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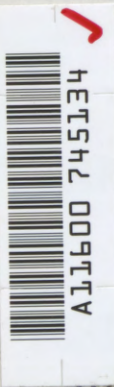
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FEDERAL ETHICS AND FINANCIAL DISCLOSURE

GOVERNMENT

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HEARINGS BEFORE THE SUBCOMMITTEE ON LOYEE ETHICS AND UTILIZATION OF THE COMMITTEE ON OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 6954, H.R. 2733, and H.R. 3928

JUNE 16 AND 23, 1977

Serial No. 95-19

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ETHICS AND FINANCIAL DISCLOSURE

THURSDAY, JUNE 16, 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.

Ms. SCHROEDER. The subcommittee is called to order.

Today the subcommittee will again take up the issue of ethics and financial disclosure for Federal employees. We will be basing these hearings on the President's Ethics in Government Act, H.R. 6954, and two revolving door bills, H.R. 2733, introduced by Representative Spellman and H.R. 3928, introduced by Representative Mikva.

Our witnesses this morning are Russell Baker, who has been recently appointed as the Deputy Assistant Attorney General, and Alan Campbell, who is the Chairman of the Civil Service Commission.

I think the subcommittee's prime interest will be to assure that whatever ethics and financial disclosure legislation is passed by Congress, it will not be subject to the difficulties of administration which have made Executive Order 11222 nearly worthless. In addition, I want to assure everyone that testified at the last round of hearings which were on H.R. 3829, a bill similar in many respects to the President's bill, that the subcommittee will be using that record, as well as this one, arriving at our decisions.

Mr. Baker, we are delighted to have you with us this morning. As we indicated in our letter to the Department, if you would like to submit your testimony for the record and do a short summary of your comments, that would be more than adequate.

STATEMENT OF RUSSELL T. BAKER, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY THOMAS HENDERSON, CHIEF, PUBLIC INTEGRITY SECTION, DEPARTMENT OF JUSTICE

Mr. BAKER. Good morning. My comments are so short that I think I will just read them and be prepared to respond to any questions you might have.

My name is Russell T. Baker, Jr., I am the Deputy Assistant Attorney General for the Criminal Division of the Department of Justice. In that capacity, I supervise the activities of the Public Integrity Section.

I am pleased to appear at your invitation to give my views on three bills to strengthen the enforcement and prevention of conflicts of interest in the Federal Government.

These bills are the Ethics in Government Act proposed by President Carter, H.R. 6954; the Federal Ethics and Financial Disclosure Act of 1977, H.R. 3829; and the Federal Conflict of Interest Act of 1977, H.R. 2733.

In recent months there have been significant efforts by the White House, the Justice Department and the Congress to restore public confidence in the integrity of government.

Many of these efforts have included proposals to strengthen the conflict of interest laws and the rules on financial disclosure by certain high level Federal employees. The three bills which are under discussion today are all examples of these efforts.

Pursuant to your request in the invitation to testify, I will focus my remarks on the administrative aspects of these bills and the conflict of interest laws generally, since it is the administrative and enforcement aspects which most directly concern the Criminal Division.

The Public Integrity Section of the Criminal Division has responsibility at this time for the administration and enforcement of the criminal conflict of interest laws. Over the past year, this section has seen and experienced considerable enforcement difficulty in the conflict of interest areas. It would not be an exaggeration to state that conflicts of interest have caused simultaneous frustration to prosecutors, agencies, Government employees and the public. The frustrations faced by the prosecutors seem to stem primarily from the fact that we are dealing with poorly drafted statutes containing loopholes and vaguely defined prohibitions, criminal sanctions which are frequently overly severe for the conduct involved, and inadequate coordination of criminal and administrative sanctions.

The Public Integrity Section has recently conducted an informal survey of the conflict of interest cases handled in the section over the past year. In reviewing these matters, we have found that it was frequently the opinion of the attorney handling the investigation that prosecution was inappropriate because the felony sanction was too severe given the nature of the conduct involved in the particular case.

In many of those cases the attorney would have pursued a less severe sanction such as a misdemeanor prosecution, a civil fine or administrative action had such alternative been available.

I would like to point out that the President's bill, H.R. 6954, provides a very broad spectrum of remedies for enforcing its financial disclosure provisions. Section 104 of the bill provides for a misdemeanor penalty, a civil fine, and administrative personnel actions to enforce the disclosure requirements. In addition, title II of the bill establishes an Office of Government Ethics in the Civil Service Commission. This office will be able to provide the needed oversight and coordination of conflict of interest enforcement. We feel this coordination and broad selection of remedies will allow for effective enforcement of disclosure requirements of H.R. 6954.

The President's bill also contains, in title II, a strengthening of the post employment provision of 18 U.S.C. 207. That revision makes it clear that subsections (a) and (b) prohibit all types of representa-

tional activity including any contacts with intent to influence in any matter in which the former employee participated personally and substantially as a Government employee, or which was pending under his official responsibility within his last year of Government employment.

The former is a lifetime ban, while the latter has been expanded from 1 to 2 years.

This subcommittee should be aware that S. 555 as reported out by the Senate Government Affairs Committee contains a further expansion of the prohibition in section 207(a) to cover the rendering of any type of aid or assistance.

The Senate version, therefore, prohibits behind the scenes assistance in a particular matter without any contact with the Federal agency. The administration supports this extended prohibition on the rendering of aid or assistance, but we feel that further consideration must be given to the appropriateness of former Government employees acting as witnesses.

Finally, title III of the President's bill contains a new subsection which would provide that top-level officials, for 1 year after they leave the Government, may not make an appearance or attendance before their former agencies or make any contact with their former agencies on pending business.

This new subsection if enacted, will eliminate what we believe to be a major part of the revolving-door problem by prohibiting the exertion of influence by former employees over their former colleagues and subordinates for a 1 year period after they leave the Government.

In concluding my remarks about H.R. 6954, I would like to add that although this bill makes considerable strides in the areas it covers, it is not intended to be the administration's final solution to all conflict of interest problems.

In fact, the bill itself charges the new Office of Government Ethics with evaluating, in conjunction with the Attorney General, the effectiveness and need for further changes in the conflict of interest laws, rules, and regulations. The administration recognizes the need for conflict of interest reform to be thorough, fair, and well considered. This bill sets the tone for this careful but complete reform, and we endorse it wholeheartedly.

At this point I would like to just briefly comment on the enforcement aspects of H.R. 3928 and H.R. 2733.

H.R. 3928, which places reporting requirements on certain employees and former employees, contemplates enforcement by criminal misdemeanor prosecution. As I have discussed, a broader spectrum of remedies enhances enforcement, and for this reason we would favor the approach of the administration bill over a single misdemeanor provision.

As for H.R. 2733, section 5 provides for automatic dismissal of any officer or employee who takes or holds office or employment in violation of section 2 of the bill. The mandamus action available in section 5 to any person is objectionable in that this may serve as a vehicle for unfounded legal actions being instituted against Federal officers and employees.

This concludes my prepared remarks. I would be pleased to answer questions from members of the subcommittee.

Ms. SCHROEDER. I thank you very much for your testimony. One of the things that I noticed that you were saying in your testimony was, and I agree with you, that criminal penalties don't tend to work especially well in the ethics area, and should be supplemented by civil sanctions.

Yet, in 6954 you have criminal penalties for revolving-door violations. I really wonder if in a lot of these things we have not been very innovative because it seems to me that if we are really concerned about influence, revolving door, and some of the conflict problems we would look beyond criminal sanctions. What about the sanctions of revoking the company's contract on the outside, or firing the person who places the contract.

Has anyone ever thought about that? It would seem to me that if you could cancel the contract that has been secured in violation of some of these ethical requirements, the company would be much more interested in following through. Right? If they are going to get a \$1,000 fine, \$5,000 fine, a slap on the wrist, or the Government employee who violates it gets the slap on the wrist, that's not their problem. They still walk away with a good contract.

It concerns me very much that I'm not sure any of these things are really going in the direction they should be going because my intuition tells me after having served this committee for a long time that the feeling is that everybody is on their own, dealing at arms length. If that's how you have to do it, then that's how you have to do it. If you end up having to pay a fine that's the cost of doing business, but you still have the contract.

Mr. BAKER. We don't even require or provide for cancellation of contracts of forfeiture of other benefits when they are obtained by bribery, let alone if they are effected by an appearance of impropriety. That is often the concern that we have along the conflict of interest area.

Ms. SCHROEDER. I know that and it has really bothered me. I think that is why this whole thing has almost been a joke.

I feel that it is almost a facade. We are sitting around talking about this esoteric system, the best of our possible worlds, and how we would like it to work.

Administratively it is going to be a nightmare no matter what you do, almost. Because it could tie the Justice Department up in all sorts of inquiries and also some prosecutions and also some day-to-day things. Or the Department moves on and tries to deal with something on the outside. Then it gets into a real conflict on how they allocate time, because you never have all the judges, all the people, all the investigators, and everything you need.

If you are not doing constant enforcement, then when you pick someone out and enforce against him, he feels that he has been discriminated against, or she claims she has been discriminated against because it has become the norm, and "Oh, yes. We know the regulations are there, but no one else pays attention to them." It's like the speed limit, if no one enforces it, why do you pick this person?

It seems to me that we may be marching down the wrong path. That if companies really thought that there was a chance they were going to lose the goodies they are going to be much more careful. They will be much more self-policing.

MR. BAKER. A broader range of penalties would assist us in that respect. One of the reasons—as I pointed out in my testimony—that enforcement has been lax is because the felony penalties are too severe for the kinds of situations that we are characteristically confronted with. As a result we bring very few, if any, prosecutions. The result is that there are little or no deterrent effects from the statutes, and companies are complacent in their businesses and proceed along without really much concern about those activities.

A broader spectrum of penalties might be of assistance. All of this to me, Madam Chairman, points out the need that you have spoken of and I have spoken of in my testimony for some comprehensive examination in the conflict-of-interest area and a presentation of a carefully considered and worked out package.

In the Department of Justice we are forming a task to try to look at those areas with the idea of being more effective. One of the things that we would like to consider is a variety of different forms of enforcement. I have some background myself in the securities law area where required disclosures—I know from my own experience—are fairly effective because the private bar is so worried about the various reporting requirements which the SEC imposes on publicly held companies.

Although the SEC and we at the Criminal Division continue to worry about securities fraud, those reporting requirements, by tapping the energies of the private bar, do seem to force publicly held companies to disclose a lot of material which I doubt they would otherwise disclose. Perhaps there is some way in which you could have some mechanism such as this to force public companies to disclose this type of information which is so often true, the sunshine sort of strategy might act as a deterrent for this type of activity.

No corporation would like to disclose the sort of relationships that we see in the conflicts-of-interest area.

But, to return to my basic point, to me it points out the need for some sort of comprehensive examination in this area. Something on which, I might add, we would be very happy and anxious to work with you. It is not something that we would like to do strictly in-house, but we would like to work with your committee on it.

MS. SCHROEDER. I would like to hear that. That is one of my concerns in looking at all of these bills. We have not adequately dealt with what the remedy should be. I do prefer the civil penalties to the criminal penalties. Just to kind of summarize it, it seems to me whether it has been an individual involved and they have been caught in some impropriety in the Federal Government, we hesitate to prosecute because it is very similar to bringing out the whole fire department to put out a basket fire.

But when the company is involved it is just the reverse thing. You catch a company and then it is like taking a water pistol to put out the Chicago fire. You really scare them terribly. We just had a case last week where there was some minor penalty assessed to this company in a contract; it was like petty cash.

So, you are not going to get anywhere either. So, the penalties, I agree with you, have been tremendous and they have been out of line. It hasn't provided any incentive for uniform enforcement.

I think, thus, we are starting this thing all over and really reappraising. We really should look at that very seriously, and we appreciate working with you on that.

I think one of the things that we are going to look at is contract procedures, when a company knowingly employs someone with a revolving door or knowingly does that sort of thing. I think it would be very interesting.

Mr. BAKER. That perhaps should be one of the penalties within the range.

Ms. SCHROEDER. Well, it's a very heavy one, but if it was there and if the goodies could possibly be taken away then it suddenly becomes much more serious than giving them a \$1,000 penalty. I think it should be a whole range of penalties.

Mr. BAKER. One of the things I can think of is prohibiting the company from bidding or otherwise applying for future contracts for a period of 6 months. Much in the same way the SEC could prohibit an accountant, for example, from accepting a new client for a period of 6 months probation. There is a range of penalties that the SEC has come up with that we could possibly use.

Ms. SCHROEDER. That still won't work on a lot of these contracts because they only need one contract every 5 years to keep going. Again, that penalty would mean nothing. Each company is different. It's not like you are selling Kleenex to the U.S. Government. You are selling so many things and purchasing them every week.

Again, you've got to be very careful. I'm not sure you want to limit them. But, if you find the one violated contract, you reopen it and start the new procedure.

Let me ask some more questions.

On pages 11 and 12 section, 105c(2) of H.R. 6954, that section says that "an unlawful use of disclosure statements would invoke a civil action by the Attorney General for up to \$5,000." My question is, Will that section preempt a civil action by whomever's disclosure statement it was that was illegally used? Is the Justice Department attempting to preempt actions by the employees whose disclosure statement was inadequately or unlawfully used?

Mr. BAKER. I had never thought of that before. I wouldn't think that that would be the purpose behind that provision. If you like, I can look into that with the staff assistants and give you a firm answer. That is not my understanding.

Ms. SCHROEDER. I don't think we would want that. I would not want it to be a preemption of the employee's rights or the person's.

If you could, look into that and put something into the record as to what the intent of that section was.

Mr. BAKER. One thing, if that were construed that way, as I understand it, to amend the private of right of action afforded by the Privacy Act since that disclosure would be in a records system in the area that the Privacy Act covers, it could amend another statute. If that were the purpose it would have been clear.

We will check that out and let you know about that.

Ms. SCHROEDER. On page 16, line 18 of the bill it says "except when prohibited the director may obtain certain agency information to investigate violations." My question would be whether you view it as being prohibitive. Where are the prohibitions?

Mr. BAKER. The principal one would be rule 6(e), Federal Rules of Criminal Procedure, assuring secrecy of grand jury materials. We would not in the present law be permitted to disclose grand jury testimony or documents to the record.

Ms. SCHROEDER. That would be the main thing.

Mr. BAKER. I cannot think off the top of my head of another one, but again, we would consider that if there is some other area of prohibition. We would advise you of that.

Ms. SCHROEDER. We would appreciate that. Again, my purpose is to make sure that that is as narrowly construed as possible.

I commend the administration and I can't do enough to help them in their attempt to figure out how to regulate the ethics of the Federal judicial employees. And, of course, we of the House have a little problem with our own ethical code.

I know the administration has made ethics in government one of its four main priorities this year, which I think is terrific. But as we do that I know that there is a quasi-Federal type that works on Federal contracts. It really isn't under the Federal Civil Service. They are working really for the employer, the private employer. They have a sole source of contracts, which is the U.S. Government. They can do almost anything, and we have never really dealt with that issue at all.

That creates a tremendous morale problem. If you have a civil service employee on one side operating under one code of ethics and dealing directly with employees of a private contractor who are under an entirely different code of ethics.

Mr. BAKER. If any.

Ms. SCHROEDER. If any. Yes.

I wonder if the administration or the Justice Department have investigated this area or thought at all about submitting legislation with the sole-source contractors. I would think those sole-source contractors would be a beginning.

Mr. BAKER. To my knowledge we have not even considered that area. I'm glad you brought it to our attention. We can include that as one of the subjects to be considered by the task force.

Ms. SCHROEDER. I think that would be very helpful. It creates a tremendous morale problem, that I think I have seen in the Defense Department and other places, where their hands are tied. In essence, they are almost on Federal payrolls, especially if their sole-source contractor is the Federal Government.

In many instances it is really a sort of passthrough. If you launder them, the employees are no longer Federal employees because their money goes through their private employer to them. We may really want to think about ethics there. It may be interesting.

Congressman Gilman, do you have any questions?

Mr. GILMAN. Mr. Baker, I have just had an opportunity to lightly skim through some of your notes. You may have touched on this before. I regret that due to prior commitments, I wasn't here at the beginning of your testimony.

Why has the administration applied different restrictions to subsections A and B of section 207? The former is apparently a lifetime ban while the later section B is for only 2 years.

Mr. BAKER. You are referring to the distinction between the lifetime ban with respect to a matter in which he substantially and per-

sonally participated on one hand, and a 2-year ban for a matter for which he did not substantially and personally participate but which is under his official responsibility in the last year of his employment. Is that the question you are asking?

Mr. GILMAN. Yes. Why this distinction?

Mr. BAKER. I think the judgment for retaining this distinction which is presently found in section 207 is that otherwise it would simply bar employees from areas that are much broader than our concern.

I think the policy judgment there is that 2 years is enough.

Mr. GILMAN. Is that much of a distinction between the two?

Mr. BAKER. The administration's bill would increase from 1 year to 2 years that bar found in subsection B.

Mr. GILMAN. Yes.

Mr. BAKER. That is still not a lifetime prohibition. I think the administration's position is that the distinction is sufficient. That otherwise the ban would be much too broad.

Mr. GILMAN. In your opinion is either subsection A or B of 207 precluding agency officials from contacting a former colleague for advice or counsel?

Mr. BAKER. He shouldn't be working on the matter at all. That is, if he were personally and substantially involved in it while he was with the agency.

With respect to subsection B, if he were outside the 2-year period and if he were seeking advice without any intent to influence the particular action of the officials, I don't know that B would prohibit that.

Mr. GILMAN. What about if the agency official wanted to contact the former colleague to ask his advice with regard to a matter that the agency official is working on?

Mr. BAKER. I don't think that would be prohibited by 207 as presently enacted, or as proposed to be amended. That is, if I now as a Government official wish to consult with my predecessor about some particular problem and he is no longer in Government, I don't think that is prohibited.

Mr. GILMAN. Then none of this language would apply to anyone who was in office. Only to those who are out of office.

Mr. BAKER. Correct. There are other prohibitions which would prohibit me from, for example, I cannot act as a Department of Justice employee. I cannot act for anyone as a lawyer except certain pro bono cases.

Mr. GILMAN. Do you believe there is a need for a written code of conduct in this measure?

Mr. BAKER. You are asking me if I think H.R. 6954 should include a written code of ethics for the Federal employees?

Mr. GILMAN. Yes.

Mr. BAKER. I haven't considered that. That is sort of outside our concern which would be enforcement and administration of such a prohibition. I guess I really don't have an opinion of whether it ought to be in the statute or not. Some of those provisions might create enforcement problems. But, I suppose it would depend on how broad they were and what they were trying to regulate.

Mr. GILMAN. Can you foresee any legal problems with either the reporting of public disclosure or requirements in this matter?

Mr. BAKER. We have been unable to think of any. We would have brought them to your attention if we had. There have been some disclosure rules over the years which we haven't had any difficulties with.

Mr. GILMAN. I don't have any further questions.

Ms. SCHROEDER. We have to go answer a vote. If you don't mind and if counsel doesn't have any questions then I thank you very much for appearing.

We will have a temporary recess while we go to vote.

[The letter which follows was received for inclusion in the record:]

DEPARTMENT OF JUSTICE,
Washington, July 11, 1977.

HON. PATRICIA SCHROEDER,
Chairwoman, Committee on Post Office and Civil Service, Subcommittee on Employee Ethics, and Utilization, House of Representatives, Washington, D.C.

DEAR CHAIRWOMAN SCHROEDER: I would like to thank you for giving me the opportunity to testify before your Subcommittee on the enforcement and prevention of conflicts of interest in the Federal Government. This is an area of serious concern both to this Administration and to your Subcommittee, and I hope that we will be able to work together effectively to accomplish our mutual goals.

You will find enclosed a copy of the transcript of my testimony which has been edited to correct errors in grammar and transcription of my statements. In addition, I would like to amplify and clarify several aspects of the testimony with this letter.

In our discussion of the feasibility of contract rescission as a remedy for conflicts of interest, I neglected to mention the provisions for such a remedy which exist in the current law. Section 218 of Title 18, United States Code, allows the Federal Government to declare void and rescind any contract or other benefit in relation to which there has been a final conviction under the bribery or conflict of interest laws. In addition, there is the common law doctrine which prevents the enforcement of contracts which are void as against public policy. In *United States v. Mississippi Valley Generating Company*, 364 U.S. 520 (1961), the Supreme Court held as a matter of common law that contracts which are tainted by a conflict of interest on the part of a government agent may be disavowed by the government, even when the party seeking enforcement may appear to be entirely innocent. It should be noted that the government agent in *Mississippi Valley* was neither prosecuted nor convicted for his purported conflict of interest, yet the resulting contract was rescinded.

As I indicated in my testimony, I am not aware of any intention on the part of the Administration to preempt any private rights of action which may exist for employees whose disclosure statements are used for an unlawful purpose. H.R. 6954, does give the Attorney General a civil right of action for abuse of disclosure statements, but this provision is intended to be an additional remedy, not an exclusive one.

Section 203(2) of the Administration's bill provides that the Director of the Office of Government Ethics may obtain access to all agency information and records which may be necessary for the performance of his duties "except when prohibited by law." During the June 16, 1977 hearing you expressed an interest in seeing that this exception is narrowly construed. Please be assured that the Administration intends to encourage the federal agencies to cooperate fully with the Office of Government Ethics. The quoted exception is intended to provide for other interests which are protected in the law. These would include grand jury secrecy as protected by Rule 6 of the Federal Rules of Criminal Procedure, the privacy interests protected in the Privacy and Tax Reform Acts and certain National Security interests. Although my list is probably not exhaustive, I want to reiterate that the intended thrust of this section is to foster cooperation and access to agency records by the Office of Government Ethics.

If you or members of your staff have questions or suggestions for the Department of Justice, please do not hesitate to contact us. I suggest that you make contact through Thomas Henderson, Chief of the Public Integrity Section. He can be reached at 739-2676.

Sincerely,

RUSSELL T. BAKER, Jr.
Deputy Assistant Attorney General,
Criminal Division.

Enclosure.

Ms. SCHROEDER. We are very, very glad to have with us the new Chairman of the U.S. Civil Service Commission, Alan K. Campbell. We are delighted to have you here. If you would, introduce your compatriots for the record.

STATEMENT OF ALAN K. CAMPBELL, CHAIRMAN, U.S. CIVIL SERVICE COMMISSION, ACCOMPANIED BY DAVID REICH, ETHICS COUNSEL AND CARL F. GOODMAN, GENERAL COUNSEL

Mr. CAMPBELL. Thank you very much, Madam Chairman. I am accompanied by Mr. Goodman and Mr. Reich. I have them accompanying me because I probably have spent more time since moving into my present position working in the ethics area than any other because of my becoming, in a sense at least, a part of the team representing the President in this field.

I do welcome this opportunity to appear before this committee because the President's bill has been introduced here by the chairwoman as one along with others. Obviously the administration is appreciative of that.

We have been spending a good deal of time and effort in the consideration and evaluation of the ethics program for employees in the executive branch of the Government. As you know, the President, during his campaign, expressed great interest and concern about potential conflicts of interest and even before assuming office, he released guidelines for financial disclosure by Presidential appointees.

H.R. 6954 embodies the administration's recommendations for achieving high ethical standards in the executive branch. I shall refer briefly to two parts of the bill before dealing more fully with that portion of the bill regarding the role of the Civil Service Commission in administering the program.

Public disclosure of financial statements would be required for all top-ranking personnel in the executive branch. It would cover those in the grade of GS-16 and above, including comparable officers in the foreign service and the uniformed services. The office of President and Vice President would be included.

As background, it is interesting to note that when Executive Order 11222 was promulgated in May 1965, the requirement for the filing of financial statements caused considerable concern.

The President's proposal goes one step further in that it would require public disclosure by top-ranking personnel, since President Carter believes that the public has a right to know the assets and liabilities of senior Government officials.

The statements of the President and Vice President and those of Cabinet and other high-ranking officials within the White House and full-time members of commissions, boards, and committees would be filed with the Director of the new Office of Government Ethics to be created in the Commission.

The financial reports of the other top officials would be filed with their respective agencies and would be available for public inspection. Personnel below the grade of GS-16 would remain subject to present financial reporting requirements as contained in the Commission's regulations in part 735 of title 5 of the Code of Federal Regu-

lations. The statements of these employees, however, would not be subject to public inspection.

To restrict, insofar as possible, the disclosure of financial statements to those who have a genuine concern, H.R. 6954 would make it unlawful for any person to inspect or obtain a copy of any report for any commercial purpose or for a credit rating or for use directly or indirectly for any political, charitable, or similar purpose. Appropriate sanctions for violations are specified.

The financial report would contain information on the source and amount of earned income of \$100 or more. Unearned income about \$100 from any one source would be reported by value category; that is, up to \$5,000, from \$5,000 to \$15,000, from \$15,000 to \$50,000, from \$50,000 to \$100,000 and greater than \$100,000.

Gifts in excess of \$25 or gifts aggregating \$250 or more from a single source would have to be reported, other than gifts from relatives with whom the employee has no contact in the course of his official duties. The term gifts would include transportation, lodging, food, and entertainment.

Additionally, the official would have to report each liability, other than to a relative, which exceeds \$2,500 at any time during the course of the year.

Information on personal property held in a trade or business or for investment or production of income and valued at \$1,000 or over would have to be furnished, excluding household furnishings, works of art, jewelry, and collections of stamps, coins, and other similar items.

Securities transactions, commodities futures, and dealings in real property exceeding \$1,000 in value, as well as interests in patents, copyrights, and mineral leases would be included in the form.

Officials would have to identify positions they hold as officers or employees of any business, nonprofit or educational organization, other than religious, political, social, or fraternal organizations.

H.R. 6954 provides that any agreement for future employment would be made public, as would continuing relationships with former employers, such as bona fide pensions, employee benefit plans, and leaves of absence to take Government employment.

I observe that H.R. 3928 before your subcommittee covers this subject of private employment in that it would require employees whose rate of pay is equal to or greater than the minimum for grade GS-13, to disclose positions held by them during the 3 years preceding and following their employment with the Federal Government.

According to our data this bill would mandate public reporting for over 500,000 Federal employees, embracing, as it would, employees in grade GS-12 at or above step 7 by reason of their pay being equal to the minimum compensation for grade GS-13.

We think this would intrude upon the private lives of too many Federal employees whose positions do not warrant such a probing and that it is not an appropriate group to include. At present, employees in the grade of GS-15 and below, who are involved in contract procurement or the rendering of decisions in economic matters affecting the public, must submit statements of their financial interests under the Commission's regulations issued pursuant to the Executive order in this area.

A second major improvement proposed by the President is in the field of postemployment where the administration would seek, insofar as it is reasonably possible, to eliminate the revolving door syndrome.

H.R. 6954 would amend and strengthen section 207 of title 18, United States Code, which presently restricts in a limited fashion the postemployment activities of former Federal employees.

The amendment would enlarge from 1 year to 2 years the prohibition against appearing before a former official's agency on a particular matter which was within the official's responsibility while he was with the Government.

A totally new concept would be added to section 207 in that agency policymaking officials would be banned from making any oral or written communication to any person in the agency in which he previously served regarding any official matter which is pending before the agency or in which the agency is a party or has a direct and substantial interest, for 1 year after his employment with that agency has ceased.

A violation of this restriction would subject the employee to a fine of up to \$10,000 and imprisonment up to 2 years or both.

The major significance of H.R. 6954 with respect to the Commission is the creation of a new Office of Government Ethics within the Commission, to be headed by a Director to be appointed by the President with the advice and consent of the Senate.

Most importantly, the bill contains provisions which would give the Commission the authority and responsibility it requires in the area of conflicts of interest. Among the powers enumerated are the monitoring and investigating of compliance with the public financial disclosure requirements by the various agencies, conducting reviews on a random basis of the financial statements filed in each agency, required reports from agencies as needed by the Director of the Office of Government Ethics, and ordering corrective action on the part of agencies and employees which the Director deems necessary.

At the present time, the Commission is carrying out its functions and responsibilities under the ethics program pursuant to Executive Order 11222. Questions have been raised as to whether the Commission has remedial authority over the Federal agencies in the ethics field, and while the Commission has prevailed in many situations by a type of persuasive influence, specific authority to the Commission through legislation would remove any doubt as to the Commission's power and responsibility for the ethics program.

I appreciate the purposes of another bill before your subcommittee, H.R. 2733, a bill which would restrict the activities of employees at the level of GS-16 and above where their actions are likely to have a significant impact on matters regulated by their agency.

We believe that such considerations are generally covered in H.R. 6954 and that rather than approach each possible or potential conflict by separate enactment, it would be preferable to have them handled by broader legislation such as H.R. 6954 with implementation through the Director of the proposed Office of Government Ethics in the Commission.

That is the general presentation of the contents of the President's bill. We stand ready to respond to any questions.

Ms. SCHROEDER. I thank you very much. I know it has been quite a week for you.

Mr. CAMPBELL. It has.

Ms. SCHROEDER. I ask these questions in the nature of some of our concerns as we look at the bill and just to make sure that when we

finally put it together, we are as comprehensive as we can be in this madhouse which we work in.

One of my questions is that I notice in the bill it says that the intent is to cover all Federal employees. But, the Postal Service Act says that the Postmaster General, the Deputy Postmaster General and postal employees would not be covered by other laws unless specific reference was made to them.

So, my question is if we are intending to cover them and, if so, should we put language in. Or, are we not intending to include the Postal Service. Has any decision been made on that?

Mr. CAMPBELL. It is anticipated that the Postal employees in the appropriate brackets would be covered, and if there is a need to specifically spell that out we obviously should do it and should be supported.

Ms. SCHROEDER. It might be something you would want to look at legally to see if we need to add specific revisions.

Mr. CAMPBELL. I understand that the present order does contain that.

Ms. SCHROEDER. I think that's correct and I would hate to see us strapped if we forgot to put them in.

Also, you said that there is no possibility in the bill for employees with pay less than GS-16 to be covered by public disclosure. What is the administration's position on preventing coverage by greater job classification? Would it be the option of the President on lower level employees or would there be a way to go if we were to opt for some sort of public disclosure on employees below the GS-16 level?

Mr. CAMPBELL. The hope of the administration is that we can have a year or 2 of experience with the group of employees that are now involved to determine whether that is sufficient, and also what are the administrative problems in carrying it out before we make the universe too large.

In principle, the coverage of employees who are involved with contracting work or who in other ways have direct interest with the private sector would continue to be covered by the current Executive order. That, of course, would not be public disclosure but would be disclosure within the agencies.

Whether that would be—that Executive Order H222 would be appropriately amended to take account of this new legislation if it it passed and whether that practice should be modified has not been decided.

Ms. SCHROEDER. One of the other things I noted is that both the identity and the amounts of assets should be disclosed I was wondering if you have given any thought to another approach such as requiring them to disclose the identity but not necessarily the amount unless someone raises a question about—in other words, if you put down “Exxon stock” and somebody says “What about Exxon” if he works for ERDA, then you say “Well, I own two shares” or I own 1,500 shares”.

If you had down “Household Finance”, you then wouldn't have to tell people that you have half a million dollars worth of Household Finance stock that you inherited, because that stock doesn't relate to anything that ERDA is doing.

I guess what I am really concerned about is the Privacy Act and really having people be able to figure out whether they can sue you in an automobile accident, or what have you, and what kind of assets you have.

Mr. CAMPBELL. The obvious countervailing issue here is between privacy on the one hand and public disclosure on the other hand. I think it is fair to say that the administration has opted for what they believe to be maximum disclosure, and that it is appropriate, particularly at these levels in the system, for there to be that kind of disclosure.

In relationship to the administration of the President's Executive order, where the specific issue was raised about the amount of stock, there has been some controversy as to whether it need be recorded if it is a sufficiently small amount. I think the legal term is *de minimis*.

I would like David to just comment briefly on the experience of the Commission in relation to that area.

Mr. REICH. Some agencies would like an exception for what they consider *de minimis* holdings. For example, if a holding is less than \$5,000 in one particular company and the interest of the individual in that company is less than 1 percent of the overall holdings of the company, they would like to gain an exception so that it wouldn't have to be reported at all.

We at the Commission feel that it is very difficult to have any arbitrary stand on *de minimis*, but to answer your other question on the thought that perhaps everything need not be reported in the category of value, under the present bill each of these items would have to be reported by a category of value.

But, this is something, as the chairman has stated, that the Commission could consider under the broad powers that would be granted for reviewing the program on a continuing basis.

Ms. SCHROEDER. I certainly understand. I support what you are doing on *de minimis*. I think you obviously can't make exceptions on those types of things. I certainly understand why you want all of the type of holdings that everyone has.

My main question is whether you also have to put the amount in unless it appears there is a substantial conflict. Then it is worked out between the ethics counselor and the person. Just because of the fear of kidnappings or what have you that employee could be subjected to if he has some amount of money and the public is able to go find out.

Mr. CAMPBELL. Mr. Goodman would like to comment.

Mr. GOODMAN. I think you voiced the concerns of the administration, and in a sense a kind of balance has been drawn. Where you draw that balance depends on your value judgment. But, you will notice that categories of value that are talked about do not go to the "sky is the limit."

For example, the last category simply says "greater than \$100,000." One of the reasons for cutting it off at that point was this concern about whether it makes any difference to the public if you have \$100,000 holdings, or whether you have \$5 million in holdings.

But there were proposals on the other side of Congress that would have used figures of that size.

What we have done in the administration's proposal is to try to draw a balance considering the kinds of concerns that you have mentioned and not requiring that you totally disclose your asset posi-

tion. But, that you do disclose sufficient of your asset position which is necessary for the public to make suggestions about their public officials.

MS. SCHROEDER. Let me say in this whole area too that one of the things that we hear a lot is a complaint from Federal employees. They are saying that they are being made to disclose, and they can be penalized because they don't disclose, but they haven't given any guidance on what might be a conflict of interest.

In other words, there seems also to be a feeling that we need some kind of a code of ethics for Federal employees. I have some more questions as to why any Federal employee would be permitted to accept gifts or entertainment with anyone.

I am not sure but that I would move much further on this bill on the issue of gifts and entertainment. I have a question on whether stronger language is needed.

I have been shocked by the ones who have called me and told me that they were moonlighting and having this wonderful time and that they understood that we might be shutting off second salary sources and that that was a terrible thing to do.

I am not sure that we should be encouraging moonlighting especially when you are utilizing the information that you are gaining at the public expense and dispensing it at night.

Now, either we are paying an adequate salary or we are not paying an adequate salary. But, having everybody out freelancing and doing all of these other things I have some questions about too.

So, I think a need for a code of ethics as to what is a conflict, which they say they really don't have any definition on, and the issues of gifts and the issues of outside income and all that. There has really been a large oversight and I'm wondering if maybe the administration and the Civil Service Commission might not want to give some thought to that as we continue down this line.

MR. CAMPBELL. I think to some extent the concern is covered on page 15 of the House bill—evaluating, with the assistance of the Attorney General, the need for changes in rules and regulations issued by the Commission and the agencies regarding conflicts of interest and ethical problems with a view toward making such rules and regulations consistent with and effecting supplement conflict of interest laws.

Obviously what has been done here is a delegation of that authority to the new office and to do it by administrative regulation. I think it is a fair question as to whether one should try to incorporate some more specific language than that in the legislation itself.

My own feeling is that certainly it is the administration's position that until we get more experience in this field as to those kinds of definitions which you are attempting to make, we should not spell it out too precisely. What is a conflict of interest and what is, for example, moonlighting? I would argue that it depends on the moonlighting activity. To the extent that it is related specifically to your job, I think it raises serious questions. To the extent that it is some other activity, then I think that there should be the choice of allowing it or disallowing it on a case by case or other basis.

I would accept the point that in relation to the coverage, which is for super grades and above, that salaries should not be necessary to justify moonlighting on the grounds of supplementing salaries.

Ms. SCHROEDER. What I hear you saying is nice but I am just afraid that Federal employees would like more guidance faster. You want more time before creating a code of conduct, and the bill will give you the authority. But, in the meantime, they are going to be asked to disclose. People are going to take pot shots at them under conflict of interest, and they won't know yet how a conflict is being defined.

Everybody has some idea of what the parameters are but the specifics aren't there. I know there has been a petition about gifts. It has been over in the Civil Service Commission for 2 years waiting for a response. That has been some of the frustrations.

If you had and could devise some code of ethics in a fairly short period of time, it could be very helpful. I think the sooner the better. That's what I am trying to say.

Mr. CAMPBELL. I do not know the content of these myself, but I am informed that the Executive order and part 735 of the Commission's regulations do have provisions concerning outside employment and gifts. I certainly would personally look at those. I would also be happy to provide them to the committee to see whether or not these are in the direction in which the committee is going.

Ms. SCHROEDER. I think that would be helpful, and I think we need the regulations on outside work and things like that. I know areas where you work for the labor board and tell lawyers how to get around the labor board by night. That's unconscionable.

We really should have some code of ethics on that.

In one of the prior hearings there was a problem brought out that was the lack of line of authority from the Civil Service Commission to the agency ethics counselors. They said that a lot of the agency ethics counselors were personnel officers or lawyers and had many other duties. They weren't sure about the chain of command—who was really the boss. That has been a tremendous problem in the past.

Have we got any kind of assurance that there is going to be a standardization of the chains of command and ethic policies.

Mr. CAMPBELL. Mr. Goodman has been working in this field so I will ask him to respond.

Mr. GOODMAN. I think that the administration's bill does specifically deal with that, in section 202. There would be created this new Office of Ethics. One of the purposes of the Office of Ethics would be, in effect, to rationalize this sort of system and to give that office direct responsibility and authority to deal specifically in that position.

Ms. SCHROEDER. There will be authority?

Mr. GOODMAN. Yes.

Ms. SCHROEDER. Not just nice pieces of paper floating back and forth?

Mr. CAMPBELL. Yes.

Mr. GOODMAN. Yes.

Ms. SCHROEDER. Congressman Gilman got here first, but I understand Congressman Harris has some questions.

Mr. GILMAN. I'll be glad to yield to Mr. Harris.

Mr. HARRIS. Thank you, Madam Chairman. I appreciate my colleague for yielding. I still think you owe me two. [Laughter.]

Mr. GILMAN. One more. [Laughter.]

Mr. HARRIS. Thank you very much. I would like to say "Hello" to you again. It has been almost a day since we have seen each other.

Mr. CAMPBELL. Right.

Mr. HARRIS. Generally, the bill requires disclosure for GS-16's and above, as I recall.

Mr. CAMPBELL. Yes.

Mr. HARRIS. We have questioned some of the personnel about this before. So, if they get tense around you, don't bother with them.

Mr. CAMPBELL. All right. [Laughter.]

Mr. HARRIS. And the bill covers executive level personnel?

Mr. CAMPBELL. Yes.

Mr. HARRIS. Would the bill apply to positions other than general schedules? For example, confidential assistants to the secretaries?

Mr. CAMPBELL. Yes.

Mr. HARRIS. Even if the position was not above 16?

Mr. CAMPBELL. No. If they were not above 15 it would not apply to them.

Mr. HARRIS. Above GS-16 in salary or however it is measured, depending on what system you are looking at.

As you know, we have positions in Government that are confidential assistants to the secretary or assistant secretary, what have you. It may not be a grade 16, but sometimes it is a very sensitive position.

Mr. CAMPBELL. Right.

Mr. HARRIS. How about all of the appointees to the regulatory commissions? Would it apply to all of the appointees to the regulatory commissions?

Mr. CAMPBELL. By that you mean Commissioners?

Mr. HARRIS. Yes.

Mr. CAMPBELL. Yes, it does.

Mr. HARRIS. How about the White House staff and the Vice President's staff?

Mr. CAMPBELL. Yes, and the President. All of these qualifications depend on salary levels.

Mr. HARRIS. It only applies to those whose salaries are GS-16 or above. Is that correct?

Mr. CAMPBELL. Yes.

Mr. HARRIS. On page 3 the reference is made to "special Government employees." What does this mean? Does this mean consultants?

Mr. GOODMAN. Special Government employees are defined in title 18, and to a great extent it does mean people who are mainly consultants. There is a very technical definition which I guess would be more appropriate for the Justice Department to deal with.

But, it really deals with people who are not on the Government payroll as a kind of regular matter—the sort of person who comes in for a day or 2 to help you work on a problem goes back to his own business, and comes back again the next week for a day or 2. Those people are obviously somewhat different from the person who works 5 days a week on a full-time basis with the Government.

That is the sort of situation that the special Government employee deals with.

Mr. HARRIS. Also on page 3 of your testimony you said that personnel below the grade of GS-16 would remain subject to the present financial reporting requirements as contained in the Commission's regulations. Could you just quickly, briefly, summarize what those requirements are. What do we require those below GS-16 to do?

Mr. CAMPBELL. I think I can answer that, but if I'm not complete, I'm sure my colleagues will add to it. It is in relationship to those employees who have regulatory contractual and procurement responsibilities in the Federal Government and thereby have considerable contact with some portions of the private sector.

In that case they must file with their agencies a list of their holdings and do so in substantial detail. In the case of conflicts, and the agency people are responsible for determining when there are conflicts, in which case employees will be instructed by their agency as to what actions they have to take in order to remove themselves from a conflict of interest situation.

Mr. HARRIS. You are saying that this bill should not address these requirements in any way with respect to these sensitive employees below GS-16?

Mr. CAMPBELL. Yes. That is not a matter of principle but a pragmatic matter. We would like some experience with the broader approach before we start moving to the kinds of large numbers of employees that would be involved if you drop below the supergrade level.

We have calculated, for example, that in one case a field that would include up to grade 13 would add 300,000 people. You create a tremendous administrative problem if you do that. Quite frankly I'm not sure to what end.

Mr. HARRIS. I couldn't agree with you more on that. I didn't mean to inquire about lowering requirements for filing. I was just wondering if the bill should in any way address the coverage of those below GS-16. I didn't mean the same requirements should necessarily be placed on them.

Mr. GOODMAN. If I may add to the Chairman's answer. In matters other than the filings of reports, for example, there are provisions in the bill which would impact on Government employees in general, regardless of the grade level.

For example, the responsibility of the Office of Government Ethics extends beyond looking at the reports and its authority to order corrective action. It would extend beyond merely grade 16, as I read the provisions of the bill.

So, there are areas which apply to these other employees as well.

Mr. HARRIS. Good.

Here it is very possible that I don't understand the bill completely, but with respect to the requirements of filing, as I read the bill I think I understand that an employee has to file when he or she is employed and when he or she leaves, but I didn't see any provision for any sort of annual filing requirement.

Mr. CAMPBELL. There is an annual filing requirement.

Mr. HARRIS. The filing has to be annual?

Mr. CAMPBELL. Yes, very definitely. OK, it is not explicit, but it does talk about "during the year." Anything that happens during the year must be reported. So, it would have to be reported annually to do that. It may very well be that we ought to be explicit about it.

Mr. GOODMAN. It is the intent.

Mr. HARRIS. I thought maybe it was and I thought—if that is the intent—maybe we ought to put it in.

Mr. CAMPBELL. No objection.

Mr. HARRIS. With regard to those employees who file, do you think they should be notified when their file is requested by someone or not?

Mr. CAMPBELL. We do require that a listing be kept of any request for the files. That list is available to the employees. When you should go beyond that, when there should be the extra step of notifying by mail or some other means, the bill does not include that. But, anyone who inspects the records, has to sign for them, and that is a public record.

