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ETHICS AND FINANCIAL DISCLOSURE

GOVERNMENT

CUMENTS

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HEARINGS

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BEFORE THE

SUBCOMMITTEE ON

EMPLOYEE ETHICS AND UTILIZATION

OF THE

COMMITTEE ON

POST OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 3829

A BILL TO ESTABLISH A COMMISSION ON ETHICS AND
FINANCIAL DISCLOSURE FOR OFFICERS AND EMPLOYEES
OF THE FEDERAL GOVERNMENT, AND FOR OTHER
PURPOSES

MARCH 8, 22, 24, AND 25, 1977

Serial No. 95-8

Printed for the use of the
Committee on Post Office and Civil Service



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1977

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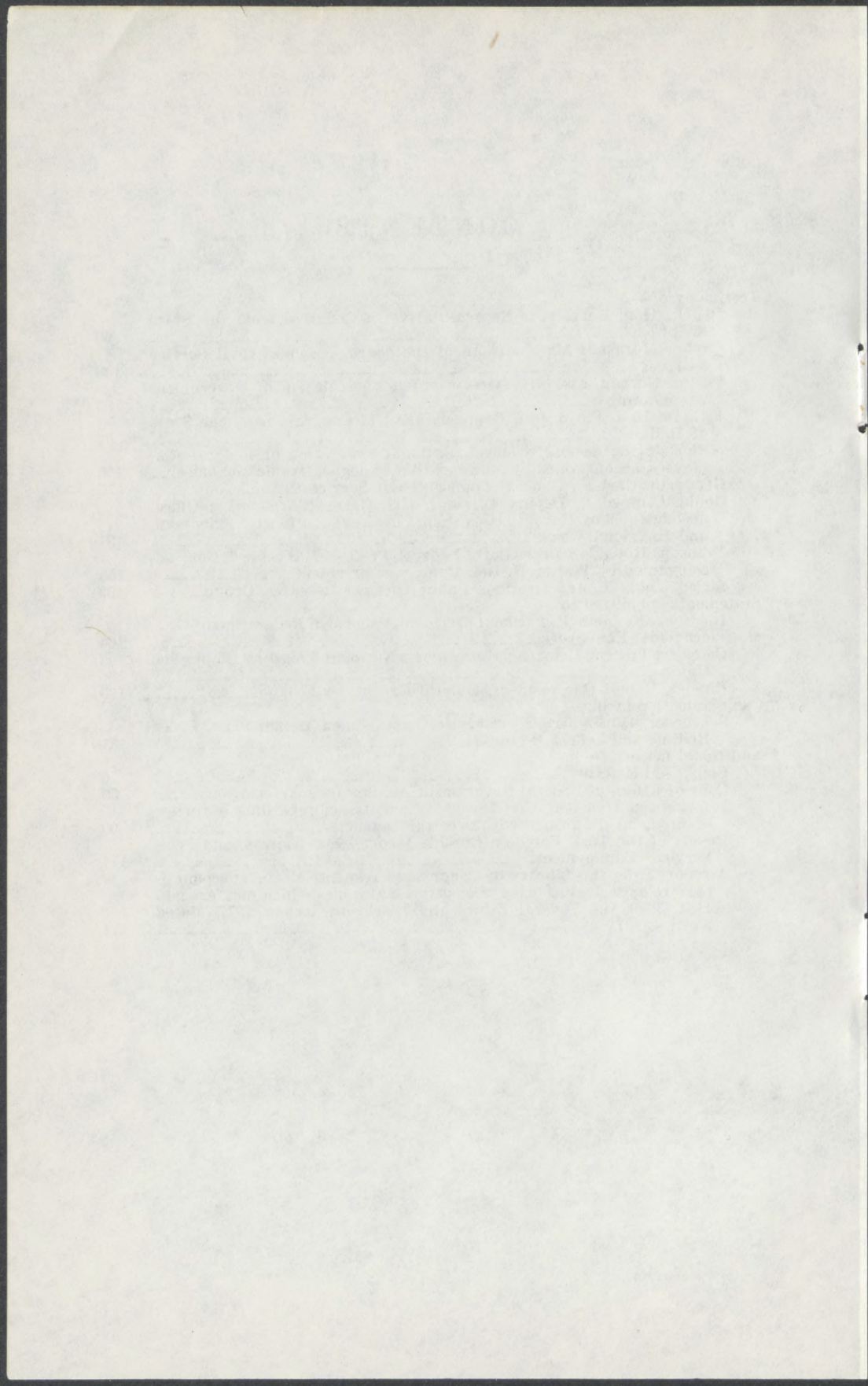
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(CHARLES KNULL, *Subcommittee Staff Director*, Room 603 HOB Annex—Ext. 54025)

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ETHICS AND FINANCIAL DISCLOSURE

TUESDAY, MARCH 8, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEE ETHICS AND UTILIZATION,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 311, Cannon House Office Building, Hon. Patricia Schroeder (chairwoman of the subcommittee) presiding.

Mrs. SCHROEDER. This is the first meeting of the subcommittee for the 95th Congress. We are holding our first hearing on H.R. 3829, a bill to establish a Commission on Ethics and Financial Disclosure. H.R. 3829 is an extensive bill. It covers everyone from the President to Federal judges to uniformed military personnel. However, our main concern in the subcommittee will be with its effects on Federal civil servants. I want to note at this time that the Speaker gave joint jurisdiction over H.R. 3829 with other committees; and last week I wrote to the chairmen of the Armed Services, Judiciary, and the Standards of Official Conduct Committees notifying them that we are starting the ball rolling on this bill.

A copy of the bill and these letters will be made a part of the record at this point.

(1)

95TH CONGRESS
1ST SESSION

H. R. 3829

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1977

Mrs. SCHROEDER (by request) introduced the following bill; which was referred jointly to the Committees on the Judiciary, Post Office and Civil Service, Armed Services, and Standards of Official Conduct

A BILL

To establish a Commission on Ethics and Financial Disclosure for Officers and Employees of the Federal Government, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Ethics and
4 Financial Disclosure Act of 1977".

5 TITLE 1—ETHICAL CONDUCT

6 SEC. 101. This title may be cited as the "Federal Ethics
7 Act of 1977".

8 SEC. 102. DEFINITIONS.—For purposes of this title:

9 (1) The term "employee" includes the President of
10 the United States, the Vice President of the United States,

1 a Member of Congress, an officer designated under section
2 2104 of title 5, an employee designated under section 2105
3 of title 5, an officer or member of a uniformed service, and
4 an officer or employee of the United States Postal Service
5 or the Postal Rate Commission, and special Government
6 employees as defined in section 202 of title 18 of the United
7 States Code.

8 (2) The term "agency" means any authority of the
9 Government of the United States.

10 SEC. 103. Solicitation.—An employee shall not solicit
11 or accept any item of value in excess of \$50 from any person
12 with whom such individual is involved in the performance
13 of his official duties.

14 SEC. 104. Use of Official Position.—(a) An employee
15 shall not (i) use or attempt to use his official position, or
16 (ii) disclose or use any information obtained through that
17 position to secure any gain, privilege, benefit, exemption,
18 or other item of value for—

19 (1) himself, or

20 (2) any other person, unless such use or disclosure
21 is provided by law for the proper performance of his
22 official duties.

23 SEC. 105. Appearance of Impropriety.—An employee
24 shall not engage in any conduct nor associate with any person

1 in such a manner as to present to the public an appearance
2 of impropriety.

3 SEC. 106. Nongovernmental Employment.—(a) An
4 employee shall not perform any services other than his
5 official duties if such service conflicts in any way with the
6 performance of his official duties.

7 (b) Any employee who is required to file a report
8 under section 203 (b) 6, 7, or 8 of the Financial Dis-
9 closure Act of 1977 shall not receive any item of value for
10 the performance of services other than his official duties,
11 unless such employee has entered into an agreement with
12 the head of the agency for which he is employed specifically
13 authorizing such employee to perform services other than
14 his official duties.

15 (c) Any employee who is required to file a report
16 under section 203 (b) 1, 2, 3, 4, or 5 of the Financial Dis-
17 closure Act of 1977, and an employee who is the head of an
18 executive agency (as defined in section 105 of title 5) shall
19 not receive anything of value for the performance of services
20 which are directly or indirectly related to his official duties.

21 TITLE II—FINANCIAL DISCLOSURE

22 SEC. 201. This title may be cited as the "Financial
23 Disclosure Act of 1977".

DEFINITIONS

SEC. 202. As used in this title—

(1) the term “agency” means each authority of the Government of the United States;

(2) the term “administering officer” means the head of an executive agency, the Secretary of the Senate, the Clerk of the House of Representatives, the Director of the Administrative Office of the United States Courts, and the Chairman, Commission on Ethics and Financial Disclosure;

(3) the term “commodity future” has the meaning set forth in sections 2 and 5 of the Commodity Exchange Act, as amended (7 U.S.C. 2 and 5);

(4) the term “candidate” has the meaning set forth in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431);

(5) the term “Comptroller General” means the Comptroller General of the United States;

(6) the term “dependent” has the meaning set forth in section 152 of the Internal Revenue Code of 1954;

(7) the term “employee” includes, for purposes of section 203, any employee designated under section 2105 of title 5, United States Code, any employee of the United States Postal Service or of the Postal Rate

1 Commission and special Government employees as de-
2 fined in section 202 of title 18 of the United States
3 Code;

4 (8) the term "immediate family" means the spouse
5 of an individual and those blood relations of an individ-
6 ual or of the spouse of such individual who are residents
7 of the individual's household;

8 (9) the term "income" means gross income as de-
9 fined in section 61 of the Internal Revenue Code of
10 1954;

11 (10) the term "Member of Congress" means a
12 Senator, a Representative, a Resident Commissioner, or
13 a Delegate;

14 (11) the term "officer" includes, for purposes of
15 section 203, any officer designated under section 2104
16 of title 5, United States Code, and any officer of the
17 United States Postal Service or of the Postal Rate
18 Commission;

19 (12) the term "Presidential nominee" means an
20 individual appointed by the President to an office for
21 which confirmation, by and with the advice and con-
22 sent of the Senate, is required, or an individual nom-
23 inated by the President to serve as Vice President pur-
24 suant to the twenty-fifth amendment to the Constitution
25 of the United States;

1 (13) the term "political contribution" means a con-
 2 tribution as defined in section 301 of the Federal Elec-
 3 tion Campaign Act of 1971 (2 U.S.C. 431) ;

4 (14) the term "political expenditure" means an
 5 expenditure as defined in section 301 of the Federal
 6 Election Campaign Act of 1971 (2 U.S.C. 431) ;

7 (15) the term "security" has the meaning set forth
 8 in section 2 of the Securities Act of 1933, as amended
 9 (15 U.S.C. 77b) ;

10 (16) the term "transactions in securities and com-
 11 modities" means any acquisition, transfer, or other dis-
 12 position involving any security or commodity; and

13 (17) the term "uniformed services" means any of
 14 the Armed Forces, the commissioned corps of the Public
 15 Health Service, or the commissioned corps of the Na-
 16 tional Oceanic and Atmospheric Administration.

17 INDIVIDUALS REQUIRED TO FILE REPORT

18 SEC. 203. (a) Any individual identified in subsection

19 (b) shall file each calendar year a report containing a full
 20 and complete financial statement for the preceding calendar
 21 year if such individual has occupied or been a candidate for
 22 the office or position for a period in excess of ninety days
 23 in such calendar year.

24 (b) The individuals referred to in subsection (a) are—

25 (1) the President and any candidate for that office;

(2) the Vice President and any candidate for that office;

(3) each Member of Congress and any candidate for Congress;

(4) each Justice or judge of the United States;

(5) each Presidential nominee;

(6) each officer or employee of the United States who is compensated at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS-16 of the General Schedule or any higher grade or position;

(7) each member of a uniformed service who is compensated at a rate equal to or in excess of the monthly rate of pay prescribed for grade O-7 or any higher grade of pay established under chapter 3 of title 37, United States Code;

(8) such other member of a uniformed service, officer or employee as may be determined to be necessary by the administering officer.

CONTENTS OF REPORTS

21 SEC. 204. (a) Each individual shall include in each
22 report required to be filed by him under section 203 a full
23 and complete statement. In order to maintain uniformity and
24 consistency the administering officers will consult with the
25 Commission on Ethics and Financial Disclosure regarding the

1 frequency and form of the statements required to be filed
2 by each individual under section 203:

3 (1) the amount and source of each item of income,
4 each item of reimbursement for any expenditure, and
5 each gift or aggregate of gifts from one source (other
6 than gifts received from any member of his immediate
7 family) received during the preceding calendar year
8 which exceeds \$100 in amount or value, including any
9 fee or other honorarium received for or in connection
10 with the preparation or delivery of any speech or address,
11 attendance at any convention or other assembly of in-
12 dividuals, or the preparation of any article or other com-
13 position for publication, and the monetary value of sub-
14 sistence, entertainment, travel, and other facilities re-
15 ceived by him in kind;

16 (2) the identity and the category of value, as desig-
17 nated under subsection (b), of each asset, other than
18 household furnishings or goods, jewelry, clothing, or any
19 vehicle owned solely for the personal use of the indi-
20 vidual, his spouse, or any of his dependents, held during
21 the preceding calendar year which has a value in excess
22 of \$1,000 as of the close of the preceding calendar year;

23 (3) the identity and the category of amount, as
24 designated under subsection (b), of each liability owed

1 which is in excess of \$1,000 as of the close of the pre-
2 ceding calendar year;

3 (4) the identity, the category of amount, as desig-
4 nated under subsection (b), and date of any transaction
5 in a security of any business entity or any transaction
6 in a commodity futures during the preceding calendar
7 year if the aggregate amount involved in transactions
8 in the securities of such business entity or in transactions
9 in commodities futures exceeds \$1,000;

10 (5) the identity and the category of value, as desig-
11 nated under subsection (b), of any purchase or sale of
12 real property or any interest in any real property during
13 the preceding calendar year if the value of property
14 involved in such purchase or sale exceeds \$1,000;

15 (6) any patent right or any interest in any patent
16 right, and the nature of such patent right, held during
17 the preceding calendar year;

18 (7) a description of, the parties to, and the terms of
19 any contract, promise, or other agreement between such
20 individual and any person with respect to his employ-
21 ment after such individual ceases to occupy his office or
22 position with the Government, including any agreement
23 under which such individual is taking a leave of absence
24 from an office or position outside of the Government in

1 order to occupy an office or position of the Government,
2 and a description of and the parties with any unfunded
3 pension agreement between such individual and any
4 employer other than the Government; and

5 (8) the identity of any position held as an em-
6 ployee, officer, owner, director, trustee, partner, adviser,
7 or consultant of any corporation, company, firm, or other
8 business enterprise or partnership.

9 Each individual designated under paragraphs (6), (7),
10 and (8) of section 203 (b) shall also include in such report
11 the identity of any person, other than the Government, who
12 paid such individual compensation in excess of \$5,000 in
13 any of the five years prior to the preceding calendar year
14 and the nature and term of the services such individual
15 performed for such person.

16 (b) (1) For purposes of paragraphs (2) through (5)
17 of subsection (a), an individual need not specify the actual
18 amount or value of each asset, each liability, each transaction
19 in securities of any business entity or in commodities futures,
20 or each purchase or sale required to be reported under such
21 paragraphs, but such individual shall indicate which of the
22 following categories such amount or value is within—

23 (A) not more than \$5,000,

24 (B) greater than \$5,000 but not more than
25 \$15,000,

1 (C) greater than \$15,000 but not more than
2 \$50,000,

3 (D) greater than \$50,000, but not more than
4 \$100,000, or

5 (E) greater than \$100,000.

6 (2) Each individual shall report the actual amount or
7 value of any other item required to be reported under this
8 section.

9 (c) For purposes of paragraphs (1) through (6) of
10 subsection (a), an individual shall include each item of
11 income or reimbursement and each gift received, each item
12 received in kind, each asset held, each liability owed, each
13 transaction in commodities futures and in securities, each
14 purchase or sale of real property or interest in any real prop-
15 erty, and each patent right or interest in any patent right
16 held by him, his spouse, or any of his dependents, or by him
17 and his spouse or dependents jointly, or by any person acting
18 on his behalf or for his benefit.

19 FILING OF REPORTS

20 SEC. 205. (a) (1) Each individual required to file a
21 report under section 203 (a), shall file such report with the
22 Commission on Ethics and Financial Disclosure not later than
23 May 15 of each year.

24 (2) Each such individual (other than the President,
25 Vice President, a Member of Congress, a justice or judge of

1 the United States, any officer or employee of the Senate or
2 the House of Representatives or any court of the United
3 States) shall file a copy of such report with the head of the
4 agency in which such individual occupies any office or posi-
5 tion at the same time as such report is filed with the Com-
6 mission on Ethics and Financial Disclosure.

7 (3) Each Member, officer, and employee of the House
8 of Representatives and the Senate required to file a report
9 under section 203 (a) shall file a copy of such report with
10 the Clerk of the House of Representatives and the Secretary
11 of the Senate, respectively, and each Justice, judge, officer,
12 and employee of any court of the United States shall file a
13 copy of such report with the Director of the Administrative
14 Office of the United States Courts not later than May 15 of
15 each year.

16 (4) The President may exempt any individual in the
17 Central Intelligence Agency, the Defense Intelligence
18 Agency, or the National Security Agency, or any individual
19 engaged exclusively in intelligence activities in any agency of
20 the United States from the requirement to file a report with
21 the Commission on Ethics and Financial Disclosure if the
22 President finds that, due to the nature of the office or position
23 occupied by such individual, public disclosure of such report
24 would reveal the identity of an undercover agent of the
25 Federal Government. Each individual exempted by the

1 President from such requirements shall file such report with
2 the head of the agency in which he occupies an office or
3 position.

4 (b) (1) Any individual who ceases prior to May 15
5 of any calendar year to occupy the office or position the
6 occupancy of which imposes upon him the reporting require-
7 ment contained in section 203 (a) shall file such report for
8 the preceding calendar year and the period of such calendar
9 year for which he occupies such office or position on or
10 before May 15 of such calendar year.

11 (2) Any individual who ceases to occupy such office or
12 position after May 15 of any calendar year shall file such
13 report for the period of such calendar year which he occu-
14 pies such office or position on the last day he occupies such
15 office or position.

16 FAILURE TO FILE OR FALSIFYING REPORTS: PROCEDURE

17 SEC. 206. (a) (1) Any individual who knowingly and
18 willfully falsifies or fails to report any information such
19 individual is required to report under section 4 shall be fined
20 in any amount not exceeding \$10,000, or imprisoned for
21 not more than one year, or both.

22 (2) The Attorney General may bring a civil action in
23 any district court of the United States against any individual
24 who fails to file a report which such individual is required
25 to file under section 203 or who fails to report any informa-

1 tion which such individual is required to report under section
2 203. The court in which such action is brought may assess
3 against such individual a penalty in any amount not to
4 exceed \$5,000.

5 CUSTODY AND PUBLIC ACCESS TO REPORTS

6 SEC. 207. (a) (1) The Commission on Ethics and
7 Financial Disclosures, officers of the executive, legislative,
8 and judicial branches of the Government with whom reports
9 are filed under provisions of this title shall, with due regard
10 for the right of privacy of persons required to file reports,
11 release such reports for public disclosure under the following
12 conditions:

13 (i) The requestor shall present a written request
14 which shall state his name and address and the names
15 and addresses of the persons or organizations, if any,
16 or on whose behalf he is making the request.

17 (ii) The request shall state the reason for the re-
18 quest, the purpose for which the disclosure statement
19 will be used, and the basis upon which the requestor
20 believes the report contains information indicating the
21 existence of a conflict of interest or potential conflict of
22 interest.

23 (iii) At the time the report is made available the

1 person with whom the report is filed shall notify the
2 individual whose report has been made available. Such
3 notification shall include a copy of the written request
4 for the report.

5 (iv) Reports shall be available to the public within
6 fifteen days after their receipt.

7 (2) In the event the custodian of reports which may be
8 released under provisions of this section determines release
9 of a report will be denied he shall make a public statement of
10 the reason for such denial, stating specifically any finding
11 made that no conflict of interest or potential conflict of inter-
12 est appears in such report.

13 (b) Any person requesting a copy of a report under
14 subsection (a) (1) may be required to pay a reasonable fee
15 in an amount necessary to recover the cost of reproduction or
16 mailing of such report excluding any salary of any employee
17 involved in such reproduction or mailing.

18 (c) (1) It shall be unlawful for any person to inspect
19 or obtain a copy of any report—

20 (A) for any unlawful purpose;

21 (B) for any commercial purpose;

22 (C) to determine or establish the credit rating of
23 any individual;

1 (D) to compile any mailing list; or

2 (E) for use directly or indirectly in the solicitation
3 of money for any political, charitable, or other purpose.

4 (2) The Attorney General may bring a civil action in
5 any district court of the United States against any person
6 who inspects or obtains such report for any purpose pro-
7 hibited in paragraph (1). The court in which such action is
8 brought may assess against such individual a penalty in any
9 amount not to exceed \$1,000.

10 (d) Reports shall be held and made available to the
11 public under conditions stated in subsection (a) (1) of this
12 section for a period of five years after receipt. After such
13 five-year period, the reports shall be destroyed.

14 (e) (1) The Clerk of the House of Representatives,
15 the Secretary of the Senate, the Director of the Adminis-
16 trative Office of the United States Courts, the Chairman,
17 Commission on Ethics and Financial Disclosure and the head
18 of each agency shall make provisions to assure that each
19 report filed with them shall be reviewed in accordance with
20 any law or regulation with respect to conflicts of interest of
21 confidential financial information of officers or employees of
22 the House of Representatives, the Senate, the United States
23 courts or each such agency or in accordance with rules and
24 regulations as may be prescribed.

1 TITLE III—COMMISSION ON ETHICS AND
2 FINANCIAL DISCLOSURE

3 ESTABLISHMENT OF COMMISSION ON ETHICS AND
4 FINANCIAL DISCLOSURE

5 SEC. 301. (a) (1) There is established a commission to
6 be known as the Federal Commission on Ethics and Financial
7 Disclosure (hereinafter referred to as the "Commission").
8 The Commission is composed of seven members appointed
9 as follows:

10 (A) two shall be appointed by the President of
11 the United States from a list submitted by the majority
12 and minority leaders of the Senate and the House of
13 Representatives;

14 (B) two shall be appointed by the President of the
15 United States from a list submitted by the Judicial
16 Conference of the United States; and

17 (C) three appointed by the President of the United
18 States. No more than one member appointed under sub-
19 paragraph (A) or (B) and no more than two mem-
20 bers appointed under subparagraph (C) shall be affil-
21 iated with the same political party.

22 (2) Members of the Commission shall serve for terms
23 of two years, except that of the members first appointed,
24 the President shall designate one appointed under para-

1 graph (1) (A), one under paragraph (1) (B), and (1)
2 (C), to serve for a term of only one year. No individual may
3 serve more than two terms on the Commission. An indi-
4 vidual appointed to fill a vacancy occurring other than by
5 the expiration of a term of office shall be appointed only for
6 the unexpired term of the member he succeeds. Any vacancy
7 occurring in the membership of the Commission shall be
8 filled in the same manner as in the case of the original
9 appointment.

10 (3) Members shall be chosen on the basis of their ma-
11 turity, experience, integrity, impartiality, and good judg-
12 ment and shall be chosen from among individuals who, at the
13 time of their appointment, are not elected or appointed
14 officers or employees in the executive, legislative, or judicial
15 branch of the Government of the United States.

16 (4) Members of the Commission shall receive per diem
17 at the maximum daily rate for GS-18 of the General Sched-
18 ule under section 5332 (a) of title 5, United States Code,
19 when they are engaged in the performance of their duties as
20 members of the Commission and shall be entitled to reim-
21 bursement for travel, subsistence, and other necessary ex-
22 penses incurred by them in carrying out the duties of the
23 Commission.

24 (5) The Commission shall elect a Chairman and a Vice
25 Chairman from among its members for a term of one year.

1 No member may serve as Chairman for more than one term.
2 The Chairman and the Vice Chairman shall not be affiliated
3 with the same political party. The Vice Chairman shall act
4 as Chairman in the absence or disability of the Chairman, or
5 in the event of a vacancy in such Office.

6 (b) All decisions of the Commission with respect to the
7 exercise of its duties and powers under the provisions of this
8 Act shall be made by a majority vote of the members of the
9 Commission. A member of the Commission may not delegate
10 to any person his vote or any decisionmaking authority or
11 duty invested in the Commission by the provisions of this
12 Act.

13 (c) The Commission shall meet at least once each month
14 and also at the call of any member, with the approval of
15 the Chairman or Vice Chairman.

16 (d) The Commission shall prepare written rules for the
17 conduct of its activities, shall have an official seal which shall
18 be judicially noticed, and shall have its principal office in or
19 near the District of Columbia (but it may meet or exercise
20 any of its powers anywhere in the United States).

21 (e) (1) The Commission shall have a staff director who
22 shall be appointed by the Commission. The staff director
23 shall be paid at a rate not to exceed the rate of basic pay
24 in effect for GS-18 of the General Schedule under section
25 5332 (a) of title 5, United States Code. With the approval

1 of the Commission, the staff director may appoint and fix
2 the pay of such additional personnel as he considers desirable.

3 (2) With the approval of the Commission, the staff di-
4 rector may procure temporary and intermittent services to
5 the same extent as is authorized by section 3109 (b) of title
6 5, United States Code, but at rates for individuals not to ex-
7 ceed the daily equivalent of the annual rate of basic pay in
8 effect for grade GS-18 of the General Schedule under section
9 5332 (a) of title 5, United States Code.

10 (3) In carrying out its responsibilities under this title,
11 the Commission shall, to the fullest extent practicable, avail
12 itself of the assistance, including personnel and facilities, or
13 other agencies and departments of the United States Govern-
14 ment. The heads of such agencies and departments may make
15 available to the Commission such personnel, facilities, and
16 other assistance, with or without reimbursement, as the
17 Commission may request.

18 POWERS

19 SEC. 302. (a) The Commission has the power—

20 (1) to require, by special or general order, any per-
21 son to submit in writing such reports and answers to
22 questions as the Commission may prescribe; and such
23 submission shall be made within a reasonable period of
24 time and under oath or otherwise as the Commission
25 may determine;

1 (2) to administer oaths or affirmations;

2 (3) to require by subpoena, signed by the Chairman
3 or the Vice Chairman, the attendance and testimony of
4 witnesses and the production of all documentary evidence
5 relating to the execution of its duties;

6 (4) in any proceeding or investigation, to order
7 testimony to be taken by deposition before any person
8 who is designated by the Commission and has the power
9 to administer oaths and, in such instances, to compel
10 testimony and the production of evidence in the same
11 manner as authorized under paragraph (3) of this
12 subsection;

13 (5) to pay witnesses the same fees and mileage as
14 are paid in like circumstances in the courts of the United
15 States;

16 (6) to render advisory opinions as provided in sec-
17 tion 304 of this title; and

18 (7) to conduct investigations and hearings expedi-
19 tiously, and to report apparent violations to the ap-
20 propriate law enforcement authorities.

21 (b) Any United States district court within the juris-
22 diction of which any inquiry is carried on, may, upon peti-
23 tion by the Commission in the case of a refusal to obey a
24 subpoena or order of the Commission issued under subsec-
25 tion (a) of this section, issue an order requiring compli-

1 ance therewith. Any failure to obey the order of the court
2 may be punished by the court as a contempt thereof.

(c) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(d) Whenever the Commission submits any budget estimate or request to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

10 DUTIES

11 SEC. 303. (a) It shall be the duty of the Commission
12 to investigate and report with respect to violations of titles
13 I and II of this Act.

(b) (1) Any person who believes a violation of titles I or II of this Act has occurred may file a complaint with the Commission.

(2) The Commission, upon receiving any complaint under paragraph (1), or if it has reason to believe that any person has committed a violation of any such provision, shall notify the person involved of such apparent violation and shall—

22 (A) report such apparent violation to the Attor-
23 ney General; or

24 (B) make an investigation of such apparent vio-
25 lation.

1 (3) Any investigation under paragraph (3) (B) shall
2 be conducted expeditiously.

3 (4) The Commission shall, at the request of any person
4 who receives notice of an apparent violation under para-
5 graph (2), conduct a hearing with respect to such apparent
6 violation.

7 (5) If the Commission determines, after investigation
8 and after affording due notice and an opportunity for a hear-
9 ing, that there is reason to believe that any person has en-
10 gaged, or is about to engage in any act which constitutes or
11 will constitute a violation of titles I or II of this Act, it shall
12 report such findings to—

13 (A) the person with respect to whom the investi-
14 gation was conducted,

15 (B) the head of the agency in which the individual
16 investigated is employed, except in the case of—

17 (i) the President or Vice President, it shall
18 notify the Committees on the Judiciary of the Sen-
19 ate and the House of Representatives;

20 (ii) a Member, officer or employee of the Sen-
21 ate and House of Representatives, it shall notify
22 the appropriate ethics committee of the Senate and
23 the House of Representatives, respectively;

24 (iii) a justice, judge, officer, or employee of
25 any court of the United States, it shall notify the

1 Director of the Administrative Office of the United
2 States Courts; and

3 (iv) the head of each agency, each Presidential
4 employee in the Executive Office of the President,
5 and each full-time member of a board, committee,
6 or commission appointed by the President, it shall
7 notify the President, for appropriate personnel or
8 other action, and

9 (C) the Attorney General.

10 (c) The Commission shall have no enforcement power.

11 In any case in which the Commission refers an apparent
12 violation to the Attorney General and to any individual
13 notified under subsection (b) (5) (B), the Attorney General
14 and such individual shall report monthly to the Commission
15 with respect to any action taken by the Attorney General
16 or such individual regarding such apparent violation with
17 the first report being transmitted no later than thirty days
18 after the date the Commission refers any apparent violation.
19 If the Commission determines that appropriate action is not
20 being taken within a reasonable time, it shall report such
21 determination to the President and to the Congress.

22 (d) develop and recommend consistent procedures to
23 carry out the provisions and purposes of titles I and II of
24 this Act no later than sixty days after the date of the enact-
25 ment of this Act.

ADVISORY OPINIONS

1
2 SEC. 304. (a) Upon written request to the Commission
3 by any employee of the United States Government, the
4 Commission shall render an advisory opinion, in writing,
5 within a reasonable time with respect to whether any specific
6 transaction or activity by such individual would constitute
7 a violation of title I or II of this Act.

8 (b) Notwithstanding any other provision of law, any
9 person with respect to whom an advisory opinion is rendered
10 under subsection (a) who acts in good faith in accordance
11 with the provisions and findings of such advisory opinion
12 shall be presumed to be in compliance with the provisions
13 of titles I and II of this Act.

14 (c) Any request made under subsection (a) shall be
15 made public by the Commission. The Commission shall,
16 before rendering an advisory opinion with respect to such
17 request, provide any interested party with an opportunity to
18 transmit written comments to the Commission with respect
19 to such request.

REPORTS

20
21 SEC. 305. The Commission shall transmit reports to the
22 President of the United States and to each House of Congress
23 no later than January 31 of each year. Each such report
24 shall contain a detailed statement with respect to the activi-
25 ties of the Commission in carrying out its duties under this

1 title, together with recommendations for such legislative or
2 other action as the Commission considers appropriate.

3 GOVERNMENT IN THE SUNSHINE ACT

4 SEC. 306. For purposes of the Government in the Sun-
5 shine Act, the Federal Commission on Ethics and Financial
6 Disclosure shall be considered an agency within the meaning
7 of section 552b (a) (1) of title 5, United States Code.

NINETY-FIFTH CONGRESS

ROBERT N. C. NIX, PA., CHAIRMAN

U.S. House of Representatives

COMMITTEE ON POST OFFICE AND CIVIL SERVICE
309 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515

March 2, 1977

Honorable Melvin Price
Chairman
Armed Services Committee
2120 Rayburn HOB

Dear Mel:

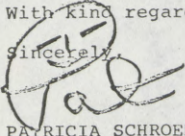
I want to make you aware that the Subcommittee on Manpower will begin hearings on H.R. 3829, a bill to establish a Commission on Ethics and Financial Disclosure. This is the bill drafted by the Comptroller General which the Speaker jointly referred to the Committees on Post Office and Civil Service, Judiciary, Standards of Official Conduct, as well as your Committee.

My Subcommittee will be examining the bill from the point of view of its effects on Executive Branch employees; but I expect that by the time our examination is complete, we will have, as all hearings go, hit on other matters as well.

If you have any questions, please feel free to contact me or Mr. Charles Knull, Subcommittee Counsel, at 56741.

With kind regards,

Sincerely,



PATRICIA SCHROEDER, Chairwoman
Subcommittee on Manpower

PS:CK/bmr

NINETY-FIFTH CONGRESS

ROBERT N. C. NIX, PA., CHAIRMAN

U.S. House of Representatives
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
309 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515

March 2, 1977

Honorable Peter Rodino
Chairman
Judiciary Committee
2137 Rayburn HOB

Dear Pete:

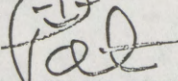
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My Subcommittee Counsel, Charles Knull, has already discussed these hearings with William Shattuck of your staff. We will be examining the bill from the point of view of its effects on Executive Branch employees; but I expect that by the time our examination is complete, we will have, as all hearings go, hit on other matters as well.

If you have any questions, please feel free to contact me or Mr. Knull at 56741.

With kind regards,

Sincerely,



PATRICIA SCHROEDER, Chairwoman
Subcommittee on Manpower

PS:CK/bmr

NINETY-FIFTH CONGRESS

ROBERT N. C. NIX, PA., CHAIRMAN

U.S. House of Representatives

COMMITTEE ON POST OFFICE AND CIVIL SERVICE
309 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515

March 2, 1977

Honorable John J. Flynt, Jr.
Chairman
Standards of Official Conduct Committee
2360 Rayburn HOB

Dear John:

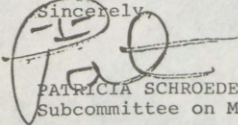
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Sincerely,



PATRICIA SCHROEDER, Chairwoman
Subcommittee on Manpower

PS:CK/bmr

Mrs. SCHROEDER. Later this month, and in April, we hope to take in the views on H.R. 3829 of the Civil Service Commission, various public interest groups, and Federal employee organizations.

Today the subcommittee has before it representatives from the General Accounting Office. Mr. Clifford Gould, who is the Deputy Director of the Federal Personnel and Compensation Division will be testifying, and he is accompanied by Harold Lewis, John Covalesski, Antionette Friedman, and Raymond Wyrsh. We welcome you.

STATEMENT OF CLIFFORD I. GOULD, DEPUTY DIRECTOR, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY HAROLD LEWIS, JOHN COVALESSKI, ANTIONETTE FRIEDMAN, AND RAYMOND WYRSCH

Mr. GOULD. Madam Chairwoman and members of the subcommittee, we appreciate the opportunity to be of assistance to the subcommittee by testifying on the General Accounting Office reviews of the enforcement of regulations pertaining to financial disclosure reporting in the Federal Government; and on H.R. 3829, a bill to establish a Commission on Ethics and Financial Disclosure for Officers and Employees of the Federal Government.

Since January 28, 1977, when the Comptroller General sent the draft legislation embodied in H.R. 3829 to Congress, the House has adopted H.R. 287, which establishes a financial disclosure system for Members, officers, and employees of the House of Representatives, and includes other provisions governing the conduct of these individuals.

A Senate resolution, which would require financial disclosure and impose other responsibilities on Members and certain employees of the Senate, is now under consideration. In addition, President Carter is considering issuing an Executive order establishing a code of official conduct for officers and employees of the executive branch. Further, recent Cabinet appointees have been required by the new administration to make unprecedented disclosures of net worth, sources and amounts of income, restrictions following Government employment and agreements to serve for the entire appointed term.

There has been a large number of proposed legislation introduced both in this session and the past sessions of Congress. The General Accounting Office has been concerned with provisions which relate to two specific areas.

One is that many of these bills would put the responsibility for administration within the General Accounting Office, and we do not believe that is an appropriate place for it to be placed. The purpose of our submitting draft legislation that would set up a commission was to provide an alternative that would remove that function from the General Accounting Office and place it with an independent body.

As another alternative, we also provided you with draft legislation that would require the enforcement of conflict-of-interest and financial disclosure provisions in each branch of the Government. We think this is also a viable alternative.

We believe that any legislation that may be enacted should give appropriate recognition to those individuals who should be required to file financial disclosure statements. We have enumerated those on page 5 of my statement.

We also think that there is certain information which should be reported. That is enumerated on page 6 of my statement.

The review of the reports, we think, ought to be conducted in each of the three branches. We think that it is important that heads of the agencies continue to be held accountable for any questionable interest, and a review in each branch of the agency is necessary to accomplish that.

The other major concern which has been a particular problem is how you balance the goals of public disclosure with the rights of individual privacy. We recognize that the House of Representatives has decided to have public disclosure for its Members; and we believe, as legislation is considered for the other three branches of Government, that Congress should continue to balance these concerns.

That pretty much summarizes my statement.

I would like to emphasize that most of the work that we in the General Accounting Office have been involved in over the past 21½ years has been concerned with financial disclosure reporting. We have touched peripherally on some of the other issues which your counsel has suggested that you would be interested in. We would be happy to respond to those, but I hope you will recognize that we have not done in-depth reviews in all of those areas.

With that, we would be happy to respond.

[The prepared statement follows:]

STATEMENT OF CLIFFORD I. GOULD, DEPUTY DIRECTOR, U.S. GENERAL
ACCOUNTING OFFICE

Madam Chairwoman and members of the subcommittee, we appreciate the opportunity to be of assistance to the Subcommittee by testifying on the General Accounting Office reviews of the enforcement of regulations pertaining to financial disclosure reporting in the Federal Government and on H.R. 3829, a bill to establish a commission on ethics and financial disclosure for officers and employees of the Federal Government.

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A Senate resolution, which would require financial disclosure and impose other responsibilities on Members and certain employees of the Senate, is now under consideration. In addition, President Carter is considering issuing an Executive Order establishing a code of official conduct for officers and employees of the executive branch. Further, recent Cabinet appointees have been required by the new administration to make unprecedented disclosures of net worth, sources and amounts of income, restrictions following Government employment and agreements to serve for the entire appointed term.

As you pointed out in your statement on February 22, 1977, H.R. 3829 embodies draft legislation proposed by the Comptroller General. That draft accompanied a letter to the Speaker of the House of Representatives which you placed in the Record, at the time you introduced this bill, together with an alternative draft of legislation prepared by our Office. This alternative bill (H.R. 3828) was referred to the Committee on the Judiciary.

The Comptroller General's letter stated the reasons for the action of our Office in submitting proposed legislation to the Congress was that numerous bills have been introduced, which would place the administrative responsibility, the receiving of reports, and investigative functions relating to financial disclosure with the Comptroller General of the United States. In the past the Comptroller General has expressed his strong opposition to each proposal and emphasized the serious repercussions they would have on the General Accounting Office if enacted.

We endeavor to remain completely nonpartisan and free from any type of political influence in carrying out the functions vested in our Office. We do not believe that oversight and investigation of individual Members of Congress is consistent with our role as a nonpartisan arm of the Congress.

Moreover, placing the responsibility for administering financial disclosure with the Comptroller General, particularly as it relates to financial disclosure problems of Members of the Congress, could potentially do great damage to the overall effectiveness of the General Accounting Office and endanger the close relationship which this Office must have with Members and committees of the Congress.

We think there is much to be said for the creation of a commission on ethics and financial disclosure to be responsible for developing uniform standards and consistent procedures for implementing, administering, and investigating ethical conduct for the financial disclosure system, and for rendering formal advisory opinions and counsel on potential conflict-of-interest matters. The General Accounting Office could be given specific responsibility for maintaining oversight of these systems.

We believe that if disclosure reports were filed with the individual agencies and transmitted by the agencies to such a commission, the objectives sought could be achieved with minimal disruption and costs and could be merged with existing systems in each branch. This would allow the responsible officers of each branch to review the reports to determine whether apparent or potential conflicts of interest exist with the employees' official duties. Such reviews are extremely important and are currently required to be performed by each agency in the executive branch. It is essential that the agency head continue to be held accountable for any questionable interests. Agency heads are in a better position to know and make judgments as to what specific financial interests an employee should not have based on their responsibilities.

With these concerns in mind, the Comptroller General submitted for your consideration the draft bill introduced as H.R. 3829 which incorporates many features of the various legislative proposals introduced in the Congress, but with significant modifications. He has not necessarily endorsed all of the provisions of the draft bill.

In the event Congress should not favor the establishment of an independent commission on ethics and financial disclosure, we have recommended that the primary responsibility for ethics and financial disclosure in each of the branches of the Federal Government be centralized in an office of ethics in the executive branch, the Clerk of the House of Representatives, the Secretary of the Senate, and the Director of the Administrative Office of the United States Courts, respectively.

In any legislation that is considered by the Congress, we believe there are several questions that need to be considered and resolved.

WHO SHOULD FILE?

We believe that the following individuals should be required to file financial disclosure reports:

- (1) The President and any candidate for that office;
- (2) The Vice President and any candidate for that office;
- (3) Each Member of Congress and any candidate for Congress;
- (4) Each justice or judge of the United States;
- (5) Each presidential nominee;
- (6) Each officer or employee of the United States who is compensated at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS-16 of the general schedule or any higher grade or position;
- (7) Each member of a uniformed service who is compensated at a rate equal to or in excess of the monthly rate of pay prescribed for grade 0-7 or any higher grade of pay established under chapter 3 of title 37, United States Code;
- (8) Special Government employees (consultants and experts); and
- (9) Such other member of a uniformed service, officer or employee as may be determined to be necessary by the administering officer in each Government agency.

This would require the Government-wide filing of at least 23,000 reports for the GS-16 and 0-7 level and above. The executive branch agencies currently require about 80,000 employees at various grade levels to file reports.

WHAT INFORMATION SHOULD BE REPORTED?

