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Folder Title:
Ethics Package

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CONFLICT OF INTEREST - STAFF

Boyden Gray explained to Members yesterday that the conflict of interest abuse by staff is a Senate problem. Yet the compromise he proposes, and corresponding alternatives apply only to House staff; the Senate will not accept criminal liability and already has a conflict of interest provision in its rules.

Boyden Gray's understanding of compromise (attachment A):

Those staff who file disclosure forms (GS-16 & above) will state their areas of substantive responsibility on their disclosure forms. The Member/boss will review and authorize the staff member to work in areas posing a conflict of interest. Any staff who influences the executive branch outside this area (non-legislative, i.e., casework) will be subject to criminal penalties under 18 U.S.C. 208, the federal conflict of interest statute. If a job description changes, the form must be amended or criminal penalties will apply.

NOTE: A major goal of the Gray initiative is to achieve parity of criminal risk for staff recognizing the speech & debate protection for Members and staff regarding legislative matters.

Foley/Michel/Fazio understanding of compromise (attachment B):

By House rule (no criminal/U.S. Attorney involvement), Staff who file disclosure forms (GS-16 & above) shall refrain from contacting an agency of the executive or judicial branches regarding non-legislative matters (i.e. casework) when the staff member has a significant financial interest. Unless the employee first advises the Member/boss of his conflict and obtains from the Member/boss a written waiver stating the participation is necessary. A copy of the waiver is to be filed with the Standards Committee.

NOTE: The rule is written to parallel the conflict of interest criminal statute and the Gray understanding.

To Char V L
From Amy Schwartz
53437

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Attachment A

Section 208 of title 18, United States Code, is amended to read as follows:

"Sec. 208. Acts affecting a personal financial interest

"(a) Definitions. For the purposes of this section --

"(1) Designated duties of a House employee shall mean those areas of responsibility enumerated on the employee's Ethics in Government Act financial disclosure report, after review of the employee's financial interests, by the Member of the United States House of Representatives responsible for the employee's appointment.

"(2) Executive employee shall mean any officer of employee of the Executive Branch of the U.S. Government (including any independent agency of the United States) or the District of Columbia, or a Federal Reserve bank director, officer or employee and shall include a special Government employee, as defined in section 202 of this title.

"(3) A financial interest is attributable to an individual in the case of the financial interests of an individual's spouse, minor child, general partner, or organization in which the individual is acting as an officer, director, trustee, partner, or employee, or with which the individual is negotiating for employment or has any arrangement concerning present or prospective employment.

"(4) House employee shall mean any officer or employee of the United States House of Representatives, other than a Member of the United States House of Representatives, and shall include a special Government employee, as defined in section 202 of this title.

"(5) Legislative agency employee shall mean any officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity or office in the Legislative Branch (other than a House employee, as defined in paragraph (4) of this subsection, and other than a United States Senator or officer or employee of the United States Senate) and shall include a special Government employee, as defined in section 202 of this title.

"(6) Participate includes participation as a Government officer through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise.

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"(7) Particular matter means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest, but does not include the formulation of Federal legislative proposals or positions.

"(b) Except as permitted by subsection (d) hereof, no Executive employee or Legislative agency employee may participate personally and substantially in a particular matter in which, to his or her knowledge, the individual has a financial interest or in which a financial interest is attributable to the individual.

"(c) No House employee whose rate of basic pay is at or above the annual rate of basic pay in effect for GS-16 of the General Schedule may participate personally and substantially in a particular matter involving specific parties, outside the scope of his or her designated duties (as defined in subsection (a) of this section), in which, to his or her knowledge, the individual has a financial interest or in which a financial interest is attributable to the individual.