Mr. HARRIS. Over here in the House we are very careful, as you probably know. If someone requests our files we get a little pink slip saying that the file has been requested. I don't know whether that is necessary or not, I just wonder what your judgment is.

Mr. CAMPBELL. I would just start out urging that it would not be made a specific requirement until we see how the thing works. Again, my concern is—

Mr. HARRIS. Administration.

Mr. CAMPBELL. Yes, it is an administrative concern and it is a major concern by the way. When you start getting this kind of files and these numbers of reports and then there are the reviews, quite frankly it is a bit frightening when you think about the kinds of administrative burdens that may be involved.

Mr. HARRIS. One last question, if I may, Madam Chairwoman.

Do you think this type of legislation should apply to the judicial branch?

Mr. CAMPBELL. The administration's position is that its responsibility is with the executive branch and the recommendations are all in relationship to the executive branch.

Mr. HARRIS. I didn't know you had been here that long. [Laughter.]

Mr. CAMPBELL. It comes from reading and writing textbooks. [Laughter.]

Mr. HARRIS. The administration does not intend to promote legislation that would cover the judicial branch with respect to such?

Mr. CAMPBELL. It does not.

Mr. HARRIS. Thank you, Madam Chairman.

Ms. SCHROEDER. Thank you, Congressman Harris. I am delighted to hear from you. Shall we all go down and get your file? There are a lot of requests.

Congressman Gilman.

Mr. GILMAN. Thank you, Madam Chairman.

I am a little concerned about this creation of this new division of Government ethics within the Commission. Do you really foresee a need for the creation of a new separate somewhat quasi-independent body within the Civil Service Commission to regulate this proposal? Couldn't the Commission perform this function without the creation of such a commission?

I can understand if there is some additional clerical personnel and that sort of thing, and possibly a couple of executives, but is there really a need to cough out a whole new agency within your department?

Mr. CAMPBELL. Let me make two points in relation to that. There certainly is a desire on the part of the administration to give this activity and the person who is responsible for it high visibility. The way to do that is to provide a leader who is a Presidential appointee, with the advice and consent of the Senate—a measure of the significance attached to the position as well as to the activity itself.

Second, a more general kind of point and this is something that I have been gradually learning over these past few weeks, the assignment to the Commission of regulatory activities on the one hand which means enforcement, and a sort of policeman's role, while the Commission also has broad policy responsibilities in a sort of positive way to encourage and promote good Federal management, does create a kind of internal conflict—internal inconsistency.

In that regard I would suggest that it is important that this unit have some degree of independence and clear independence from the rest of the Commission's activities.

The question that we discussed in relationship to this is whether it should not be more independent than making it a part of the Commission, by creating a separate new agency. We decided against that on the ground that, one, it does relate to the function and role of the Commission, and two, there are undoubtedly some efficiencies to be gained by using the Commission's experience and background, as well as the ethics people's association with the Agency.

So, in a sense, this was kind of a middle position which we believe maximized the possibility of effectiveness.

Mr. GILMAN. While you may be under this same, roof, you have essentially created an independent agency.

Mr. CAMPBELL. Certainly. The Presidential appointee and the power of the agency are, however, not independent of the Commission because this person is responsible by the statute to the Commission. It is under the general supervision of the Commission, for example, in developing and recommending to the Commission, and in consultation with the General Counsel, rules and regulations to be promulgated by the Chairman of the Commission.

Mr. GILMAN. What page is that?

Mr. CAMPBELL. Page 13, sections 202(a) and 202(b) (1).

Mr. GILMAN. What happens if there is a conflict between you as Chairman of the Commission and your role as the Director of this agency? Who would resolve that conflict? Is the Presidential appointee responsible to the President and not to your authority?

Mr. CAMPBELL. This is not an unusual situation in the executive branch where there are Presidential appointees who have alliance and responsibilities to the Secretary to whom they report as well as to the President. Might I simply further add that it is also complicated by responsibilities to Congress. I don't think we are ever going to get away from conflicting responsibility lines in a governmental system that attempts to be responsive in a variety of ways.

The possibility of conflict that you point out is indeed there, as it is in many other situations.

Mr. GILMAN. What do you see Chairman Campbell as the personnel needs for such an agency?

Mr. CAMPBELL. I believe in the bill we suggest a cost of \$1 million. That was based on a calculation of personnel that would be needed.

I am going to ask my colleagues if they remember the numbers that we discussed.

Twenty-two to twenty-five people was discussed as the potential need. I must say that those were informal discussions. We are attempting to get some feel for the magnitude of this job.

Mr. GILMAN. I'm sorry, how many employees?

Mr. CAMPBELL. 22 to 25.

Mr. GILMAN. Total number of employees?

Mr. CAMPBELL. For this unit.

Mr. GILMAN. Including executive personnel?

Mr. CAMPBELL. Yes.

Mr. GILMAN. Could I make a request that you supply for the record a definite organizational chart, staffing, and the budget that you foresee for the Office of Ethics.

Mr. CAMPBELL. We certainly can. It will be tentative but we would indicate what our best guess is.

Mr. GILMAN. Madam Chairman, I would like to request the organization chart and budget information be made part of our record at this point.

Ms. SCHROEDER. Without objection, so ordered.

[The information follows:]

OFFICE OF THE INSPECTOR GENERAL FOR GOVERNMENT ETHICS

I. ORGANIZATION

A. Separate office within CSC headed by an Executive Level V who would be subject to Senate confirmation.

B. Office would report to the President through the Chairperson of the CSC.

II. FUNCTIONS

A. Policy development

1. Would issue general guidelines on what constitutes a conflict interest in financial interests, acceptance of gifts, travel, outside employment, and other areas related to ethics in government.

2. Would investigate the need for reform of the current system of internal agency review of the financial statements of those employees not subject to public disclosure requirements and would recommend needed changes to the President and the agencies.

3. Would investigate with the Attorney General the need for changes in the statutes governing conflicts of interest, including the need for civil as well as criminal penalties for violations, the need for clarifying language governing severance pay, the need to address prosecutorial difficulties with the current language and would recommend changes to the President and the Congress.

4. Would develop general guidelines on the resolution of conflicts including the conditions necessary for a blind trust, the instances where disqualification is appropriate, etc. and would investigate the need for any changes in the tax laws that might be warranted in order to ease any unnecessary burden of divestiture.

5. Would work with other offices and agencies, such as the Office of Federal Procurement Policy, to develop and implement necessary policies to ensure strict standards of ethical conduct in government programs and policies.

B. Consultation and advisory opinions

1. Would work with and provide advice to agency ethics counselors and individuals on interpretations and applications of the guidelines established by the Office.

2. Would provide help to agencies in developing agency procedures and regulations to carry out the Office's guidelines on ethics.

C. Monitoring of compliance

1. Would monitor individual compliance with regulations governing both public disclosure and internal agency review of financial statements through a random evaluation of 5 percent of the statements each year. The evaluation would be based on the information provided; it would not involve subpoena power to require employees to produce bank records, personal records, etc. Providing false information on a government form is already covered by criminal statute.

2. Would monitor agency compliance with the Office's guidelines through this yearly evaluation procedure.

3. Would determine administrative action needed to resolve any conflicts found during these evaluations.

4. Would recommend any needed changes to individuals, to agencies, or to the President based on the findings of the yearly evaluation.

D. Information and education

1. Would directly provide and would help agencies provide information to government employees on ethical standards in order to promote greater awareness of the conflict of interest requirements.
2. Would handle public relations and correspondence related to the Office.
3. Would act as a center for referring complaints to the employing agency.

III. RELATIONSHIP TO OTHER DEPARTMENTS AND AGENCIES

A. Administrative enforcement

1. Primary responsibility for enforcement of agency regulations would remain within the individual agency.
2. Public disclosure of the financial statement of GS 16-18 and Executive Level appointments (or their equivalent) will be the responsibility of the employing agency.
3. Departments and agencies with special operating requirements, such as the State Department, intelligence agencies, and DOD, will continue to have primary responsibility for the setting of and the interpretation of standards governing the specific situations that their employees encounter.

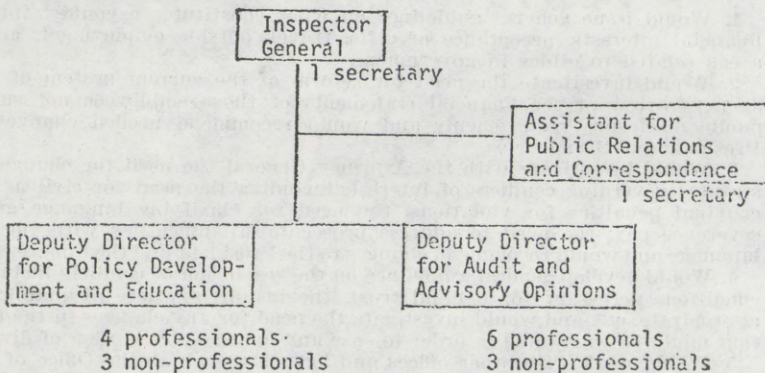
B. Prosecutorial responsibilities

1. Prosecutorial responsibility will remain in the Justice Department and both the agencies and the Inspector General will refer any recommendations for prosecution to Justice.

IV. BUDGET AND STAFFING

A. Staffing

1. Would require 12 professionals and 8 non-professionals.



B. Budget

Salaries	\$ 460,000
Fringe Benefits	84,000
Administrative Costs	<u>275,000</u>
	819,000 • TOTAL

Mr. GILMAN. This \$1 million estimate, I would assume it is the initial estimate. What would you estimate the annual budget to be? One million dollars per year?

Mr. CAMPBELL. Yes.

Mr. GILMAN. And your Department wouldn't be able to handle this responsibility without creation of a whole new section?

Mr. CAMPBELL. Not without reduction of personnel in other areas. I say, having now had some time to examine that situation, and looking at our workloads and backlogs in a great variety of areas, and assuming that we are doing those things that we are doing such as testing and putting people on registers and hearing grievances cases, there is no leeway for that. But, that doesn't mean that we couldn't stop some activity; it would not be easy within the mandates of the Commission.

Mr. GILMAN. Is the Commission presently keeping records of financial disclosure?

Mr. CAMPBELL. Yes, we are under the Executive order. It is Mr. Reich's responsibility in that area.

Mr. GILMAN. How many employee records do you now keep?

Mr. REICH. There are roughly 200 persons in category 401 of Executive Order 11222. Those are the top agency officials, members of commissions and boards, and the top personnel in the White House. In addition, we keep our own records for our own employees, which are about 200.

Mr. GILMAN. You are keeping a record for about 400 employees now?

Mr. REICH. Yes.

Mr. GILMAN. This would mean how many employees?

Mr. CAMPBELL. I don't know if we have that number or not. We have to make a distinction between those who have filed with us and those who file with other agencies, because the Commission will continue to receive the reports from the Presidential appointees.

Mr. GILMAN. How many have filed with the Commission?

Mr. GOODMAN. If I could, Mr. Gilman, I don't think we have the figure at hand, but we would be talking about all GS-16's, GS-17's, and GS-18's, as well as those people on the Executive Schedule who are not members of commissions and boards and so on. Right now we only handle financial reports except for our own in-house people of those people who are members of commissions, boards, and so on. So, it would include all those who are GS-16's in the Government, all of those who are GS-17's, all those who are GS-18's.

We are talking about numbers in the thousands rather than 200.

Mr. GILMAN. And they would be filed with this Commission?

Mr. GOODMAN. That's correct.

Mr. GILMAN. Then the remainder of that would be filed with the separate agency?

Mr. GOODMAN. Yes. The people below grade 16 would have continuing responsibility. I would also note that our responsibility in regard to those financial statements would be greatly increased under this bill. So, it isn't just a question of getting more statements. We would be getting more statements and would have to do more with them.

For example, we have random reviews that we have to make under this bill.

Mr. GILMAN. Actually your paperwork would increase on individual papers from about 400 to you say approximately a couple of thousand.

Mr. CAMPBELL. We will provide you the exact figure on that. Let me say that by doing a very quick calculation based on the numbers I do know, my guess is that we're talking about maybe 10,000.

Mr. GILMAN. The Commission itself would have to accumulate in its file?

Mr. CAMPBELL. There are approximately 15,000 employees in the executive branch who would be covered under the proposed legislation.

Mr. GILMAN. I am a little curious too about your opinion concerning a provision in the bill that talks about—yes, page 11 of the bill, section 105, (subsection 2(c)), where it states it is unlawful for any person to inspect or obtain the use of reports for unlawful purposes.

How do you propose to implement that sort of thing. For example, if a newsman comes in and makes a copy of it and it gets into someone else's hand, how do you prevent that from happening?

Mr. CAMPBELL. Like law enforcement in a lot of areas, it is a matter of determining the purpose. The bill does provide that the Attorney General can bring civil action against any person who inspects, obtains, or uses a report for any of these prohibited purposes.

Certainly, if a person received a solicitation and felt that that solicitation was the result of somebody having access to that record, since we will have a list of everybody who asked to see a record and who sees the record, and we will keep that list both in relationship to the person who is requesting it as well as the name of the specific person of the record that they request, it seems to me you have a system which will make possible a fair enforcement of this kind of prohibition.

Mr. GILMAN. Would all of the records be open to someone who was in for a proper cause—making an examination for one of these duly authorized purposes?

Mr. CAMPBELL. Yes.

Mr. GILMAN. And the entire record would be available.

Mr. CAMPBELL. Yes.

Mr. GILMAN. If you had your choice, would you prefer that the Office of the Government Ethics be your own appointment, the Director of that office?

Mr. CAMPBELL. No. I think it is an appropriate Presidential appointment because of the significance of the new direction which the Federal Government is taking. And, I believe in the greater help it would be in regaining public trust in the Government.

Mr. GILMAN. The chairman suggested the need for a code of ethics and I talked with our prior witness about the possibility of a code of conduct for Government employees. I assume that you wouldn't object to having such a code of ethics proposed for governmental employees. Am I correct from your prior statements?

Mr. CAMPBELL. You are quite correct. There are now some codes. The question is the degree to which they are given effectiveness. There is a code in relationship to the Executive order which we are now carrying out.

Congress some time ago passed a code which I saw for the first time 2 days ago and did not know it existed. But, in principle, the more guidance which can be provided to people in jobs of public trust, I think, the better.

Mr. GILMAN. And you said you are working on such a code at the present time?

Mr. CAMPBELL. No, I did not.

Mr. GILMAN. You intend to work on such a code?

Mr. CAMPBELL. The issue has been raised frequently enough in hearings and in relationship to other inquiries that I have had; that I have asked the staff to examine what now exists, whether there are loopholes, and should we consider moving in that direction.

Mr. GILMAN. One of your assistants today mentioned the provision seemed to take care of it. I've been reading that provision as well. It talks about the need of some new regulations and putting them together. That is not what I am thinking about. I am thinking about a general code of ethics. A general code of conduct.

Mr. GOODMAN. I think that is one of the things that this office would have the authority to do. I think that is one of the things that this office would in fact look into: the need to have a general code that rationalizes many of the things that are presently in existence and some of the things that don't exist.

Mr. GILMAN. Those are some of the things that you would be recommending?

Mr. GOODMAN. That is what this office will be dealing with.

Mr. GILMAN. You would be making that kind of recommendation?

Mr. GOODMAN. I'm sure that is what we would be doing.

Mr. GILMAN. What I'm saying is that one of the recommendations that you would be making for this new office to consider would be a general code of conduct, is that right?

Mr. GOODMAN. I'm sure we would.

Mr. GILMAN. Thank you.

Ms. SCHROEDER. Just a few quick questions.

You mentioned in your testimony that the revolving door disclosure bill will create a lot of paperwork. And, then I understand that under the Executive order a lot of people are already covered to file such statements.

Does that mean that paperwork is essentially done on this revolving door area and all we have to do is make it public? Or are those paragraphs relating?

Mr. CAMPBELL. No, it does not mean that.

Ms. SCHROEDER. Page 5.

Mr. CAMPBELL. Page 5?

Ms. SCHROEDER. Yes.

Mr. CAMPBELL. Your question relates to the comment about employees in the grade GS-15 and below?

Ms. SCHROEDER. About the revolving door disclosure—many people are already covered under Executive Order 11222.

Mr. CAMPBELL. You are asking if that is the case why not expand it. The fact is that under the current Executive order it relates only to those employees in those sensitive positions related to procurement and the like.

What this bill would do, as I understand it, it would include many more employees.

Ms. SCHROEDER. Would it deal with those more sensitive employees in regard to the revolving door provision? In other words, has that information already been collected under the Executive order?

Mr. CAMPBELL. They would be covered under the amendment, suggested in the administration's program, to section 207 of title 18. Is that correct?

Mr. GOODMAN. Right.

Ms. SCHROEDER. Then I want to ask also about regulating the conduct of military officers. It is becoming a hotter issue hourly and I think that the approach is kind of an unprecedented one. I am wondering why you took that approach and whether or not maybe since we are staying away from the judiciary area that we want the Joint Chiefs of Staff or the President to come up with a military ethics liaison or someone else to deal with the area of military ethics.

Mr. CAMPBELL. I think it is fair to say that the administration very much considers the military part of the executive branch. Therefore, I do not think that special rules and regulations are necessary. Frankly my own view is that at this level there is not that great distinction as to the public trust between the civil side of the public service and the military side of the public service.

Ms. SCHROEDER. It may be interesting as we go down the path.

Mr. CAMPBELL. Yes, it may.

Ms. SCHROEDER. There is a section that requires the source and amount of income in the preparation and delivery of speeches and convention attendance and the like to be publicly disclosed. That appears to be drafted broadly enough so that a Federal speechwriter would have to disclose his whole salary. Or, a scientist who goes to a scientific convention at Government expense would be required to disclose his per diem.

Was that broad a coverage intended? I think also you could say that section 3 was broad enough so that a medical doctor would have to disclose the value of the medical kit if he took it with him to his Government job because it would be personal property.

I was wondering if it were meant to be that broad. I was wondering if I was misreading it.

Mr. CAMPBELL. It clearly was not meant to be that broad. It was meant to convey that if it is one's responsibility to carry on those activities, then it would not be reported. The bill is not clear on that point. It obviously ought to be.

Ms. SCHROEDER. We may want to look at that and see if we come up with the same thing.

On page 10 of the bill you say that blind trusts are not to be disclosed if they fulfill certain requirements made by the Civil Service Commission and the Department of Justice. I am wondering if you could supply for the record the description of those regulations because otherwise we may have people taking pot shots on the floor saying that this is a pig in the poke or the escape clause.

Mr. CAMPBELL. We will.

Ms. SCHROEDER. Then you also have a 5-percent sampling of disclosure statements which are going to be filed. I would like to know what is the extent of those audits as you envision them. Are you going to look into tax returns, securities files, the FDI? How far are you going to go on those audits or is it just an auditing of the audits?

Mr. CAMPBELL. Well, we use the word "review" rather than audit, intentionally. It certainly is a review on the face of the material supplied. However, the power will be there to look further if it is thought to be necessary.

We are attempting to achieve a balance. If there were a requirement of an audit, that would mean a full audit which would be investigation of tax returns and all the rest. There is no way we could do that with a \$1 million a year appropriation.

So, we are attempting to establish a system of review which will help us identify those statements which we believe need an in-depth investigation without doing very many investigations in depth.

Ms. SCHROEDER. I see. How are the service employees in the judicial and legislative branches covered?

Mr. CAMPBELL. By their own branches as far as the President's bill is concerned.

Ms. SCHROEDER. Counsel, do you have any questions?

Mr. KNULL. No.

Ms. SCHROEDER. I would like to thank you, Chairman Campbell, for your testimony.

Mr. CAMPBELL. We appreciate very much the opportunity to present the administration's view.

Ms. SCHROEDER. We appreciate you for all the hard work you have done. I'm sure we will have much more hard work to do together before it is all done.

Thank you very much. This hearing is adjourned.

[Whereupon, at 11:30 p.m., the hearing was adjourned.]

[The information which follows was received for inclusion in the record and consists of the administration's views on blind trusts as set forth in the statements of President Moore of the Export-Import Bank and Chairman Campbell before the Senate Governmental Affairs Committee on June 9, 1977.]

STATEMENT OF JOHN L. MOORE, JR., PRESIDENT OF THE EXPORT-IMPORT BANK, AT HEARINGS OF SENATE GOVERNMENT AFFAIRS COMMITTEE, REGARDING THE USE OF TRUSTS

Thank you for allowing me the opportunity to have my comments on the use of trusts read for me. I am presently attending the annual meeting of the International Union of Credit and Investment Insurers in Oslo.

I speak to you now, not as President of the Export-Import Bank, but as former Special Counsel to the Carter-Mondale Transition Group on ethics and conflicts of interest. Over some months, I had the opportunity to work with members of the Cabinet and other Presidential appointees to help them resolve their conflicts of interest. During that time I witnessed appropriate uses of trusts to eliminate conflicts of interest.

The Carter Administration believes that blind trusts with correct features are appropriate and should be allowed.

18 U.S. Code 208(a) prohibits government officers from knowingly participating in particular matters affecting the financial interest of organizations ownership of which is held by the officer, the officer's spouse, or by any minor child. If the officer does not know what is held for him or her or for the other relatives, he or she may participate in matters which may affect the financial interest of organizations the ownership of which is so held. The other solution, if the officer does know of a conflict of interest, is to disqualify and not act on such matters.

That statutory framework is sufficient and adequate to avoid conflicts or the appearance of conflicts. To be "blind", trusts should incorporate the following features:

(A) The trustee should be independent of the officer and the relatives defined in the statute. Independence is achieved if the trustee is not related to the officer by blood or marriage, is not employed by the officer or by any organization affiliated with the officer.

(B) The trust instrument must provide that all decisions on purchases or sales of assets are made by the trustee or persons or companies also independent of the officer.

(C) No information as to the composition of the assets of the trust will be given to the officer or any person not independent of the officer.

(D) Tax returns will be prepared, signed and filed by persons independent of the officer and no information given to the officer as to assets held in trust.

(E) The assets transferred to the trust should be cash or such well diversified assets with a high enough tax basis so that the officer can genuinely assume that the trustee will change the portfolio.

The last point is the most difficult to achieve. If the tax basis is low or if the assets are large or not well diversified, the officer then may well know that the chances are overwhelming that certain assets will be retained. In that case 18 U.S. Code 208(a) requires that the officer disqualify.

In most instances disqualification will suffice. But if the disqualification inhibits seriously the performance of duties for the government, divestiture by sale is the only satisfactory course of action.

"Blind Trust" has become a term which to many in Washington signifies avoidance of the statute. If an officer transfers to the trustee \$10,000,000 in value of stock in one company with a small tax basis and does not disqualify as to particular matters affecting the financial interest of that company, the officer runs a grave risk of violating the provisions of 8 U.S. Code 208(a).

The answer to the problem, to the extent one exists, is not to abolish the use of blind trusts but to oversee their use to the end that they be blind and that they be so perceived by others. I urge this Committee and the Congress to allow the use of properly structured blind trusts.

Further, there is no reason why a trust cannot be used which has in it assets "blind" to the officer and other assets as to which the officer may not be "blind" but as to which the officer disqualifies. For example, the trustee may be directed to dispose of a particular stock in full over two years, to reduce the rate of capital gains tax to be paid. Disqualification with respect to that stock over two years would resolve that conflict.

The features of trusts described in (A), (B), (C), and (D) above, as to independence of trustee, total investment discretion in the trustee, cut-off of information, and filing of tax returns can be safely and easily incorporated in a statute if Congress wishes to be specific as to those items.

However, I fear that if Congress seeks to address solution of (E) in statutory form, the result will be too rigid. In some circumstances involving smaller portfolios, 15 percent to 25 percent may not be an undue concentration in one security, while in larger portfolios a smaller percentage should apply. I believe it wise for Congress to delegate to other officers or agencies the case-by-case determination needed. Otherwise too many capable people considering government service may be deterred from it.

While most people may be willing to make a considerable tax sacrifice to become Cabinet Officers, will they be willing to do so to become Deputies or Assistant Secretaries?

STATEMENT OF ALAN K. CAMPBELL, CHAIRMAN, CIVIL SERVICE COMMISSION, BEFORE THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE, JUNE 9, 1977

It is a pleasure to appear again before your Committee at your specific request that I present the Administration's position on blind trusts.

Section 303(d)(2) of S. 555 would dissolve all blind trusts, whether they be revocable or irrevocable, by May 15, 1978, unless prior to that date the minimum requirements for a blind trust have been defined by statute and the trust involved meets the requirement of such statute. Your Committee, I understand, is now reviewing the elements of a blind trust with a view to formulating a proposal for incorporation into S. 555 when it is considered on the floor of the Senate. We believe that this purpose can be accomplished either by specific legislation setting forth the appropriate terms of a blind trust or by delegating to the Director of the Office of Government Ethics to be created in the Civil Service Commission the authority, with the concurrence of the Attorney General, to draw up rules for blind trusts and the procedure for their approval.

We recognize that there are some persons who doubt the validity of blind trusts and maintain, in effect, that they are merely "sugar coating" to authorize holdings which would otherwise be prohibited. In our opinion, this view fails to recognize the realities. There are some situations in which a blind trust should and must be available if the Government is to continue to attract and retain persons who may happen to have substantial and varied holdings. 18 U.S.C. section 208, for example, provides that a Federal employee cannot participate personally and substantially in any matter in which, to his knowledge, he, his spouse or minor child has a financial interest. There are some officials who when they join Government have holdings in a wide variety of companies and who, because of economic consequences, cannot be expected to divest themselves immediately of such interests. While they could recuse themselves in particular matters, the range of activities of their office may be so extensive that their effectiveness could be unnecessarily restricted. Proper blind trusts serve to ameliorate these situations by insulating the official from knowledge of his holdings.

The Administration does not lightly give its endorsement to every proposed blind trust. Each case must be weighed carefully and approval is given only when the criteria that the Administration has set up have been met.

For a trust to be accepted as beyond the control and knowledge of the employee and thus deemed a blind trust, the Administration at a minimum would require that the assets initially placed in the trust be relatively diversified and marketable, that the trustee be truly independent in that he is neither a relative nor an officer or employee in a corporation or enterprise controlled by the employee, that the trustee not be placed under any direction to retain particular assets or be otherwise restricted in his actions, and that the employee and his spouse and minor child be fully insulated after the trust has been created from knowledge of the trust assets and transactions. Insofar as public disclosure is involved, the identity and the category of value of asset initially placed in the trust and the trust instrument itself would be made available to the public. To reveal to the public the contents of the trust thereafter would obviously destroy its very efficacy as a blind trust since it would make it possible for the reporting official to ascertain the contents of the trust.

Once again, I have enjoyed the opportunity to appear before you.

[The statements which follow were received 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 700,000 Federal employees in exclusive recognition units, is grateful for the opportunity to submit a statement to the Subcommittee on Ethics and Utilization of the House on the President's "Ethics in Government Act", H.R. 6954. AFGE testified on March 24, 1977 before this Subcommittee on H.R. 3829, a bill which would establish a Commission on Ethics and Financial Disclosure within the Federal Government. We hope these additional comments today will prove useful.

In our previous testimony, we stressed the need for quick Congressional action to restore the climate of trust and confidence in government which existed prior to the Viet Nam war and the Watergate scandal. We also outlined our general views as to the kind of problems any new legislation should address and resolve. Today, therefore, we would like to restrict our remarks to certain specific features of H.R. 6954 which we believe should be part of the eventual law, and to various other proposals which we understand are being made to improve this bill.

One major concern for us relates to the total number of Federal employees who might be required to file financial disclosure statements, available to the public, under any new law. We understand there has been a proposal that the Civil Service Commission, by request of the President, would be permitted to apply the public disclosure provisions of this legislation to lower-grade civil service employees.

We would oppose such an amendment unless the eventual statute provided clear standards for application by the Commission in exercising this authority. Otherwise, it could have the result of creating virtually open-ended reporting requirements and conceivably undermine the effectiveness of any new reporting system. Also, we believe the numbers of Federal employees required to file under this bill should be restricted to those who are actually able to gain personal,

private profit from the government positions they hold. If this is not done, the effort to eliminate conflict-of-interest will not be targeted accurately, the volume of unnecessary paperwork could inhibit effective implementation of the law, and the privacy of employees could be invaded without serving any public purpose.

We also oppose suggestions that all outside employment by Federal employees should be prohibited without prior approval of an "agency ethics counselor". While this might be applicable in the upper reaches of government, we do not believe that rank-and-file government workers should need prior approval of an agency official before taking routine night or weekend jobs, if such employment is not expressly prohibited or restricted by agency regulations. It seems sufficient for such workers simply to report only such outside employment which is steady in nature within 10 working days of the onset of such employment.

Unlike upper-level federal employees who may choose to acquire part-time employment in order to further enhance their already comfortable lives, many lower and moderate income Federal families have found it absolutely necessary to supplement their Federal pay in order to afford adequate housing, clothes, medical care, food, and basic services.

The latest figures from the Department of Labor's Bureau of Labor Statistics (B.L.S.) are instructive. The BLS recently determined that it now costs an urban family of four at least \$10,041 to maintain a very minimum standard of living. The cost of sustaining this same family at a moderate level of comfort and decency would be \$16,236. The BLS study put the cost of providing an above average standard of living for this family at \$23,759.

According to the Civil Service Commission (C.S.C.), there are over 431,000 Federal civil service employees in the United States who earn less income each year than the \$10,041 which the BLS determined is essential to support a family of four at minimal living standards. Similarly, C.S.C. statistics indicate that over 1,787,000 Federal workers earn less than the \$16,236 needed to provide a moderate standard of living. Over 2,227,000 earn less than the \$23,759 necessary to provide an above average level of decency and comfort for this family of four.

These data make it clear that many thousands of Federal employees need part-time outside work just to maintain a basic level of living for their families. Thus, we would oppose any limitation on outside part-time jobs for such people unless there was a clear conflict-of-interest involved or unless it clearly interfered with performance of government duties. Among other limitations, we would oppose any requirement to obtain prior approval for any and all outside employment of rank-and-file Federal employees.

Any code of conduct established for Federal employees should reflect a realistic awareness of differences in the responsibilities, duties, and opportunities for private profit and conflict-of-interest between lower-level and higher-level Federal employees, as well as their relative needs for outside employment and the type of outside employment involved. Restrictions which should apply to procurement officers and contracting officers should not necessarily apply to clerks or stenographers.

Furthermore, employees should be provided proper due process if faced with adverse personnel actions stemming from this legislation. Initial implementation of the financial reporting system is bound to create a certain amount of confusion, and some Federal employees may involuntarily or unknowingly violate some provision of the law, or of the regulations to be promulgated by any new enforcement body. We recommend, therefore, that a mandatory notice and orientation program be provided by statute and that compliance therewith be a condition precedent to the application of any disciplinary provisions of the law.

There is one final note of caution which we wish to sound. It involves the right to privacy on the part of those Federal employees who must, under the provisions of this bill, file financial disclosure statements available to the public. 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. The Public Interest Research Group, for example, has opposed any access provisions on the ground that implementation would create complexity and litigation.

While we strongly support efforts to increase the public accountability of Federal officials in key positions, we are also concerned over the rights of such officials themselves to be free from unwarranted intrusions into their privacy. For example, one need only read the recent report of the National Advisory Committee on Criminal Justice entitled "Disorders and Terrorism", which predicts an upsurge in the United States of the kind of political kidnapping for ransom that has swept many other countries, to realize that full public access to financial disclosure statements could conceivably place the safety of affected government employees and their families in jeopardy.

Political terrorists, though the most dramatic, are not the only threat. Disclosure statements would also be valuable sources of information to illegitimate American business enterprises and foreign intelligence services who could be keenly interested in the financial situations and connection of government civilian and military officials. Finally, Federal employees should not be made more valuable than necessary or than other citizens to private credit companies, bill collectors, mailing list compilers, and others who could misuse these statements, unless an overriding public interest was there by being served.

We, therefore, fully endorse section 105 of H.R. 6954, which places certain essential restrictions on public access to financial disclosure statements and provides criminal penalties for those who attempt to use these public statements for unlawful or unethical purposes.

This concludes our statement. AFGE would be pleased to discuss further with the Committee or its staff any of the points made in this statement, in our May 5, 1977, statement on S. 555 to the Senate Governmental Affairs Committee, or in our March 24, 1977 statement on H.R. 3829 to the House Subcommittee on Employees Ethics and Utilization.

NEW YORK SOCIETY FOR ETHICAL CULTURE,
New York, N.Y., June 21, 1977.

Representative PATRICIA SCHROEDER,
Chairwoman, Subcommittee on Employee Ethics and Utilization, House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE SCHROEDER: On behalf of the Center for Applied Ethics of the New York Society for Ethical Culture, I submit the enclosed report in the hope that it may be useful as part of the record of hearings on the Ethics in Government Act of 1977, H.R. 6954, and related provisions in H.R. 2733 and H.R. 3928.

This study, with our recommendations, was submitted on June 9 to Mr. Robert Lipshutz, Counsel to the President, in a meeting at the White House arranged by his office for this purpose. Last April 18, when I met with Mr. Lipshutz and a few of his associates to discuss ethical issues in government, he generously suggested that the Center for Applied Ethics, which I serve as Director, might wish to consider the "revolving door" problem and forward our recommendations to him, as well as to share our thinking with the Congress. We are pleased to respond to this suggestion.

We shall be glad to answer any questions that you have about our study and its recommendations.

Sincerely,

EDWARD L. ERICSON,
Chairman, Board of Leaders.

NEW YORK SOCIETY FOR ETHICAL CULTURE,
New York, N.Y., June 9, 1977.

Mr. ROBERT LIPSHUTZ,
*Counsel to the President,
The White House, Washington, D.C.*

DEAR MR. LIPSHUTZ: The following report, which I submit on behalf of the Center for Applied Ethics of the New York Society for Ethical Culture, developed out of your suggestion to me last April 18 that the Center, which I serve as Director, might wish to examine the issues involved in the "revolving door" problem and forward its recommendations to you. We are pleased to accept your invitation.

We believe the approach outlined in our recommendations is responsive to the Ethics in Government legislation recently proposed by the President and now

before Congress; we also believe that the principles and procedures suggested will continue to be applicable to the work of an Office of Government Ethics, once such an agency comes into being. We stand ready to offer our voluntary services as a continuing resource designed to facilitate critical examination of ethical issues in business, government, and the professions.

The members of the nonpartisan panel who labored to produce this report served without compensation. Several are members of the Society, but the majority are not. These distinguished citizens responded to our invitation in the spirit that Americans always manifest when their government demonstrates moral leadership and a concern for the integrity of the democratic system.

Thank you for your encouragement of this study.

Sincerely,

EDWARD L. ERICSON,
Chairman, Board of Leaders.

THE REVOLVING DOOR

OBSERVATIONS AND RECOMMENDATIONS ON THE ETHICAL ASPECTS OF THE MOVEMENT OF HIGH LEVEL PERSONNEL BETWEEN GOVERNMENT SERVICE AND PRIVATE ENTERPRISE

Prepared by the Center for Applied Ethics of the New York Society for Ethical Culture, New York, N.Y.

PARTICIPANTS IN THIS STUDY

Ivan Shapiro, (Chairperson), President of New York Society for Ethical Culture and member Greenbaum, Wolff & Ernst.

Edward L. Ericson, Director, Center for Applied Ethics and Chairman, Board of Leaders, New York Society for Ethical Culture.

James L. Adler, Jr., Member Greenbaum, Wolff & Ernst.

Lisa Drew, Senior Editor, Doubleday & Company, Inc.

John P. Engel, Legislative Assistant to Deputy Mayor, City of New York.

John A. Guzzetta, Member Simpson, Thacher & Bartlett.

Robert Kleinberg, First Vice President, White Weld & Co., Inc.

Jan Mares, Operations Manager, Union Carbide Corp.

David Peasbach, Vice President, Heidrick & Struggles, Inc.

Sidney Scheuer, President, Scheuer & Co. and Chairman, National Committee for an Effective Congress.

Hon. Nicholas Scopetta, Deputy Mayor and Commissioner of Investigation, City of New York.

Mitchell Bernard, Recorder.

[The Ethics in Government Group is part of the Center for Applied Ethics of the New York Society for Ethical Culture. Its participants, the majority of whom are not affiliated with the Society, are active professionally in fields which provide acquaintance with the problems considered. Our purpose has been to avoid grand designs and abstract appeals and to deal instead with realizable solutions to those problems we deem of current importance.]

I. INTRODUCTION

This report relates to the problems which arise when people in private life enter into government service and subsequently return to their private careers, or when career government personnel undertake a new career in the private world. This subject is currently receiving the attention of the President and the Congress.

A special feature of this report which we believe to be unique in addressing the problem, is our proposal to make greater use of the civil law. For reasons set forth below, we are convinced that civil procedures should exist, utilizing pre-employment agreements that are binding upon the individual entering or leaving government service and his private associates, as the first line of compliance. By private associates we mean to include all non-governmental firms and organizations.

We believe that such criminal sanctions as now exist, or that may be enacted, will serve principally as a deterrent, but are likely to prove to be an uncertain tool in dealing with any but the most flagrant instances. Such pre-employment

agreements as we contemplate should be supervised by an Office of Government Ethics, as proposed by the President, which should be created for this and other purposes.

Here we consider only the "revolving door" problem. We have left to another occasion other questions raised by the misconduct of public officials while in office or subsequently.

We have accepted as our premise that an abuse is possible when the person on one side of the government/private interest door shifts to the other side. Clearly this situation poses some basic ethical problems and it is these we have endeavored to address.

We have also accepted as our premise that it is desirable for the government to be able to recruit high officials outside the pool of civil servants to serve in government for a few years, or to work on a single, finite government project. The alternative to drawing upon the talents of people in private enterprises and professions would be to have every appointive position in government filled by a career government employee. If this were done, the revolving door problem would limit itself to elected officials and to those employees who are approaching the end of their government careers and intend to associate themselves with new employers, partners, or clients. We believe that neither a totally career government nor a totally elected government is practical or desirable. While the civil service contains many extremely able people at all levels, there are a great many functions, permanent as well as ad hoc, which can be handled at least as well by short-term appointees. Accordingly, we urge that whatever remedies or preventatives are suggested for revolving door conflicts should not be so restrictive as to deprive the government of able people for limited periods of public service.

The early history of America provides an example of government conducted almost entirely by temporary manpower. From colonial times until the introduction of civil service and pensions, the business of the federal government was conducted by people who, whether elected or appointed to office, expected to resume their private pursuits relatively soon. It has not been uncommon throughout our history for people to make the round trip several times in their lives. Until well into the present century the number of career federal employees, both civil and military, was small. Thus, there is nothing novel about the fact that there is a revolving door at the entrance to the federal establishment.

What is relatively new in the fact that as the laws and activities of the Federal Government have come to have more impact on the economic life of America, the result has been that a departing high official of the government has a greater opportunity to capitalize on the influence and knowledge he or she has acquired in public life. The private sector is eager to recruit executives and professionals who have held important posts in regulatory agencies, in the military, in the Congress and in the executive departments. If an object of the seeker and the sought is to buy and sell influence, serious consequences could flow.

II. THE NATURE OF THE REVOLVING DOOR PROBLEM

The basic ethical issue is a variant of the conflict of interest problem. In a true conflict of interest situation, an individual endeavors to serve two masters simultaneously. That is, each of his employers or clients has full and complete claim on his services and loyalties. When these employers or clients are in conflict between themselves, the individual cannot in the nature of things participate in the dispute with the full measure of commitment each principal has the right to expect.

The revolving door situation is somewhat different, in that the competing interests are not usually entitled to assert their claims on the individual simultaneously. Presumably the official has fully relinquished his government post before taking a role on behalf of a firm or client who may later be in conflict with the government or seeking a benefit from the government. However, the revolving door situation does carry some elements of conflict of interests. Two instances of this are the following:

1. The career government person, having decided to retire within the next year or two, considers seeking or accepting a position with a corporation whose people he has come to know from his contacts with them. The contemplation of this future career may be said to create the possibility of a conflict of interest.

2. The official, having left the government, is serving or representing a firm which is dealing with the government. If the official during his governmental service obtained confidential knowledge of the government's intentions in the matter, his possession of the information and his knowledge that its disclosure would benefit his new associates places him in a conflict of interest. While we strongly favor a policy of openness in all governmental actions, we recognize a valid right of government to maintain confidentiality while the negotiations or decisionmaking process continues. Accordingly, the government does have the continuing right to claim nonparticipation, at least temporarily, from its former employee.

One may inquire whether one's ethical obligations to the government are of higher nature than one's ethical obligations to anyone else. Barring certain narrow or infrequent circumstances, it would seem appropriate in a democracy to recognize that the ethical obligations owed to or by the government are neither greater nor less in priority than anyone else's ethical rights and responsibilities. Thus, we believe that everything we will say must cut both ways. If an official of a corporation leaves or contemplates leaving his firm and accepts a post in government, whatever limitations should be placed on his conduct to protect the interests of his former employer are the same as if his employment shuttle carried him in the opposite direction.

Having said that the revolving door problem has ethical dimensions, and having discussed briefly some conflicts of interest situations, we arrive at the hardest part of the problem: defining the nature of the conduct that represents an abuse of the former employer (i.e. the government for the purposes of this discussion).

The wrongdoing most likely to flow from the switch in roles is likely to stem from the improper use of influence on behalf of the private interest. "Influence" is a loaded word with a long history and a usually dishonorable connotation in the context of public/private relationships. It is important, therefore, to distinguish the improper use of "influence" from other quite proper uses of the experience and acquaintanceships gained from the years of public employment.

We believe that a reasonably able and likable public official departs from his government position with at least three new assets:

(a) A knowledge of the substantive policies, rulings and attitudes of the department or agency in which he worked. We will call this his "Expertise";

(b) A knowledge of the procedures of the agency, how it handles matters and which channels must be traveled for any particular matter. We will call this his "Know-How";

(c) A network of friendships, moral obligations and due bills within the agency or department which he may present in the future. These intangibles will be based in part upon the character of the individual, including his reputation for honor and ability, but will also reflect the power he formerly held, i.e. the degree of his influence, or the power of his supporters when he held government employment. Obviously, there are many other factors, but the net result is to give the person what we will call "Influence".

We do not find any ethical problem raised by the former official capitalizing on either his Expertise or his Know-How. Putting these at the service of a firm dealing with the official's former agency does not by itself give any improper advantage to the firm or place the public interest (or the firm's competitors) at an improper disadvantage. To characterize every utilization of his Expertise or Know-How by the private firm as improper is ethically unjustified and absurd in its results. Ethics cannot even exist without knowledge and awareness. If democratic government is to perform this function properly, the citizenry (which includes the management of the Fortune 500 corporations as well as those on welfare rolls) has every right to know what policies the government is pursuing, who the people are who determine and administer those policies, the reasons for them and how one can go about dealing with the government in its myriad parts. In our judgment, any regulation or policy which has as its effect the creation of a wall of darkness between the government and the citizenry is unethical. This nation has awakened to the fact that our government, instead of being the ideal servant of the citizens, can take on a life of its own which sets it in conflict with the proper rights of the citizens.

We believe that one of the most effective ways of narrowing this gulf is for here to be a back and forth movement of able individuals, with Expertise and Know-How, between public employment and association with private interests which necessarily have dealings with government. The young prosecutor

who leaves government to represent persons charged with crime is not "abusing" the public interest because he brings to his new role Expertise and Know-How which another lawyer lacks. Nor does the former commissioner of a regulatory agency abuse a trust simply by placing his knowledge and experience at the service of firms which his agency regulates.