Based on our experience of reviewing agency financial disclosure systems, we believe individuals should be required to report:

1. Sources of earned income (other than from Federal Government)—name, address, and nature of the business; services rendered for income; and amount.
2. Gifts, honorariums, and travel reimbursements (other than from Federal Government)—source, value, and date of receipt of (a) gifts other than from relatives; (b) honorariums; and (c) reimbursements for transportation, lodging, food, or entertainment.
3. Ownership of securities, bonds, patent rights, and commodities' futures—name, address, and nature of the business or commodity; dates of acquisition and divestiture; and value.

4. Organizational relationships—name, address, and nature of business or entity with which connected (as an employee, officer, owner, director, member, trustee, partner, or adviser or through a pension plan, shared income, severance payments, agreement for future employment, or other arrangement).

5. Liabilities (other than ordinary household expenses and mortgage on personal residence)—name, address, and nature of the business to which liable; date liability was assumed; and amount.

6. Real property—address or legal description of property location other than that which is occupied as a personal residence, purpose for which property is used, date of acquisition or divestiture, and approximate market value.

Individuals should also report whether the financial interest belongs to them, their spouses, or their dependent children. The value of the interests should be reported in categorical dollar amounts in order to minimize the invasion of privacy.

We also believe that each Government agency should be required to determine what, if any, additional information is needed to preclude employee conflicts of interest and require such information to be reported.

WHO SHOULD REVIEW REPORTS?

The Clerk of the House of Representatives, the Secretary of the Senate, the Director of the Administrative Office of the United States Courts, the head of the executive branch office of ethics, and the head of each agency should make provisions to assure that each report filed with them is reviewed in accordance with any law or regulation with respect to conflicts of interest. As pointed out earlier, we believe it is essential that the heads of agencies continue to be held accountable for any questionable interests. Subsequent to the review of the statements, the administering office in each branch of Government should transmit a copy of each disclosure report to the ethics commission, should one be established.

HOW CAN INDIVIDUAL RIGHTS OF PRIVACY BE SAFEGUARDED UNDER A SYSTEM OF PUBLIC DISCLOSURE?

While the House of Representatives has decided to have public disclosure of financial interests of its Members, we believe that as legislation is considered for the three branches of Government, the Congress should continue to balance conflict-of-interest and public disclosure concerns with the rights of individuals to privacy. This is a difficult task, requiring trade-offs between equally meritorious goals. Achieving this balance will require (a) careful judgments as to which individuals should be required to disclose resources, (b) limitation of routine disclosure to those with a "need to know," and (c) disclosure requirements structured to preclude the use of financial disclosure reports as shopping lists by criminals.

Obviously, the Congress faces a difficult dilemma in seeking to accommodate the public policy considerations underlying requirements for public disclosure of personal financial information and the right of personal privacy which affects all of us. This dilemma is somewhat the same as is inherent in the public policy aims of the Freedom of Information Act and the Privacy Act of 1974—the one promoting openness in Government administration and the other carefully spelling out the basis upon which "private" information in the hands of the Government may be used and disclosed.

Here the primary concern is promoting confidence in public officials through a code of ethics and full disclosure of their personal financial status. Aside from

any philosophical or ethical objections which might be voiced against such disclosure, there are difficult problems that need to be considered—problems which, to our mind, are avoidable without undermining the overall objective being pursued.

Provisions should be made to require notice to the individual involved that disclosure of his financial report has been made and to whom. We believe the requestor should be required to present a written request giving his name; address; names and addresses of the persons or organizations, if any, or on whose behalf he is making the request; the reason for the request; the purpose for which the financial report will be used; and the basis upon which he believes the report contains information indicating the existence of a conflict of interest or potential conflict of interest.

The legislation should authorize the administering agency to issue regulations limiting access to pertinent information in these reports to conflict of interest or potential conflict-of-interest situations (e.g., interests, gifts or other relationships of officials of the regulatory agencies in companies regulated or affected by their regulations).

In the event the custodian of reports determines that release of a report will be denied he should be required to make a public statement of the reason for such denial, stating specifically any finding made that no conflict of interest or potential conflict of interest appears in such report.

We also believe there should be a system to receive complaints from the public concerning violations of standards of conduct laws or regulations, and that the administering agency should notify the person involved in such violation, and should conduct such investigations and hearings necessary to resolve complaints.

This concludes my prepared statement. We will be pleased to respond to any questions.

Mrs. SCHROEDER. Thank you very much.

Since I was tardy in getting here, let's see if Mrs. Spellman has any questions, and I'll save mine.

Mrs. SPELLMAN. No; I'm going to pass on asking questions at this time, too, Madam Chairman.

Mrs. SCHROEDER. Does Mr. Harris have some?

Mr. HARRIS. Madam Chairman, yes, to make sure I understand this legislation. I have some material that didn't catch up to me until this morning.

As I understand now, we have three committees that share jurisdiction on this legislation?

Mrs. SCHROEDER. Four.

Mr. HARRIS. Is that Judiciary and Armed Services?

Mrs. SCHROEDER. And Standards of Official Conduct.

Mr. HARRIS. We still have them?

Mrs. SCHROEDER. Yes.

Mr. HARRIS. I have no questions. Thank you very much.

Mrs. SCHROEDER. Do you have any questions, Mr. Corcoran?

Mr. CORCORAN. I was just considering some questions.

Mrs. SCHROEDER. All right. Fine.

Mr. CORCORAN. I do have one question.

In the report which analyzes the impact of this legislation, there is a cost figure of \$5 to \$10 million. Could you elaborate a little bit more on how you came to that conclusion as to what it might cost.

Mr. GOULD. I'm not sure I understand which cost figure and which report, sir.

Mr. CORCORAN. Well, in H.R. 3829 which was introduced by the chairwoman, I thought you made an analysis which indicates that it would cost somewhere between \$5 to \$10 million? Have you examined the legislation from that standpoint as far as total costs?

Mr. GOULD. I think that that cost figure refers to the estimated cost for S. 495, 94th Congress which would have placed the responsibility within the General Accounting Office and would have given us the requirement of auditing 5 percent of all of those statements annually. And the cost figure that you have, I'm sure that you are referring to, would involve the audit responsibility.

The cost figure that we have attempted to work up as relates to H.R. 3829 is substantially less than that because as we envision the commission, it would be more of an advisory and a custodial type of commission. So, the cost figure that we have subsequently worked up, at the request of staff counsel, is in the neighborhood of about 1½ million, slightly less than that.

Mr. CORCORAN. That would be spread across the various agencies?

Mr. GOULD. For the Commission itself. The cost for the other agencies would be in addition to that.

The cost for the commission itself would depend a lot on what it is that ultimately the legislation requires of that commission.

What we are talking about is a very minimal organization, basically with them trying to come up with uniform regulations, guidelines for the three branches of the Government, the custodial duties of making statements public, and providing advisory services to the three branches of the Government. Investigating those questionable interests that are brought to their attention, but not going out and auditing and making sure that the systems are effective within the three branches, and not auditing specifically a set number. The review responsibility we think, needs to remain with each branch of the Government.

Mr. CORCORAN. Based on the work that you have done so far, how deep into an agency do you think these kinds of disclosure requirements ought to go? Do you have any ideas as to what kind of people ought to be covered? Policy people? People who are in a career status in the agency? Do you have any thoughts at this point that would guide us on just how deeply within the agency the disclosure requirements ought to go?

Mr. GOULD. I think that would depend primarily on the nature of the agency. It is our feeling that all key people who are involved in the decisionmaking or policymaking chain ought to be looked at in terms of their contribution to the policy and decisionmaking, and that those judgments be made individually by each of the agencies.

For example, a staff person working on a project is in a position where he can decide what to include and what not to include. And by virtue of his omission of some critical information, he could have substantial impact on the decision that is made.

So, we think that judgment has to be made by the agency. They have to analyze the job requirements, the performance of the individual and make those kinds of determinations. We don't think there is a precise grade level that you can establish. It can be grade 5 in one agency for one type of function and it might be grade 16 in another, depending on the interests of the agency.

Mr. CORCORAN. Thank you very much.

Mrs. SCHROEDER. Mr. Gould, I have some questions.

The GAO has issued a lot of reports on different agencies, and they haven't gotten very high marks on their ethics and financial disclosure systems which have been in place.

One of the things I was wondering, have you found any agency that is doing a good job?

Mr. GOULD. With your permission, I would like for Mr. Lewis to address that question.

Mrs. SPELLMAN. "Give me a few moments to think of one"; is that what you are saying?

Mr. LEWIS. The second time we went in and took a look at the Department of Interior, after reviewing one of their bureaus, the U.S. Geological Survey, they had really taken a hard look at what they thought their system should be in their agency. And so we think now that agency probably has one of the most effective systems in the executive branch.

In addition, the Energy Research and Development Administration, ERDA, on their own initiative, took a comprehensive look at their financial disclosure reporting, and we think that the system they devised on their own initiative, after much publicity from our reports in other organizations on financial disclosure reporting, is now an effective system, and we said so on our report.

We had a few concerns about that system in that they had a lot of people who were allowed to retain holdings and all they were supposed to do was to disqualify themselves from a particular matter in which they had financial holdings. We feel that disqualification as a remedial action is not the best approach when you have a large number of people doing this. It could affect, for example, the productivity of an agency whereby key people just cannot effectively function.

We felt that there should be followup reporting on the number of disqualifications so that the agency could determine whether disqualification was occurring frequently rather than rarely.

Mrs. SCHROEDER. Would you favor divestiture in situations like that? In other words, where there are things that are determined to be a conflict, would you favor divestiture for that person?

Mr. LEWIS. Using divestiture as the first remedial action is a very severe way of approaching appearance of a conflict or a conflict-of-interest matter.

There are really four ways an agency can deal with an impropriety or the appearance of an impropriety, and that would be a reassignment of duties, if this is possible; disqualification, that I just spoke of; divestiture; or, disciplinary action.

And, I would say that divestiture, as a first approach, may be too severe. It may cause too great a hardship on the individual. His holdings may not be large enough. That is, the interest is insubstantial and an agency may want to grant a waiver or take some other remedial action.

Mrs. SCHROEDER. I read your report and was very interested in it, but one of the things that concerned me was that if people are disclosing that they have a conflict and one of the rumblings is disqualification in certain areas, you do have a first problem, which is a personnel problem. If you have massive numbers of people being disqualified from certain transactions, that clearly is a problem.

You have another problem. If you just have a few, there is a problem that they could be lobbying within, amongst their peers, because obviously they will be knowing the people that will be dealing with this matter, on an informal work basis.

So, as I say, it is a very difficult problem.

There is also the problem of how much is significant? I mean, we can say \$5,000 is not significant, yet I would imagine to many people in the civil service that \$5,000 is very significant.

And, you wouldn't want to be eradicated. So, those things are very, very difficult to try and draw strict guidelines about, and I see you have broken with them.

We can articulate the problem, but we haven't done too well with the solution.

Mr. GOULD. I think you have touched the heart of the problem. The appearance of conflict and conflict of interest means different things to different people.

I think if you hold no holdings and take no action that affects an outside interest at all, we would all agree that that is no conflict. If you had a substantial holding and took an action that enriched you or had an impact on a company, we would all agree, that there perhaps was a conflict there.

It is that broad area in between where we cannot get a consensus as to what constitutes an appearance of conflict, and I think that that is the thing that the Congress is going to have to determine, maybe on an arbitrary basis.

The House did it for themselves on outside earnings. They set an arbitrary 15 percent. There are some that argue that is too much and some that argue it is not enough.

So, it can be done and somebody has to do it. Perhaps it has to be the Congress or the President for the executive branch.

Mrs. SCHROEDER. Then I have read your report. You are not going to tell us what it is; you are going to throw the ball in our field and say, "You make that determination."

Mr. GOULD. Congress should make that decision.

Mrs. SCHROEDER. I've got you.

Mr. LEWIS. Madam Chairwoman.

Mrs. SCHROEDER. Yes.

Mr. LEWIS. I think it could be better articulated than the way it is now in the Civil Service Guidelines.

I think there are some guidelines that we could add. It really is a policy matter. A management policy matter. And I think each agency could take a look at this and make a more intelligent approach so that more intelligent decisions can be made on whether one should disqualify rather than divest, or vice versa.

Mrs. SCHROEDER. It seems to me, though, and I think there is a lot of merit in what you said, first of all it is very difficult for any independent agency to understand what all the other agencies are doing, understand what would be a conflict.

You discuss it is very hard to come up with the standard that would apply to every Federal employee. So, if you defer a lot of that authority to the agency, the head of each agency, figuring they know more about the inner workings of the agency and where potential conflicts might arise. If you do that it is very difficult to get that agency head to enforce it because we do that on many different counts.

What kind of system do you impose if other agencies don't bring their conflicts and financial disclosures up to snuff in say Interior? Use Interior as one.

What do you do? What incentive is there for everybody to really monitor this and do a good job?

And I haven't figured out how we crank that incentive into a personnel system at a Federal level.

Mr. GOULD. Our overall report recommended that the President establish an Office of Ethics in the executive branch, to provide the kind of guidance that is necessary to give the agencies a clear understanding of what is required of them and to give the employees a clear understanding of what is required of them.

Mrs. SCHROEDER. What if they don't do this? We have done this with equal employment and they kind of thumb their noses, and it has been going on 7 years and nothing really happens.

Mr. GOULD. You are talking about a problem of resources. The oversight agency has to be given the resources and the authority to enforce correction of those kinds of deficiencies when they find them.

The problem is not the way the current Executive order is written, but the fact that the Commission has interpreted it as saying it did not give them enforcement authority. And certainly, from a legal standpoint, you can argue it did not specifically give them that authority and they kind of left it up to each of the agencies to go their own route, with some very general guidelines.

We think, if you want the uniformity, you are going to have to have some sort of an office in the executive branch with an oversight responsibility in order to assure that.

We think that something similar to your Code of Ethics in the House, what it does for its Members of the House of Representatives, is necessary.

Mr. CORCORAN. Madam Chairman, would you yield?

Mrs. SCHROEDER. Yes.

Mr. CORCORAN. I would like to follow up your comment about the Civil Service Commission and its reaction to the enforcement provisions of the Executive order.

Has the Commission indicated what it would like to have in the way of enforcement authority?

Mr. GOULD. They have not specifically responded to us in that area. They are in the process of getting with the White House on a revised Executive order.

They have told us that they are in substantial agreement with our conclusions and recommendations in the report.

Mr. CORCORAN. Would it be helpful in this area for our subcommittee to ask the Civil Service Commission for its comments on the enforcement authority it would need?

Mr. HARRIS. Madam Chairman, we can do that, but they are not going to tell us.

Mrs. SCHROEDER. We have done that and waited with bated breath, but we have yet to hear.

Mr. GOULD. I would like to point out that agencies are required to make a response to recommendations in our reports within 60 days. Whether or not that would include the Civil Service Commission in this particular instance, since our recommendations were made to the President, I'm not sure.

Mrs. SCHROEDER. I had a question on the revolving door problem, which you don't address in your report, but I think it is a very seri-

ous one, and one of the areas of conflict that looks incredibly bad on the outside.

I suppose it comes from serving on the Armed Services Committee, where we see people leaving and getting jobs with the people they negotiated contracts with for about five times what they were getting in the Defense Department. Negotiating those contracts, and you hate to say you smell a rat, but it appears something is going on.

I know President Carter has asked all of his high-level employees to promise not to take a conflicting job for 2 years after they work with him.

I was wondering if you had done any looking into the revolving door problem or if you had any recommendations or any ideas or any suggestions as we grope with this part of the conflict area.

Mr. GOULD. Mrs. Friedman, do you want to respond?

Mrs. FRIEDMAN. Well, we are all, of course, quite familiar with this problem of people gaining expertise in the Government, particularly in the regulatory agencies, and particularly lawyers, and then going into private industry or into private law practice and benefiting from it.

Of course, in the present law there is a criminal statute which prevents people from dealing with any particular matter they handled in the Government after going out into private practice for 1 year after Government service.

And the Carter plan would simply make it 2 years instead of 1 year.

But it is very difficult to know whether this is going to defeat recruiting good people, so that this is not always an easy solution either.

Mrs. SCHROEDER. Have you ever done an investigation on how many times that criminal statute has ever been used? I don't believe it has been used in years.

Mrs. FRIEDMAN. Not to my knowledge. I don't think it has been.

Mrs. SCHROEDER. That is like not having taillights on horses downtown at night. I think it is totally——

Mrs. FRIEDMAN. I think that is true. It has not really been implemented.

Mrs. SCHROEDER. And my understanding was that because the practice has become so widespread that you would put so many people away. I don't know. But the GAO has not done any kind of analysis of that. Is that correct?

Mr. LEWIS. We did a brief analysis for Senator Abourezk 1 year or so ago dealing with where do you get the expertise for energy research and development. We put out an inquiry to, I think it was 12 agencies, and got reports back that quite a few of their people now in key positions in the various agencies came from key positions in energy and oil companies. We have also compiled some of the restrictions and some of the factors and some of the criticisms that we are hearing about the revolving door. If you want me to go over some of those, just to supply it for the record, I will.

Mrs. SCHROEDER. I would like that very much.

Mr. LEWIS. For example, there are absolutely no restrictions at all for the Senate or the House. In the Judiciary, there are no restrictions either. The only restrictions that appear are in the executive branch. There are certain postemployment restrictions applied to

former employees. This you will find in title 18 United States Code 207 (a) and (b). The restriction applies to former executive employees from representing clients before their former agency on matters in which they were involved before leaving Government service. This is a 1-year prohibition. The prohibition is permanent if the employee participated personally and substantially in the matter.

There are also statutes and regulations which levy requirements on specific agencies or groups of individuals.

To cite a few: The Department of Defense employees, under Public Law 91-121 of 1969, in certain cases have to file postemployment reports up to 3 years if they go to work for defense contractors.

Officers and employees of the Consumer Product Safety Commission are prohibited for 1 year after leaving from working with companies that are affected by their duties.

Other agencies governed are the Governors of the Federal Reserve System: Board of Directors of FDIC; Members of the FCC, employees of NASA, FTC, SEC, and Environmental Protection Agency.

Some agencies also require departing employees to report their new place of employment.

In summary, there are no broad and uniform prohibitions on accepting employment after Government service. We have, in our audits and in our legal research, not found evidence of any flagrant abuses to show that postemployment restrictions are warranted at this time. However, we feel that postemployment restrictions would reduce the number of apparent conflict-of-interest situations, and the provisions could serve to increase the public confidence.

Now, with switching sides, that is the revolving door situation, it appears that the recent criticism seems to be favoring broadening the bar to switching sides on a particular matter to later employment in any capacity, and the criticism here seems to be the effect on agency decisionmaking; knowledge of agency procedures and who makes what decisions; secret contacts; disloyalty; erosion of adversary process; unfair personal advantage; and problems of appearances.

Mrs. SCHROEDER. How about reporting? The ones that do have reporting on postemployment, has there been any—my understanding is that no one ever enforces that, and if you leave and don't report it and don't report, then no one will ever know it.

Mr. LEWIS. It is true that there is a problem of enforcement. The Council on Economic Priorities, which is a private organization, a research organization in New York, issued a report on Pentagon officials about 2 years ago. It showed that those who were reporting, the Pentagon officials that were reporting, a number of them had taken positions with defense contractors and there was the appearance of conflicts.

I think that some of these cases were referred to the Justice Department, and I don't know the outcome of that study.

Mrs. SCHROEDER. I wanted to make just a few comments on the costs.

The committee, when we were faced with our preliminary budget, we put a figure of \$10 million in the budget to report to the House Budget Committee, and they did this based upon the estimates by GAO of enforcement costs, I believe is where we got the cost figure.

My understanding is that would be at GS-16 and above. The question is if we were to decide to cover all GS-11's and above, how much

would be added to the costs? Do you have any breakdowns on costs as to how much it costs as you trickle down through the different levels?

Mr. GOULD. No, not on the cost figure. We can tell you how many additional people would be required to file statements between GS-16 and GS-11.

It goes up astronomically. Do you have those figures?

Mr. LEWIS. Yes.

Mr. GOULD. GS-16 and above would be roughly 23,000 people required to file statements. GS-11, the number would be roughly 324,000 people who would be required to file statements.

Mrs. SCHROEDER. So, you would see a phenomenal increase.

Mr. GOULD. The figure before was based on a 5-percent audit of those statements. If you required that on the increment, it would be at least 10 times.

Mrs. SCHROEDER. So your figures originally were based upon the 5 percent of people GS-16 and above and what that will cost personnelwise?

Mr. GOULD. Yes, Madam Chairman.

Mrs. SCHROEDER. Let me go back to enforcement again.

What kind of enforcement efforts would you foresee for this independent agency? What should they be?

Mr. GOULD. I think it is a constitutional matter when you talk about enforcement of an independent agency that has responsibility for all three branches. The Constitution provides for separation of power, and I think you have a similar problem. As it is constructed in this bill, it is my understanding, it would be an executive agency.

Mrs. FRIEDMAN. May I speak to that, Madam Chairman?

In section 303(c) we have a specific provision that the Commission shall have no enforcement power and the reason for that is, as Mr. Gould says, of course, a constitutional problem in having an executive branch agency enforce laws governing the legislative and judiciary branches.

Mrs. SCHROEDER. Doesn't that leave us where we are now though, almost?

Mrs. FRIEDMAN. In effect, that is true.

Mrs. SCHROEDER. So we have just really created an agency that can go out and audit, but can't do anything.

Mrs. FRIEDMAN. Of course, it can report to the Attorney General. It can refer matters to the Attorney General for enforcement. And there is a provision for fine or imprisonment in case a person does not comply. So that the Commission would be able to go to the Attorney General and bring a civil action or criminal action, in fact, in any district court. But it would be the Attorney General and not the commission that would enforce this.

Mr. GOULD. I think the problem with the enforcement that you are talking about would be the penalties for failing to file or filing false information. You still have the additional question of trying to define what is a conflict of interest and that could be defined by one branch of the government differently than another one. The Commission would have an awful hard time, I think, trying to turn that over to the Attorney General for resolution.

As we see it, this Commission would basically be an advisory body that would be looking at the systems, trying to produce uniformity which probably would have to be through consultations as opposed to

directions, and providing a forum that the public could ask for resolution of conflicts and do those investigation. If they found something, it would either have to be turned back to each branch of Government for enforcement or to the Attorney General, if it was a criminal violation.

Mrs. SCHROEDER. The gentleman from Virginia has a question.

Mr. HARRIS. You are talking about my people. I was trying to figure out why you came down, in the bill at least, on the side of an independent commission.

As I review it, this Government of ours, I have concluded, has needs; but the need for an additional commission is not one of them. I know that we have a Civil Service Commission and I know we have an Executive Office of the President.

Why another commission?

Mrs. FRIEDMAN. I think the basic reason for that, Mr. Harris, is that we want to make sure, make the point that the Comptroller General does not want to take on this responsibility. This was one of the two alternatives, as a matter of fact.

We don't feel that our agency is the proper place for this kind of operation and therefore this was one mechanism for performing the function. As you know, we submitted another bill that had a different system.

Mr. GILMAN. Will the gentleman yield?

Mr. HARRIS. Very pragmatic approach.

I will be happy to yield to my distinguished colleague of New York.

Mr. GILMAN. I thank the gentleman for yielding.

While I can understand GAO's reluctance to assume an added function, it is my understanding that the Civil Service Commission does have an ethics unit. However, you are concerned about the laxity in the manner in which they perform their responsibilities.

Mrs. FRIEDMAN. In a sense, yes.

Mr. GOULD. They currently have one individual responsible for ethics who does not currently even have a full-time secretary to help him. He was appointed after our first report on financial disclosure systems.

Mr. GILMAN. Most of my colleagues in the House and Senate will be concerned I'm sure about the creation of another bureaucracy at a time when we are seeking to reorganize and consolidate and cut back on Government expenditures.

While the objectives of this proposal are certainly worthy, it seems to me that we ought to be able to incorporate this commission into one of our vast bureaucracies, i.e., GAO, Civil Service, etc.

When we talk about \$5 to \$10 million, to install this commission, we are only touching the tip of the iceberg. When you plan a new agency, you are not talking about two or three members of a commission; you are talking about 300 or 400 employees or more.

Let me just pose this question: What would you estimate the budget of such a new commission to be?

Mr. GOULD. Mr. Gilman, assuming that the enforcement would remain with each of the branches, as set out in the bill, we would estimate that this would be roughly \$11½ million the first year. It would be substantially less than that after the commission got established.

Mr. GILMAN. How many employees do you think such a commission would need to perform their function?

Mr. GOULD. We have estimated 54 people.

Mr. GILMAN. Fifty-four people who would need offices and all of the necessary wherewithal. And you say that would cost only 1½ million?

Mr. GOULD. That is our estimate.

Mr. GILMAN. Then what is the basis for the \$5 to \$10 million estimate?

Mr. GOULD. On S. 495, which would require the General Accounting Office to perform an audit of 5 percent of all statements filed.

Mr. GILMAN. Why wouldn't the new commission need to expend that kind of money?

Mr. GOULD. Because the agency we are proposing would not be responsible for that audit. That would be the responsibility of each branch of the Government.

Mr. GILMAN. Then we are talking about \$1½ million for the agency alone, plus the additional departmental expenditures?

Mr. GOULD. That's correct.

Mr. GILMAN. You are saying the \$5 to \$10 million is a conservative estimate; is that correct?

Mr. GOULD. The \$5 to \$10 million dealt with a different bill, under a different set of circumstances.

I think we get into a difficulty if we try to apply it to this kind of organization.

Mr. GILMAN. Could you, Mr. Gould, to aid this committee, give us your best estimate of the cost of this entire proposal under this set of circumstances?

What are we really talking about by way of hard dollars?

Mr. GOULD. We are talking about an incremental cost of this agency of about \$1½ million. Within each of the branches of the services that should now be enforcing their conflict-of-interest regulations much more than they now are, there would be additional costs, but that cost ought to be expended anyway, whether you have an independent organization set up anyway.

Mr. HARRIS. I wonder if my colleague would let me reclaim my time.

Mr. GILMAN. Thank you for yielding.

I was hoping we would be able to establish some parameters in discussing this bill's costs.

Mr. HARRIS. Perhaps my colleague might be recognized as soon as I finish.

Mr. GILMAN. Thank you for yielding.

Mr. HARRIS. I did want to establish with you that the independent commission idea is not fundamental to your report. As I noticed in your report, what you were really calling for in your report was an executive branch agency that would have the authority to investigate and to audit.

The report really wasn't all that clear as to where and how that agency would be established in the executive branch.

The bill comes out with an independent commission, but I don't think the report ever really does that.

Mr. GOULD. Mr. Harris, if I could clarify:

We are talking about in the report the executive branch only. We are talking about an office of ethics which could be within the Civil Service Commission. It could be anywhere the President wants to put it.

It would be responsible for the executive branch only.

The bill deals with a commission which would have responsibilities that relate to all three branches of the Government.

Mr. HARRIS. Once you do that, you have created a different legal-constitutional situation that supposedly has authority to oversee the activity of all three branches of Government. But quite obviously, it cannot have any enforcement authority unless it breaches constitutional provisions.

Isn't that basically where you find yourselves?

Mr. GOULD. I think that is basically what you will find.

Mrs. Friedman mentioned part of the concern was that the General Accounting Office did not feel the responsibility ought to be put with our office. We might make some of the same kinds of arguments on the separation of powers, where the General Accounting Office is concerned. The General Accounting Office would have the responsibility for three branches of Government.

There is another aspect that we were trying to address and that is the question of concern that seems to be that financial disclosure and reporting responsibilities, and so forth, ought to be uniform within the three branches of Government; and the question is, how do you do that without having somebody that looks at what each of the branches is doing and suggests what those standards ought to be.

Mr. HARRIS. Can I ask two rather quick questions?

To the extent possible that you might give me fairly brief answers to it, how did you reach the magic figure of grade 16 as the cut-off for the disclosure requirement?

Mr. GOULD. Well, in past years there have been a number—

Mr. HARRIS. Were there too many employees after you got further down than that?

Mr. GOULD. In past years this was set on salary amounts and grade levels, and we have provided to the House and the Senate a number of estimates at various salaries and grades. And we think that above grade 16 may be a reasonable approach for public disclosure.

We think there is also a need to go below that to the lower levels, but those perhaps could be on a confidential basis.

Mr. HARRIS. But what the last tag line there, that is really what I was reaching for.

Let me ask you. I think, Madam Chairman, this becomes a significant point. I think our position, for example, in regulatory agencies, where grade 12 financial connections may become very significant and very important to the U.S. Government. There may be other cases where grade 17 really is going to push the paper exactly the same way regardless of his financial connections are, and I just wondered whether using grade levels arbitrarily is the way to approach financial disclosure requirements.

Has the study considered at all a more definitive type of approach of who must disclose and who might not be required to disclose other than just grade levels?

Mrs. FRIEDMAN. Yes. We just left—

Mr. HARRIS. This Government is run by grade 12's and 13's.

Mrs. FRIEDMAN. We did include language to the effect that an employee may be determined to be required to report by the administrative officer in an agency. That is in addition to the GS-16 cutoff. So we did recognize that possibility.

Mr. GOULD. We made the assumption that GS-16 is probably a policymaking position and there are perhaps substantial others that ought to be considered.

Mr. HARRIS. One last question. I thank the chairwoman for my time.

I have had the experience of having established some of these things in local governments and I've always been able to distinguish very clearly in my mind the difference in the responsibility between the elected official and the appointed or Civil Service officials.

In the past, I've always come down to the side of saying that an elected official has chosen to live in a fish bowl, and his or her finances should be made public for everybody to see and that is part of what he or she has accepted. But for the civil servant, it has seemed to me that while there may be positions where disclosure is necessary, that doesn't mean that he or she should be required to live in a fish bowl. And there is strong argument, it seems to me, that can be made with regard to those positions.

Filings can be made with someone with overview responsibility, but those filings do not necessarily need to be made public unless there is reason for the filings to be checked by those persons who have the responsibility to enforce ethical standards in the agency or in the Government. Why isn't that a better approach than to say that everyone and perhaps everyone above GS-16 or perhaps a grade below GS-16, are going to have to make some type of public disclosure of their finances?

Mr. GOULD. I frankly think that is a better approach, and I think that is pretty much the way that Mr. Staats testified on H.R. 3249, 94th Congress, before the House Committee on the Judiciary. Certainly he had no problem with public disclosure for elected officials and certain appointed officials. But for the career force, public disclosure should be a last resort; and if it does go into effect, there should be adequate safeguards to assure that only information necessary to determine whether there has been a conflict of interest be made public.

Mrs. FRIEDMAN. Section 207 does address that particular aspect.

Mr. HARRIS. I know it does.

One last shot, Madam Chairman. This is the third last one, I realize.

Let me assure this committee and those before me that any time I vote for a bill that has a section that says "employees shall not engage in any conduct or associate with any person in such manner as to present to the public an appearance of impropriety," any time I vote for a bill with a section like that, I'm going to resign from a number of organizations which I have probably joined. I think that is probably the worst legislative language that I have ever seen in my life, and I'm not criticizing anybody for it.

Mrs. SCHROEDER. Thank you, Mr. Gilman.

Mr. GILMAN. Thank you, Madam Chairman.

I would like to pursue, if I might, Mr. Gould, just why the GAO, the Comptroller's Office, would not be able to perform a function of filing and keeping the necessary records within the agency?

Mr. GOULD. Well, as you may know, the Comptroller General has expressed his strong opposition to such proposals in the past and emphasized the repercussion on the General Accounting Office if responsibility was placed with the General Accounting Office. The rea-

son for his objection was that we endeavor to remain completely nonpartisan in carrying out the functions vested in our office. We do not believe that oversight and investigation of the financial transactions of individual Members of Congress is consistent with our role as a nonpartisan arm of Congress, called upon for help daily by committees and Members of Congress.

Placing the responsibility for administration of the system of financial disclosure, particularly as it refers to financial disclosure problems of Members of Congress could potentially do great damage to the overall effectiveness of the General Accounting Office and endanger the close relationship which this Office has with the Members and committees of the Congress.

Mr. GILMAN. Isn't that equally applicable to almost any agency? Don't we expect them to be an effective arm of the executive branch and still be nonpartisan in their approach and provide accurate information to the legislative branch? Is that a good reason for absolving GAO of its role as collection agency of this sort of information?

Mr. GOULD. I'm not sure I understand your question.

Mr. GILMAN. You are stating that there is a danger that GAO could become partisan by having to review these forms. Wouldn't that apply to any other agency?

Mr. GOULD. When the General Accounting Office was set up, the Congress provided that the Comptroller be appointed for a term of 15 years and not be replaced each time the administration changes. This was an endeavor on the part of Congress to see that the organization did remain nonpartisan and objective, and those same kinds of provisions have not been set up for the other branches or for the executive branch of the Government and the agency involved there.

So we feel that we have a strong motive to try to retain that independence and objectivity authorized, to greater serve the Congress.

Mr. GILMAN. I guess what I'm asking you, Mr. Gould, is that I don't understand how the filing of such information would change the complexion of your nonpartisan agency. Certainly, we all respect the good work that your agency has done in the past and wish to do nothing to damage our close relationship. But, I am doubtful that the filing of such reports with GAO would really change GAO's fine performance or endanger that sort of nobility that you have established, being above politics.

Mr. GOULD. But it does put us into an administrative-type of responsibility. Exactly the kind of administrative things that we have endeavored to relieve ourselves of; like the reconciliation of Treasury checks, the transportation claims, and those things where we think are more appropriately the responsibility of the agencies themselves. We are trying to maintain our policy as an oversight agency as opposed to a ministerial agency.

Mr. GILMAN. Mr. Gould, isn't the real thrust of this bill to make financial disclosure situations public?

Then why is it necessary to audit these public statements? Is there any requirement in this bill that Government should audit all of these statements once they are filed?

Mr. GOULD. Not in this piece of legislation.

Mr. GILMAN. Once these forms are filed and made public by each agency, why doesn't that fulfill the responsibility that we are seek-

ing here—to make it available to anyone who wants to scrutinize that sort of information?

Mr. GOULD. If that is your total objective, I would say that could be accomplished by doing what you suggest.

Mr. GILMAN. If there is some wrongdoing, wouldn't it be the Justice Department that should be conducting a thorough investigation and whatever auditing is needed?

Mr. GOULD. That's correct. The only thing, if you want uniformity within the three branches of the Government, an independent commission would give you a vehicle to look at differences and point out the inconsistencies.

Mr. GILMAN. Precisely. If that is the objective, to have uniformity, why couldn't the Civil Service Commission write uniform guidelines and see that they are adhered to? It may mean putting on one or two more people in the Civil Service to make sure that the guidelines are being administered and adhered to, but better that than create a whole new bureaucracy that is going to cost several millions of dollars.

Mr. GOULD. With all due respect, would you be willing to be bound by guidelines made by the Civil Service Commission?

They can certainly do it for the executive. But if you want uniformity—certainly, I don't think the Members of Congress are going to agree that the Civil Service Commission is going to set the standards for the Members of Congress.

Mr. GILMAN. I think we would be subject to the standards in the Congress. All we ask is that some existing agency administer these standards and provide the guidelines. Some existing agency!

Do you see any problem in that?

Mr. GOULD. No; if you establish the standards in the legislature, but the legislation that has been proposed does not establish standards. All it does, all it requires is the filing of statements and public disclosure. It does not set standards.

Mr. GILMAN. We are providing some general guidelines, so to speak. Maybe we need a little more specificity, if that is what you are suggesting. It would seem to me that some administrative agency should be able to take over requirements and establish some uniform standards for all of the agencies and let the administrators of these agencies accumulate evidentiary material and put it on public record, and then allow any investigatory body that wants to come in to look at the material.

I'm not convinced that you need a whole new bureaucracy.

Mr. GOULD. I think I would agree that your approach is also very reasonable.

Mr. GILMAN. Thank you.

Mrs. SCHROEDER. Mr. Corcoran.

Mr. CORCORAN. No questions.

Mrs. SCHROEDER. Mr. Lehman.

Mr. LEHMAN. I have no questions.

Mrs. SCHROEDER. I'm not sure that we really accomplished much in the way of solving anything this morning, but I think we have certainly had some very important questions.

We appreciate your coming.

I do have some problems. I think some of the other members are trying to figure out if it is going to be uniform for everybody; then

I think what we have to do is put the limits in the law and you just have some agency oversee it.

I still have not been convinced that the GAO is the place for it to go.

Mr. GOULD. Madam Chairman. If I might, I think Congressman Harris made a good point. Because of the differences in the three branches of Government, it may not be necessarily good that the requirements be exactly uniform in all three branches. There are certainly enough differences in the way they conduct their business that it might be necessary that there be separate standards in which case you would not need a central body, either as a commission or within the General Accounting Office to do that. You could do that with the heads of each of the three branches.

You could do it, but you have to decide whether you want uniform standards between the three branches. Once you make that decision then the rest of it is kind of guided by that decision.

Mrs. SCHROEDER. Well, it seems to me like we have several things floating around. First, the enforcement thing which we all seem to agree that it is very difficult to put in beyond the Justice Department doing it. Then the question of where the authorization for the disclosure and making sure that the reports are filed, and so forth, and so on.

It seems like no matter who has had it, it hasn't been done. That is the way I have read your report. The agencies haven't done it. The Civil Service, they haven't done a very good job.

I can never recall Civil Service coming in and saying, "We need more people to oversee this." They haven't made it a real priority. They have never used it as an excuse to correct it.

So, I think one of the things that really confuses us is that everybody would like to see it done and nobody likes to do it. Thank you very much.

Now as far as the GS-16's and above, which we are talking about, public disclosure, there is a difference. Now, maybe the internal below GS-16 which you maybe want to keep more confidential, maybe you can do that internally in each agency, but it seems to me at some point you have to glean out the policymakers and say who they are and at some point we have to figure out who it is that is going to make them become accountable and disclose and make sure it is done and have it on file.

And, I'm not sure the GAO couldn't do that as well as anybody else. I don't see you having to have a whole lot of authority to do that except get ahold of someone at HUD or wherever and say, "Hey. The following people haven't turned in their records."

Mr. GOULD. I think the General Accounting Office does have an oversight responsibility on any system. I think the thing we are trying to avoid is having a ministerial responsibility, as well as the overseeing responsibility.

Mrs. SCHROEDER. You don't want to oversee yourselves?

Mr. GOULD. It might raise some questions, and again the whole issue depends on what it is you are trying to do. Are you trying to avoid conflict of interests? We found very few direct conflicts of interest that would be prosecutable.

Or, are you trying to avoid the appearance of conflict of interest? The thing that appears to be the primary issue is the credibility of the

Government with the American people, and I think those are the questions you have to answer.

Ask yourself first, what is it that we are trying to accomplish with this system. And once we have answered that, then how can we do it on a reasonable basis? And Congress, I hope, has the wisdom to do that.

Mrs. SCHROEDER. Mr. Gilman.

Mr. GILMAN. Mr. Gould, just two other questions that I would like to address to you.

In light of the testimony that we have heard here today, what do you think would be the effectiveness of requiring the employment of a full-time ethics counselor in each agency who would be responsible for accumulating this kind of material?

Mr. GOULD. I think it would be an outstanding suggestion.

Mr. GILMAN. Instead of having a new commission do it?

Mr. GOULD. Yes.

Mr. GILMAN. Do you think that section 2028 of H.R. 2839 should be amended, in that it should designate whether the interest belongs to himself or his spouse or to any children? Do you think that would be more reasonable?

Mr. GOULD. Whether that should be amended?

Mr. GILMAN. Should we include "emancipated children" in section 2028 as well?

Mr. GOULD. I think that deals with the question of whether the individual has control over the income or assets of those individuals. You get into the argument about the spouse's independent income, whether or not that ought to be disclosed. You get into if you have a son who is away from home, and you have no control over his assets or his income, whether that should be reported. Most of the legislation and discussion is kind of centered on reporting those interests of the spouse that are related to the employee or the member's responsibility and those other assets of members of the immediate household which he has some control or influence over.

Mr. GILMAN. There is just one other question.

You have been involved in advisory opinions many times.

We have a provision in H.R. 2839 for insuring advisory opinions to employees. Should there be a time limit on the return of these advisory opinions by the agency?

Mr. GOULD. I would think there ought to be and the ethics counsel for each branch ought to be in a position where they can determine whether a holding is acceptable or unacceptable at an early time.

Mr. GILMAN. Thank you.

Mrs. SCHROEDER. Mr. Gould, wasn't one of the recommendations of the Peterson Commission disclosure by Congressmen?

Mr. GOULD. I believe that is correct.

Mrs. SCHROEDER. Do they make any comment in the Peterson Commission about the judges also disclosing?

Mr. GOULD. By the judges?

Mrs. SCHROEDER. For the pay increase.

Mr. HARRIS. Madam Chairman, do you mean executive level?

Mrs. SCHROEDER. GS-16 and above, I think he defined it.

Mr. HARRIS. Did they define GS-16 and above as executive level? They only dealt with executive levels.

Mr. GOULD. Mr. Harris is correct. The Quadrennial Commission Commission only has jurisdiction over the executive level. They are indirectly related to the supergrades.

Mrs. SCHROEDER. Did you have any further questions?

Mr. HARRIS. I do not.

Mrs. SCHROEDER. Did you have any further questions?

Mr. CORCORAN. I would just like to follow up on one idea. You gave approval to the notion of requiring the agencies to assign somebody the responsibility as ethics coordinator or somebody with that responsibility in the agency to make sure that the required financial disclosures are being implemented. If we are going to have those people in each of the agencies with this responsibility then that brings at least to my mind another step, which would be some means for Congress to have to determine whether or not the system is working. And at that point, wouldn't your agency be the proper vehicle for going in to see how the system is working?

You have given this report. We might make some changes in the law this year and in future years. Periodically, checking to see how the thing is functioning gives us the opportunity to determine whether or not we really are getting effective use out of the new requirements.

Mr. GOULD. We think we have that oversight responsibility and if Congress wanted to spell it out more precisely in the bill, certainly we would have no objection. I think any ethics counselor ought to be clearly empowered with the power to enforce within his own branch of the Government. That could be your Committee on Ethical Conduct in the House. It would not have to be an individual. It could be an individual.

Mr. CORCORAN. That is the way you avoid the problem with the separation of powers?

Mr. GOULD. Yes.