"(d) Subsection (b) hereof shall not apply --

"(1) if an Executive employee first advises the Government official responsible for appointment to his position or a Legislative agency employee first advises the Director of the Office of Government Ethics of the nature and circumstances of the particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the individual; or

"(2) pursuant to a general rule or regulation issued and published in the Federal Register by--

"(A) the Office of Government Ethics, which is applicable to some or all officers or employees; or

"(B) the head of an Executive Branch agency, which is applicable to some or all officers and employees in or administratively attached to that agency --

stating that the financial interest has been exempted from the requirements of subsection (a) hereof as being too remote or too inconsequential to affect the integrity of the services the Government may expect from the individuals affected; or

"(3) in the case of a special Government employee

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serving on or being considered for an appointment to an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the official responsible for the employee's appointment, after review of a financial disclosure report filed pursuant to section 207 of the Ethics in Government Act, as amended, certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved; or

"(4) the President certifies in writing that the national interest so requires; or

"(5) the financial interest that would be affected by the covered matter is that resulting solely from the interest of an individual, his or her spouse, or minor child in birthrights in a federally recognized Indian tribe, Pueblo or Alaska Native corporation established pursuant to the Alaska Native Claims Settlement Act or in an individual or tribal allotment or claims fund, provided that the particular matter does not involve the tribe, Pueblo, or Alaska Native corporation as a specific party or parties.

"(e) A copy of any determination granting an exemption under subsection (d)(1), (d)(3), or (d)(4), shall be submitted to the Director of the Office of Government Ethics, who shall make such determinations available to the public pursuant to section 205 of the Ethics in Government Act. For determinations under subsection (d)(3), the information from the individual's financial disclosure report describing the financial interests that necessitated the waiver shall also be made available. This subsection shall not apply if the head of the agency involved, or his or her designee, determines that the determination involves classified information.

"(f) For the purposes of paragraph (1) of subsection (d), in the case of class A and B directors of Federal Reserve Banks, the Board of Governors of the Federal Reserve System shall be deemed to be the Government official responsible for appointment.

"(g) The punishment for an offense under subsection (a) or subsection (b) is the following: [continue on as in (e) of the Task Force draft]

"(h) [same as (f) in Task Force draft]

"(i) The Office of Government Ethics, with the concurrence of the Attorney General, shall adopt regulations to implement this section."

1 (c) Rule XLIII of the Rules of the House of
2 Representatives is amended by inserting after clause 11 the
3 following:

4 ``12. Except as provided by paragraph (b), any employee
5 of the House of Representatives who is required to file a
6 report pursuant to rule XLIV shall refrain from participating
7 personally and substantially as an employee of the House of
8 Representatives in any contact with any agency of the
9 executive or judicial branch of Government with respect to
10 non-legislative matters affecting any non-governmental person
11 in which the employee has a significant financial interest.
12 `` (b) Paragraph (a) shall not apply if an employee first
13 advises his employing authority of his significant financial
14 interest and obtains from his employing authority a written
15 waiver stating that the participation of the employee is
16 necessary. A copy of each such waiver shall be filed with the
17 Committee on Standards of Official Conduct.'`.

Rule XLIII is amended by adding a new paragraph (12).

(12) (a) Except as permitted by subsection (b) of this paragraph, any employee of the House of Representatives who is required to file a report pursuant to Rule XLIV of the Rules of the House shall refrain from participating personally and substantially as an employee of the House in any contact with any governmental agency with respect to non-legislative matters affecting any non-governmental organization in which the employee has a significant financial interest.

(b) Subsection (a) of this paragraph shall not apply if the employee first advises his employing authority of his significant financial interest and obtains from his employing authority a written waiver stating that the participation of the employee is necessary. A copy of any such waiver shall be filed with the Committee on Standards of Official Conduct.

In report language the Committee on Standards of Official Conduct ^{should be directed to} ~~shall~~ issue interpretative guidelines which clarify the meaning of the terms "Participating personally and substantially"; "contact"; "government agency"; "non-legislative matters" "non-governmental organization" and "significant financial interest".

HIGHLIGHTS BY TITLE OF GOVERNMENT ETHICS REFORM ACT OF 1989
(November 14, 1989)

TITLE I -- LIMITATIONS ON OUTSIDE EMPLOYMENT & ELIMINATION OF
HONORARIA

- Members, officers and non-career employees of the Federal government earning at the GS-16 grade pay level and above could not have outside earned income of more than 15% of Executive Level II salary beginning in 1991;
- Honoraria would be prohibited for all government Members, officers and employees beginning in 1991;
- Payments in lieu of honoraria could be donated on behalf of a Member, officer or employee to a charity provided any such payment does not exceed \$2,000, does not financially benefit the individual or immediate family member and is not received or counted for tax purposes.
- Members, officers and employees could not be affiliated with or employed by a professional service firm which involves a fiduciary relationship, for compensation, or practice a profession involving a fiduciary relationship for compensation;
- Members officers, or employees could serve on boards of directors without compensation; and could teach with compensation if approved by the supervising ethics office;
- The above provisions do not apply to the Senate;
- Executive branch employees required to divest holdings for conflict of interest reasons could defer taxes on the gain by reinvesting in an approved neutral instrument within 60-days.