It is in the use of the former official's third asset, Influence, that most problems arise. It is our judgment that it is impossible to eliminate every trace of Influence short of totally proscribing role switching. Simply being a former colleague will give Influence, unless the old relationships were themselves sour. But there is a considerable difference between, on the one hand, appearing before a former colleague, with the anticipation that one will receive a full and prompt hearing and an opportunity to persuade him of one's position, and on the other hand appearing before him with explicit or implicit promises of doing him favors, or a threat of his being subjected to unfavorable action by his superiors, or presenting the due bills for past favors received. That difference constitutes the ethical difference between proper representation of the new associates and improper abuse of the former employer.

The test would seem to be not the propriety of the result which one seeks, but the means one uses. After all, if a private interest seeks and obtains an outrageously favorable result from the government wholly without the use of former or present government officials or bribery or fraud, we may ascribe it to hard bargaining, talent, official incompetence or whatever, but not to impropriety. However, if the means used to bring about a particular result are questionable, i.e. means which destroy the "arms length" relationship between government and the private contender, we have an impropriety against which preventive or punitive action may be taken by the government, regardless of the reasonableness of the result achieved.

This, in essence, is the largest part of the revolving door problem: the possible destruction of the arms-length relationship through the utilization by private interest of the influence of a former government official.

It is obvious from what has been said above that we do not believe the ethical standard is determined by the result. Only a sensitivity to the right and wrong aspect of the means used to achieve a result can help a democratic society to fulfill the purposes for which it exists.

III. RECOMMENDATIONS

We continue to believe that a public office is a public trust. However, we do not believe that subsequent commercial gain must inevitably be interpreted as establishing that a breach of the public trust has occurred. Accordingly, we have already stated our opposition to stringent preventive measures which would demand excessive sacrifices by those who might be extremely valuable government officials. If we believed that there was no other way to preserve the integrity of the public interest, our conclusions would be otherwise. But we reject this conclusion. We do not believe that even a significant minority of temporary officials are insensitive to their moral obligations. Ethical sensitivity and awareness is, of course, the bedrock on which government affairs and society's affairs in general must rest.

Morality is contagious. Moral tone in a nation, in a business, in a family or, indeed, in any group, is set at the top. If insensitivity exists at the top, it will, like a river of pitch, defile everything below it. Criminal laws can only punish relatively gross instances of immorality. They cannot establish the tone of a society. If idealism and highmindedness with respect to both means and results are important in the White House, in the Congressional leadership, in the heads of departments and agencies, that tone will pervade not only the government, but the nation at large. But if those leaders are indifferent to truth, honor or public trust, that indifference will also tend to corrupt the entire system, with disastrous results.

We believe that legislation is an appropriate response to the possible abuses of influence by temporary government officials. However, we do not believe that adding substantially to the existing criminal law offers an effective or sufficient remedy. For reasons stated below in Item C, we believe that criminal sanctions are unlikely to be available except in the most flagrant cases. We prefer initial reliance on enforceable civil contracts administered through the following:

(a) The requirement that a pre-employment agreement incorporating substantially the undertakings described in Section A below be executed between the

person leaving a private firm for a high position in government, and that firm, or between the departing government official and the new firm he has agreed to join.

(b) The creation of an Office of Government Ethics, along the lines proposed by President Carter in his message to Congress and legislative proposals of May 1, 1977.

(c) Retention of subdivisions (a) and (b) of 18 USC section 207, and the modification of subdivision (c).

(d) Enforcement of, and perhaps broadening, existing statutes and administrative rules relating to conduct by government officials with persons or firms with whom they have had or may reasonably expect to have economic relationships.

We turn first to the agreement.

A. The agreement

Quite commonly a private person, prior to accepting a high government appointment, or before running for office, will be offered the opportunity by his present firm to return to the firm whenever his government service ends. Obviously this possibility creates, at least, the apparent conflict of interest discussed earlier. We therefore recommend legislation and/or administrative rules requiring that prior to assuming the public post, the individual and the firm execute an agreement and immediately file a copy in a public records file to be maintained by either the Director of the Office of Government Ethics (if such an office then exists) or with the Attorney General. This agreement should contain at least the following:

1. An acknowledgment that the firm has offered to allow the individual to return when he leaves the government.

2. An undertaking by both parties that during the period of government service neither will communicate with the other on any matter in which the firm has a direct or indirect interest, except as contacts may occur in a public forum at which an official record is made.

3. An acknowledgment that during the period of government service no compensation or other benefits will accrue to the individual from the firm for work performed after his departure, except that seniority may accrue if the individual has held a position in the firm in which seniority is a factor in determining subsequent benefits (e.g., pension or profit sharing rights based upon the number of years of employment).

4. An undertaking by the individual that while in government service he will not participate in, nor give advice to the government, nor discuss with anyone (acting on behalf of either the government or the firm) any matter relating to the firm or its affairs, whether such matter be past, pending or proposed.

5. An undertaking by the firm that it will promptly issue instructions to all its officers, partners and high level management personnel sufficient to make them aware of, and comply with the firm's undertakings in the agreement.

6. An acknowledgment by the firm that in agreeing to allow the individual to return, the firm will not use the confidential information or misuse the acquaintanceships with government personnel which the individual may have acquired during his government career.

7. An acknowledgment by both parties that the agreement is being made in order to protect the public's interests, and acknowledging that the agreement will be enforceable by the United States, and that threatened breaches may be enjoined.

We believe that a similar agreement should be executed and filed by every career government official who accepts a position in the private section within two years following the end of his government employment.

In the case of professionals or others who, leaving public office, create their own business or professional offices serving clients, we urge that a similar agreement be signed, and filed, between the individual and each client obtained during the first two years after the end of the public employment.

These agreements should be fully enforceable by each party and by the United States. However, once a breach is found to have occurred, it should be the right of the government to set aside any government decision, ruling or agreement with the firm which was made in circumstances which indicate a likelihood that the decision, ruling or agreement would have been different but for the misconduct.

Other non-criminal remedies might also be provided for in the legislation or established administratively under rules promulgated by the Director of the

Office of Government Ethics (if such then exists) or by the Attorney General. Such other remedies might include civil damages against the offending parties, termination of the individual's right to receive further pension payments from the Federal Government or anything else deemed appropriate. However, we urge that any remedy be available to the government only after holding a hearing which accords with constitutional due process standards.

Because no legislation can be drafted which will anticipate each specific situation, we believe that it is of utmost importance that the Office of Government Ethics be empowered to issue advisory opinions upon the request of any interested party. Experience has shown that interpretations of ethics codes are always necessary. Such interpretations will be extremely salutary if given in advance of a party committee himself to a course of action. If the opinion finds no impropriety in the proposed section, the parties should have the right to rely upon that opinion. If the opinion views the conduct as being improper it is likely that such conduct will never occur.

B. Creation of an Office of Government Ethics

We recommend that such an office be created, as proposed by President Carter. However, at this time we make no recommendations about the powers or role of that Office except to the extent we have suggested it be involved in the receiving and enforcement of the pre-employment agreements described above and the issuance of interpretative opinions upon request.

C. 18 U.S.C. section 207

The existing law relevant to the revolving door situation is found principally in the three subdivisions of this section of the Criminal Code.

Subdivision (a) makes it a criminal offense for certain former government employees ever to appear before the United States on behalf of another party in a matter in which he "personally and substantially" participated while a government employee. We believe this is a correct and fair requirement, and the fact that its violation constitutes a crime is not objectionable. The grossness of the impropriety described warrants such a legal characterization.

Subdivision (b) creates a 1 year proscription with respect to a former government employee appearing before the United States in a matter which, during his last year of government service, was "under his official responsibility". Again, while the effect of this prohibition is broad, there may be sufficient reason to warrant the criminalization of this activity. The higher the official's position was, the more matters came under his official responsibility. And by virtue of the loftiness of his position, his opportunity to have significant influence is increased. However, we admit to misgivings about the violation of this subdivision constituting a crime. In general, we do not believe that the criminal sanction is an effective remedy. Indeed, we must assume that had there been a non-criminal remedy available, more actions would have been taken by the government to prevent or redress violations.

Subdivision (c) is designed to prevent partners of a present government employee from appearing before the government in matters which are personally before the government employee for decision, or within his official responsibility.

We believe this provision is excessively broad, given the present realities of the legal and accounting professions (against whom the provision is apparently aimed). Law firms of more than fifty partners and accounting firms with hundreds of partners are today commonplace. If one partner becomes, for instance, an SEC Commissioner, it would appear that the whole firm must cease representing clients on securities matters, or risk criminal convictions. If these restrictions can be avoided by having the departing partner withdraw from the law firm, then there is no remedy at all available for improper future contacts, even if the firm has already agreed to welcome the man back into the firm after his term of government service. In short, the harshness of a criminal sanction has had the effect of leaving no workable remedy for the particular problems that may arise from the revolving door role of one partner. We therefore suggest that subdivision (c) be repealed, and replaced by the Agreement mechanism we recommended in section A of this portion of our report.

D. Enforcing and broadening the laws against a present Government official dealing improperly with his former (or future) private associations

Corruption or abuses, however characterized, are usually bilateral: a present government official must be bending before the cajolery or threats of a private individual. While most of this report directs its intention to a private individual

who had formerly been a government official, we would be remiss if we did not state the obvious, namely, that action should be taken against the direct wrongdoer, the present official.

Again, the consequences of the kind of moral tone which is set at the top will be crucial. In an administration characterized by moral squalor, wrongdoing by government officials will be endemic. In a morally sensitive administration which neither makes illegal demands upon government officials nor countenances improper demands on them by private interests, the problem will be less severe.

We believe that existing criminal laws relating to acceptance of bribes are appropriate. However, we also urge than an Office of Government Ethics be given supervisory responsibilities in the area of government employees bending to influence, and that it be given an adequate arsenal of non-criminal remedies. We repeat our firm belief that where the only remedy is a criminal sanction, there is small likelihood of effective enforcement of the law in any but the most notorious instances.

IV. Conclusion

We conclude this brief report by reiterating our belief that the enactment of legislation, while necessary, must always be less efficacious than the moral tone set by each administration. At best, the legislation we advocate will provide a standard of conduct in the area of revolving door public service, and a workable mechanism for enforcement. But if an administration is indifferent to the public interest, it will appoint to office individuals who are similarly indifferent, and it will thwart rather than encourage the enforcement of the legislation. All the exhortations in the world will not solve the problem in the face of unethical administration. Democracy is the highest political expression of ethics. The public spirit of the leaders and officials of the country alone can preserve or destroy both democracy and the ethics of government. We have confidence that most of our leaders have the necessary integrity and conscience, and will do those things that will make it an honor and not an opprobrium for able people to participate from time to time in the operation of the government.

ETHICS AND FINANCIAL DISCLOSURE

THURSDAY, JUNE 23, 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 9:05 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 second meeting of the subcommittee on the bills H.R. 6954, H.R. 2733, and H.R. 3928 relating to ethics and financial disclosure.

Our witnesses today will be Representatives Abner Mikva and Benjamin Rosenthal, Fred Wertheimer, who is the vice president of operations of Common Cause, and Irving Geller, general counsel of the National Federation of Federal Employees.

They will be addressing themselves to the bills and the staff recommendations for amending the bills which we are discussing.

[The staff recommendations referred to follow:]

1. Amend H.R. 6954 to include the "revolving door" disclosure concept of Mikva bill, H.R. 3928.

2. Amend H.R. 6954 to include the civil penalties for prohibited "revolving door" activities contained in Spellman bill, H.R. 2733.

3. Amend H.R. 6954 to make agency ethics counselors independent of agency heads and personnel offices, by placing them under the direction of the Director of Office of Government Ethics.

4. Amend H.R. 6954 to establish a Code of Conduct for all Federal employees which would:

(a) Prohibit outside employment without prior approval of agency ethics counselor. This provision would be available to prohibit (1) employees (e.g. lawyers and accountants) from utilizing government acquired expertise simultaneously in private practice; and (2) employees (e.g. lawyers or contracting officers) from creating appearances of or actual conflicts by working in any capacity for firms with which their agencies deal.

(b) Prohibit the acceptance of gifts and gratuities, reimbursements, meals, lodging, travel, etc. from private firms with which the employee's agency deals.

(c) Prohibit investments or ownership by employees in private firms with which the employee's agency deals.

Civil remedies would be available to correct illegal arrangements.

5. Amend H.R. 6954 to permit—by Presidential request—the Civil Service Commission, by rule, to apply public disclosure provisions of the bill to lower grade levels.

6. Amend H.R. 6954 to require—by petition to the Civil Service Commission of any one—the inclusion or exclusion of groups of employees under any requirement or prohibition of H.R. 6954.

7. Amend H.R. 6954 to permit agency ethics counselors to grant certain limited exceptions from rules for short periods of time.

8. Amend H.R. 6954 to permit employees a civil action for damages caused to them by wrongful use of disclosure statements.

9. Amend H.R. 6954 to permit public disclosure required only of the identities of asset, with further disclosure required if an asset (a) appears to be a conflict, and (b) a person requests its investigation. E.g. A identifies in disclosure statement the ownership of "Exxon" stock. A works for Federal Energy Administration, *ergo* an appearance of conflict. B, a public interest group, requests further disclosure, and such is ordered by FEA ethics counselor. Further disclosure is solely on this item and finds that A owns 5 shares of Exxon inherited from grandmother. FEA ethics counselor in public meeting decides that based upon A's duties, the ownership is or is not a conflict.

10. Amend H.R. 6954 to assure proper due process for adverse personnel actions based on the bill.

Mrs. SCHROEDER. Our first witness is Representative Mikva. We welcome you this morning; we are delighted to hear what you have to say.

Mr. MIKVA. Thank you. With your permission, I would like to ask that my statement be put in the record and let me just summarize very briefly, and then I will be glad to take any questions.

Mrs. SCHROEDER. Fine.

[The complete statement follows:]

PREPARED STATEMENT OF HON. ABNER J. MIKVA

I am pleased to appear before your Subcommittee to discuss H.R. 3829, which would require Federal employees compensated at the GS-13 level or above to disclose each position held by them during the 3 year periods preceding and following their employment with the Federal Government.

Testimony in the hearings which the Subcommittee has held over the past several months has pointed out the concern about the situation occurring in the Federal Government, as employees move, seemingly with ease, between government service and the industries and organizations with which they have been involved. The President's proposed Ethics in Government Act of 1977 affirms, as well, that the Administration is concerned with the ethical implications of this flow of people in and out of government, and the conflict of interest which might occur. It is my hope that this Subcommittee can report a bill which deals with the problem fairly, but clearly controls the interests of government employees, so that some of the gross examples of conflicts will no longer occur.

Several recent congressional studies point out the seriousness of the problem. One study showed that in the years 1971-75, 52 percent of the commissioners appointed to nine Federal agencies came from the industries these agencies regulated. During the same period, 48 percent of the commissioners who left the Government went to work, directly or indirectly, for the industries they policed. This arrangement is quite profitable for those men and women who move between the Government and private organizations. Another Congressional study 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.

Getting ahead in business is not the problem we are dealing with here. Getting ahead in business—or law firms, or lobbying organizations—at the expense of the Federal Government, is the problem. I recognize that Government agencies should attempt to hire the most knowledgeable and able employees for their positions. And often, it is the case that those people come from industry or organizations which the agency regulates. Going to work for the industry or organization with which one had direct contact in his or her job in a Government agency does not necessarily create a conflict of interest. It should not be the case, however, that the organizations that the Government regulates utilize these former employees in a way which creates a conflict of interest between the regulators and the regulated.

In too many instances, 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 on be-

half of the industry in general, if not on 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.

More important, the public cannot be comfortable with a regulatory apparatus which appears to tilt in favor of the industry being regulated because of the swinging door between the industry and the agency.

The intention of my bill is to provide information on the employment of Federal employees for three years prior to Government service and 3 years following Government service. It would require that each Federal employee at GS-13 and above who has been employed for less than 3 years file with the agency a description of each job held during the 3 years preceding his or her employment. It also provides that former Federal employees who were GS-13 or above file an annual report describing each position held during the 3 years after Federal employment. The reports filed with the agencies would be made available to the public, and the agencies submit to Congress annual reports containing the information.

The bill provides the penalty, for those who knowingly violate the reporting requirements, of a fine up to \$1000 or 6 months imprisonment, or both.

I feel very strongly that this reporting requirement should be implemented. It is the least onerous of the various suggestions for controlling the "revolving door" syndrome, yet it could allow the agencies and the public to chronicle the potential conflicting arrangements between Government employees and private industry. The study undertaken by Common Cause on conflict of interest in the energy agencies took over one year to conduct because information on prior and post employment of government employees was so hard to obtain.

This Subcommittee is considering at this hearing the President's bill, H.R. 6954, the Ethics in Government Act. This bill seeks to strengthen the restrictions on conflict, by extending the current prohibition on appearances before an agency of former employment on matters that were under the official's responsibility by extending the prohibition from 1 year to 2; and by including informal as well as formal contacts. A new and broader ban on formal or informal contact on other matters with agencies of former employment, for a period of 1 year after the end of Government service, is also proposed.

Considered together, the President's bill and the one which I have introduced, could greatly improve the ethical arrangements in Government. I would suggest, therefore, that the reporting requirements in my bill be added to the Administration bill, and that enforcement of the ban on appearances and contacts with the former agency be extended to a three-year period. The President's bill suggests criminal penalties for violations of the conflict-of-interest provisions. I would suggest that the penalties include civil penalties in addition to administrative remedies for violations. Thus, a range of penalties, befitting the violation, should be considered.

The bill establishing a new Department of Energy which has passed both Houses of Congress includes provisions to curb the revolving door syndrome. It may be useful to consider the language found in that department's creation.

The Congress has set a good example in establishing codes of ethics for Members and employees. This move has gone far to reinstate the trust in Government that seems to be missing from the American public. Establishing a policy which seeks to eliminate conflicts of interest and ethical standards in Government will increase substantially the confidence in Government of the American people.

STATEMENT OF HON. ABNER J. MIKVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. MIKVA. I am very happy to appear for a variety of reasons, the most important of which is this committee is addressing a long overdue subject; that is, how would we create a proper climate of trust between the public and the Government, and within the Government itself. I think an important part of that has to do with the statement of ethics and ethical principles which ought to govern high Government employees.

I don't think that there is an ethics law that could be passed, not even by this distinguished committee, that could make an honest person out

of someone who is bent on dishonesty. That is not the purpose of the legislation. The purpose of the legislation is to set the standards for honest people.

This committee and most of the people who have studied Government know that the overwhelming majority of employees and people who work for the Government are dedicated public officials who are concerned about doing a good job. The kind of legislation that the committee is considering is an effort to set standards for those people so they will know what ought to govern their behavior.

That is why I am most anxious that the committee consider some of the substance of my proposal, H.R. 3829, because it would set a rule, and provide some disclosure about that rule, which I think would go a long way to restoring confidence to people in the Government and Government itself. It would require everybody who occupies a GS-13 level or above to disclose each position held by him during the 3-year period both preceding and following his employment with the Federal Government. This bill would help to satisfy the average citizen that people don't take these positions to further their private career and use their public base for feathering their private nest.

I think that kind of disclosure made a matter of public record in each employee's case would be a way of satisfying the public that this is not the fact. It would also be a way of reminding public employees that their employment with the Government is not for that purpose. While we don't want to hamstring Federal employees' career efforts after they leave Government, the public is entitled to know what they do with their Government experience. That basically is the substance of my bill.

Most of the other things that are contained in my proposal the President has plagiarized, and I am delighted that he did. Indeed, there are many other provisions in the administration's proposal and other proposals being considered by this committee which I think go beyond what I was trying to do. I commend them. I think this one addition to the basic administration proposal would go a long way toward getting at the heart of what we're all trying to do.

I will be glad to answer any questions.

Mrs. SCHROEDER. Thank you very much.

I think the concern here has been very, very good over the long haul. It's been kind of like pushing on a string. Maybe something will finally transpire.

One of the things we also hear when we talk about the provisions, and I think you mentioned it was left out of the President's bill, is the need for expertise in the Federal Government, that we would be left in the lurch with a bunch of rubber dummies. What is your response to that kind of caveat if your provisions were adopted?

Mr. MIKVA. First of all, my provision doesn't prohibit moving to and fro. What it does require is full disclosure, so if somebody is a Federal Power Commissioner and then proceeds to go to a natural gas company, we will know about it and can see whether he or she is, in fact, using his clout that they obtained while a Commissioner to further their private interests.

Secondly, I am a great proponent of expertise, but there are limits to expertise, and if the price we have to pay for expertise is a breakdown of the credibility of the process, that's too high a price, and if

the price we have to pay is a divided loyalty of our public officials, that's too high. It's better to have someone a little naive than a sophisticated pro who doesn't know who his master is.

Mr. SCHROEDER. What about the people who say that the way to get the best people in the Government is you lure them with a stepping stone to a better career, that the good ones use it as a stepping stone and the other ones stay in so that we shut off the career path of a certain highly motivated group?

Mr. MIKVA. I don't think so. My first job out of law school was as a law clerk for a Supreme Court Justice. The Justice had a rule that once you left, you couldn't work on any matter that you had been involved with for a period of 2 years. There was a 2-year immunization period. That didn't prevent us from going out and becoming lawyers and using credentials as a law clerk for a Supreme Court Justice in order to get the better job. It simply said that one shouldn't switch sides in the middle of a case. A lawyer in private practice who has been representing a plaintiff for 6 months isn't going to say, "Well, I like the defendant better, I am going to represent him." I think the same sort of thing ought to apply for any professional person.

No one is trying to short cut people's careers. Indeed I think it's a legitimate career pattern to go into the public sector and then move to the private.

Professor Newstadt at Harvard once said that perhaps the most useful public servants are the in-and-outers. I'm inclined to agree. Having said that, that doesn't mean they ought to be on both sides of the same matter. That's all my disclosure proposal and many other proposals seek to do. They don't seek to prohibit somebody from ever getting involved in utilities law because they worked for the Federal Power Commission, but it does say "Don't be on both sides."

Mrs. SCHROEDER. Have you thought at all about the paperwork burden that your bill creates? Many of these executive agencies said it would be unenforceable because it would require too much paperwork.

Mr. MIKVA. First of all, the reporting requirement for the 3 years prior to coming into Government service is already covered through personnel records. For the 3 years following Government employment I set up elaborate procedures, because I think the majority of people are going to file whatever information the agency suggests need be reported to comply, since most of them do look forward to going back to work for the Federal Government. They're honorable; they want to maintain this standing. I think they will voluntarily comply. For those who don't, I think this failure in itself creates the kind of bad vibration which we are trying to create for those who don't play the game.

I think the agency could set their own rules on what kind of disclosure information they would want following employment with the agency. It would be put in the personnel file which they keep anyway.

Mrs. SCHROEDER. My frustration is watching DOD. They have laws, but they have no one to enforce them. We have lots of things on the books for disclosure, and they just plain haven't been enforced by anyone. You begin to wonder what we do as a body to make sure that this really transpires. One of the things that we have considered is that if you are on one side of contracting or procurement, say the Government side, 1 week, and then 1 year later you're on the other side, maybe the contract would be dissolved. Maybe that's how we have to do it.

Mr. MIKVA. I think so. I happen to favor civil penalties much more than the criminal penalties that have been proposed. I think criminal penalties are very hard to enforce on this kind of white-collar crime. I think some automatic civil penalties might go a long way to providing the right kind of enforcement climate. For example, someone who does not comply with these specific requirements will be disqualified from representing anybody who seeks to do business with the Federal Government.

The greatest leverage that the organized bar has over lawyers, for instance, is that hold they have over the licensing and the right to practice law. I know many lawyers who tread the straight and narrow because they worry about hanging on to their license. Somebody who wants to do business in the private sector with DOD, I think will comply with these things if he knows that at the end of a failure to comply is a total or temporary disqualification from doing business with that Department.

Mrs. SCHROEDER. Or better yet, that the company is disqualified, rather than relying on 20 million citizens groups to bring it out.

Mr. MIKVA. I do think the report ought to be a public document. I think the public ought to know what happens to our top level employees. I have heard some concern that this interferes with the right to privacy. When a former cabinet officer leaves the public sector and goes to the private sector, everyone knows where he goes. George Schultz left the Secretary of the Treasury and we know he went to an oil company. He made no efforts to hide that. That's important public information. I think that applies.

Mrs. SCHROEDER. I thank you very much for your testimony.

I have got to go to a whip's meeting, so I am going to turn the meeting over to Congressman Lehman.

Mr. LEHMAN. Thank you.

Mr. Geller, do you want to come up? We have your written statement here, and if you would like to summarize, it would be inserted in its entirety in the record.

Mr. GELLER. Thank you.

Mr. LEHMAN. We are interested in your off-the-top-of-your-head remarks on the problem in your position as general counsel for the National Federation of Federal Employees.

[The complete statement follows.]

PREPARED STATEMENT OF IRVING GELLER, GENERAL COUNSEL, 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, the oldest and largest independent union of Federal civil service workers. Accompanying me today is Maureen Clancy, our legislative liaison.

I am pleased to appear before the Subcommittee for the second time this Congress to comment on some very important proposals designed to insure ethical conduct by Executive Branch employees. NFFE commands the Chairwoman for the great personal interest she has shown in obtaining the proper statutory framework for a code of conduct for these workers. Such a law is needed to restore the public's eroding confidence in its Government.

NFFE believes 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. Similar blanket requirements for career employees below GS-16 are inappropriate. In cases of employees with responsibilities affecting the

fortunes of private interests, where the appearance of a conflict is so destructive, disclosure of financial holdings, subject to public review on request, may be necessary. Employees with a conflict should remove themselves from particular cases. 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 for violations.

I will begin my analysis of pending legislation with some comments on H.R. 6954. We favor the reporting provisions of this bill. For some time NFFE has been concerned about hidden lobbying of the Executive Branch. Much wining, dining and arm twisting of Government officials is done by businesses seeking lush contracts and industries desiring a reprieve from the stricter aspects of regulation.

These reporting requirements also seem adequate to expose blatant conflicts of interest. We applaud the inclusion of specific dollar reporting thresholds for investments and liabilities. This will prevent subjective determinations of substantial financial interest.

In addition to the penalties mentioned in Section 104 of the bill, we would subject individuals who deliberately falsify reports to automatic dismissal from the Federal service. This punishment should be clearly stated in the Ethics Act. NFFE believes that only persons of high moral caliber should serve the public. Such appalling dishonesty renders persons unfit for Government employment.

Section 105(c)(1) makes it unlawful to use financial disclosure reports for commercial, political and other purposes. The section provides civil penalties for these actions. We would suggest that this be strengthened by including some criminal penalties for such offenses.

Section 106 provides that the Director of the Office of Government Ethics review, on a random basis, not less than 5 percent of the reports. We believe this figure could be raised to 20 percent. If the Director finds numerous abuses in these reports, we would recommend that he or she survey additional documents.

NFFE opposes the creation of a new Office of Government Ethics within the Civil Service Commission. Although we support the need for an independent agency to oversee this area, we suggest that this body not be part of the badly discredited Commission, and that it also have jurisdiction over labor disputes, contracting-out, whistle-blowing, and other issues concerning Federal employees. Regarding the suggestion for agency ethics counselors, we would recommend that these be full-time positions, not in any way associated with personnel departments. These counselors should assist workers in interpreting ethics regulations and educate employees as to their responsibilities under the Act.

The "revolving door" provisions of Section 207, which forbid a former Federal employee from using his inside knowledge to represent special interests before the Government, are good.

We have examined the staff recommendations provided to us by the Subcommittee. The first point suggests adopting the "revolving door" disclosure concept of H.R. 3928 in an ethics law. This bill would regulate all Federal employees at the grade level of GS-13 above. Since NFFE does not believe that grade is the proper determinant of potential conflict with the Government's interest in the case of non-supergrade workers, we do not favor this approach. We would advocate instead that requirements apply to political appointees, GS-16's and above, and only to other employees if their duties entail dealing with private concerns. NFFE has been greatly concerned with industry executives taking slots in Government and the resultant bias in such departments as the Office of Management and Budget and the energy agencies. Hence, we appreciate the need for "revolving door" regulations, but they should be applied where they do the most good, whether the employee involved is a GS-9 or a GS-18.

In addition, we believe that the reporting requirements outlined in H.R. 3928 could be simplified. Certainly the Office of Government Ethics should supply clear, comprehensible instructions and forms for employees to use. We would hope that the Ethics Office would not emulate the IRS or the Civil Service Commission in their gobbledy-gook guidelines and documents. Detailed information about Government contracts or grants held by the worker's employer should be supplied by the company, not the employee.

NFFE favors the penalties provided in H.R. 2733, which require the withholding by Government any salary paid to an employee violating this Act or the conflict of interest regulations in Title 18. We note that Section 5(a) of this bill

provides dismissal as a penalty for transgressions. This is a foundation of the NFFE position. This language also permits a person to obtain a mandamus to compel the management official to fire the offender. Such court order may also be used to prevent an employee from participating in a regulatory decision where he or she has a conflict. Mandamus can also be used to compel compliance with other sections of this law. NFFE supports these concepts.

We accept H.R. 2733's requirement that civil servants remove themselves from decisions where a personal financial interest is involved and we appreciate the need for financial reports available for public inspection on request.

We strongly favor staff recommendation number three, making agency ethics counselors independent of personnel offices and agency heads by placing them under the Director of the Office of Government Ethics. Again, I stress that the Ethics Office should not be part of the Commission, but rather an independent agency with jurisdiction over all Federal labor matters.

Staff recommendation number four greatly puzzles us. We fail to understand why Government lawyers and accountants cannot use their expertise in private practice, so long as they do not represent clients in dealings with the Federal Government. Part two of four (a) is clearly desirable, as it refers to the possible conflict of interest resulting from workers moonlighting for a firm with which their agencies deal. Rather than asking a counselor for prior approval of outside employment, we would prefer that employees in positions where an appearance of conflict of interest might arise be required to file annual reports detailing their outside activities. Of course, any employee would be free to seek the opinion of a counselor about other employment. Any apparent violations should be reported to the independent agency with ethics responsibilities. Persons who knowingly and willfully engage in employment that poses a clear conflict of interest should be dismissed from the Government service.

Recommendation number four (b) prohibits the acceptance of gifts, meals, etc., from private firms with which the employee's agency deals. We support such a provision. Number four (c) forbids investment or ownership by employees in such private firms. We believe this should be clarified to include only those workers who deal directly or indirectly with business; e.g., purchasing agents, contract or grant officers, inspectors, etc. In addition, we believe this stricture on investing should be expanded to include a worker's relatives, as defined by the nepotism regulations.

In general, recommendation number four, with the changes I have mentioned, should apply to career employees below GS-16 only when these workers have responsibilities where an appearance of conflict of interest is a reality. Restricting clerks and custodial laborers would be overkill.

Consistent with our earlier statement to the Subcommittee, we strongly oppose staff recommendation number five which allows the President or the CSC to apply financial disclosure provisions of the bill to lower grade levels. Persons covered by these provisions should be designated in the law. For similar reasons, we also oppose recommendation number six, allowing groups to petition the Commission to bring under public disclosure requirements certain workers. Non-elected private citizens should not be allowed to make regulations governing Federal employees.

We don't see the need for recommendation number seven, which allows agency ethics counselors to grant certain limited exceptions from rules for short periods of time. Section 8, permitting employees civil action for damages caused to them by wrongful use of disclosure statements, receives our support.

Section 9 appears to add a complicating step to the financial disclosure procedure by requiring partial disclosure, with full revelations made on the request of an individual or group. NFFE opposes this because of our position that Schedule C employees, GS-16's and above, and cabinet members make full public disclosure.

NFFE traditionally seeks the greatest due process and would favor staff recommendation ten.

I believe in commenting on the staff recommendations, I have made our position clear on H.R. 3928 and H.R. 2733. Again, I compliment the Chairwoman on her interest and work in this area and thank the Subcommittee for its invitation to testify.

STATEMENT OF IRVING GELLER, GENERAL COUNSEL, NATIONAL
FEDERATION OF FEDERAL EMPLOYEES, ACCOMPANIED BY
MAUREEN CLANCY, LEGISLATIVE LIAISON

Mr. GELLER. Thank you, Congressman Lehman. I would like to introduce Maureen Clancy, our legislative liaison.

Mr. LEHMAN. Do you have State organizations and then local organizations?

Mr. GELLER. Yes.

Mr. LEHMAN. How are you broken down?

Mr. GELLER. We represent the national organization; we represent Federal employees in virtually every governmental agency throughout the United States and overseas.

Mr. LEHMAN. Including the Post Office?

Mr. GELLER. Exclusive of the Post Office. We are an independent organization; we are not affiliated. We run the gamut, however, of types of occupations and professions.

Mr. LEHMAN. That includes the blue-collar wage grade employees all the way through the highest?

Mr. GELLER. Yes.

Mr. LEHMAN. Do you have it broken down into State organizations?

Mr. GELLER. We do have State organizations. We have regional vice presidents who have jurisdiction over a group of States; however, we do have State organizations as well as local organizations.

Mr. LEHMAN. Do the retired Federal employees remain part of your organization?

Mr. GELLER. They do in an associate capacity.

Mr. LEHMAN. Once they retire, they are no longer able to participate at the same level.

Mr. GELLER. If they choose to, they can. Generally most of them don't.

Mr. LEHMAN. In my district, they have more retired than they do active Federal employees.

Mr. GELLER. That may be true of Post Office employees, but not generally.

Mr. LEHMAN. In my district it could be, because the most typical condominium resident in Miami, which is where my district is based, is basically not dependent on social security but is not affluent. I don't have ocean condominiums. I guess the most typical is a retired Federal employee with an income from around \$15,000 to \$18,000 a year counting his pension and savings.

Mr. GELLER. Well, there is within the Federal structure the organization of the National Association of Retired Federal Employees. Many of our members do join that and sometimes leave us, so generally speaking, it's largely a working population that we represent, but we do have substantial membership in the State of Florida and in Miami.

Mr. LEHMAN. And your organization is for open government.

Mr. GELLER. We are. Of course, Florida does enjoy the sunshine State law as well as being the Sunshine State. However, we do want to address ourselves to some of the recommendations made by the committee and staff with regard to H.R. 6954 and H.R. 3928.

We are in agreement generally with the provisions of H.R. 6954 and with the disclosure provisions generally as pertain to employees who are at the GS-16 and above level and, for that matter, for all political appointees regardless of their grade. However, we have some reservations with regard to the requirement for disclosure and the other provisions of the revolving door legislation as it applies to career employees. That is the type of employee that we represent. And again, we have no concern if the employee is involved in what could be a conflict of interest situation or an apparent conflict of interest situation; however, we feel that the grade level that Congressman Mikva mentioned, grade 13, which automatically requires people to make out certain reports and file certain reports may create an unnecessary burden on people who simply don't have an interest that would in any way conflict with the Government interest.

We would rather identify those people who would be required to make disclosure or to submit reports to those who actually are engaged in work such as contracts, award of grants, investigatory work, which might concern the Government's business.

Mr. LEHMAN. Well, I guess the way I look at it is at what point does unnecessary invasion of privacy become more important than the possible unknown conflict of interest?

Mr. GELLER. Well, that certainly is one of the issues, and almost equally important is the fact that if you have a lot of useless reports, there is a tendency for the reporting system to fail.

Mr. LEHMAN. It falls apart under the weight of the paper.

Mr. GELLER. That's correct, and the Congresswoman alluded to that. The large volume and the GAO report on the subject indicates that there has been a failure on the part of people to report what should have been reported, so that if you burden the requirement with people who are not susceptible to conflict of interest, then we think that an arbitrary grade level, especially at grade 13—

Mr. LEHMAN. Is a little too rough.

Mr. GELLER. And unnecessary. When you put it at grade 16, we feel there should be no distinction with regard to a career employee, however, a political appointee, on the other hand, might well be a person who should comply with financial disclosure.

Mr. LEHMAN. Regardless of his pay level?

Mr. GELLER. Regardless of his pay level.

Mr. LEHMAN. How do you feel about congressional committee staff?

Mr. GELLER. I would perhaps put them into the same category, and I don't mean to be discriminatory, however, career people generally do not come in at say grade 13, they come in at grade 5 or 7 and work up, whereas a political appointee comes in at a higher level.

So Congressman Mikva's bill, which requires a 3-year reporting prior to working for the Federal Government doesn't make too much sense in terms of the career employee who may have had a very modest job prior to entering the Government at the GS-5 level and has worked for 8, 10, 12 years before reaching the grade 13 level. So, I don't know how useful that would be to anybody to know that the person worked in a department store during the summer or a construction job or whatever, and it would go to the question of piling up unnecessary reports.

Stating it more clearly, perhaps, if all employees, regardless of career or political appointees, and including military who equate to GS-16 or above, should come within the jurisdiction of reporting requirements.

Mr. LEHMAN. And services of people who deal with the contractual relationships.

Mr. GELLER. In the career group, it would be those people who have a responsibility for representing the Government's interest, which goes to another question concerning some of the committee and staff recommendations with which we generally agree, but I would like to point out those areas particularly where perhaps we disagree, one of them being the requirement to consult with the ethics counselor before seeking outside employment or obtaining outside employment.

This can work a hardship essentially where there is no conflict of interest, and there are many employees who work at the lower level of government who need that outside employment to supplement their income to make do, to provide the wherewithall for their families. Unless that outside employment interferes with their Government employment, we think it may be an unnecessary burden to require them to secure prior approval from the agency's ethics counselor.

Mr. LEHMAN. Let me just interrupt you. In your organization, what percentage of the people in the National Federation are civil service employees?

Mr. GELLER. Well, I would say about 90 percent.

Mr. LEHMAN. In all government work? Well, you except the armed services.

Mr. GELLER. No; we don't represent any significant grouping of State and county employees. The only other group that we represent in substantial size, the nonappropriated fund employees who are not technically civil service employees and who form a very low-paying category.

Mr. LEHMAN. They don't include congressional staff, White House staff, or anything like that.

Mr. GELLER. No.

Mr. LEHMAN. Basically you deal with career people looking for making this their life work, like the school employee.

Mr. GELLER. Yes, we represent teachers, engineers, scientists.

Mr. LEHMAN. Teachers who work for the Federal Government like the ones who work overseas.

Mr. GELLER. Yes, and in the Bureau of Indian Affairs who teach at the boarding schools and within the schools here at the defense establishment.

One of our major concerns is we have not been pleased with the activities of the Civil Service Commission, and this bill places the function within the framework of the Civil Service Commission. Its record in connection with the administration of the Hatch Act and the merit system generally makes us to be highly critical of their efforts. So, we would like to see without burdening the Government structure an independent organization to administer the ethics program, and we have proposed a bill in connection with the whole employee-management relations aspect of Federal employees to be under the aegis of an independent authority, and we think that might be a

logical place to put ethics in this commission on ethics or office of ethics within that framework, so as not to create an additional organization which the administration is anxious to avoid.

Mr. LEHMAN. You just can't possibly spell out every possible conflict of interest, because you could have a Federal employee whose wife worked for McDonnell Douglas—if I were working for the Federal Government and my wife worked for McDonnell Douglas, I'm sure her job security would depend on the Federal Government, and I would hope that McDonnell Douglas would get the Government contract.

Mr. GELLER. I think there has to be a good deal of commonsense in framing of guidelines making employees knowledgeable about what those guidelines are not after the fact but before the fact. We think that the committee and staff are moving in the right direction in trying to create ethics counselors who are independent of the traditional government structure and can make independent judgment with regard to it.

Mr. LEHMAN. Well, there's a limit to how you can legislate morality.

Mr. GELLER. We recognize that, and that's why it needs a good deal of simplicity, although it is a complex subject.

Mr. LEHMAN. This is kind of a soft level discussion, but I raise the point that when you get right down to it, is there really much difference. You wouldn't consider, say, a GS-15 working part time for the Government and part time for McDonnell Douglas. At the same time, the family income could depend on the wife's income at McDonnell Douglas and the husband's income at the GS-15 level.

Mr. GELLER. Right—well, there has to be some arbitrary level.

Mr. LEHMAN. Well, the GS-13.

Mr. GELLER. The grade 16 and the equivalent in the military as well as in the legislative branch and judicial branch is perhaps a reasonable level to require general reporting and to make such information available to the public.

You have touched on it, Congressman, the question of balancing the interest, the privacy question as well and the disclosure question. In those situations where the people are career employees, and I have to speak largely for them, while the information could be made public, it should not be publicized, and if somebody wanted to inquire concerning a person's background or where they worked or what they do, they would have to make a request for it rather than having a general publication of the information.

Mr. LEHMAN. If the person is married, do you think it should include where his wife works, or if he is not married, his parents, or if he is married and if he has children, where his children work?

Mr. GELLER. Well, I think at the higher levels of Government, it might be necessary, much as I find that distasteful, because it is rather common knowledge that holdings have been hidden within the family structure, and conflict of interest can arise from indirect holdings as well as direct holdings.

Mr. LEHMAN. I know in my own case I have to worry more about my wife's investments than my own; if I don't, I am in trouble.

Mr. GELLER. It may create problems, apparent, indirect, or real, and in balancing the equity, it may be that some of the privacy would have to be balanced off.

Mr. LEHMAN. I wonder if Mr. Gilman has any questions at this time. We are just having a discussion with Mr. Geller in regards to his organization.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. Geller, apparently you have taken a position of opposition to a new Office of Government Ethics within the Civil Service Commission.

Mr. GELLER. That is correct.

Mr. GILMAN. Do you feel that such an office should be created?

Mr. GELLER. Oh, yes.

Mr. GILMAN. Where would you place such an office?

Mr. GELLER. Well, we have proposed, and I think during our recent legislation rally, representatives of our group have met with representatives of your office in a bill in which we propose the creation of a labor relations authority which would have jurisdiction over all Federal employees, primarily rank and file, in all aspects of their relationship, and we feel this might be a logical place to put the ethics responsibility rather than with the Civil Service Commission. The track record of the Civil Service Commission has not been good in connection with many of their activities, including appellate activity, Hatch Act administration, or lack of it, and it may be that with the new Commissioners, we can look to improvement, but I don't think at this stage it would be appropriate to place the authority within that organization.

Mr. GILMAN. Would we be setting up a whole new branch or a new regulatory agency?

Mr. GELLER. Well, we think there's a need now for an independent authority to administer a variety of problems that concern Federal employees, including large contracting out problems, the question of complaints registered to the Congress by employees or private citizens, the so-called whistle-blowers. There currently are Government agencies who are involved in this in one way or the other. We have recommended a single agency to pull together all of the activities, and we would think logically the Office of Ethics might be placed within that organization, within that structure.

Mr. GILMAN. Would you feel that a complaint, for example, of contracting out should come within the ethics committee?

Mr. GELLER. No.

Mr. GILMAN. Within the Ethics Office?

Mr. GELLER. No; within this organization I have described, this independent organization which deals with labor-management relations matters, which would deal with the question of contracting out, which would deal with whistle-blowing problems, and as an independent adjunct to that office, the Office of Ethics. In other words, grouping together all of those activities which concern Federal employees under one overall administration.

Now, it could very well be that this important question of how contracts are awarded could be interrelated with an Office of Ethics, and one of the purposes of all of the disclosure is to unearth those situations wherein people abuse the private interest.

Mr. GELLER. Essentially that's somewhat of an erosion of the Civil Service Commission's powers, is it not?