Mr. CORCORAN. And also that way you avoid the need to embark on a new agency with all of the immediate costs and additional other obligations that would impose.

Furthermore, I don't know that we really need any more legislation to instruct or to give GAO that authority. That is a dormant authority that you have which would be activated upon the request of any future Congress.

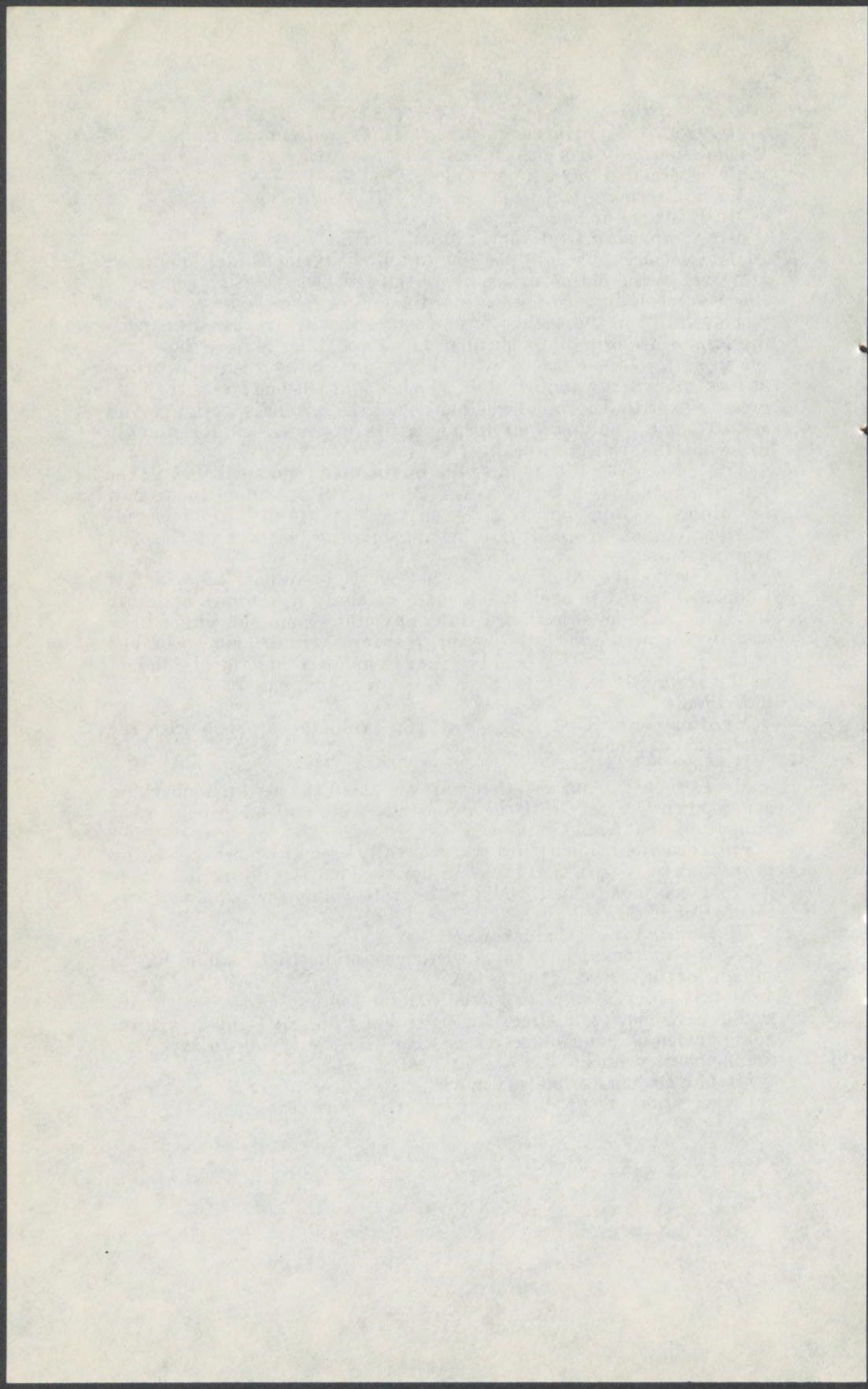
Mr. GOULD. I think that is correct.

Mrs. SCHROEDER. I have some written questions that I would like to submit for the record, if that is OK.

At this point, I want to thank you for coming, and we wish you would have more guidelines for us to hang on. So I think you are going to let us hang ourselves is what you are trying to say. But, thank you very much.

Mr. GOULD. Thank you very much.

[Whereupon, at 10:50 a.m., the hearing was adjourned.]



ETHICS AND FINANCIAL DISCLOSURE

THURSDAY, MARCH 24, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEE ETHICS AND UTILIZATION,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 304, Cannon House Office Building, Hon. Patricia Schroeder (chairwoman of the subcommittee), presiding.

Mrs. SCHROEDER. The subcommittee meeting is called to order.

This is the third hearing on H.R. 3829, a bill to establish a Commission on Ethics and Financial Disclosure for Federal Employees.

I want to note a couple of changes in our witness list. Our first witness today will be Nathan Cutler, who is the executive vice president of the Association of Government Accountants. Congressman Bedell is, unfortunately, tied up in the Agriculture Committee with our former colleague Bob Bergland, but has promised to arrive about 10:15 to 10:30 to make his statement.

Last night we got a call from Ken Blaylock with the American Federation of Government Employees, who will not be here today to give his testimony. Instead, the AFGE will submit a written statement.

I think the Federal Accountants Association will be able to offer us some good insights on H.R. 3829. Representing whom they do represent, and considering that accountants are privy to a great deal of the policymaking in the Government, they may be especially hard hit by the disclosures H.R. 3829 would require.

In addition, I hope that we will be able to utilize their expertise to review whatever loopholes and administrative problems there might be with regard to such problems as auditing financial disclosure statements which the bill presents.

We're delighted to have you here, Mr. Cutler.

Mr. CUTLER. Delighted to be here.

Mrs. SCHROEDER. We're anxious to hear what you have to say.

STATEMENT OF NATHAN CUTLER, EXECUTIVE VICE PRESIDENT, ASSOCIATION OF GOVERNMENT ACCOUNTANTS

Mr. CUTLER. Thank you for inviting the Association of Government Accountants to testify on H.R. 3829, a bill to establish a Commission on Ethics and Financial Disclosure for Officers and Employees of the Federal Government.

The association is a professional body of approximately 9,000 members in 75 chapters throughout the world who are engaged in account-

ing, auditing, budgeting and related financial management disciplines for Federal, State, and local governments. We have consistently supported highest ethical standards for Government employees since they comprise the greatest number of our membership. In this regard, you may be interested in examining our own code of ethics—a copy of which I will furnish to the subcommittee—which closely parallels title I of the bill in some respects.

We also favor reasonable financial disclosure designed to prevent conflicts of interest and to enhance the Government employees' image and public confidence in their work.

There are several specific sections of the bill which, in our opinion, require clarification or revision to further its objectives and eliminate potential problems. They are as follows:

1. Page 2, line 16 and 17. The wording of this subparagraph needs revision to exclude the honest efforts of a Government employee who provides nonexclusive information in response to public requests. For example, if a Government auditor provides a copy of published audit standards to an outside accountant pursuant to a specific request, that should not be construed to be improper disclosure of information for possible personal gain.

2. Page 8, line 14. We do not believe that the monetary value of subsistence and travel costs, which are reimbursed to a Government employee in accordance with Government travel regulations, should be a reportable item under section 204(a)(1).

3. Page 13, line 18. The wording should be clear that "failure to report any information" must also be knowing or willful in order to avoid criminalization of honest omissions of relatively minor matters. The word "any" may cause some problems within the present context of the sentence.

4. Page 15, line 16. Pursuant to existing Government policy, we recommend that recovery of costs of reproducing or mailing requested reports should include salary and overhead costs of employees involved in such reproduction or mailing.

5. Page 14, line 11. This sentence should be clarified to indicate that release of reports under conditions (i) and (ii) is not automatic but only after a positive determination that release is appropriate.

We recommend reconsideration of portions of the bill which establish relatively low monetary "thresholds" (e.g. \$50, \$100, and \$1,000), which activate the reporting requirements. Higher figures would achieve the same objectives with less difficulty for the report preparer and reviewers.

In redrafting of the bill, major emphasis should be placed upon preserving as much privacy for Government employees as is consistent with basic objectives of the bill.

We will be happy to provide any further information you may desire.

Mrs. SCHROEDER. Thank you, Mr. Cutler.

If you don't mind, I have just a few questions I'd like to ask.

Mr. CUTLER. No; not at all.

Mrs. SCHROEDER. First of all, how does your association enforce its code of ethics?

Mr. CUTLER. The bylaws of our association provide for certain sanctions and actions against members who may violate our code of

ethics. This includes suspension from membership or expulsion from our association. I don't believe that was included in our ethics statement.

We do this through our chapters. When any matter comes to the attention of the chapters which appears to be a violation of the code of ethics, that information is submitted to the association for possibly convening a committee to hear any charge of its violation.

Mrs. SCHROEDER. How does it come to their attention?

Mr. CUTLER. Well, it can come to their attention through the work of colleagues of the individual, or perhaps, from other information that results from the possible violation of the code of ethics.

There could be a situation where an individual openly indicates that he is working on an outside assignment which is construed to be a violation in conflict with his normal duties of a Government employee.

If this should come to the attention of the chapter officials, we would presume that our chapter officials would have the information flow to our association for review and action.

Mrs. SCHROEDER. But you don't have a formal complaint proceeding in which someone, in order to begin—whether or not there has been a violation, there has to be a formal complaint filed?

Mr. CUTLER. There is a mechanism in our bylaws for the filing of a formal complaint by any one of our members who feels that a violation of ethics has actually occurred.

Mrs. SCHROEDER. But an investigation of a violation could happen without that complaint. Is that right?

Mr. CUTLER. Yes.

Mrs. SCHROEDER. Or is the complaint the only triggering action.

Mr. CUTLER. The action takes place by convening of a special committee to hear the violation, and it is a formal procedure.

Mrs. SCHROEDER. There are other ways to trigger the investigation of a violation than just the complaint, or is the complaint the sole beginning of investigation?

Mr. CUTLER. Under our bylaws the only mechanism for triggering an investigation is a formal complaint through our membership.

Mrs. SCHROEDER. Signed only by your membership?

Mr. CUTLER. Right.

Mrs. SCHROEDER. Can an outsider sign a complaint, or only the membership?

Mr. CUTLER. I imagine it could be done; as I said, our bylaws do not provide for that type of recognition of outside complaints. And I don't think it would be beyond the realm of our consideration if a complaint were furnished to a member or to a chapter that is funneled up in the normal procedure.

Mrs. SCHROEDER. What I'm trying to find out is if it is similar to our ethics in the House—the House Ethics Committee—where we only take up complaints if they are filed by a Member against a Member, which is always hard to do.

And I was trying to find out if this was analogous.

Mr. CUTLER. Yes; I imagine that would be an acceptable comparison to our procedures.

Mrs. SCHROEDER. You also say that you represent State and local accountants.

Could you give us a general run down, if possible, of the ethics of financial disclosure and regulations in the different State and local governments as to how they might compare to the bill we're talking about, H.R. 3829?

Mr. CUTLER. I guess I would not be in a position to answer that. We really are not privy to the financial disclosure requirements that exist in the various States and local governments.

They vary so much and the number of jurisdictional units are so numerous that we really don't know too much about how the State and local governments conduct their financial disclosure practices.

Mrs. SCHROEDER. So your association has not done a study in that area?

Mr. CUTLER. No; we have not.

Mrs. SCHROEDER. One of your recommendations is that we should lift the amount of money, or gifts, or what have you, that we consider improper.

Another suggestion that we have had is just to ban all gift giving. That would really stop all the incredible accounting and disclosure if you just say, "soliciting in the form of a gift is illegal, period, whether it's \$2 or \$200."

What would your reaction be to that?

Mr. CUTLER. Well, our main concern here, Madam Chairman, was that we would want to preserve the objectives of the bill to avoid situations where there are conflicts of interest.

But, on the other hand, we did not want to overburden the preparer, or, possibly, magnify relationships which are normal to professional dealings such as, perhaps, a lunch or something like that, which possibly could be involved when the amounts are so small.

Although we do not have an actual figure to give as a substitute, a possibility could be, rather than flat amounts, perhaps, percentages of income. That could be a significant amount, say, not to exceed, say 5 or 10 percent.

And again, our objective here is to avoid the numerous details and still preserve the objectives of the bill by trying to prevent conflicts of interest.

Mrs. SCHROEDER. So, you really wouldn't like the idea of just banning gifts entirely? You would prefer to have the threshold higher—as great.

Mr. CUTLER. That's right.

Mrs. SCHROEDER. What gifts would you say are normal gifts, kind of professional expectations almost? What would you mean by that, so we'll have some idea?

Mr. CUTLER. Well, from our professional relationships, both in the profession of accounting as well as working for the Government, many of our members, for example, do participate in professional meetings, symposiums, conferences.

And some of those meetings are conducted with large groups, as many as 1,000 people attending, and it is coupled, generally with a luncheon or dinner.

And those seem to be normal types of acceptances—or favors, so to speak—while attending a professional meeting.

Other than that, I can't recall any actual gifts of the type that we are discussing that is not a normal relationship.

Mrs. SCHROEDER. Doesn't the Government usually pay for the people's attendance at professional meetings?

Mr. CUTLER. In some cases they do. In some cases some of these members attend in the evening on their own, or weekends.

For those people who are attendees, the Government does pay for them; but sometimes speakers that are there just for an hour, or a couple of hours, do not get their full travel or reimbursement. In many cases there is a payment by the Government.

Mrs. SCHROEDER. That is, in essence, what you're talking about.

Mr. CUTLER. Yes; primarily.

Mrs. SCHROEDER. And you think that it might be harmful to your profession if we prohibited that, but if you attend a professional meeting, a Government meeting, it would be fine?

Mr. CUTLER. Right.

Mrs. SCHROEDER. If you're invited to meetings, and they pay, then that's illegal.

Mr. CUTLER. To get paid for attending a meeting?

Mrs. SCHROEDER. By some outside group. If you're paid by the Government, that's all right.

Mr. CUTLER. By and large, our members—accountants, Government particularly—do not get or accept honorariums for making speeches or for participating in a meeting.

Mrs. SCHROEDER. Is that part of your code of ethics?

Mr. CUTLER. Well, it's not specifically singled out, but it just seems to be a practice.

I can't, on my own, recall any major situation where honorariums were given to participate in a meeting.

Now, there is another type of what you might call a gift, that could be associated with a meeting: recognition of accomplishment, which could be a trophy, or a plaque, or something similar which, in some cases, may exceed, for example \$50, depending upon the nature of the trophy.

Now, that certainly is not something which is a conflict of interest.

Mrs. SCHROEDER. Will your group ever except free travel and transportation, say, for the person and their spouse to a meeting to accept an honorarium for participating?

Mr. CUTLER. I guess I can't speak for everyone. I do know of situations while attending a meeting, where the agency could not, or did not, pay travel costs, the individual may have had the travel paid by the host organization to participate in that meeting.

Whether or not a spouse did attend, to my own recollection, I don't recall it.

Mrs. SCHROEDER. Do you have any questions, Counsel?

Mr. KNULL. Yes. In No. 4 in the recommendations, you say that you have the cost of reproducing, including the staff support, for producing the financial disclosure statements, paid for by whomever requested it.

That would conflict, I think, with the Freedom of Information Act, which limits the cost of obtaining something from the Government to the cost of the actual reproduction.

Do you have anything to say about that?

Mr. CUTLER. First, I don't think it would be a significant addition. It's just that it's been a rather accepted policy recently in furnishing

material and services to outsiders—outside to an agency—that there should be as much full recovery of the associated costs as is possible.

That does not mean, necessarily, that every case must be recovered, every dime. People in Government have been trying to make sure that there are the accounting aspects, of a sale, which is a way of saying that the Government should recover as much of those costs as possible.

As I say, in a case like this where there's a mailing or a reproduction, the salary add-on portion would be relatively insignificant. It would be just a good accounting principle.

If it does conflict with other portions of another act to limit the cost, of course—

Mr. KNULL. Then Congress could decide to pay for this burden alone and could account for it?

Mr. CUTLER. Yes.

Mr. KNULL. Your code gets into the appearance of impropriety as one of things your members have to guard against. What sort of enforcement problems have you had with that?

Mr. CUTLER. Very few. I guess, over the history of our association, I can't recall more than one or two instances, not necessarily for impropriety, where the ethics provisions of our bylaws have been invoked.

I don't know whether it's peculiar to the very, very conservative and very professional aspects of our membership, but we are very, very cautious—the members and the association—in this respect, to avoid any appearance of impropriety.

To answer your question, I can't recall of any instances where the ethics violations have been invoked in this situation.

Mr. KNULL. What sort of things would you classify?

Mr. CUTLER. Perhaps individuals who are working for a Government agency, and maybe participating in major meetings of organizations, that have direct dealings with that Government agency, and, perhaps, discussing matters that are more of agency concern than public concern.

I'm just thinking of some situations that could arise. I just can't cite any examples. But I personally would feel that any individual who is employed by a Government agency in an accounting function would be very careful in not disclosing information, or not appearing to disclose information, that could be construed as being improperly disclosed.

Mrs. SCHROEDER. I just have one further question.

Are you aware of any of your members that work outside the Federal Government—like "moonlight"—for example, teaching, or working on peoples' taxes, or something like that in the evening?

Mr. CUTLER. Among our members?

Mrs. SCHROEDER. Yes.

Mr. CUTLER. Well, I guess if you call that "moonlighting," many of our members are on faculties of universities, and they teach in the evenings—primarily in the evenings. And other than that, there may be other situations.

And again, I don't know from personal knowledge. Some of our members may, perhaps be astute tax people, and maybe do some tax work on their own on Saturdays or weekends. I guess the major outside effort would probably be the teaching area.

Mrs. SCHROEDER. So, that is kind of common.

Mr. CUTLER. And again, in those situations, to my knowledge most of the members do advise their agencies that they are conducting this type of outside work.

Mrs. SCHROEDER. We've also heard several people testify about the necessity of adding something to this bill which would be an anti-revolving-door provision, which would be: If you're working for the Federal Government in a certain area, when you leave, for 2 years you cannot go into the other side of the private sector.

As you know, that's gotten a lot of sensational press of late, because one or two people will do that.

And I wonder if your group has had any time to think about that, or has a division, or if you have any personal opinion.

Mr. CUTLER. Well, I can only venture a personal opinion based on my personal knowledge.

A relatively large group of our membership in recent years have retired from Government, mostly because of the inadequate salaries when the salary freeze was imposed upon the super grades.

And I know, again from personal knowledge, some members did leave Government and join the public accounting profession. Generally each agency was very careful—in very careful control to see whether joining a particular public accounting firm was one which that agency had direct dealings with.

So, members did leave to join the profession in the public sector. I don't recall of any situations where there was specific moving from the Government to an outside organization that had direct dealings with the agency.

Mrs. SCHROEDER. And you would feel, really, the spirit of the code of ethics would kind of be violated anyway if you started that kind of revolving-door procedure?

Mr. CUTLER. No. Again, I would be greatly concerned personally. I would recommend that certainly there should be some review in one's moving from a Government agency to an outside organization to determine that there has been no direct relationship with that person in actually dealing on the other side in some specific contract or some specific situation.

But I see, personally, nothing wrong with individuals joining their own profession in the public sector.

Mrs. SCHROEDER. I think we would want to make it clear that everybody could join their own profession in the public sector. It's just the segment of that profession that was dealing with the agency that they left that causes real concern.

Well, I thank you very, very much for your time and your appearance here, and your thoughts on the bill.

[The code of ethics which was submitted by the Federal Government Accountants Association, follows:]

FEDERAL GOVERNMENT ACCOUNTANTS ASSOCIATION CODE OF ETHICS

1. A member shall adhere to the Standards of Conduct promulgated by his employer.
2. A member shall not engage in acts or be associated with activities which are contrary to the public interest or discreditable to the Federal Government Accountants Association.
3. A member shall not engage in private employment or hold himself out as an independent practitioner for remuneration except with the consent of his employer, if required.

4. A member shall not purposefully transmit or use confidential information obtained in his professional work for personal gain or other advantage.

5. A member shall strive to perform the duties of his position and supervise the work of his subordinates with the highest degree of professional care.

6. A member shall continually seek to increase his professional knowledge and skills and thus to improve his service to employers, associates, and fellow members.

7. A member shall render opinions, observations, or conclusions for official purposes only after appropriate professional consideration of the pertinent facts.

8. A member shall exercise diligence, objectivity, and honesty in his professional activities and be aware of his responsibility to identify improprieties that come to his attention.

9. A member shall be aware of and strive to apply requirements and standards prescribed by authorized Government agencies which may be applicable to his work.

10. In the performance of any assignment, a member shall consider the public interest to be paramount.

11. A member shall not engage in any activity or relationship which creates or gives the appearance of a conflict with his responsibilities to his employer.

12. In speaking engagements or writings for publication, a member shall identify personal opinions which may differ from official positions of his employer.

Mrs. SCHROEDER. Congressman Bedell is now with us. We will be delighted to hear from you at this time.

STATEMENT OF HON. BERKLEY BEDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. BEDELL. Madame Chairwoman, it is a pleasure to testify before your subcommittee this morning. While I am not an expert on "ethics" legislation, I come here today to express my concern on the dilemmas posed by "conflicts of interests" in our Federal Government. I commend this subcommittee's efforts to study this difficult problem and impose legislative solutions.

I believe the time has come for action on establishing a tough code of ethics for all Government officials. Though past efforts in this regard have often met with defeat, I believe that the mood within Congress to take the lead with standards for its members requires that we now turn our attention to the executive branch. The President is willing and with congressional action we can restore the American people's faith in their Government officials.

The actions of the new President to require that his administration's top policymakers not be possessed of conflict of interests are to be applauded. They must disclose their financial holdings and, if necessary, divest themselves of any that would affect their decisions and actions.

They must also promise to wait 1 year after leaving Government before approaching their former agencies as lobbyists—2 years if they worked on a specific issue matter.

These are admirable improvements, but the search must continue to find the most effective ways of assuring that the decisions of our officials are truly in the best interests of the majority of the citizens they are hired to serve.

Several recent congressional studies point out the seriousness of the problem we face. One study showed that in the years 1971-75, fully 52 percent of the commissioners appointed to nine Federal agencies came from the industries those agencies regulated. During the same period, 48 percent of the commissioners who left Government went to work,

directly or indirectly—as outside counsel for instance—for the industries they policed.

And the other congressional study which showed that a businessman who works about 5 years in the executive branch and then returns to industry earns, on the average, 72 percent more than he was making before he joined the Government.

Moreover, the Common Cause study entitled “Serving Two Masters,” October 1976, and the GAO study released last month, both effectively highlight the gross examples of the potential conflicts of interest in the Federal agencies. These studies show that Federal agencies have been remiss in establishing and enforcing financial disclosure and divestiture rules now on the books. There also has been a failure by agencies to consider conflicts of interest requirements as high priority or to even correct abuses or inadequacies when they have occurred.

And perhaps most disturbing are those polls taken by the Gallup and Harris organizations which indicate the lack of trust by Americans of their Government officials whom they believe “are just out for their own personal and financial gain.”

I recognize the need for expertise that former employees of industry can provide. However, I also believe that Government must maintain balance between the industries that are regulated and those who regulate by recruiting from a greater variety of sources.

I suggest, first of all, that we must have guidelines established which provide for public disclosure of financial assets. Simple financial disclosure allows the American citizen the opportunity to form their own opinions on an official’s credibility.

However, we know this is not enough. As the Supreme Court held in the *Buckley v. Valeo* case, disclosure requirements appear to be the “least restrictive” means of curbing political corruption. Disclosure doesn’t prohibit conflict of interests, it only informs the electorate of it. Allowing the American citizen to use information to vote a dishonest politician out of office is one thing, but the executive branch is isolated from this recourse.

Second, divestiture of assets that could involve possible conflicts of interest is another needed requirement. It should not be left to the owner-official to decide. Strict guidelines must be established to identify possible conflicts.

Third, restrictions on the employment of the policymakers after they have left Government is a necessity to restore public trust. How can the American people be asked to make the necessary, tough energy choices when top ERDA officials leave Government service for high level—and high paying—positions with major oil companies and electric companies.

I also believe that the need for conflict-of-interest requirements must apply to any Government employee, no matter his or her GS level, who has authority to make or influence public policy determinations.

If we fail to act on these problems and propose effective and equitable solutions, then we continue to face the American peoples’ lack of trust and faith in their Government, and we fail to govern in their best interests.

I would like to take this occasion, Madam Chairwoman, to commend you for the leadership that you have put forth in work to try to bring a more strict code of ethics and a better enforcement of such a code of ethics in our Congress. And I commend you for your efforts to do so in other areas of our Government as well.

Mrs. SCHROEDER. Thank you, Congressman Bedell.

As you know this bill hits a lot of different things, and I appreciate your emphasis on the revolving-door aspect of the whole problem.

One of the areas that we address in the bill is the area of gifts. And the bill was put together by the General Accounting Office, and they put some restrictions in there that people could not solicit more than \$50 gifts, and so on.

We had another person come in and testify, saying that it really wouldn't hurt if we just totally limited all gifts. That would cut off all the reporting and the disclosure, to say that it is illegal to solicit gifts, whether they're \$2 or \$200.

I wonder if you have given any thought to gifts. I know congressional offices, to some extent—or the same people—often come and want to give people gifts. Do you have any feeling about how we might handle the gift section of the bill?

Mr. BEDELL. Does it have to do with soliciting or accepting, Madam Chairwoman, because I think there's quite a difference. As far as I'm concerned, I think there should certainly be the prohibition of the acceptance of gifts above a certain level.

I would have no objection to a complete prohibition of accepting gifts of any kind. I guess it gets a little "sticky" if somebody wants to send you a book that they have written, that would explain the problems of nuclear industry, and they want to send it to everybody in the Congress because they believed that this book presented their opinion. The book is worth \$2.95.

I would feel a little reluctant to say we're going to pass legislation that prohibited them from doing such. I think it would restrict, in some way, the ability to get a message across.

But if, on the other hand, if somebody wanted to give you a necktie, I think that is a different story, and I see how the prohibition of gifts that were unrelated to the work of the Congress—

Mrs. SCHROEDER. Or the Federal agency, I suppose it would be the same thing.

Mr. BEDELL. Yes, surely.

Mrs. SCHROEDER. If you tied it over, your idea on that revolving-door problems is that it's easier to handle it as they go out of Government—in other words, if you leave Government and put like a 2-year limitation or something on who they can work for after they leave.

But you commented on their also coming in.

Mr. BEDELL. Yes; I do.

Mrs. SCHROEDER. Now, how do we deal with that?

Mr. BEDELL. Because of the need of expertise?

Mrs. SCHROEDER. Yes.

Mr. BEDELL. In that area?

Mrs. SCHROEDER. Right, you have a need of an expertise. Let's take a hypothetical; you say the new super energy grades, that were supposed to be graded in the new energy department, there will obviously

be a hue and cry if they come from Exxon. There will obviously be a hue and cry if they don't come from the oil industry.

Now, how do we deal with that in legislation?

Mr. BEDELL. Now, I'm not sure that you can very well. But I think if you control the other you go a long way toward solving our major problems.

And the reason I say that is: When they come from industry into Government, there are people who have been elected in Government who, hopefully, are sensitive to the peoples' demands, and it is published very clearly, and I think that those of us who are in high elective positions which report to people collectively, are in a position, if we see fit to do so, to at least have some accountability in regard to this.

And hopefully, we do have organizations that are going to point out this problem where it exists.

You say that it is easier to control when they leave. The fact of the matter is, it seems to me, that it's more difficult to control, because I happen to believe that, generally, capable people can get good jobs, and people without capability cannot get good jobs.

And I hear all the time this complaint, and this hue and cry, about peoples' rights and our impinging upon their rights if they know something about the petroleum industry and won't let them go back to work for the petroleum industry.

That's not been my experience at all in my experience and industry. And, as you know, I come out of Industrial background. My experience is that there's a great demand for capable people. And if somebody has proven themselves as a capable executive in the petroleum industry, they've got no problem in the world in getting a job with the automotive industry, or the steel industry, or any other industry that does not have similar requirements.

Now, they get to the people who have the particular expertise. For example, if you spent your life as a chemist, maybe studying metals, and you come into the government and work in that department, that doesn't disturb me too much because, by and large, those people are not the people who are making policy decisions anyway.

And where I think that the American people are being hoodwinked is they're taking people who have technical expertise and saying that it's impinging on their rights if you don't let them use that expertise. And I think that's correct.

And then they're saying people who have executive expertise, or management capability, that you're infringing upon their rights if you take them out of industry, and I think that's simply myth that is being used in order for a large industry to fool the American people.

Mrs. SCHROEDER. I think you make a very good distinction between the technical knowledge and the managerial knowledge that applies in a superficial area.

Of course, you know the technical knowledge would get into the Moon Suit case. You know, how technical do we get down the line, to use that classic Moon Suit case, whether I can carry all the things from the Moon Suit case out in his head and go to another contractor—where it's technical, it's very specific, and it's very limited.

Mr. BEDELL. Well, it seems to me if we have to choose—and I'm not sure we do, but sometimes these decisions come up—whether we're

going to determine that it may make it a little more difficult for a person to take full advantage of his past training, or whether we're going to, in effect, destroy the effectiveness of government and peoples' confidence in government, then that's the price that that individual probably should have to pay.

I think it's pretty important that we reestablish peoples' confidence in Government, and that we establish the feeling that people are here to try to serve.

I was very, very disturbed, as you know, with what happened with ERDA; and I'm partly disturbed, frankly, because it appeared to me that Mr. Hirsch over there, who was in charge, was not objective in terms of promoting solar energy, and the effort of that department was directed almost overwhelmingly toward nuclear energy. And I've questioned the advisability of that. So, it appeared that the problem existed before he left even.

Business is interested in profit. There are two things on which a manager of any business gets his report card: One is growth and one is profits. And most people are concerned about their report card because that determines whether they keep their job and what their pay is.

And I think we should get that out and let the American people realize that. And I don't think we should be criticized for someone who tries to do what they are judged by. And that's what happens in industry.

Now, with that situation existing, I think it's the duty of government to protect the people—to see that that policy is not detrimental to what should be governmental policy. And I think frequently it is.

You know if you're in the oil business you want to sell more oil and make more money. Let's don't kid anybody. And if you're in the nuclear business, you want to sell new reactors and make more money. And that's your interest.

Now, those interests do not jive with the interests of the American public and the country. Somebody has to bring that protection, and I think we bring it more effectively. If it's your interest to see that your people in industry hire Government people, because you think they have influence, that's what you're going to do, because that's what you're guided by.

And I think somebody needs to speak out and let the American people know what that problem is.

Mrs. SCHROEDER. I really agree with you.

Let me ask just one last question, and that is: Have you given any thought to whether or not the bill should deal with employees "moonlighting"—for lack of a better word—whether we should deal with Federal employees having two jobs?

Mr. BEDELL. No; I had not given thought to that, but certainly, if it's in the way, they should not have other jobs in industries related to their particular branch of government. I think that is pretty clear. I don't know if it happens; but if it does, I think it would be pretty terrible for the person that's regulating Exxon Petroleum to have a "moonlighting" job where they were paid as a consultant by Exxon Petroleum.

Do you have any evidence of those types of things?

Mrs. SCHROEDER. We don't have evidence, necessarily, of that. We have evidence of quite a bit of "moonlighting" going on in the Federal Government.

And the question is whether we should look into it more extensively or not I think we probably should, but think about it.

Mr. BEDELL. Well, I think that would probably be the first thing to do, would be to find out if it's causing any conflict-of-interest; and if so, I would think you should include it all in the legislation to prevent that possibility.

Mrs. SCHROEDER. Of course, honorariums and things, in an indirect way, are doing it, which I think we will be dealing with.

Mr. BEDELL. I hope so.

Mrs. SCHROEDER. Well, I thank you very much for your testimony and for your appearance here today.

Mr. BEDELL. Thank you very much, Madam Chairwoman.

Mrs. SCHROEDER. The hearing is now adjourned.

[Whereupon, at 10:35 a.m., the hearing was adjourned.]

ETHICS AND FINANCIAL DISCLOSURE

TUESDAY, MARCH 22, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEE ETHICS AND UTILIZATION.

Washington, D.C.

The subcommittee met at 9:45 a.m., in room 311, Cannon House Office Building, the Honorable Patricia Schroeder (chairwoman of the subcommittee) presiding.

Mrs. SCHROEDER. This is a continuation of the hearing which began on March 8 on H.R. 3829, a bill to establish a Commission on Ethics and Financial Disclosure for Federal Employees.

So far, the subcommittee has had to face three big policy questions with regard to H.R. 3829. First, whether we need to have a special commission to guard against ethical violations and conflicts of interest by Federal employees. The second, is whether Federal employees—at least those who are not elected or high level appointees—need or deserve the fishbowl or public disclosure. And third, whether any new system of ethical standards and conflict of interest disclosure might work any better than the system we now have, which appears to work in a haphazard fashion at best.

It is our hope that our witnesses today will offer some comments and recommendations on ways to solve these problems, as well as others they see in this area.

Our first witness this morning is Representative Floyd Fithian.

We're delighted to have you with us this morning, Floyd. Floyd's from Indiana. We're anxious to hear what you have to say. Welcome.

STATEMENT OF HON. FLOYD J. FITHIAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. FITHIAN. Chairperson Schroeder and members of the subcommittee, it's very kind of you to allow me time to testify this morning on something that I consider to be very, very important to this government.

During the past year, as you know, we've taken several steps toward restoring a sense of integrity to the Government. The House of Representatives recently passed a strict code of ethics for its members, and the Senate is in the process of attempting to do so. President Carter has formulated ethical guidelines for his appointees.

Today we are discussing H.R. 3829, the Federal Ethics and Financial Disclosure Act of 1977. It is, in my judgment, a bill, and it's one that I will wholeheartedly support. However, there's one subject that

the bill does not cover—the “revolving door” syndrome. And I would urge the subcommittee and the full committee to address that particular question.

Now, the “revolving door” syndrome is simply a catchy term for something that has become a real problem—it’s always been something of a problem; in my judgment it’s now becoming a major problem—and that is the flow of personnel between Government jobs and closely related private industry.

The turnover rate among Federal employees has reached the point where a scorecard is necessary to tell who’s in and who’s out at any given point. And in too many instances, the government jobs are no longer looked upon as public service; instead, they have become stepping stones to higher paying jobs in related private fields.

The potential for a conflict of interest is clear. Those persons who anticipate future employment with regulated clients have a vested interest in acting in behalf of the industry in general, if not in behalf of a particular organization. An employee may be tempted, for example, to help a firm obtain a Government contract if he knows a lucrative job with that firm is awaiting him.

And former Government employees can be valuable to a firm because of their contacts at the agency and their knowledge of how the agency operates.

Thus, a firm that retains a former agency employee gains what I consider a very unfair advantage in the competitive market, because with the person’s aid it may be able to avoid compliance with agency regulations, or at least reduce the time it takes to comply.

This problem extends to virtually every Federal agency and every branch of the armed services.

Last October Common Cause released a study of 29 employees of 11 agencies who, according to news media accounts, had accepted jobs with regulated companies or their law firms.

The study showed that 20 of the 29 employees had contacted officials of their former agency on matters of agency policy or specific proceedings, and two others had communication with their former agency on matters that were not recorded.

Examples of the “revolving door” syndrome are too numerous to detail here, but let me cite just a few cases to document what I’m saying:

Beverly Splane was influential in choosing a staff for the fairly recently created Commodity Futures Trading Commission, and later became its acting executive director. While she was the acting executive director, the Chicago Mercantile Exchange had four major complaints pending before her commission. And during that time while the complaints were pending, she was offered, and then accepted, a post with the Chicago Mercantile Exchange.

James W. Plummer, former Under Secretary of the Air Forces, remained in that position for several months after he announced his intention to accept a post as chief executive of Lockheed Missile & Space Co., the Nation’s largest defense contractor.

Bill Ruckelshaus, former head of the Environmental Protection Agency, was hired by the polyvinyl chloride industry to influence the EPA in writing a regulation to control the cancer-causing agent in polyvinyl chloride.

John Knebel, the successor to Earl Butz, and the person who just preceded Bob Bergland as Secretary of Agriculture, initiated a study of a plan for an agricultural land investment deal while he was Secretary of Agriculture. And 3 weeks later he was hired by Baker & McKenzie, the law firm representing Continental Illinois Bank & Trust Co., a major interest in the land deal that was then under discussion.

That list goes on:

A former SEC commissioner who became chairman of the New York Stock Exchange—Jim Needham;

The former head of the Office of Nutrition and Consumer Sciences who went to work for Hershey Foods—Alden Johnson;

The former FCC Commissioner who returned to a firm which owns nine radio stations, after serving for 2 years on the Commission, Robert Wells. He had been general manager of a division of the company before coming to the FCC.

Now, these persons have not violated any Federal laws by taking jobs with regulated industries or their law firms, nor is there any impropriety necessarily involved. But the potential conflict of interest, or at least the appearance of one, seems to be obvious.

The only governmentwide ban on postemployment activities applies to representing parties before one's former agency, and this is in title 18, United States Code, section 207. That title prohibits former executive branch employees from representing their clients before their former agency on matters in which they were involved before leaving. That's a specific case-by-case involvement.

This holds true for 1 year in matters that were under the employee's official responsibility, and the restriction is permanent if the employee participated personally and substantially.

But there are some glaring loopholes in this law:

Nothing at all prevents a person from taking a position with a regulated firm and then advising other company counsel on how to represent the company's case to the agency.

Nor does the law prevent former employees from representing clients before the agency in matters where they were not personally involved or in matters which arose after they left.

I suggest that the bill before you, H.R. 3829, be amended to include comprehensive restrictions on post-government employment. This is in accordance with the spirit of President Carter's own code of ethics for Federal employees that he is appointing.

And I would suggest that these regulations might include:

First, a 2-year prohibition against accepting employment with any company that had been affected by any agency action in which this employee had a personal and substantial involvement;

Second, a 2-year prohibition on representing any party before their former agency in any legal, lobbying or other professional capacity.

Now, for practical reasons, the President, Vice President, and Members of Congress should be excluded from this provision of the bill, because these persons have had so many areas of jurisdiction that it would be nearly impossible for them to take any job in any industry or organization that has not been affected in some way by something that has happened in Congress or during the presidency.

Now, these postemployment rules could be enforced by requiring employees to sign a legally binding contract with their agency prior to employment. We could not, I might add, make it *ex post facto*.

A review board could be set up to handle special cases, and to insure that these restrictions did not impose an unfair burden or prevent the recruitment of qualified public officials. Or, perhaps, the committee's judgment would be that the Justice Department plus oversight, probably by this committee, would be sufficient.

I'm not as concerned about the technical part of whether a commission or the Justice Department handles this, as I am the basic law.

My proposal would basically put the force of law behind the code of ethics that President Carter required his Cabinet members to sign.

I believe these restrictions on postemployment activities are essential to restoring trust in Government. The people in this country need assurance that Federal employees are not serving two masters, and that they are there to act in the public interest, not in their personal financial interest. I think Congress must act now to stop the "revolving door."

If I may add just briefly to the prepared statement, the Mikva bill which has been introduced, and this proposal, are similar. This goes a little bit further than Congressman Mikva's bill, in that it extends to the uniformed services as well as to agencies.

I have the personal knowledge of situations in DOD which lead me directly to believe that they are among the chief violators, and, therefore, should be covered by any statements this committee should care to make. I believe this proposed amendment affixed to the bill you have before you is indeed germane to the subject of a Federal code of ethics.

I thank the members of the subcommittee for allowing me to come in this morning. If there are any questions, I would be glad to speak to those.

I have attempted to put an amendment on the individual agency bills in a couple of cases, but I always have heard, from USDA and others, the argument: "Well, why pick on us if you're not going to require this of all Federal employees?"

This would be an opportunity for your committee to solve that problem by simply requiring this of all Federal employees.

Mrs. SCHROEDER. Thank you very much. We appreciate what you're saying, and I tend to be very sympathetic although it's very hard for me to try to figure out what I should question you on.

You would extend it, then, to uniformed services as well as the civilians?

Mr. FITHIAN. Yes; I would.

I'm reminded of a situation in a van company—one of the larger ones—that made its business hauling people's household goods.

And I talked to the vice president, who said that his company could transfer people's household goods as well or better than any other competitor; but they never could get a contract to move military personnel from one base to another.

He was curious as to why they never got a contract, and he started talking to some of his friends in the trucking industry, and they said: "Well, you've got to get smart. Go down and hire somebody from the DOD—somebody that's retiring." He said "We don't need anybody; we're already staffed up."

So, they bucked the tide for another 2 or 3 years. Finally, they went down and hired not one but two persons to join their firm. In no time

at all, they were getting a full fair share and then some of their contracts to move military personnel.

So, yes; I would extend it to that.

Mrs. SCHROEDER. My biggest problem in dealing with this—and I've seen the same thing you have seen. In the Armed Services Committee, one of the gentlemen who was in front of us last year testifying, is this year working for \$190,000 a year with a contractor who last year was a Government official.

So, we see that all the time from the armed services. But, my problem is: What kind of penalty do you impose, or what do you do?

What I fear is we might pass something, and in trying to get it enforced and trying to put a realistic way of really making it something other than slapping their hands. I'm not sure what we do.

Mr. FITHIAN. Well, I think it would depend upon the legal nature of the contract they would sign with the agency as to the penalty.

But I think an adequate penalty—we wouldn't want to make it a felony or something else—is possible. I would not want to appear naive and believe we can solve all problems with a single bill. Obviously we can't.

It's a major undertaking, and even if we removed half or two-thirds of this in-and-out-of-Government activity, we'd be serving the American people well, I think. I think it's badly needed.

And I would add one more thing. The more the Federal Government gets involved with regulations and directives and Federal Register promulgations, the greater the problem and the greater the potential for this shift.