TITLE II -- FINANCIAL DISCLOSURE

- Payments made to charities in lieu of honoraria would be disclosed beginning in 1991 by source and amount, but the identity of the recipient charity would be filed in confidence with the supervising ethics office; spousal honoraria must be reported by source and amount;
- More detailed reporting of travel expenses would be required;
- Gifts and travel reimbursement thresholds for reporting would be made uniform at \$200 from any source;
- Financial disclosure reporting categories would be broadened to range from less than \$15,000 to over \$1-million;
- Blind trust requirements would be tightened to ensure the independence of the trustee, and the total value of trust assets would be disclosed;
- Termination reports would be required on May 15 or 30-days after leaving government, whichever occurs later;
- Civil penalties would be increased from \$5,000 to \$10,000 for knowing and willful failure to file or false filings.

TITLE III -- CITIZENS' COMMISSION ON PUBLIC SERVICE & COMPENSATION

- The quadrennial commission on executive, legislative and judicial salaries would be reconstituted as a Citizens' Commission on Public Service and Compensation consisting of 11 members, including 6 chosen by lot from registered voters, and 5 appointed by the President, Congress, and Judiciary;
- The commission would first be appointed in fiscal 1993; the President would submit his recommendations in January of 1994;
- The president's recommendation would be subject to a privileged joint resolution of approval if offered by the majority leader within 60-days;
- No recommendation or other pay increase could take effect in the same Congress or without an intervening House election;
- The 1989 and 1990 COLAs (4.1% and 3.6%) would be restored for Congress (except the Senate) and executive and judicial branch senior officials denied these adjustments;
- Senior officials of the three branches (except for Senators) would receive a 25% salary increase in 1991 as part of the ban on honoraria and new restrictions on outside income;
- Future annual COLAs for senior officials would be tied to the Economic Cost Index for private industry salaries minus .5%, and could never exceed 5%.

TITLE IV -- MISCELLANEOUS STATUTORY CHANGES

- Various statutory changes from the President's ethics package relating to conflicts of interest would be included;
- The incidental use of government and officially leased vehicles would be permitted subject to regulations; House Administration Committee is directed to adopt such regulations for the House;
- The "grandfather clause" on converting campaign funds would be repealed for Members after the 102nd Congress, and Members could not convert more than held by their campaign fund on the date of enactment.

TITLE V -- HOUSE RULES CHANGES

- Gifts from any source would be prohibited other than from relatives, gifts of personal hospitality, and those not aggregating more than the minimal amount permitted under the Foreign Gifts and Decorations Act (now \$180); gifts under \$75 would not be counted towards aggregate and meals or beverages consumed which are not in connection with overnight lodging would be exempt; waivers from the ethics committee are authorized in exceptional circumstances;

- The anti-discrimination provisions in various House rules, regulations and elsewhere would be consolidated in the Code of Official Conduct;
- The current rule prohibiting Members from retaining staff who do not perform work commensurate with their pay would be amended to extend to officers and committees and to ensure staff are performing official duties in the offices of their employing authority;
- The Committee on Standards of Official Conduct would be expanded from 12 to 14 members in 1991 and would be required to "bifurcate" its investigative and adjudicative functions into separate subcommittees; reports would be required on any investigation undertaken; right to counsel on the House floor would be allowed for accused Members; a three-term statute of limitations would apply to investigations unless violations are related to more recent offenses; an Office of Advice and Education would be created in the ethics committee to assist with inquiries and advisory opinions and conduct periodic briefings and seminars for Members, staff and spouses to acquaint them with ethics rules.
- The honoraria ban and outside income limits and restrictions to be effective in 1991 would be incorporated in House rules.
- A 4-day limit on domestic private travel and 7-day limit on foreign travel paid by private sources would be imposed, with waiver authority granted to the ethics committee.