Mr. GELLER. Well, the Commission has not been particularly active in the area of ethics, and if it has been, it's done an abominable job. I would not look with any hesitation about eroding an organization

which simply hasn't worked. It's not my view. It's the General Accounting Office's estimate of how badly—and anybody who reads the newspaper knows how terrible the situation is with regard to conflict of interest. The Civil Service Commission hasn't done the job. They may say that it's because of the need for good legislation, but they have reasonable legislation in other areas in the whole merit system and have done a very poor job.

Mr. GILMAN. I have no further questions.

Mr. LEHMAN. Mr. Corcoran, do you have any questions?

Mr. CORCORAN. First of all, I would like to examine that part of the testimony where you're talking about the conflict-of-interest itself. The difficulty with effecting a meaningful way of excluding the conflict of interest when it should arise involving public officials is the problem of first the identification of the potential conflict, and then second, the means by which the person with public responsibility faces the conflict.

The question I have is: How would you go about developing a system whereby a person would remove himself or herself from that position?

Mr. GELLER. Well, there's a simple system that the judiciary follows if they have any kind of a conflict; they simply disqualify themselves from making a judgment. But if their Government activity would require them to disqualify themselves in many cases, then they should not be put into the governmental job. It's as simple as that. Congressman Mikva testified previously to that effect. The person may be the most brilliant and most talented, be a genius, but if they are so involved in conflict of interest, it doesn't make much sense for them to serve in that capacity, but if it is an isolated case, they simply can disqualify themselves from participating in that particular case.

Mr. CORCORAN. This responsibility, in the case you have mentioned, the judiciary, is with the person himself. I think it's difficult for us to expect a civil servant in a regulatory agency or some other department of Government who comes into contact with somebody who is just seeking information and to decide at that point to not provide that kind of information or provide any assistance he might not be able to simply say, "I can't help you, because in my past experience as an attorney, I have had some experience with this particular issue, therefore, I cannot talk to you about it."

So, I think the problem from our standpoint in trying to legislate is developing a system at the outset whereby the person with the potential conflict exposure would not be placed in that position. Do you think the legislation before us gives us that kind of protection?

Mr. GELLER. I'm not sure that it's the cure all. It works in that direction, and I think most importantly it creates the publicity, the public knowledge, that is necessary to make a judgment as to whether the person is trying to consider two masters.

Another thing I observed the other day, a former deputy assistant secretary of state, who apparently now is in the private practice of law, and his forte was air traffic. We had very serious negotiations with the United Kingdom, and he was very much involved in advising private companies concerning their responsibilities. He certainly made a useful contribution, but as to the conflict of interest that might be

involved, I don't know, I could not state. That genuinely presents a problem and may perhaps restrict an employee or former official of the Government from following his profession.

The most important part of the legislation I think is to let the public know what the circumstances are regarding a person's activity within the Government and outside of the Government within a time frame of 1 or 2 years, as is suggested in the Rodino bill.

Mr. CORCORAN. Would you say, then, that the best regulator in this area is disclosure?

Mr. GELLER. Unquestionably, and that has to be accomplished with discretion. Our organization represents the career employee, and we are vitally concerned about the career employee and that his privacy be maintained except when the balance requires that it not be maintained. So, disclosure is a very important element, and it's unfortunate that we have to reveal all these facts of our personal lives, but in those situations where people are at the very highest levels of Government, such as grade 16 and above, I think that is a burden they have to bear.

Mr. CORCORAN. Do you think that's the best cutoff level?

Mr. GELLER. Well, as I previously testified, the grade level—that's an arbitrary grade level. The grade level isn't as important as what the person does. If the person is involved in work that may present a conflict of interest, then the grade level is of no significance. We can recognize that a person working on contracts at perhaps a GS-11 level should be required to furnish reports and disclose their investments and outside interests.

Mr. CORCORAN. Do you think a written code of conduct would be useful in this area?

Mr. GELLER. There's no question about it. I'm not so naive to think that the fact you have a code will stop the transgression. However, I believe that a good office of ethics, with a good auditing activity and review activity can first at least establish where the potential is and to have a basis upon which it can conduct investigations. That's why we don't want to unnecessarily burden people who have no conflict of interest with the requirement for recording and making financial disclosure. So, grade levels are arbitrary.

Mr. CORCORAN. Because of your association with the National Federation of Federal Employees and the interest of that organization in these areas, would it be possible to provide us some appropriate language that would apply to a code of conduct?

Mr. GELLER. Well, we could work at that; it's not an easy thing, but we would be pleased to do that.

Mr. CORCORAN. Thank you very much.

Mrs. SCHROEDER. I appreciate your testimony. I'm sorry I had to be away.

Counsel, do you have any questions?

Mr. KNULL. No.

Mrs. SCHROEDER. Thank you, Mr. Geller.

The next witness we have is Congressman Rosenthal from New York, whom we are absolutely delighted to have with us today. We are interested in hearing what you have to say.

Mr. ROSENTHAL. Thank you.

STATEMENT OF HON. BENJAMIN S. ROSENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ROSENTHAL. I am pleased to have the opportunity to testify before this distinguished subcommittee on pending conflict of interest legislation.

The subject of Federal employee ethics is a highly complex one. At issue are the potential influences upon a decisionmaker's conduct stretching from bribery at the one extreme to normal and valuable influences derived from background, knowledge, and experience at the other extreme.

Once we admit that no official can or should be immune from the usual biases and prejudices which affect all human behavior, we are left the difficult task of drawing a line between permissible and impermissible influences. But even successful completion of this task does not end our work because conflict of interest is not limited to the situation where certain private interests such as economic gain or friendship influence a decision. It includes the situations where these factors may influence a decision or indeed may only appear liable to influence a decision. Thus, any restrictions on Federal conflicts of interest must take into account actual influence, potential influence, and finally, the appearance of potential influence.

Before going into what I perceive to be improper influences, I wish to suggest that the distinctions I maintain are valuable in that they might offer a guide to the sanctions which might be imposed against individuals in the conflict of interest context. You will notice I left out the first page or two of my statement which indicates that I have spent a fair amount of time investigating this subject, together with Congressman Moss, and my own subcommittee has given a considerable amount of attention to this subject.

Where impermissible influences, such as bribes or the promise of employment, have clearly been allowed to affect personal conduct, criminal penalties might be appropriate. On the other hand, where it is merely deemed that a potential conflict may exist, then laws and regulations to shield the employee from such conflict should be adopted, and violation of these rules should be met with civil penalties adjusted to the particular circumstances. Beyond these situations, there will be instances where public disclosure of certain information, such as previous or subsequent employment or financial holdings, might be mandated. Penalties for failure to comply with these disclosure requirements should, of necessity, be the least severe since there is not even necessarily a potential conflict.

It is not too difficult to identify many of the potential influences upon a Federal employee's conduct. It is far harder to select those which we might find objectionable and then to fashion finely tuned rules insulating employees from these influences without unduly restricting Government activity. Realistic restraints require a careful balancing of the likelihood a potential conflict might improperly influence a Government employee against the difficulty of limiting the operation of this influence.

In my experience, there are three broad categories of potential conflict: Those resulting from employment which preceded Government service, those which relate to conduct of the employee while he is in

Government employ, and those which stem from the prospect of lucrative private employment. In my remarks below, I treat each of these separately and discuss as to each the problems I perceive, the present law, and my recommendations for change.

Potential conflicts resulting from employment preceding Government service are the most difficult to regulate. Obviously, such earlier employment is the source of the experience which made the employee attractive to the Government in the first place. To restrict the employee from all activity related to his prior experience would defeat the purpose in hiring him.

On the other hand, there are numerous instances where the potential decisions of the employee so closely affect matters in which he was earlier involved for private enterprise that an element of independent judgment may be lacking. Moreover, an employee who earlier worked for a particular company may harbor strong hopes of returning to such company's employ. This would also tend to color his particular decisions.

One of the most blatant examples of this potential conflict was offered by Clarence L. Palmby. Although a vice president of the U.S. Feed Grains Council, he was tapped by the Nixon administration to negotiate the United States-Soviet grain deal for the Department of Agriculture. A few months after concluding these negotiations which resulted in a windfall of billions of dollars to grain sellers, and before the terms of the wheat deal were publicly announced, Mr. Palmby accepted a vice presidency with Continental Grain Co.

Similar experiences are all too common. A survey conducted by the House Interstate and Foreign Commerce Subcommittee on Oversight and Investigations in 1975 revealed that 39 top employees of the Securities and Exchange Commission had been earlier employed by a brokerage firm, investment banker, or investment adviser, or a law firm with clients which included the foregoing. Moreover, shortly after the inquiry was completed, Ray Garret, SEC Chairman, announced his intention to return to his former Chicago law firm which had done extensive business with the SEC.

Existing law is virtually silent on this issue which is, in effect, the initial turn of the so-called revolving door. Clearly some regulation is required, although care must be taken that the Federal Government does not deny itself needed expertise in its haste to preclude potential conflicts. One balanced approach would be an outright prohibition on having Federal decisionmakers rule on matters (1) with which they were personally and substantially involved while in any private employ and (2) on any matter which will substantially impact upon any person who had employed them within a set prior period of time. Section 2 of H.R. 2733 contains such a provision. A related provision was adopted by the House in section 602 of S. 826, as amended, the Department of Energy Act.

This approach would meet the principal risk of conflicts from previous employment. As a supplement to these prohibitions, the subcommittee might also want to adopt the disclosure standards of H.R. 3928, requiring senior Government employees to reveal previous employments which could give rise to a conflict.

The second category of potential conflicts arises from economic interests of the Government worker during his employment. These may be conveniently broken down into, first, gifts, favors, entertain-

ment or loans from other people; second, outside employment or other activities; and third, financial interests. Definitions of these potential conflicts and rather comprehensive rules to limit them are embodied in civil service regulations, 5 CFR part 735. The regulations establish minimum standards which the comparable regulations of all executive agencies, other than the GAO and the Postal Service, must meet. The regulations also establish an ambitious program of financial disclosure to assist enforcement of the substantive restraints.

Unfortunately, as the GAO report to the Congress dated February 28, 1976, and GAO's specific agency reports made evident, this laudable scheme is not working well enough. Of the 6,458 disclosure statement audited by the GAO, 12 percent revealed "interests that were questionable in light of the employees' duties." Similar findings were made by a Common Cause survey team whose report was published in 1976 under the title "Serving Two Masters." Both GAO and Common Cause concluded that the problems lie less in the civil service rules themselves, although they could be made more specific and place more emphasis upon divestiture, than in enforcement and compliance. Toward solving these problems, the GAO and Common Cause recommended establishment of an independent executive branch office resembling the office which would be established by H.R. 6954.

I concur generally in these recommendations, although I feel the office can be lodged in the Civil Service Commission. I have learned from long experience in the area of Government operations that oversight authority is only as valuable as the power to correct abuses. The latter has been notably lacking in the Civil Service Commission. If coupled with a clear congressional mandate to implement strict conflict-of-interest standards, a grant of strong enforcement powers to the Civil Service Commission should permit implementation of a meaningful code to limit conflicts of interest arising from outside economic interests.

The third area of potential conflicts arises from the promise or prospect of future employment. This is the classic revolving door phenomenon which has been so well documented in "Serving Two Masters." Common Cause found that, for example, 48 percent of the 36 regulatory commissioners investigated who left during the 5 fiscal years 1971-75 went to work for regulated industries or their law firms. A notorious, but all too common experience, was that of William D. Ruckelshaus who left the leadership of the Environmental Protection Agency to set up a law firm which was shortly thereafter retained by the plastics industry to represent its views before the EPA on polyvinyl chloride regulations.

I am aware that 18 U.S.C. 207 regulates to some extent the appearance of ex-employees before the agencies for which they had worked. This might have some effect upon an employee's hope of lucrative future employment with regulated companies. Yet, according to a New York Times article of June 20, 1976, the Justice Department has sought to prosecute only six individuals during the last 10 years for violating this law. For the provision to be workable, the definition of appearance and the scope of the prohibited acts must be greatly expanded.

But there are more serious problems with this approach to the revolving door. First, its real impact is less upon the prospect of future employment than upon the conflict of interest for present employees

arising from the appearance before them of former acquaintances and colleagues. Second, this law does nothing to limit the attractiveness to industry of Federal employees who may be more valuable for their knowledge than for their contacts within Government. Third, the heavy criminal penalties attached to a violation of the law discourage prosecution.

It is an unfortunate fact of government life that the lure of future employment is always present as an influence on decisions which the employee makes while still within Federal employ. This is the real problem of the revolving door. Disclosure of future employment, as contemplated by H.R. 3928, might limit to a greater extent than at present this potential conflict. So would a provision, such as that which I helped to add to the Department of Energy organization bill, which would require an employee negotiating for outside employment to be insulated from decisions substantially affecting his prospective employers.

But if we are truly serious about limiting the impact of the revolving door, we should contemplate restrictions such as that contained in regulations of the Consumer Product Safety Commission, which would limit for a period of time, perhaps 6 months or a year, any employment with, or on behalf, a non-Federal concern regulated by the executive agency for which the employee had worked. As with all other conflict of interest regulations, such a restriction could be waived in cases of extreme hardship. But for the large majority of senior Government employees, a 6-month or year's restriction on employment with a regulated concern would go a long way towards insulating them from the pressures to look somewhat more favorably upon the interests of firms which might become their employers immediately upon leaving Government service.

From the testimony already received on conflicts of interest, I know the subcommittee is grappling with a number of other related issues. I wish, respectfully, to add my thoughts on some of these matters.

First, as to which employees should be covered by conflict of interest regulations, I would suggest that the present Civil Service Commission regulations offer a good model. The less onerous restraints upon gifts, outside employment and financial interests might be applicable to all Federal employees. The more comprehensive restraints which are intended to reach employees whose decisionmaking powers make them more likely subjects of outside pressures should be applicable solely to senior employees. Moreover, disclosure standards which require considerable effort to meet and are intended primarily to enhance enforcement might also be limited to senior employees. As for the range of such senior employment, I would recommend the definition in 5 CFR sec. 753.403, although to reduce the burdens some thought might be given to change "GS-13" in that regulation to "GS-16."

Second, as to the availability of disclosure reports for inspection, I feel that public access is essential. After all, a major purpose of conflict of interest restrictions is to promote the public's trust in the independence of their civil servants. The procedure established in section 105 of H.R. 6954 seems a generally satisfactory way of balancing the public's right to know against the legitimate privacy concerns of the individual.

Third, waivers from all conflict of interest restraints should be available from agency ethics counselors with the concurrence of the Civil Service Commission.

These remarks are long but I wanted to share with you some of the conclusions I have reached after quite a few years of considering the problem of conflicts of interest. I am quite impressed by the considerable task which the subcommittee has undertaken and the diligence with which it is addressing the issue. I am confident that any bill reported by the subcommittee will do much to help restore our citizens' faith in the integrity of their Government officials.

Thank you very much, and I apologize for a very lengthy statement.

Mrs. SCHROEDER. Thank you very much and don't apologize at all; I think it shows your real grasp of the subject.

Mr. Gilman, do you have any questions?

Mr. GILMAN. Thank you, Madam Chairman.

I want to add my commendation for the distinguished Member from New York, Mr. Rosenthal, for taking the time to address this problem and for giving us the benefit of his research on this issue.

We have been wrestling with time periods, and I notice you're talking about a 6-month or 1-year period. This committee was tossing around a 2-year period. I guess there isn't any magic period. It's an attempt to insulate the employee from as much of the activity as possible; yet in discussing your 6-month period to a year's time, I can foresee where an attorney, for example, could have been involved in some decisions in his agency, and then gone out and been involved in litigation that could extend for 4, or 5, or 6 years before the Federal Government. I would assume in that kind of situation we should have some flexibility; would you agree?

Mr. ROSENTHAL. I think so. I think the point to be made is that we are dealing with a precarious balancing. We want to eliminate not only conflicts, but even the appearance of conflicts, but we want still to be able to hire capable people. So, you're trying to fix the balance to have good people work for the Government and not to hinder the rest of their lifestyle after they leave Government. So, 6 months, 1 year, 2 years, I think it's flexible. Also, you might want to have a special way of dealing with lawyers who leave the Government who do get involved in long suits.

Mr. GILMAN. You have suggested some sort of waiver by the counselor or agency; I would assume the agency could very well handle that kind of approach.

Mr. ROSENTHAL. I think Congress might want to establish a broad set of standards for the waivers and leave it up to the Civil Service Commission to draft the details.

Mr. GILMAN. There's one other issue that's been bouncing around in our committee, and that has to do with whether it ought to be an independent agency or be handled within the Civil Service Commission. There are those who feel it needs more independence and could be best handled by an independent agency rather than the Civil Service Commission that has not had such a good track record.

Mr. ROSENTHAL. To be perfectly honest, I don't have strong feelings on the subject. I defer to your experience and judgment.

Mr. GILMAN. Thank you.

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

Mr. CORCORAN. I have no questions. I appreciate the testimony.

Mrs. SCHROEDER. One of the areas I am concerned with has been contracting. We have seen so many one day buying for the Government and selling the next day. One of the things we had toyed around with is the situation in which the contract would be void if you could prove the negotiator was working for the Federal Government in the very immediate period before, or has been able to get a sole-source designation because of influence in the department he just left. Have you ever given that any thought?

Mr. ROSENTHAL. That sounds like a rough row to hoe. It's a severe penalty. I would also consider the constitutionality of doing something like that. I think if you write tough and enforceable regulations, you may not have to go that far. The fact you are even thinking about that is enough, I would assume, to cause concern.

Mrs. SCHROEDER. I think the concern is that so often what you see transpires, that if anybody pays the penalty, it's the person. There is no incentive for the company not to try to lure him away. If that person gets caught, then he is the one who is penalized and the company still has the goodies.

Mr. ROSENTHAL. That's a valid point. You can go all the way from invalidating the contract, to civil penalties against the company, to criminal penalties against the company's principals. I think there are several possible approaches.

Mrs. SCHROEDER. I think in many instances it's very clear why they want that person. I think as long as they go free, there's always the temptation to gamble.

Mr. ROSENTHAL. I think that's an area that should be addressed. I do think it's difficult, but I think it should be addressed. I commend you for raising the issue.

Mrs. SCHROEDER. The 6 months that you talked about, would that be just long enough for someone to take a vacation or accrue leave?

Mr. ROSENTHAL. I don't know, maybe 6 months, 12 months, 18 months. I just don't know. The GAO might have made some useful findings in that area.

Mrs. SCHROEDER. They really didn't have any; there weren't any specific ones.

Mr. ROSENTHAL. Their work material I think might have some information as to that. I defer to the judgment of the committee.

Mrs. SCHROEDER. We will have to have a temporary recess for a vote. [Whereupon, at 10:14 a.m., the subcommittee recessed until 10:40 a.m. the same day.]

Mrs. SCHROEDER. Thank you for your patience. Our next witness is Fred Wertheimer.

Mr. WERTHEIMER. Thank you. I am happy to be here. I am Fred Wertheimer, vice president for operations, Common Cause. I am accompanied by Ann McBride, who is a Common Cause lobbyist who worked on these issues.

What I would like to do is to be able to submit our testimony for the record. Along with that, we have a series of statements¹ that we have made at other hearings during the last few months which outline in broader detail our position on these issues. We would like to also submit that.

¹ Retained in the subcommittee files.

Mrs. SCHROEDER. Without objection they will be accepted.
[The prepared statement follows:]

PREPARED STATEMENT OF FRED WERTHEIMER, VICE PRESIDENT FOR
OPERATIONS, COMMON CAUSE

Common Cause appreciates this opportunity to testify today on three issues which have a direct and significant impact on government integrity and accountability: conflicts of interest, financial disclosure, and the revolving door between government and industry.

We have long felt that meaningful public financial disclosure by top government decision-makers is a key ingredient to eliminating conflicts of interest. With the House and Senate recently adopting their own comprehensive financial disclosure rules, the stage has now been set for expeditious action on government-wide legislation.

Similarly, the Administration's guidelines on post-employment activities of its appointees have added impetus to efforts which have been begun to deal with the problems of the revolving door between government and private enterprise. The time has clearly come for action to be taken in this area as well.

We pledge our assistance in working to insure that needed legislation is enacted promptly.

FINANCIAL DISCLOSURE

For too long, government at all levels has been characterized by a secrecy and remoteness that has helped lead to public suspicion that personal interests of public officials and powerful special interest groups dominate the policy-making process.

Unfortunately, our study last summer of Executive Branch conflicts of interest ("Serving Two Masters") found that such suspicion is not unfounded. Conflicts of interest can and do occur in a variety of ways—through stock holdings by regulators in regulated corporations, acceptance of gifts and favors from interest groups, maintenance of outside interests or sources of income, and cultivation of future employment prospects through accommodative official action.

In recent surveys conducted over the last two years in thirteen agencies and three executive departments, the General Accounting Office found that no less than 12% of the employees required to file financial disclosure statements had apparent conflicts between personal financial interests and their official duties. GAO also found that 10% of those required to file financial statements had failed to do so.

What can be concluded from GAO's work is clear—much of the problem can be traced to the confidentiality of the current reporting system, which encourages a casual attitude toward compliance with and enforcement of existing laws and regulations on conflicts of interest.

The executive and judicial branches must be subject to a process of public scrutiny much like the House and Senate have now adopted for themselves. Real and apparent conflicts of interest undermine the integrity of the government and breed cynicism about the impartiality and evenhandedness that must characterize the governmental process.

NEED FOR PUBLIC DISCLOSURE

Common Cause believes that the initial key to protecting against potential conflicts of interest is public financial disclosure. The House and Senate recognized that public disclosure is a critical ingredient by incorporating it in their new codes of conduct; so has President Carter by including it in his proposals for dealing with conflicts of interest in the Executive Branch. Full public disclosure is the only way citizens can know of these real or apparent conflicts of interest. Without disclosure, executive branch officials and federal judges need never answer to citizens for having interest which may jeopardize their integrity and impartiality as public servants.

COVERAGE AND SCOPE OF DISCLOSURE

Common Cause strongly believes that a public financial reporting and disclosure system must cover all three branches of government. We believe that disclosure should be made by federal elected officials and candidates, federal judges, Presidential appointees and other government officials at GS-16 and

above. H.R. 6954, by applying only to the executive branch, falls short of the overall goal. We believe that the legislation considered on the House floor should deal with all three branches of government as will 5555, the Senate version of this legislation.

We fully support the bill's requirements on what information must be disclosed: income, gifts and honoraria; assets and liabilities; transactions in securities, commodities futures and real property; mineral leases and patents; positions held in businesses, organizations and institutions; and post-employment agreements and contracts, as well as agreements for continuing compensation by former employers.

With the Chair's permission, we would like to insert in the record at this point our recent testimony before the Senate Governmental Affairs Committee on Title III of S. 555, which provides for public financial disclosure by government officials. While that testimony addresses many of the issues relevant to a discussion of H.R. 6954, three areas deserve particular attention: blind trusts, divestiture, and administration and enforcement.

BLIND TRUSTS

We very much disapprove of section 105(a) (1) of H.R. 6954, which legitimizes blind trusts without setting any standards for them. In recent testimony before the Senate Governmental Affairs Committee on the use of blind trusts by federal officials, we recommended that minimum statutory guidelines be established for the use of blind trusts. With your permission, we would like to insert that testimony in the record.

We believe that a federal official who establishes a blind trust must either direct his trustee to dispose within a reasonable time of those assets which give rise to the conflict of interest, or refrain from taking any action which could affect an asset placed in the trust until notified by the trustee that the asset has been disposed of. Under these conditions and statutory guidelines, we believe that blind trusts may be an appropriate form of divestiture.

DIVESTITURE AND DISQUALIFICATION

While we believe public financial disclosure is a key ingredient to eliminating conflicts of interest, we don't believe it is the final answer. Clear, tightly-drawn requirements as to when conflicting financial interests must be divested are also needed.

We recently testified before the Interstate and Foreign Commerce Subcommittee on Oversight and Investigations on conflicts of interest in federal regulatory agencies and would like to submit our testimony before the subcommittee for the record.

In our opinion, there is no justification for not requiring divestiture of conflicting interests in those agencies which are industry-specific, such as the FDA, ICC, and FCC. Regulations of these three agencies, for example, already specifically prohibit holdings in enterprises subject to agency regulation.

The issue of automatic divestiture is less easily resolved where the agency's jurisdiction covers the whole spectrum of private enterprise, such as EPA, FTC, and SEC. Regulations of these agencies reflect that, and generally do not prohibit financial holdings in a particular industry. For the most part, these agencies rely on employee disqualification and reassignment to avoid conflicts of interest. We believe that in general this is an adequate remedy, provided that the system is not self-policing.

ADMINISTRATION AND ENFORCEMENT

While public financial disclosure is a first step toward an effective and workable ethics system, an important second step is the establishment of a random auditing process for all covered public officials. The third step toward effective administration and enforcement of the federal ethics system must involve a drastic upgrading and reorganization of the executive branch ethics infrastructure.

We propose the following principles to guide reorganization and upgrading of the Executive branch ethics system:

1. A strengthened Civil Service Commission must contain a well-staffed and funded Ethics Division with final appeal, enforcement and oversight responsibility for the executive branch ethics system.

2. The Ethics Division of CSC should be headed by a Presidential appointee responsible to the Commission of the CSC who shall provide to the President and Congress a public biannual report on the activities of the Division.

3. CSC's Ethics Division should have the following authorities: review and approval of agency regulations and interpretations; determination, where it deems advisable, of Executive Branch-wide regulations, interpretations and operational structures and processes; review and approval of agency enforcement procedures and decisions; final resolution of appeals from any agency decision or action; investigation, on its own initiative, of potential conflict of interest situations; and resolution of outside complaints or petitions for rulemaking.

4. The ethics infrastructure now in place in each line agency must be strengthened. Ultimate responsibility for overseeing ethics matters within any agency should be held by the agency's general counsel, inspector general, or a specially-appointed ethics counsel (in any case, reporting directly, periodically, and publicly to the agency head). All agency personnel involved in operating the ethics system must have appropriate training.

5. Line agencies should have initial responsibility for receiving financial disclosure, examining them for potential conflicts of interest, ordering appropriate resolutions of conflicts (e.g. divestiture), preparing advisory opinions, investigating possible conflicts on their own initiative, taking disciplinary actions (administrative and civil sanctions), preparing regulations, and administering all appropriate ethics provisions. Each agency should have the initial obligation and opportunity to keep its own house in order on ethics matters. A copy of each report filed with the agencies should be filed with the Civil Service Commission so that public access to reports is facilitated.

6. Non-governmental individuals and organizations should have the right to file formal complaints or petitions for rule-making with the CSC regarding conflict of interest matters to receive formal CSC response. We strongly disagree with the White House assertions that a citizen complaint mechanism would impose a "serious burden" on the Director of the proposed Office of Government Ethics, or that it could be used as an instrument for harassment." This procedure is already used and has been found workable by the Federal Election Commission in campaign enforcement matters. Without such a mechanism to act as a protection against inadequate Civil Service Commission performance in the future, there is no assurance that conflict of interest and financial disclosure laws will be vigorously enforced.

7. The GAO should operate as an independent monitor of the financial disclosure system. Specifically, GAO should conduct random audits of the disclosures made by Executive Branch personnel to determine that the system is properly functioning.

8. In order to provide an additional measure of public accountability, we would propose that a government-wide advisory body be established consisting primarily of private citizens. The purpose of this body would be to review the impact and effectiveness of conflict of interest measures after a reasonable period of implementation and report its findings to all three branches of government. Over half of the states have established independent commissions to enforce conflict of interest laws, made up of people who are not otherwise public officials. These commissions add credibility to the system.

PRE- AND POST-EMPLOYMENT REPORTING

Common Cause supports section 102(a)(10) of H.R. 6954, which requires reporting of any agreements or arrangements with respect to future employment. However, we believe this section does not go far enough, and support instead the thrust of H.R. 3928, introduced by Rep. Mikva, which would establish a more comprehensive pre- and post-employment reporting system.

Common Cause strongly favors pre-employment reporting. Our study (*Serving Two Masters*) last year of the previous employment backgrounds of top officials in four major energy agencies (Energy Research & Development Administration, Nuclear Regulatory Commission, Federal Energy Administration and the Interior Department) showed that those agencies were being run, to a substantial degree, by officials who used to work with private energy companies or other organizations that have close dealings with the agencies. Numerous top government executives came from enterprises that receive contracts or licenses from the agencies they were administering.

Previous employment with the same private enterprise which a top official is now regulating creates at least the potential for conflict of interest. Anticipat-

ing later employment with the same firm could lead to favoritism toward past employers, which leaves the door open for conflicts between an official's private financial interests and a commitment to objective public service.

The other issue raised by our study concerns the relationship between these agencies and the industries they deal with, which must remain impartial, unbiased, and independent. This objective relationship is seriously threatened when the agency draws a high percentage of its policy-makers or consultants from firms or organizations that are closely involved with it. Pre-employment reporting is necessary to provide a basis for assessing the degree of imbalance and potential bias that exists, so that appropriate remedial action can be taken.

Common Cause also believes that employees should file reports for two or three years with their former agencies when they leave government service which identifies their new employers and the nature of their duties. Such reports are also required by H.R. 3928.

Our study suggested a widespread practice of public officials moving into jobs with regulated firms upon leaving government. This practice points to a serious potential for conflicts of interest on the part of employees in virtually every federal agency.

Those who anticipate future employment with regulated clients may have a vested interest in acting in behalf of certain companies while in office, or at least in behalf of the industry in general. This conflict is created by the very real opportunity to take jobs with such companies or with law firms that represent them.

POSTEMPLOYMENT RESTRICTIONS

Existing statutory postemployment prohibitions are riddled with loopholes. 18 U.S.C. 207 does not in any way disqualify former government employees from acting as agent or attorney for private interests before an agency in general rulemaking proceedings or in the formulation of general policy or standards. An individual is not disqualified on a matter even if he or she was deeply involved in developing the agency's proposed rules or preliminary policy on that subject.

Further, section 207 does not prohibit postemployment activities that may be described as aiding or assisting another. As construed by former Attorney General Robert Kennedy: "An individual who has left an agency to accept private employment may, for example, immediately perform technical work in his company's plant in relation to a contract for which he had official responsibility—or, for that matter, in relation to one he helped the agency negotiate." (Memorandum of Attorney General Regarding Conflict of Interest, February 1, 1963, 28 F.R. 985)

The statute also does not apply to matters arising after an employee or official has left, and both are free to appear before the agency on those matters the day after they leave the government.

H.R. 6954 would expand the existing prohibition on appearances before an agency of former employment on matters under one's official responsibility from the present one year to two years and would include a ban on informal as well as formal contacts. In addition, the bill would ban all contacts with a former agency for a period of one year, even if the contact was made on a matter other than one which was under the former employee's official responsibility, or one in which he participated personally and substantially. This provision would close the third loophole identified above.

We recently testified before the Senate Banking, Currency and Housing Committee on S. 695, a bill to close the revolving door between government contractors and contracting officers and eliminate for these officials the second problem we identified. We would be happy to submit that testimony for the record.

The third loophole can be closed by expanding 18 U.S.C. 207 to include rule-making proceedings and policy decisions.

CONCLUSION

We appreciate this opportunity to express our views on the various conflict of interest issues being addressed by this Committee. We look forward to working with this Committee and other interested Committees in the coming weeks on legislation to set a high standard for integrity and accountability by government employees and officials.

Thank you.

Mrs. SCHROEDER. You may continue.

**STATEMENT OF FRED WERTHEIMER, VICE PRESIDENT FOR
OPERATIONS, COMMON CAUSE, ACCOMPANIED BY ANN
McBRIDE, LOBBYIST**

Mr. WERTHEIMER. Basically, we think the administration has done a commendable job with the bill it's proposed. While we do have a few differences I would like to explain and set forth today, we do think that the comprehensive approach set forth in there is a very good one. We have always argued that financial disclosure is the starting point, it's crucial, but in and of itself cannot do all of the jobs that are necessary to deal with in the conflict of interest area.

We feel very strongly that financial disclosure legislation should cover all three branches and should be as equal in its treatment for the three various branches as is possible. Therefore, we are very hopeful that when this committee finishes its business, that a process will be able to be worked out whereby the legislation now being worked on by the Select Committee on Ethics that deals with implementing the congressional code of conduct, can be integrated or combined in some way so when we get to the floor on this legislation, it all can be dealt with at once. As you know, that is the approach that is going to be taken on the Senate side. We think it would be much more practical and workable if in some way that could be worked out on the House side.

There is one particular area in the pending bill here that I want to talk about for a minute, that's the question of the way blind trusts are dealt with. We do not agree with H.R. 6954. We think if blind trusts are to be allowed at all as a means of divestiture, that there has to be some basic statutory guidelines, that in any event, the trust either must require a turning over, within a reasonable period of time, of the assets in the trust, or else those assets that are put into the trust should be treated as owned, specifically owned by the person who puts them in, until they are turned over.

So, unless an executive branch official has been informed that the trust no longer held stock, the executive branch official would have to treat it as held for purposes of either disqualification or divestiture. So, we do not think the blind trust system as presently being operated by the executive branch is adequate.

The Senate has been working on this specific question with recent hearings. We did testify there. That's one of the submissions we have made to this committee.

We have testified earlier this year that with regard to regulatory agencies, agencies that deal with specific industries, that in those cases it is logical to ban holdings in those industries for people who are working with the agencies, and we think such a provision was part of the Department of Energy bill that went through.

We note here with respect to FDA, ICC, and FCC such prohibitions already exist. We are not arguing for those prohibitions when you get into an area where you cannot identify as specifically as you can in some areas the specific industry you're dealing with.

As Congressman Rosenthal noted earlier, in some of our earlier work we have found that the lack of compliance and enforcement has been at the heart of the problem. We struggled with the question of where this enforcement and oversight mechanism should be put, and came up with the same conclusion that is represented in this testimony, that it

should be in the Civil Service Commission. We did that, recognizing the Civil Service Commission has been a large part of the problem, not the cure, in past years; that in order for it to work, the President, for one, would have to be very seriously committed to revitalizing and upgrading the Civil Service Commission. If that were the case, then it is the logical place to put this kind of responsibility, and we are supporting placing it there rather than creating any new independent body to deal with it.

We do know that the office has to have the powers necessary to be able to oversee and necessary to do its job. If the office is created and responsibility is not given to it, then it will not really serve any real valuable purpose in the long run.

There is one area we are concerned about. This came up on the Senate side when the administration testified against having a citizen complaint procedure whereby an outside citizen or group would be given the power to file a sworn complaint raising a problem that it felt the Civil Service Commission should deal with. That kind of complaint procedure exists now with respect to the House Ethics Committee, with respect to the Senate Ethics Committee, and with respect to the Federal Elections Commission. It is a process that is not, in our view, subject to widespread abuse, because people are rather reluctant to go around swearing out complaints. They may feel comfortable writing anonymous letters, but people think twice about signing sworn complaints. With the proper guidelines, we think that kind of provision is an important part of the overall process of making sure that the Civil Service Commission and this office itself does its job.

We were, frankly, taken aback at the administration's position. As a result of their statement to the Senate Government Affairs Committee, the provision was taken out of the bill. We are going to work to have it placed back in on the floor of the Senate. We really don't think there's any logical basis on which the administration can justify no citizen complaint or outside complaint procedure when, in fact, the Congress deals with it in its own body and the Federal Elections Commission deals with it.

In the area of pre- and post-employment reporting, we basically support the bill introduced by Representative Mikva, although we recognize there can be differences of opinion over the GS-13 level. I do think the reporting requirements are of a less intrusive nature than some of the other issues you have to look at.

When you look at postemployment restrictions, our view in that area has been formulated based on the balancing question that Congressman Rosenthal talked about earlier, that is to say, how do you balance the desire to have people come into the Government and serve for a while and be free to leave with the need to protect against what has become a very serious problem, particularly when you look at the Defense Department for one, the contracting area, in the way in which people are working on specific projects turn around and wind up serving in those companies in procurement jobs.

Our overall approach has been to start off with the concept recommended in this bill that is, using a 1-year ban on contracts so you don't particularly prevent someone from going to a particular job, but when they get there, they are not able to deal with this given area for a period of time. It's kind of a buffer, in some way stopping the process of tak-

ing someone from the Government and immediately turning them around and working on specific issues. That, in our judgment, probably is good as a general proposition. However, we are concerned that it does not go far enough when you're dealing with such things as procurement contractors, for example. In that area what we have suggested is a provision, and we testified in favor of Senator Proxmire's bill in the Senate recently, which in effect provides a specific company ban for people who are working on specific company matters.

For example, if someone was in the chain of process of working on the B-1 contracts with Rockwell, they would be banned from going to work for Rockwell for 2 years thereafter. That is not an industry-wide ban. It does say, "If you are in the middle of specific contracts that you should not wind up going to work for the company who got the contract." The temptation becomes too great and the difficulties in balancing what your motivations are become too hard at that point.

The problem arises in how you deal with higher level officials, because if you take a specific company ban and apply it to the Deputy Secretary of Defense who probably signs off on every contract, what you have done is taken a specific company ban and made it into an industrywide ban for higher level people, since they are dealing with everybody. We have not, in our judgment, concluded that that would be a wise way to deal with it. So, we came up with two additional ideas, and we frankly recognize that further research is necessary to figure this out precisely, one is to set up some ground rules so that if a higher level official reaches out of the chain of command, for example, if the Secretary of Defense reaches down at a lower level in the stage of the contract processing and instructs that Rockwell as opposed to General Dynamics gets the B-1 bomber, that that kind of activity outside the normal process perhaps could be treated as a specific company ban for the Secretary, so that you provide some protections against higher level officials going outside what would be the normal process.

Second, that you consider a lengthier period on the ban of contracts for offices and departments that do heavy amounts of contracting. We might consider, for example, for the Secretary of Defense and the Deputy Assistant Secretary that they be banned for 2 years from specifically dealing with the Defense Department. That way again you would allow them to go out from the Defense Department into some industry-related jobs, but you would increase the protection of their using their expertise or making a decision while they were in those jobs which were designed to help gain future employment.

In conclusion, we recognize that this is a very difficult area, and that it's important to approach it from a standpoint of trying to balance interests and not build in too much rigidity; however, we also believe that we are at the stage now where some basic rules could be written that deal with financial disclosure, conflict of interest, post-employment activities, revolving door, and can have a real shot at convincing the public that the public and Government officials are concerned about meeting the concerns of the American people. I think the President is on the right track and Congress is moving ahead. We just hope this can be done in a coordinated and expeditious way.

Thank you.

Mrs. SCHROEDER. Thank you. I really appreciate your thoughts. I know you have been working very, very hard on this.

One of the things we hear a lot is that employees are being asked to disclose in all this movement that's going on, but they really don't have a statutory code of conduct, so it seems a little inconceivable that people might not know what they are supposed to do. Nevertheless, they will disclose and later on they will say, "I didn't know it was wrong." One of the things we have been toying with in the subcommittee is attaching some kind of code of conduct for Federal employees on acceptable standards of gifts, investments conflicts, just trying to do some basic definition that people might have in working with those things. What would your response be?

Mr. WERTHEIMER. Well, I guess my initial response would be that if you take the ideas that you're talking about legislating here and combine them with some of the things that exist on the books, the code of conduct is already there. What is missing, however, is some easy integrated way for people to know precisely what is proper and what is not proper. So, the code of conduct for executive branch officials might be a little bit different than the code of conduct, as it were, for Congress. I would think as part of this overall legislative effort there should be a pulling together in a very easy way of an explanation of what the ground rules are. That makes a lot of sense. I don't think it exists today.

I do think, however, that what it would wind up being would be the concepts and requirements in this legislation, plus some of the specific prohibitions that already exist on gifts and outside employment activities.

Mrs. SCHROEDER. I think that's probably true. I think it's all there if you dig long enough. I think the frustration of the employee is where can he find it.

Mr. WERTHEIMER. I remember when I first went to the Securities and Exchange Commission, I was told at the beginning what the guidelines and rules were. Then the whole thing disappeared. I think if there were a simplified way of doing things, it would be easier for them.

Mrs. SCHROEDER. Do you have any problem with banning outside employment for Federal employees?

Mr. WERTHEIMER. I guess that there are certain prohibitions on outside employment for Federal employees now. In certain cases, they don't apply. They don't work on lawyers. A lawyer can go home and write a will on the weekend.

Mrs. SCHROEDER. I don't think they work on teachers, which is why I bring it up. You could work in labor relations all day and then go and teach a class in the same field.

Mr. WERTHEIMER. I guess I wouldn't ban it, because of a decision made on the congressional side. Rather than flat bans, we leave a little breathing room to figure out what's proper and not proper. I don't start off with any problem of banning outside earned income for any one working for the executive branch, but I do think—and I certainly don't have any problems with banning honorary for people who are working for the executive branch—but I do think that perhaps for the same reasons that the same balancing questions that the judgment was made to allow some outside earned income for Members

of Congress, that the capacity be there subject to whatever specific construction or bans that made sense with it.

I would just add that when you ban outside earned income or have a 15-percent limitation on it at a salary of \$50,000, \$60,000, or \$70,000, let's say, you're dealing with one set of circumstances compared to say putting flat bans on any kind of outside earned income for someone who is earning \$8,000 or \$9,000 or \$12,000 or \$14,000, which could well happen in a lot of Federal jobs. I think that has to be looked at carefully. Perhaps a ban in the way it's drafted might have to relate a little more carefully the salary structure of the people you're dealing with.

Mrs. SCHROEDER. I think that's very true.

The subcommittee has been looking into a system of financial disclosure and benefits. I am a little concerned about the right to privacy, which I think is something that we really do need to think about. One of the proposals that's been floating about would be a requirement that everybody identify all their assets but not have to bring in the amount. Then when anybody had a question about any one of the assets at that point, it would be open for examination and you would get a total picture as to whether the person owned one share or 10,000 shares. In theory I think that this would work, just have the listing of the assets without the sum, and this would be some sort of protection for these people. You know, you hear the horror stories of kidnapping, extortion, and the rest.

Mr. WERTHEIMER. We have struggled with that question. The kind of formula you have talked about, we feel strongly will not do the job, although, we have accepted the idea of the categories approach. Having started out with the idea of the net worth and specific valuation, we concluded that if you had a series of categories, the range in which the holdings were in that you could both give a greater degree of privacy about what one's actual specific net worth was, if they wanted that privacy, but at the same time allow people to have an understanding of what the impact is of the potential conflict. We think this is extremely important. It is particularly important when you don't have any disqualifying rules, which we don't now have in Congress, so the public is going to have to judge, for example, for a Member of Congress in terms of holding the activity and the impact on the holding.

We are aware of the horror stories. I don't think that the track record on the horror stories holds up.

Many of the States have gone way ahead of the Federal Government in coming forward with new financial disclosure legislation. I have yet to see any specific case cited by any one despite the fact these things have been functioning in States for a while. I'm not unsympathetic, but I think when you weigh the reality of the argument versus what the problem is you're trying to deal with, that we do not satisfactorily solve the problem of listing holdings without giving some sense of impact. I do think people's legitimate privacy can be protected by having a series of categories, but there is a difference between someone holding \$3,000 worth of stock and \$150,000 worth of stock.