And, finally, you couldn't really blame the young lawyer who takes the position with EPA directly out of law school. He's bright, aggressive, and alert. He gets to the point where, because of his abilities, he's writing the regulations.

And, in less than a couple of years, he may be worth \$50,000 or \$75,000 to Dow Chemical, and it's a step upward for him to leave his agency—a \$30,000 a year Government job. So, you can't blame the individual. I'm not faulting the system.

Mrs. SCHROEDER. We're rather running an apprenticeship program, so to speak.

I thank you, and you've been very lucid, and I appreciate it.

Mr. Corcoran, do you have any questions?

Mr. CORCORAN. Thank you, Madam Chairman. I also appreciate the testimony of my colleague, Congressman Fithian.

The "revolving door" theory, as you have described it and as it's commonly referred to, is a very serious problem. In my short tenure in Congress, as well as during my earlier years in Washington, I've seen it happen many, many times.

It is a serious problem and I think that you are right in calling our attention to the possibility of this legislation before us including a provision which would deal with the problem. I'm certainly prepared to work to see that the legislation that ultimately leaves the subcommittee and goes to the full committee would contain such a provision.

There is, however, in your statement, one comment which I would like you to elaborate on. On the first page you talked about the possibility of an entity hiring a former employee of an agency in order to "avoid compliance with agency regulations."

Could you elaborate on that, please?

Mr. FITHIAN. Well, I'm thinking of those examples where a short-cut can be found because of a loophole, or because of the ineffectiveness of the regulation itself.

I'm not saying, therefore, that we write ineffective legislation or regulations; but we all know that when you write a regulation good lawyers can find a way around it. I have worked with Environmental Protection Agency regulations with regard to pesticide formulators, and there are many ways of interpreting those rules.

And all I'm saying is that, whether the individual goes out and assists his company to quick compliance—and there's nothing wrong with that—or he goes and assists his company to come back before the agency, as in the case of Ruckelshaus, and asks that certain regulations be written for that industry; or, as a situation which occurs when they come back and say: "Well, I know this and this loophole occurs, or if we do this we can actually avoid compliance with the regulation."

Now, in those cases where you try to use your influence by getting new regulations written for your company or industry, or where you advise your company on ways to get around existing regulations, a direct and overt conflict of interest occurs, it seems to me.

And there's no way of reaching the problem through 18 U.S.C. 207 in my judgment. I've had some people to look at it; there's just no way of getting on with that.

Mr. CORCORAN. I appreciate that. I was concerned that you were suggesting that there might be some violation of regulations, and these people would be brought into the act in order to accomplish that. You're not suggesting that?

Mr. FITHIAN. No; I'm not suggesting that.

Mr. CORCORAN. Thank you. I have no further questions.

Mrs. SCHROEDER. Thank you.

Mr. Lehman?

Mr. LEHMAN. Thank you, Congressman Fithian, for coming.

This whole question of trying to legislate relative to ethics is older than our Government. And I've been in the automobile business for a good bit of my life, and I see what happens to big corporations—General Motors. If you serve your time with General Motors properly, then you get a nice dealership in Carmel, Calif., or something; and everything is done through the "buddy" system.

I was just talking to our Chairperson, and I just wondered if you could really make this apply to the executive branch, and not have it also to apply to the legislative branch. And there are number of ex-committee staff members on congressional committees that also drop out to become well-paid people in organizations that come back and deal with these committees.

Mr. FITHIAN. You raise a very good—excellent—point, and I would support that if any practical way could be found to write that in.

I was advised by legislative counsel that if you were to include Members of the House and Senate it would essentially preclude any employment, because in the course of a lifetime of a Senator, or whatever, he's probably voted on and acted upon every agency, every industry, every possible occupation.

If there is some way that my proposal could be strengthened, I would favor it. I did not include it in the proposal, but I have no

objection to extending it, you know, completely and making it a complete matter if one can get around the legal problems of that all-encompassing nature.

I think you pointed out yet another area of direct conflict, where a person leaves his job as a committee counsel and goes out and represents an agency before that congressional committee. It appears to me that's the same thing.

Mr. LEHMAN. You could even extend that to the ultimate, and say that former Congressmen and Senators be also included in that, because that's the way that it happens.

Mr. FITHIAN. Yes; and as you know, along with several of you, Congresswoman Schroeder and several of you, I supported the proposals which were acted on last year in terms of the lobbying activities of former Members of Congress. I think it's absolutely wrong that a former Member of Congress, who's acting as a lobbyist, comes on the floor of the House and talks to me or talks to anybody else on the floor. I think that's just a rank impropriety and misuse of former position.

Mr. LEHMAN. I think we'd be stepping, somewhat, into the opaque ethic jurisdiction if we tried to that—this committee, perhaps—but it's just, I guess what I really was trying to encompass is that until we raise such moral standards throughout the country it's going to be very difficult to isolate certain segments of our political system or certain segments of our social system and say: "You've got to play different from anybody else." It's just awfully tough.

Mr. FITHIAN. I wholeheartedly concur with the proposition that we cannot legislate morality. I'd just like to make immorality a little more difficult.

Mr. LEHMAN. And less fun. Thank you.

Mrs. SCHROEDER. Thank you.

Congressman Harris, one of our more moral members.

Mr. HARRIS. Thank you, Madam Chairman. I think that's mostly from lack of opportunity. [Laughter.]

I think it's an excellent statement, Congressman, and I'd like to compliment you on it.

It seems to me, when we talk about the "revolving door" problem, my attention has been focused on the regulatory agencies, and I hope we won't find too many excuses as to why not to apply some standards now on regulatory agencies.

We may run into all kinds of problems as we extend it to this one and to that one, but we've got no business having commissioners and, frankly, top staff in regulatory agencies with power of the ICC, the FPC, and what-have-you, that do not have legitimate restraints on their going back into industries.

I just wonder if you could comment on that?

Mr. FITHIAN. I wholeheartedly concur, and the reason—the constitutional and legal reason—for strongly supporting Congressman Harris' point is this: There has been an absolute revolution in this country, constitutionally speaking, in the last 40 years, 40 years ago the Supreme Court of the United States was holding unconstitutional things like the first AAA that the Congressman is familiar with, on the grounds that it was an unwarranted delegation of legislative authority to delegate that kind of ratemaking, rulesetting, etc.

Mr. HARRIS. That's Agricultural Adjustment, not the American Automobile Association.

Mr. FITHIAN. And today—the Federal Register last year published I don't know how many pages of Federal regulations, and didn't cause a single constitutional “eyebrow” to be raised.

So, we are in an age where regulatory agencies do make law. Now, they tell me that this isn't law, that it's only regulation; but you can be punished, imprisoned, or put out of business. And if those things occur, it seems to me they have the effect of law, and as a nonlawyer, I refer to them as laws even though they're not duly processed through the legislative branch.

And, therefore, I think the onus of this kind of regulation or legislation falls rather directly and specifically on the regulatory agency personnel.

Mr. HARRIS. I have seen the figures, that I referred to a couple of weeks ago I think, that a third of those commissioners that leave the regulatory agencies, for the past 7 years have returned to the sources that are being regulated.

Certainly, when we're dealing with problems of this magnitude, I think it cries out for some sort of reform. Certainly, this can't happen, the regulator become the regulated overnight without expecting at least the appearance of conflict of interest.

Mrs. SCHROEDER. Thank you again. We really appreciate your testimony, and I think you've been very persuasive.

Mr. FITHIAN. Thank you very much.

Mrs. SCHROEDER. Thank you.

Mr. LEHMAN. Don't go get another job.

Mrs. SCHROEDER. Yes; don't go get another job.

Congressman Gilman, did you have some questions?

Mr. GILMAN. I'm sorry I was delayed in getting over, Mr. Fithian.

If we act on your proposal, aren't we subjecting ourselves to a charge that we're taking away a person's livelihood—the individuals who are most probably specialists in their field before their Federal Government employment specialty—actually seek employment in their field, or with a firm—could they put their expertise to work?

Mr. FITHIAN. Well, that's correct, but I would hope that we would not have to see agency personnel go directly into regulated industry, then return and represent their corporate entity before an agency they used to work for.

The legal side of it, which is what we're raising here, I think is covered by the fact that a person enters knowingly into a contract with the Government as a condition for taking the job.

So, it is a voluntary matter, and I inserted parenthetically during the testimony that I do not believe legally we could make this apply to people who have been hired under different conditions, when this kind of rule did not apply.

You cannot make it *ex post facto* without getting into a long, legal case. But if an individual knows when he takes the job that that is the condition, that he would be precluded for 2 years after taking that job from going out and going to work for a regulated company, then it's my judgement—and the best legal judgement that we could find—that that would be fair.

Mr. GILMAN. Will the gentleman from Indiana tell us how he happened to select a 2-year period. Is there some special reason for that?

Mr. FITHIAN. Well, I was guided, not by any magic; 18 U.S.C. 207 addresses itself to this. And the 2-year period seemed to me to be long enough to cause some rotation at least in the old agencies—some of the friends may have moved on to other desks by that time.

I think if you precluded it, say, 5 years, you're then getting into a situation where you exacerbate the point you raised; and that is, you deny a person employment in his specialty for a fairly long period of time. And I think that would result in some very great difficulties in recruitment for Government jobs.

You know if you're going to regulate a railroad—you're going to run Conrail—you ought, probably, to hire some people from railroad industry. I don't know how else to do it.

And I guess this is a compromise between what I would like to have—an ideal situation where they would never be able to use their information of contracts they picked up in Government—and the situation that now exists—where they can go out almost immediately and advise another counsel of the company as to how to represent that company before their agency.

Mr. HARRIS. Will my colleague yield?

I think Mr. Fithian has put his finger on it. I think it's 2 years because 1 year is too short, 3 years is too long.

Mr. GILMAN. Thank you, gentlemen.

Just one other question of the gentleman from Indiana: Do you figure that proposed regulation to really plug loopholes that we're complaining about in your statement?

Mr. FITHIAN. Well, I think it would go several steps in that direction. I would not want to appear naive enough to believe that this would solve the entire problem, because I don't believe we can legislate morality.

And, I don't believe we can ever get away from some of this. But I think it would at least reduce the more gross violations of a position of trust which they've been placed in by being hired into the agency.

So, no, I don't think it will legislate Nirvana, but I do believe it would help.

Mr. GILMAN. I want to thank the gentleman from Indiana for adding these thoughts—for bringing these thoughts before the committee, and for this opportunity to more fully explore the issue.

Mr. FITHIAN. Thank you.

And thank you, Madam Chairman.

Mrs. SCHROEDER. Thank you again.

The next witness is Mr. Carl Goodman, General Counsel of the Civil Service Commission. We're delighted to have you with us.

STATEMENT OF CARL F. GOODMAN, GENERAL COUNSEL, U.S. CIVIL SERVICE COMMISSION

Mr. GOODMAN. Good morning. My name is Carl Goodman. I'm General Counsel for the Civil Service Commission.

And if I might be granted a moment for a personal reflection, I was listening to the previous testimony. I couldn't help but be struck

by the fact that next week will mark the 16th anniversary of the date when I first joined the Government, and all but 11½ years of that was served in the Government service.

So, I guess to some extent, this may be the exception that proves the rule.

By letter dated March 10, Chairwoman Schroeder requested the presence of a Commission representative at the hearing this morning to discuss the entire subject of ethics and financial disclosure. In that regard, reference was made to H.R. 3829, as a sounding board for discussion. This understanding was confirmed in conversation with Mr. Knull, of the subcommittee staff, and so I am here today, not to express specific comments on H.R. 3829, but rather to set forth the history of the present ethics regulations and financial disclosure requirements in the executive branch, and to answer such questions as you may have in any way that I can be helpful to the committee.

I believe the members of the subcommittee are aware of the fact that there are meetings which have been going on in the executive branch of Government, concerning the question of financial disclosure requirements for key administrative personnel and high-ranking civil servants.

While statutes involving conflicts of interest have been on the books for well over 100 years, they cover such items as: criminal law, bribery and dual compensation, representation by Government employees in a private capacity with respect to claims against the Government and, to some degree, with postemployment.

These statutes were revised and recodified by the Congress in 1962, and now appear in chapter 11 of title 18 of the United States Code.

Conflict of interest, on the other hand, must be considered on a much broader plane than the criminal provisions now on the books. For example, in 1953, the appointment of the Secretary of Defense resulted in one of the landmark instances of required divestiture of stock as a condition of Senate confirmation.

Concern over conflict of interest continued throughout the 1950's in both Government and private study commissions.

For the first time, an Executive order covering this problem, generally, was issued by President Kennedy in 1961. This order, Executive Order No. 10939, prohibited heads of agencies, assistant heads of agencies, members of commissions appointed by the President, and members of the White House staff from receiving outside income or having investments that could conflict with the official responsibilities they could have. The order left to each agency the responsibility for issuing implementing regulations.

In 1965, the present Executive Order No. 11222 was promulgated to prescribe standards of ethical conduct for Government officers and employees. This order is based on the concept that it is the fundamental duty of Federal officers and employees to serve the public and that their private interests must be subordinate to and not conflict with their official duties and responsibilities.

Section 101 of the order states that each employee "must help to earn and must honor" the public trust "by his own integrity and conduct in all official actions."

The order introduced a new concept and one that caused much adverse comment at the time, namely that top officials in the executive

service must file financial disclosure statements. Many people, both in and outside the executive branch at that time, opposed this, for the time, advanced idea.

We have come a far away from that time. There is no longer much debate over the requirement that financial holdings be reported. Now the question is whether financial statements should be publicly available, and if so, what financial data should be disclosed.

As you know, President Carter has already made public disclosure a requirement for his top appointees, and as indicated earlier the administration is now working on further steps in this important area of financial disclosure.

Under section 401 of the present Executive order, the heads of agencies, some Presidential appointees in the Executive Office of the President, and full-time members of boards and commissions appointed by the President must submit financial statements on an annual basis to the Chairman of the Civil Service Commission.

We receive approximately 200 such statements a year, and they are reviewed carefully. If any potential conflict is disclosed, the official is informed to that effect and arrangements are made to resolve the conflict.

The order places with the Commission the responsibility for issuing regulations to cover in more detail the basic principles set out in the order. Our regulations are found in 5 CFR part 735, and they proscribe gifts except under limited circumstances, set the bounds of outside employment, prohibit the misuse of Government property and the wrongful use of official information, and treat other subjects of similar import.

These regulations are used as a model for the standards of conduct issued by the other executive agencies which, under the order, must clear their conduct rules and modifications of those rules with the Commission.

We have set the guidelines for the filing of financial disclosure statements and the criteria for determining which employees in Government must file such statements. Generally speaking, statements must be filed in each agency for employees paid at the level of GS-16 or above, and those employees classified at grades 13 and above who have the responsibility for making Government decisions or taking Government action with respect to contracting or procurement, grant or subsidy programs, or regulating or auditing private or non-Federal enterprises, or other activities where their decision or action has an economic impact on any non-Federal enterprise.

As to employees classified below GS-13, agencies are not authorized to require financial statements from them unless they have shown, to the satisfaction of the Commission, that the inclusion of such positions is an exception that is essential to protect the integrity of the Government and avoid employees involvement in a possible conflict-of-interest situation.

The financial statements generally disclose the following information:

A list of the names of all corporations, companies, firms or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions, with which the employee is connected as an employee, officer, owner, director, trustee, partner, adviser, or con-

sultant; or in which the employee has any continuing financial interests, through a pension or retirement plan, shared income, or otherwise, as a result of any current or prior employment or professional business association; or in which he has any financial interest through the ownership of stocks, bonds, or other securities; a list of the names of his creditors, other than those to whom he is indebted by reason of a mortgage on property which he occupies as a personal residence, or to whom he may be indebted for current and ordinary household and living expenses; and a list of the employee's interests in real property or rights in lands, other than property which he occupies as a personal residence.

One of the most important provisions of the Executive order and the Commission's implementing regulations is the inclusion within the conduct rules of apparent conflicts of interest. The Federal employee program is not only concerned with actual conflicts but also with apparent conflicts. They are often difficult to evaluate.

We take the approach that the public interest comes first, and that if there is any question as to whether or not a Federal employee's private affairs conflict with his public duty, no matter how uncertain that may be, the pendulum is swung in favor of the public and the Federal employee is asked to remove the conflict.

As noted above, Executive Order 11222 was a marked departure from past practice. While it carved out new ground, it left some issues unresolved. For example, under the present Executive order as interpreted by Commissioners present at its inception, the Commission does not have authority to enforce the ethics requirements, or to order another Federal agency to take action where it has failed to do so.

We have, however, in recent years, taken steps in an effort to at least partially fill the void left by the Executive order. Thus, by reason of our meetings and conferences with ethics counselors in the agencies, we have created both an atmosphere in which our recommendations are respected and followed, as well as an atmosphere highlighting agency understanding of the need to strongly carry out the agencies' responsibilities in the conflict-of-interest area. There is, of course, much that is left to be done.

I appreciate the opportunity which you have afforded me this morning to appear before you. I'll be happy to answer such questions as I can.

Mrs. SCHROEDER. Thank you, Mr. Goodman, and as in past practice with the subcommittee, I think what we'll do is have people question you in the order in which they came in, and I'll question you last, if that's all right.

Congressman CORCORAN.

Mr. CORCORAN. Thank you very much, Madam Chairwoman.

I have a couple of questions dealing with the enforcement capability of the Commission.

As I understand it now, the enforcement procedure that you employ is really one of persuasion through your meetings with the ethics counselors in the agencies.

Could you elaborate a little more on what is now done, and if you have any recommendations that you'd care to make with respect to how this legislation might be strengthened in that respect, I'd appreciate it.

Mr. GOODMAN. The enforcement is really at two different levels. The first level, for example, has to do with financial statements that are filed directly with the Commission by heads of agencies—other presidential appointees.

In that regard, the Commission's enforcement authority is simply to bring the matter to the attention of the White House.

Now, our past experience has been that when we have done that, the conflict situation has been resolved. When it comes to the other agencies of government, we have no enforcement responsibility as such. The commissioners there when the order was promulgated felt that they did not have that enforcement responsibility, and in that regard, we are engaged in the process of what we might call cajoling, attempting to bring the agencies along and to deal with the agencies on an informal basis.

There, again, I think recently we have had some successes with the agencies in getting action taken.

Mr. CORCORAN. The February 28, 1977, GAO report found that 10 percent of the financial disclosure statements required to be filed in 3 departments and 13 agencies were not filed.

Can you tell me what action the Civil Service Commission has taken to insure that all departments and agencies will be willing to comply with the Executive order?

Mr. GOODMAN. I believe it was in 1975 when, for the first time, the Civil Service Commission sent a group of people out to agencies to make a check on what reports had been filed with the various agencies. We did that, even though we didn't find anything in the Executive order that indicated that we could do that; but we felt that somebody ought to do it, and so we did do that. As a consequence, we wrote to the various agencies concerning taking steps to see that the order was, in fact, followed—to see that they did, in fact, get the financial statements from people that they were supposed to get them from.

So, we have, you know, initiated some initiatives in that regard.

Mr. CORCORAN. One final question: Could conflicts come up—Government conflicts of interest—in requiring financial disclosure?

As you have testified for some time: One of the arguments against financial disclosure for executive employees is that it discourages people from joining the organization. It is a negative factor in the recruitment of high-level experienced, capable personnel for public service.

Would you care to comment on what the experience has been so far?

Mr. GOODMAN. Well, of course, it's hard to say whether the experience we've had so far is relevant, because the financial disclosure requirements to date have not been public disclosure requirements.

In other words, the financial statements which are filed are not publicly available under the present program. The financial statements that are filed are to be kept in confidence unless the chairman of the commission or the agency—the statements filed with the agency—determine that there's a good cause for making that public.

So, I don't know that the past experience is really reflective of what the future might hold for us.

Mr. CORCORAN. Thank you very much.

Mrs. SCHROEDER. Thank you.

Congressman Gilman said he had to leave.

Congressman Gilman.

Mr. GILMAN. Mr. Goodman, we appreciate your confidence, and having read your proposal, is there any need for a new commission on that? Do you feel the Department, given a little more authority, could properly handle the proposal?

Mr. GOODMAN. I believe one of the problems in the past has been the lack of a clear statement of enforcement responsibility on the part of the Civil Service Commission. I do not know that it is necessary to have a separate agency created for that purpose.

If a clear statement were made of the responsibility and authority given to the Civil Service Commission to handle this area, I think the Commission could handle it.

Mr. GILMAN. And there wouldn't be any need for a sizable increase in your employees to take on that responsibility?

Mr. GOODMAN. Well, that depends upon the extent to which the Commission would be given the responsibility. If, for example, financial statements were to be filed with the Commission from Government employees, let's say GS-16 and up, throughout the Government, and to be reviewed by the Commission, yes, we would need a substantial increase, I believe, in staffing, to deal with that.

And, at the moment, only 200 statements a year are filed with the Commission, those being by the Presidential employees; so it would depend upon what responsibility were given.

Now, if we were given responsibility to review those statements on a sample basis, for example, then obviously it would not require as much of an appropriation as it would if we were to review each and every statement as it came in.

Mr. GILMAN. Where, Mr. Goodman, would you come down on the issue of privacy? In other words, how much is too much disclosure?

Mr. GOODMAN. The issue of public disclosure is, as I think I indicated earlier, an issue that's presently being discussed in the executive branch, and I know that there have been statements made by the President concerning public disclosure in this area.

I do not know what the final resolution of that will be in the executive branch. I do believe, personally, that it is important for the committee, or whoever deals with this question, to balance the public's interest, the need to know, with the privacy interest of the Government employees involved.

And, in that regard, it may be that certain types of information should be put in the public domain, and other types of information not put in the public domain. For example, it may well be that the name, or some indication of the amount of compensation that one receives from an outside interest would go into the public domain, but personal holdings that one may have acquired long before ever obtaining Government service, might really have no relationship or bearing on one's public service.

So, I think there's a balancing act that will have to be engaged in in that regard.

Mr. GILMAN. Can you tell us what the status is of the proposed revised Executive Order 11122?

Mr. GOODMAN. I can simply tell you that work is proceeding on it. I cannot give you any further information than that on it because I do not have it.

Mr. GILMAN. Who's working on it?

Mr. GOODMAN. It's being worked on in the White House counsel's office. They're receiving assistance from other people in the executive branch as well.

Mr. GILMAN. Just one last question. Don't you think it should be a ban on all "freebies"?

Mr. GOODMAN. A ban on all "freebies"? I think a ban on all "freebies" is something that the executive branch or that Congress may well wish to put into place.

Mr. GILMAN. Thank you.

Mrs. SCHROEDER. Thank you.

Congressman Lehman?

Mr. LEHMAN. This morning in the New York Times there is a story by Lowell Weicker, Jr., called "Full Disclosure." He says that you don't have the full, total disclosure. He includes the fact that every financial detail should be published yearly—income tax returns, itemized statements of employees, liabilities, membership, stock, every holding in trust, every interest payment, financial status of the wives—all should be published for voter consideration. He says:

Senators should be required to make public every financial detail they possess through yearly publication of individual income tax returns and an itemized statement of net worth, detailing assets, liabilities, and gifts received. Every share of stock, every holding in trust, every interest payment on every loan should be offered to the voters for consideration. The financial status of senators' spouses and dependent children should also go public, with all the records being published.

How full a disclosure do you think should be required of the employees in your jurisdiction. Should it be a total and no-holds-barred type of disclosure?

Mr. GOODMAN. Well, if I can express a personal view on this, because I don't know what the view of the executive to be, but to express a personal view, there are conflicting interests here. For example, one of the acts mentioned was tax returns. Tax returns would disclose such information as one's medical history—whether one went to see a psychiatrist last year, or whether his children went to see a psychiatrist, or whether one had an operation.

Mr. LEHMAN. Can I interrupt you just a second?

The tax returns that we file in Florida are open, basically, to the public, because the State of Florida can go into the computer operations in Georgia where they present our tax returns, and take all the information off that they want. So, we're really not hiding anything at the present time.

Mr. GOODMAN. That may be, but what I started to point out was, I think there are some privacy interests of the employees involved—in people who are Government employees who are involved in this question of full disclosure.

I think that what is really called for is not phraseology, if I can put it that way. A full disclosure, or limited disclosure—concealing things, hiding things, putting things in the open. I think what's called for is really a reasoned judgment of what financial facts concerning Government employees are relevant to a determination by the Congress, by the executive branch itself, and by the public, as to whether or not an employee has a conflict, or apparent or potential conflict of interest.

I think that is the determination that must be made, and in making that determination, I think it is significant to bear in mind the privacy interests of the people who are involved. After all, the Government civil service does consist of some 2.8 million citizens, and they have privacy interests which have been recognized by the Congress.

Those privacy interests, I think, must be balanced in determining what disclosure should be made, and who should make it, and how public that disclosure should be.

Also, I think in considering that—I am thinking back to some testimony I heard the Comptroller General give last year on a bill that dealt with disclosure—I think one should consider the effect, if disclosure were required, what is necessary to protect the public's interest, may have on the ability of the Government to recruit and retain top talent. I think that must be thrown into the mix.

I think that when those considerations are put side-by-side, that there is an area for public disclosure, and that that area can be culled out and appropriately dealt with.

Mr. LEHMAN. But that's a tough line to draw.

Mr. GOODMAN. I agree with you. I believe it is a hard line to draw.

Mr. LEHMAN. The same line that you would draw for me, with a son that operates an automobile agency, would be different from someone else, maybe, whose father was a mechanic in the same entity.

Mr. GOODMAN. I agree with you. Yes; you're absolutely correct.

Mr. LEHMAN. I have no further questions.

Mrs. SCHROEDER. Congressman Harris.

Mr. HARRIS. Thank you.

On the top of page 4 you describe who is covered by the present Executive order: "heads of agencies, some Presidential appointees in the executive office of the President, and full-time members of Boards and Commissions."

I just wonder what is meant by "head of agencies;" departments, commissions, administrators—what is meant by that?

Mr. GOODMAN. The answer to that is, "Yes," the head of a department, cabinet officer—the chairman of the CAB, for example—would be those types of people.

Mr. HARRIS. Would all commissioners be covered?

Mr. GOODMAN. Those full-time members of the commissions who are appointed by the President; yes, they would be covered. Yes.

Mr. HARRIS. All administrators covered?

Mr. GOODMAN. Well, I don't think so, because I don't believe that all administrators are appointed by the President, and so, I don't believe so.

Mr. HARRIS. Just those appointed by the President are covered?

Mr. GOODMAN. Yes; that is to say those who have to file statements with us. The administrators who are not appointed by the President would have to file them with the head of the agency department, or whatever, where they are appointed.

Mr. HARRIS. Which Presidential appointees in the Executive Office of the President—are all of the employees in the EOP on the White House staff?

Mr. GOODMAN. No; not all of the employees there have to file with us. Where there is, for example, an OMB as part of the White House, it has a head. And where you have a head of this kind of discrete unit,

people in the unit would file their statements with the head of that unit and not with us.

So that it's not everybody who is associated with the White House that files with us, by any stretch of the imagination. We only file—

Mr. HARRIS. What about the White House staff?

Mr. GOODMAN. Again, not everybody on the White House staff would file with us. They might file with those people in the White House.

Mr. HARRIS. Could you advise us which of the White House staff?

Mr. GOODMAN. Yes, sir.

Mr. HARRIS. You might not have it right there.

But Madame Chairman, if there's no objection, if I could have in the record at this point which members of the White House staff are actually involved, and which members of EOP actually file.

Mr. GOODMAN. Which members?

Mr. HARRIS. Executive Office of the President; separate terms for bureaucratic chiefs.

Mr. GOODMAN. Could I ask a question about that, Congressman Harris? You would like to know which of them filed with us as distinguished from—

Mr. HARRIS. Yes, right.

Now, as I understood you, all Presidential appointees file. Right.

Mr. GOODMAN. Basically, yes.

[The following information was furnished:]

The positions in the Executive Office of the President which require the filing of confidential statements of employment and financial interests with the Chairman of the Civil Service Commission pursuant to section 401 of Executive Order 11222 are: Members of Council of Economic Advisers, members of Council on Environmental Quality, Director of Council on Wage and Price Stability, Director of Office of Management and Budget (OMB), and Director of Office of Telecommunications Policy.

Mr. HARRIS. With you.

Mr. GOODMAN. Yes.

Mr. HARRIS. In your view, is that coverage adequate?

Mr. GOODMAN. If the filing of financial statements by other persons in the Government with the heads of their agencies is appropriately carried out, and if there is some monitoring mechanism, then that may be appropriate.

In other words, I think that the question of whether they should file with the Commission—whether the Commission or somewhere else—can be dealt with if there is some mechanism for enforcing the requirement that they file somewhere else if they file somewhere else.

Without that mechanism I think there are substantial problems with that procedure.

Mr. HARRIS. Is there anybody in the executive branch right now that knows whether all of those that should file are filing?

Mr. GOODMAN. In my opinion the answer is "No."

Mr. HARRIS. That's what I thought.

Now, with respect to enforcement, on page 6 you indicate that Executive Order No. 11222 "left some issues unresolved." You say, "Under the present Executive order as interpreted by Commissioners present at its promulgation, the Commission does not have authority to enforce the ethics requirements."

The Commission doesn't have the authority to enforce the requirements, right?

Mr. GOODMAN. That is correct. That is the way the Executive order was interpreted during the past.

Mr. HARRIS. Have some Commissioners interpreted the order to the effect that the Commission does have the questioned authority?

Mr. GOODMAN. Not that I am aware of.

Mr. HARRIS. Don't you think it leaves the Commission in a rather incredible position, that they go through all this exercise and yet don't have the authority to enforce it?

Mr. GOODMAN. I think it's a matter that should be rationalized, clarified, and cleared up.

Mr. HARRIS. That means, "Yes," right?

Mr. GOODMAN. As I understand it that's an issue that should be resolved. I don't think that that's a situation to have—some responsibilities and no enforcing authority.

Mr. HARRIS. On page 4 you indicate that: "If any potential conflict is disclosed . . . arrangements are made to remove the conflict."

I was wondering what that means.

Mr. GOODMAN. Well, for example, we've had instances where people have been required to sell securities. That would be an arrangement made to remove the conflict.

And there have been situations where blind trusts have been created; again, a situation which would remove the conflict. I can picture situations where people may have recused themselves from certain types of activities to remove the conflict.

Mr. HARRIS. Let me understand what happens. When they file—and with those who haven't filed with you—certain individuals have to file with you, and if they don't file you say, "Hey, you haven't filed with us." Right?

Mr. GOODMAN. Right.

Mr. HARRIS. And you keep doing that until they do file with you?

Mr. GOODMAN. We say, "You haven't filed with us; you'd better file with us." And if they don't file with us, we go to the White House and say, "These guys haven't filed with us, and they're supposed to file with us."

Mr. HARRIS. Right. Pretty good show for a paper tiger that can't enforce it anyway.

Mr. GOODMAN. Well, it's all we have. We use what we've got.

Mr. HARRIS. OK. And they do file with you, and you say, "Hey, here's a conflict of interest here; you ought to clear it up."

Mr. GOODMAN. OK.

Mr. HARRIS. And they say, "OK"; what happens if they don't say "OK"?

Mr. GOODMAN. I'll give you an illustration of a particular situation which arose. We read a financial statement, and we looked at it, and we said—we called up the person involved—and said: "You have the ownership of a certain type of stock. We think that that stock is in the company that has something to do with your regulations, and we think that's a conflict. You ought to divest yourself."

The next thing that happened was I got a call from the General Counsel of the particular entity involved, and he said to me: "Well, it's really not much stock. It's been in the family for a long, long time.

and assume you compare it with the person's entire worth it really doesn't mean anything, and cetera, cetera, cetera."

And when he got all through I said, "Well, I think you ought to get rid of it. And I think you should get rid of it right away."

And then I called someone over in the Counsel's office at the White House, and I said: "You know, this person's got this stock, and we've had discussions, and I think they ought to get rid of it."

The person in the White House said, "I agree with you; they ought to get rid of it."

So I called the General Counsel back, and I said: "You know. I've discussed this with so-and-so at the Counsel's office at the White House, and he agrees with me, you ought to get rid of it." And the official got rid of it.

Mr. HARRIS. What would have happened if he had not?

Mr. GOODMAN. My answer would have been to go back to the White House staff and say: "I've done all that I can do. He hasn't gotten rid of it, and as far as I'm concerned, there's a conflict. You people have something to do now."

Mr. HARRIS. What year was that? About what year was that?

Mr. GOODMAN. Excuse me.

Mr. HARRIS. About what year was that?

Mr. GOODMAN. During the last years.

Mr. HARRIS. I just wondered who the General Counsel in the White House was at the time.

Mr. GOODMAN. Well, I didn't speak to the General Counsel in the White House at the time, but—

Mr. HARRIS. Well, the GAO has found in this February 28, 1977 report, and I quote: "Our reviews reveal many weaknesses in agencies of the disclosure system, stemming primarily from the low priority given to agency standards of conduct in financial disclosure systems. Many employees were unaware of requirements and unknowingly found themselves in possible conflict-of-interest situations with the result that their credibility and that of their agency was questioned."

That's a quote from the report of the GAO. Can you respond to this? How many, for example, conflicts, or potential conflicts, have been uncovered?

Mr. GOODMAN. I can't give you a number on that. I don't know. Let me, if I could, generally respond.

Mr. HARRIS. Let me just say something specific, because I think we ought to be able to get a specific response to this. I don't know, in any specified period—the last 3 years or what have you—how many conflicts of interest have been uncovered with respect to the Commission's activities? Don't you think you could give me a figure on that?

Mr. GOODMAN. I think that I can give you a figure—

Mr. HARRIS. Madame Chairman, can we do that in the record?

Mrs. SCHROEDER. Yes; I would like to do that.

Mr. HARRIS. And what has happened? We used one example, but I would like to tie down how many conflicts have been uncovered, and what has happened with respect to those conflicts. Could we do that?

Mr. GOODMAN. Yes.

[The following was furnished:]

Whenever any conflict or potential conflict has been discerned by us in our review of financial statements under section 401 of Executive Order 11222, we

have taken up the matter with the official involved and in every instance the conflict has been resolved by divestiture or other appropriate explanation or action. There have not been about five such cases over the past two years.

Mr. HARRIS. How many employees have been dismissed or disciplined because of the conflicts? Do you know off-hand?

Mr. GOODMAN. I am not aware of any employees who have been either dismissed or disciplined, who have filing requirements with the Commission, over this period of time. I really cannot say whether any have been in the agencies except to note that when there was an issue pending regarding certain people at DOD, I think it was, who went to certain hunting lodges. We did take a position then with DOD, that we thought DOD should engage in some form of discipline, and I believe there were some letters of censure or something that were sent.

Again, I would really not know what goes on at the agency level, because, really, that's the agency's responsibility under the Executive order and the regulations.

Mr. HARRIS. Can you think of any way this committee could gain that information? Gosh! what would it mean, going out to every agency?

Mr. GOODMAN. Good heavens!

Mr. HARRIS. That would be quite a job, wouldn't it?

Mr. GOODMAN. That would be quite a job, and I don't know that it would be a job that could, in fact, be achieved, because I don't know that the agencies keep that sort of record.

Mr. HARRIS. But as far as you know, and as far as the Commission is concerned, any conflict-of-interest activities at the Commission, do you know of no employee that's been disciplined or discharged because of this?

Mr. GOODMAN. That's correct. I'd like to point out, Mr. Harris, if I may, that I think the general thrust behind the financial disclosure requirement is not one really of disciplining people for a conflict, but I think the general thrust of it is that an agency could determine at the inception as to whether the potential for conflict exists, so the situation can be changed, through divestiture, for example.

There are, of course, other areas of conflict-of-interest besides the financial disclosure requirements, but those are the agency responsibilities.

Mr. HARRIS. I didn't realize that those conflicts or potential conflicts could continue on until somebody said there was probably a conflict, and that would resolve itself not by discipline, but some sort of arrangement that, as you referred to, the appearance of conflict would be removed. And this is not a good situation. That's a bad situation.

That means that people can get away with this conflict until somebody calls it to his attention, and then he arranges to resolve the conflict. Isn't that right?

Mr. GOODMAN. I tell you, there are real problems in this area.

Mr. HARRIS. Madame Chairman, I have a couple of other questions. If we have time I'd like to come back to them.

Mrs. SCHROEDER. Congressman White, do you have any questions?

Mr. WHITE. Madame Chairman, I am sorry I was unable to be here earlier. I was attending another meeting.

I note on page 2 of the bill—I've gotten that far—this language: "An employee should not use or attempt to use his official position or disclose or use any information obtained from that position to secure

any gain, privilege, benefit, exemption or other items of value for himself or any other person. . . .”

Suppose a man happened to be in a particular agency, and in the course of his duties—whether it be specifically in his own jurisdiction or may even be a neighboring department in that same Cabinet agency—learns something that inclines him to believe that he should invest in some certain stock.

He sees, for example, that a lot of bridges are going to be built somewhere, and he decides to go out and buy some steel stock. Under the terms of this particular bill, I would judge that that would be prohibited. Am I correct?

Mr. GOODMAN. I would believe that to be prohibited too; and I don't think that's substantially different, though, from the insider information prohibitions in the Securities Exchange Laws, about people who work in corporations and have high responsibilities there—who hear about things going on about the corporation, but can't use that to dabble in stock.

Mr. WHITE. Well, I wonder if that's the proper result or not. In other words, if a person is in a position, and by reason of the knowledge that he gleans, and maybe on something that is not under his wing, that he turns a profit. Is this something we're trying to prohibit?

Mr. GOODMAN. Well, I think it may depend upon whether the information is public information. If it's public information, to which the entire public has a right, then I assume it would be perfectly proper for him to use it because it would be in the public domain.

But if it is the sort of information that one can only get by being in a Government agency, then I could see reason for saying you cannot make use of that information.

Mr. WHITE. Well, by reason of his position he got it altogether, as it were. He sees the whole picture a little more clearly than from sporadic information going to the public. As I see this, he cannot use that. He cannot buy that stock. He's in violation.

Mr. GOODMAN. That's the way I read the provision.

Mr. WHITE. Suppose the man is in a particular field, let's say he's in the aviation field, and has a great deal of expertise since this happens to be what he's devoted his life to. Also suppose that he's intending to retire and hasn't made any prior contact at all with any particular airline. He just goes out into the public as a retiree. As I understand the bill, he would be prohibited from being hired by the airline. If that is true, isn't this, in a sense, depriving him of a certain property without due process?

In other words, knowledge is part of his earning power. If you say he cannot be hired, are you not denying him the use of that knowledge and earning opportunity?

Mr. GOODMAN. As I read the bill, the bill did not address itself specifically to this issue.

I believe the testimony of Congressman Fithian was related exclusively, virtually, to this issue of what is or is not permissible after a Government employee leaves the Government.

Mr. WHITE. For instance, suppose a man is in the armed service, and he's a musician. He gained all of his musical knowledge while in the service. Maybe this isn't a good illustration, but if you carry it to the extreme, what he gained in the service, in the knowledge of

military music, he could not use if he decided to be hired for a professional band that is devoted to military music.

Mr. GOODMAN. I don't believe that this bill addresses that issue, or intends to prohibit that sort of conduct.

Mr. WHITE. But it would, the airline situation.

Mr. GOODMAN. I don't think this bill addresses that question, even with the airlines. Frankly, I think what section 104, at least as I read it, addresses, is the issue of, let's say, somebody that works at the FDA—or FAA—he finds out that because of his work at the FAA that the FAA is going to issue a regulation that requires all airplanes to have a certain type of equipment in planes. He then goes out and purchases 1,000 shares of stock from the company that manufactures that equipment.

I believe that was the sort of thing that section 104 was directed to, and to deal with that sort of problem.

Mr. WHITE. I think there are a lot of things we're seeking to prevent that could be done by other means than to do what Mr. Fithian was talking about in cutting off a man's opportunity of work. I would not agree with Mr. Fithian in his premise at all. I agree with his objective, but not with the means.

Mrs. SCHROEDER. Thank you, Mr. White.

Let me ask you a question. You mentioned in your testimony that the Civil Service Commission has interpreted the Executive order to say that they did not have enforcement authority.

Did the Commissioners ever ask the President to give it the enforcement authority?

Mr. GOODMAN. I am not aware of any request by the Commission to the President to give them enforcement authority.

Mrs. SCHROEDER. So, they read his order as one saying they didn't have enforcement authority. They kind of read themselves out of enforcement, but they never thought it important enough to ask the President to give them that authority, in your knowledge?

Mr. GOODMAN. As far as I know they have never asked for that.

Mrs. SCHROEDER. What effect do you see in the Civil Service Commission's lack of enforcement authority over ethics and financial disclosure?

In other words, what I hear you saying is: "We do have conferences, and news letters, and try and gently probe the different agencies along." But if the agency doesn't care to take the first step, then you never even get into the picture. Is that correct?

Mr. GOODMAN. That is basically correct. I think there is a gap here that should be filled.

I think that it's fair to say that, in the last couple of years, the General Counsel's Office in the Civil Service Commission has recognized the gap and has tried to the extent that it can deal with the issue to try to at least highlight to the agency their responsibility in the area. I believe there is a gap by not having some centralized responsibility. Yes.

Mrs. SCHROEDER. Well, could you supply for the record the number of ethics counselors that are at work in the executive branch?

Mr. GOODMAN. Yes; I can.

Mrs. SCHROEDER. And then can you tell me if those employees have any other duties, and if so, what they are?

Mr. GOODMAN. Yes; I can do that, but I can tell you right now that many of them, if not all, do have other duties.

Mrs. SCHROEDER. I think we'd like to see that and figure out how much time they have and what they devote to being ethics counselors. [The following information was furnished:]

There are approximately 100 Ethics Counselors throughout the Executive Branch. At times they are assisted by Deputy or Bureau Ethics Counselors where the number of employees is substantial. This is particularly true in the Departments of Agriculture and Defense.

In smaller agencies Ethics Counselors spend time on other duties, but generally they have to devote their full efforts during the period—approximately three months—when financial statements are being analyzed. In a larger agency such as the Department of Interior, the Ethics Counselor will devote full time with another assistant and additional time is spent at the Bureau level where initial review of statements is made.