TITLE VI -- SENATE RULES CHANGES [To be provided by Senate]

(1) Allow language -

Sec 208 Criminal Code:

[white house - source]

"Staff - that makes a contract
w/ agency on the half of Co that
may involve a conflict will
be subject to criminal sanctions..."

we draft a rule - making
a person in violation - unless
a written waiver x

To get them to accept a
rule - we agreed to repeal the
Procurement items re DoD

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a Member served.

- Define agency for a Legislative Branch employee as the Member for whom the employee worked and any employee of the Committee and/or personal staff on which the employee served.

- 204 restricted:
- 2 yr on official
overseas
- 4th - 2 yr ban
- o To equalize treatment of the branches, repeal 18 U.S.C. 207(b). (This still retains the lifetime bar on representations in matters in which one had personal and substantial involvement and the one year cooling off period, for Senior Employees.) *Still have lifetime bar on everything.*
 - o Require that Executive Office of the President (EOP) be treated as one agency for cooling-off period purposes to ensure that a former Senior Employee who leaves any EOP agency cannot contact anyone at any other EOP agency (e.g., a former top NSC staffer could not contact anyone at OMB).
 - o Define Senior Employees as GS-17s (or equivalents) and up, and eliminate the current designation system.
 - o Repeal section 6 of the Office of Procurement Policy Act [See section 602(b) of the Administration bill].

Brooks - Jim Lillen

finding and investigations, and such Office is required to provide such assistance.

4. Capital gains deferral: Executive officials who divest holdings with the approval of OGE office to avoid conflicts of interest may roll the basis into new holding and defer tax liabilities.

5. Interpretation of the honoraria statute is being vested in the appropriate ethics office, rather than the FEC, and the law is being clarified to say that honoraria is counted for the year in which it is earned.

6. Misdemeanor and civil penalties and injunctions are authorized for violations of the gratuities and conflicts of interest statutes.

7. Contingency fees for lobbying the executive and legislative branches are prohibited.

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PRINCIPAL ISSUES

1. Conflict-of-Interest Coverage - *part matters / specific parties*

- o Amend 18 U.S.C. 208 to bar Legislative Branch staff from personal and substantial involvement in particular matters involving specific parties in which they have a financial interest (or such an interest is attributed to them). (As defined in current regulations, "particular matters involving specific parties" does not include legislation, rulemaking, or policy discussions.) *including nego for ee*
- o Add a provision to 18 U.S.C. 208 stating that it does not prohibit an employee from participating in the formulation of Federal legislative proposals or positions. *also ok for spec branch working on legis.*
- o Extend to Members of Congress the portion of 18 U.S.C. 208 that prohibits an official from personal and substantial participation in particular matters that affect entities with which he is negotiating for employment. - *Legis. exempt.*
- o Give the President the authority to grant conflict-of-interest waivers under 18 U.S.C. 208 "in the national interest." [See Section 104 of the Administration bill amending 18 U.S.C. 208(b)(4).] Add similar provisions to 18 U.S.C. 203, 205, 207, and 209.

*case work -
entirety*

*members &
staff
only*

*18 USC 219
see*

2. Post-Employment Coverage

Tax Rollover

- o Extend to the Judicial Branch the existing Executive Branch lifetime bar (in 18 U.S.C. 207(a)) on representations in matters in which a former employee was personally and substantially involved.
- o Extend to the Judicial Branch and to the Legislative Branch the Executive Branch one-year cooling off period (in 18 U.S.C. 207(c)) during which a former Senior Employee may not make representations to his/her agency.
- Define agency in the Judicial Branch as equal to the specific court on which the individual served (e.g., the Eighth Circuit, not all circuits; the Northern District of N.Y., not all district courts in a circuit).
- Define agency for a Member of Congress as equal to any Member or staff person on a Committee on which

GS-17

SENATE ETHICS BILL SUMMARY -- DRAFT

TITLE I: POST-EMPLOYMENT LOBBYING.

Similar to H.R. 5043 (100th Congress) as passed by Congress.
Highlights are:

1. On matters in which a former employee participated personally and substantially while a federal employee, prohibits representation of a party other than the U.S. for life. On matters in which a former employee had official responsibility for the last year of employment, prohibits representation for 2 years.