Mrs. SCHROEDER. I think that the distinctions that a lot of us have been concerned about is for the Congress you have one problem and it's

very difficult to think of an area where some potential conflict wouldn't arise. So there it's much more difficult to deal with specific categories that would be a no-no for anyone being a Member of Congress, because you really end up saying, "You can't do anything because it's a potential conflict." However, if you are working as an assistant secretary in the Department of Defense, you can pretty well sort out the things that could be no-no's, that could potentially have great conflicts of interest, and for that person it's a little bit different than a Member of Congress who has run for office. It was thought if you have the person list all their assets, you may find out that the assistant secretary happens to own Rockwell International; then you could find out what the extent of it was.

Mr. WERTHEIMER. I know the argument. We know the issue. This series of arguments I just don't feel the case has been made for it; I really don't. I do think that the need from the impact standpoint is very important. If these things are going to work, they are ultimately going to have to be self-policing.

We have had a series of disclosure laws on the books for some period of time. It was not public information. It led to people not complying with the requirements by not having filed reports or not bothering in terms of dealing with conflicts that were specifically on the record. By making it public, we set the stage for almost self-compliance. I do think in terms of being able to judge the impact and what is going on that there is a strong case for at least treating it in the categories. I know that's been the position of the administration. I think that what's happened to date in terms of people who have come in and have had to voluntarily comply with it has worked. People are always a little uncomfortable with this kind of concept when it starts. I don't think that uncomfortableness carries through once people get used to it.

Mrs. SCHROEDER. I know you say in your statement that you have a lot of faith in the public enforcement once this is public. Don't you think part of the problem is also the Civil Service Commission has really not put the emphasis on it that it should, and that we shouldn't let them totally escape any authority for having to do this. I agree fully with making it public and having it there for citizens' groups, but I don't think we want to give them the message that that's it, if the citizens don't care, that's the end. The Civil Service Commission certainly has a duty.

Mr. WERTHEIMER. Well, they have failed totally in their responsibility in this area in the past; that's one of the reasons that we and others were initially hesitant about the idea of giving them the responsibility. They have had some responsibility in this area and haven't done anything, but I think their performance, and assuming they are given the responsibility, their performance will determine whether or not the new guidelines work or not. I share your view; they not only should have a mandate, but there has to be a way of making sure the mandate is carried out. That's why we believe citizen complaint is important; that's why we ask that GAO monitor whether they are carrying it out.

Mrs. SCHROEDER. One of the things we have been considering is that each of the ethics counselors of each of the independent agencies of the executive branch be outside that agency head and instead be under the

Civil Service Commission, so there is the civil service chain of command, and that that would help us get the message to the Civil Service Commission, and they will have their own chain of command inside each of the ethics counselors of each of the independent agencies of the that. What do you think of that?

Mr. WERTHEIMER. I guess in order to do that you would have to make them full time ethics counselors. Once you do that, it's not clear to me whether they should be in the department in the first place. What we are leading to is trying to move that function into one of a couple of areas where it hasn't been focused before. If an agency has an inspector general type of arm, then you do have a sense of an independent arm in the body to begin with and the function should be put there. Otherwise we have argued the function should be put in the general counsel's office, because there are a lot of legal and legal-related decisions that have to be made when you're talking about the problem areas that are going to arise. We have argued that one should place that kind of responsibility with the legal branch of a department with the oversight in the Civil Service Commission. I guess we would tend to stick with that approach from our standpoint. That's what we would try to do, place it in either an existing independent part of the department or else place it in the General Counsel's office.

Mrs. SCHROEDER. I agree with your comments about the blind trusts because they are never really that blind, and I also agree with your divestiture as one of the remedies for conflict. Have you thought about other recommendations? I know you touched on this lightly in your opening statement, but would you go as far as dismissal of employees, cancellation of contracts or grants or any kind of award received through a contract?

Mr. WERTHEIMER. I guess I share the reaction of Congressman Rosenthal that the cancellation problem is a very complicated one, and the remedies we look toward really, if we are dealing with anything out of the postemployment area, dismissal could be a remedy for failure to comply. There should be a range of remedies that would be used for enforcement purposes, but I think if the guidelines are made clear, and there is a sense the people are going to have to comply with these things, the need for remedies, the actual need for remedies, will become minimal in this process. Most people comply with rules if the rules are very clear. It's only when you don't have clear rules or they aren't enforced that people make their own rules.

Mrs. SCHROEDER. Which is why we think it's important to put in a code of ethics.

I thank you very much for your time.

Do you have any questions, Counsel?

Mr. KNULL. I don't believe so.

Mrs. SCHROEDER. Thank you very much. We will be working on this. If you have any other ideas, we will be glad to have them.

Mr. WERTHEIMER. Thank you.

Mrs. SCHROEDER. The hearing is closed.

[Whereupon, at 11:12 a.m., the hearing was adjourned.]

[The following administration reports were received and ordered included in the record:]

PRESIDENT'S COMMISSION ON PERSONNEL INTERCHANGE,
July 25, 1977.

ROBERT N. C. NIX,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter to me of May 31, 1977 asks for comment on H.R. 2733 and H.R. 3928. As Mr. Jay F. Morris, the Executive Director of the President's Commission on Personnel Interchange, indicated to you by letter on June 7, 1977, I was unable to get comments to you by the state of the June 9th hearings.

As Chairman of the President's Commission on Personnel Interchange, I am in support of the President's alternative, H.R. 6954. I find it to be a good, all-encompassing, and reasonably particular bill.

The above represent my views as Chairman of the President's Commission on Personnel Interchange. The advice of members of the Commission was not requested.

I appreciate very much the opportunity to comment. Thank you.

We are advised by the Office of Management and Budget that there is no objection to the presentation of the report from the stand point of the Administration's program.

Sincerely,

JOHN C. COLLET, *Chairman.*

U.S. INTERNATIONAL TRADE COMMISSION,
Washington, D.C., June 14, 1977.

HON. ROBERT N. C. NIX,
Chairman, Committee on Post Office and Civil Service, Cannon House Office Building, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN NIX: Thank you for writing to us concerning the "Federal Conflict of Interest Act of 1977" (H.R. 2733) and the "Federal Employees Conflict of Interest Disclosure Act" (H.R. 3928), currently being considered by your Committee. Both H.R. 2733 and H.R. 3928 would have an impact upon existing governmentwide practice and procedures respecting employee responsibilities and conduct, established by the President per Executive Order 11222, as implemented by the Civil Service Commission on a governmentwide basis at 5 C.F.R., Part 735, and as specifically implemented by the U.S. International Trade Commission at 19 C.F.R., Part 200.

First, H.R. 2733 would restrict the activities of certain Federal employees and officers, would provide private remedies to implement these restrictions, and is intended to facilitate the enforcement of existing conflict of interest statutes. Second, H.R. 3928 would require federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the federal government. Per your recent request, I am enclosing reports on both H.R. 2733 and H.R. 3928 to assist your Committee's present deliberations. If your Committee desires further assistance in this matter, please do not hesitate to call upon me.

I hope you have a nice day.

Yours sincerely,

DANIEL MINCHEW, *Chairman.*

P.S. I personally strongly favor both bills.

U.S. INTERNATIONAL TRADE COMMISSION MEMORANDUM ON H.R. 2733

If enacted, H.R. 2733, termed the "Federal Conflict of Interest Act of 1977," would restrict the activities of certain Federal employees and officers, would provide private remedies to implement these restrictions, and would attempt to facilitate the enforcement of existing conflict of interest statutes.

Our review of provisions of law with respect to conflicts of interest among members of the federal work force has not disclosed a specific need which would be addressed by the instant legislation. We have no knowledge of any deficiency in the operation of the generally uniform framework established for the so-called Executive agencies by the President through Executive Order 11222 and regula-

tions promulgated pursuant thereto by the Civil Service Commission. Nor do we have specific knowledge as to the enforcement or lack of enforcement of such Executive Order and its regulations or of the various conflicts of interest provisions of title 18, United States Code. Thus, our comments cannot be addressed to those questions and not necessarily be of a general and technical nature.

It should be noted that the present law respecting federal employee responsibilities and conduct is governed by Executive Order: it may very well be that the needs sought to be addressed by this legislation would be better addressed by the Executive Branch through a revised and expanded Executive Order.

Restrictions on activities of certain Federal employees

Section 2 of H.R. 2733, in its present form, only restricts officers or employees in the executive branch of the Federal Government whose (1) rate of pay is equal to or greater than the rate established for level GS-16, or (2) who occupy a "professional or technical position with duties of a nature that the employee could cause an economic advantage for or handicap against a special interest in the discharge of his official duties and responsibilities," or (3) who occupy a "management, administrative, or investigative position, in either regulatory or management echelons, where his actions are likely to have a significant impact on special interest enterprises." As such, the scope of the population proposed to be restricted by H.R. 2733 is governed by one objective criterion (grade level) and by two subjective criteria. The application of subjective criteria to determine the population proposed to be restricted by section 2 may not be desirable for several reasons.

First, in light of the procedures and remedies proposed in sections 5 and 8 of H.R. 2733, federal employees affected by the restrictions of section 2 should receive clear notice as to whether they are members of the restricted class which may subsequently be affected by the procedures and remedies established by sections 5 and 8. The application of subjective criteria to determine the membership of the restricted class may not afford employees who are in fact affected by the provisions of H.R. 2733 with clear and adequate notice. Second, a uniform, governmentwide application of the subjective criteria of section 2 is not provided for by H.R. 2733, as presently contemplated. Presumably, therefore, the application of these subjective criteria is left wholly to the heads of the respective agencies or their designees. This situation could very well lead to an unequal application of the restrictions of section 2 and the procedures and remedies of sections 5 and 8 to the federal work force.

Third, it should be noted that the subjective criteria of section 2 are not consistent with existing governmentwide criteria established by the Civil Service Commission at the direction of the President with respect to confidential statements of employment and financial interests filed by federal employees. [See Executive Order 11222, 3 C.F.R. 306 (1964-1965 Comp.) See also 5 C.F.R. Part 735, Subpart D]. If subjective criteria are to be applied to determine which members of the federal work force are subject to conflict of interest proscriptions and standards, it stands to reason, in order to avoid employee confusion and to provide adequate notice, that the various sets of subjective criteria should be like or similar. Established governmentwide procedure pursuant to the requirements of Executive Order 11222 and in conformity with the provisions of the uniform criteria established by the Civil Service Commission is to require the submission of confidential statements of employment and financial interests from—

(a) Employees paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

(b) Employees classified at GS-13 or above under section 5332 of title 5, United States Code, or at a comparable pay level under another authority, who are in positions identified in the agency's regulations as positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

- (1) Contracting or procurement;
- (2) Administering or monitoring grants or subsidies;
- (3) Regulating or auditing private or other non-Federal enterprise; or
- (4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(c) Employees classified at GS-13 or above under section 5332 of title 5, United States Code, or at a comparable pay level under another authority, who are in positions which the agency has determined have duties or responsibilities which require the incumbent to report employment and finan-

cial interests in order to avoid involvement in a possible conflicts of interest situation and carry out the purpose of law, Executive order, this part, and the agency's regulations.

(d) Employees classified below GS-13 under section 5332 of title 5, United States Code, or at a comparable pay level under another authority, who are in positions which otherwise meet the criteria in paragraphs (b) or (c) of this section . . .¹

It may be advisable to conform the subjective criteria in section 2 of H.R. 2733 to the existing subjective and objective criteria which govern governmentwide practice with respect to the monitoring of conflicts of interest and apparent conflicts of interests.²

Fourth, the restrictions of section 2 of H.R. 2733, as proposed, only deal with the participation by certain federal employees in federal regulatory actions or policy decisions. No mention is made of the participation by federal employees in matters respecting agency contracting and procurement when a conflict of interest situation may also be present. It should be noted that the existing criteria in this area are also addressed to the participation by federal employees in contracting and procurement activities where a conflict or apparent conflict may be present.³

Statements of substantial economic involvement with special interests

Section 3 of H.R. 2733, as proposed, would require federal officers or employees, GS-16 and above, or employees who meet a subjective criterion to file "a detailed statement of such officer's or employee's former substantial economic involvement with any special interests." Such statements would be made available for public inspection upon request in conformity with rules to be promulgated by the Civil Service Commission. As with section 2 of H.R. 2733, no attempt was made to align the criteria of section 3 with existing governmentwide practice in this area pursuant to Executive Order 11222 and existing Civil Service Commission regulations. Existing governmentwide practice and procedure generally requires confidential statements of employment and financial interests from employees GS-13 and above.

In addition, with regard to the public inspection of "detailed statements of economic involvement and special interest," it must be noted that such records in all likelihood would constitute records in systems of records within the meaning of the Privacy Act of 1974 [5 U.S.C. 552a]. Disclosure of present records in systems of records which contain similar information ("Confidential Statements by Employment and Financial Interests") is governed by the requirements of the Privacy Act. The interface between section 3 of H.R. 2733 and the Privacy Act apparently has not yet been considered by the Committee. The disclosure which would be required by section 3, however, appears to be consistent with the recent holding in *Public Citizen Health Research Group v. Department of Labor* (D.C.D.C. 1977) (Civil Action No. 76-887) [See Access Reports, June 1, 1977, at 2, 3].

Exceptions to the provisions of section 2

Section 4 of H.R. 2733 would permit the head of each agency or entity to make a specific individual exception, in the case of a particular and specific regulatory action or policy decision, to the restrictions of section 2 of the bill. Such exceptions would be permissible whenever an agency head determines in writing that the specific exception is essential to the public interest. Congress would be entitled to 3 days advance notice of such determinations and written determinations would be made available for public inspection upon request pursuant to rules to be promulgated by the Civil Service Commission. With respect to this section, the effect of failure to supply advance notice to the Congress is not specified. In addition, an interface problem with the Privacy Act of 1974 could also be present inasmuch as the required written determinations may constitute records in systems of records within the meaning of the Privacy Act.

Extraordinary remedies

Section 5 of H.R. 2733 would provide for actions in the nature of mandamus to compel any officer or employee of the United States to execute the duty imposed by subsection 5(a) and would provide for actions in the nature of mandamus or prohibition to prevent any officer or employee from participating in any Federal

¹ 5 C.F.R. 735.403(a), (b), (c), and (d).

² See note 1, *supra*, and accompanying text.

³ *Id.*

regulatory action or policy decision in violation of section 2 of the bill and require compliance with section 3 of the bill. In light of the subjective criteria of sections 2 and 3 of the bill, as proposed, and mindful of the extraordinary nature of remedies in the nature of mandamus and prohibition, any application of such remedies to the situation desired to be remedied by H.R. 2733 may not achieve the desired result. The effect of a written determination pursuant to section 4 of H.R. 2733 upon any action in the nature of mandamus or prohibition, brought per section 5, is very clear.

Certain exemptions

Section 7(a) of H.R. 2733 exempts the President and Vice President of the United States and their respective staffs from the provisions of the bill. The basis for this exemptive provision which appears to amount to a legislative double standard is not clear. The "exception to the exemption" only obfuscates the clear parameters of the exemption itself. Section 7(b) exempts special government employees, as defined by 18 U.S.C. 202(a) from the restrictions of the act but requires disclosure of their past and present employment and duties for any special interest, as defined in the act, within 3 days of the commencement of their Government employment or service. The disclosure requirements of section 7(b) appear to partially overlap with existing governmentwide disclosure requirements for special government employees. [See 5 C.F.R. 735.412].

Illegal payments of salaries or emoluments

Section 8 of H.R. 2733 provides that the total salary or emolument received by an affected employee in violation of law per subsection 8(a) shall constitute (1) an indebtedness due to the United States for the purposes of withholding pay with respect to an employee removed for cause under 5 U.S.C. 5511 and (2) arrears to the United States for the purposes of withholding pay until arrears are settled under 5 U.S.C. 5512. These penalties are apparently in addition to the existing criminal penalties in title 18, United States Code.

U.S. INTERNATIONAL TRADE COMMISSION MEMORANDUM ON H.R. 3928

If enacted, H.R. 3928, entitled the "Federal Employees Conflict-of-Interest Disclosure Act," would require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and the three years following their employment with the Federal Government. In addition, the bill would require each Federal agency to file annually with the President of the Senate and the Speaker of the House of Representatives a report containing the information filed with it by Federal employees and former Federal employees. Finally, the bill would require each Federal agency to maintain a file containing the information filed under its provisions and to make such file open for public inspection during its regular working hours.

Our review of provisions of law with respect to conflicts of interest among members of the Federal work force has not disclosed a specific need which would be addressed by the instant legislation. We have no knowledge of any deficiency in the operation of the generally uniform framework established for the so-called Executive agencies by Executive Order 11222 and regulations promulgated pursuant thereto by the Civil Service Commission. Nor do we have specific knowledge as to the enforcement or lack of enforcement of such Executive Order and its regulations or of the various conflicts of interest provisions of title 18, United States Code. Thus, our comments cannot be addressed to those questions and must necessarily be of a general and technical nature.

It should be noted that the present law respecting Federal employee responsibilities and conduct is governed by Executive Order; it may very well be that the needs sought to be addressed by this legislation would be better addressed by the Executive Branch through a revised and expanded Executive Order.

REPORTING REQUIREMENTS

Section 3 of H.R. 3928 contains certain reporting requirements for Federal employees compensated at the rates in effect for GS-13 and above. These reporting requirements are similar to, but expand upon, the existing governmentwide practice and procedure with respect to the filing of confidential statements of employment and financial interests [See 5 C.F.R. part 735, subpart D]. The present reporting requirements, established per the directive of Executive Order

11222 [3 C.F.R. 306 (1964-1965 Comp.)], deal primarily with presently-owned financial interests and do not, as does H.R. 3928, deal with the past or future connections of Federal employees with the private sector. The instant bill is otherwise consistent with the existing governmentwide practice of requiring disclosure of financial interests from employees, GS-13 and above. The scope of the population affected by the reporting requirements of section 3, unlike present practice, however, is determined entirely by an objective standard (grade level).¹ The reporting provisions are silent as to any special or particular requirements for "special government employees" as defined at 18 U.S.C. 202(a). In addition, in light of the fact that the reports required by section 3 would constitute records on identifiable individuals within systems of records protected by the Privacy Act of 1974 [5 U.S.C. 552a], a question of interface between H.R. 3928 and the Privacy Act is raised.

EXCEPTIONS

Section 4 of H.R. 3928 would provide a basis for exemption of the employees or former employees of the Central Intelligence Agency or the National Security Agency, Department of Defense. Written certifications would be required to document the exceptions; with respect to these written certifications, a Privacy Act question may also be raised.

PUBLIC AVAILABILITY OF REPORTS

Section 5 of the bill would require the head of each agency to maintain a file, open to public inspection during the regular working hours of the agency, which contains a copy of each report required to be filed by section 3. Although considerations of individual privacy may be appropriately raised under the Privacy Act of 1974, it would appear that the public interest may permit or require disclosure of information respecting conflicts of interest and apparent conflicts of interest with respect to the federal work force. [See *Public Citizen Health Research Group v. Department of Labor* (D.C.D.C. 1977) (Civil Action No. 76-887), as reported in Access Reports, June 1, 1977, at 2, 3].

OTHER PROVISIONS

Section 6 of H.R. 3928 would require the head of each agency to submit a report to the President of the Senate and the Speaker of the House of Representatives containing a copy of each report filed with such agency under section 3 of the bill during the preceding calendar year. For the purposes of facilitating effective legislative oversight of the proposed bill, it may be preferable to have such reports made to the chairman or to the Chief Counsel of the respective Committees of the House and the Senate which oversee the Civil Service system. Section 7 of the instant bill provides for certain criminal penalties for violation of the bill's provisions and section 8 provides for definitions of terms.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., July 22, 1977.

HON. ROBERT N. C. NIX,
Chairman, Committee on Post Office and Civil Service, Cannon House Office Building, Washington, D.C.

DEAR CHAIRMAN NIX: Thank you for your letter of May 31, 1977, in which you request the Commission's comments on two bills: H.R. 2733, the "Federal Conflict of Interest Act of 1977;" and H.R. 3928, the "Federal Employees Conflict of Interest Disclosure Act." In accordance with your request, we are pleased to transmit to you our comments, which are enclosed herewith.

If I can be of any further assistance to you in this matter, please do not hesitate to contact me.

Sincerely yours,

CHARLES L. CLAPP,
Acting Chairman.

¹ Subjective considerations, similar to those respecting the reporting requirements of Executive Order 11222, as implemented 5 C.F.R. 735.403, do not determine the scope of the population required to report pursuant to section 3 of the instant bill.

COMMENTS OF CHARLES L. CLAPP, ACTING CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ON H.R. 2733 AND H.R. 3928

On behalf of the Interstate Commerce Commission, I wish to express our appreciation for this opportunity to comment on two bills; H.R. 2733, the "Federal Conflict of Interest Act of 1977," and H.R. 3928, the "Federal Employees Conflict of Interest Disclosure Act."

We would observe at the outset that neither of these bills, as presently written would appear to be applicable to employees of the Interstate Commerce Commission. Section 2 of H.R. 2733 applies only to employees in the Executive Branch of the Federal Government. Section 8 of H.R. 3928 includes all executive agencies, as defined in section 105 of Title 5, United States Code, plus several other named agencies. 5 U.S.C. § 105 refers to 5 U.S.C. § 101, which lists the Executive Departments, and the ICC is not included among them. Moreover, the Justice Department has been consistently of the opinion that, unless otherwise clearly indicated to the contrary, the ICC is not to be included within the definition of "executive departments."

For example, in one early Attorney General's opinion it was stated: "Of the various establishments mentioned, there can be no doubt that the Government Printing Office, the Interstate Commerce Commission, and the Smithsonian Institution are independent of any of the executive departments mentioned in section 158 of the Revised Statutes." (26 OP. ATT'Y GEN. 209, 214 (1970)).

However, because of the importance of the subject matter of this legislation, we would like to offer some comments on the major provisions of both bills.

The Commission is aware that public confidence in all government institutions is low at the present time. This lack of confidence is based in part on the perception that some Federal government employees may be guilty of conflicts of interest. Such a climate makes an already difficult regulatory job more difficult. Therefore, while we have utmost confidence in the integrity of our employees overall, we realize that an increased public confidence in Federal institutions is vital to the continued success of our program. Therefore, there is no question but that both bills deal with a subject of the utmost concern.

H.R. 2733 would restrict certain government employees from participation in the decisionmaking process if they have had a "substantial economic involvement" in the subject matter while in private employment prior to Federal employment. The bill also includes reporting and disqualification procedures.

While the purposes behind H.R. 2733 are commendable, we are not convinced that legislation of this kind is necessarily required at this time. The fact that a Government employee has been employed at an organization which would fit the bill's definition of "special interest" does not, by itself, create any inherent conflict, in our view. What can create a conflict is where the employee retains some significant economic interest in the "special interest" organization, but as to this situation there are now in effect disclosure and disqualification requirements which deal with such situations.

To deal with the problems of disclosure and disqualification, the Commission presently requires all new employees to complete a "Certificate of Non-Financial Interests" (copy attached)¹ as mandated by the Interstate Commerce Act and our Canons of Conduct (see 49 U.S.C. 11, 49 U.S.C. 17(3), and 49 U.S.C. 305(i); and 49 C.F.R. 1000.735-12, respectively). These same Canons also require that: "Members and employees shall not participate in any matter in which they have a substantial pecuniary interest, or other interest which might affect or appear to affect their actions in this matter (49 C.F.R. 1000.735-13)."

Moreover, key Commission employees occupying positions which have significant impact on regulated carriers are required to submit annually a "Statement of Employment and Financial Interests" (ICC Form 1164). Various professional associations, such as the American Bar Association, also have codes of ethics which deal with such conflicts of interest.

Section 2 of H.R. 2733, however, would go much farther. It would require that any officer or employee in the executive branch (1) whose rate of pay is equal to or greater than GS-16, or (2) who occupies a professional or technical position with duties of the nature such that the employee can cause an economic advantage or disadvantage for a special interest, or (3) who occupies a management, administrative, or investigative position, with duties such that his actions

¹ Retained in subcommittee files.

could have a significant impact on a special interest; would not be able to (1) participate in any Federal regulatory action or policy decision which involves any special interest in which the officer/employee had a "substantial economic involvement" any time during a two-year period prior to his joining the government, or (2) participate in any Federal regulatory action or policy decision involving any subject matter concerning which the employee had been involved or participated personally for or represented a special interest any time during the period of 10 years prior to joining the government.

We fear that the requirements of this section could cause difficulty for any agency covered by H.R. 2733 which attempts to hire personnel from the private sector experienced in its area of regulation. Since the definition of "substantial economic involvement" in section 6 of the bill includes employees who earned one-quarter or more of their annual income working for a "special interest," anyone who worked to that extent for a transportation organization could be barred from working for substantial periods of time.

It is unclear to us from this language whether these prohibitions run against the activities of a particular "special interest" or would include all similar organizations. For example, the Commission might hire a tariff examiner with a "substantial economic involvement" (full salary) in the Rocky Mountain Tariff Bureau who worked on the subject matter of rates determined by the rate bureau. Would such a "subject matter" prohibition run against handling any tariff matter from any rate bureau, or just those directly involving the Rocky Mountain Tariff Bureau? The intent of section 2 in this respect is not entirely clear.

Moreover, this agency, at least, is sometimes directed by the Civil Service Commission to hire prospective employees having a particular expertise. For instance, Civil Service Commission Mid-Level Announcement No. 413 has approved qualifications for GS-9 transportation tariff examiners. These qualifications provide for a minimum of 5 years of experience in rate/tariff matters with a carrier, rate bureau, or similar organization. H.R. 2733 could conflict with this requirement. We expect that other agencies have similar situations.

Retaining these trained technical personnel is crucial to assurance that rates and charges remain just and reasonable. However, of equal, or perhaps greater, concern to the ICC is the employment of qualified field investigators, not only to expose occasional criminal violations which can result in consumer "rip-offs", but also to detect and mediate shipper/carrier disagreements before they can escalate to real problems.

The Commission is fortunate to have many such employees, and I will discuss one of them—Mr. Edward Bill of our San Francisco Office—to illustrate a point. Mr. Bill joined our staff after working for the California Trucking Association. His recent involvement in two matters shows how invaluable industry-trained personnel can be.

First, upon suspicion that a local agent of a National household goods mover was engaged in the practice of "weightbumping"—an illegal method of inflating a consumer's moving bill by surreptitiously loading scrap iron, old tires, etc., on the truck before weighing—Mr. Bill sought out and worked with California authorities on an investigation. Together, they succeeded in actually filming the illegal activities. Later, Mr. Bill was instrumental in preparing the evidence which resulted in the convictions of those filmed.

Second, upon information that a rate disparity existed between the small towns of Placerville, Calif., and nearby communities, Mr. Bill met with involved shippers and succeeded in persuading the motor carriers to reduce their rates voluntarily. Mr. Bill was presented a letter of commendation by community leaders.

In general, the Commission believes that the best way to prevent conflicts of interest is to hire qualified personnel whose integrity is not in question. We believe that section 2 of H.R. 2733 could make this more difficult. Moreover, while we by no means suggest that our own regulations on this subject are above criticism, we believe it preferable to deal with the conflict problem by regulation because it allows us to account for all the many considerations involved, including the need for a ready supply of trained personnel from the private sector.

Section 3 of this bill would require each of the Federal employees listed in section 2 to fulfill a reporting requirement. Within 30 days of joining the government, such employees would submit to the head of the agency a detailed statement of his or her former substantial economic involvement with any special interest. Such statements would be made available for public inspection upon request.

The Commission, like other Government agencies, already routinely collects a good deal of the information which would be required by section 3, both through the Government-wide Standard Form No. 171, which all prospective Federal employees must complete, and our own financial disclosure forms previously mentioned. For this reason, the provisions of section 3 do not appear to be necessary. Moreover, we believe section 3 should be carefully analyzed to ensure that the public inspection provisions do not conflict with provisions of the Privacy Act.

Section 5 would require every officer and employee of the United States having the authority to do so to dismiss any other officer or employee who takes or holds Federal employment in violation of the provisions of section 2. Section 5 goes on to allow any person to sue in the nature of mandamus to compel such officer/employee to execute this duty. Moreover, any person may seek a writ of mandamus to prohibit a Federal employee from participating in any regulatory action or policy decision which would violate section 2. We do not believe this procedure would be an effective mechanism to revise existing procedures for the removal of Federal employees for malfeasance, and could lead to an unnecessary burden on the Federal courts. We believe that procedures under existing law and Civil Service Commission regulations are adequate to deal with abuses which may occur.

H.R. 3928 has four requirements: (1) it would obligate each Federal employee compensated at a rate equal to or greater than the minimum rate of compensation for GS-13 to file with the Federal agency where such employee works, a description of each position held by that employee during the 3 years preceding his joining the Government; (2) it would require former Federal employees compensated at the same rate to file with the Federal agency in which they last worked a description of each position held during the 3 years after termination with that Federal agency; (3) it would require the Federal agency to file annually with the President of the Senate and the Speaker of the House a report containing the information compiled; and (4) it would require the Federal agency to maintain and to make open for public inspection the information supplied pursuant to this Act.

The reporting requirements detailed in (1) above are essentially complied with now through all Federal employees' submission of the SF 171 Form, and the financial disclosure provisions required by the Commission discussed above. To the extent that the somewhat more extensive reporting called for by H.R. 3928, such as the awards of grants or contracts, is concerned, it might be preferable to include questions on SF 171 relating to such matters if this information is deemed necessary.

As far as post-Federal employment reporting requirements are concerned, it is difficult to determine what effect such a provision, standing alone, would have. There is, of course, a significant policy question as to whether, and to what extent, former Federal employees should be barred from certain employment following service. If Congress believes that the reporting called for by H.R. 3928 is necessary to develop necessary information, we would have no objection to the imposition of such a requirement. However, we believe also that attention should be given to the implementation of this requirement, in order to minimize any additional paperwork burdens which might be involved. It should also be determined that the provisions of this bill do not conflict with the Privacy Act before it is enacted.

Thank you for this opportunity to comment on these bills.

DEPARTMENT OF JUSTICE,
Washington, D.C., April 28, 1977.

HON. PATRICIA SCHROEDER,
Chairwoman, Committee on Post Office and Civil Service, Subcommittee on Employee Ethics and Utilization, House of Representatives, Washington, D.C.

DEAR CHAIRWOMAN SCHROEDER: The Attorney General has referred to me your letter to him, dated March 21, 1977, in which you requested information with respect to the enforcement of the federal conflict of interest statutes, 18 U.S.C. §§ 207 and 208.

The Public Integrity Section of the Criminal Division has recently compiled statistics on federal prosecutions of corrupt public officials from 1970 through

1976. A copy of that full report is enclosed for your information.¹ Those statistics show eight indictments of federal employees under 18 U.S.C. § 208 and eight convictions. Statistics were available only where five or more convictions were reported. Less than five convictions were obtained under 18 U.S.C. § 207, and therefore the report indicates no indictments or convictions under that statute. Although a few charges may have been missed in the compilation, by any measure only a few indictments have been returned under those two sections.

The figures do not indicate the number of investigations that have been conducted under sections 207 and 208; that number would be considerable. The figures also do not reflect administrative civil actions under those sections, as to which the Criminal Division has no information.

The Public Integrity Section has also recently completed a study of enforcement problems and efforts in the area of conflict of interest. That study included an informal survey of conflict of interest matters handled directly by that Section (rather than by the United States Attorneys). The survey showed that over the past year the Public Integrity Section received and handled 35 conflict of interest referrals and that the large majority of those referrals came from federal agencies. The following chart shows the results of those referrals which involved 18 U.S.C. §§ 207 and 208.

	Sec. 207	Sec. 208
Prosecution declined without further investigation.....	1	6
Prosecution declined after, FBI investigation.....	1	3
Prosecutorial decision still pending—some FBI investigation conducted.....	2	4
Indicted.....	0	0

Several things should be noted beyond the statistics. The survey showed that one of the more common reasons for declining to prosecute conflict cases was the lack of criminal intent and the resulting concern that a jury would refuse to convict. In several cases Section attorneys indicated that the felony penalty was too severe given the particular facts, but that they might have pursued misdemeanor prosecutions, civil fines or administrative penalties, if those less severe penalties had been available.

The statistics with respect to section 207 prosecutions are probably misleading. Section 207 is most frequently violated by attorneys in the context of a judicial or administrative proceeding. In such contexts the most effective and feasible remedy can be a recusal motion (or the threat of one). We do not have statistics available on that point, but we are aware of many such recusal motions, all of which were successful in removing the former government attorney from the case.

The Criminal Division is very interested and concerned about the problems of conflicts of interest, and the Department of Justice is now considering the creation of a Departmental task force to recommend reform in this area. I would be pleased to send you the report of that task force when it is completed.

If we can be of further assistance in describing the statistics, enforcement difficulties or coverage of the criminal prohibitions, please do not hesitate to contact us.

Very truly yours,

BENJAMIN R. CIVILETTI,
Assistant Attorney General,
Criminal Division.

¹ Retained in subcommittee files.

The Federal Bar Association

1815 H STREET, N.W., WASHINGTON, D.C. 20006

(202) 638-0252

June 1, 1977

The Honorable Patricia Schroeder
Chairman, Subcommittee on Manpower
Committee on Post Office and Civil Service
603 HOB Annex No. 1
Washington, D.C. 20515

Dear Congresswoman Schroeder:

I regret it has taken so long to respond to your request dated March 2, 1977, for our views on H.R. 3829, but the indisposition of key individuals in this Association which caused the delay was for me unavoidable.

1. The New Ethics Commission. While we applaud the implicit purpose of the bill to improve ethical standards of Government employees, we disfavor its principal stated purpose, i.e., to establish a Commission on Ethics. The bill's purpose to improve integrity in Government operations can be achieved without the costly creation of yet another hybrid-independent Government agency, and we suspect the creation of such an agency would be counterproductive. We think that Executive branch managers, including Cabinet heads, should be made more, and more directly, responsible for their own integrity and that of their subordinates. The need for integrity inheres in all operations, and the knowledge of what kind of conduct is appropriate in the infinitely variable sets of circumstances which attend the working out of the responsibilities placed on agency managers by statute is best and most closely known by the operating managers. Withdrawing responsibility for integrity from them, or even sharing it with a special commission, is to us a step in the wrong direction. A better approach would be to remind them of their responsibility for integrity as an uncompromisable and unavoidable facet of their customary work function, and then monitor their performance through effective Congressional oversight.

To assist with oversight, it is a simple matter to establish reminder mechanisms which are easy to police; such as a requirement (1) that all agency employees be furnished a written statement of ethics or financial disclosure rules upon the occurrence of a fixed date or personal event each year, or (2) that a specified agency official with responsibility for personnel or administrative matters arrange for the filing of required financial statements from specified classes of employees no less often than once each given fixed period, or upon appointment to a particular class of position, etc.

Congress could also fix responsibility on a central agency (like the Civil Service Commission or the Department of Justice) to collect reports from agencies on their compliance with any rules so set, or with any set of general standards established by statute, all for the purpose of reporting Government-wide results on an agency basis to the Congress. What the GAO and other investigations have disclosed thus far is not that criminal conflicts of interest abound, and not that the rules and regulations which stem from the criminal conflicts laws and Executive Order No. 11222 are not well stated, but that inadequate attention and respect have been paid to them. It serves as a very useful reminder to any Government employee required to file a disclosure of his finances that his ownership of a particular financial interest may conflict with his duties. The value of the exercise is lost completely, of course, if no one reminds him that the time for filing has arrived, so that the employee never finds the oppor-

tunity for such reflection. The remedy we suggest is simple, so long as the responsibility for looking after it is firmly fixed. The duties involved are not likely to require more than a single person-year of effort in a central agency.

One caution seems in order. We recommend against placing in a selected central agency the initial responsibility to review the financial statements of employees or officers other than its own. As we indicate above, propriety of conduct often depends on contextual circumstances, and there will be occasions when "outsiders" may see nothing wrong in a situation where anyone acquainted with the operating details of a program would be suspicious enough of impropriety to embark on further investigation. Again, we suggest that the better approach is to fix responsibility for integrity in program managers, and monitor their compliance.

2. Contents of Reports. In the Privacy Act, Congress showed considerable sensitivity to the complaint that the Government collected, stored and used too much information on individuals which was irrelevant to serious Governmental needs. This bill is far less sensitive on that score, and places on individuals reporting burdens which furnish data of little or no consequence to the resolution of ethics or conflicts problems. For example, an employee without credit card accounting facilities who travels a good deal for the Government would need a bookkeeper to respond to the excessively detailed demands of section 204(a)(1) concerning "each item of reimbursement for any expenditure" he incurred on such trips. Why reimbursement from the Government need be included is a mystery, but the sub section contains no specific exemption on that account. Moreover, the accounting must be precise, since subsection (a)(1) is not relieved by the \$5,000 or more bracketing permitted for (a)(2) through (a)(5) by section 204(b)(1). Neither is such relief given for the presumably difficult task of valuing patent and contract rights under subsections (a)(6) and (a)(7). See also the requirement of section 204(b)(2).

With respect to these three subsections requiring exact amounts, is it really of great significance that a specific receipt of income is in the amount of \$3,700 rather than \$3,500? Even for far lesser amounts, is it not more significant that the gift is from a person within an industry regulated by the employee's agency? We suggest that sources and relationships ought to be the starting basis for inquiry, with the capacity for investigation of amounts and other details reserved for the relatively few cases which may ultimately deserve such attention. Incorporation of notions of source into section 204(a)(2) might also be helpful. As it stands, an employee who, in the year before the preceding calendar year, received as a bribe jewelry, clothing or a vehicle valued around \$15,000, would not have to report it if he or his spouse or dependents made personal use of those goods. It is questionable whether either (a)(1), (income), or the last sentence of (a), (compensation), would apply to the given factual situation.

As a general matter we suggest that the forms for reporting financial statements currently in use under Executive Order 11222 are well suited to the disclosure task without undue invasion of private data. They do not exclude small amounts on a de minimis basis, leaving that consideration for subsequent investigative development if conflicting interests are discovered. The effect of this is to make needless all of the provisions of section 207 dealing with custody and public access, since such matters would be handled directly under the Privacy Act and the Freedom of Information Act.

3. Failure to File or Falsification. The criminal penalty in section 206(a)(1), to the extent it deals with falsification of reports, or to the extent that failure to file required information in "material", largely duplicates 18 U.S.C. 1001 (false statements) and is unnecessary. The not to exceed \$5,000 civil penalty in section 206(a)(2) for failing to report in whole or in part seems simply strange. We suggest that such reluctance is unseemly in an employee, and could be dealt with, for a second and wilfull offense, by any form of discipline up to and including dismissal from the service. No additional statutory provision seems necessary to bring this about, since such a dismissal or other discipline seems clearly to be for "such cause as will promote the efficiency of the service under both the Lloyd-LaFollette Act and the Veterans Preference Act. See 5 U.S.C. 7501 and 7512, respectively.

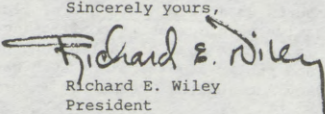
4. Random Suggestions, some with constitutional overtones. Section 103 could be rewritten in such a way as to avoid the implication that it is permissible to solicit and accept items of value from persons the employee officially deals with so long as the values are kept under \$50.

Section 105 could be read to interfere with one's association with one's brother if he was thought to be an embezzler, or if he was the current subject of bad reputation, no matter how undeserved.

The intent of section 106(a) is awkwardly stated and, by the inclusion of "in any way", is somewhat overbroad. It could be stated as: "an employee shall not perform any services for others than the Government which conflict with his official duties." A preferable version is that found in 5 C.F.R. 735.203(a) through (a)(2). In combination with section 106(b), the section seems to prohibit (short of agreement with the agency head) any form of "moonlighting" whatever. Except to the extent that the Government ought to get a full day's work for a full day's pay (see 5 C.F.R. 735.203(a)(2)), one may wonder what business it is of Government if one of its employees with unusual debts finds it necessary to work several nights a week as a checker in a grocery store. After all, the bill is not exclusively concerned with highly paid employees. See section 203(b)(8). In addition, if approval of the head of the agency is required for such work, we suggest that the statute require a request followed by approval, rather than involve an "agreement" with the employee. The latter seems to suggest that an agency head can change the conditions of employment for one or more employees merely by agreeing with each to do so. We see no need for, and the potential for considerable mischief from, such a precedent.

We regret the relatively negative reaction we have had to major provisions of H.R. 3829, but the combination of our professional judgment and our view of the interests of the constituency which forms our membership has brought it about. We remain deeply appreciative of the opportunity to comment, and offer to be of whatever technical assistance you may think we could be in further work on the bill.

Sincerely yours,


Richard E. Wiley
President

Supplementary Statement for the Record

of

Ronald B. Johnson

National President, The Federal Professional Association regarding H.R. 6954 and two other bills (H.R. 2733 and H.R. 3928) relating to ethics and financial disclosures of certain Federal officers and employees. This statement reaffirms the basic position and related viewpoints presented by Mr. Johnson to the Subcommittee on Employee Ethics and Utilization, March 25, 1977, regarding H.R. 3829.

June 21, 1977

Summation of comments on bills now before the Subcommittee:

1. Ethics - a special concern of all professions. The Federal Professional Association reaffirms strongly its support in principle of an adequate ethics and financial policy and its effective administration for Federal officials and employees, as presented to this Subcommittee, March 25, 1977. The Association did not endorse H.R. 3829 in its present form, but limited its consideration to the responsible role of professional employees in the Federal service in matters of ethics and financial disclosure.

2. Coverage of personnel affected. The various provisions of the above bills regarding financial and conflict of interest disclosures would generate a potential magnitude of paper processing and record keeping. For example, the Mikva bill (H.R. 3938) includes persons seeking Federal employment to report the private pay received for three years prior to acceptance at the basic rate of GS-13 and above and for three years after termination of Federal employment. This requirement alone would concern eventually about 500,000 Federal employees. Such a requirement would raise outcries of a form of "state tyranny."

3. Personnel reporting under Executive Order 11222. The present reporting of financial disclosures by the higher officials and employees, as now required under Executive Order 11222, May 8, 1965, would seem to remain as an adequate model for top Federal personnel and for certain employees in sensitive positions, such as contract procurement, investigators, and public economic matters. Desirable responsibilities of the Civil Service Commission in the administration of this Executive Order may need legislative support.

4. Public disclosures of financial statements. H.R. 6954 extends additional aspects of requirements of Executive Order 11222. It requires the public disclosure of the financial statements of all top officials in the Executive branch. It also includes employees in the grade GS-16 and above and comparable personnel in other statutory services and the uniformed services. For the administration and maintenance of such statements H.R. 6954 would establish an Office of Government Ethics within the Civil Service Commission. This requirement is seemingly the outgrowth of the so-called public interest requirement for the disclosure of financial statements by the higher personnel in government. Similar requirements by two state governments have raised questions of privacy among some state employees who have brought up constitutional issues, leading to pending tests in the courts.

5. Establishing an overall government code of conduct. The several items drafted by the staff of the Subcommittee for discussion pose challenges to aspects of what are fair and effective factors for the management and supervision of Federal employees. The public interest requirements in the so-called sunshine legislations deserve careful consideration, but at the same time Federal officials and agency employees have private rights. Clearly, a Code of Conduct for all officials and employees is desirable, but its administration poses difficulties regarding distinctive kinds of government activities. Professional employees through their associations and societies recognize the importance of codes of conduct as a part of their standards for job performance and their ultimate responsibilities to the public.

It is suggested that the Federal Personnel Management Project, launched recently by the Chairman of the Civil Service Commission and the Director of the Office of Management and Budget, sponsor a special study committee on matters for an overall government-wide code of conduct for all Federal officials and employees.