How many people are employed at the Commission?

Mr. GOODMAN. We have one professional who is employed in that office, an attorney. He has some staff assistance through the general staff of the office, and we have, from time to time, detailed other people to work with him as back up on various matters involving ethics.

Of course, I have responsibility, and my deputy has responsibility. But basically we have one full-time professional to deal with the area.

Mrs. SCHROEDER. Well, now, the General Accounting Office told us on March 8, when they did not give the Civil Service Commission very high rating on their ethics, that the Commission, to do this kind of ethical advisory work and oversight, would require at least 50 more employees.

Mr. GOODMAN. Well, I think I indicated in answer to Mr. Gilman's question that if greater responsibility and authority were to be granted to the Commission in this area, that I think that would require greater allocation of resources and funds.

Right now, as I say, we receive about 200 statements a year to review. If we're going to receive statements from a lot of other people, if we're going to audit what other agencies are doing, if we're going to have enforcement responsibility, then I think we must recognize that that is going to require an allocation of resources, and we'd have to get those resources.

Mrs. SCHROEDER. The only reason you're only getting 200 a year is not because of the law, but it's because the agencies don't turn them in. Is that right?

Mr. GOODMAN. No; the reason we only get 200 is because the Executive order only requires that these Presidential appointees file with us. Everybody else files with their agency.

Mrs. SCHROEDER. OK, don't you ever go and review the agencies, and see what's inside?

Mr. GOODMAN. We did. We did undertake the first time, in 1975, to review other agencies, and at that time we sent out four people from my office to visit various agencies and do kind of spot checks to see what was filed and what the problems were in filing.

We found a lot of problems in filing, and attempted to deal with the agencies, about getting them to get the financial statements that should be filed with them.

Mrs. SCHROEDER. In that spot check was there a final report or anything we could put in the record as to what they have done?

Mr. GOODMAN. I will check the records to see if there is something on that, and if there is, I will submit it to the committee.

Mrs. SCHROEDER. If so, I would certainly like to have it in the record to find out how extensively they find the agencies complying with it.

[The following was furnished:]

Furnished are a sample questionnaire dated July 26, 1974 sent to all agencies, Commission Bulletin 250-5 of November 7, 1974 (see p. 5) and memoranda and reports covering sixteen agencies¹ of the Executive Branch on which the Commission conducted audits in April 1975. As a result of these surveys, we issued our memorandum of June 5, 1975, a copy of which is attached, setting forth the procedure to be followed by Ethics Counselors in the processing of supplementary statements.

¹ Retained in the files of the subcommittee.

Mr. Jorge L. Cordova
 General Counsel
 ACTION
 806 Connecticut Avenue, N.W.
 Washington, D. C. 20525

Dear Mr. Cordova:

I am writing to you in your capacity as Ethics Counselor for the
 ACT 100.

As you know, under Executive Order No. 11222 of May 8, 1965, the Civil Service Commission has responsibility and authority for overseeing the Government-wide ethical conduct program which was established by that Order. Pursuant to this responsibility, the Commission has issued regulations, 5 CFR Part 735, and instructions, Chapter 735, Federal Personnel Manual, implementing the Executive order and establishing guidelines for all departments and agencies. We are now beginning a comprehensive review of these regulations and instructions to determine areas where changes may be desirable to clarify existing provisions and provide additional guidance to ethics counselors and employees.

For example, in the course of approving various agency regulations and providing advice in response to questions from agency counselors, we became aware that some misunderstanding exists with regard to the use of blind or no-control trusts as a method of avoiding actual or apparent conflicts of interest. Enclosed is a draft copy of a Federal Personnel Manual Letter that we propose to issue to provide additional guidance in this area. We would appreciate your comments on it.

Questions that have arisen frequently concerning proper interpretation and application of the regulations include:

- (1) When is it proper under 5 CFR 735.203(c) (or the appropriate agency regulation) for an employee to accept an honorarium for teaching, lecturing, or writing?
- (2) If it is improper under the regulations for an employee to accept an honorarium personally, may he accept the honorarium and donate it to a charity of his choice? To a charity of the sponsoring organization's choice?

- (3) When is reimbursement from the sponsoring organization for travel expenses incurred through a speaking engagement proper under 5 CFR 735.202(f) (or the appropriate agency regulation)?
- (4) When may an employee use his official Government title in connection with a publication, lecture, or other activity?
- (5) What constitutes a financial interest that is too remote or too inconsequential to affect the integrity of an employee's services under 5 CFR 735.404a and 18 U.S.C. 208(b)?

We would appreciate your views on the above questions and the pertinent regulations, and your furnishing us copies of any instructions or opinions you may have issued which bear on these questions. In addition, we would appreciate your comments on other problem areas that you have encountered in administering the program.

Finally, we are concerned with the effectiveness of the Government-wide system of reporting outside employment and financial interests. In this connection, we would appreciate receiving your response to the following specific questions:

- (1) In your agency, approximately how many employees are required to file confidential statements of employment and financial interests?
- (2) How many current employees who are required to file have not done so? What action is being taken to secure compliance?
- (3) Of the statements that were filed, how many were filed within the time limits set forth in your agency's regulations?
- (4) What is your agency's method of noting that a statement has been reviewed by the appropriate official?
- (5) Pursuant to his review of these statements, on approximately how many occasions has the reviewing official found it necessary, for the purpose of insuring that conflicts problems do not exist, to consult with an employee who has filed a statement.
- (6) On occasions when consultations have been held, in approximately how many instances have employees been required to divest or otherwise alter their financial interests to avoid conflicts problems?

In the coming months we plan to hold meetings between Commission representatives and agency ethics counselors to discuss problems that have arisen under the program, and to explore methods for improving its effectiveness. The information we are presently requesting should be helpful in determining particular topics for discussion at these meetings. So that we may move forward with this program as rapidly as possible, we would appreciate receiving your response to this letter within three weeks.

This report has been cleared in accordance with FPMR 101.11.11 and assigned interagency report control number 0039-CSC-OT.

If you have questions, please feel free to contact Mr. Pierce Myers of this office (code 101, extension 26124). We will appreciate your cooperation.

Sincerely yours,

Anthony L. Mondello
General Counsel

Enclosures: E. O. 11222
5 CFR Part 735
Draft FPM Letter

Reporting financial interests held in blind or no-control trust

The Commission has recently become aware of the necessity for guidance concerning the proper procedures for reporting financial interests held in blind or no-control trusts. The following material reflects this guidance and sets forth appropriate changes in Chapter 735 of the Federal Personnel Manual and in Part IV of the format for the "Confidential Statement of Employment and Financial Interests".

The Commission initially became aware of the necessity for further guidance in this area through its supervisory activities with regard to reviewing and approving various agency employee conduct regulations as required by E.O. 11222 of May 8, 1965. Some agencies submitted regulations which would exempt entirely from the reporting requirement "interests held in trust for the employee" without providing the necessary provisions to insure that the trust was a true blind trust. Of course, a simple trust arrangement would not protect an employee from possible real or apparent conflicts of interest. As principal beneficiary or remainderman the employee would know what is held for his benefit in the corpus of the trust and such knowledge could affect or appear to affect his impartiality while serving the agency. Adding a requirement in the trust that the trustee not disclose to the employee what is held in the corpus should shield the employee from this situation. In order to insure that this requirement is contained in the trust, it is necessary that a copy of the trust agreement be filed when a financial report is made.

While in theory the execution of a true blind trust should insulate the employee from any conflicts problems, as a practical matter this may not be the case. The blind trust may operate merely as a facade which does not afford adequate protection for the employee. For example, an employee may hold a large block of stock in a company which is subject to frequent regulation by his agency. This employee knows when he places this stock in the blind trust that the trustee will not immediately "dump" this entire block of stock because of the depressing effect such a transaction would have on the market, and, therefore, he also knows that this stock is still being held for his benefit. In such a case the possibilities for a conflict of interest are no different than if the employee held the stock in his own

Legal Advisory Section, Office of the General Counsel, Code 101,
Ext. 26124
735, Employee Responsibilities and Conduct

FPM Ltr. No. 735-

(2)

name. In this situation the employee is faced with two alternatives: (1) he can divest himself of the entire interest which would probably cause a financially undesirable result; or (2) he can direct the trustee in the trust instrument to sell the stock over a reasonable period of time. During this time the employee would have to disqualify himself from any matter concerning the company that came within his responsibilities.

To protect an employee from inadvertently finding himself with a blind trust which does not afford adequate protection, it is necessary that the employee report to the officer responsible for reviewing financial statements those interests he proposes to place in the trust. If the trust has been executed prior to the time the employee entered Government service, a direction to the trustee should be executed so that the holdings, particularly, those which have remained in the trust since its inception, may be reviewed for possible conflicts problems. In a case where the trustee has been directed to sell conflict assets over a period of time it is also necessary that the trustee file supplementary statements directly with the reviewing officer so that officer may insure that these assets have been divested as directed in the trust instrument.

Once the employee has been insulated from all knowledge of the assets held in the corpus, the trustee is usually free to invest and reinvest in accordance with his fiduciary responsibility and there is no longer a necessity for the submission of supplemental financial statements by the trustee. In some special cases, however, it may be wise to direct the trustee in the trust instrument to avoid investing in assets of a particular type where the possibility of the appearance of a conflict is great. This situation may occur even though a blind trust adequate in all respects has been executed. For example, it would be extremely awkward for a Government real estate appraiser to have numerous real estate holdings conveyed to him by the trustee at the termination of his Government service. This would be particularly true if the employee in the discharge of his Government service had appraised lots in the same geographical area where the trustee held investments. Although there may clearly have been no actual conflict of interest since the appraiser had no knowledge of the lots held for his benefit in trust, there would be an appearance of a conflict, and Executive Order No. 11222 and the Commission's regulations specifically speak in terms of apparent as well as actual conflicts. Therefore it would be wise to include in the trust instrument a direction that the trustee not invest in real estate in the geographical area within the appraiser's responsibility. To insure that the trustee complies with this direction, it is necessary that he file supplementary statements directly with the reviewing official.

The authority for requiring statements of employment and financial interests has been delegated to the Commission by the President under section 701 of the Executive Order. Presently the procedures with regard to submission of statements of financial interests which are held in trust are set forth in section 735.408 of the Commission's regulations which provide:

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(3)

"If any information required to be submitted on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf." (emphasis added)

Accordingly the Commission has determined there is no necessity to change existing regulations in order to reflect the reporting policies explained in this letter.

In view of the foregoing the following amendments have been made to Chapter 735 of the Federal Personnel Manual: Paragraph 4-8 of Chapter 735 is amended to read:

4-8 INFORMATION NOT KNOWN BY EMPLOYEES

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee is required to request that other person to submit information on his behalf. If any holdings have been or are to be placed in a blind or no-control trust, a copy of the trust agreement together with an inventory of the holdings placed in trust must be submitted with the employee's statement.

Part IV of the format for the "Confidential Statement of Employment and Financial Interests" set forth in Appendix D-3 of Chapter 735 is amended to read as follows:

PART IV. INFORMATION REQUESTED OF OTHER PERSONS.

If any information is to be supplied by other persons, e.g., trustee, attorney, accountant, relative, please indicate the name and address of such persons, the date upon which you requested that the information be supplied, and the nature of the subject matter involved. If any holdings have been or are to be placed in a blind or no-control trust, a copy of the trust agreement together with an inventory of the holdings to be placed in trust must be submitted with the employee's statement. If none, write "NONE".

Bernard Rosen
Executive Director

4. Standards of Ethical Conduct for Government Officers and Employees

The head of each department and agency subject to the provisions of Executive Order 11222, as amended, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," will provide a certification to the Civil Service Commission that:

- (a) Statements of Employment and Financial Interests, as prescribed by part 735 of the regulations of the Civil Service Commission, are on file for each employee and special Government employee required to submit such statement under the regulations of the employing agency.
- (b) Changes in, or additions to, the information in Statements of Employment and Financial Interests have been reported in supplemental statements, or negative reports are on file, as of June 30, 1974. (If an alternative date has been authorized by the Commission for a particular agency, the agency may use the alternative date as its reference point in reporting.)
- (c) Action is being taken to promptly obtain required statements or negative reports not currently on file, and that necessary attention is being given to assure continuing compliance and currency.
- (d) The certification is to include, in addition, a statement of the most recent date on which the agency regulations governing ethical conduct and responsibilities have been brought to the attention of employees. Section 735.104(b)(4) of the Commission's regulations requires that such agency regulations be brought to the attention of each employee annually.
- (e) This certification, signed by the agency's Director of Personnel, General Counsel, or other appropriate official at the same or higher level, is to be submitted to the Office of the General Counsel, U.S. Civil Service Commission, by December 31, 1974. Telephone inquiries may be directed to that office at code 101, extension 24519, or 63-24519.

UNITED STATES GOVERNMENT

U.S. CIVIL SERVICE COMMISSION

Memorandum

Subject: The Processing of Supplementary
Statements Under 5 C.F.R. 735.406.

Date: JUN 5 1975

In Reply Refer To:

From: David Reich
Ethics Counsel

Your Reference:

To: Agency Ethics Counselors

Over the past several months we have examined the procedures of a number of agencies in their handling of supplementary statements. Such statements, as you know, are required under 5 C.F.R. 735.406 to update the initially filed confidential statements of employment and financial interests. Our analysis shows that there has been in some instances a lack of the necessary follow-through and supervision to make the program meaningful.

To assure that the supplementary statements are timely received and reviewed, we propose that the following procedure be followed:

- (1) Officers and employees required to file supplementary statements must be apprised in writing of this requirement, with a copy of the confidential statement. A letter to this effect should be sent out on or about June 15th of each year with the instruction that the statement must be returned after July 1st but no later than July 31st. The statement should cover the employment and financial interests of the employee as of June 30th.*
- (2) A check-off list must be established to be sure that all statements have been returned no later than July 31st.
- (3) The statements must be reviewed by August 31st at the latest and resolution of any real or potential conflicts of interest must be completed as soon after August 31st as possible, but no later than September 30th.
- (4) Approval of each supplementary statement must be shown affirmatively by initialing an "O.K." or other symbol of approval and the date of approval.

* Some few agencies have been authorized by our Commission to use other closing dates for the supplementary statements. The schedule suggested here can be adapted appropriately by such agencies.

- (5) Where the review has been delegated to others, such as Deputy Ethics Counselors or Regional Directors, you must maintain responsible control for the program. This does not require you to review each statement, but you must be assured that the steps outlined above have been complied with. The reviewing official should submit to you, at a minimum, a statistical report containing the number of statements required, the number received and the results of the review, such as the number approved and those awaiting final resolution. In the latter case, a brief presentation of the problem and its handling should be stated. The report must be made to you by September 15th at the latest.
- (6) Where there are other officials reviewing confidential statements, they must be instructed by you as to the purpose of the statement, what they should look for in them, the use of financial reports such as Standard & Poor's and related matters.

Should you have any questions, thoughts or suggestions, please communicate with me by telephone (632-5524) or by letter. Unless I hear to the contrary, I shall assume your agency is complying with the contents of this memorandum.

Mrs. SCHROEDER. In the light of the GS-11's and GS-12's, it says that the agencies could go to the trouble of identifying these employees, but they could avoid identifying these employees.

Do you think that's good, or should some guidelines be coming down from your office as to what GS-11's and GS-12's should be looked at?

Mr. GOODMAN. Well, I think there are some guidelines that have come down. I think it's important to recognize that at the time the Executive order came down, and the way it has been interpreted in the Commission, because the filing of financial statements was such a new step—and it was a new step and subject to a great deal of dispute—there was a tendency to say: "Let's not go down too far into the reaches of the general schedule to get people to lay bare their financial soul." Now, that was the philosophy.

And so the objective was: "Fine, go down to grade 13, but if you go down below that, you ought to come to us and explain why it is you want to look into this what was considered private information concerning those people."

Now, I think that, in the past few years, there has been a tendency to look at this problem from the other end. And I think that has influenced thinking in the area, and I think that's the sort of thing that has brought forth the sort of comment in the GAO report—rather a new thinking on how to approach this problem.

And with that—the thinking as how to approach the problem—should come changes and new suggestions for how to deal with it.

Mrs. SCHROEDER. And you don't feel that you can give us any specific suggestions until you see what the executive branch comes up with?

Mr. GOODMAN. Well, I believe that there will be something coming out of the executive branch; at least I'm hopeful of that because I do know that work is being done on this Executive order. I think it might be more appropriate to comment at that time.

Mrs. SCHROEDER. OK. Thank you very much. We appreciate your appearing.

Mr. WHITE. Madame Chairman, may I just ask another question?

Mrs. SCHROEDER. Yes.

Mr. WHITE. Under the bill, a person who is an elected officer appointed to a high position would be covered under this. He would have to make a financial disclosure for his wife and his dependents.

Now, in making a disclosure of dependents, where does that conflict with the Right of Privacy Act? The dependents are not privy to the employment or to the election of that person. Yet, under the bill the official must make a disclosure of their assets and all of their details concerning any moneys or gifts received by them, I presume. How can you accommodate that to the Constitution?

Mr. GOODMAN. If I were here today dealing with the specifics of the bill, one of the things I would have dealt with, Congressman, was the question involving dependents. Because in going through the bill myself, and making my own notes in the margin, I notice that the term dependent is defined as under the tax laws. And that can include many people that are not in the household, for example, who are somewhere distantly related; and that might, as we mentioned, lead into the question that you raised with this paragraph (c), requiring reporting of dependents.

Under the present program we do deal with rights held by the employees, the spouse, and members of the immediate family, who live in the same home.

I think, you know, when you've got a really close relationship, we have many laws which define a person who holds that close relationship as, in fact, being the agent of the person to whom that relationship belongs.

I think, again, the Internal Revenue, say, if the purchase and sale of stock occurs in a short period of time, and I sell it—that my son owns—we're considered one.

So, the law does accommodate those sorts of positions. I would have some question, personally, about the question of dependent, because of the broad definition that is given in the statute. To comment specifically on the statute, I think that would be one point that we would make.

Mr. WHITE. Let's take one quick instance; let's even take a son or daughter. That's clearly a dependent situation.

Suppose that son or daughter were receiving benefits in trust that were not necessarily their parents' trust, but not sufficient to take them out from under being a dependent. Now, if that were, under the terms of this bill, to be disclosed publicly, available to persons who request it—and that request would have to be met unless a custodian makes a public statement of reasons why not—would that child be able to bring a lawsuit, under the Privacy Act, and perhaps other interpretations of the Constitution, to enjoin the disclosing of that information since that child did not ask for the office or elected position, or was not appointed to the position, even though the child may derive some of its money through the revenue of that office?

Mr. GOODMAN. I think there has been evolving law concerning the rights of minors. If I recall correctly, this past year the Supreme Court decided a case involving representation rights of minors, juvenile proceedings, and so on.

I believe here the law's philosophy has been changed as to what subjects would be considered to be for the benefit of the minor and therefore no rights attach.

Now, as we realize that it doesn't always benefit the minor to send the minor to some institution, we begin to attach rights, recognizing those proceedings for what they are.

So, there is here an evolving law of minors' rights. As to whether or not such a suit could successfully proceed, I have serious doubts. Certainly Congress could mandate it, and then I would think the Privacy Act would not be something the minor could rely on if for no other reason than Congress, which having passed the Privacy Act, having passed another statute which conflicts, I don't think you can rely on the first statute under those circumstances.

As to whether or not there is some constitutional right, again, I really would not be in a position to answer that. I have some doubts about if that would involve this whole question of what has been characterized as the penumbral rights to privacy under the Constitution. I really am not in a position to give an answer on that.

Mr. WHITE. Thank you very much.

Mrs. SCHROEDER Thank you very much. Again, we appreciate your time and testimony.

Mr. GOODMAN. Thank you very much for having me.

Mrs. SCHROEDER. Mr. Sirico, you've been waiting very patiently, and I apologize. We are delighted to have you.

STATEMENT OF LOUIS J. SIRICO, JR., ATTORNEY, PUBLIC INTEREST RESEARCH GROUP (PIRG)

Mr. SIRICO. First of all, thanks for the invitation to discuss with you these matters.

As a Washington-based public interest group, we have felt certainly compelled to grapple with them on our own. Although we participate in any number of proceedings before Federal agencies and are up in front of Congress periodically, we hold to a policy against dispensing economic gratuities. And it's common, well-publicized knowledge that many others don't share our scruples. And we fear that the lack of a strict prohibition on all gift giving puts citizens and groups like ours at a disadvantage in the public arena.

Our concern is not a fear that decisionmakers are being bought by special interests for the price of a lunch.

There are more subtle results. Favors lead to a sense of personal obligation or other social exposures that determine the way employees approach their duties. Governmental dealings with the private sector should be an arm's-length affair.

In 1975, we decided to examine the problem of gift giving in the Federal agencies. We began with the ethics regulations of the Civil Service Commission, which set minimum regulatory standards for the other Federal agencies. Other agencies can impose stricter rules if they wish.

The events of the past few years have demonstrated the ineffectiveness of existing regulations. They are violated or abused by Government employees and even top agency officials. We all saw the headlines over the last few years regarding hunting trips for agency officials. Beneficiaries have included not just the people in the Defense Department; they also included the gentleman who recently headed the Civil Service Commission. And he made no apologies. He said the hunting was good, the grass was green, and that it was a nice thing to do.

The problem has been heightened by the widespread nonenforcement of existing regulations. We interviewed the agencies and found a minimal emphasis on assuring compliance with ethics regulations. Few of the agencies had any formal method for monitoring or enforcing compliance.

This lack of control permits and even encourages agency employees to violate the regulations or to rationalize abuses with highly subjective interpretations of what the regulations permit or do not permit.

In light of this situation, we filed with the Civil Service Commission a rulemaking petition proposing an absolute rule against "freebies," as they're called. We recognize that no regulatory scheme can prevent violations and abuses by willing lawbreakers, but we felt that with unambiguous, clearly-defined, regulatory language giving guidance and discretion, employees would normally follow the rules.

It would lessen the ability to rationalize inappropriate conduct as permissible under a questionable interpretation of the regulations.

We follow the approach that John Robson, head of the Civil Aeronautics Board, has expressed. One of his famous quotes is: "I pay for my own . . . It's just easier to have a simple rule saying, 'Look, I pay my own way.' You don't have any questions. It's just simpler."

Our petition was filed on January 16, 1976. Over 1 year and 2 months later, the Civil Service Commission has yet to act on it in any way. The Commission has not even proposed an alternative. The agency most responsible for ethics in Government is sitting on the PIRG proposal. Despite telephone calls on a periodic basis, they refused to face the issue, and we feel it's appropriate for Congress to take action.

The bill we're discussing today addresses a broader range of issues, and some of the issues that we've dealt with, and on the whole the bill provides much needed reforms. There are a few areas, though, where we think the bill could be improved, and I'd like to briefly touch on four of them.

The first is the question of enforcing a ban on gift giving. Section 103 forbids employees from soliciting or accepting gifts in excess of \$50. However, provisions for monitoring and enforcing compliance are lacking. Financial disclosure reports would be required of high-level Federal employees and they require disclosure of only those gifts exceeding \$100 in value and of gifts from a single source with an aggregate value exceeding that amount. Smaller gifts are not covered. More importantly, there is no monitoring of gifts for lower level employees.

Monitoring for compliance is especially important because the bill's provision is so vulnerable to abuse. Fifty dollars is the ceiling on individual gifts. There is no ceiling on the aggregate of gifts. Lots of meals and other gratuities cost less than \$50, and a lot of conduct that can go on without technically violating this provision. And for Federal employees below the GS-16 level, no one need know when the \$50 limit has been breached or not.

To require a centralized, governmentwide monitoring of this sort of gift-giving would likely become a bureaucratic nightmare. Reports and monitoring at the individual Federal agency levels is a possibility, but a neater solution would be a complete ban on all gift-giving. It would largely eliminate the problem of abuses under the provision and would dispense with the need for financial disclosure statements from every single federal employee.

Second is the definitional problem with gift-giving. There are also, I think, a few problems with this section that are definitional, maybe, or technical. For example, Congress would probably want to exclude from the ban on gifts, gifts that are given to a Federal employee by another family member when the circumstances make clear that the motivating factor is the family tie rather than the respective businesses of the persons involved.

Likewise, an employee of a banking agency should be able to obtain a mortgage loan or other consumer loan from a financial institution without running afoul of this provision. These exceptions should be spelled out.

When we drafted our petition to the Civil Service Commission, we looked at the existing Civil Service Commission regulations and took their language to begin with and modified it. The subcommittee might wish to revise the bill by using this same type of approach.

The third issue I'd like to mention is the access to financial disclosure records for the higher-up employees. The bill permits limited access to these reports, but the limitations on access are a bit cumbersome and a bit awkward. The custodian of the reports has enormous discretion in deciding whether a requesting individual may obtain access to a financial report. The custodian decides whether there is a conflict of interest or potential conflict of interest that justifies disclosing the information. If the custodian finds no conflict, the requesting party must be satisfied with the custodian's interpretation of the law. The custodian also decides whether or not the requesting party's purposes are unlawful or commercial.

This determination could involve some highly judgmental calls. Reports would also not be available after 5 years, even though some Federal officials have terms of office longer than 5 years.

If these access provisions are implemented, they are going to spawn complexities and result in a good deal of litigation. In recent years, the Freedom of Information Act and the Sunshine Act have attempted to do away with complicated and limiting-access requirements to as great a degree as possible.

We have learned that limited access rules easily become warped with partisanship and frustrate openness in Government. Full access is a far better alternative.

Parenthetically, the bill before us lacks another asset of the Freedom of Information Act. The bill authorizes the charging of fees to reproducing and mailing financial reports. The Freedom of Information Act authorizes waiving fees where it is in the public interest. This provision aids citizen groups with limited funds.

The fourth issue I would like to mention is enforcement power for the Ethics Commission. The bill creates a Commission on Ethics and Financial Disclosure, but gives it no enforcement power. Instead, it must rely upon the Attorney General to institute legal action. We believe this is a mistake. To create a regulatory body without enforcement power implicitly reduces the importance of that body's priorities. Virtually all Federal regulatory bodies have enforcement power, and this Ethics Commission should be no exception.

The bill should also have a provision enabling citizens to act as private attorneys-general and bring their own legal actions to enforce the ethics law. The precedents for citizen suits are ample, particularly in the environmental area. Provision for citizen action are especially crucial if the Ethics Commission is to lack its own enforcement power.

In conclusion, we're glad that the subcommittee is focusing its resources on these issues, and we hope our contribution will prove of assistance.

Mrs. SCHROEDER. Thank you very much, Mr. Sirico. I listened with great interest to your testimony about the ban on receipt of all gifts. I know we've done that in our office, and it's incredible. I am surprised how willing people are to send a calendar back or something. What does it mean?

But, in the long run, I think it's been very, very good. Because the word got out, and almost everybody did it, and I think your group has set an excellent example in doing that. I think it might be very good.

One of the things about the bill that we're discussing today that upset the people was the language in it about the "appearance of impropriety." What does that mean, and so forth.

If we just ban all "freebies" with the qualifications that you are talking about—obviously the people can get loans from a home and so on and so on, and the family gifts and things—if we did that, don't you think we could then scrap the appearance of impropriety language and not have to have that kind of esoteric discussion?

Mr. SIRICO. I think the language of appearance of impropriety provides a general policy for the law, and it might help interpret other sections of the law, where there is some question about what Congress is really trying to do.

Mrs. SCHROEDER. So, you would still say that even if we were to ban the "freebies"—

Mr. SIRICO. Yes, simply because it would provide a clear definition of policy. The language comes simply from the canon of ethics for lawyers now called the Code for Professional Responsibility, and the way that works is that there's language that bans appearances of impropriety, but there are also more specific disciplinary rules.

We could make an analogy here that we'd have specific rules on interest on gift-giving, but at the same time have broader language to provide the underlying philosophy.

Mrs. SCHROEDER. I also appreciated your comments about having enforcing powers by the agency that would oversee this if the bill were passed.

One of the problems we'd have is that there might be a constitutional problem of putting that in to work that out. Then my question would be: What enforceable powers would you suggest for that kind of oversight committee?

Mr. SIRICO. I think a commission like that should have the enforcement powers of any other regulatory agency. We heard testimony earlier today from the Civil Service Commission about some of the problems they have, because they just everything but go to court, it seems.

Mrs. SCHROEDER. So, would you allow them to do such things as insist upon divestiture?

Mr. SIRICO. Yes.

Mrs. SCHROEDER. And would you require them to disqualify themselves from certain cases?

Mr. SIRICO. Individuals might have to disqualify themselves from certain cases, certainly.

Mrs. SCHROEDER. Would you permit termination of employment? Would you go so far as to allow them to terminate one with frequent abuses?

Mr. SIRICO. Well, I think I would phrase it differently. When an individual becomes a government employee, that individual basically enters into a contractual relationship and makes certain promises about what they're going to do and what they're not going to do with regard to service later on. And those provisions, or that contractual relationship, should be enforceable.

Mrs. SCHROEDER. I know your group has done a lot of work in this. Have they ever looked at the possibility of having people post bonds when working in certain areas that would be called in case there was such conflict arising?

Mr. SIRICO. We haven't really explored that. Off the top of my head that seems it could be something that would become a bit awkward and bulky to deal with.

Mrs. SCHROEDER. Yes. Well, as I say, you don't want the oversight to be so much that it sinks into bureaucracy or is never adequately staffed.

There is that tremendous question of how much power you would give them if you're able to grant it, the enforcement power.

I think all those those things are very difficult, and different questions that the committee is going to have to grapple with. We'll look forward to seeing your proposals and the language on the gifts.

On the area of privacy you talk about full access. If that access was misused by anyone, what would you do?

Mr. SIRICO. It's difficult to see how the access could be abused in a legal sense of the term. I think anyone who is in the Government has to have an awfully thick skin. It's just a fact of life that now information is required to be disclosed, and there are problems—because that information is private—of enforcement.

But once the information is relevant to performance of government duties, it should be disclosed, and I think that is something that a public official has to live with. If certain information is not relevant, then I think it's probably an invasion of privacy, and that information should not be requested in the first place.

Mrs. SCHROEDER. So you put public employees in the same area as public officials.

Mr. SIRICO. I don't think there's much difference today. Everybody makes decisions.

Mrs. SCHROEDER. And so you don't foresee a problem with the abuse?

Mr. SIRICO. No; I don't. We're talking about disclosure at GS-16 and above, and those are people who are making important decisions.

Mrs. SCHROEDER. You think creating a commission to oversee this ethical conduct and make sure financial disclosure goes through, do you think that is justifiable?

Mr. SIRICO. I think it definitely is. Given just our experience with the Civil Service Commission and some of the issues raised by questioning earlier today. They just haven't done much. Their own chairman last year was off on a hunting trip.

It's been very unfortunate that our interviews with the agency officials were last year, but I assume they still reflect the realities of today. And they aren't doing anything. They're not keeping records; they're not doing any monitoring. They may be handing an individual a slip of paper discussing ethical questions when that individual first enters the government's employ, and that's about it.

Mrs. SCHROEDER. Well, I think you also pointed out that it's a phenomenal problem that the current regulation allows each agency to its own interpretation.

Let's say we have an enforcement agency. How does an enforcement agency get an agency to enforce? What tool do you give it—that's when you get into real trouble—to make them focus on it as one of

their priorities and to be sure that there's a uniform application throughout these occasions?

Mr. SIRICO. I think part of it has to be by requiring a regulatory structure for the agencies. If an agency is left to its own devices and doesn't set a high priority, I think what it will do will be to require some sort of ad hoc enforcement where if one agency employee has stepped out of line, and so egregiously that everyone knows about it, then—the general counsel's office has to take some sort of action.

Other than that there are no across-the-board regulations. I think, too, if you eliminate a lot of the possible abuses—a ruling for gifts—you eliminate a lot of those problems, and your only real concerns are monitoring to make sure that no one breaches that ban.

Monitoring conflict-of-interest is pretty easy because it's on paper. It's just a matter for the records.

Mrs. SCHROEDER. Would you want to have uniform disclosure rules for all government agencies, and all the branches, and then maybe each agency would have to implement and regulate within. But you would have uniform, not allowing each one to change one?

Mr. SIRICO. Well, there ought to be a minimum that all agencies should have as a uniform basis.

Mrs. SCHROEDER. So you would put in a floor.

Mr. SIRICO. Yes, it's a floor. For instance, some would have the regulations that are held by the Civil Service Commission, and those trigger regulations in all of the agencies. Some agencies have gone further.

Civil Service Commission regulations also permit agencies to be a little more flexible in certain areas, and allow them to make bigger exceptions. It strikes me as being just a very simple approach.

Mrs. SCHROEDER. Thank you very much.

Congressman White?

Mr. WHITE. Thank you, Madam Chairman.

Please understand why I ask this question. I'm just as concerned about the opinion makers of this country, because they're the ones that are moving the public to certain pressures or making certain stands on issues.

I wonder if you and the officers of your organization, as an opinion group, would be willing to furnish to this committee your entire financial statement and source of all money and assets.

Mr. SIRICO. Well, in terms of that, we're part of a large organization. I don't know if our records are divided up. I can certainly give you an overall figure for salaries.

Mr. WHITE. No, I mean to comply with the terms of this bill that we have here.

Mr. SIRICO. Well, what we do file—maybe this would help you—certain parts of our organization may have to file, under the tax laws regulations for nonprofit organizations, may have to file disclosure statements for nonprofit organizations and that sort of thing.

Mr. WHITE. What does that include?

Mr. SIRICO. Offhand I don't know. It's not an area that I know much about.

Mr. WHITE. Is it made public?

Mr. SIRICO. Yes.

Mr. WHITE. Well, why don't you go back and look at it and see if you can comply with that so that you can let us see how far your organization is willing to go.

I guess what I'm driving at is this: After you do this and after you report back to the committee—and Madam Chairman, if you will allow it—then you will have to get a perspective of whether or not you may be obliging some people not to take Government positions.

I'm not talking about us, but I'm talking about for executive positions, people—good, able people—who will not come to government if you become too restrictive on them.

I would like very much to see if you all are willing to go as far as you want to impose on the executives down town.

Mr. SIRICO. We've had to, in a number of cases. I mentioned the tax laws for nonprofit organizations. Some groups that we work with in the States have to file under charitable laws that are fairly specific in terms of where your money comes from, where it goes, who gets paid what.

Mr. WHITE. Then you won't mind sharing that with us. See if your people are willing to comply precisely with the terms of the bill.

Mr. SIRICO. I'll be delighted to.

[The following letter was received for inclusion in the record:]

PUBLIC INTEREST RESEARCH GROUP,
Washington, D.C., March 22, 1977.

REPRESENTATIVE PATRICIA SCHROEDER,
Committee on Post Office and Civil Service, Subcommittee on Employee Ethics and Utilization, House Office Building Annex 1, Washington, D.C.

DEAR REPRESENTATIVE SCHROEDER: At the Subcommittee's March 22, 1977 hearing on Ethics and Financial Disclosure, Representative Richard White requested that the Public Interest Research Group submit a statement describing the information it would have to disclose if H.R. 3829 applied to public interest organizations.

As written, the bill would require no statements of financial disclosure from PIRG employees, because employee salary levels are lower than a GS-16. Even if the provisions of the bill applied to a lower income level, they would not compel any particularly revealing disclosures about our employees. For example, if I were to apply section 204 to myself, my responses to section (204(a)'s subsections would be as follows:

- (1) None.
- (2) None.
- (3) None.
- (4) None.
- (5) None.
- (6) None.
- (7) Agreement to assume the position of assistant professor at Rutgers Law School—Camden in September 1977.
- (8) Secretary-Treasurer to the Board of Directors, Connecticut Citizen Action Group.

I invite Representative White to disclose similar information concerning himself and members of his staff for inclusion in the printed transcript of these hearings.

Sincerely,

LOUIS J. SIRICO, JR.

Mr. WHITE. Thank you, Madam Chairman.

Mrs. SCHROEDER. We have no further questions.

Thank you for your patience and we appreciate the testimony.

The meeting is now adjourned.

[Whereupon, at 11:40 a.m., the meeting was adjourned.]

ETHICS AND FINANCIAL DISCLOSURE

FRIDAY, MARCH 25, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEE ETHICS AND UTILIZATION,
Washington, D.C.

The subcommittee met at 9:40 a.m., in room 304, Cannon House Office Building, Hon. Patricia Schroeder, chairwoman of the subcommittee, presiding.

MRS. SCHROEDER. The subcommittee is called to order.

This is the last in a round of hearings on H.R. 3829, a bill to establish a Commission on Ethics and Financial Disclosure for Federal employees. By the end of today, the subcommittee will have a fairly good record developed which takes into consideration the views of all groups interested in the ethical conduct of Federal employees. H.R. 3829 has, and will today, suffer some wounds; but I think it has served as a fairly good sounding board for everyone's consideration.

I plan that the staff now get to work on a clean bill which will patch the wounds and incorporate the suggestions which have been made so that the subcommittee can reexamine the issue next month.

Our first witness today is Mortimer Caplin, former Commissioner of the Internal Revenue Service, who is here representing the National Civil Service League. I also understand that Mr. Caplin is wearing another hat as a representative of the Peterson Commission, which proposed the salary increases for Congress and high public officials be coupled with a new code of ethics for the same people.

Welcome, Mr. Caplin. We are delighted to have you here.

STATEMENT OF MORTIMER CAPLIN, CHAIRMAN OF THE BOARD, NATIONAL CIVIL SERVICE LEAGUE

Mr. CAPLIN. I am a partner in the Washington law firm of Caplin & Drysdale. I appreciate your mentioning that I am also Chairman of the National Civil Service League. It is a citizens' organization that goes back to 1881, and it really drafted and was largely responsible for the adoption of the merit system. Today it is aimed at good government, efficiency, and integrity throughout our Federal and State government bodies.

I did serve as Chairman of the Task Force on Public Conduct of the Quadrennial Commission on Executive, Legislative, and Judicial Salaries, and I would like to mention the names of some of the other members of that committee: Justice Tom Clark served; former Secretary of the Treasury Douglas Dillion; former SEC Chairman Ray

Garrett; Martha Griffiths, formerly of the Congress; Leon Jaworski; former Chairman of the Federal Reserve Board, William McChesney Martin; Governor Romney; Mr. Ruckelshaus; George Shultz; Stuart Symington, formerly of the Senate; Willard Wirtz; and Cyrus Vance, who now has gone to new heights in his career.

We did prepare a report which is a part of my statement, and I would appreciate that it be incorporated in the record.

Mrs. SCHROEDER. We'd be delighted to put it in the record.

[The report referred to follows:]

TASK FORCE ON
OUTSIDE INCOME, INVESTMENTS,
AND POST-SERVICE EMPLOYMENT

November 29, 1976

Mr. Peter G. Peterson, Chairman
Commission on Executive, Legislative
and Judicial Salaries
1750 K Street, N.W.
Washington, D. C. 20006

Dear Mr. Peterson:

I am privileged to submit the final report of the Task Force on Outside Income, Investments, and Post-Service Employment.

At your direction, we focused on issues which go to the heart of the American democratic process:

1. The need to restore public confidence in the quality and integrity of the women and men who conduct the affairs of our federal government; and
2. The need to establish and monitor effective standards of conduct for top officials in all branches of the federal government, so as to strengthen this public confidence.

The Task Force reviewed applicable laws, regulations and published reports; and also solicited the views of officials in all branches of the government. It relied heavily, too, on the extensive and personal experience and judgment of its members.

In view of time constraints and limited resources, it was not feasible, and perhaps not appropriate, for the Task Force to attempt to articulate precise standards of conduct to be applicable to all branches of government. Rather, we have set forth a Statement of Recommended Principles governing the conflict-of-interest issue, with particular emphasis on higher and more explicit standards of conduct, fuller public disclosure, and better auditing and administrative procedures and practices.

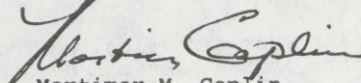
We are of the view that further action is needed at the highest practicable levels of government for the purpose of determining (a) what the precise standards should be, (b) the extent to which they should be uniform among the

Mr. Peter G. Peterson
November 29, 1976
Page Two

branches of government, and (c) how they should be administered in all essential details. This will require not only the proper auspices, but will also entail meticulous care and full participation by representatives of each of the three branches of government as well as by representatives of the public.

It has been my distinct pleasure to work with the distinguished members of this Task Force. All of us share your concern about restoring the public's faith in the quality and integrity of government, and we hope that this report will be of some help in your efforts to this end.

Respectfully yours,


Mortimer M. Caplin
Chairman

Members of the Task Force on
Outside Income, Investments,
and Post-Service Employment

- Tom Bradley
Mayor: Los Angeles, California
- The Honorable Tom C. Clark
Associate Justice of the Supreme Court (Ret.)
- The Honorable C. Douglas Dillon
Former Secretary of the Treasury
- Ray Garrett, Jr.
Partner: Gardner, Carton & Douglas
Former Chairman, Securities and Exchange Commission
- Martha W. Griffiths
Partner: Griffiths and Griffiths
Former Member U.S. House of Representatives
- Leon Jaworski
Senior Partner: Fulbright & Jaworski
- William McChesney Martin
Former Chairman of the Federal Reserve Board
- George Romney
Chairman: National Center for Voluntary Action
Former Industrialist, Governor, Secretary of
Housing and Urban Development
- William D. Ruckelshaus
Senior Vice President: Weyerhaeuser Company
Former Deputy Attorney General
- George P. Shultz
President: Bechtel Corporation
Former Secretary of the Treasury
- The Honorable Stuart Symington
Member U.S. Senate
- Willard Wirtz
Partner: Wirtz & Gentry
Former Secretary of Labor
- Cyrus R. Vance
Partner: Simpson, Thatcher & Bartlett
Former Deputy Secretary of Defense
- Mortimer M. Caplin, Chairman
Partner: Caplin & Drysdale
Former Commissioner of Internal Revenue

REPORT OF THE TASK FORCE ON
OUTSIDE INCOME, INVESTMENTS,
AND POST-SERVICE EMPLOYMENT

Charge to the Task Force

By memorandum to the members of the Task Force, dated November 9, 1976, Mr. Peter G. Peterson, as chairman of the Commission, described the problem in the following manner:

1. One of the critical challenges before our country today is the restoration of the public's faith in the quality and integrity of government.
2. The maintenance of this confidence depends primarily on the quality of the men and women attracted to the public service and the public's trust in the processes of government.
3. Many of the best qualified for important roles in the Executive, Legislative and Judicial branches now either decline public service, or leave that service prematurely because they cannot meet their family obligations from inadequate government salaries.
4. Others who do serve in high positions feel required to supplement those salaries with income from outside activities, which necessarily detracts from full time attention to the business of government.
5. Unfortunately, such outside activities may also involve, or give the appearance of involving, conflicts of interest not conducive to building the requisite public trust.

A central assignment given to the Task Force was "to examine the implications of these various types of outside activities and to suggest appropriate conditions, restrictions, and public disclosure."

The memorandum raised specific questions on: the acceptance of honorariums for speeches and writings; compensation from private business or professional practice such as the practice of law; business investments and business interests; monitoring of conflict of interest provisions; auditing of expense allowances; public disclosure; restrictions which should be placed on activities of government officials who leave the public service; and related matters.

The Task Force was also asked to consider the extent to which standards should be uniform for all three branches of government--considering the separation of powers and the different conditions which obtain by reason of differences in tenure, and the periodic accountability of Congress to the electorate.

Philosophy of the Report

The Task Force is concerned over the public's perception of the integrity of government officials--whether the standards of conduct applicable to these officials are adequate, and whether or not they have contributed to the erosion of public trust.

The polls show clearly that public respect for government officials has declined sharply in recent years. Widescale reports of campaign fund excesses, large honorariums, extravagant foreign travel, inadequate disclosure and reporting practices, and financial relationships in

conflict with government interests, are among the root causes. Indeed, scandal has touched some of the highest officials in the land. All of this has contributed to public unease about these outside activities, and we regard the problem as serious.

Yet despite frequent reports of corruption, the Task Force believes that the present loss of confidence goes much further than the facts warrant. It finds no grounds for serious apprehension over the standards of conduct of most senior federal officials. The vast majority is honest, capable, and underpaid.

We believe that federal pay should be adequate to leave no doubt in anyone's mind on the need for public officials to engage in outside activities to supplement their incomes.

The need for high standards of conduct, however, stands by itself. It should not be regarded as a quid pro quo for a pay raise. To hold otherwise would be to condone venality on the part of any official who happens to feel underpaid.

Our recommendations are intended to improve the climate of public trust in government. We suggest higher and more explicit standards of conduct, fuller public disclosure, and better auditing and monitoring--across-the-board for top public officials in all branches of government. Improvement of present disclosure rules and practices is one of our principal concerns because we think that, like sunlight, disclosure will cleanse as well as illuminate.

Organization and Procedure

The Task Force reviewed the laws, regulations, and published reports covering the matters outlined in the charge from the Commission. We solicited the views of officials in all three branches of the government. Our staff, under the direction of Robert W. Stokley, discussed the problem with officials in the General Accounting Office and the Civil Service Commission.

We relied heavily, too, on the extensive and personal experience and judgment of the Task Force members themselves. The Task Force included men and women whose service spans the three branches of the federal government, and extends to state and city governments as well. Most of its members have also been employed in the private sector and have faced practical problems relating to government service from almost every point of view.

We have concentrated on basic issues and matters of principle. In view of time constraints and the limited staff resources at our disposal, it was not feasible--and perhaps not appropriate--for the Task Force to articulate precise standards of conduct to be applicable to all branches of government.

Current Trends and Developments

One principal finding emerged from the Task Force investigations which we believe is highly pertinent: Reform is in the air.

Everywhere in government there is a move toward higher and more explicit standards of official conduct, fuller reporting, and better administration. Here are a few examples:

1. Following a report of the House Task Force on House Accounts chaired by Rep. David Obey, the House voted to consolidate its cumbersome system of allowances and accounts. It stopped the possibility of "cash-outs" for stationery, the travel account, and the home office account, reducing the potentiality for personal income supplement by \$10,750. It took other steps which will make it no longer possible for Members to obtain indirect pay raises by increasing their allowances.
2. The Senate passed S. 495, Title III of which provides for detailed public disclosure by officials of all branches of government. The measure will be reintroduced.
3. The Senate has established a commission on the operation of the Senate under former U.S. Senator Harold E. Hughes to look into conflicts of interest, among other matters.
4. No fewer than 20 executive agencies have designated special legal advisers to help employees comply with Executive Order 11222 prescribing standards of ethical conduct for government officials and employees. This is a recent action, although the Executive Order was issued in 1965.
5. A Code of Judicial Conduct for United States Judges was adopted by the Judicial Conference in 1973. A Review of the Activities of the Judicial Conference Committees Concerned with Ethical Standards, containing 47 advisory decisions, was issued April 19 of this year.

To repeat, the trend is clear. It is toward higher and more uniform standards of conduct, more disclosure, and better enforcement.

Attached as Appendix A is a summary of existing rules and practices in each of the three branches of government pertaining to: (1) financial interests which raise questions of divestiture or disqualification to avoid the likelihood of conflicts of interest; (2) continued participation in outside business or employment including the practice of law; (3) honorariums for speeches, television appearances, and articles; (4) gifts and testimonials; (5) reimbursement for expenses; (6) foreign travel; (7) post-service employment; and (8) auditing and administration.

STATEMENT OF PRINCIPLES TO AVOID
APPEARANCE OF CONFLICT OF INTEREST

The following statement of principles are suggested with dual goals in mind--the need to assure the public of the integrity of those conducting the affairs of government, and the need to attract to public service the ablest of our citizenry. Integrity is concerned not only with financial conflicts but also with conflicts arising from personal relationships and other aspects of the decision-making process. But in devising rules aimed at enhancing public confidence in government, we must be careful not to make them so onerous or such an invasion of privacy that we will discourage good men and women from entering public service. In the final development of standards of conduct, a judicious balance of these sometimes competing interests will have to be made.

- I. Clearer, more comprehensive standards should be adopted both as a guide to personal conduct and as a basis for audit and enforcement.

To insure public confidence in their integrity and independence, senior officials in all branches of government should regulate their personal activities to minimize the risk, or appearance, of conflict with their official duties. At the same time, clear standards should be set forth (a) to reflect the public's expectations on the level of conduct of senior officials and (b) to assist

officials in applying these standards to their own situations. Today the rules are in many cases ambiguous--on disclosure, divestiture, disqualification, acceptance of gifts and testimonials, and continued outside employment. This first principle is aimed at correcting this problem.

II. Uniform rules for public disclosure of financial interests should be adopted for public officials in all branches of government where conflict-of-interest possibility exists.

Disclosure should cover: income by source and amount, debts, investments and capital transactions, including real estate; directorships, continuing business associations and contractual arrangements; gifts, honorariums, and reimbursement for travel and other expenses.

A difficult question is raised over the extent to which this information should be generally made available to public scrutiny. (See Appendix B for a summary of present disclosure rules and practices.) Here a necessary conflict arises between the values of personal privacy and the need for public disclosure. It is similar to the dilemma that exists in reconciling the objectives of the Freedom of Information Act with those of the Privacy Act of 1974.

One of the Task Force members, Douglas Dillon, suggests that for the Executive Branch the extent of public disclosure should be handled by the appointing authority,

namely, the President, and by the confirming Senate Committees. He recognizes that they should be given all pertinent and essential information to assure themselves that no conflict exists. However, in urging that there not be "an unnecessary and wholly unjustified invasion of personal privacy," he adds: "If either the appointing or confirming authority wishes to make such information public, the prospective appointee should be so informed and given the opportunity of withdrawing his or her name from consideration."

With the foregoing in mind, we are of the view that (a) regular filings of the required information should be made with a designated body or bodies, and (b) the information should be generally made available to the public except in circumstances when the filing body determines that (i) no conflict exists and (ii) the demands of individual privacy outweigh the public's right to know.

III. Salaries of public officials should be sufficient to permit them to live decently and spend full time on public service without the need to earn any form of outside income which raises conflict-of-interest questions.

Honorariums from trade associations, labor unions, or farm groups; the continued practice of law or active participation in business enterprises; or non-government reimbursement for foreign travel or other expenses, necessarily raise questions of conflict of interest. This

is particularly true of outside employment growing out of a person's status as an important public official. In contrast, however, it would seem proper and sometimes advisable to permit nominal amounts to be earned from teaching or writing, provided such activities did not impinge on government employment.

As a further application of this principle, the practice of accepting gifts or the proceeds of testimonial dinners, etc. for personal use or to defray office expenses should be strongly discouraged. This problem has been aggravated by the practice of some legislators of commingling personal accounts, office expense accounts from appropriated funds, and funds from campaign and outside sources.

- IV. All officials who, by virtue of investments or other interests, have an actual or apparent conflict of interest should be required to divest themselves of such interests or disqualify themselves from the decision-making process.

Application of this principle to individual cases will require not only greater specificity in articulating standards, but the establishment of a counselling and enforcement adviser in every agency, responsible to the head of the agency. Both the disclosure and conflicts issues must be handled with a sensitive awareness of the complexities involved--including such questions as (a) who

should review the disclosure statements and rule on divestiture or disqualification; (b) whether in certain cases the use of a blind trust would be sufficient; (c) what specific information should be made public, and under what safeguards to prevent improper use; and (d) how much investigation should be made to verify reported interests and relationships.

V. Post- and pre-government employment restrictions should guard against actual or apparent exploitation of government service for private advantage.

The "revolving door" between government and private industry, particularly in the regulatory and procurement agencies, has been much criticized. Yet there is also public recognition of the need to attract the ablest technical and managerial skills to public employment.

Present laws (Title 18 U.S.C. §§203, 207 and 208 and Executive Order 11222) appear generally adequate. For example, there are limitations on former federal employees representing clients before their former agencies on matters in which they had been involved during government service--for one year on matters which were under the employee's "official responsibility," and permanently if the employee participated "personally and substantially" in the matter. A general summary of existing post-service restrictions is set forth in Appendix C.

Agencies should reexamine their personnel policies to reduce what sometimes appears as unseemly dependence on regulated or client industries. Consideration should also be given to whether former federal employees should not be subject to a blanket one-year bar prohibiting them from appearances before their former government agencies on new matters as well as old. Here again care must be taken not to adopt rules that are overly restrictive--rules that will discourage able people from joining the government because of their inability to overcome post-service economic barriers resulting from former federal service.

VI. Auditing compliance with the rules on standards of conduct should be given equal importance with auditing appropriated funds.

A great deal more attention is needed to improve administration, monitoring, and auditing of the rules governing disclosure and standards of conduct. The present system is weak and operates unevenly. For a summary of the auditing practices among the three branches of government, see Appendix D. To make standards of conduct rules more effective requires a restructuring of the administrative process--to assure full compliance and to assist agencies and individuals in answering borderline questions.

The Task Force recognizes that the three branches are separate and co-equal, and that each is responsible for

policing itself. Each agency must likewise bear initial responsibility for compliance and auditing. Nevertheless, an overall monitoring of the system, as a system, by the Comptroller General would seem to be a desirable step.

Application of Principles

In the preceding section the Task Force set forth six principles for creating an improved environment of ethical conduct for public officials. While these principles could be implemented separately by each branch of government, we believe that more is required--that the problem of the public trust is government-wide in nature, and that many of its aspects transcend the concerns of individual agencies or branches.

The Task Force recognizes the separation of the three branches of government, and does not recommend giving overriding powers to a single body. We do believe, however, that the slowly evolving system could benefit from a coordinated effort at the highest tripartite level to rationalize, regularize, and promulgate existing regulations, and to propose new ones where necessary.

The problems are complex and involve subtle shades of distinction. A careful study and analysis must be made of each issue as it applies to each branch of government, and decisions must be made based on experience and good judgment.

In brief, we believe that further action is needed at the highest practicable levels of government for the purpose of determining (a) what precise standards should be established, (b) the extent to which they should be uniform among the different branches of government, and (c) how they should be administered in all essential details. To be successful, this will require not only the proper auspices, but also meticulous care and full participation by representatives of all three branches of government as well as by representatives of the public.

Conclusion

Restoring public confidence in government depends largely on the quality of the women and men who are conducting the affairs of government--the level of respect that they show for their public trust, their honesty, integrity and impartiality, their commitment to due process, courtesy and first-rate public service which every citizen is entitled to. In turn, the public's support of top federal officials, whether it be through salary increases or otherwise, is closely intertwined with its perception of the extent to which these high standards of conduct are being met.

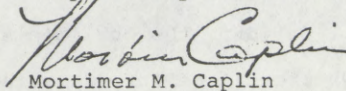
The ultimate and in most cases the most reliable guide to conduct is personal conscience. If you cannot legislate honesty, neither can you assure it by regulations and controls. What you can do, however, is to set forth the

public's expectations on government service, and then establish clear standards of conduct to apply in each of the three branches of government.

Let everybody know what is expected; let there be uniform and adequate disclosure; let there be an audit to see what is being done. This completes the circle.

The Task Force believes that the opportunity for government service is unique in the challenges it offers and the satisfactions it affords to those privileged to serve. It is vital that the best possible men and women be attracted to such service. To this end, while it is important to increase compensation, it is no less important to take steps to restore the public's trust and respect for top government officials. Specific reform is needed, and the public looks to the President and all branches of government for leadership and action.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Mortimer Caplin", written in a cursive style.

Mortimer M. Caplin
Chairman

Washington, D.C.
November 29, 1976

APPENDIX A

A SUMMARY OF RULES AND PRACTICES
RELATING TO STANDARDS OF CONDUCT
IN MAJOR AREAS OF CONCERN

The governing rules and practices of each of the three branches vary considerably, as likewise do practices between agencies. The following summary identifies some of the major differences:

1. Financial interests which raise questions of divestiture or disqualification to avoid the likelihood of conflicts of interest.

In the Executive Branch, to insure that there is no conflict of interest, certain employees, especially Presidential appointees, must submit a statement to the Chairman of the Civil Service Commission detailing the names of all organizations with which they have a continuing financial interest through ownership of stocks, bonds, etc.; a listing of the names of certain creditors; and a listing of interests or rights in real property. These reports are held in confidence and any conflict of interest may be investigated by the Justice Department and reported to the President. Disciplinary actions are prescribed for infractions. Various waivers and blanket exemptions may be granted if the financial interest is deemed unlikely to affect the integrity of the employee.

With respect to financial interests, in the Legislative Branch there are no restrictions, but there are some requirements for disclosure.

In the Judiciary, no conflicting interests are permitted. If such are apparent, a judge is disqualified from the case. A judge cannot be a manager, adviser, director, or employee of any business for profit. He cannot practice law.

2. Continued participation in outside business or employment including the practice of law.

In the Executive and Judicial branches, outside activities are strictly controlled, and for practical purposes do not constitute an important source of outside income or the potential for conflict of interest.

There are no restrictions on outside activities by Congressmen except for reporting requirements which differ between the two Houses, and a prohibition against Congressmen representing clients in appearances before government bodies.

House members are required to report publicity:

(a) the ownership and management of business entities doing substantial business with the federal government where ownership is in excess of \$5,000 or where income is in excess of \$1,000 per annum; (b) professional associations where income is in excess of \$1,000; and (c) the source of income for services rendered in excess of \$5,000. Sealed information, available only to the Committee for Investigation, includes the actual amounts of such items; but information available to the public only reveals the source. The

Senate reports essentially the same information, but it is in sealed envelopes filed with the Comptroller General which are opened only for authorized investigations.

In 1975, only 53 Representatives reported receiving more than \$1,000 from the practice of law. Comparable data on the Senate is not available to the public.

3. Honorariums for speeches, television appearances, and articles.

For the Executive Branch, the basic policies on outside income -- as well as its propriety and its reporting -- are contained in Executive Order 11222. These policies, as extended and amplified by regulations of the Civil Service Commission and individual agencies, prohibit the receipt of honorariums or travel expenses when appearances concern the official business of the agency.

The Federal Election Campaign Act Amendments of 1976 prohibits honorariums for Congressmen totalling more than \$25,000 per annum -- raising this amount from \$15,000. Any single honorarium cannot exceed \$2,000 plus expenses and agent fees. Senators are required to publicly report not only the source but the amount, Representatives make public disclosure only of the source of honorariums in the amount of \$300 or more.

In the calendar year 1975, 80 Senators reported receiving honorariums; 20 reported none. Those receiving

honorariums reported a range from \$300 to \$20,300. The average amount received by those reporting honorariums was \$8,072.

Representatives are not required to disclose the amount of their outside income from honorariums, but are required to report the source. In 1975, 231 Representatives reported income from honorariums, an increase for the fifth straight year.

A federal judge may speak, lecture, and teach on matters related to the law and receive compensation, but not in excess of the usual levels for such compensation. The Judicial Conference's strict interpretation of the canons of judicial conduct precludes judges from receiving any form of compensation for services which are related to normal judicial duties. As a practical matter, this limits most judges to teaching, and not many engage in that.

4. Gifts and testimonials.

In the Executive Branch, employees are prohibited from receiving gifts (including gifts in kind, such as entertainment) which are in any way related to official business.

Federal judges are also banned from accepting gifts except from members of their families.

Rule 42 of the Standing Rules of the Senate requires that all gifts of \$50 or more from any source must

be reported. Rule 4 of the House Code bans acceptance of any gift of substantial value from any person having a "direct interest in legislation before Congress." There are no other restrictions.

A major difficulty in both Houses arises from the commingling of personal accounts, office expense accounts from appropriated funds, and funds from campaign and other outside sources. There is also the problem of testimonial dinners and other events which provide funds that are sometimes used for office expenses or personal use.

5. Reimbursement for expenses.

Opportunities for diversion of public allowances to private use were greatly minimized by House action during the last session. Members are allowed up to 26 round trips home every session of Congress, and are required to file documentation in support of their claims only in case air travel is used. It is reported that 19 House members have turned back \$12,898 to the Treasury in the past six months. Most of the refunds came from members who filed vouchers for auto travel which proved to be inaccurate.

6. Foreign travel.

This is an especially sensitive area from the standpoint of public opinion. Recent reports on travel of members of Congress and their staffs and families at the

expense of "cover organizations" for foreign governments raise real questions of legal violation under the Constitution -- which forbids accepting gifts from foreign governments. Even when no question of foreign money is involved, Congressmen have in the past had three government sources of funds available to them for foreign travel: regular appropriations, military courtesy funds (and transportation), and local counterpart funds in some countries. There is no procedure at present in the auditing of these accounts to prevent duplicate payments.

The Task Force notes that both in the House and in the Department of Defense steps are reportedly being taken to minimize duplication.

Expenses for foreign travel are strictly controlled in the Executive and Judicial branches.

7. Post-service employment.

At present, in the Executive Branch there is a prohibition against agents or attorneys representing clients before their former agencies on matters in which they had been involved during government service (Title 18 USC § 207). This prohibition is for one year on matters which were under the employee's official responsibility, and are permanent if the employee participated personally and substantially in the matter. In addition, more specific requirements may be imposed on individual agencies. For example, Public Law

91-121 requires former Defense Department employees to file post-employment reports if, during the three years following their departure, they go to work for defense contractors.

Questions have been raised on the practice -- which has been referred to as the "revolving door" -- of frequent movement of employees between some government agencies, especially the regulatory agencies, and industry. Some interchange between government and industry personnel is beneficial to both, and one reason advanced for increasing top government salaries is to make it possible for government to compete with industry for talent. Unfortunately, the tenure of top officials recruited from industry is often so short as to suggest that their ultimate interests lie outside the government.

There are no restrictions on post-service employment by Congressmen or judges.

8. Auditing and administration.

Throughout government, a great deal more attention is needed to improve administration, monitoring, and auditing of the rules governing disclosure and standards of conduct. The present system operates unevenly among the branches of government, and among the agencies. To make standards-of-conduct rules effective requires a restructuring of the administrative process -- to assure full compliance and to assist agencies and individuals in answering borderline questions.

The Task Force recognizes the separation of the three branches of government, and does not recommend giving overriding powers to a single body. It is believed, however, that the present system could benefit considerably from a concerted effort to rationalize, regularize, and promulgate existing regulations, and to propose new ones where necessary.

APPENDIX BSUMMARY OF DISCLOSURE
REQUIREMENTS IN THE THREE BRANCHESI. Executive Branch

1. Basic Authority: E. O. 11222 of May 8, 1965 and Part 735,401-411 of the Civil Service Commission Regulations.
2. Requirements: The heads of agencies and Presidential appointees must submit a statement to the Chairman of the Civil Service Commission. Other officials down to GS-13 (and below in some cases) are required to report to the designated officer in each agency. Statements must be kept current. Disclosure is required of the following:
 - (a) A list of the names of all enterprises in which employee has a continuing financial interest of any kind, through employment, ownership or other connection.
 - (b) A list of the names of other creditors.
 - (c) A list of all interests in real estate other than personal residence.
3. Weaknesses:
 - (a) Reports are kept confidential.
 - (b) A series of GAO studies show that many persons who were required to file failed to do so, and many others who should have been required to file were excluded.
 - (c) Reports cover only source -- not amount.
 - (d) Lack of procedures to force divestiture to avoid conflict-of-interest situations.

II. Legislative Branch1. Basic Authority:

House: Financial Disclosure Rule

Senate: Rule XLII and XLIV of the Standing Rules of the Senate.

2. Requirements:

House: All members, officers, permanent professional staff and staff members designated by members or appointing officers must submit a financial disclosure report to the Committee on Standards of Official Conduct. Report is due on April 30 of each year. The reporting form is in two parts:

Part A, includes:

- (a) Name of any enterprise doing substantial business with U.S. Government in which person's ownership is in excess of \$5,000 or income from which is in excess of \$1,000 during the year.
- (b) Name of any organization from which \$1,000 or more was received for services as officer or partner.
- (c) Name of any organization from which income for services rendered exceeded \$5,000 or capital gain exceeded \$5,000.
- (d) Name of any organization from which reimbursement for expenses exceeded \$1,000 or honorarium exceeded \$300.
- (e) Each creditor holding an unsecured loan in excess of \$10,000 for a period of 90 days or more.

Part B:

Requires dollar amounts for all items reported in Part A.

Part B is in sealed envelopes filed with the Committee on Standards of Official Conduct, and is only opened for authorized investigation.

Senate: Report required of all Senators, officers or employees earning more than \$15,000, and all candidates for the Senate. Reports are filed with the General Accounting Office by May 15 of each year.

Part A, includes:

- (a) A copy of preceding year's tax return.
- (b) The source and amount of each fee or compensation exceeding \$1,000.
- (c) Name of each enterprise in which he is an officer, partner or employee, and amount of compensation received.
- (d) Identity of each interest or property having a value of \$10,000 or more.
- (e) The identity of each trust or fiduciary relation in which he had an interest of \$10,000 or more.
- (f) The identity of each debt of \$5,000 or more.
- (g) Source and value of gifts of \$50 or more.

This report is sealed.

Part B: All contributions and honorariums in excess of \$300. This report is available for public inspection.

3. Weaknesses in both Houses:

- (a) Most reports kept confidential.
- (b) Most data, even the confidential parts, are not reviewed by anyone.
- (c) Reporting forms and requirements are different and confusing, and lack important detail.

III. Judiciary

- 1. Basic Authority: Code of Official Conduct for United States Judges.
- 2. Requirements: All Federal judges are required to file reports every 6 months with the clerk of the court of which the judge is a member. A copy is filed with a Judiciary Review Committee which reviews it for propriety. Report covers all monies received from extra-judicial services, gifts,

payments of excess expenses, positions held in business, or other organizations, and participation in cases where the judge had any financial interest.

3. Weaknesses: The only weakness is the failure of a small number of judges to report, and the fact that the Judicial Review Committee's rulings are advisory only. These are not regarded as serious.

SUMMARY OF RESTRICTIONS ON
EMPLOYMENT OF FORMER GOVERNMENT
OFFICERS AND EMPLOYEES OF THE
EXECUTIVE BRANCH 1/

Basic Authority

18 U.S.C. §§ 203, 207, 208; Executive Order 11222; legislation applying to individual agencies such as Public Law 91-121 relating to former employees of the Department of Defense.

Requirements

1. Conflict of interest laws do not prohibit a federal employee from seeking other employment while he is still with the government, even if the prospective employer is regulated by or has dealings with the employee's agency. They do, however, require the employee to disqualify himself in any government action which may directly affect the prospective employer.

2. A former federal employee is permanently barred from acting "as agent or attorney" for anyone other than the United States in connection with any "particular matter involving a specific party or parties" in which he participated "personally and substantially" in his government capacity. This does not preclude post-employment activities other than acting in a representational capacity. A former federal employee may thus work directly on a contract or grant which he negotiated on behalf of the government so long as he does not represent the organization in dealings with the government relating to that contract or grant.

3. There is a one-year bar against "appearing personally" before a government agency on any matter which was under the "official responsibility" of the former employee. The term "official responsibility" is defined as administrative or operating authority to direct government action -- generally, but not necessarily, a supervisory responsibility. This does not bar such former employees from appearing personally in new matters involving his new employer with his former government agency, even though they are of the same general type as those which had been under his official responsibility.

4. A former federal employee may not receive compensation for representational services rendered by himself or others during the period of the employee's government service.

5. Other specific limitations apply to particular government agencies. Public Law 91-121, for example, requires former Defense Department employees to file post-employment reports if, during the three years following their departure they go to work for a defense contractor.

1/ There are no restrictions on post-service employment in the Legislative and Judicial branches.

APPENDIX D

SUMMARY OF AUDITING PRACTICES
FOR STANDARDS OF CONDUCT
IN THE THREE BRANCHES

General

Audit is at the end of the chain of administrative actions which begins with policy formulation and promulgation of the rules. Various steps, such as counseling, and enforcement (divestiture, blind trusts or limitations on official actions such as disqualification) are next in the administrative chain. Next comes reporting, or disclosure. Finally there is audit.

The audit can only be as effective as the records upon which it is based. Audit is severely handicapped if (a) standards are unclear, (b) counseling ineffective or non-existent, (c) procedures for enforcement lacking, and (d) reporting poorly designed, incomplete and usually kept secret. If, in addition, the audit, both in the agencies of the Executive branch and the Legislative branch is restricted in its coverage and handicapped by lack of staff, the process is even more ineffective. All of these limitations happen to apply in some respects to the audit of standards of conduct in the Executive and Legislative branches.

Executive Branch

In the Executive branch the purely financial audit of appropriated funds except military courtesy funds and counterpart funds appears adequate. There is no way of knowing how effective the agency review of conflict-of-interest disclosure statements is, because the review is confidential. The General Accounting Office has issued a number of reports of specific agencies which show the need for improvement. Standards and practices between agencies differ. The Civil Service Commission which is supposed to review and police the work of the agencies has only one professional employee assigned to this work. Only 20 agencies have designated ethics advisory officers, and procedures and standards differ widely throughout the government.

Legislative Branch

In the Legislative branch, the ethics committees of the Houses of Congress have final responsibility. Neither has a regular procedure for reviewing confidential statements of members. They act on special cases which have been brought to their attention, usually as a result of reported scandal.

The General Accounting Office is charged with auditing the use of appropriated funds. Its audit is seriously restricted, however by 2 U.S.C. 95 which provides (for the House) that

"Payments made (from contingency funds) upon vouchers approved by the said Committee (on Administration) shall be deemed, held, and taken, and are declared to be conclusive on all officers and departments of the government."

Thus, for a variety of items of reimbursement, the GAO cannot go beyond the certification of the Clerk of the Committee. The appropriation for Contingency Funds of the House covers travel, office expenses, salaries of investigative staffs, postage, stationery and equipment leasing.

Similar provisions of the law restrict the Senate audit of accounts.

Judicial Branch

In the Judicial branch, audit is under the Administrative Office of the U.S. Courts. Judicial Review Committee reviews conflict-of-interest disclosure statements, which are also made public. No audit deficiencies are perceived.

Mr. CAPLIN. We made our recommendations to the Commission, and the Commission made ethics in the Government the centerpiece of its recommendations, which called for a substantial pay raise. We were all very happy to see the pay raise go through; we think it was entirely justified and badly needed.

The House is to be commended for adopting House Resolution 287 and approving the recommendations of its Commission on Administrative Review, headed by Representative David R. Obey. In my view it met the challenge presented by outgoing President Ford when he stated, "I would not recommend the salary increases if there is not a firm commitment to a new code of conduct."

I think there is a commitment reflected in H.R. 287, and we are all looking forward to seeing the Senate take comparable action. We think the Senate will.

Now that the legislative bodies are agreed on the general principles for themselves, the time is at hand for greater detail and specificity, for looking at the problem on a governmentwide basis, and for establishing adequate machinery to audit and monitor the rules. Everyone is for honor and integrity—at least until the precise delineation of these terms conflicts with the individual's concept of right and wrong or unduly interferes with his daily way of life.

Articulating a precise code of public conduct is difficult. President Carter already faces problems over the rigid standards he earlier announced. Exceptions have been made on the 4-year commitment rule, divestiture of assets, blind trusts that are also deaf, and detailed disclosure requirements. To be sure, honesty and integrity are concerned not only with financial conflicts but also with conflicts arising from personal relationships and other aspects of the decisionmaking process. The subtleties involved demand room for flexibility and a rule of reason.

The goals of a public conduct code also often compete with each other. First, there is the need to assure the public of the integrity of those conducting the affairs of Government and, second, there is the need to attract to public service the ablest of our citizenry. Care must be taken that rules aimed at enhancing public confidence are not so onerous or such an unreasonable invasion of privacy that good men and women will be discouraged from entering public life.

Total and detailed public disclosure, for example, is regarded by some as excessive and undesirable. Former Treasury Secretary Douglas Dillon, who was a member of our task force on public conduct, believes that for the executive branch the extent of public disclosure should be handled by the appointing authority, namely, the president, and by the confirming Senate committee. He recognizes that they should be given all pertinent and essential information to assure themselves that no conflict exists; but he also urges that there not be "an unnecessary and wholly unjustified invasion of personal privacy."

I might say as an aside that people of large wealth are exposed to a lot of pressures that we ordinary people don't think of—such things as potential kidnaping, which is not unknown, financial solicitations, extortion, and other types of pressures. I do think that the admonition of Douglas Dillon is something that should be kept in mind.

The scope of disclosure, too, needs refinement. For example, the Comptroller General of the United States recently reported on February 28, 1977, that, "The current disclosure requirement of Executive Order 11222 is not sufficiently specific," He pointed to the diverse responsibilities of Federal agencies and their varying needs for types of information to test for potential conflicts of interest. For example, the Interior Department may need more information about property interests; the SEC, about the ownership of securities; and the Smithsonian Institution, about personal art collections.

To quote the Comptroller General's report:

The financial disclosure form must meet the needs of each agency without unduly burdening the employee by requiring information of little use to the agency.

Clarification is also needed in interpreting existing statutory prohibitions. According to the Comptroller General, a literal reading of the statute relating to the Federal Communications Commission seems to prohibit its employees from owning stock in Sears-Roebuck because the company sells radios.

And the statutory prohibition against Geological Survey employees owning "lands or mineral wealth of the region under survey" might even preclude purchasing their own private homes in the locality.

On outside activities, strict and precise controls are needed for the executive and judicial branches in particular. In the judiciary, for example, special care must be given to disclosure of positions held in any type of organization, as well as any financial interest in cases where the judge participates.

Again, on postservice employment, rules to guard against exploitation of Government careers require discreet handling. While the "revolving door" syndrome is troublesome and sometimes shocking, care must be taken not to be so restrictive that qualified people will be unable to accept the risks surrounding future economic barriers. A blanket 2-year restriction on returning to a particular business or law practice could be ruinous in many cases.

In sum, in drafting disclosure and conflict-of-interest rules, a judicious balancing of these various interests must be made by each of the responsible agencies.

In our task force on public conduct report, we concluded in part:

A great deal more attention is needed to improve administration, monitoring and auditing of the rules governing disclosure and standards of conduct. The present system is weak and operates unevenly.

At the end of our report in a series of exhibits, we condensed the various rules of each branch of Government on auditing and policing of the rules.

The gap here is obvious, and H.R. 3829, in establishing an independent commission on ethics and financial disclosure, sets forth one approach for correcting the problem.

While there are advantages and neatness in having a central controlling body, its creation does raise separation-of-power issues. At stake are the prerogatives of each branch of Government. And we have here a constitutional issue which should not be lightly ignored.

The separate and coequal status of the legislative, judicial and executive branches must be recognized, for it is doubtful that any single

body should be given overriding powers to enforce a code, Governmentwide.

With this in mind, I would like to offer the following views:

1. Primary responsibility should be placed in each branch of Government (a) to administer and enforce the ethics and financial disclosure system, and (b) to render advisory counsel and formal opinions on conflict-of-interest issues.

2. In the executive branch, a centralized office of ethics should be established, either as a new independent agency or within an existing agency. In administering the entire executive system, the central office should coordinate carefully with each agency's ethics officer or ethics group. Filings should be made both with the immediate agency and the central office, with the primary review process being performed in a decentralized fashion close to the employees' place of duty.

3. In the House, primary ethics responsibility should be placed with the Clerk of the House of Representatives; in the Senate, with the Secretary of the Senate; in the judiciary, with the Director of the Administrative Office of the U.S. Courts.

4. At the same time, a national commission should be organized to provide oversight of the entire system, to assist in effective administration, and to recommend improvement in any aspect of the system. The commission's primary function should be to advise and recommend, with no enforcement or operating responsibilities. In performing its oversight function, the commission should be authorized to investigate, hold hearings, and to call witnesses.

Membership on the commission should come from nominees of each branch of Government. Guidance for the general functioning of this body can be found in the operations of the U.S. Civil Rights Commission.

In conclusion, I'd like to state that remarkable progress has recently been made in adopting standards for ethics and conflicts of interest. What remains to be done is the establishment of an effective machinery for compliance and enforcement.

I might say, as a former Commissioner of Internal Revenue, that while Government leans heavily on voluntary compliance and the goodwill of everyone concerned, I think it is necessary to an effective system that we have honest, straightforward auditing and policing.

Ethics in government is a continuous and ongoing responsibility. Cooperation among all three branches of government is essential, with appropriate assistance to be provided by the private sector.

I don't think the public can put its head in the sand and expect that government will run itself. They, too, have an important part to play.

There is a clear role for vigorous and informed public oversight. Organized public concern can serve both to mobilize support for reform and to keep the public informed of progress. The National Civil Service League intends to be involved in this citizens' effort. A major priority in its program for this year is the issue of "Meriting the Public Trust." The league initially intends to engage in research and to provide public information through conferences and publications.

We believe that the league can play an important role in helping to restore public confidence in the quality and integrity of government. It is a privilege for us to be of assistance to this committee.

Mrs. SCHROEDER. Thank you very much, Mr. Caplin. And we do appreciate the time and the effort you have put into all this.

You must have heard that some of our colleagues have been testifying to put in an anti-revolving-door provision, even though it's not in the bill currently. You made this statement that you thought something like that could be ruinous to an individual. Could you expand on where that would be ruinous?

Mr. CAPLIN. What I have in mind pertains to young people as much as anyone else. We are seeking to attract young people to come into government and we ask for a commitment of 4 years. In fact, as a law professor for many years, encouraged many of our brightest graduates to give part of their lives to government service.

Now, if you are going to say that a young man who will spend 4 years with the SEC would be barred for 2 years in engaging in any practice relating to the SEC, you are going to make it impossible for him to come into government. I think you will lose many of fine people.

I don't think we should look for the lowest common denominator in devising these rules. I think reasonable restrictions are important. I could see a bar to appearances for a year, but permit them to engage in outside activities related to the field.

We already have statutes which follow that pattern, and I think that the statutory pattern is reasonable. There may be some items that could be perfected.

Mrs. SCHROEDER. I think what the committee was looking at or what our colleagues were talking about was a more specific kind of limitation, not saying you can't go out and practice law, but you can't go out and serve a client that you were serving on the other side. I think that is the real nitty-gritty.

Mr. CAPLIN. I share that concern. I think it is rather shocking to see somebody considering grants, let's say, for a company in the defense industry, and the next day have that same person leave government and join that particular company. I think this leads to tremendous suspicion and it tends to undercut the public's faith in government. I do think that is a sensitive point and one that has to be looked at.

Mrs. SCHROEDER. Or comes from that company into government.

Mr. CAPLIN. Yes; exactly. I don't think we can bar people who are from a particular industry coming into government. It may be that you need someone who understands defense production; you may need oil people; you may need people with special knowledge about distribution. And I think if they do come into government and lend their expertise, there should be a balance—we shouldn't have an agency, for example, overloaded with people from a given industry. And I can think of some reasonable restrictions imposed upon them on leaving government.

On the entry part, you might really insulate them from having any contact at all with their former companies.

Mrs. SCHROEDER. I think probably legally to make it stand you'd also have to have a limited type of revolving door. I think if you just prohibit them from practicing generally in the area that they were in, that would never hold up.

Mr. CAPLIN. It might violate the constitutional amendment against slavery.

[Laughter.]

Mrs. SCHROEDER. We have had several Members of Congress in testimony saying that their problem with this package was we had not dealt with that issue which they felt that every now and again there is some big splash that hits the paper and gives everyone in government service a bad name.

Mr. CAPLIN. It is a large subject and one that I think requires careful study. It is one that we shouldn't answer just on emotion.

Mrs. SCHROEDER. No; that is right. And I would think we would want something that was specific and really directed right at—

Mr. CAPLIN. Well, if we can develop anything, I'd be very happy to present it to the chairwoman.

Mrs. SCHROEDER. We'd be very appreciative if something like that comes up in the interim.

One of the other problems we have that you didn't mention is I know the Internal Revenue Service has always been one of the areas that has been really, really cautious about appearances, and some have criticized this bill because we said the appearance of impropriety is very important, but I know the Internal Revenue Service has been careful of that.

One of the suggestions was rather than constant monitoring about solicitations or gifts, maybe we should make it a Government policy you just can't accept gifts, and maybe you accept something like calendars and key chains and tokens or things like that that are rather ridiculous, but rather than put \$50 accumulations or totals over the year, maybe that is the way to go. I wondered if you had any insight on that, both from being in the Internal Revenue Service and in other areas.

How would you feel if an agent got a case of whisky?

Mr. CAPLIN. That would be grounds for severe disciplinary action and maybe even discharge. We have had occasions of agents going to jail where they received "gifts" from people who have been under audit. Indeed, the newspapers recently reported about a large company that took an agent on a trip, and this is now being investigated by the Department of Justice.

I think that is a very real area for concern. I wonder what true gifts are given to people who are in government service? I read this morning in the newspapers that the Federal Election Commission permitted a certain member of Congress to go forward with a gift program on a large scale—to have dinners for that purpose I wonder if that would pass muster before any commission on ethics or anybody on ethics. In a way, that makes some of the limitations of speech-making ludicrous.

Mrs. SCHROEDER. That is right.

Mr. CAPLIN. I know when I was in the Revenue Service we had an absolute rule about accepting gifts. Someone sent me a desk set which was obviously something he had sent to many other people, but I just felt I had to return it. We got a few little comical things poking fun at the Internal Revenue Service, which we'd just put up on the shelf. But I think you have to have a de minimis rule. Even the Internal Revenue Service permits an employer to give an employee a ham at Christmas without treating it as income to him.

There may be some small things. Former Senator Paul Douglas had a rule on acceptability based on whether you can eat it in a day or not. I don't know if you can eat a ham in one day.

Mrs. SCHROEDER. And the \$50 limitation might look just as bad to the public as a \$500 limitation, especially if you don't have a total—you can give \$50 a day as long as it's not more than \$50.

Mr. CAPLIN. I have some doubt as to whether cash should ever be permitted. You might allow small gifts—a gift which has a value not in excess of \$25 or \$50.

In connection with expense accounts, the Internal Revenue Service has a rule that you need a receipt for any deductible expenditure of over \$25. And gifts of over \$25 are not deductible as business expenses.

So maybe we ought to look at the Internal Revenue Service for some guidance there.

Mrs. SCHROEDER. That is an excellent idea because I believe they probably have the most stringent rules of any of the Federal services I know of.

Mr. CAPLIN. The rules I was referring to weren't so much for the agency itself. We wouldn't even permit a \$5 gift. I was talking about a businessman giving a business gift to an associate: There is a \$25 limit in the code on that as far as deductibility is concerned.

Mrs. SCHROEDER. But among the Federal employees in the Internal Revenue Service, even \$5 would be considered improper?

Mr. CAPLIN. Yes.

Mrs. SCHROEDER. In the Internal Revenue Service, for employees, what was the policy on their teaching or having another job somewhere?

Mr. CAPLIN. There was a general rule that you couldn't engage in any teaching or outside activities without the approval of the organization. There was a pattern of permitting people to teach in educational institutions after hours, so long as it didn't interfere with their work.

I must confess that I have a great deal of sympathy for that myself. I think that frequently, whether it's a Congressperson or whether it's someone in the executive or the judiciary, there is a lot to be gained by that individual, as well as the public, participating in educational activities. I hope that won't be stopped.

I know there is the dollar limitation, but certainly that is an activity that I regard as much more valuable than just ordinary speechmaking to different organizations.

Mrs. SCHROEDER. So you do permit the educational thing but there were certain things that were prohibited. Were there guidelines?

Mr. CAPLIN. Yes; there are detailed guidelines on rules of conduct. I think your subcommittee might be interested in getting copies.

Mrs. SCHROEDER. Mr. Caplin, we really appreciate your time and effort.

Mr. CAPLIN. I appreciate being here.

Mrs. SCHROEDER. Our next witness is Irving Geller, general counsel for the National Federation of Federal Employees.

Mr. Geller, we welcome you and are delighted to have your input on the bill.

**STATEMENT OF IRVING GELLER, GENERAL COUNSEL, NATIONAL
FEDERATION OF FEDERAL EMPLOYEES, ACCOMPANIED BY
MAUREEN CLANCY, LEGISLATIVE LIAISON**

Mr. GELLER. Thank you, Madam Chairwoman.

To my left is Maureen Clancy. She is legislative liaison for our organization. And with your permission, we'd like to submit our prepared testimony for inclusion in the record and just to briefly summarize the comments that we have, particularly in connection with H.R. 3829, as well as other bills that have been introduced in connection with ethics and financial disclosure.