Further consideration of the above summaries:

1. There are approximately 300,000 professionals among the nearly 2 million white collar employees, as identified by the Civil Service Commission. These professionals are generally members of, or at least otherwise identify with one or more professional societies or associations.

Among the major goals of The Federal Professional Association, founded in 1962, is to foster the concept of "professionalism" in the broadest sense of its usage for recognizing the full responsibilities of professional occupations in the Federal service. This recognition permits the development of higher professional standards in the Federal service, comparable to the highest standards known elsewhere in the national economy.

Briefly, "professionalism" concerns the identity of Federal employees as members of a profession as distinguished from being only government employees. With this usage, a professional employee usually remains loyal to the norms of his profession and its activities, attends and participates in society meetings, writes papers, and subscribes to its publications. Thus, the Federal professional is not only concerned with the national standards of his profession, but is equally concerned with the standards and judgments required for effective job performance in his agency.

The Federal Professional Association regards its ethical matters with those considered in these current bills as being distinguishable in two significant respects: (a) perceiving professional standards for the highest job performance; and (b) recognizing matters relevant to desirable behavioral conduct of Federal officials and employees in carrying out duties and responsibilities. In daily operations they are largely inseparable.

2. The two principal bills under review differ on coverage of personnel affected. H.R. 3829 provides for a government-wide governance in matters of ethics and disclosures. H.R. 6954 confines its coverage of personnel to the Executive branch. This difference raises a significant question. If ethical conduct and financial disclosure governance is desirable in one branch of the Government, why not a similar requirement in the other two branches? What is being done in state and local governments?

3. The role of the Civil Service Commission, as provided by H.R. 6954, would be strengthened. However, there is historic resistance by the departments and agencies to increasing its authority in personnel management.

4. H.R. 6954 provides for public disclosures of financial statements by top personnel in the Executive branch. This is apparently pursuant to the current public interest requirements in the finances of public office-holders. This distinction gives rise to questions about requiring elected officials and appointed judges to make public their finances.

5. Professional employees conduct work through their mutual understandings and accepted practices. These comprise a network. Thus codes of professional conduct have evolved. Such a code can be shared by the entire service, particularly at the higher levels of personnel.



OFFICE OF
THE DIRECTOR

ACTION

WASHINGTON, D.C. 20525

July 1, 1977

Honorable Robert N. C. Nix
Chairman
Committee on Post Office and Civil Service
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Thank you for your letter of May 31, 1977 requesting my comments on H.R. 2733 and H.R. 3928. These two bills deal with several aspects of the conflict of interest problem which faces many federal agencies and employees.

H.R. 2733 would disqualify federal employees at the GS-16 level and above from participation in regulatory or policy decisions involving a special interest in which the employee had a substantial economic involvement during the two year period prior to his employment, or in the subject matter of which he had been involved for a period of ten years prior to his employment.

H.R. 3928 would require employees compensated at the GS-13 level or above to report any positions held during the last three years prior to their Government employment, and during the three years after termination of employment. The bill would require all employees whose Government duties, directly or indirectly, include participation in the award of grants or contracts, to submit a list of grants, contracts, or other forms of financial interest which each former employer (or in the case of a terminated employee, the present employer) has obtained in the preceding 12 months, or is attempting to obtain.

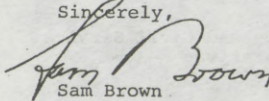
I am in general agreement with the subject matter of these two bills - prevention of conflicts of interest, and disclosure of interests of employees which might influence his or her decisions as a federal employee. I am not convinced, however, that either of these bills, or both of them, would provide the best approach to the problems they address.

As you know, the President has proposed legislation (H.R. 6954) to deal comprehensively with the ethical problems of Government service. Among the provisions of that bill is a proposal for the establishment of an Office of Government Ethics which would have extensive powers to develop policies relating to the prevention of conflicts of interest, and to assist in evaluating the effectiveness of conflict of interest laws and in recommending appropriate changes.

I believe that this more systematic approach to the problems of disclosure and conflict of interest is to be preferred, and I therefore support the passage of H.R. 6954 rather than either H.R. 2733 or H.R. 3928.

The Office of Management and Budget has advised that it has no objection to the submission of this report from the standpoint of the program of the President.

Sincerely,



Sam Brown
Director

Pension Benefit Guaranty Corporation
2020 K Street, N.W., Washington, D.C. 20006

Honorable Robert N. C. Nix
Chairman
Committee on Post Office and
Civil Service
309 Cannon House Office Building
Washington, D.C. 20510

Dear Congressman Nix:

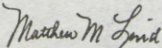
This is in response to your request of May 31, 1977 for comment on H.R. 2733 and H.R. 3928, two bills relating to conflict of interest restrictions, reporting and disclosure for certain federal officers and employees.

The Pension Benefit Guaranty Corporation is governed by a Board of Directors composed of three Cabinet officers. Except for proposals that bear directly upon the goals and operations of the Corporation, it is not feasible to obtain concurrence of the Board with legislative comments within the short time frames normally specified by Congressional committees.

Review of H.R. 2733 and H.R. 3928 by the staff of the Corporation did not reveal any particular circumstances concerning application of the bills to PBGC that would call for a staff level report to the Committee. Accordingly, PBGC has no comment at this time.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,



Matthew M. Lind
Acting Executive Director

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037
(202) 254-7020

June 9, 1977

Honorable Robert N.C. Nix
Chairman
Committee on Post Office and
Civil Service
309 Cannon House Office Building
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your letter of May 31, requesting our comments on H.R. 2733, the Federal Conflict of Interest Act of 1977, and H.R. 3928, the Federal Employees Conflict-of-Interest Disclosure Act.

The Administrative Conference, as a body, has not had an opportunity to consider these bills and takes no position on them. The views expressed herein are those of my Office.

H.R. 2733 is captioned a bill "to restrict the activities of certain Federal employees and officers, to provide private remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes." Its principal substantive provision, section 2, would prohibit Federal employees of grade GS-16 or higher, as well as a somewhat indeterminate class of other employees whose actions are likely to have a significant impact on "special interest enterprises," to participate in any Federal regulatory action or policy decision (1) which involves any special interest in which the employee has had a substantial economic involvement at any time during a period of two years prior to his Federal employment, or (2) which involves a subject matter concerning which the employee has been involved or has participated personally for or represented a special interest at any time during the ten years preceding his Federal employment. There are provisions for reporting former substantial economic involvement with special interests (section 3), for granting specific exceptions in individual cases (section 4), and for suits by private citizens to enforce the act (section 5).

H.R. 2733 seems to us to differ markedly in its approach from that taken in present conflict of interest laws. It is useful to compare it with 18 U.S.C. §208, which prohibits a Government employee from participating in agency decisions on particular matters in which he has a personal financial interest. 1/

1/ The principal statutory conflict of interest provisions are 18 U.S.C. §§205, 207, and 208. Sections 205 and 207 are not comparable to H.R. 2733 since they are addressed to somewhat different problems. Section 205 prohibits a government employee from acting as an attorney on behalf of a private party in a claim against the Government or in connection with a particular matter in which the Government has an interest. Section 207 contains post-employment prohibitions with respect to matters in which the Government employee participated or had responsibilities. The ban in section 207 would be broadened somewhat by Title III of the Administration's proposed Ethics in Government Act.

Both H.R. 2733 and section 208 seek to prevent a Government employee from participating in decisionmaking in circumstances in which it might be feared that his independence of judgment would be affected by personal interest. However, section 208 applies only to present financial interests (including an interest in prospective employment), and, thus, an employee or prospective employee who is faced with potential conflicts can divest himself of those interests which create the conflicts. Divestiture is, as you know, the accepted procedure for dealing with such potential conflicts. H.R. 2733, however, would make interests or associations previously held disqualifying, so that the conflict could not be cured by divestiture. Furthermore, the ban on participating in decisionmaking is not limited to decisions on "particular matters," as in section 208, but covers regulatory actions or policy decisions "which involve[s] any special interest," etc., and the test of coverage appears to be simply whether the special interest "is regulated or directly affected by the policies and decisions" of the officer. See section 6(1). This is a very broad disqualification, so broad, in fact, that it is hard to see how those agencies with regulatory responsibilities over substantial parts of the private sector, e.g., the Internal Revenue Service, the Federal Trade Commission, or the Department of Labor, could ever obtain qualified senior level personnel from outside the Government. ^{2/} Even agencies whose regulatory responsibilities are narrower would frequently find themselves cut off from the likeliest sources of experienced and knowledgeable personnel. For example, how could the Nuclear Regulatory Commission obtain employees to be responsible for the preparation of nuclear reactor safety standards if all employees of enterprises regulated or directly affected by such standards would be disqualified? Such examples could be multiplied. In short, the ban in H.R. 2733 appears to us so broad as to be self-defeating.

H.R. 3928 would require each Federal employee at grade GS-13 and above who has been with the Government for less than three years to file with his agency a description of each job held during the three years preceding his Federal employment. In addition, each former Federal employee who at any time served in a position at grade GS-13 or above would be required for three years after leaving Federal service to file annual reports with his former agency describing each position held subsequent to such Federal service. The reports required would be submitted by the agency to Congress and would be available for public inspection.

The purpose of the bill, according to the introductory statement of its sponsor, 123 Cong. Rec. H 1385 (February 23, 1977), is "to eliminate potential conflicts of interest -- or at least make others aware of such conflicts -- among Federal employees." While it may have some tendency in that direction, we

^{2/} It is perhaps merely a drafting oversight, but we might note that the two-year and ten-year periods specified in section 2 are not measured from the official action in question but from the commencement of the officer's Federal service. Thus, even a career employee might be disqualified on the basis of interests or employment held many years earlier.

believe that the burdens placed on Federal employees by the bill and the impingement on their privacy interests would more than outweigh any such benefit.

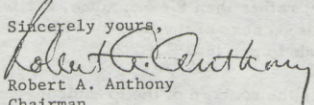
The information respecting employment previous to Federal service is, after all, almost invariably in the agency's possession already since it forms part of the information on the Standard Form 171. The question, therefore, is not whether it should be made available to the agency, but whether it should routinely be made available to the public. Perhaps there is a legitimate public interest in information regarding the employment background of high level officials, such as Presidential appointees and supergrade employees, but we seriously doubt that such routine disclosure would be appropriate for lower level employees.

We have more serious problems with the disclosure provisions respecting post-Federal employment. In the first place, the information requested is unlikely to be sufficiently specific to be of value in bringing to light violations of the conflict of interest laws. ^{3/} What the reports are likely to reveal is simply what is well known and obvious, that people who leave Government employment frequently obtain employment with firms and enterprises which have some sort of relation with the Government, contractual, adversary, or otherwise, and that the duties undertaken by the former Government employee in the private sector frequently involve use of the experience, skills and personal contacts which he obtained while in Government employment. This movement of personnel between Government and the private sector may, of course, create conflict of interest problems, and such problems arising from post-employment activities are addressed in Title III of the Administration's Ethics in Government Bill. But it is hard to see how H.R. 3928 would contribute to a solution, since the bill neither attempts to define appropriate standards of conduct nor is likely to be of assistance in uncovering violations of existing standards.

Furthermore, the requirement that former employees file an annual public report of present whereabouts and activities seems to us both demeaning to such employees and violative of their privacy. We fear it would have an adverse effect on the ability of the Government to recruit professional and management personnel at all levels.

Accordingly, we advise against enactment of either of these bills.

Sincerely yours,


Robert A. Anthony
Chairman

^{3/} Requiring greater specificity in the reports might, however, raise self-incrimination problems. See, e.g., Haynes v. United States, 390 U.S. 85, 95-98 (1968).

CIVIL AERONAUTICS BOARD
WASHINGTON, D.C. 20428

June 24, 1977

IN REPLY REFER TO:

Honorable Robert N. C. Nix
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your May 31, 1977, letter asking for the Board's views on H.R. 2733, a bill to restrict the activities of certain Federal employees and officers, to provide private remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes, and H.R. 3928, to require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government.

These bills would supplement the conflict of interest provisions in 18 U.S.C. 207 and 208. We note that in his message of May 13, 1977, the President has proposed legislation to expand the restrictions on a former employee's participation in agency matters during his post-Government employment. In addition, the Board recently revised its Rules of Conduct in Board Proceedings (14 CFR 300) to disqualify Board employees from participating in certain matters in which they participated on behalf of someone other than the Board before becoming a Board employee. In some cases, such disqualification may result if the employee's previous employer, partner or associate, rather than the employee, earlier participated in the matter. The relevant sections of the Board's rules, 14 CFR 300.9 and 300.10, were generally modeled upon 18 U.S.C. 207.

The Board shares the concern of the President, members of Congress, and the public that any actual or apparent conflict of interest arising from an employee's past or future employment or financial holdings be avoided. At the same time, we believe that consideration must also be given to the interests of Government employees and to the ability of the Government to hire experienced people.

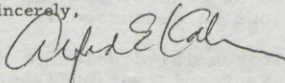
In light of these principles, the Board has no objection to H.R. 3928. The bills provisions for public disclosure of past and future employment appear to be a reasonable response to the widespread concern about possible conflicts of interest, while imposing no unreasonable burden on Board employees. We suggest, however, that criminal sanctions as to former Government employees be limited to those who have actual knowledge of the filing requirement but do not file the report.

On the basis of these same characteristics, however, the Board opposes the enactment of H.R. 2733 unless it is modified to make its provisions more practicable. For example, the prohibitions in clauses (1) and (2) of Section 2 should expire within a specified number of years after the employee's commencement of service. The prohibition in clause (2) should be limited to specific matters in which the employee previously participated, rather than to "subject matters." Without these changes the prohibitions in Section 2 would be so far reaching as to make it difficult for the Board to employ any person with prior air transportation industry employment. Additionally, they could cause many employees innocently to violate the statute in situations where their participation in a Board matter could not adversely affect the public interest, despite their previous affiliations and interests.

The waiver provision in Section 4, moreover, seems unnecessarily strict in requiring a finding that an exception is "essential to the public interest." A better finding in the Board's view would be one similar to the one now provided by 18 U.S.C. 208, i.e., a finding that the financial interest is not so substantial as to affect the integrity of the employee's services. Moreover, the provision that 30 days advance notice must be given may be impractical, since many matters need to be resolved before the 30 day period will have passed.

Furthermore, in the Board's opinion, the dismissal provision in Section 5(a) and the termination of salary authorized by Section 8 seem unnecessarily harsh, especially since the bill authorizes no exceptions for employees who unwittingly violate the law while acting in good faith.

Sincerely,



Alfred E. Kahn
Chairman

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-177908
FPC-77-26

June 6, 1977

The Honorable Robert N. C. Nix, Chairman
Committee on Post Office and Civil Service
House of Representatives

Dear Mr. Chairman:

Reference is made to your letter dated March 7, 1977, requesting our comments on H.R. 2733 (95th Congress), a bill which if enacted would be cited as the "Federal Conflict of Interest Act of 1977." The purpose of this bill is "To restrict the activities of certain Federal employees and officers, to provide private remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes."

On February 28, 1977, we issued a report, "Action Needed To Make The Executive Branch Financial Disclosure System Effective," which relates to the subject matter in H.R. 2733. This report concludes, as does H.R. 2733, that there is a need for more effective enforcement of existing conflict of interest statutes. In our report we addressed this issue and recommended that the President of the United States establish an office of ethics with adequate resources to address the problems of enforcement and compliance for the executive branch. Among its responsibilities, we stated that this office should

- Issue uniform and clearly stated ethical standards of conduct and financial disclosure regulations as discussed in GAO reports.
- Develop financial disclosure forms so that all relevant information is obtained concerning employee interests needed to enforce conflict-of-interest matters.
- Make periodic audits of the effectiveness of agency financial disclosure systems on a sample basis to see that they include appropriate procedures for collecting and reviewing statements and followup procedures to preclude possible conflicts of interest.
- Establish a formal advisory service to render opinions on matters of ethical conduct so that all agencies are advised of such opinions.
- Provide criteria for positions requiring disclosure statements.
- Investigate and resolve ethical conduct matters unresolved at the agency level, including allegations against Federal employees.

--Provide criteria for positions requiring disclosure statements.

--Administer the financial disclosure system for Presidential appointees under section 401 of Executive Order 11222.

--Report annually to the President and the Congress on the effectiveness of the ethics program and recommend changes or additions to applicable laws as appropriate.

We believe such an office could encompass the functions of H.R. 2733 concerning prior employment reporting, defining the specific intent of the bill's language and enforcing its provisions. Such an office would further provide for one function H.R. 2733 does not now deal with, that is the oversight function. A copy of our report is enclosed for your convenience.

The House is currently considering several bills on ethics, one of which is the Administration's bill "Ethics in Government Act of 1977." This bill was introduced by Representative Peter Rodino as H.R. 6954 on May 5, 1977, and was referred to the Committees on Armed Services, the Judiciary, and Post Office and Civil Service. H.R. 6954 provides for the establishment of an Office of Government Ethics within the Civil Service Commission which would recommend rules and regulations to be promulgated by the President pertaining to the identification and resolution of conflicts of interest. We believe that H.R. 2733 would be useful in prohibiting conflicts of interest situations currently not being covered. From an institutional standpoint we take the position that the requirements of H.R. 2733 should be centralized in one Office in the executive branch designated to deal with conflict of interest matters. An Office of Government Ethics would be suitable for including the H.R. 2733 requirements.

It should also be noted that the Senate Governmental Affairs Committee recently reported to the full Senate S.555, a bill similar to H.R. 6954 called the "Public Officials Integrity Act of 1977." Like H.R. 6954, S.555 provides for the establishment of an Office of Government Ethics within the Civil Service Commission which would recommend rules and regulations to be promulgated by the President pertaining to the identification and resolution of conflicts of interest.

The comments to follow express our legal opinions on various sections of H.R. 2733. Our comments are essentially the same as those we provided to your committee on H.R. 3050 (94th Congress) by letter dated May 14, 1975.

In general, the bill would prohibit all upper level employees (GS-16 and above) and several other categories of executive branch officers or employees of the Federal

Government from participating in any Federal regulatory action or policy decision involving (1) any "special interest" in which the officer or employee had a "substantial economic involvement" during the 2 years immediately prior to Federal employment, or (2) any subject matter concerning which the employee was personally involved or represented a "special interest" during the 10 years prior to Federal employment (section 2). The phrase "special interest" would be defined to mean any corporation, industry, trade, labor union, or other similar group regulated or directly affected by the policies and decisions made by the employee in his official capacity (section 6). The operative phrase "substantial economic involvement" would cover investments or private employment that, directly or indirectly, produced or equaled at least one-fourth of an individual's annual income or that of his spouse or both combined (section 6). Specific exceptions, if "essential to the public interest," could be granted by the agency head or the President, provided Congress received 30 days advance notice thereof (section 4). Also, each exception would have to be made by a written determination that is made available for public inspection.

Section 3 of the bill would additionally require covered officers and employees to file, within 30 days of their employment, detailed statements of their former "substantial economic involvement" with any "special interest." These statements, filed with the employing agency, would be available for public inspection and would contain a comprehensive description of the employee's former involvement, including all Government-related work done for the "special interest." The Act would not apply to the President and Vice President or to persons holding positions in the White House Office or on the staff of the Vice President, provided such individuals were not otherwise officers or employees in the executive branch (section 7). Special Government employees, as defined in 18 U.S.C. § 202(a) (1970), are also excluded from coverage under the bill, except that they would be required to file written public reports within 30 days of their Government employment setting forth their past and present employment and duties for any "special interest" (section 7).

The enforcement mechanism proposed in section 5(b) of H.R. 2733 embraces the private attorney general concept; that is, the bill would purportedly confer legal standing on any person to file a civil court action in the nature of mandamus or prohibition to prevent, before the fact, any officer or employee from participating in a regulatory action or policy decision when the participation is prohibited by section 2 of the bill. Similar legal actions could also be filed to compel covered officers and employees to submit detailed statements of "former substantial economic involvement with any special interests." Furthermore, section 5(a) of H.R. 2733 would impose a duty on superior officers and employees to dismiss any subordinate officer or employee who "takes or holds office or employment in violation of section 2," and any person, again

using the private attorney general concept, could, by filing an action of mandamus, compel the superior officer to discharge his duty to dismiss the subordinate employee found to be in violation.

We appreciate the fact that section 5 seeks to improve upon a record of somewhat lax enforcement of conflict-of-interest laws. However, we believe there are substantial difficulties in the proposed enforcement mechanism, primarily the lack of a procedure for determining that a violation of section 2 has occurred in a given situation. This sanction of dismissal in section 5(a) of the bill can only be imposed on an officer or employee who is found to have violated section 2, yet the bill is silent as to the official or agency that is directed or authorized to determine whether the violation in fact occurred. It does not appear to us that judicial proceedings on a mandamus or prohibition action would entail fact finding to the extent necessary for determining whether or not section 2 of the bill had been violated. We also note that section 5(a) would impose the sanction of dismissal on any officer or employee "who takes or holds his office in violation of section 2." The latter section, however, does not prohibit the taking or holding of office per se. Rather it proscribes participation in any regulatory action or policy decision concerning which the employee has had substantial involvement or personal participation with a special interest. In many cases proscribing participation may be tantamount to a prohibition from taking the office; but there may be many instances where it would not.

For purposes of chapter 75 of title 5, United States Code, the removal of individuals in the competitive service (or preference eligibles) constitutes an adverse action with attendant administrative due process protections provided by regulations of the United States Civil Service Commission. See generally part 752, title 5, Code of Federal Regulations (1977). It is not clear whether dismissal under section 5(a) of H.R. 2733 is intended to, or could properly, supersede the cited provisions. Present regulations of the Civil Service Commission concerning sanctions for conflict-of-interest violations authorize the agency head to take disciplinary action which could involve removal. However, any proposed disciplinary action must be effected in accordance with applicable laws, Executive orders, and regulations. See 5 C.F.R. § 735.104 (1977). If H.R. 2733 is scheduled for Committee consideration, we suggest clarification of whether dismissal actions under section 5(a) are subject to laws otherwise applicable to many categories of employees in the Civil Service system. We reiterate that the major shortcoming in section 5 (a) is the apparent lack of any procedural mechanism or delegation of official authority to determine the factual occurrence of a violation of section 2. In our opinion that type of determination properly made would be required before a court could consider the issuance of an order (mandamus) compelling one officer or employee to dismiss a subordinate.

Section 8 of H.R. 2733 proposes a further sanction for any violation of the bill or conflict-of-interest provisions, in 18 U.S.C. §§ 205, 207, 208, (1970). Any salary paid to

the incumbent of a position during a period when such incumbent is in violation of the provisions of H.R. 2733 would be deemed an unlawful expenditure resulting in the creation of a debt owing to the United States. Such debt would be collectible from the officer or employee in accordance with all the provisions generally allowing withholding or pay and installment deductions therefrom. 5 U.S.C. §§ 5511-5514 (1970). The Government's claims under these circumstances could be considered for waiver under 5 U.S.C. § 5584 (1970). This section of the bill includes several references to the Comptroller General and his duties and authority under sections 312 and 313 of the Budget and Accounting Act, 31 U.S.C. §§ 53, 54 (1970). We do not believe these references add to the Comptroller General's existing duties or authority under statute; therefore, they seem superfluous and should be deleted from the bill if it is considered by the Committee.

We have a more fundamental criticism of section 8 relating to the concept of retroactive forfeiture, as found in subsection (a). Our comments above on the lack of any means to determine the occurrence of a violation are pertinent here also. We see major problems, including constitutional due process issues, in declaring a retroactive forfeiture of pay which has been received for services rendered before there was a determination that the officer's or employee's conduct was in violation of any provision in the bill. If section 8(a) is intended to invalidate expenditures for salary payments covering services performed after a court order is issued (section 5(b)) that prohibits an officer or employee from participating in a regulatory action or decision in violation of section 2 of H.R. 2733 then the forfeiture appears lawful. Similarly, if section 8(a) works a forfeiture of salary payments made for services rendered after a proper determination is made that the incumbent is in violation of section 2 of the bill, we see no legal objections.

The Committee is aware of existing laws relating to conflicts of interest, specifically the criminal provisions in chapter 11 of title 18 of the United States Code, and more particularly sections 207 and 208. The latter section in substance requires officers or employees of the executive branch or independent agencies to refrain from participating as such in any matter in which the employee, his or her spouse, or minor children has a financial interest. The employee must also remove himself from a matter in which a business or nonprofit organization, with which he is connected, or is seeking employment, has a financial interest. The criminal sanctions for violations of 18 U.S.C. § 208 (1970) are a maximum fine of \$10,000, imprisonment for up to 2 years, or both. Federal employees are also directed not to have "direct or indirect financial interests that conflict * * * with their responsibilities and duties as Federal employees," section 203, Exec. Order No. 11222 as amended, 3 C.F.R. § 157 (1974); also set forth in note following 18 U.S.C. § 201 (1970). Under section 401 of the cited Executive order, agency heads and other Presidential appointees are required to submit statements disclosing outside relationships involving financial interests. Section 402 of the Order directs the Civil Service

Commission to prescribe regulations requiring subordinate employees to file statements of financial interests at the times, and in such form and content as the Commission specifies by regulation.

The regulations of the Commission are found at part 735 of title 5, Code of Federal Regulations (1977). Under 5 C.F.R. § 735.204 (1977) an Executive agency employee shall not have a direct or indirect financial interest that conflicts substantially with Government duties. The regulations generally establish a reporting system for disclosing the outside employment and financial interests of Executive agency employees and prescribe minimum disclosure requirements that all agencies must establish and enforce with respect to their employees, 5 C.F.R. § 735.403 (1977). The regulations also provide that Executive agency heads must require employees above the GS-13 level, or its equivalent, to file financial statements within 30 days after entrance on duty, with annual supplements, if their positions involve responsibility for taking Government action in connection with four specified types of activity, 5 C.F.R. § 735.403(b) (1977). Exceptions can be made by the agency if the duties of a particular position are such, or the degree of review and supervision is so extensive, that involvement in a conflict-of-interest situation is remote. Executive agency regulations must also require disclosure from employees at the GS-13 level, and above, when it determines that their duties, although not within the four categories referred to above, are such that reporting is necessary to avoid involvement in a possible conflict-of-interest situation, 5 C.F.R. § 735.403(c) (1977). Finally, employees below the GS-13 level may be required to submit employment and financial statements if shown to be essential to avoid employee involvement in a possible conflict-of-interest situation. However, the general position of the Civil Service Commission has been that employees below the GS-13 level are excluded, unless the agency proposing to include them specifically justifies inclusion on the basis that the positions at issue meet the criteria set forth in paragraph (b) or (c) of 5 C.F.R. § 735.403 (1977).

By contrast, the categories of employees that would be included under H.R. 2733 are not limited in terms of grade level or rate of compensation. The bill would cover all executive branch officers and employees at level GS-16 or above but employees below that level would also be subject to the bill if they occupied either (1) "a professional or technical position with duties of a nature that the employee could cause an economic advantage for or hardship against a special interest," or (2) "a management, administrative, or investigative position, in either regulatory or management echelons, where his actions are likely to have significant impact on special interest enterprises * * *." The foregoing language would effectively include employees at virtually all grade levels in nearly all types of positions--professional or technical with potential to cause "economic advantage for or a handicap against a special interest" and management, administrative, or investigative in "regulatory or management echelons" where actions would be likely to have "significant impact on special interest enterprises." This.

bill does not define the key words "advantage," "handicap," or "significant impact." Presumably the lack of such definitions signifies that executive branch agencies or the Civil Service Commission would have discretion, as they do under present regulations, to develop criteria for identifying those positions which would come within the above-quoted language found in both sections 2 and 3 of H.R. 2733.

This facet of the bill could lead to less than effective operation of this system in the interpretation by Federal agencies of the language which would require other employees, besides those at the GS-16 level, to file a statement. This arrangement is similar to that found in the Civil Service Commission plan requiring the filing of financial disclosure statements under Executive Order 11222. Agencies that we have reviewed have not adequately established definitive guidelines to evaluate whether the incumbent of a position has duties which fall within the parameters of such language. The resultant effect, based on guidelines we have developed to interpret this language, has been that many positions which should file a financial disclosure statement are not doing so.

In our forementioned report we recommended that the Office of Ethics provide criteria for positions requiring financial disclosure statements. We feel that such an office should have the responsibility in this bill for defining key words and terms. The Office could also develop criteria to identify those positions which would come within the above quoted language of sections 2 and 3 of H.R. 2733.

Under the disclosure provisions in section 3 of the bill, each person appointed to a covered position would, within 30 days of employment, have to submit a "detailed statement of any former relationship with a "special interest" that accounted for at least 25 percent of his or her annual income, that of the spouse, or both combined. This reporting requirement relates only to former employment or economic involvement with special interests. Therefore, it appears that section 3 of H.R. 2733 would supplement rather than supersede the reporting system established pursuant to Executive Order 11222 and Civil Service Commission regulations discussed above for presently held financial interests. If the reporting system proposed by this bill were to be merged with the reporting system under Executive Order 11222, it could take advantage of the review process annually performed on each statement to determine whether the employee is in a conflicting situation.

It is noted that the bill would require dismissal of an employee who owned substantial shares of stock in a company which his present agency regulates even though he divested himself of such holdings a year prior to accepting the Government job, if he participates in any actions involving the company in which he had a prior financial interest. We believe a reasonable distinction can be made between an employee who was on the payroll of a "special interest" enterprise and who may retain his personal contacts with the management of such interests, and those employees who participated in the enterprise solely through ownership of shares of stock.

Generally, after selling one's entire holdings in a corporation or company, there is no further financial interest that can in any way be influenced by the Federal employee's participation. Therefore, we suggest clarification of the language of section 5(a) involving the dismissal of an employee. The provision could state that the dismissal of an employee is required if he participates in any actions involving a company in which he has substantial economic involvement in the form of prior employment.

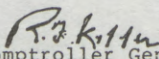
Turning to the barring language in section 2 of the bill, we note the differences between the 2-year and 10-year periods during which the covered officer or employee is disqualified from participating in Federal regulatory actions or policy decisions. The categories of officers and employees covered has been explained and commented on above. The 2-year bar would only apply to the officer or employee whose economic involvement through prior employment and/or past or continuing investment, pension, or other financial arrangement, produced 25 percent or more of annual income. The bar would end 2 years after termination of any "substantial economic involvement," such as the types just mentioned. The 10-year bar would preclude participation in regulatory actions or policy decisions "involving any subject matter concerning which such officer or employee has been involved or participated personally for or represented a special interest any time" (emphasis added), within 10 years prior to beginning Federal employment. This language, particularly the underscored words, is subject to varying interpretations and as we pointed out in connection with other provisions in H.R. 2733, should presumably be a matter for implementation by an Office of Government Ethics.

In summary, our studies concerning conflicts of interest and the related issue of financial disclosure have shown that the current problems in these areas result from a lack of clearly stated enforcement authority. We feel that the proper mechanism to provide enforcement is an office of ethics, in the executive branch having:

- oversight responsibility,
- strong Presidential support,
- a full-time staff,
- adequate funding,
- clearly stated enforcement authority, and
- a clear charter of its mission and responsibility.

H.R. 2733, as it is now written, lacks the concept of one office being responsible for enforcement and oversight of the bill's provisions. Therefore, we believe that any legislation considered by your Committee on this subject should provide for its administration by an Office of Government Ethics.

Sincerely yours,


Deputy Comptroller General
of the United States

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-130961
FPC-77-53

June 16, 1977

The Honorable Robert N. C. Nix
Chairman, Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

Reference is made to your request of May 31, 1977, for our comments on H.R. 6954--"Ethics in Government Act of 1977." This bill sets forth new financial disclosure requirements for Government personnel and would establish an Office of Government Ethics to enforce such disclosure. This bill would also amend section 207 of title 18, United States Code, concerning the disqualification of former Government officers and employees.

As you are probably aware, the General Accounting Office, over the past years, has issued a series of reports concerning financial disclosure systems in the executive branch. On February 28, 1977, we issued our summary report--"Actions Needed To Make The Executive Branch Financial Disclosure System Effective" (FPCD-77-23), a copy of which is enclosed. We are pleased to note that H.R. 6954 contains most of the recommendations we made in that report, including the establishment of an enforcement body--the Office of Government Ethics.

While we are highly supportive of this bill, we do offer several comments.

1. We propose an amendment to subsection 101(f) as follows:

--on page 3, line 1, insert after the word "Code" the following:

"with the exception of the General Accounting Office,"

We are proposing this amendment to exclude officers and employees of the General Accounting Office from coverage by reference to section 105, title 5, United States Code. We believe this inclusion was unintentional since our agency is the only entity in the legislative or judicial branch of the Government which falls within the definition of "Executive Agency" as stated in section 105.

Thus the bill in its present form would cover no agency of the judicial or legislative branch other than the General Accounting Office. Furthermore, a reading of the bill in its entirety indicates an intent to establish a system of financial disclosure solely for employees of the executive branch. Therefore, we are recommending the specific exception in order to carry out this intent as we understand it.

2. Section 105(a) would require each agency to make the disclosure reports available to the public within forty-five days after filing. This would require each agency to establish such a system with personnel available to handle public requests. We believe a less costly and more efficient procedure would be to have each agency collect all required statements in duplicate and forward one copy of each with a checklist of all those required to file to the Office of Government Ethics which would make all statements public at one location.

This procedure would also make it easier for the Office to determine if all such statements had been filed and to perform the review of 5 per centum of the statements required of the Office by section 202(b)(4). We also believe that such a central repository might be an ideal location to receive allegations from the public concerning violations of conflict of interest laws as addressed by section 202(b)(12).

3. Section 107 states that

"Nothing in this title shall be construed to prevent the President from requiring officers or employees not covered by this title to submit confidential financial statements."

We believe section 107 should be deleted and the following inserted:

"Sec. 107. (a) Each officer or employee of the United States including each member of the uniformed services, who is not required to file a report under section 101 and who in the course of the performance of his official duties makes any decision or takes any action with respect to

- (1) contracting or procurement,
- (2) administering or monitoring grants or subsidies,
- (3) regulating or auditing private enterprises, or
- (4) other activities having an impact on the interests of private enterprises,

shall file a report containing the information described in section 102 with the head of the agency for which he is employed at the time specified in section 101(d). Department and agency heads shall be responsible for identifying those officers and employees with such duties. All reports filed under this section shall be confidential and may not be released without written approval of the agency head or the Director of the Office of Government Ethics. Agency heads shall be responsible for reviewing all such statements filed with them."

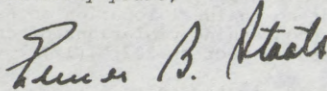
In this way, the confidential reporting requirements would have a statutory base, and the Director of the Office of Government Ethics would be required by section 202(b)(5) to monitor and investigate individual and agency compliance with the confidential reporting system.

4. Section 203 should contain a new subsection to state that

"The Comptroller General shall have access to financial disclosure reports filed with the Office of Government Ethics and with department and agency heads for the purpose of carrying out his statutory responsibilities."

In summary, I wish to reiterate our support for this bill as we believe the strong enforcement powers given to the Office of Government Ethics will remedy many of the deficiencies we have found in executive branch disclosure systems.

Sincerely yours,



Comptroller General
of the United States

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D. C. 20506

June 28, 1977

Honorable Robert N.C. Nix
Chairman
Committee on Post Office and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your letter of May 31, 1977, in which you asked for my comments on two proposed pieces of legislation pending before your committee in the House of Representatives, H.R. 2733 and H.R. 3928. Neither bill deals directly with the substantive work of this agency under Title VII of the Civil Rights Act of 1964 as amended, i.e., the eradication of unlawful employment discrimination and the promotion of equal employment opportunities. However both bills, if enacted, could have an impact upon the employees of this agency.

1. H.R. 3928 would impose upon all federal employees at the GS-13 level and above the obligation of filing annual reports (required under Section three of the proposed law) for their first three years in the federal service and for the first three years after leaving the federal service. The reports would concern any employment for the three year period immediately prior to or immediately after their tour of duty in the federal government. Thus, many federal employees and former federal employees would be compelled to file up to six such annual reports during their working life; others who enter, leave and re-enter the government, would file more.

We note that the three year proviso of this proposed legislation does not mesh with the current one year proviso in the present federal conflict of interest legislation, see 18 U.S.C. 207(b).

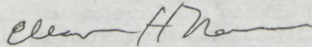
Section Six of H.R. 3928 would also impose a requirement for each agency to submit a report to both bodies of Congress each year containing copies of all reports filed with that agency by present or former employees. Thus, the present and former employee reporting requirements of Section Three, when combined with the agency reporting provisions of Section Six of the Bill, would increase the paperwork burden of all agencies. This paperwork burden could be reduced if the agency reporting requirements permitted the agency to summarize in statistical charts or another format the individual reports filed with it, instead of reproducing in full all of such reports. Also, reporting requirements might be limited by further consideration of whether the purposes of the Bill would best be served by maintaining the blanket reporting requirement at the GS-13 level, or by maintaining the three-year reporting requirement in all cases.

2. The time periods contained in the core provisions of H.R. 2733 are not in harmony with the current one year provision of the present criminal conflict of interest statute for federal employees, 18 U.S.C. 207(b). It may be desirable to harmonize the time periods of the existing and the proposed legislation. Section 2(2) of this bill would appear to prohibit anyone in a position of administration, management or investigation who had while in private employment, anything to do with a particular subject matter area, or who represented a special interest, from participating in the decision making process in that subject matter area for ten years after becoming a public employee. Unless the introductory clauses of Section Two were to be read conjunctively so as to restrict the prohibition of subpart (2) to investigating and managerial personnel only at the GS-16 level and above, a literal reading of the provision would have a severe impact on the talent pool from which this agency could draw its investigating and managerial personnel. Of course, this would not be the case if the provisions of this bill are intended to be no broader than the reach of 18 USC §207(a), in which case the bill merely places on employees in the federal government the same obligations that presently are placed on former federal employees.

Those provisions of Section Five, which permit any individual to commence an action in federal court to keep a particular federal official from participating in the decision making process concerning a particular issue or subject matter area, have the potential for significantly delaying the governmental decision-making process.

Thank you for providing an opportunity to comment on the proposed legislation. If the Equal Employment Opportunity Commission can be of any further assistance to you please let us know.

Sincerely,



Eleanor Holmes Norton
Chair

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

JUN 28 1977

IN REPLY REFER TO:

3200

Honorable Robert N.C. Nix
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I appreciate the opportunity to comment on H.R. 3928, a bill to require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government, and H.R. 2733, a bill to restrict activities of officers or employees in the executive branch of the Federal Government, whose rate of pay is equal to or greater than the rate for level GS-16.

H.R. 3928: This proposed bill requires certain employees, whose rate of compensation is equal to or greater than the minimum rate of compensation for grade GS-13 to file a job description of every job held for a period of three years prior to Federal employment; and to file with the Federal agency post-employment job descriptions for each job held for a period of three years. Section 2(1)-(2). The agency, in turn, is required to report the information to Congress and to make it available for public inspection.

The proposed bill appears seriously flawed and unnecessary. First of all, prior to employment, most agencies require the employee to indicate previous employment on various personnel forms (e.g., S.F. 171). These forms are usually filed with the personnel section and are readily available to the Commission should a question arise as to a particular employee. If Congress, or any Committee or Subcommittee thereof, has any need for this information, it is presently available to it upon request under 5 U.S.C. 552 as amended by the Privacy Act of 1974 (P.L. 93-579, sec. 3). Of course, at present, these files are not in the public domain. Moreover, I am not familiar with any abuses or breaches of public trust which dictate that such personal information be taken from under the umbrella of privacy. To the extent there is any implication from the reporting requirement that recruitment of persons with experience -- which can often be obtained only in regulated industries -- is in any way questionable or improper, the bill raises fundamental questions of law, policy, and common sense. The bill's title seems to contain such an implication, calling it the "Federal Employees Conflict-of-Interest Disclosure Act."

Recognizing that "conflict-of-interest" has become a popular issue in some quarters, it nevertheless remains a very complex subject -- perhaps not susceptible in all its ramifications to statutory definition. I would begin any analysis with the assumption that people generally -- including government employees -- are basically honest and have a high degree of personal integrity. Moreover, there are ample laws already on the books to take care of such improper activities as may occur. (See, e.g., 18 U.S.C. 207-8).

It seems contrary to good common sense to hamper recruitment of the best available citizens willing to serve their government. I'm not at all sure Congress could legally preclude persons working for industry from thereafter serving in a related area of government. I have no doubt that, as a matter of policy, it should resist any temptation to do so. This is something which needs to be thoroughly explored in the event such legislation receives serious attention. (I recognize the bill requires only disclosure and prohibits nothing. This, to me, simply encourages guilt by implication and innuendo. If there is a demonstrated problem of conflict of interest as to persons coming to government from private industry, it should be faced directly and squarely and not by implication.)

I have attached some informal comments prepared by our staff for the use of a GAO audit team which had examined this question. These comments¹ illustrate the need for recruitment of expert talent from industry if an agency such as ours is to properly perform its statutory functions.

¹ Retained in the subcommittee files.

With respect to the filing requirement of post-agency employment, I would note simply that it does not appear to serve any useful purpose and it is questionable whether an employee who has severed his employment with the Federal Government may lawfully be required to report on subsequent employment. In any event, if such employment is lawful, the requirement serves no apparent purpose and, if it is unlawful, then a requirement that the employee so report would seem to contravene the constitutional guarantee against self-incrimination.

The bill, as drafted, appears to add nothing of value but rather simply imposes another layer of paperwork and reports on individuals and already burdened government agencies.

H.R. 2733: Section 2(1) would preclude an "officer or employee," as those words are referred to in section 2 from participating in any Federal regulatory action or policy decision involving a special interest in which the employee or officer has had substantial economic involvement for two years prior to the day his government service begins.

Section 2(2) would preclude participation by an officer or employee in any Federal regulatory action or policy decision involving any subject matter in which he has been "involved or participated personally for or represented a special interest any time" during ten years prior to the day government service begins. The term "special interest" as defined in section 6 is very broad and includes "any corporation, industry, trade, labor union or other similar group ... regulated or directly affected by the policies and decision of such officer or employee"

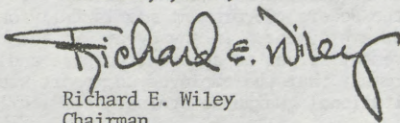
While this bill represents a more direct attempt to delineate certain matters as prohibited conflicts of interest, it raises some of the same basic policy issues as H.R. 3928. For example, with respect to the provision of section 2(2) prohibiting participation in a Federal regulatory action or policy decision involving any subject matter concerning which such officer or employee in the preceding 10 years has been involved or participated personally or represented a special interest, all of the above discussion dealing with the need for certain expertise available only through industry experience is applicable here. A ten year prohibition -- or even a one year prohibition -- means, as a practical matter, that an agency would be severely restricted in hiring people from a regulated industry or those who have represented such industries. The government, through ordinary personnel process, could ascertain any

relevant information affecting one's prospective government employment and evaluate it, as appropriate, in making employment decisions. The ten year prohibition of section 2(2) seems extreme and we have no information showing the necessity or desirability for such a provision.

Any employer, public or private, has a right to know of the experience and background of a potential employee, but what is there to disprove the logical assumption that when one is working for the government, he serves the government -- and when he is working for a private employer, he serves that private employer? Conflicts of interest would seem to be those situations which preclude an employee giving that loyalty to the proper employer. Thus, a case can be made for prohibiting private financial interests which conflict with public employment (e.g., 18 U.S.C. 207-8; 47 U.S.C. 154(b)). However, it seems that previously held financial interests (section 2(1) specifies those held within two years prior to government employment) are irrelevant in that regard.