Mrs. SCHROEDER. You may do that, and your statement will be made a part of the record after your comments.

Mr. GELLER. Our concern is primarily with career employees and not so much with the other branches of Government. However, within the executive branch there are a substantial number of career employees who are obliged to file financial disclosure statements. And while I can agree with a good deal of what the prior witness testified to, we are of the notion that there should be greater uniformity in the matter of financial disclosure, and the forms themselves should, wherever possible, be uniform. And we believe that the duties that are set forth in H.R. 3829 perhaps should be enlarged to include not only investigatorial responsibilities and the requirement for reports, but to take a more preventive approach to the problem and to provide for advisory service to all of the Government agencies, not on a requested basis, although that is perfectly acceptable, but to advise the various agencies as to what the interpretations are of the various definitions.

We note with some degree of satisfaction that the grade level has been established for career employees at least at grade 16 and above, whereas some of the bills have a lower grade. Frankly, we don't know as there should be any grade limitation, but rather a definition requirement: Is there or can there be a potential conflict of interest in terms of a person working in the Bureau of Land Management or Geological Survey? And that would be the test.

This is where the definition is so important, rather than the grade as such. And I don't know whether a computer programmer at grade 16 needs to file a financial disclosure, or a scientist, where there is no potential for conflict. And I think anything that would limit the number of financial disclosure forms would be helpful, which leads me to another suggestion, not novel—it is one that the Comptroller General in his report suggested—and that is the active audit of the program, not to wait until problems occur to determine whether there has been 100 percent reporting, but to have an inspectional or audit function to perhaps enlighten the agencies concerning their responsibilities. I believe that many of the agencies do not have their employees file forms out of ignorance, lack of knowledge of the requirement of the Executive order.

The Commission's duties and responsibilities, or any independent authority that is created to oversee the Ethics and Financial Disclosure Act, should have an ambitious advisory service, and it is ambitious, because there are many statutes which provide serious limitations concerning employees who are required to file disclosure statements.

We believe that uniformity is essential—and when I speak of uniformity, I mean within the executive branch, although the sense of ethics and standards of morality should be equal through all branches of Government.

And on the one point concerning outside activity, I think there should be a distinction. It is one thing for a person who makes \$50,000 a year to be limited in terms of outside income, and another career employee, for example, who makes \$8,000 or \$9,000 a year to be limited in any way except insofar as that outside performance may interfere with the Government duties and responsibilities.

I see no reason for a limitation on outside activities for career employees who financially must work at two jobs—two or more jobs—to make do for their families.

We are very much in agreement with the purposes and intent of H.R. 3829, and would be happy to respond to any questions concerning our views.

[The prepared statement follows:]

PREPARED STATEMENT OF IRVING GELLER, GENERAL COUNSEL OF THE NATIONAL
FEDERATION OF FEDERAL EMPLOYEES

Madam Chairwoman and members of the subcommittee, I am Irving Geller, general counsel of the National Federation of Federal Employees. NFFE is the largest independent union of Federal career workers. We have represented these employees for 60 years.

Madam Chairwoman, we note that recently you changed the name of the subcommittee from "Manpower" to "Employee Ethics and Utilization." We commend you for this decision. Not only does the new title more accurately reflect the jurisdiction of the panel, it also eliminates the sexist connotations of the earlier name. As an organization we support the deletion of titles that suggest the Federal workplace is a male domain.

On behalf of the members of NFFE, I welcome the opportunity to comment on ethics legislation applicable to executive branch employees. As the oldest union of Federal workers, we have dealt with employees at every grade level in virtually every agency. For the most part, Government workers possess great integrity. They are proud to be employed by the Government and take their "public trust" very seriously. We only regret that their superiors have not always likewise demonstrated such high principles. Scandal after scandal rocks this Nation and almost invariably the misdeeds are committed by high-level officials. Such hanky-panky has not been limited to one political party. The old saying that power corrupts and absolute power corrupts absolutely seems to describe the phenomenon more than any partisan considerations. So we view strict ethics codes, including full public financial disclosure, conflict of interest regulations, and limitations on gifts from lobbyists or others dealing with Government, as entirely appropriate for top officials of all three branches of Government.

The President, the Vice-President, Cabinet officers, Members of Congress, and Federal judges should certainly disclose their finances. Making such information easily available to the public would discourage the worst abuses. Political appointees in the executive branch, Schedule C workers, usually have policymaking positions involving decisions having wide impact. Logically, they should file disclosure statements. Federal career employees, who obtain their positions by qualifying under high civil service standards, should not.

For telling the public what you own and what you owe, which is the major feature of many ethics proposals, surrenders a good deal of privacy. Such sacrifice of a precious right should only be required of American citizens when there is a compelling justification. NFFE does not consider the justification compelling for Federal career workers.

Government employees are taxpayers and citizens. As such they share with other Americans disillusionment with Government, disgust at the shabby behavior of some elected officials, and suspicions that big money has undue influence over our political processes. NFFE members would wholeheartedly support reasonable laws designed to clean up and clean out the Federal Government. But to apply the legislative broom to career employees is sloppy housekeeping.

Federal workers, in their efforts to do an adequate job for the American public, accept agency rules that allow for more effectiveness. While NFFE protests installation regulations that are arbitrary, capricious, discriminatory, or inefficient, it's not rules per se that we oppose. But we cannot support requiring a GS-14 computer programmer to publicly state his or her debts or bank balances. Nor is it far, in our view, to tell a GS-5 clerk, who may have to staple sensitive Government reports, that he or she must also expose his or her financial linen to the world—including friends, neighbors, etc.

There is one area in which some conflict-of-interest regulation of civil service employees may be desirable. Certain workers with contract, grant, or responsibilities involving regulation of private entities should not be involved in cases where they have a personal financial interest. Requiring such workers to abstain from performing their regular duties in these instances is essential to avoid an appearance of a conflict. To enforce this regulation, some disclosure would be necessary. However, which employees are so covered must be clearly spelled out in statute. Agency heads must not be given discretion in this matter. NFFE has had bitter experiences with abuses in this area in the past. In addition, these financial reports should not be disclosed to the public. Rather, they can be reviewed privately by an appropriate official and where conflicts appear to exist, the individual should be asked to remove himself or herself from the particular case.

As I have indicated, Federal employees share some negative impressions about Government with other Americans. This is particularly true of their experiences with the Civil Service Commission. The integrity of this agency is in doubt, for some of its past top officials appear to have been guilty of some of the very violations it is charged with preventing. Unfortunately, many employees are equally fed up with the response they get from agency management. So workers generally feel that, with the exception of the unions and some Members of Congress, there is no one that they trust with their complaints and no one concerned with their problems. NFFE members, in recent national conventions, have proposed the establishment of an important authority, independent of the CSC or any agency, to conduct investigations and receive employee complaints. The body could refer criminal violations to the Attorney General for prosecution or recommend disciplinary action to agency heads. In addition to ethics violations, this authority could deal with whistle-blowing cases, Hatch Act transgressions, contracting-out, and labor-management disputes.

Another essential ingredient for ethics laws governing executive branch employees should be strong penalties. Fines and prison sentences for falsifying financial disclosure reports are frequently proposed. We believe that instead of or in addition to this, Government officials arrogantly violating such laws should be subject to automatic dismissal. If we want high-caliber Government, let's begin by demanding honesty at the top. If such officials fail to meet high standards of integrity, let's return them to private life. The American people deserve no less.

To summarize, we believe that all political appointees in the Executive Branch should be required to make full, public financial disclosure. In addition, these employees can be subject to limitations on outside income, in order to avoid the appearance of impropriety. Such strong regulation is necessary to restore the confidence of the people in the Government. Similar requirements for career employees are inappropriate. In cases of employees with responsibilities affecting the fortunes of private interests, where the appearance of a conflict is so destructive, private disclosure of financial holdings for review by the designated officer may be necessary. Then these employees should remove themselves from particular cases. However, such regulations should be spelled out clearly in statute. An independent authority should be created for ethics matters and dismissal from Government service should be one of the penalties.

We will not comment in depth about regulations for Congress and the Judiciary, as that is not our area of expertise, except to say that standards for top officials of all three branches of Government should be similar. I would now like to comment on H.R. 3829, one of the more comprehensive proposals regarding employee ethics.

Title I, from our reading of the bill, applies to all employees. Section 103, forbids solicitation or acceptance of any item of value in excess of \$50 from any person with whom such individual is involved in the performance of his official duties. "Person" is not defined. We are concerned about the employee who wishes to obtain a home mortgage or automobile loan from a bank, even though the

employee may have to deal with this particular bank in the performance of official duties. We believe an exception for such routine loans should be written into this section. It would also clarify this provision if close relatives of the employee would be exempted from the prohibition on expensive gift giving.

Section 105, which forbids an employee to engage in any conduct or associate with any person in such a manner as to present to the public an appearance of impropriety is unconstitutionally vague, in our view. Impropriety is not defined. A determination of what is proper would be extremely subjective. The potential for abuses of such a law is frightening. Conceivably, it could trigger witch hunts. Certainly ruthless officials could use it to harass employees, regardless of their innocence or guilt.

Title II sets out certain rules for GS-16 and above employees. As I have indicated, we do not favor financial disclosure for career employees, except in a few cases which must be clearly stated in the law.

Section 203, subsection 8 gives the head of an Executive agency the power to require the filing of a financial report by any employee in the department. We strongly advise against this. It will lead to extreme variety between agencies as to their regulations. Our experience has been that such important matters should not be left to the whims of different Cabinet members.

As an organization whose members are concerned about corruption in Government, we suggest that financial disclosure statements for political appointees in the Executive Branch be made more readily available to the public than proposed in H.R. 3829.

We favor the establishment of the independent Commission in H.R. 3829, but as we suggested earlier, it could be given more responsibilities.

Mrs. SCHROEDER. Thank you very much.

I do have some questions about your comments on financial disclosures for GS-16's and above and also your comments about uniformity. If we are going to have uniformity, should we have it among the three branches?

For example, as you know, the House and Senate ethics proposal requires disclosure of employees making \$25,000 or more. So clearly, GS-16 would be way too high. If we were going to have the same uniform application for Federal employees we'd have to drop it way down.

I know you made some comment you didn't understand how a GS-16 computer programmer could have a conflict.

Mr. GELLER. Correct.

Mrs. SCHROEDER. But when you figure their income level nationwide, they are in the top 3 percent of the income level. Isn't it very conceivable that the programmer is also having input into what kind of computers the Government is going to buy, so he could clearly have a conflict of interest.

Mr. GELLER. Frankly, if the person was in that position, certainly that person would be obligated to file financial disclosure.

Quite candidly, we don't represent too many GS-16's, so our heart is not going out for them so much as for the people that we do represent.

It is the notion of requiring a filing of a form which may make the system more complicated when there is no need for filing a form.

But responding specifically to your question, in that regard I think there should be uniformity. And if there is a \$24,000 limitation, then perhaps that should be equally applicable, except that you get into the other area where a person in the career service is appointed through a special method, through having competed competitively, and isn't a schedule C or political appointee, or is not subject to the revolving-door syndrome aspect.

I suspect there are some career employees who do go into industry, but the return is not quite so simple as it is in the schedule C area or in the other appointive positions.

Mrs. SCHROEDER. Well, I hear what you are saying about not filing a disclosure statement unless you have to. My biggest problem with the Federal Government is trying to write something that would tell us when we had to, so people would automatically know that and be triggered. Because a lot of this is innocence, when people get into these problems and don't know it, and it is hard for someone on the outside to go through each agency and determine what might be a conflict.

Mr. GELLER. It is very easy to strike GS-16, for example, as a bottom grade. It is arbitrary and perhaps it is convenient, and one might conclude that most of the people in that area might have a potential conflict of interest. And I can understand that reasoning.

But if, as was pointed out in the report, at least 10 percent of the people who should have filed did not file, if you reduce the number of people who are required to file because there is no need for filing, then perhaps it makes the review function, the audit function, the oversight function, a little easier.

But we'd be happy to yield on that grade level as an arbitrary cutoff point, frankly.

It is just the notion that we don't want employees unnecessarily burdened. And we are more concerned about the definitions, as to who should file. And that is where the uniformity and advisory service is so necessary, even though there are statutes that require people at lower levels to file forms.

I think a good deal of the errors in terms of financial disclosure arise out of the fact that people don't know they have to file the forms. And that is why there should not be the delay to ask for advice, but rather this Commission, or whatever authority is appointed to implement the act, should have an ambitious advisory service and keep the agencies well informed concerning who should and who should not file, and definitions concerning the spouse, members of the family, and things of that nature, with great clarity or as much clarity as possible.

Mrs. SCHROEDER. I think we would certainly agree there, that there certainly has not been the information out and the emphasis on it.

You stated in your written testimony that you were concerned about the gift section of the bill. And I am sure you heard some of the discussion I had with the prior witness, Mr. Caplin, about the gift section and whether we should scrap it and just prohibit gifts entirely, rather than reporting. What would be your advice?

Mr. GELLER. I think I would defer to the Internal Revenue Service approach to the problem, and it would have to be a de minimis matter. I think \$50 is a lot of money in some instances, and the value should not be more than a calendar or a ballpoint pen or something of that sort. We would think that should be a rather strict rule.

Mrs. SCHROEDER. I take it, too, that even though we don't have anything in the bill about revolving door, from your comments you wouldn't really object if it is specific, if it says you cannot quit and go to work for the company you were dealing with.

Mr. GELLER. Oh, Absolutely. We favor such a provision, particularly where it is a company that had dealings with the Government. However, it should not be so restrictive as to deprive a person from his or her livelihood.

Mrs. SCHROEDER. I couldn't agree more.

We appreciate your testimony, and if you have any further thoughts later on in the middle of the night, scribble them down and send them in.

Mr. GELLER. Thank you very much.

Mrs. SCHROEDER. Thank you.

The next witness we have today is Ronald B. Johnson who is the president of the Federal Professional Association. Mr. Johnson, we are delighted to have you with us.

STATEMENT OF RONALD B. JOHNSON, PRESIDENT, FEDERAL PROFESSIONAL ASSOCIATION; ACCOMPANIED BY WALTER H. DELAPLANE, VICE PRESIDENT

Mr. JOHNSON. May I introduce Walter H. Delaplane who is this year's vice president of the association.

Mrs. SCHROEDER. We are glad to have you.

Mr. JOHNSON. Madam Chairwoman, I likewise would like to submit my written testimony for the record and summarize what we have indicated in the testimony, and also address some questions that you have brought up in the course of the hearing this morning.

[The statement follows:]

STATEMENT OF RONALD B. JOHNSON, NATIONAL PRESIDENT, FEDERAL PROFESSIONAL ASSOCIATION

Madam Chairwoman and members of the subcommittee, I appreciate the opportunity to appear before you today to comment on H.R. 3829, the Federal Ethics and Financial Disclosure Act of 1977 introduced by Representative Schroeder. This bill is designed, and I quote, "to establish a commission on ethics and financial disclosure for officers and employees of the Federal Government and for other purposes."

In my testimony today, as National President of the Federal Professional Association, as a private citizen and not in my capacity as an employee of the National Bureau of Standards, I plan to present views on this subject of utmost interest and concern to our Association. Before commenting on specific aspects of H.R. 3829, I would like to stress the Federal Professional Association's interest in this area. A major goal of the FPR is to foster high standards of career professional service in the Federal Government. These high standards help the Government to maintain a good public image, without which, it cannot attract quality personnel which are vitally needed in the conduct of our Nation's business. The Federal career professional is proud of his or her contribution to the effective and efficient operation of the Government. The Association accepts the principle that our actions at all times must be above board, open to public scrutiny, and review by other branches of the Federal establishment.

H.R. 3829 does indeed address important problems, or questions, which have been brought to the public attention by people within and outside of the Government. We of the Federal Professional Association sincerely believe that a more effective approach can be taken in regard to this subject. Within the last few years we have seen misconduct by a few members of the Federal establishment. Although the conduct of a few does not reflect the conduct of the whole, the public trust in our Federal system of government has wavered at times. This bill is a start on the road to rectifying this situation, however we, the Federal Professional Association, cannot endorse it in its present form.

I would now like to address specifics using the bill itself as background. My comments will be directed to those aspects of the bill which are applicable to the career professional employee, although many of these remarks are applicable to all career employees. In the area of ethics and financial disclosure, the Executive Branch already has a system in existence aimed at establishing and maintaining high standards of ethical conduct for all employees. All Federal agencies currently stress high standards of personal and job related conduct regarding the

performance of all employees. In particular, the higher GS grade level employees must adhere to formal procedures for reporting outside employment and financial interests. The higher GS level employees are required to submit information on these pursuant to Section 402 of Executive Order 11222, dated May 8, 1965. This order involves prescribed standards of ethical conduct for Government officers and employees. It is our opinion that the requirements under this Order are generally being adequately enforced throughout most agencies of the Executive Branch.

We do feel, however, that there is a possible need for assuring that uniform policy and procedures, in regard to both code of ethics and financial disclosure regulations, are being adhered to throughout all agencies. In this regard we suggest that, if legislative action is necessary, Congress should establish general policy, principles, and guidelines for establishing and enforcing these requirements. The observance and enforcement of these requirements should be made the responsibility of each agency head. The point to be stressed here, is that the responsible Federal manager should be held accountable for the implementation of guidelines concerning ethical conduct and financial disclosure within his or her area of responsibility. The Civil Service Commission should continue its role as reviewer of compliance within such guidelines. The Civil Service Commission's role would be similar to their oversight function in regard to equal employment laws wherein each agency must submit its own affirmative action plans to the Commission for approval. We believe that such a flexible system would recognize the fact that the specific ethical requirements of agencies can differ dramatically depending on whether the agency's function is regulatory, policy setting, research, enforcement, etc. For example, if the head of a regulatory agency were to attend a meeting sponsored by groups being regulated by his or her agency and if this individual were to be reimbursed for travel costs by the sponsoring group, we might all agree that a possible conflict of interest was apparent, even if the agency head did not obtain any personal monetary gain. However, if a professional scientist within the same agency, were to be invited to present a scholarly paper at a scientific meeting sponsored by the same regulated group, and the agency were to be reimbursed for his or her travel expenses, one could argue that there is no appearance of conflict of interest. This would be especially true, if the scientist were to receive a prior approval, by his or her agency, that reimbursable travel of this type was in the best interests of the Government and the public.

We feel that it is very important to point out that ethics is indeed a day-to-day responsibility and the best people to enforce this are those managers who are closest to the activities of the Federal employees. It is our recommendation that the Civil Service Commission review all current regulations and procedures and check with each department, agency, etc., as to how these are being implemented. With this approach, we all would see a much clearer picture of what is being done now and where applicable changes can be made to make the criteria and enforcement more uniform throughout the Executive Branch. We believe it would make such requirements much more effective, cohesive, and understandable.

In regard to H.R. 3829 we have one specific comment concerning the activities required of the custodian of financial disclosures. We feel that if such a law were implemented, the employee affected by the requested disclosure does not have sufficient rights to challenge the need for this disclosure before such information is released to the requestor and the public. Even though, it ultimately may be determined that the employee is not guilty of misconduct, some damage could occur to his or her reputation by the very fact of the disclosure being made. We would hope that, if requirements for financial disclosures to the public are required by law or executive order, that the inherent rights of the affected employee will be maintained and that additional safeguards, such as appear to the Civil Service Commission, be built into any new regulation. Another aspect of the bill, which is of concern to the FPA, is the requirement for listing of monetary value associated with stocks, etc. We are aware that the Subcommittee has already discussed the definition of what is a significant amount of money. Under the current system of documenting financial interest pursuant to the aforementioned Executive Order, there is a requirement for listing stocks and other assets held without the indication of monetary value. We recommend that this is a satisfactory disclosure. If, in the review of the required statement submitted by the employee, there are indications of a possible impropriety, then we believe that it is the responsibility of the appropriate agency official to investigate this in whatever manner is prescribed, including a detailed financial analysis. However, we do not feel that such detail is necessary a priori.

Madame Chairwoman, my testimony, as the National President of the Federal Professional Association, has attempted to present some of our ideas and suggestions on this subject of ethics and financial disclosure. I would hope that it is clear that we endorse the absolute necessity to maintain high standards of ethical conduct throughout the Government. However, as stated, we do feel that the mechanism for accomplishing this for career Government employees is well established. The system may not be perfect, but we feel that major changes are unnecessary. We believe that any system of monitoring and reporting ethical conduct should be a simple system, i.e., not cumbersome and overly bureaucratic; with a uniform policy and guidelines to help assure that the system will be both efficient and fair. We would hope that, through these hearings, as well as the efforts of your Subcommittee and the other organizations testifying on this bill, that a more uniform but fair system for assuring ethical conduct can be implemented without violating the basic rights to privacy of the Federal career employee. I want to assure you that the Federal Professional Association is ready and willing to work with all involved. I would like to repeat what I said earlier; we are proud to serve the Government in our respective roles and, with this, comes our dedication to maintaining the high level of ethical conduct that professional employees have shown over the years. Madame Chairwoman, this ends my written testimony and I would be pleased to answer any questions you or members of your Subcommittee may have. I thank you for this opportunity.

Mr. JOHNSON. The Federal Professional Association is dedicated to the requirement, observance, et cetera, of ethics, conduct of performance by the Federal employee, and likewise financial disclosure. During the course of this morning, my remarks will be addressed primarily to the career professional employee within the Federal Government, but likewise I would hope that it would cover all career employees in the Federal Government.

The bill as it now reads, we do not endorse for various reasons. We do feel, however, that this bill has served as a vehicle to get this subject out at the level where it should be.

In the area of ethics and financial disclosure, we feel that the executive branch has a mechanism now available for at least covering the financial disclosure, and as such this would pertain to ethics. I refer to the Executive Order 11222, dated May 8, 1965. The order prescribes standards of ethical conduct for Government officers and employees.

I will say to the best of our professional knowledge, all employees at certain levels and above, the highest levels particularly, have a requirement to submit the report on outside employment and financial interests. This report indicates holdings other than your immediate home and automobiles, et cetera. It covers stocks and interests in businesses, et cetera, although it does not give dollar levels.

We recognize you have had some discussions on what is a significant dollar level, and I won't belabor the point at this time. We do not have a feeling that there is a uniform policy throughout the Federal agencies as far as observing this. We do, however, feel that most of them do observe it.

If there is to be a legislative action in this area, we would hope that Congress would establish the general policies, principles, and guidelines for enforcing these requirements. The actual observance and enforcement should be made the responsibility of each agency head. The point we want to stress here is that the responsible Federal manager should be held accountable for the implementation of these guidelines.

This is similar to the responsibilities that we have now in program management. We feel it goes hand in hand.

We have indicated that the Civil Service Commission should continue its role under the current situation as a reviewer of compliance within such guidelines. However, we certainly would be agreeable to any other suggestion as far as another organization having this responsibility, and that is not intended to say anything against the Civil Service Commission's role. Their role would be similar to their oversight function as now performed under equal employment laws, whereby the Federal agencies have to submit annual affirmative action plans, which seems to be working all right as far as the plans are concerned. The implementation I will not discuss.

In assigning the responsibility for the actual observance and enforcement of an ethics and financial disclosure statement by Federal employees—and I will address the business about the grades in just a little while—I think we have to recognize that there is a great difference, a dramatic difference, in fact, between the various agencies as far as what they would require. I listed an example in my written testimony, but I'd like to make it public for the people here.

An example is, for instance, the head of a regulatory agency may be invited to attend a meeting sponsored by the regulated industry or groups. In the course of this, his or her travel costs, out-of-pocket costs, would be covered by that group. Even though there is no direct monetary benefit to this head of the agency, or whatever organization it is, it would appear that there could be some impropriety, or a possible case of impropriety.

However, at the same time, if a scientist or a technologist was invited to the same meeting to present a scholarly paper on the state of the art of the research in such and such an area, and the sponsors covered this cost or actually reimbursed the agency for the costs, I'd venture to say there is no argument it's not a conflict of interest. It is our responsibility to get these measurement standards and technical information out to the public, including both the regulator and the regulated.

I think that addresses one of the questions that you had as far as, shall we say, the computer programmer. I don't believe that anybody above the agency level can really say whether that computer programmer or that scientist or that contract officer has to submit a financial disclosure. I think we have to put the responsibility at the level of the agency head and for his or her lieutenants to enforce this. We feel this is a much more uniform and fair system. We feel it would get the job done.

However, we also recognize that there has to be a lot more publicity, for lack of a better word. We have to get the word out on this. I am not naive enough to say that every Federal employee above GS-13 or 14 or 15, whatever the case may be, is even aware of this.

Likewise, I mentioned the computer programmer, be it GS-7 or be it GS-16, I don't have a good feel—and I am speaking for the Association—as to what the appropriate GS level is.

For instance, we could have a case where an individual has influence in setting the standards for government procurement of paper. Now, if said individual had stock in paper companies, I'd venture to say there sure is a possibility of a possible conflict of interest. But this individual could be a GS-7, could be a GS-9, could be a GS-15. The

only person who is going to know that is the agency head or, as I said before, his or her lieutenants.

And I know I am not solving your problem. I am just adding a few more data points on the parameters.

I would like to repeat one thing that I have in the testimony. We feel that it is very important to point out that ethics is indeed a day-to-day responsibility, and the best people to enforce this are those managers who are closest to the activities of the Federal employees.

A possible step in determining where the executive branch stands as far as the career Federal employees are concerned is for the Civil Service Commission or some other organization to check with the individual departments and agencies to see how they are implementing the requirements under the aforementioned Executive order. I would hope that this would not be a cumbersome review process. I would venture to say it should be fairly simple.

At the conclusion of this submission of information, we certainly would understand where we stand as far as the executive branch is concerned, as to what is applicable to career employees. At that time we would hope that using the Executive order or advice or a law from Congress, we could expand this to cover the many points that are being brought out before your subcommittee in one way or another, through hearings or through submissions.

In regard to the bill itself, one point we are concerned about is the custodian of the financial disclosures. We feel that as the bill is written right now, this certainly puts the individual whose financial disclosure is going to be released to the public in a very awkward position. He or she does not seem to have the opportunity to challenge the right of the requester, and we would hope that if something like this was enacted, the rights of our employees would be observed.

I mentioned earlier about the dollar level. We are probably as unclear about what is significant as the subcommittee and other people who have testified here have shown.

We endorse the concept, as I said earlier. We feel that those of us who are career employees—unlike Mr. Geller, I feel I am speaking for the higher-level Federal employees, we are honored to serve, and we accept this responsibility.

At the same time, along with this, the Federal Professional Association naturally would be pleased to work with all of you involved to help accomplish what we are all trying to strive for in this area.

I would like to address, if I may, Mrs. Schroeder, two points Mr. Caplin brought up, and I believe Mr. Geller addressed one of them partially. This is the area of gifts, the \$50 level, or the x dollar level. I will have to give you some examples that happened to me personally, and it might get my point across.

There are times when we are invited to address, say, a local civic group, either at noon time or after hours, and we will make profound statements on our research or on this and that, and it is generally an enjoyable time because we are transmitting information to interested public citizens.

As a result of this time that we spent, normally the individual will get a scroll, "To Ronald B. Johnson, in recognition of his talk

before such and such a civic group." At the same time, we may get lunch or dinner. I am not trying to be flippant, but I am sure you have been through some of these dinners and lunches at civic organizations. I don't know whether you consider that as a benefit or not.

What I am trying to say is I do believe it is very hard to just say, "OK, \$5." "\$10," or other levels.

I think something like scrolls, ashtrays, what have you—they recognize your personal input to the interest of the civic organization or the university, and certainly feed your ego, which you need at times, and I do believe something like this is a proper thing to receive. It is personal; it has virtually no monetary value outside of your own immediate family.

In regard to outside employment, I would like to expand what Mr. Caplin spoke about, particularly in regard to teaching at local universities. This is normally done, to the best of my knowledge, or to the best of our knowledge within the professional association, after hours or on weekends, and we consider this to be part of our obligation to the next generation, or part of our obligation to academia. We came from academia, and this is part of our requirement to get things back into it. We don't feel this is a conflict of interest.

Naturally there should be prior approval. I can speak for my own organization, though I am not representing it today in an official capacity. This is what we require—written approval as far as the topics and what have you, so there is no possibility of conflict of interest, or we hope there is not. We make the determination. We feel we are in the best position.

To have somebody above that, with all due respect, I think would put you in a very awkward position to decide whether such a talk or such and such a course is in the public interest or not.

I believe that concludes my off-the-cuff remarks, and we certainly have appreciated the opportunity to appear before you, and we are, as I said before, more than willing and dedicated to provide you and your subcommittee any assistance in this matter.

Mr. SCHROEDER. We appreciate all you do. Maybe we should get the FDA to try some of those dinners on Canadian rats, and maybe that will solve the problem.

Mr. JOHNSON. I will bring it before our committee.

[Laughter.]

Mrs. SCHROEDER. Let me do this kind of backward. I will hit one of the things you mentioned last, the teaching and outside income.

I know when I was an employee at the NLRB—I was a lawyer in the regional office—one of the things that distressed me was that they would allow some of my fellow attorneys and investigators to teach labor relations at night. I also had problems like that, teaching at night how to avoid the NLRA and by day enforcing it. [Laughter.]

Mr. JOHNSON. I think they call that aid and assistance to the enemy.

Mrs. SCHROEDER. Yes. That was one of the real problems I had. We had a prior sign-off by the agency. The regional director's opinion was: "Of course, they are teaching in this area. This is the area we all know about."

Mr. JOHNSON. I certainly appreciate your remark. There is a lot to be done along this line. For myself, I can only speak parochially from

a scientific research viewpoint, where I guess, at times, we feel quite honored if any students sign up for our classes.

But seriously, I think there have been many examples that are not as dramatic as that. But I concur that is a pretty valid observation.

Mrs. SCHROEDER. I think that is something we might want to think of. What is the grade level that you represent?

Mr. JOHNSON. I would have to think probably the average is close to a 15.

Mrs. SCHROEDER. So you have the top level and it cuts across all the agencies.

Mr. JOHNSON. Yes; it does, in all parts of the Nation.

Mrs. SCHROEDER. What you are saying about the agency head making those determinations as to who would be in conflict and who would not—is a very valid point. But, one of the objections of your fellow or your sister union or group was that agency heads might run vendettas against some of the employees if they were given that free rein.

Would you favor grievance systems so when one GS-7 is singled out and it's said, "You have a conflict nobody else does"—would you think that would be a good way, or what would be your idea of a way to assure that was not misused?

Mr. JOHNSON. Yes, I would. I would favor that the same as I favor the current procedures we have under the grievance system. I believe it is just as important that we have the rights of the employee observed as it is to make sure that these regulations be observed.

Mrs. SCHROEDER. Your comments about the civil service policing on this, I think, would be very good except for the marks that the General Accounting Office gave to the Civil Service Commission on their current policing of it.

Mr. JOHNSON. Yes, and in my testimony or remarks I made reference to another organization, if necessary. I don't want to get in the position that the FPA is taking on the Civil Service Commission or anything, but I understand that, too.

Mrs. SCHROEDER. The biggest problem we have discovered in these hearings was that the first thing that happened when the Executive order came out was the Civil Service Commission interpreted it to say they didn't have any enforcement authority. So they interpreted the executive branch's ruling to be they didn't have to do anything, but they never asked the executive branch, No, 1, if their interpretation was correct or, No, 2, if they did have enforcement authority, which I think made this Commission a bit leery about what their commitment was. There may be a whole new day dawning in that respect.

Mr. JOHNSON. I would like to address this. We do have the mechanism established now, and I don't think we should seriously consider setting up another mechanism until we investigate what we have right now. And if any Federal agency is not doing a job correctly, I think it is up to us within the Federal Government, as a career employee, and yourselves, and all other branches of the Government, to look at this and find out what is wrong. And if they are not doing it, then I suggest that corrective action could be taken.

Mrs. SCHROEDER. What is your feeling about the revolving door problem? Now, if you are representing scientists, that is a real problem.

Mr. JOHNSON. That is right. We have heard the dramatic cases, the ones that are somewhat obvious to you. And what is bothering me is what is at the other extreme?

For instance, say a technologist is working in such and such an agency, and he or she may have had some contracts with the University of Maryland, and then at the individual's retirement or if he decides to leave the Federal Government, he or she goes to the University of Maryland and gets a full professorship.

Well, some people could say that is on the basis that they bought this professorship through contracts.

I am putting in something that is close to our heart that we have to be aware of, and I'm sorry I don't have any answer. I am not aware of any actual cases. I am stressing I am not aware of any of them.

Mrs. SCHROEDER. I think the classic case came down several years ago. There was the moon suit case of 10 years ago when the guy was working intensely on designing a moon suit and became a latex engineer of the first order and had really pushed himself into a corner. There was only one person on the outside making the moon suit.

I think with attorneys, and so on, it may be easier to deal with the problem with someone who isn't a latex engineer.

Mr. JOHNSON. There is also a requirement that if, say, an engineer, scientists, or technologist, develops a new system for analysis or measurement, maybe a new equipment configuration, and it goes to the Patent Office, the patent is open to the public. And I have personally seen this happen. And as soon as it hits the public, three or four companies will jump in and pick it up.

Mrs. SCHROEDER. So the question is, who owns it?

Mr. JOHNSON. Yes.

Mrs. SCHROEDER. It is almost the proprietary right, which Coca-Cola has fought for years.

Mr. JOHNSON. I am sure there are cases where there is just one individual and just one company where they have a match. And I'd hate to be the agency official that had to tell the individual yes or no. I think it is so interlocking it bothers me.

Mrs. SCHROEDER. Did you have a comment?

Mr. DELAPLANE. I just wanted to bring up the case of organizations such as the National Science Foundation, who could not operate otherwise, by people coming directly from the universities for a specific term and running immediately to their universities.

Mr. JOHNSON. I think that is a good point, crossfertilization.

Mr. DELAPLANE. Quite obviously, someone who comes to the National Science Foundation for a period of 2 to 4 years may direct some grants back to his university. And this is a thorny problem.

Mr. JOHNSON. I think it's the point we have been talking about.

Mrs. SCHROEDER. That is the point where we are. It is very difficult.

Mr. DELAPLANE. I think there is a trade-off there somewhere, and universities acknowledge this type of gain, if you will.

Mrs. SCHROEDER. I flew back from my area with a gentleman from Martin-Marietta who was screaming about Jack Anderson's column about Martin and the Defense Department.

Mr. DELAPLANE. The question is how do you regulate that, because there is a point at which conduct would become unprofessional.

Mrs. SCHROEDER. We can set some general guidelines, though, and we can set a tone. What we want to be sure of is that in doing that we don't harm the specific scientific areas.

In other words, for an attorney, I don't think it's all that difficult because attorneys are not really into one pigeon hole and can't possibly serve anyone except someone whose returns they have been reviewed over in the IRS. They can get jobs doing other things, obviously.

I would appreciate, since you are the group that kind of represents a broad spectrum of that, if you might look at that and get some feedback from your members on that to help us if we try to do some general guidelines as to what is too much and what is too little and what is going too far.

We clearly do not want to do any kind of a generic prohibition, I don't think, saying if you are a lawyer you can't be a lawyer for 2 years after you leave the Government, or if you are a scientist you can't be a scientist. That is ridiculous.

The only thing we are concerned about is the appearance of impropriety. Maybe what you do is say that the person from the University of Maryland doesn't deal with their grants, that he is to disqualify himself. Maybe that's all.

Or maybe you say to the person from Martin-Marietta, the Department of Defense doesn't deal with Martin-Marietta.

We would really appreciate some guidelines because we don't want to go running off with all this great fervor for reform and find we have put everybody in a box. I think we all know what it is we are trying to get to. It is just how to get there without putting ourselves in that box.

If you could think about that and offer some ideas, we would really appreciate it.

Mr. JOHNSON. Surely.

Mrs. SCHROEDER. Does Counsel have any questions?

Mr. KNULL. Just one. You are saying that the agency heads should be the ones to decide whether or not there is a conflict in existence, and then offer the advice to the employees that ask for it. Would you have a separate ethics counselor under the agency head?

Mr. JOHNSON. I think somewhat similar to the EEO laws that we have, the EEO structure.

Mr. KNULL. So you'd have somebody to bounce everything off of, and somebody who'd make the final determinations on the questions.

Mr. JOHNSON. I think you'd have to. I think there has to be a central source, an expert in this field.

Mr. DELAPLANE. We also feel the agency must submit an action plan that would implement the policies and guidelines that would be spelled out by the legislation.

Mrs. SCHROEDER. Thank you very much. I want to thank everyone as we close this preliminary overview.

The subcommittee will be more than willing to receive suggestions as we try to deal with the legislation. I think it is clear something will be happening in this area, and that is why we want as much input as possible.

Thank you for your participation.

The hearing is adjourned.
 [Whereupon, at 10:50 a.m., the hearing was adjourned.]
 [The following statements and letters were received by the subcommittee for inclusion in the record:]

STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN
 FEDERATION OF GOVERNMENT EMPLOYEES

The American Federation of Government Employees, AFL-CIO, representing over 725,000 Federal employees in exclusive representation units, has a profound interest in ethical Federal service. In fact, the entire concept of a competitive classified career civil service is based on the principle that it must be ethical and that the public has a right to know who is recruited, what standards apply, and that there is no conflict of interest.

The provisions for the safeguards of a continuing career exist primarily to permit the Federal employee to regard the Federal service as a "calling." In this sense, the career standards are similar to the standards in the classic, traditional professions, such as clergy, doctors, lawyers, teachers, all of whom have tenure to be sure that they could devote themselves to their "calling" without temptation of improper emolument or fear of reprisal.

I do not intend to dwell on the decline in the sense of "calling" which is bemoaned and decried today. I hope instead that my testimony can be constructive and useful to you in restoring that sense of "calling" to Federal career employees.

Public employment is a public trust. To discharge that public trust, public officials should be willing to disclose all those matters which have, or may appear to have, an adverse bearing on the discharge of their functions. Certainly one of those more important functions today is to retain the confidence of the public in the integrity of public officials. A sure way is to permit the public access to all the facts about public office and the persons who hold them.

H.R. 3829, introduced by Representative Schroeder, is intended to provide the procedures through which the public's confidence in Federal employees will increase. We endorse the purposes of that Bill and commend Representative Schroeder for the detail incorporated in it to assure that conflict of interest, including the appearance of conflict of interest, is removed from public office at those levels where important functions of trust are discharged, particularly decisions leading to disbursements of Federal funds.

In endorsing this Bill, we wish to note that it should be brought as far as possible into conformance with the strict code of ethics which the House has just passed for its members. We do not yet know the outcome of the Senate's deliberations regarding its own membership. However, we believe that the best features of both of these actions should be reviewed and, should they appear relevant, incorporated during Committee markup in H.R. 3829.

THE CAREER SERVICE AND PRIVATE EMPLOYMENT

There is one matter which we believe has not had the attention which we believe it deserves. That is the fact that, in some sectors of our population, government employment is no longer looked upon as a public service; instead, for many of these persons; it is a stepping stone to higher compensation in private enterprise positions where the knowledge gained in prior Federal employment is used for private gain.

To correct this situation, the concept of "career" needs to be expanded, to assure that those persons who do not regard Federal service as a career or "calling" are no longer able to exploit short term service in the Federal government.

I am alluding, of course, to the situation which today has been popularly called the "revolving door" process. Here the potential for conflict of interest is greatest. Those persons who really desire future employment with regulated clients, or with private enterprises seeking profitable contracts from the Federal government, really are not disposed to accept psychologically the limitations and the obligations exercised by genuine career employees. In this situation the Federal government must seek to ensure that the public interest as a whole is not damaged by those who would attempt to profit from employment of former Federal employees.

Although some may argue that this problem could be solved by authorizing and appropriating more funds to Federal Departments and Agencies which monitor compliance with Federal regulations, experience is that major improvements are not likely to occur here, particularly with present budget deficits. The best hope for prevention of these "conflict-of-interest" situations lies in enactment of mandatory reporting requirements for the regulated enterprises themselves. We therefore recommend the inclusion of language in this Bill to create a rigorous system of disclosure and strict enforcement of time intervals which must be observed by companies who seek to benefit from the "revolving door". Although there is some disagreement as to the length of time the "barrier to employment" should apply, generally there is a consensus that, to maintain public confidence, it should not be less than two years, both prior and subsequent to Federal employment, although in some cases it might require at least three years of separation between Federal and private employment in the same or related field.

I wish to emphasize that the decline in public confidence in the Federal government has been aggravated by the past appearance of conflict of interest. Certainly, where there has been no conflict in the past and where none will exist in the future, there will be no harm to anyone in such a provision as I have suggested. And in those cases where in the future someone might be tempted to exploit Federal service for private ends, the statute would make that punishable. Thus, a genuine public service would have been performed for the Federal government by such a provision.

THE ETHICS COMMISSION

The Bill creates a Commission on Ethics and Financial Disclosure as an independent body. We are, of course, concerned with the proliferation of independent Commissions, particularly if they are not properly staffed and funded. Consequently, our preference would have been to vest the powers of this Commission on Ethics and Financial Disclosures in an existing effective body.

Normally, it would have appeared to us that such a body should be the Civil Service Commission which already has the authority and the obligation to assure compliance with the civil service laws. We appreciate that the Civil Service Commission has been diminished in power and function since the establishment of the Office of Management and Budget under Reorganization Plan Number 2 of 1970. This Plan, which we opposed and which the House Government Operations Committee also opposed, unfortunately was not rejected by either House in 1970 and has resulted in many serious abuses of the Federal civil service.

Even so, there are prospects for a revitalized Civil Service Commission. For example, in the past Congress, the House Post Office and Civil Service Committee conducted hearings on necessary improvements in the authority, role, and integrity of the Civil Service Commission. Our organization testified to the effect that the membership of that Commission should be expanded to five, two of whose members would devote their energies to assuring the proper observance of the Federal personnel laws in a grievance procedure terminating in hearings in which they would participate. We asked for proper staff to initiate investigations and to compel the attendance of witnesses.