It is hoped that these views will be helpful to the Committee in its consideration of these matters.

Sincerely yours,



Richard E. Wiley
Chairman

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D. C. 20429

OFFICE OF THE CHAIRMAN

June 8, 1977

Honorable Robert N. C. Nix
Chairman
Committee on Post Office and Civil Service
House of Representatives
309 Cannon House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

This responds to your request for our comments on H. R. 2733, 95th Congress, the "Federal Conflict of Interest Act of 1977," and H. R. 3928, 95th Congress, the "Federal Employees Conflict-of-Interest Disclosure Act."

H. R. 2733 would prohibit an executive branch employee paid at the GS-16 rate or higher, as well as any other executive branch employee whose duties significantly affect regulated institutions, from participating in any governmental action affecting a regulated entity with which he was affiliated during the two years preceding his Federal employment. The bill would also

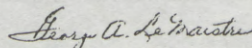
prohibit participation in any governmental action relating to any subject matter with which an executive branch employee was personally involved during the ten years preceding his Federal employment. New executive branch employees would be required to report to their agencies full particulars concerning previous affiliation with regulated entities. The bill would permit agency heads to grant exemptions from its prohibitions where required by the public interest and would mandate dismissal from Federal employment for violations of its provisions. Any person could institute mandamus action to enforce the bill's requirements and all compensation paid a Federal employee while he is in violation of those requirements could be recouped by the Government. White House personnel would be exempt from the bill's provisions.

H. R. 3928 would require every Federal employee who has been with the Government less than three years and who is compensated at the lowest GS-13 rate or higher to report annually to the agency for which he works, describing each position held during the three years preceding his Federal employment. It also would require former Federal employees who were compensated at the lowest GS-13 rate or higher to make similar annual reports to their former agencies for three years after leaving Federal employment, describing their employment positions during such three-year period. The bill's stated purposes indicate that Federal agencies should file annual reports with the Congress covering employee reports filed under the bill's requirements and that such individual reports should be open to public inspection, but the bill contains no subsequent provisions implementing these statements of purpose.

In recent testimony before the Senate Committee on Banking, Housing and Urban Affairs, I indicated that the FDIC supported the general approach of the Administration's bill entitled "Ethics in Government Act of 1977," which you recently introduced in the House (H. R. 6952). This bill would strengthen existing prohibitions against appearances by former Government officials before an agency with which they were previously employed on matters that were under such person's official responsibility for a period of two years after termination of Government service (instead of one year as under present law -- 18 U.S.C. 207) and by prohibiting informal as well as formal contacts with such agency. Also, the bill would impose a new and broader ban on formal or informal contact on other matters for a period of one year after the end of Government service.

We prefer the more comprehensive approach of H. R. 6952 insofar as the conflict-of-interest issues addressed in H. R. 2733 and H. R. 3928 are concerned. We would therefore recommend that your Committee report a bill containing provisions generally similar to those in Titles II and III of H. R. 6952. We do have some difficulty, however, with the breadth of the financial disclosure requirements in Title I of that bill. We believe that Title I may constitute an unnecessary and unwarranted invasion of the privacy of upper echelon Federal employees and could even jeopardize their safety and that of their families by publicizing details of their financial affairs. Certainly, we support financial disclosure as a general prophylactic measure to minimize governmental corruption. On the other hand, we believe that such financial disclosure requirements should be carefully drafted to maintain adequate protection of Federal employees' privacy and safety. While we will defer to others more expert in this field as to the best way of striking the delicate balance between necessary disclosure and preservation of individual privacy, we do strongly recommend that Title I of H. R. 6952 be very carefully analyzed by the Congress from this standpoint.

Very truly yours,


George A. LeMaistre
Chairman

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

June 20, 1977

Honorable Robert N.C. Nix
Chairman
House Committee on Post Office
& Civil Service
309 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Nix:

This letter is in response to your request of May 31, 1977, for the Commission's comments on H.R. 6954, the "Ethics in Government Act of 1977." This bill would implement government personnel financial disclosure requirements, establish an Office of Government Ethics, and amend the provisions of Title 18, United States Code, pertaining to the disqualification of former officers and employees in making appearances before agencies with which they were formerly employed.

At the outset, we would like to point out that the Commission, cognizant of its responsibility to insure independent and impartial monitoring and enforcement of the Federal election laws, has adopted a Code of Ethics for its members and employees. A copy of the Commission's Code is enclosed for your information. The Commission adopted this Code in order to insure that the Commission's business is conducted in a nonpartisan manner and that it is free from conflicts of interest or the appearance thereof.

As you will note, certain provisions of the Commission's Code are broader than the requirements of H.R. 6954. For example, H.R. 6954 requires all persons paid under the executive schedule pay rates and all persons classified at GS-16, GS-17 or GS-18 to file financial disclosure statements. The Commission's Code, however, requires all employees paid at the rate of GS-11 or above and all auditors and investigators irrespective of grade to file a financial disclosure statement. See Section 11, Page 19 of the enclosed Code. Due to the public nature of

1 Retained in subcommittee files.

the Commission's work and the need for public confidence in the administration of the election laws, the Commission is of the opinion that the disclosure requirements set forth in its Code are more appropriate.

The Commission is of the opinion that independent agencies, such as the Commission, should have the explicit authority to determine that the public interest requires more extensive disclosure by its employees.

H.R. 6954 specifically provides that the Act should not be construed as preventing the President from requiring officers or employees who would not be subject to reporting under the Act to submit financial information. See Section 107 of H.R. 6954. The bill should similarly provide for the adoption of stricter disclosure requirements and ethics codes by agencies.

Under the bill, candidates for nomination or election to the Office of President or Vice President are required to file their financial reports with the Commission. We suggest that the provisions of Section 105 pertaining to public access to reports, while appropriate for reports filed by employees, are overly burdensome and restrictive when applied to candidate reports. For example, a person inspecting a copy of a report is required to supply his or her name and address and the name of the person or organization, if any, he or she represents. In the opinion of the Commission, a report filed by a candidate is in the nature of a public document, and the public should be encouraged to review such reports. Accordingly, we suggest that subsection 105(b) be amended by adding the phrase "except those reports filed under subsection 103(d)" immediately after the phrase "under subsection (a)."

We would also like to offer several technical suggestions. First, subsection 101(c) requires an individual "[u]pon becoming a candidate for nomination or election to the office of President or Vice President, as determined by the Federal Election Commission . . ." to file reports. The Commission is not required under the Federal Election Campaign Act to make an affirmative determination of an individual's candidacy. However, since candidate is a defined term under the Federal Election Campaign Act, we suggest that the phrase "as defined in 2 U.S.C. §431(b)" be substituted for the phrase "as determined by the Federal Election Commission . . ."

Second, Presidential and Vice-Presidential candidates are required to file their reports with the Federal Election Commission. See subsection 103(c). The Commission does not appear to have specific authority for review. Subsection 106(a) specifically requires the Director of the Office of Government Ethics and the head of each agency to review reports filed under subsections 103(a)(b), and (c). The candidates reports, however, are filed under subsection 103(d), and there are no provisions for review of reports filed under this subsection. Accordingly, we suggest amending subsection 106(a) to require the Commission to review all reports filed under subsection 103(d) to assure compliance with applicable laws and regulations.

Finally, subsection 104(b) requires the head of each agency and the Director of the Office of Government Ethics to refer to the Attorney General the name of any individual they have reasonable cause to believe has falsified or failed to file a report. We suggest the inclusion of specific language directing the Commission to refer to the Attorney General the name of any candidate it has reasonable cause to believe has falsified or failed to file a report.

We appreciate your giving the Commission this opportunity to comment on this bill. The Commission has recently testified before the House Select Committee on Ethics on a proposed Legislative Branch Disclosure. I have enclosed a copy of our statement before that Committee.

I hope that the Commission's comments and the enclosures will be of assistance to the Committee. If the Commission can be of further assistance, please do not hesitate to contact my office.

Sincerely yours,

Thomas E. Harris

Thomas E. Harris
Chairman for the
Federal Election Commission

Federal Home Loan Bank Board



320 First Street, N.W.
Washington, D.C. 20552

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

June 10, 1977

The Honorable Robert N. C. Nix
Chairman
Committee on Post Office
and Civil Service
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your request of May 31, 1977, for the views of the Bank Board on H.R. 2733 ("Federal Conflict of Interest Act of 1977") and H.R. 3928 ("Federal Employees Conflict-of-Interest Disclosure Act"). Subject to further opportunity to analyze the legislation, the Board has confined its comments to aspects of the legislation of immediate concern.

H.R. 2733 would restrict the activities of certain high-ranking officials in the executive branch of the Federal government (at GS-16 or the equivalent level and which occupy positions able to cause an economic advantage for or handicap against a special interest or occupy positions likely to have a significant impact on special interest enterprises) by prohibiting participation in any regulatory action or policy decision which involves any special interest in which such person has had a substantial economic involvement during a period of two years prior to government employment or involves a subject matter in which the official has had

a personal involvement for a special interest during a period of ten years prior to government employment. Such officials also would have to submit a detailed statement of substantial economic involvement with any special interest within thirty days after commencement of government employment to the head of the employing agency. Such statements would be made available for public inspection. Where essential to the public interest, exceptions could be made in writing by the agency head (or the President in the case of an agency head). The provisions of the bill would not apply to the President, Vice-President or their staffs.

H.R. 2733 would make it the duty of officials to dismiss employees under their authority for violations of the prohibitions, would create a private right to bring an action in the nature of mandamus or prohibition for such violations and would provide for recapture of compensation from any official in violation of the Act.

H.R. 3928 would establish requirements and procedures for disclosure of comprehensive employment information for each position held by government employees and former government employees during the three years preceding and following their government employment. The provisions would apply to all persons whose compensation during government employment was the equivalent to that for GS-13. The head of each agency would be required to make disclosure statements available to the public. Violation of the reporting requirements would be punishable by a fine of \$1,000, imprisonment for up to six months or both.

In commenting on the provisions of these bills, it would be useful to review current regulations which prescribe standards of conduct for Board employees. By promulgation of these regulations, the Board has sought to promote confidence in the integrity of government:

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by employees and special Government employees is essential to assure the proper performance of Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of employees and special Government employees through the use of informed judgment is indispensable to the maintenance of these standards.

12 C.F.R. §511.735-1 (1977). The regulations generally prohibit any action which might result in or give the appearance of using public office for private gain, giving preferential treatment to any person, losing complete independence or impartiality, or adversely affecting the confidence of the public in the integrity of the agency and the government. The regulations specifically prohibit an employee from having a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his duties and responsibilities with the Board. In addition, all Board employees at GS-13 or higher must file a confidential

financial statement with the Board each year which is reviewed by the General Counsel for conflicts of interest. 12 C.F.R. §§511.735-10 - 511.735-55 (1977).

Thus, the Board supports the purpose behind each of these bills, the disclosure and elimination of actual or potential conflicts of interest in government employment. Current Board regulations have been designed for this purpose. However, the Board feels that the purpose of promoting government efficiency and economy requires limiting prohibitions and public disclosure to circumstances which may result in or create the appearance of impropriety. Disclosure of additional information would impede the operation of the agencies and employees involved by generating paperwork to be processed with no apparent benefit to be achieved and would impede enforcement of the legislation.

In this regard, the Board notes that the prohibition of H.R. 2733 may be too broad. As presently drafted the bill would prohibit a government official from participating in a regulatory or policy action involving a special interest in which the person has had a substantial economic involvement or involving a subject matter in which the official has been involved personally prior to employment. Given the broad definition of "special interest," the prohibition could prevent government employment of any person from an affected industry or active in areas of current concern to the government agency. This prohibition goes far beyond matters involving actual or potential conflicts of interest.

Similarly, the disclosure requirements of H.R. 3928 may be overly broad. Disclosure of employment information unrelated to actual or potential conflicts of interest by government employees is unnecessary to the purposes of the legislation.

Lastly, the Board would like to comment on the recapture of compensation provisions of H.R. 2733. While this remedy would be a strong deterrent to violations of the prohibitions of the bill, the Board suggests that the legislation specifically allow for a defense of good faith in an action to recover compensation while in violation of the legislation.

We hope that this is responsive to your inquiry.

Respectfully yours,

Daniel J. Goldberg
Daniel J. Goldberg
Acting General Counsel

FEDERAL MEDIATION AND CONCILIATION SERVICE

UNITED STATES GOVERNMENT

WASHINGTON, D.C. 20427

June 15, 1977

Honorable Robert N. C. Nix
Chairman, Committee on Post
Office and Civil Service
U. S. House of Representatives
309 Cannon House Office Building
Washington, D. C. 20515

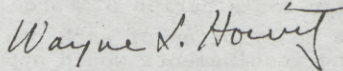
Dear Mr. Chairman:

This is in response to your request for the views of the Federal Mediation and Conciliation Service on H. R. 2733, to restrict the activities of certain Federal employees and officers, to provide private remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes; and H. R. 3928, to require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government.

We concur in the objectives expressed in seeking safeguards against conflicts of interest and abuse of the public trust by government officials. In this regard, it is my understanding that the Committee will be considering H. R. 6952, the "Ethics in Government Act of 1977," which has been submitted by the Administration. We would urge consideration and support for H. R. 6952 as a means to preserve and promote ethical standards throughout the executive branch.

The Office of Management and Budget advises that they have no objection to the submission of this report.

Sincerely,



Wayne L. Horvitz
Director

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

IN REPLY REFER TO:

JUL 7 1977

H.R. 3928 - 95th Congress
"Federal Employees Conflict-of-Interest
Disclosure Act"
H.R. 2733 - 95th Congress
"Federal Conflict of Interest of 1977"

Honorable Robert N. C. Nix
Chairman
Committee on Post Office and Civil Service
309 Cannon House Office Building
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

In response to your request for the Federal Power Commission's views on H.R. 3928 entitled "Federal Employees Conflict-of-Interest Disclosure Act" and H.R. 2733 entitled "Federal Conflict of Interest Act of 1977," we submit the following comments.

H.R. 3928 provides that each employee of an agency who has been an employee of an agency for less than three continuous years and who is compensated at a rate equal to or greater than grade GS-13 must file with the head of the agency a description of each position held by the employee during the three years immediately preceding his employment with a Federal agency. This report must be filed once a year every year until the employee has been with a Federal agency for three consecutive years. This filing requirement is both wasteful and unnecessary in that it would require an employee to file the same report for three consecutive years. Moreover, the requirement that these duplicative reports be filed annually with the Congress appears to be pointless "paper pushing."

The bill further provides that all former employees of an agency who were at any time during their employment compensated at a rate equal to or greater than GS-13 must file each year for a period of three years following such employment a description of each position which they hold. The reporting requirements would apply to all GS-13 employees, regardless of their connection with the decisional and regulatory processes, but would apply only to those Federal employees who terminate their employment with an agency after H.R. 3928 is enacted.

H.R. 2733 provides that any officer or employee in the executive branch of the Federal Government whose rate of pay is equal to or greater than level GS-16, or any officer or employee who occupies a professional or technical position with certain vaguely described duties is forbidden to participate in a Federal regulatory action or policy decision which involves a special interest in which the employee had substantial economic involvement at any time during the two-year period immediately preceding his Federal employment. Participation in any regulatory action or policy making decision involving any subject matter with which the employee has been involved, participated personally for, or represented a special interest at any time during the ten year period immediately preceding Federal employment is also forbidden.

Enactment of this provision would, in effect, preclude the hiring of experienced persons from the private sector with expertise in the subject matter with which the agency is concerned. If such experienced persons from the private sector were hired, they could not participate in many Federal regulatory actions or policy decisions without going through the time consuming process of obtaining a written exception for each regulatory action or policy decision.

Section 5 of H.R. 2733 provides that it is the duty of authorized officers and employees to dismiss employees who violate the participation restrictions in the bill. Any person may compel an authorized officer to dismiss an employee who violates the provisions of this bill or prevent an officer or employee from participating in a Federal action or policy decision by bringing an action in mandamus. We believe that these enforcement provisions grant too much discretion to other persons to have an employee dismissed or to prevent the employee's participation in certain agency actions, and provide undue opportunity to bring unfounded legal actions against Federal officers and employees.

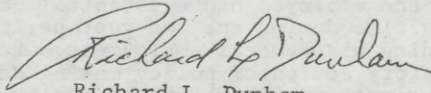
Existing FPC regulations relating to financial disclosure and standards of conduct for employees (18 C.F.R. Subpart C, s3.201, et seq.) are designed to eliminate any potential conflicts of interest of FPC employees without unduly burdening the employee or the agency. Every employee must file a "Confidential Statement of Employment and Financial Interests" upon entering FPC employment and must update this statement annually.

The vaguely defined prohibitions of the two proposed bills, H.R. 2733 and H.R. 3928, would be difficult to administer and enforce in a fair and effective manner, and they would generate burdensome, unnecessary and unproductive paperwork. Therefore, we oppose the enactment of either of the bills.

The Office of Management and Budget advises that there is no objection to the submission of this report

from the standpoint of the Administration's program and that enactment of the "Ethics in Government Act, H.R. 6954, instead would be in accord with the President's program.

Sincerely yours,



Richard L. Dunham
Chairman

CHAIRMAN OF THE BOARD OF GOVERNORS
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

June 23, 1977

The Honorable Robert N. C. Nix
Chairman, Committee on Post Office
and Civil Service
U. S. House of Representatives
309 Cannon House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

I am responding to your request of May 31 for the Board's comments on H. R. 2733, to restrict the activities of certain Federal employees and officers, to provide private remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes; and H. R. 3928, to require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government. We note that your Committee is also considering H. R. 6954 which contains extensive disclosure requirements.

The Board firmly believes that it is important to take all reasonable steps to help insure the integrity and objectivity of those who occupy important policy positions in the Federal Government. However, H. R. 2733 and H. R. 3928 (as well as H. R. 6954) involve reporting requirements and restrictions on employment which appear to breach our nation's concepts of personal privacy and an individual's freedom to pursue a chosen occupation -- principles which should not be denied those who pursue public service in the absence of clear and convincing evidence of abuse by such individuals. In the Board's

judgment the well-intentioned proposals in these bills could seriously limit the Government's ability to attract individuals of outstanding ability at a time when the complexity of our Government demands such talent.

While the Board is aware of the move toward public financial disclosure with respect to persons holding key positions of responsibility in the Federal Government, the Board believes that public review or access is not necessary or even desirable, providing that Federal agencies enforce strict adherence to existing reporting requirements under Executive Order 11222. The recent trend toward broadened public disclosure appears to reflect a conclusion that the right to privacy provided for in the Privacy Act of 1974 must take a subordinate position to an asserted need for extensive public disclosure of financial and even personal data by many Government employees. This step is proposed without demonstration of a real likelihood that such disclosure will in fact prevent conflicts of interest. The Board, while wholly supportive of measures reasonably calculated to assure against the existence of conflicts of interest, or even the appearance of such conflict, is strongly of the view that this objective can be achieved by measures, strictly enforced, that would also assure against unwarranted and unnecessary invasions of personal and financial privacy.

A less severe but equally effective approach to the control of possible conflicts of interest can be the use by Government officials of a blind trust as a result of which the official's holdings are placed beyond his control and knowledge. The provisions of H.R. 6954 would require public disclosure by the grantor or trustee of the contents of such blind trust at the time of its establishment. Once such a blind trust was established pursuant to applicable regulations and its contents reviewed by an official of the Government duly designated, and -- if so directed -- made known to appropriate Committees of the Congress, then we question any good purpose to be served in requiring public disclosure of the trust corpus.

It is the Board's experienced judgment that the Federal Government's goals require participation by officials having broad and current experience in many areas subject to Federal regulation. In particular, the Board has found it beneficial to employ staff with extensive experience in and knowledge of affected industries and markets. Thus, the Board is deeply concerned that several of the provisions in H.R. 2733, H.R. 3928, and H.R. 6954 are so broad as to offer the likelihood either of precluding agency access to experienced, qualified personnel or of discouraging such qualified individuals from considering Federal Government service.

In conclusion, the Board strongly recommends that consideration be given to modifying the bills' provisions in such manner as to avoid unwarranted invasions of personal privacy or undue

impediments to the Federal Government's access to qualified individuals otherwise willing to embark upon public service.

Sincerely yours,

Arthur F. Burns
Arthur F. Burns

(Approved by Chairman Burns and signed in his absence)

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

The Honorable Robert N. C. Nix
Chairman, Committee on Post Office & Civil Service
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This report is in response to your request for the Federal Trade Commission's views regarding H.R. 3928, the Federal Employees Conflict-of-Interest Disclosure Act, and H.R. 2733, the Federal Conflict of Interest Act of 1977. The Federal Trade Commission welcomes the opportunity to report on these bills. The Commission has an active, continuing interest in agency and Congressional consideration of appropriate standards of conduct and problems of conflict of interest. The Commission has also noted with interest the recent introduction of the Administration's proposed Ethics in Government Act of 1977 which would impose certain financial disclosure requirements and which would expand, in certain respects, the provisions requiring disqualification of former officers and employees contained in Section 207 of Title 18 of the United States Code. The Commission fully supports Congress' effort to come to grips with this aspect of the problem of ethics in government.

The Commission recognizes that what must be avoided by those who are charged to decide and act for the benefit of the public is not just the reality of conflict of interest but the appearance of such conflict as well. Only under such conditions can the public repose its trust in the conduct of government employees. At the same time, the Commission believes that the public at large would be disserved by a policy disqualifying from public service, because of their past experience or contact, individuals of accomplishment, integrity, and commitment who desire to place at the service of the public their talents and expertise. While we must be vigilant regarding the appearance of conflict of interest in Government, our primary concern is to insure that there is no actual conflict.

There is another reason why we should be careful about placing restrictions on an individual's ability to enter government service when there is no indication of any actual current conflict of interest: ours is a participatory democracy in the widest sense. We want to encourage the individual's participation in Government. The result is a more informed citizen and a better Government. We must avoid disqualifying unnecessarily those individuals who have much to offer -- if we can be sure of their honesty, integrity, and commitment. The Commission questions whether prior affiliations alone of a government employee, as contrasted with current interests held, raise in fact ethical problems warranting disqualification and/or public disclosure. The Commission, therefore, cannot say with certainty that comprehensive regulation would be either desirable or effective.

The Commission is already addressing these issues. The Commission has promulgated regulations (based on Executive Order 11222, Public Law 87-849, and Civil Service regulations) which relate to Standards of Conduct for employees and special government employees in the Federal Trade Commission. These regulations supplement the prohibitions against conflict of interest imposed by Sections 205, 207, and 208 of Title 18 of the United States Code. These Commission Regulations, codified at 16 CFR § 5.1 et seq., pertain to financial interests, acceptance of gifts, entertainment, and favors; outside employment; use of Government information; and teaching, lecturing, and writing. The regulations also contain instructions on the filing of statements of employment and financial interests by certain employees and special Government employees. In addition, the Commission is currently undertaking a major review of its rules regarding practice before the Commission by former employees. Commission Rule 4.1(b), 16 CFR § 4.1(b), governs authorization for appearances and participation by former Commission members and employees. It flatly prohibits such participation in matters pending during the period of Commission employment without advance authorization from the Commission. The standards governing such authorization include not only the proscriptions of 18 U.S.C. § 207, the criminal statute governing postemployment activities of former agency officers and employees, but also the Commission's broader test: authorization will be given only if the Commission is satisfied that the appearance or participation will not involve any actual or apparent impropriety. In implementing this test, the Commission has addressed the problem of the receipt of confidential information and other ethical difficulties neither reached by the criminal statute nor clearly encompassed, with respect to former government employees, by the Code of Professional Responsibility. The Commission is currently reviewing the clearance restrictions placed upon former members and employees with a view toward developing more objective standards.

The Commission has the following, more specific comments about the two bills before your Committee and the practical difficulties they may present:

H.R. 3928 would require current and former Federal employees compensated at the rates for GS-13 and above to disclose each position held during the three years preceding and following their employment with the Federal Government. The bill also would require each federal agency to file annually with the President of the Senate and the Speaker of the House of Representatives a report containing the information supplied by current and former employees; such information must be maintained

by the agency in a file open for public inspection. The bill changes no substantive law with respect to the legality of former interests and contains no enforcement provisions.

H.R. 2733 prohibits certain employees from participating in any Federal regulatory action or policy decision involving any "special interest" (as defined in the bill) in which the employee has had a "substantial economic involvement" (as defined in the bill) at any time during the period of two years prior to the commencement of the term of employment. Such employees also could not participate in any such action or decision involving any "subject matter" (which is not defined) concerning which, at any time for a period of ten years prior to commencement of the term of employment, that employee had been involved, or had participated personally for or represented a "special interest." The bill provides for the enforcement of these provisions in an action brought by any person.

The bill provides further sanctions against the prescribed conduct by deeming as an expenditure made in violation of law the payment of salary with respect to employment held during violation of the Act. The Comptroller General would be required to investigate and report such payments. The General Accounting Office would be empowered to withhold pay from the employee in order to satisfy the resulting indebtedness or arrears due to the United States. An officer or employee having the authority to do so would be required to dismiss an employee who takes or holds office in violation of the restrictions.

Specific individual exceptions, in the case of a particular regulatory action or policy decision, could be made by the head of an agency upon a determination in writing that to make such an exception is essential to the public interest. With respect to the head of an agency, however, such exception and written determination must be made by the President. The written determination would be available for public inspection on request.

Finally, H.R. 2733 also would require certain employees (as defined in the bill) to submit a detailed statement of any prior "substantial economic involvement" with any "special interests." Such statements must be made available for public inspection on request.

With respect to H.R. 3928, the Commission notes that the bill does not alter in any way the substantive law of conflict of interest and thus provides no basis for a formalized review mechanism for the disclosure statements filed. Moreover, the Commission believes that the disclosure requirements of H.R. 3928 are largely unworkable. There is no enforcement mechanism in the bill and no incentive for former government employees to disclose the details about subsequent employment positions. In addition, it seems unnecessary to require each Federal employee whose rate of compensation is equal to or greater than the minimum rate for GS-13 to file with the agency. Particularly if the disclosure statements are to be made available for public inspection, the class of those subject to the filing requirements should be more narrowly drawn, limited to persons with significant decision-making authority, perhaps GS-16 and above, a level the President has proposed with respect to financial disclosure. Finally, the bill also requires (Section 3(a)(2)(H)) that if a current employee has duties which directly or indirectly include participation

(through decision, recommendation, investigation or otherwise) in the awarding of grants, contracts, or other forms of business or financial interests, then that employee must file a list of the grants, contracts, or other forms of business or financial interests which a former employer has obtained or is attempting to obtain from the employing agency. This requirement could impose a major burden on an employee, and his former employer may have no incentive or interest in making public the information requested.

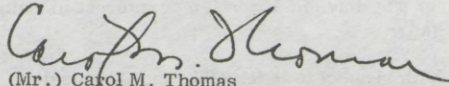
With respect to H.R. 2733, the Commission finds problematic the ambiguous definition of those employees subject to the filing requirements and prohibitions of the bill. Such employees consist of those (1) whose rate of pay is equal to or greater than the rate established for GS-16; or (2) who occupy a professional or technical position with duties of a nature that the employee "could cause an economic advantage for" or "handicap" against a "special interest"; or (3) who occupy a management, administrative, or investigative position (in either "regulatory or management echelons") where his actions are likely to have a "significant impact" on special interest enterprises. Particularly if the disclosure statements are to be made available for public inspection, the requirements of the bill should be limited to significant decision-makers, and for that objective the first category may be sufficient. The Commission also questions whether public disclosure is in fact necessary or desirable in light of the broad range of information extending into the indefinite past required to be reported. The prior employment disclosure provisions of H.R. 3928 -- limited to positions held during the three years preceding employment with the Government -- are more clearly relevant to current responsibilities and are for that reason preferable.

While reserving judgment on the question of whether prior affiliations may in fact create or suggest conflicts of interest, the Commission questions whether the definition in H.R. 2733 of the term "substantial economic involvement" -- an involvement that produces or equals one-quarter or more of the annual income of the individual or his spouse -- would be adequate to reveal or control actual or potential conflicts of interest. Many types of involvement with special interests may not meet the bill's criteria although they might appear to affect the objectivity of Government employees. Also, the use of percentage-of-income test to trigger the reporting and prohibitory requirements of the bill seems to sacrifice uniformity and fairness of treatment. Perhaps separate criteria based on absolute monetary values should be drafted for the reporting and prohibitory provisions of the bill.

The Commission also finds potentially excessive the restriction in H.R. 2733 on participation in any regulatory action or policy decision involving any "subject matter" concerning which the prohibited employee has been involved, or had participated personally for or represented a special interest, at any time during a period of ten years prior to employment. The term "subject matter" is ambiguous and the ten-year time period seems too long.

The Commission welcomes this opportunity to comment on the proposed bills H.R. 3928 and H.R. 2733.

By direction of the Commission.


(Mr.) Carol M. Thomas
Secretary

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

Honorable Robert N.C. Nix
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Reference is made to your letter of May 31, 1977, requesting reports by the Foreign Claims Settlement Commission on H.R. 2733, to restrict the activities of certain Federal employees and officers, to provide private remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes. You further request comments on H.R. 3928, to require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government.

The Foreign Claims Settlement Commission does not take a position on either of these proposals; rather, it defers to the Civil Service Commission and the broader views of the Administration as enunciated by the President, embodied in his message to Congress on May 3, 1977, with respect to the Proposed Ethics in Government Act of 1977.

Advice has been received from the Office of Management and Budget that there would be no objection to the presentation of this report to your Committee.

Sincerely,

J. Raymond Bell
Chairman

INDIAN CLAIMS COMMISSION

RIDDELL BUILDING, 6TH FLOOR
1730 K STREET NW.
WASHINGTON, D.C. 20006

June 7, 1977

Honorable Robert N. C. Nix
Chairman, Committee on Post Office
and Civil Service
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 2733, Federal Conflict of Interest Act of 1977.
H.R. 3928, Federal Employees Conflict-of-Interest Disclosure
Act.

Dear Mr. Chairman:

This is in response to your letter of May 31, 1977, in which you requested our comments on the above-captioned bills.

With regard to H.R. 2733, it does not appear that the bill, as presently drafted, would have any substantial effect upon Commissioners or employees of the Indian Claims Commission. This is so for the following reasons:

1) Section 2 of the bill prohibits any officer or employee covered by the bill from participating " . . . in any Federal regulatory action or policy decision . . ." under certain conditions and for certain stated periods of time from the commencement of Federal office or employment. Since the Indian Claims Commission is exclusively an adjudicatory body which has no regulatory or policy-making functions, a Commissioner or employee of the Commission could not possibly engage in the proscribed activities.

2) The language of section 3 of the bill appears to apply only prospectively, i.e. to covered officers or employees who become such after the bill becomes law. Since the Indian Claims Commission is scheduled to go out of existence on September 30, 1978, it is most unlikely that there will be any new officers or employees who would be required by section 3 of the bill to file the statement described therein.

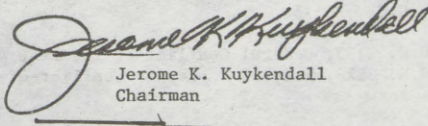
With respect to H.R. 3928, our only comment is to point out that under section 3(b)(1) of the bill as presently drafted, it will be impossible after September 30, 1978, for former employees of the Commission to file the report required by that section for the reason that the Indian Claims Commission is scheduled to go out of existence on that date. This situation might apply in the future to other employees of other agencies. The Committee might consider an alternative central filing establishment in such circumstances.

For your general information, it should be pointed out that section 3(c) of the Indian Claims Commission Act, 25 U.S.C. §70b (1946), contains the following provision:

No Commissioner shall engage in any other business, vocation, or employment during his term of office nor shall he, during his term of office or for a period of two years thereafter, represent any Indian tribe, band, or group in any matter whatsoever, or have any financial interest in the outcome of any tribal claim. Any person violating the provisions of the subdivision shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

Please feel free to call upon us if we can be of any further assistance.

Sincerely,



Jerome K. Kuykendall
Chairman

INTER-AMERICAN FOUNDATION
1515 WILSON BOULEVARD
ROSSLYN, VIRGINIA 22209

June 7, 1977

Honorable
Robert N.C. Nix, Chairman
U.S. House of Representatives
Committee on Post Office and Civil Service
309 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Nix:

This is in response to your letter of May 31, 1977 concerning HR2733 and HR3928.

Your letter was addressed to me as "Chairman" of the Foundation. In fact I am the Executive Officer. We also have a Chairman of our Board of Directors, and a President. In my role as Executive Officer I am responding to your request, and I have coordinated this response with our President, Mr. William M. Dyal, Jr. and our General Counsel, Mr. Hugh B. Key.

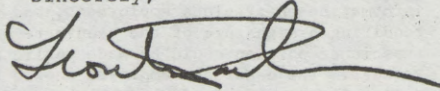
We find HR2733 to be generally acceptable and applaud the effort to reduce the potential for conflicts of interest in policy and decision-making positions.

We do think that the terminology "or who occupies a professional or technical position", etc.; from line 9 of page 1 thru line 7 on page 2 should be clarified by the addition, on page 2, line 6, after "echelons," of the phrase "regardless of grade or pay level." The same phrase should also be added similarly at the end of line 5, page 3. This addition would clarify that these regulations apply as appropriate without regard to grade.

I think we understand and agree with the thrust of the legislation proposed in HR3928. However, the reporting requirements generated seem to far exceed the potential benefits. I find the threat of having to follow the careers and obtain reports about all terminated employees GS-13 and above for three years after their termination to be frightening. I cannot afford the manpower to do it for the Foundation, and just as a taxpayer I object to the fantastic expenditure of federal funds that would be required to carry out these reporting requirements. I would much rather see appropriate minor additions to manpower allocations at the agency level to enforce the provisions of HR2733, with the efforts being aimed at suspected wrongdoers. One main concern with HR3928 is that it would generate so much paper that the manpower processing it would not have time to read it closely enough to find the few indications of conflict of interest that would be buried in it.

Thank you for the opportunity to comment on these two proposals.

Sincerely,



Leon M. Parker
Executive Officer

NATIONAL ADVISORY COUNCIL ON THE EDUCATION
OF DISADVANTAGED CHILDREN

425 Thirteenth Street, N.W., Suite 1012
Washington, D.C. 20004
(202) 382-6945

June 6, 1977

Congressman Robert N.C. Nix
Chairman
U.S. House of Representatives
Committee on Post Office and Civil
Service
309 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

After careful review of the proposals referred to us for comment, I believe that you are undertaking a delicate but necessary step to curtail conflict of interest in government employment. Current applicable statutes, regulations and guidelines have confined practices of employees considerably and have reduced incidences of conflict of interest. Public

employees are aware of the requirements of their service to the people. There is considerable material presented to them in writing and through briefings at the outset of their employment to discourage those employees inclined to violate the spirit of conflict of interest requirements.

However, the public has, through some elected representatives, sought to further refine public employee accountability in the same spirit as those changes enacted for elected officials. As an expression of this will, the bills referred to us attempt to delineate the details of such a refinement. I sincerely believe that although the intentions were of a high caliber, that the proposals go overboard. In fact, if passed as presented, I believe that serious harm will come to the federal service by discouraging the most capable and experienced staffers from joining civil service ranks.

With some adjustment, the spirit of the mandate could be preserved and a viability retained for the civil service to attract a professional group of employees dedicated high standard of public administration.

1. The Form 171 already contains sufficient background information on previous employment, and with a waiver requiring a signature of the candidate-employee, the experience portion could be made public upon written request. The candidate-employee should be advised that an inquiry has been made and by whom. Privacy restrictions and courtesy should be respected.
2. The mandatory requirement of a financial statement patterned after that of an elected official could be required without objection. Similarly, this financial statement would require a waiver signed by the candidate-employee and should contain the provision that they will be notified of any public inquiries and by whom.
3. Closer scrutiny of those individuals involved in contracts and grants is more appropriate, including a file of their professional career before and after government service for no more than two years. However, due process of law should be observed in each individual case before alleging any wrongdoing, and violations should be strictly enforced.
4. Additionally, persons who seek such information under the illusion of wrongdoing should be required to pay legal fees and court costs if the evidence and due process is convincing that the government employee is free from alleged conflict of interest. This should offset wholesale character assassination.
5. Spouses income sources need not be revealed as a routine matter, considering protections covered under the privacy act. Such revelations can be ordered under the rules of evidence if wrongdoing is proven (after due process) in a court of law. Spouses of government servants do not need to be required to give up their privacy merely due to the employment of their spouse in the civil service.

I hope that revisions of these bills for all government employees is undertaken with great care and respecting the rights of individual government servants. Further, keep in mind the reduced quality and skills of recruited government employees which could result when expert persons avoid the civil service due to the unwarranted invasion of personal privacy which these bills espouse.

Respectfully,

Owen F. Peagler

Owen F. Peagler
Chairman



National Aeronautics and
Space Administration

Washington, D.C.
20546

JUL 8 1977

Honorable Robert N. C. Nix
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in further reply to your request for the comments of the National Aeronautics and Space Administration on the bills H.R. 2733, "To restrict the activities of certain Federal employees and officers, to provide private remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes," and H.R. 3928, "To require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government."

H.R. 2733 would prohibit a Federal employee (1) whose pay rate is equal or greater than the GS-16 pay rate, (2) who occupies a professional or technical position in which the employee could cause an economic advantage for or handicap a special interest, or (3) who occupies a management, administrative, or investigative position where his actions are likely to have a significant impact on special interest enterprises, from participating in any Federal regulatory action or policy decision involving a special interest in which the employee had a substantial economic involvement any time in the two years prior to becoming a Federal employee or from participating in any such action or decision involving any subject matter

concerning which the employee had been involved or participated personally for or represented a special interest any time in the ten years prior to becoming a Federal employee.

Such Federal employees would be required to submit, within 30 days of becoming a Federal employee, to the head of the agency a detailed statement, which would be available to the public, of his or her former substantial involvement with any special interest.

The head of the agency is authorized to except an employee from the prohibitions of the Act upon determining in writing that the exception is essential to the public interest. No written determinations could be made without 30 days advance notice to Congress and all written determinations would be available to the public.

Federal employees with the authority to do so must dismiss a Federal employee who is in violation of the Act's prohibitions, and any person may bring a mandamus action to compel such a dismissal or to prevent the employee from participating in a Federal regulatory action or policy decision when the Act's prohibitions are being violated and to require that the employee submit the detailed statement to his or her agency head.

"Special interest" is defined broadly to include any corporation, industry, trade, labor union, or other similar group that is regulated or directly affected by policies and decisions of such an employee in his or her official capacity. "Substantial economic involvement" is defined as investment or employment or otherwise which directly or indirectly equals 1/4 or more of annual income of an individual, or his/her spouse, or of both combined.

H.R. 3928 would require a Federal employee who is paid at the rate of GS-13, step 1 or higher, and has been employed by an agency for less than three continuous years, to file annually, until employed for three or more consecutive years, with the head of the agency, a report detailing the employee's employment history for the three years prior to Federal employment. Further, if the employee participates in any way in the award of grants, contracts or other forms of business or financial interests, the employee would be required to list grants, contracts or other forms of business or financial interests which his/her former employer has obtained within 12 months preceding report or is attempting to obtain at time of filing report from employee's agency.

A former agency employee paid at the GS-13, step 1 rate or higher would also be required to file the same type of report with the head of the last agency in which he/she was employed for three years following termination of Federal employment.

Both H.R. 2733 and H.R. 3928 would affect NASA because certain NASA employees fall within the definitions of those employees covered by the prohibitions and reporting requirements in the bills.

As an overall comment on both bills, we note that at present your Committee is also considering a comprehensive Administration bill, H.R. 6954, which deals with conflict of interest. We believe that the wisest course of action would be to treat the conflict of interest issue as a whole in the form of comprehensive legislation rather than through piecemeal legislation such as H.R. 2733 and H.R. 3928. We have many difficulties with the two bills; our major concerns are set forth below.

H.R. 2733 at the very least would affect all employees at GS-15, step 7 and above because of the rate of pay standard. Further, the definition of employees covered is so exceedingly broad that it would be very difficult to interpret and could result in almost every professional employee considering him or herself subject to the prohibitions and reporting requirement.

It would appear that H.R. 2733 is retroactive in its application to Federal employees. As such it could reach an employee presently at the GS-16 level who, for example, has worked for the Federal Government for 20 years and worked for a "special interest" 21 1/2 years ago. This type of situation could not, in our view, pose a true conflict of interest for an employee but could have devastating results for the Federal Government and its ability to function.

The ten year prohibition regarding representation of a special interest could have the effect of depriving the Federal Government of expertise in many areas. Although we recognize that there is a legitimate reason for controlling the "revolving door" between agencies and companies in regulated industries, the wording of the proposed bill goes beyond this purpose with the use of the phrase "policy decisions." As a research and development agency which requires personnel with in-depth expertise, NASA would be deprived of this needed expertise because of the reluctance of highly qualified individuals to place themselves in a working situation where the boundaries of permitted activity are so unclear.

Further, the public reporting requirement of an employee's previous work history as related to any special interest coupled with the right of any person to bring a mandamus action could lead to a burdensome amount of litigation that could jeopardize the ability of the Federal Government to make decisions.

Although H.R. 2733 does not contain criminal sanctions, the sanctions regarding dismissal and/or loss of pay would be an additional inhibiting factor in the decision making process.

H.R. 3928 which reaches down to the GS-13 employee would appear to impose an unnecessary reporting requirement that has no real discernible purpose. Further, it does not seem possible that a Federal employee would even be able to fully fill out a report since it is doubtful that after leaving one's former employer that one would be able to obtain information on the former employer's attempting to obtain grants, contracts, etc.

In view of the foregoing, the National Aeronautics and Space Administration would oppose the enactment of the bills H.R. 2733 and H.R. 3928, and instead urges the Committee to give favorable consideration to H.R. 6954.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, it has no objection to the submission of this report to the Congress.

Sincerely,

Joseph P. Allen

Joseph P. Allen
Assistant Administrator
for Legislative Affairs

National Center for Productivity and Quality of Working Life

Washington, D.C. 20036

June 8, 1977

The Honorable Robert N.C. Nix
Chairman
Committee on Post Office and Civil Service
U.S. House of Representatives
309 Cannon House Office Building
Washington, D.C. 20515

Re: H.R. 2733 and 3929

Dear Congressman:

The following comments on the proposed legislation are made from the perspective of our concern for the productivity of the federal government and although they are general I hope you will find them of some assistance. While the legislation under consideration does not directly affect the performance of the government, the procedures adopted for meeting the basic intent - elimination of conflict of interest - could have an impact on public employee caliber and performance. In addition, we would hope that the legislation would not inadvertently create another bureaucracy whose costs exceed the benefits obtained by its existence.

First, we must keep several goals in mind lest we reach one at the expense of others. Recent studies by GAO and the Government Operations Committee of the Senate have reaffirmed the need for the government to attract highly qualified personnel to manage its various agencies and programs. Our work at the Center verifies this need. Accordingly, we should not enact legislation that places unusual burdens on

an individual simply because he works for the federal government. If we are concerned about those few individuals who might perhaps abuse their government positions, our remedy ought to focus directly upon them. This can be done by:

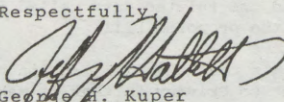
- A) Explicitly defining what constitutes abuse.
- B) Creating severe penalties for abusing the position.
and
- C) Relying upon "due process" to punish offenders.