We note that the Commission on Ethics and Financial Disclosure proposed in H.R. 3829 does not have any enforcement powers. Instead it must rely upon the Attorney General to institute legal action. We believe past experience suggests that this might be a mistake. To create a regulatory body without enforcement power seriously prejudices the ability of that body to maintain its own priorities.

For this reason, we urge that the Commission have enforcement powers and we recommend to your consideration the possibility of integrating it with the Civil Service Commission.

If an independent Commission were to be established, we would hope that partisan political considerations could be as far removed as possible from the conduct of its affairs. For this reason we recommend that the support staff, to the extent practicable, be brought into the competitive career service. We need not remind this Committee that in the dark days of the Watergate the loyalty and integrity of the civil service prevented even greater catastrophe from befalling the nation.

THE RIGHT TO PRIVACY

In conclusion, we would like to turn our attention to the single outstanding issue which must be explored; the right to privacy on the part of those Federal employees who must in the future, under the provisions of H.R. 3829, be required to file financial disclosure statements. While there seems to be general agreement that the existing system of reporting, based on Executive Order and agency regulations, is inadequate, there is still controversy over whether disclosure statements should be publicly available, and if so, what financial data should be disclosed.

For example, the Public Interest Research Group, in testimony before your Subcommittee, opposed the access provisions contained in this Bill on the grounds that their implementation would create complexity and litigation. They proposed full access to these records as a more workable alternative.

While we can understand their concern over openness in government, we would like to associate ourselves with the remarks of Clifford I. Gould, Deputy Director, United States General Accounting Office, who stated before your Subcommittee that:

"While the House of Representatives has decided to have public disclosure of financial interests of its members, we believe that as legislation is considered for the three branches of Government, the Congress should continue to balance conflict-of-interest and public disclosure concerns with the rights of individuals to privacy. This is a difficult task, requiring tradeoffs between equally meritorious goals. Achieving this balance will require (a) careful judgements as to which individuals should be required to disclose resources; (b) limitation of routine disclosure to those with a "need-to-know"; (c) disclosure requirements structured to preclude the use of financial disclosure reports as shopping lists by criminals."

The disclosure provisions in this legislation contain essential safeguards to protect the genuine concerns of Federal employees, and for this reason, we endorse them wholeheartedly. If the Government is to continue to attract and retain the quality of personnel needed to staff upper levels of public administration, it must seek not only to reduce the opportunity for conflict-of-interest, but also to protect employees from unwarranted invasions of privacy.

STATEMENT OF VINCENT L. CONNERY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

I am Vincent L. Connery, President of the National Treasury Employees Union. Our union is the exclusive representative of nearly 95,000 employees in the U.S. Treasury Department and Federal Energy Administration, including the Internal Revenue Service, Customs Service, and the Bureau of Alcohol, Tobacco, and Firearms.

The post-Watergate era has spawned numerous pieces of legislation designed to foster openness in government and to protect the public from abuse. Government in the Sunshine, the recently passed Congressional codes of ethics, the Privacy Act, and the Freedom of Information Act are but a few examples.

Undoubtedly, this same spirit of reform prompted the introduction of H.R. 3829, the Federal Ethics and Financial Disclosure Act. This bill purports the public from conflicts of interest by establishing a strict code of behavior and stringent financial disclosure requirements for Federal executives and employees at or above the GS-16 level or whomever the agency head deems necessary.

We believe, however, that the "reform" outlined in H.R. 3829 is misdirected. Moreover, we are appalled that at a time when Congress has reinforced the rights of private citizens to protect the privacy of their personal finances, credit references, and even their Social Security numbers, this Subcommittee would seriously consider legislation which would implement sweeping disclosure requirements for thousands of Americans merely because their employer happens to be the Federal government.

The extent of disclosure required under H.R. 3829, as drafted, is much greater than currently exists under Executive Order 11222. The bill would delve into every aspect of an individual's personal finances, including such items as real estate, personal property, and other areas of an essentially private nature.

Furthermore, H.R. 3829 would force the families of Federal executives and employees to also file disclosure statements, even when they do not work for the Federal government. Under this legislation, the spouse, son, or daughter of a Federal employee, would have to bare their personal finances for no other reason than the head of the household happens to work for the Treasury Department or the Defense Department. In this, the bill is not only discriminatory, it strips these individuals of their essential right to privacy without any showing that this is necessary to protect other American citizens from governmental abuse.

Our strongest objection to the bill, however, is that H.R. 3829 provides for public access to these financial statements, whereas under the current system, these records are kept strictly confidential. To us, this is a totally unnecessary and unfair intrusion into the privacy of those who enter government service, on either an appointed or career basis.

No matter what safeguards the bill contains to limit the availability of this information to the public, there would remain the strong possibility that an unscrupulous person could obtain the financial statements and use them for malicious purposes. Viewed in this light, the provision on disclosure makes little sense and could hamper the effectiveness of a great many Federal employees.

For example, an Internal Revenue Service employee seeking to enforce the law against a recalcitrant taxpayer could be severely harassed by that taxpayer who, in seeking to avoid his responsibilities, might threaten to make public the IRS employee's personal financial statement. Such a situation can lead to timidity on the part of the IRS employee who doesn't want his or her commercial credit rating or personal assets to become public knowledge.

Clearly, financial disclosure and the public availability of these statements do not constitute a panacea to correct the problems posed by alleged conflicts of interest. Indeed, applied in a broad, ill-conceived manner, as we believe it is in H.R. 3829, disclosure can lead to more abuses than it seeks to correct. Even worse, to force these rigid disclosure requirements on Federal employees when the rights of private citizens have so recently been strengthened and protected is insulting to them. It matters not whether these requirements are applied to supergrade or rank and file Federal employees, the principle is the same: An individual's privacy is a very basic and cherished right, one that should not be so carelessly cast aside.

In a recent article in the Washington Post, Alan Morrison, director of litigation for Ralph Nader's Public Citizen group, also expressed this viewpoint. As a spokesman for an organization that has vocally sought more openness in government, Morrison made the following statements concerning the recent financial disclosure reports filed by President Carter's cabinet members:

"The disclosures that were made amount to the equivalent of the income side of the tax return of these appointees and their spouses, and yet the privacy we so zealously guard for every American's tax returns was brushed aside for little reason for these top officials. Moreover, the evasion extends beyond the appointees since these disclosures will also reveal a great deal about the incomes of their partners, co-directors, colleagues, and associates. If there is any public interest in making such information generally available, then the disclosure rules ought to apply to everyone in certain kinds of positions and not operate as a private penalty for those entering government service. And if the administration continues to insist upon a public display of the income of every appointee, there will be increasing numbers who will decline to serve in order to preserve their privacy."

We concur with Mr. Morrison's observation and believe that they are even more valid when applied to the career service. It was basically these same concerns that led the 94th Congress to reject a financial disclosure requirement that was much less sweeping than the provisions of H.R. 3829.

Last year, during Senate consideration of the Federal Election Campaign Act, Senator James Allen (D-Ala.) added an amendment to the legislation, requiring every Federal employee earning \$25,000 or more per year to file a financial disclosure statement. Our union strongly opposed the Allen amendment, which was later deleted in Conference Committee. This action was taken because the Conferees realized and understood the problems and inherent inequity of requiring thousands of Federal employees to submit to this invasion of privacy.

Another provision of the bill that will unfairly penalize Federal employees is Section 105 which states, "An employee shall not engage in any conduct nor associate with any person in such a manner as to present to the public an appearance of impropriety."

We have had much experience with a similar provision in the IRS Rules of Conduct and have found that the rule is vague, confusing, and open to widespread abuse. For example, how does one define the "appearance of impropriety?" How is the "public" defined and who will determine what they view as improper? Individual citizens? The Press? IRS management? The bill is silent on these and numerous other complex questions posed by Section 105.

But a far greater danger is the very real possibility of capricious enforcement of this provision. After all, it was on the basis of such "appearances" that the witch hunts of the McCarthy era gained impetus, and that the careers of dedicated Federal employees were ruined and reputations destroyed. We do not need the groundwork set for another such unpleasant chapter in the history of the Federal government.

Let me emphasize that such a possibility is by no means remote. During the late 1960's the Inspection Service, that branch of the Internal Revenue Service charged with enforcing the Rules of Conduct, used a similar provision in the Rules to launch an extensive investigation of employees in the Newark District Office. Employees of Italian heritage were summarily called in and grilled concerning any ties with organized crime figures in the area.

It mattered not to Inspection that the only link many had to these figures was that they had attended the same school or were distantly related. Employees with good performance records and previously unsullied reputations were victimized and their job security was threatened by this odious and discriminatory campaign. Some were even dismissed from their jobs.

Based upon this experience, and others of a similar nature, we believe that any such provision not only raises serious constitutional questions, but demonstrates a complete disregard for the rights and well being of Federal employees. It is bad enough that such a regulation now exists in the IRS Rules of Conduct; it is unthinkable that it could ever be written into law.

In conclusion, NTEU opposes H.R. 3829. The bill is poorly drafted, overly broad, and ambiguous. But worst of all, H.R. 3829 ignores the fundamental right of Federal employees to the privacy and confidentiality that are guaranteed to other American citizens.

We are hopeful that the Subcommittee in its consideration of H.R. 3829 will resist any temptation toward overzealous or political expediency. The requirement of disclosure should be utilized wisely so that the system can help Federal employees and officials function better, not victimize them.

FEDERAL EXECUTIVES LEAGUE

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March 31, 1977

The Honorable Patricia Schroeder
Chairwoman, Subcommittee on Manpower
Committee on Post Office and Civil Service
603 House Office Bldg., Annex #1
Washington, D.C. 20515

Dear Chairwoman Schroeder,

Your invitation to the Federal Executives League for comments on H.R. 3829, the Federal Ethics and Financial Disclosure Act of 1977, is greatly appreciated. The League was established in 1974 as a non-profit corporation in the District of Columbia to promote better government by enhancing the Federal career service, particularly, its executive corps. A copy of the League's objectives as contained in its constitution is attached for your information. The League's membership comprises active and retired Federal career executives in Grades GS 15 and above.

These comments represent the views of the League's Board of Directors since there was insufficient time to solicit the views of the entire membership. I am confident, however, that the membership would concur in this statement.

Our comments are concerned with the proposed bill only as it affects career executives as distinguished from other Federal employees made subject to its provisions, i.e., the President, Vice President, Members of Congress, etc. This distinction is important since we believe there is a relationship between the way by which employees enter the Federal Service and the appropriate degree of public disclosure. This difference will become apparent later in this statement.

As we understand H.R. 3829, it would proscribe certain acts by Federal officials, as defined therein, which can be described generally as conflicts of interests and improprieties. It would also require such officials to file annual reports disclosing certain of their finances with a newly established Commission on Ethics and Financial Disclosure and, with certain exceptions, with agency heads. Falsifying or failing to file the required information would subject the offender to fine and/or imprisonment.

The seven-member Commission would be empowered to investigate and report apparent violations of the Act upon complaint or its own motion but would have no enforcement powers. Enforcement would be vested with the Attorney General. The Commission would also be required upon written request to render and make public advisory opinions with respect to whether any specific transaction or activity would be violative of the Act.

Custody of the financial disclosure reports would be vested with the Commission and the respective officials with whom the reports are filed. With due respect for the right of privacy of persons required to file reports, such officials are authorized to release the reports under the following conditions:

1. Written request showing name and address of requestor as well as the organization or person on whose behalf the request is made.
2. The reason, purpose, intended use and the basis for belief that the report contains information indicating a conflict or potential conflict of interest.
3. Notification to person whose report is being made available at the time the report is released.
4. Within 15 days of the request.

Denials of requests would be accompanied by statements of the reason, including findings made, that no conflicts or potential conflicts of interest appear in the report. It would be unlawful for any person to obtain or inspect copies of reports for any unlawful purpose, for any commercial purpose, to determine or establish credit ratings, to compile mailing lists, or to use directly or indirectly for the solicitation of money for any political, charitable or other purpose. A civil penalty not to exceed \$1,000 may be imposed against any person who inspects or obtains reports for the prohibited purposes.

The League strongly endorses the establishment and enforcement of high standards of ethics and moral conduct for all public officials, including career Federal executives whether imposed by statute, executive order or otherwise. We have no objection to disclosure of finances and other information to agency heads for the purpose of administering conflict of interest rules and regulations. We strenuously object, however, to public disclosure of finances and other information unless there has been a finding that a conflict or an apparent conflict of interest exists and the affected employee has been informed beforehand and has had an effective opportunity to respond to allegations of wrongdoing. Unlike elected or non-career appointed officials whose tenure is dependent upon the respective voting constituencies or appointing authorities, career executives are appointed by agency heads, or their delegates, subject to the merit system statutes, rules and regulations. Career executives are responsible to their agency heads for their performance and conduct and agency heads are responsible for assuring that employees under their supervision do not violate prescribed standards of conduct. We do not believe agency heads' responsibilities should be shifted impliedly or otherwise to persons or interests outside the Federal government. H.R.3829, as it applies to career executives, in this respect is defective because it:

1. Requires that financial disclosure reports be filed with both the agency heads and the proposed Commission, thus providing public access to them from two sources with no provision for required coordination.
2. Makes no provision for notice to employees respecting requests to their financial disclosure reports nor opportunity to be heard on allegations of conflicts or potential conflicts of interest prior to release of the reports.
3. Imposes no positive requirement for a finding of a conflict or potential conflict of interest upon the custodian prior to release of the reports.
4. Splits and diminishes agency heads' authority and responsibilities in respect to conflict of interest matters for employees under their supervision.

The provisions of H.R.3829 seem to imply that the threat of public disclosure would better assure avoidance of conflicts of interests by, in our case, career executives. The League is not aware of any public crisis relative to conflicts of interest and improprieties by career executives. On the contrary, the most notorious instances reported in the press concern other categories of public officials. A recent report on a study conducted by the General Accounting Office, however, noted a series of apparent violations in a number of Federal agencies but attributed the cause to the failure of the agencies to establish and enforce conflict of interest standards. In our view, therefore, the solution to whatever problems may exist as applied to career executives seems to lie more in the direction of compelling agency heads to fulfill their obligations and to insist upon more effective and vigorous oversight of agency head performance by the Administration, Civil Service Commission and the Congress. We see no need to create a new Commission whose primary function is to do for the most part what the law and regulations now require of agency heads. As a practical matter, it is doubtful whether the new Commission could evaluate, make determinations and render advice concerning conflicts and potential conflicts of interest, as well as agency heads who have far more detailed knowledge of their agencies' work and the implications of specific transactions and activities of their employees.

In general, the League believes that existing statutes, executive orders and rules and regulations thereunder pertaining to ethical conduct and conflicts of interest applicable to career executives, if properly administered, are adequate to assure the maintenance of a high degree of honesty, integrity, impartiality and high moral conduct in the performance of public business. Executive Order No. 11222, May 8, 1965 and Civil Service Regulations, 5CFR735, set forth Federal employees' responsibilities and standards of conduct and the duties of agency heads in respect thereto. We respectfully request that these provisions be made part of the record in these deliberations. There

are, in addition, numerous statutes guiding employees' conduct which are required to be specifically called to employees' attention by agency rule, including a Code of Ethics for Government Service, House Concurrent Resolution 175, 85th Congress, 2nd Session. (See, for example, 5CFR 1001 applicable to the Civil Service Commission). These too, should be incorporated into this record.

It is not necessary here to review the present system as embodied in these statutes, rules and regulations, but it may be useful to point out several aspects which in our view are superior to the provisions of H.R.3829.

Agency head responsibilities

Agency heads are required to issue regulations governing ethical and other conduct consistent with E.O.11222 and applicable regulation, subject to Civil Service Commission approval. They are authorized to prescribe additional standards appropriate to the particular functions and activities of their respective agencies. Agency heads are also required to establish a system of review of statements of employment and financial interest for the purpose of disclosing conflicts or apparent conflicts of interest and to take appropriate steps to end conflicts of interest and impose disciplinary or other remedial action. Employees are provided an opportunity to explain conflicts or apparent conflicts of interest.

Privacy

Agencies are required to hold each statement of employment and financial interests in confidence and may not disclose such information except as the Civil Service Commission or the agency head may determine for good cause shown.

Applicability

Current regulations require statements of employment and financial interest from employees at GS-13 and above who are in a position likely to have an economic impact on any non-Federal enterprise. The statements may also be required of employees in lower grades if specifically justified by the agency head.

As indicated earlier, the League believes that the present system for maintenance of high standards of career executive conduct in performance of public business is basically sound. We would have no objection to raising such standards if the Congress deems that necessary to strengthen the citizens' confidence in their Government, provided the right of privacy of employees who faithfully perform their duties in accordance with the standards is protected as at present. The problems, if any as applied to career executives, appear to result from the failure of agency heads properly to administer the system.

H.R.3829 does not address these failures and, indeed, tends to shift some responsibility away from agency heads who are and should be entrusted with the supervisory duty of maintaining high standards of conduct for their employees. A better approach in our view would be to enact legislation which would confirm or raise ethical standards as embodied in the Concurrent Resolution, statutorily adopt the basic provisions of E.O.11222 and impose requirements on the President, agency heads, Civil Service Commission and employees to assure that standards are maintained.

Please let us know if we can be of further assistance in this matter.

Sincerely,

Robert G. Rhodes
Robert G. Rhodes
President

Enc.



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April 4, 1977

To: House Employee Ethics & Utilization Subcommittee
 Attn: Patricia Schroeder, Chairwoman

From: American Law Division

Subject: Constitutional Issues Which May Arise in H.R. 3829, The Federal
 Ethics and Financial Disclosure Act of 1977

This is in response to your request for an analysis of the constitutional issues which may arise concerning the Federal Ethics and Financial Disclosure Act of 1977, H.R. 3829. As a partial response to your request, an American Law Division report discussing the policy and constitutional issues concerning personal financial disclosure by public officials, entitled "Personal Financial Disclosure by Federal Officials: Pro-Con Analysis and Discussion of Legal Issues," February 9, 1977, was forwarded to your office on March 16, 1977.

Standards of Conduct - Questions of Vagueness

Title I of the proposal establishes certain standards of ethical conduct for officers and employees of the Federal Government. The initial constitutional issue which arises concerning these provisions of Title I is that of vagueness. Section 303 of the Bill notes that apparent violations of Title I provisions may be referred by the proposed Ethics Commission, after investigation and hearings, to the Attorney General for appropriate action. It is assumed therefore, that some sort of criminal penalty is intended to attach for violations of these Title I standards of conduct. Particularly with regard to statutes which have criminal penalties, certain requirements of specificity must be met to satisfy constitutional standards.

Even if statutes provide only civil penalties, particularly if loss of Federal employment may be involved, the issue of vagueness will still arise (see, for example, Arnett v. Kennedy, 416 U.S. 134 [1973]).

It has been held by the Supreme Court that basic notions of due process, guaranteed under the Fifth Amendment to the Constitution, require that statutes which have criminal penalties for certain conduct define that conduct with sufficient precision to give fair warning to actors that a contemplated activity is criminal. Lanzetta v. New Jersey, 306 U.S. 451 (1939); Connally v. General Construction Company, 269 U.S. 385 (1926). The terms used in the proposal, therefore, should be drawn with sufficient definiteness "to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute." United States v. Harriss, 347 U.S. 612, 617 (1954).

The Constitution does not require "impossible standards of specificity," Jordon v. DeGeorge, 341 U.S. 223, 231, and every aspect of prohibited conduct, as opposed to that conduct which is permitted, need not be detailed within the statute to meet this constitutional standard. As stated by the Supreme Court in the case of United States v. Petrillo, 332 U.S. 1 (1947):

That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense. 332 U.S. at 7.

The Federal Courts have found, however, that a criminal statute must provide an "actionable standard of guilt" (See: Bianchi v. United States, 219 F.2d 182 (8th Cir. 1955), cert. den. 349 U.S. 915 (1955)) which "conveys suffi-

ciently definite warning as to the proscribed conduct when measured by common understanding and practices" of those to whom the statute is applicable (Petrillo, *supra* at p. 8), that is, that the statute must "employ[] words or phrases ...well enough known to enable those within their reach to correctly apply them" (Connally, *supra* at p. 391).

When statutory restrictions bear upon First Amendment rights such as the freedom of speech, petition or association, a higher degree of specificity may be required than for statutes not dealing with these fundamental rights. As stated by the Supreme Court in Buckley v. Valeo, 424 U.S. 1, 77 (1976): "Where First Amendment rights are involved, an even 'greater degree of specificity' is required. Smith v. Goguen, 415 U.S. at 573. See Grayned v. City of Rockford, 408 U.S. 104, 109 (1972); Kunz v. New York, 310 U.S. 290 (1951)." Related to the due process vagueness problem, when dealing with First Amendment considerations, is the overbreadth doctrine. Relying on the overbreadth doctrine, the Supreme Court has struck down statutes which impermissibly sweep under their coverage both protected and unprotected speech and conduct. As noted by the Court in NAACP v. Button, 371 U.S. 415, 432-433 (1963): "The objectionable quality of vagueness and overbreath does not depend upon absence of fair notice to a criminally accused or upon unchannelled delegation of legislative powers but on the danger of tolerating, in the area of First Amendment Freedom, the existence of a penal statute susceptible of sweeping and improper application." Thus, the court has recognized that First Amendment rights need "breathing space" and that statutes affecting such rights "must be narrowly drawn" to avoid a chilling of those fundamental First Amendment

rights, Broadrick v. Oklahoma, 413 U.S. 601, 611 (1972).

Summarizing the vagueness and overbreadth issues, the Supreme Court in Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1971), stated:

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.² Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.⁴ A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.⁵ Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms,"⁶ it "operates to inhibit the exercise of [those] freedoms."⁷ Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone" . . . than if the boundaries of the forbidden areas were clearly marked."⁸

Thus, under these constitutional standards, issues may arise concerning the vagueness of the terms employed in Title I of the proposal, particularly as they relate to prohibitions on conduct or associations which "present to the public an appearance of impropriety." Substantial arguments may be made that the measurement of unethical conduct or improper associations within the proposal, that is, that which would "present to the public an appearance of impropriety," is not a sufficiently precise standard which provides adequate guidelines or notice as to what types of conduct

or associations would be prohibited under the law. No specific activities, behavior, conduct, or associations are described within the provision, thus providing an employee no further guidance as to improper conduct beyond one's estimate as to what the "public" would perceive as an "impropriety."

As noted above, there is no specific indication as to what type of conduct or associations come within this provision, that is, does the rule cover only activities or associations with another person on a business or financial level which would present an appearance of an impropriety, or would the provision also reach activities or associations for other than commercial purposes, such as, social, ideological, or personal associations which may present to the public an appearance of "impropriety?" This ambiguity, in addition to the due process questions of vagueness, may arguably cause a chilling effect on the exercise of an employee's protected First Amendment rights of speech, petition, and association since the employee, for fear of being in possible violation of the broad terms of the provision, may refrain from certain outside speech, advocacy or association, particularly when such activities or associations concern a controversial cause or one which is not popular with the general public.

The issue of vagueness may also arguably arise in other portions of the ethics standards in Title I, such as in the prohibition upon performing services which "conflict in any way with the performance of" one's official duties, or in receiving gifts from one who is "involved" in the performance of an employee's official duties. It has been argued, however, that such expressions are concepts with which Government employees are generally familiar, since they are presently under regulations which prohibit "conflicting" or "incom-

patible" outside employment (5 C.F.R. sec. 735.203; E.O. 11222, sec. 202) and which prohibit the receipt of things of value from persons who are regulated or affected by one's agency or one's duties, even when such activity merely creates the appearance of specified improper conduct (E.O. 11222, sec. 201). Thus, it is argued that such terms are "within the understanding" of such employees.

Federal employees are at the present time subject to somewhat similar standards of conduct and restrictions as expressed in Title I by way of regulations and executive order. These existing standards, however, do not provide criminal penalties and thus may arguably require less specificity than a criminal statutory provision. These provisions, in any case, apparently express in greater detail than Title I their proscribed conduct. The ethics standards in Title I are a somewhat generalized statement of the provisions of Executive Order No. 11222, May 8, 1965, 30 F.R. 6469, amended in 1971 by Executive Order No. 11590 to include Postal Service employees, and the Civil Service Regulations promulgated under the authority of E.O. 11222, at 5 C.F.R. part 735. As required by the Civil Service Regulations and as authorized by the Executive Order, each agency of the Federal Government has adopted these ethical provisions as minimum standards of conduct for the agency's employees. Although these provisions do not have criminal penalties, employees may be removed from the Federal service for violations of these standards even when the performance of the activity specifically prohibited merely creates the "appearance of impropriety" (see: Lowery v. Richardson, 390 F. Supp. 356, 359 (1973)).

As to the solicitation of things of value, H.R. 3829 provides at sec. 103 that employees may not receive things in excess of \$50 in value from any person "involved" in the performance of the employee's official duties. The provisions of E.O. 11222 do not have the \$50 exemption, but go into greater detail as to persons from whom gifts or things of value are prohibited, and provide certain exemptions from the prohibition. The provisions of The Executive Order prohibit the receipt of things of value from any person or corporation which has a business or financial relationship with one's agency, is regulated by such agency, or is affected by the performance or non-performance of such person's duties. This Executive Order does not require that a gift, entertainment, or favor received by an employee from an entity regulated or affected by the employee's agency be in return for, or because of, any official act of the employee for a violation to occur. Section 201(c) of E.O. 11222 specifically states that it is the intent of the provision to prohibit any activity in this area, whether or not specifically prohibited by section 201(a), which might result in or create the appearance of specified improper conduct. Thus, the activity of accepting favors, gifts and other things from certain persons, in itself, is the impropriety whether or not it influences the employee, because of the appearance of impartiality and favoritism which is presented to the public and the resulting loss of confidence of the public in the integrity of the Government (see: Lowery v. Richardson, supra at 359). The provisions of the Executive Order pertaining to gifts, entertainment and favors are reproduced below:

SECTION 201. (a) Except in accordance with regulations issued pursuant to subsection (b) of this section, no employee shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from any person, corporation, or group which—

(1) has, or is seeking to obtain, contractual or other business or financial relationships with his agency;

(2) conducts operations or activities which are regulated by his agency; or

(3) has interests which may be substantially affected by the performance or nonperformance of his official duty.

(b) Agency heads are authorized to issue regulations, coordinated and approved by the Civil Service Commission, implementing the provisions of subsection (a) of this section and to provide for such exceptions therein as may be necessary and appropriate in view of the nature of their agency's work and the duties and responsibilities of their employees. For example, it may be appropriate to provide exceptions (1) governing obvious family or personal relationships where the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors—the clearest illustration being the parents, children or spouses of federal employees; (2) permitting acceptance of food and refreshments available in the ordinary course of a luncheon or dinner or other meeting or on inspection tours where an employee may properly be in attendance; or (3) permitting acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans. This section shall be effective upon issuance of such regulations.

(c) It is the intent of this section that employees avoid any action, whether or not specifically prohibited by subsection (a), which might result in, or create the appearance of—

(1) using public office for private gain;

(2) giving preferential treatment to any organization or person;

(3) impeding government efficiency or economy;

(4) losing complete independence or impartiality of action;

(5) making a government decision outside official channels; or

(6) affecting adversely the confidence of the public in the integrity of the Government.

The present non-statutory restrictions on outside employment of Government workers are not specific in the type of employment barred, providing generally that employees may not engage in any outside employment "which might result in a conflict or an apparent conflict, between the interests of the employee and his official government duties and responsibilities" (Executive Order No. 11222, sec. 202). Similarly, restrictions promulgated by the Civil Service Commission under authority of Executive

Order No. 11222, at 5 C.F.R. sec. 735.203, prohibit Federal employees from engaging in outside employment which is "not compatible with the full and proper discharge of" one's Government duties and responsibilities. Examples of "incompatible" activities within the Civil Service regulations include the receipt of fees, compensation, or payments in circumstances which result in or may create the appearance of a conflict of interest; and employment which tends to impair one's mental or physical capacity to perform one's official duties. Although the scope of these activities which may be deemed "in conflict with" or "not compatible with" one's official duties is not precisely defined within the Executive Order or the Civil Service regulations, the regulations of the Civil Service Commission at 5 C.F.R. sec. 735.105 require that agencies shall provide a counselor to be available for advice, counselling, and guidance to employees of the agency on questions of conflict of interest. These standards are of a broad nature and employ terms similar to those in Title I of H.R. 3829. However, more specificity may be necessary in a statutory provision, and the legislature may wish to express what type of employment or services would be considered in "conflict" with one's official duties, defining what a "conflict" would entail (i.e., services or receipt of compensation relating to matters with which one's agency is concerned, or only matters with which the employee's specific duties are concerned, or services for a person or corporation regulated or affected by one's agency, or only for those persons or corporations affected by the employee's specific duties, etc.).

Prohibition on Outside Employment - Property and Contract Rights

The restrictions in Title I of H.R. 3829 further prohibit specified officers and employees of the Government from receiving things of value for the performance of services other than one's official duties. Present restrictions within the United States Code similarly restrict and prohibit the performance of outside services by specified officers of a particular agency, prohibiting such officials from engaging "in any other business, vocation, or employment" other than their Government work (see, for example, 49 U.S.C. sec. 1321(b), Federal Aviation Administration; 47 U.S.C. sec. 154(b), Commissioners of the Federal Communications Commission; 16 U.S.C. sec. 792, Commissioners of the Federal Power Commission, 15 U.S.C. sec. 41, Commissioners of the Federal Trade Commission; 49 U.S.C. sec. 11, Commissioners of the Interstate Commerce Commission; P.L. 93-438, sec. 201(e), Nuclear Regulatory Commission; 15 U.S.C. sec. 78(d), Commissioners of Security and Exchange Commission).

It would appear that restrictions and prohibitions on outside business and employment, if shown to be "reasonable" and not arbitrary or capricious regulations, would not be an impermissible taking of or restriction on an employee's property or contract rights in violation of the due process clause of the Fifth Amendment. The Supreme Court has noted that Congress may impose "controls on the behavior of federal employees tha[t] are necessary for the protection of the Government as an employer" (Arnett v. Kennedy, 416 U.S. 134, 162 (1973)). Further, the court has found that "regulatory legislation affecting ordinary commercial transactions" may be upheld if the legislation "rests upon some rational basis with the

knowledge and experience of legislator's (United States v. Carolene Products Co., 304 U.S. 144, 152 (1938)). As noted by the Court in Nebbia v. New York, 291 U.S. 502 (1934), at 527-528:

The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned...And statutes prescribing the terms upon which those conducting businesses may contract, or imposing terms if they do enter into agreements, are within the state's competency.

The Supreme Court has further noted that an individual's right to liberty of contract, derived from the due process clause of the Fifth or the Fourteenth Amendment, is a limited freedom subject to reasonable restrictions by the legislature. In 1936 the Supreme Court discussed the theory of freedom of contract in the case of West Coast Hotel Co. v. Parrish, 300 U.S. 379, 391:

The principle which must control our decision is not in doubt. The constitutional provision invoked is the due process clause of the Fourteenth Amendment governing the States, as the due process clause invoked in the Adkins case governed Congress. In each case the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract. What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.

Standards of conduct regulations prohibiting conflicting outside employment by agency employees have been upheld by Federal courts as "not only reasonable, but also necessary and normal" (Indiviglio v. United States, 299 F.2d 266, 268 (1962), cert. denied, 371 U.S. 913 (1962), see also United States v. Drumm, 329 F. 2d 109 (1st cir. 1964); Womer v. Hampton, 496 F.2d 99 (th cir. 1974)). Additionally, the Supreme Court in ruling on the conflict of interest statute then codified at 18 U.S.C. sec. 434, see now 18 U.S.C. sec. 208, noted the following principle in the case of United States v. Mississippi Valley Generating Company, 364 U.S. 520, at 549: "This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur even in the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened."

Thus, provisions restricting a Federal worker's outside employment which relates to the employee's official duties have been upheld by the Federal courts as reasonable and necessary restrictions, and numerous precedent exists within the United States Code of instances where the Congress has prohibited by statute certain Government official from engaging in any outside business, vocation or employment. It may be contended, as noted by the Court of Claims in the Indiviglio case, supra at 268, that such restrictions on outside employment are "a condition of one's employment" with which an employee is familiar at the time he chooses to work in the agency. A complete ban on outside employment of certain high ranking

Government officials may arguably be in keeping with the Government's interest as an employer to insure that such officials are devoting their professional time and energy to official governmental matters, and to avoid the potential conflicts of interest which may arise because of the private employment activities of these highly placed Government decision makers. As such, cogent arguments exist that such bans on outside employment are "rational" and reasonable regulations that do not constitute a taking of property or a denial of liberty of contract without due process of law.

Personal Financial Disclosure

An American Law Division report dealing with the legal and constitutional issues concerning personal financial disclosure by Federal officials prepared on February 9, 1977, has been forwarded to your office. It may be noted that a report prepared by the General Accounting Office after a GAO review of executive agency disclosure systems was published on February 28, 1977. This report discusses possible improvements in the financial disclosure systems and may be useful in drawing up disclosure legislation or regulations. The report is entitled "Action needed to make the executive branch financial disclosure system effective; report to the Congress by the Comptroller General of the United States," Washington, 1977, 49p. FPCD-77-23, Feb. 28, 1977.

Commission on Ethics and Financial Disclosure - Separation of Powers

Title III of H.R. 3829 provides for the establishment of a Commission on Ethics and Financial Disclosure which will receive and review financial disclosure statements from officers and employees of the execu-

tive, judicial, and legislative branches; receive and investigate complaints of violations of the disclosure and ethics provisions of the act; report apparent violations to the appropriate supervisory office and to the Attorney General; render advisory opinions concerning the ethics and financial disclosure provisions of the act; and transmit periodic reports to the Congress concerning the Commission's activities and recommendations for appropriate legislative action. The members of the Commission will be appointed by the President, two from lists submitted by the majority and minority leaders of the House and Senate, two from lists submitted by the Judicial Conference of the United States, and three others. The bill provides that the "Commission shall have no enforcement power." (sec. 303 (c)).

Questions have arisen concerning problems with the separation of powers doctrine as to the duties and powers of this Commission, and the possible infringement upon the exclusive authority and prerogatives of Congress in its rule making power concerning the conduct and behavior of its own Members.

The separation of powers doctrine derives basically from the constitutional directives that: "All legislative Powers herein granted shall be vested in a Congress of the United States..." (Art. I, Section I); "The executive Power shall be vested in a President of the United States of America" (Art. II, Sec. 1); and "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish" (Art. III, Sec. 1). The Supreme Court of the United States in the case of

Buckley v. Valeo, 424 U.S. 1 (1976), noted the "intent of the Framers that the powers of the three branches of the National Government be largely separate from one another" (424 U.S. at 120). The Court found, however, that "it is also from the provisions of the Constitution itself, and from the Federalist Papers, that the Constitution by no means contemplates total separation of each of these three essential branches of Government" (424 U.S. at 121) and that the Framers "likewise saw that a hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively" (id.).

Generally, Congress cannot delegate Article II executive "powers" which it does not possess (Humphrey's Executive v. United States, 295 U.S. 602 (1935); Weiner v. United States, 357 U.S. 349 (1958)). Congress may, however, through the establishment of independent agencies, delegate some legislative functions and some Article I judicial functions to such agencies. These agencies are empowered to exercise those legislative functions through the issuance of regulations, rules, and the conducting of investigations, and to exercise those quasi-judicial functions through the adjudication of issues arising under their regulations (See: Buckley v. Valeo, supra at 140-141). These agencies may also exercise certain executive "functions" - as opposed to Article II executive "powers" - "in the discharge and effectuation of its quasi-legislative or quasi-judicial powers" (Humphrey's Executor, supra at 628).

Thus, like similar agencies created by Congress, the proposed commission may apparently exercise administrative duties, relating

to the administration of the ethics act, in the discharge of its quasi-legislative and quasi-judicial functions delegated to it by the Congress. The make-up of the Commission, that is, that such members shall be appointed by the President, apparently conforms with the requirements of the appointments clause of the constitution at Article II, Section 2, clause 2, which requires that the President, or the courts or heads of departments, must appoint all "officers of the United States" (Art. II, Sec. 2, cl. 2) "to whom substantial executive or administrative authority is given by statute" (Buckley, *supra* at 124-125). The fact that the President will appoint some members of the commission from lists submitted by the Congress and by the Judicial Conference may arguably not derogate this appointing power of the President to an impermissible degree as long as the President has a choice of qualified applicants from which to make his decision. Congress has in the past confined the President's selections to such a degree (see: The Constitution of the United States of America, Analysis and Interpretation, Washington, 1973, Senate Document No. 92-82, 92d Congress, 2d Session, pp. 523-524, citing to Myers v. United States, 272 U.S. 52, 264-274 (1926) Brandeis dissenting; E. Corwin, The President: Office and Powers 1787-1957 (New York, 4th ed. 1957), 363-365; 42 Harvard Law Review 426, 430-431 (1929)).

Arguments have arisen that as far as the ethical conduct and behavior of Members of Congress are concerned, the duties and powers of the proposed Commission infringe upon the exclusive authority of the Congress in this area. Congress is given the express constitutional authority to "determine the Rules of its Proceedings, punish its Members for disorderly

Behaviour, and, with the Concurrence of two thirds, expel a Member" (Art. I, Sec. 5, cl. 2). It is contended, however, that such authority does not prohibit other than congressional officers from administering a statutory provision enacted by the Congress dealing with ethics of public officials, including Members of Congress, as long as Congress is reserved the authority and the final say as to its constitutional authority to punish or expel a Member of its own body.

As found by the Supreme Court in the case of Buckley v. Valeo, supra at 132-133:

The position that because Congress has been given explicit and plenary authority to regulate a field of activity, it must therefore have the power to appoint those who are to administer the regulatory statute is both novel and contrary to the language of the Appointments Clause. Unless their selection is elsewhere provided for, all officers of the United States are to be appointed in accordance with the Clause. Principal officers are selected by the President with the advice and consent of the Senate. Inferior officers Congress may allow to be appointed by the President alone, by the heads of departments, or by the Judiciary. No class or type of officer is excluded because of its special functions. The President appoints judicial as well as executive officers. Neither has it been disputed—and apparently it is not now disputed—that the Clause controls the appointment of the members of a typical administrative agency even though its functions, as this Court recognized in *Humphrey's Executor v. United States*, 295 U. S. 602, 624 (1935), may be "predominantly quasi-judicial and quasi-legislative" rather than executive. The Court in that case carefully emphasized that although the members of such agencies were to be independent of the Executive in their day-to-day operations, the Executive was not excluded from selecting them. *Id.*, at 625-626.

Thus, although Congress is expressly granted the authority in the Constitution to regulate congressional elections under the provisions of Article I, Section 4, the Federal Elections Commission, whose members are appointed by the President in conformance with the Supreme Court decision in Buckley v. Valeo, *supra*, is the body which administers and enforces the provisions of the Federal Election Campaign Act of 1971 and its subsequent amendments. Similarly, although the Congress under Article I, Section 5 has the express authority to make rules governing the behavior and conduct of its Members and to expel a Member for misconduct, the Department of Justice enforces the criminal statutory provisions concerning the conduct of Members of Congress as to, for instance, conflicts of interest regarding paid representations before Federal agencies (18 U.S.C. sec. 203) and bribery (18 U.S.C. sec. 201). As to the enforcement of the statutory conflict of interest provision, formally §1782 of the Revised Statutes, now codified at 18 U.S.C. sec. 203, by the Department of Justice against a Member of Congress, the Supreme Court stated, in the case of Burton v. United States, 202 U.S. 344 (1906):

It is said that the statute interferes, or, by its necessary operation, will interfere, with the legitimate authority of the Senate over its members, in that a judgment of conviction under it may exclude a Senator from the Senate before his constitutional term expires; whereas, under the Constitution, a Senator is elected to serve a specified number of years, and the Senate is made by that instrument the sole judge of the qualifications of its members, and, with the concurrence of two-thirds, may expel a Senator from that body. In our judgment

- there is no necessary connection between the conviction of a Senator of a public offense prescribed by statute and the authority of the Senate in the particulars named. While the framers of the Constitution intended that each Department should keep within its appointed sphere of public action, it was never contemplated that the authority of the Senate to admit to a seat in its body one who had been duly elected as a Senator, or its power to expel him after being admitted, should, in any degree, limit or restrict the authority of Congress to enact such statutes, not forbidden by the Constitution, as the public interests required for carrying into effect the powers granted to it.

....

If that which is enacted in the form of a statute is within the general sphere of legitimate legislative, as distinguished from executive and judicial, action, and not forbidden by the Constitution, it is the supreme law of the land—supreme over all in public stations as well as over all the people. "No man in this country," this court has said, "is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the Government, from the highest to the lowest, are creatures of the law, and are bound to obey it." *United States v. Lee*, 106 U. S. 196, 220. Nothing in the relations existing between a Senator, Representative or Delegate in Congress and the public matters with which, under the Constitution, they are respectively connected from time to time, can exempt them from the rule of conduct prescribed by section 1782.

(202 U.S. at 366-367, 368)

The provisions of H.R. 3829 provide that the proposed Commission will make investigations of complaints of violations of the ethical standards set forth in Title I of the act and the financial disclosure provisions in Title II. After investigation and opportunity for a hearing, if there is reason to believe that violation has occurred, or is about to occur, the Commission will forward a report to the person involved; to the Attorney General, presumably in case violations of Federal criminal statutes have been involved; and, in the case of Members of Congress, to the appropriate ethics committee of the House or Senate.

Thus, any decision concerning congressional punishment for a Member because of a violation of ethical standards would apparently remain, as is arguably required, with each House of Congress upon recommendation from the respective ethics committee. The form of congressional punishment may include such measures as expulsion, censure, reprimand, fine, condemnation or suspension as the particular House of Congress may decide. This action by the Congress concerning a Member's behavior may apparently be taken regardless of a prior advisory opinion given by the proposed ethics commission, since such commission may apparently not bind the Congress concerning congress' constitutional authority to judge and rule upon the conduct and behavior of one of its Members, and to expel a Member. Thus, it does not appear that the operation of the bill derogates the prerogative of the Congress in its rule making powers nor deprives Congress of its authority to judge the conduct and behavior of its own Members and to expel a Member for misconduct.

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