It would seem that remedies which affect the innocent majority in an attempt to reach the few who would abuse the system are dysfunctional. To require continually more explicit disclosures for increasingly lower level government employees treads heavily on the concepts and rights of individual privacy. Moreover, it would not appear that this wholesale disclosure would, in fact, deter the few who might consciously abuse their positions.

In addition, we should avoid creating another expensive paper mill. Obtaining, analyzing, collecting, verifying, and storing employment records for all GS-13 and above employees would generate another mountain of data and another bureaucracy to maintain the system.

I would commend to your deliberations the notion of targeting federal expenditures and requirements to the problem - the offender. The voters and federal employees alike can agree on the concept of harsh penalties, strictly enforced, for those who abuse the system. Similarly, both would eventually be offended by further bureaucratic encroachment into the details of their lives. Federal funds not spent for record keeping would be available for identifying and prosecuting offenders.

Respectfully,


for George A. Kuper
Executive Director

National Commission on Libraries and Information Science

1717 K STREET, N.W. SUITE 601, WASHINGTON, D.C. 20036

15 June 1977

The Honorable
Robert N. C. Nix
Chairman
Committee on Post Office and
Civil Service
U.S. House of Representatives
309 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Nix:

Thank you for the opportunity to respond to H.R. 2733 and H.R. 3928. I am sorry we did not do so by 9 June, but hope that these comments will still be of some assistance. While I am in full support of the intent of both of these bills, I believe they would create serious problems in the area with which I am concerned--libraries and information service.

Let me discuss first H.R. 3928--the Federal Employees Conflict-of-Interest Disclosure Act. As you well know, the Federal Government provides a substantial amount of support to schools and libraries through grants, revenue-sharing and related fund-disbursing mechanisms. Many employees of the Federal agencies which dispense such funds for schools, libraries, and other educational institutions have come from the very field to which their agency now dispenses funds. Indeed, one would hope they were chosen for their familiarity with, and understanding of, the field! While this Act requires only that information concerning previous (and future) employment and concerning awards to such employers be submitted to the Federal employer, the name of the bill makes it quite clear that evidence of funds given to the previous (or future) employer by an employee's present Federal employer constitutes conflict of interest. I would submit that this is an unrealistic and unworkable solution to the conflict of interest issue. HEW issues grants to many libraries throughout the country. It would appear, for example, that under this bill, any member of that library employed three years prior or subsequent to employment as a GS-13, or above, with HEW, is subject to conflict-of-interest violation. Such a policy would seriously curtail HEW's funding programs, the quality of its employees, the career ladder of many librarians, and the calibre of library staff--to cite just one potential problem area.

May I point out, in addition, that the report requirement constitutes, in part, redundant data collection and thus violates the intent of the Federal Paperwork Commission, since all Federal employees are required to submit, as part of their application for employment, a list of their former employers and the related data called for in section 3, items (A) 2 through F of the proposed bill.

Lastly, I would submit that the bill, in its present form, violates the concept of the Right to Privacy in that it makes no provision for termination of retention of the data collected. There is no defensible reason to maintain the accessibility of the data collected indefinitely; certainly the law should incorporate a "sunset" limitation on the retention of this data. Nor does it make economic sense to retain this data--the result will only be an ever burgeoning and increasingly costly data file of less and less value.

Re H.R. 2733

The last two comments made above apply equally to this bill.

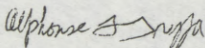
Despite the fact that this bill does define "special interest" that definition does not, it seems to me, exclude not-for-profit or non-profit organizations which provide library, educational and related services to the people of our country. If this is not the intent, the definition of "special interest" must be made more specific.

The definition of "substantial economic involvement" also leaves much to be desired. To give but one example: many libraries use Federal grants, such as an HEW R&D grant, to cover the cost of staff working on that grant project. Should these library employees be discriminated against so arbitrarily (see Section 2(1)) when one would hope Federal agencies would seek out enterprising individuals knowledgeable in their field as Federal employees rather than be forced to shy away from hiring them?

I would question, moreover, the wisdom of the restriction in Section 2 (2) in any case. How can the Federal Government possibly obtain skilled and knowledgeable personnel if it is deemed a Federal offense to be employed on a policy-making level in subject area in which the employee's expertise is less than ten years out of date?

I would submit, in short, that Section 2 (2) of this bill is not wise and should be dropped. I would propose that Section 6 be more narrowly defined, and, further, that the bill give more attention to the intent of the bill, rather than to the nature of the punishment for infringement.

Sincerely,



Alphonse F. Trezza
Executive Director

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D. C. 20456

8 JUN 1977

Office of the Administrator

Honorable Robert N.C. Nix
Chairman
Committee on Post Office
and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of May 31, 1977, requesting the comments of this Agency on H.R.2733 and H.R.3928.

The National Credit Union Administration recognizes the need to minimize the potential for conflicts of interest within the Federal government and supports efforts to accomplish this. We do, however, find that certain limitations to this objective are contained in the legislation.

H.R.2733 proposes to prevent any GS-16 or above, and in some conditions certain persons under GS-16, from participating in regulatory action or policy decision where there could be a conflict of interest due to certain past or present outside interests. By our interpretation, the language in this proposal is sufficiently broad as to deny Federal agencies access to most of the qualified persons in the "field" of the agency. Specifically, Sec. 2, para. (2) of the Bill restricts participation by such persons on "subject matter concerning which such officer or employee has been involved or participated personally for or represented a special interest" We are unable to interpret the limitations of this language and suggest that the intent be more specifically drafted.

In the same paragraph, the prohibition on participation is given a time frame of "ten years prior to the commencement of the term of office or employment of such officer or employee." This means that a person who has been a Federal employee for ten years could have a potential conflict of interest going as far back in time as twenty years. This seems an excessive amount of time.

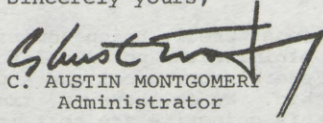
H.R.3928 proposes to examine the nature of the jobs held by GS-13's and above for a period of three years prior to entering government service and for a like period after leaving government service. The bill also proposes to centralize this information for the entire government and to make this information available to the public.

We support the concept that the collection of this information will serve as a deterrent to potential conflicts of interest. We have some misgivings, however, with the centralization of this information much the same as we would be concerned with any collection of information on individuals that was not absolutely necessary. Consideration might be given to a GAO spot check of these records in each agency as an alternative to the centralization.

Additionally, since there appears to be no enforcement provision, it may be difficult to obtain information from an ex-employee three years after leaving government service. This situation is heightened by the ex-employee's knowledge that any information submitted by him/her will be made public. It may be more realistic to limit the information gathering to one year after leaving the government or perhaps to merely the next employment.

I hope these comments are of assistance.

Sincerely yours,


C. AUSTIN MONTGOMERY
Administrator

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

June 8, 1977

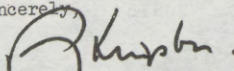
The Honorable Robert N. C. Nix
 Chairman, Committee on Post Office
 and Civil Service
 U.S. House of Representatives
 309 Cannon House Office Building
 Washington, D.C. 20515

Dear Congressman Nix:

This is in response to your request of May 31, 1977, requesting the views of the National Foundation on the Arts and the Humanities regarding H.R. 2733 and H.R. 3928, conflicts of interest bills. I am replying for the National Endowment for the Humanities. The National Endowment for the Arts will reply separately. The National Endowment for the Humanities defers to other agencies regarding the merits of these bills.

The Office of Management and Budget has advised us that it has no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



Robert J. Kingston
 Acting Chairman and Deputy Chairman

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

WASHINGTON, D.C. 20506

June 9, 1977

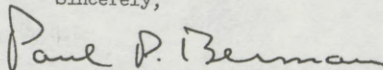
The Honorable Robert N. C. Nix
 Chairman, Committee on Post Office
 and Civil Service
 U.S. House of Representatives
 309 Cannon House Office Building
 Washington, D.C. 20515

Dear Congressman Nix:

This is in response to your request of May 31, 1977, requesting the views of the National Foundation on the Arts and the Humanities regarding H.R. 2733 and H.R. 3928, conflicts of interest bills. I am replying for the National Endowment for the Arts. The National Endowment for the Humanities has already replied separately. The National Endowment for the Arts defers to other agencies regarding the merits of these bills.

The Office of Management and Budget has advised us that it has no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



Paul P. Berman
Director of Administration

NATIONAL SCIENCE FOUNDATION
WASHINGTON, D.C. 20550

June 30, 1977

Honorable Robert N.C. Nix
Chairman, Committee on Post
Office and Civil Service
House of Representatives
Washington, D.C. 20515

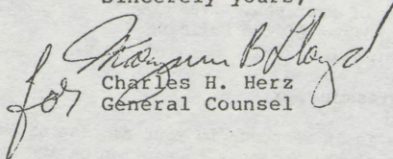
Dear Mr. Chairman:

This is in reply to your letter of May 31, 1977, requesting the comments of the National Science Foundation on H.R. 2733, the "Federal Conflict of Interest Act of 1977", and H.R. 3928, the "Federal Employees Conflict-of-Interest Disclosure Act".

The National Science Foundation has no specific comments to offer. We defer to the views of Executive branch agencies having direct responsibilities in this matter, such as the Civil Service Commission and the Department of Justice. We appreciate, however, being given the opportunity to comment.

The Office of Management and Budget has advised us that there is no objection to the submission of this report from the viewpoint of the Administration's program.

Sincerely yours,



for Charles H. Herz
General Counsel



Office of the
Chairman

National Transportation Safety Board

Washington, D.C. 20594

June 17, 1977

Honorable Robert N. C. Nix
Chairman
Committee on Post Office and Civil Service
House of Representatives
309 Cannon House Office Building
Washington, DC 20515

Dear Mr. Chairman:

This is in reply to your request for the National Transportation Safety Board's comments on H.R. 2733, a bill "To restrict the activities of certain Federal employees and officers, to provide remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes"; and H.R. 3928, a bill "To require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government."

The Safety Board recognizes that existing laws and regulations governing actual and potential conflicts during Federal service may need amplification. In our view, however, H.R. 2733 is unduly restrictive. If enacted, it would prevent Safety Board Members and staff from utilizing skills, knowledge and expertise acquired prior to Government service. Moreover, this bill would render it difficult for the Board to attract competent people from the private sector and would hamper our recruitment effort. A large part of our investigative staff must have practical experience which comes from previous employment by transportation industries. Accordingly, the Safety Board opposes H.R. 2733.

With respect to H.R. 3928, we do not support the provisions requiring disclosure of positions held following Federal employment. It would be extremely difficult to collect this information from former employees, the vast majority of whom would have no further interest in dealing with the agency. We also believe that the maintenance of such information would be ineffective in identifying the relatively few cases where improper influence might be found. We have no objection to disclosure of positions held prior to Government employment because such information may be useful to avoid conflicts of interest during Government service, provided that these records are afforded full protection under the Privacy Act.

We would appreciate the opportunity to appear before your committee to testify on these bills at the appropriate time.

Sincerely yours,

Key Bailey
for Webster B. Todd, Jr.
Chairman

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION
425 THIRTEENTH STREET N.W. WASHINGTON D.C. 20004

June 14, 1977

Honorable Robert N.C. Nix
Chairman
Committee on Post Office
and Civil Service
U.S. House of Representatives
309 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your letter of May 31, 1977, the Corporation has reviewed H.R. 2733 and H.R. 3928 and submits its comments to your committee.

It is widely recognized that the present regulations regarding standards of conduct and conflicts of interest applicable to employees of Federal agencies have proved deficient in promoting the maintenance of unusually high standards of honesty, integrity, impartiality and conduct necessary to assure the proper performance of government business. Both of these bills represent attempts to attain that goal by establishing statutory formulae for conflicts of interest for Government employees. H.R. 3928 is an attempt to tackle the problem by using a reporting and public disclosure mechanism. H.R. 2733 takes a more vigorous approach by instituting broad reporting requirements supported by strong enforcement provisions. Neither bill, however, seems as comprehensive as E.O. 11222 and 5 C.F.R. Part 735, nor does either bill resolve the complex problems that have arisen in the operation of the present regulations. Problems in this area cannot be viewed in "black or white" terms. Rather, they are more often characterized by shades of "gray". Neither of the regulatory schemes contained in these bills seem capable of handling the gray areas of employee conduct effectively. Both bills would also likely increase the present confusion.

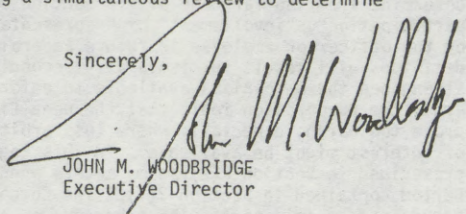
In the opinion of the Corporation, while H.R. 2733, because of its enforcement provisions, will introduce significant changes in the present conflict of interest regulations, it will also result in a good deal of confusion. First, some of the provisions of the bill contain ambiguous language, which, if the bill is enacted in its present form, will likely result in administrative problems. Because of the lack of specificity in the definition of "officers" and "employees" to whom the restrictions are applicable, it will be difficult at times to determine exactly to whom the bill applies. In addition, nowhere in the bill is it specified who shall determine which officers and employees come within the definition. The only occasion when this determination must be made is when a dismissal action is brought under Section 5. As a result there could be a great deal of uncertainty at all levels of the executive branch as to how and when the bill must be complied with. Difficulties in interpretation are also likely to arise from Section 2(2) of the bill. It is difficult to determine from the language of the Section exactly what constitutes "participation", "involvement" or "representation" such that participation by the officer or employee in future Federal regulatory actions or policy decisions will result in dismissal. Secondly, while it is important to strengthen the mechanisms available to enforce conflict of interest standards, the Corporation feels that the penalties chosen by H.R. 2733 may prove too harsh, especially where less arbitrary means to prevent conflicts of interest might be available. In this regard, the ten-year time period prescribed in Section 2(2) seems severe when compared to the two-year time period contained in Section 2(1). The Corporation also questions why prior participation in a particular subject area should be treated as a more questionable involvement than prior monetary involvement. Concerning the penalties themselves, the automatic dismissal provision contained in Section 5 is harsh particularly when no administrative hearing or opportunity to rebut is provided the dismissed employee and, as previously described, the terms of applicability are so ambiguous. Finally, Section 3, providing, inter alia, for the availability to the public of all financial interest statements seems to conflict with the restrictions to access of personnel files provided by the Privacy Act of 1974.

H.R. 3928, like H.R. 2733, contains some ambiguous language and may conflict with the Privacy Act of 1974. First, regarding language problems, it is not specified whether the phrase "current employment" as it is used in Section 3(a)(2)(B) includes positions held in the same agency at rates lower than GS-13. If it does, then long-time agency employees who have worked up to a policy-making position from lower positions involving no policy-making responsibility would be required to report on positions held prior to their first position held within the agency. Such employment could hardly be characterized as constituting a conflict of interest. Also, it is not clear whether the definition of the term "employee" contained in Section 8(2) includes personnel which are characterized as "special Government employees" in 18 U.S.C. 202(a), such as intermittent employees and Presidential appointees. Secondly, as with H.R. 2733, the public availability of records provided for in Section 5 of H.R. 3928 seems to conflict with the Privacy Act of 1974.

While the ambiguity of the language contained in H.R. 3928 and its potential conflict with existing law are important problems, they are considerably outweighed in significance by the administrative and enforcement problems which would be created by the bill's enactment. H.R. 3928 would impose substantial burdens on Federal agencies in terms of time and paperwork, the adverse effects of which may outweigh the potential benefits. Section 3(a)(1) requires that each employee classified

in grade GS-13 submit a report each of the first three years of his employment describing his former employment for the three previous years. In the first place, there is no apparent reason for submitting such a report for each of the employee's first three years, since, as the Act reads, each report would contain identical information. Furthermore, the information which would be submitted in such a report as required in Section 3(2) is quite similar to that required in S.F. 171. Section 5, however, would impose an even greater administrative burden on Federal agencies by requiring them to maintain a file of all reports submitted under the Act. Such extensive record keeping together with the compilation of an annual report for Congress would require a substantial portion of an agency's time, which may not be proportionate to any benefits derived therefrom. Also, there is no provision in the Act for using the information contained in the various reports required to determine whether conflicts of interest exist. The production of an annual report to be submitted to Congress seems to be an excellent opportunity for conducting a simultaneous review to determine whether conflicts of interest exist.

Sincerely,



JOHN M. WOODBRIDGE
Executive Director

POSTAL RATE COMMISSION
Washington, D.C. 20268

June 9, 1977

Hon. Robert N.C. Nix
Chairman, Committee on Post
Office and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your request of May 31, 1977, for our comments on H.R. 2733, a bill "to restrict the activities of certain Federal employees and officers, to provide private remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes."1/ We strongly support the concept of minimizing conflicts of interest in the Federal service, but do not believe that the approach suggested in this bill will achieve this aim. Since our agency was created in 1970, it has established and continuously enforced stringent rules to that end.2/ For a number of reasons set out herein, however, we would recommend against enactment of H.R. 2733.

Section 2 of H.R. 2733 would prohibit a large class of executive branch employees from participating in any regulatory action or policy decision under two sets of circumstances:

(1) where the action or decision involves a "special interest"--a term defined in § 6(1) of the bill--in which the employee "has a substantial economic involvement any time during a period of two years" before beginning Federal employment, or

1/ Your letter also requested our comments on H.R. 3928; they are contained in a separate letter also being sent today.

2/ In this connection, we annually report to the Civil Service Commission on the financial interests of all employees rated at the equivalent of GS-13 or above. See 39 C.F.R. § 3000.735, Subpart D.

(2) where it involves a subject matter concerning which he "has been involved or participated personally for or represented a special interest" at any time during the 10 years prior to Federal employment.

There are a number of somewhat unclear provisions in this section, which could cause difficulty in administering the bill. While the bill clearly applies to all super-grade employees, it also extends to employees in "professional or technical" jobs whose duties are such "that the employee could cause an economic advantage for or handicap against a special interest." No standard of magnitude is included, and it is thus arguable that any handicap or advantage, however insignificant, would be included. In some agencies--especially in the regulatory area--this broad standard would include virtually all professional and technical employees. Their work product, if accepted and used by their supervisors and by the agency, "could cause" such an effect. We question whether such a sweeping provision would be necessary.

A much more basic difficulty in the structure of H.R. 2733 arises in connection with the relationship between § 2 and § 5(a). The latter section makes it the duty of every Federal officer having the requisite authority "to dismiss any other officer or employee who takes or holds office or employment in violation of section 2 of this Act." Section 2, however, appears to contain no standards by which the taking or holding of employment--as opposed to participation in particular actions or decisions--could be found a "violation" of the bill's provisions. Section 2, as noted, prohibits only certain kinds of participation in discrete actions and decisions. A comparison of § 5(a) with § 5(b) suggests that improperly participating in a decision is not equivalent to taking or holding employment in violation of § 2, since two separate enforcement provisions are created.

In view of the pervading lack of clarity as to what H.R. 2733 actually would prohibit, it is not altogether easy to estimate its effect on the conduct of Federal programs. As a practical matter, it would often make it difficult for agencies to recruit skilled personnel from private practice. While in some highly specialized agencies it might be possible to locate persons with useful experience gained in an area not involving the interests regulated by that agency, there are other cases in which this could be nearly impossible. Some agencies, including the Postal Rate Commission, have an effect on nearly every business or industry in the Nation. Any person coming to such an agency from private practice or employment would be overwhelmingly likely to have had a "substantial economic involvement," within the meaning of § 6(2) of the bill, with an interest likely to be involved in the agency's program.

We believe that this would be a severe handicap to agencies seeking to recruit an able and experienced staff. In this connection, the remarks of the House Judiciary Committee, following a thorough investigation of the Federal conflict-of-interest laws, are quite apposite:

It is also fundamental to the effectiveness of democratic government that, to the maximum extent possible, the most qualified individuals in the society serve the government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the government of those men and women who are most qualified to serve it.

H.R. Report No. 748, 87th Cong., 1st Sess. (1961), page 6. The comprehensive revision of the conflict-of-interest laws which became effective in 1963 recognized this problem. 1/

Technical Comments. Several minor features of H.R. 2733 appear to call for comment and possible clarifications or revision.

1/ This revision is usefully reviewed in Perkins, "The New Federal Conflict-of-Interest Law," 76 Harv. L. Rev. 1113 (1963).

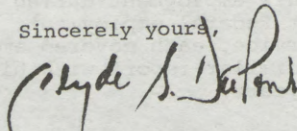
Section 2(2) prohibits a covered employee from participating in an action or decision involving a subject matter "concerning which such officer or employee has been involved or participated personally for or represented a special interest. . . ." (Emphasis added.) It is unclear whether the word "involved" is intended--as are the words "participated" and "represented"--to import a connection or community of interest with the "special interest." Literally read, the bill would apply the prohibition regardless of the manner in which the employee was "involved"--that is, whether or not his involvement had anything to do with a special interest. This seems to be an excessively broad prohibition.

The provisions of § 5 of the bill allow any person to seek a writ of mandamus to compel the dismissal of an employee who takes or holds employment in violation of § 2, or to bar an employee from improperly participating in an action or decision. Apart from the potential for delay of administrative proceedings through the filing of groundless suits under this section, there is some question whether mandamus is an appropriate remedy in these circumstances. There are a number of factual issues to be determined before it can be said that an employee is in violation of § 2 of the bill. Mandamus, however, is generally thought of as appropriate only to compel an official to perform a duty which is so plain as to be free from any doubt. See, e.g., Naporano Metal & Iron Co. v. Secretary of Labor, 529 F.2d 537 (3d Cir., 1976). H.R. 2733 requires determinations as to what the employee had done before beginning his Federal service, when he had done it, whether the interests in question would be "directly affected" by his Federal duties, and other, similarly judgmental questions. These questions would seem to leave few cases "free from doubt," and thus to place the H.R. 2733 mechanism outside the traditional ambit of mandamus.

In view of the schedule on which your letter requested we submit these comments, time has not permitted us to secure the advice of the Office of Management and Budget as to the relationship of the bill or of this report to the program of the President. We are therefore transmitting copies of this letter simultaneously to OMB, and will transmit to you any advice we receive from OMB with respect to it.

If we can supply any further information, please let me know.

Sincerely yours,



Clyde S. DuPont
Chairman

POSTAL RATE COMMISSION
Washington, D.C. 20268

June 9, 1977

Hon. Robert N.C. Nix
Chairman, Committee on Post
Office and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your request of May 31, 1977, for our comments on H.R. 3928, a bill "to require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government." 1/ We strongly support the concept of minimizing conflicts of interest in the Federal service, but do not believe that the approach suggested by this bill is practical. Since our agency's creation, it has established and enforced stringent conflict-of-interest rules. 2/

The main purpose of H.R. 3928 is to require that on entering a Federal position compensated at GS-13 or above, and for three years thereafter, every employee file a report on his employment during the three years preceding his current Federal employment. Likewise, after leaving Federal service, each covered employee would be required to file a similar report with his former agency each year for three years.

1/ Our comments on H.R. 2733, also requested in your May 31 letter, are contained in a separate response also being sent today.

2/ See 39 C.F.R. § 3000.735, Subpart D. Under these rules we annually report to the Civil Service Commission on the financial interests of all employees graded at the equivalent of GS-13 or above.

The reporting requirement for both in-service and post-employment periods, besides identifying past employers and describing the employee's former duties, would call for

. . . a list of any grants, contracts or other forms of business or financial interests which a former employer of such employee . . . has obtained within the twelve months preceding the filing of such report, or is attempting to obtain at the time of the filing of such

report, from the agency in which such employee is currently employed.

This requirement would apply if the employee's duties directly or indirectly include participation, through decision, recommendation, investigation, or otherwise in connection with awards of grants, contracts, or other forms of interests.

Among the problems of significance which we believe this bill would raise are the potential inhibition of Federal personnel recruiting and the possible impact of the legislation on individual rights. The reporting requirement might well have a chilling effect on the willingness of well-qualified persons to seek employment with Federal departments and agencies. While the bill formally requires no more than reporting of prior employment and dealings between the individual's agency and his former nongovernment employer, it could easily be perceived as offering opportunities for abuse of the information gathered. This is particularly the case since, as § 2(4) of H.R. 3928 makes it clear, all reports gathered would be public documents available to any member of the public.

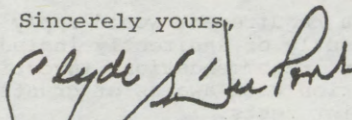
Related to this issue is the possibly inhibiting effect--stemming from similar causes--which the scheme of H.R. 3928 might have on individual rights. The bill makes a considerable portion of the life history of affected persons into a matter of public record. In addition, the ability of persons covered by the bill to obtain employment outside government could be affected by the possible unwillingness of employers to become involved in the reporting requirements. Additionally, it could be a serious burden on an ex-Federal employee who takes a position with a different nongovernment employer than the one for which he worked before joining the Federal service to attempt to report on the activities of his original private employer--about whose government-related projects and contacts he may then be totally uninformed.

We would also foresee--given the large class of employees to whom H.R. 3928 would apply--an extremely large volume of additional paperwork to be dealt with by the Executive departments and agencies.

In view of the schedule on which your letter requested we submit these comments, time has not permitted us to secure the advice of the Office of Management and Budget as to the relationship of the bill or of this report to the program of the President. We are therefore transmitting copies of this letter simultaneously to OMB, and will transmit to you any advice we receive from OMB with respect to it.

If we can supply any further information, please let me know.

Sincerely yours,



Clyde S. DuPont
Chairman

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

June 8, 1977

Honorable Robert N.C. Nix
Chairman, Committee on Post Office
and Civil Service
Cannon House Office Building
Room 309
Washington, D.C. 20515

Dear Mr. Chairman:

This is the report of the Railroad Retirement Board which you requested on H.R. 2733, which was introduced on January 31, 1977, by Mrs. Spellman, and on H.R. 3928, which was introduced on February 23, 1977, by Mr. Mikva.

H.R. 2733, entitled the "Federal Conflict of Interest Act of 1977" applies to each officer or employee in the executive branch of the Federal Government:

1. whose rate of pay is equal to or greater than the minimum rate established for level GS-16; or
2. who occupies a professional or technical position with duties of a nature so that the employee could cause an economic advantage for or handicap against a special interest in the discharge of his official duties; or
3. who occupies a management, administrative, or investigative position, where his actions are likely to have a significant impact on special interest enterprises.

Any such officer or employee may not participate in any Federal regulatory action or policy action which involves any special interest in which such officer or employee has a substantial economic involvement any time during a period of two years prior to the commencement of his term of office or employment; or which involves any subject matter concerning which such officer or employee

has been involved, or participated personally for, or represented a special interest, any time during a period of ten years prior to the commencement of his term of office or employment.

Section 7(a) of the Railroad Retirement Act of 1974 (45 U.S.C. §231f(a)) and its predecessor provision, section 10(a) of the Railroad Retirement Act of 1937 (45 U.S.C. § 228j(a)), provide that one member of the Railroad Retirement Board shall be appointed from recommendations made by representatives of railroad employees and one member shall be appointed from recommendations made by railroad employers. It is apparent that H.R. 2733, if enacted, would be in direct conflict with the legislative intent of section 7(a). The seriousness of this conflict cannot be overemphasized. It would appear that the individuals nominated and selected pursuant to section 7(a) of the Act, could not service in the positions for which they are chosen (with the advice and consent of the Senate) if H.R. 2733 is enacted in its present form. Accordingly, without an amendment to the bill which provides that the Railroad Retirement Board, or agencies like and including the Railroad Retirement Board, which are made up of multiple-head bodies composed of representatives from the various parties whose interests are directly affected by such agencies, are exempt from its coverage, the Railroad Retirement Board must strongly recommend that H.R. 2733 not be enacted.

H.R. 3928, entitled the "Federal Employees Conflict of Interest Disclosure Act", requires each Federal employee whose rate of pay is equal to or greater than the minimum rate established for level GS-13 to file with the agency by which he is employed a description of each position held by such employee during the three years preceding and the three years subsequent to Federal employment. Each agency is required to file annually reports of the information so acquired with the President of the Senate and the Speaker of the House, and to maintain a file containing the information submitted and to make such file open for public inspection during the regular working hours of the agency.

The Board is a benefit paying agency and not a regulatory agency, and it therefore appears that the reporting requirements of H.R. 3928 would not be useful in the case of the Board. Accordingly, the Committee should consider amending the bill so as to limit its applicability to certain specified agencies or departments so as to avoid proliferation of reporting and record-keeping requirements for agencies where such reports could serve no useful purpose.

Time has not permitted obtaining advice from the Office of Management and Budget as to the relation of this report to the program of the President.

Sincerely yours,

R. F. Butler
FOR THE BOARD
R.F. Butler, Secretary



WASHINGTON, D.C. 20446

July 5, 1977

Honorable Robert N.C. Nix
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In a letter dated May 31, 1977 you transmitted to us copies of H.R. 2733 and H.R. 3928 and requested our comments on them.

H.R. 2733 would restrict the activities of certain Federal employees and officers, would provide private remedies to implement these restrictions, and would facilitate the enforcement of existing conflict of interest statutes. H.R. 3928 would require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government.

In the performance of its statutory duties, the Renegotiation Board, and its employees, can significantly affect private industries. Consequently, we at the Board have a vital interest in viable conflict of interest statutes. Although the Board has experienced no significant difficulties in operating under the present law, we believe that the law could be strengthened. As to the details of such strengthening, we defer to the judgment of those who have a more direct responsibility in this area.

The Board has no specific comments on the provisions of H.R. 2733 and H.R. 3928.

The Office of Management and Budget has advised that it has no objection to the submission of this report.

Sincerely,

A handwritten signature in dark ink, appearing to read "Goodwin Chase".

Goodwin Chase
Chairman

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM
600 E STREET, N. W.
WASHINGTON, D. C. 20435

June 20, 1977

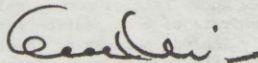
Dear Mr. Chairman,

This is in response to your request for the views of this agency on H.R. 2733 (95th Congress); a bill to restrict the activities of certain Federal employees and officers, to provide private remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes -- Federal Conflict of Interest Act of 1977 and H.R. 3928 (95th Congress); a bill to require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government -- Federal Employees Conflict-of-Interest Disclosure Act.

This agency takes no position on either bill and defers to the Civil Service Commission and Department of Justice respectively.

The Office of Management and Budget advises that there is no objection to the submission of this report.

Sincerely,



E. M. Kline
Acting Deputy Director

The Honorable Robert N. C. Nix
Chairman, Committee on Post Office
and Civil Service

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

June 23, 1977

Mr. Robert N. C. Nix
Chairman
Committee on Post Office and
Civil Service

U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Nix:

This letter is in response to your request of May 31, 1977, for the comments of the Consumer Product Safety Commission on H.R. 2733, a bill to restrict the activities of certain Federal employees and officers, to provide private remedies to implement their restrictions, and to facilitate the enforcement of existing conflict of interest statutes; and H. R. 3928, a bill to require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the three years preceding and following their employment with the Federal Government.

The Commission favors the enactment of legislation to eliminate conflict of interest situations involving Federal officials. However, both H.R. 2733 and H.R. 3928, in our opinion, contain provisions which require further consideration.

H.R. 3928, which requires Federal employees to report their employment position during the three years preceding and following their employment with the Federal Government, seems to lack an expression of purpose for the reporting requirement since it neither contains any restrictions on certain activities (as does H.R. 2733) nor does it reference other prohibiting statutes or regulations. It is recommended that the bill be revised to incorporate provisions which indicate the conduct or activity which is prohibited and, therefore, the purpose of the report.

In this regard, the bill also lacks direction or guidance to responsible officials who ascertain from a report that there has been a possible violation of a conflict of interest statute. The bill, as drafted, merely requires that the reports be made available to the public and to the Congress. It is recommended that a provision be added to expressly indicate what appropriate action is required in the event a report indicates a possible conflict of interest.

H.R. 3928, as drafted, would impose the reporting requirement on each employee whose rate of compensation is equal to or greater than the minimum rate of compensation for grade GS-13. (This would apparently include persons at lower grades whose within-grade salaries exceeded the Step 1 level of pay for a GS-13.) In our opinion, the reporting requirement should be imposed only on senior officials who are in a position to make final decisions which may have a financial or economic impact on outside parties. It is suggested that the criteria in section 2 of H.R. 2733, (e.g., GS-16 and certain other officials whose actions are likely to have a significant impact on special enterprises) is a more appropriate criterion for application of the reporting requirement.

Section 3 of H.R. 2733 contains a requirement that certain Federal officials file a statement of "former substantial economic involvement with any special interests." "Substantial economic involvement" is defined in section 6(1) to mean "involvement through investment, or as an employee, or otherwise." However, there is no provision in the bill which requires a Federal officer

to dispose of his or her investment upon assuming the Federal position. If the person did not dispose of their investment, there would be no obligation to report it pursuant to section 3 since the involvement would be continuing, and not "former." Likewise, a Federal official could seemingly participate in an action or policy decision involving an investment which was not disposed of. It is recommended that this discrepancy be remedied by a provision requiring a prospective employee to dispose of his or her investment within a certain period after assuming a Federal position or, alternatively, specifying what amount of investment could be retained by the Federal employee.

Section 2(2) prohibits a Federal official from participating in any action or policy decision involving any subject matter concerning which the person was "involved or participated personally for or represented" for a special interest at any time during a period of ten years prior to the commencement of employment with the Federal Government. It is suggested that the above quoted phrase be reworded to require that the prior involvement also be personal, e.g., "personally involved or participated personally...." Otherwise, the provision, as presently drafted, would have an inhibiting effect on recruiting talented persons for Federal service since the term "involvement" could be interpreted to encompass even indirect or incidental involvement. If a Federal official is precluded from acting on any matter with which he or she was even remotely connected with, the value of his or her services could be greatly diminished. Also, the ten-year period seems excessive, especially in view of the fact that the Federal official has severed his or her special interests upon assuming their Federal position. It is suggested that the two-year period used in section 2(1) would be sufficient.

Section 5(a) requires that any officer or employee who violates section 2 must be dismissed. While dismissal may be an appropriate discipline in some cases, it may be unduly harsh punishment in others. It is suggested that the section be revised to provide for other disciplinary measures less than dismissal and that the responsible officials be given the discretion to impose a punishment commensurate with the nature of the violation.

Section 8(a) requires that the payment of salary to an officer or employee "during violation of this Act or violation of any prohibition imposed in section 205, 207, or 208 of title 18 of the United States Code shall be deemed an expenditure made in violation of law." The Commission has two objections to this provision.

First, the phrase "during violation" is unclear as to its intention. A violation, e.g., participating in a Federal action or policy decision, may consume as little as a few minutes of time. It could be argued that the withholding of salary would only extend to the time that the official actually engaged in the action or decision and not to any time subsequent to it. The provision should be revised to be made clear.

Second, the provision seemingly puts a burden on pay officials, etc., to immediately stop an alleged violator's salary upon the mere allegation of the violation for fear that continued payment would make them liable for making illegal payments. The provision seems unfair to both the person alleged to have violated the Act and the persons responsible for enforcing its provision. Also, the termination of salary

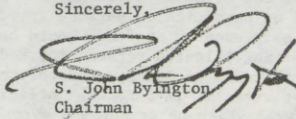
without affording the alleged violator with a due process hearing appears to conflict with Amendment V of the Constitution which provides that no person shall be deprived of property without due process of law. In this regard, we recommend that the bill be amended to provide for a due process hearing or procedure for the alleged violator prior to termination of salary.

Also, the section 8 penalty, like the section 5 penalty, may be unduly harsh in some circumstances. It is suggested that the provision be revised to allow the enforcing officials to impose a reduction in salary which is commensurate with the seriousness of the violation.

However, should the bills be modified in accordance with the several suggestions contained in this letter, we would have no objections to the passage of the modified bills.

Thank you for the opportunity to comment.

Sincerely,



S. John Byington
Chairman

UNITED STATES
INFORMATION AGENCY
WASHINGTON 20547
OFFICE OF THE DIRECTOR

June 20, 1977

The Honorable
Robert N.C. Nix, Chairman
Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

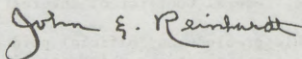
Thank you for your letter of May 31, 1977, requesting the views of the United States Information Agency on two draft bills submitted to the Committee:

(H.R. 2733), a bill to restrict the activities of certain Federal employees and officers, to provide private remedies to implement these restrictions, and to facilitate the enforcement of existing conflict of interest statutes; and

(H.R. 3928), a bill to require Federal employees compensated at the rates in effect for GS-13 and above to disclose each position held by such employees during the 3 years preceding and following their employment with the Federal Government.

This Agency has already issued comprehensive conflict of interest and disclosure regulations, a copy of which is enclosed for your information. With respect to legislation on ethics and financial disclosure, we defer to the Civil Service Commission and the Department of Justice, the agencies most concerned.

Sincerely,



John E. Reinhardt
Director

1 Retained in subcommittee files.

United States Department of Justice
United States Parole Commission
Washington, D.C. 20537

June 7, 1977

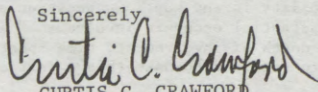
Honorable Robert C. Nix
Chairman, Committee on Post
Office and Civil Service
309 Cannon House Office Building
Washington, D. C. 20515

Re: H.R. 2733 and
H.R. 3928

Dear Mr. Nix:

In response to your letter of May 31, 1977, I favor the passage of the above bills to provide greater protection against the misuse of authority or discretion by certain government employees.

Sincerely,



CURTIS C. CRAWFORD
Acting Chairman
U.S. Parole Commission

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

JUN 16 1977

Dear Mr. Chairman:

Reference is made to your request for the views of this Department on H.R. 2733, the "Federal Conflict of Interest Act of 1977."

The bill would preclude any official paid at the rate of GS-16 or above from taking certain actions which are likely to have a significant impact on a special interest enterprise, if that individual has had a substantial economic involvement in the special interest in the past two years or has been "involved or participated personally [in] or represented a special interest any time during a period of ten years prior to the commencement of the term of office or employment..." There is limited authority for a head of an agency to make a specific individual exception to this rule, with the requirement of 30 days advance notice to Congress. Presumably, Congress would try to prevent the exception if it finds such exception to be objectionable.

This bill could be disruptive of the effective functioning of the Government by prohibiting policy officials from taking necessary actions affecting various corporations, industries, trade or labor unions, defined as special interest enterprises by the bill. Moreover, the authority in the bill allowing any person to enforce its provisions by an "action in the nature of mandamus," is an inducement to unnecessary litigation.

In the Department's view, this bill would seriously impair the President's ability to appoint to high-level Government positions individuals who have had extensive experience or expertise in industry or the special interest area they are to administer. Most of the individuals who would be capable of filling high-level Federal positions, especially those in the Executive Schedule, are likely to have been involved at some time during the preceding ten years in some special interest that would be related to the prospective Government position. In the same regard, Congress would be reluctant to confirm individuals whose scope of action would be severely limited because of prior activities. This legislation could tend to favor filling certain positions with current long-term Federal employees, who have had little or no opportunity to become involved in special interests.

In addition, there is a lack of clarity in the drafting of some of the provisions which could make them difficult to interpret and to administer. Section 2 provides that an employee is prohibited from taking certain actions if his position includes "duties of a nature that the employee could cause an economic advantage for or handicap against a special interest..." Almost any action by such employee could either have or be perceived to have an advantage or disadvantage to a particular special interest. Although section 6(1) defines "special interest," it does not do so with sufficient precision to limit its applicability in any way. We question also whether section 6(2) which defines "substantial economic involvement" includes all salient factors related to depth of involvement, time spent, and other economic factors which are required to make this a fair or useful definition.

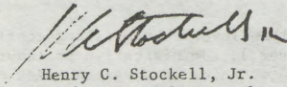
There appear to be two assumptions underlying this bill which we find troublesome. First, it would seem that the bill is predicated on a lack of existing law or controls governing activities of Federal personnel. There are provisions of the criminal code, 18 U.S.C. 201 et seq., which prohibit, among other things, conflicts of interest. Further, the screening done by Congress for Presidential appointees and by the agencies in filling high-level positions is also designed to prevent conflicts of interest.

Secondly, there seems to be a presumption against the integrity of high-level Federal employees who have also had substantial experience in related areas in the private sector. We do not believe that this is an accurate assessment. We are aware of no basis for believing that the majority of high-level officials lack integrity. In some cases, officials even disqualify themselves from participating in decision-making or policy-making in areas which could directly affect a former employer or a firm or interest with which the official has had prior involvement. Integrity cannot be legislated. We believe, therefore, that limiting the scope of necessary action of Federal officials, or indirectly restricting some of the more experienced and qualified candidates from Federal employment, because their scope of action would be so limited, is an ineffective and inefficient way to prevent conflicts of interest.

In view of the above, the Department would oppose H.R. 2733 and would recommend, instead, favorable consideration of the Administration's proposal H.R. 6954, "Ethics in Government Act of 1977" which would require disclosure of certain financial and business interests of high-level officials, but would not restrict their authority across the board.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,


Henry C. Stockell, Jr.
Acting General Counsel

The Honorable
Robert N.C. Nix, Chairman
Committee on Post Office
and Civil Service
Washington, D. C. 20515

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

JUN 16 1977

Dear Mr. Chairman:

Reference is made to your request for the views of this Department on H.R. 3928, "Federal Employees Conflict-of-Interest Disclosure Act."

This bill seeks to prevent conflict of interest situations in Federal Government by requiring employees, compensated at the rate of GS-13 and above, to disclose each position held during the three years preceding and following their employment with the Federal Government.

The bill would also require information filed by employees to be submitted annually by agencies in reports to both Houses of Congress and to be included in a file held open for public disclosure.

The objective of the bill is to make it more difficult for Federal employees to hide actual or apparent conflicts of interest thereby preventing such conflicts. However, we believe that there is serious question whether its provisions would be adequate to achieve its aims.

Firstly, the use of the salary rate of GS-13 as an identification of those positions where there is potential for conflict of interest is an arbitrary and to a large extent inaccurate test. This would include a large segment of the Federal professional workforce. We are aware of no basis for believing that a majority of Federal employees lack integrity, a presumption implicit in the bill. For the most part, conflicts of interest are likely to be found, if at all, only in those positions where there may be an actual opportunity to effect benefits or detriments for certain interests in the private sector. To use GS-13 as a threshold is clearly too far-reaching. Holding information gathered from employees open for unrestricted public inspection is a wholly unwarranted invasion of personal privacy, especially in the case of employees who have terminated their Federal employment.

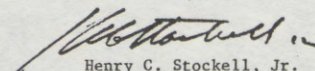
Further, employment data of itself would not be sufficient to determine whether a conflict of interest existed. The other financial interests of an individual would certainly be at least as relevant to the inquiry, if not more so.

The Department believes that existing conflict of interest provisions (18 U.S.C. 201 et seq.), administrative procedures, and the Administration proposal, H.R. 6954, "Ethics in Government Act of 1977," provide more effective and appropriate means by which to protect against potential conflicts of interest.

In view of the above, this Department is opposed to H.R. 3928.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,



Henry C. Stockell, Jr.
Acting General Counsel

The Honorable
Robert N.C. Nix, Chairman
Committee on Post Office
and Civil Service
House of Representatives
Washington, D. C. 20515