2. General one-year ban on contacting federal employees with the intent to influence on official business to be applied to former officials in the following ways:

Members of Congress: Branch-wide.

Congressional staff: For personal staff, contacting their Member or other on the personal staff, or committee staff under their Member's control; for committee staff, contacting Members or staff of that committee, or personal staff of the Member employing them; for leadership staff, contacting Members of the leadership or other leadership staff, or personal staff of their Member. Applies to staff paid at or over the GS-17 rate.

Top-level executive officials (EL-I and -II): Any employee in the agency in which the official served, and any EL-I and -V in the executive branch, for 1 year.

Other senior officials: Executive Levels III-V, Military O-7 and above, heads of compartmentalized units (irrespective of rank), and GS 17 and above are prohibited from making contact with anyone in their agency for 1 year.

3. Compartmentalization: Compartmentalization of agencies for purposes of the one-year ban would be prohibited for the Executive Office of the President.

4. Compensation as element of the crime: Would not be required. This is the same as current law, but different than H.R. 5043.

5. Inside information: Disclosure of non-public information relating to trade or treaty negotiations is prohibited. This is in lieu of both the general "aiding and advising" provision of H.R. 5043 (Rudman floor amendment) which is opposed by the Administration, and the Bush proposal which prohibits the disclosure of any information designated as sensitive by the Administration.

6. Foreign entities: For former officials covered above, representation of foreign governments or political parties before

any U.S. agency or official, and aiding and advising such foreign entity with the intent to influence the U.S. is prohibited for 1 year.

7. Exemptions: International organizations to which the U.S. belongs are added to the entities whose employees are exempt from the 1 year contact ban. Current law so exempts state and local governments and non-profit hospitals and universities, and elected officials are exempt from the entire section.

8. Penalties for violation: \$250,000 and/or 5 years for "corrupt" violations. \$10,000 and/or 2 years for other violations. Civil forfeiture of proceeds and injunctive relief authorized.

TITLE II: FINANCIAL DISCLOSURE

1. The three separate financial disclosure titles (one for each branch) are collapsed into one title.

2. The existing "in excess of \$250,000" category of assets is divided into 3: assets from \$250,001 to \$500,000; \$500,000 to \$1,000,000; and assets in excess of \$1,000,000. The lowest 2 tiers (\$1-5,000 & \$5-15,000) are collapsed into one.

3. The exemption for disclosing loans from relatives will be limited to spouses, parents, siblings, and children.

4. Termination reports will be required in the legislative branch.

5. Legislative branch financial disclosure will be required for employees paid at or over the GS-15 rate of pay (about \$57,000). The threshold will remain at the GS-16 level for the other 2 branches.

6. The penalty for failing to file or falsely filing is doubled to \$10,000. Any individual filing more than 30 days late without an approved waiver shall pay a filing fee of \$200.

7. Legislative and judicial branch disclosure filings will have to be reviewed within 60 days of their being filed. (Executive branch disclosures are already so reviewed.)

8. Service on Boards of Directors: Permitted without compensation for nonprofit entities. Prohibited for for-profit corporations or enterprises unless a waiver is granted by the appropriate ethics office (Senate Ethics Committee for the Senate).

9. Creates commission to study the federal appointments process with 6 members appointed by the President and 2 each by the 2 Senate leaders.

TITLE III: GIFTS AND TRAVEL

NOTE: Changes in Senate gift and travel rules will be done through

Senate rules changes, except as noted. The House is writing its own provisions. The following rules will apply to the Senate only.

1. Meals and beverages, and entertainment incidental thereto, will be excluded from the definition of a gift. All entertainment will no longer be excluded, and will therefore be treated as gifts.
2. Personal hospitality and gifts from relatives will continue to be excluded.
3. The de minimus value below which gifts do not count (for both acceptance and financial disclosure) is raised from \$35 to \$75. (If the \$35 figure had been adjusted for inflation since its enactment, it would be \$72 at the present time.)
4. Gifts in excess of \$100 may not be accepted from "prohibited sources", with the current definition to be continued.
5. The aggregate value of gifts from any other source may not exceed \$300 in a calendar year.

(NOTE: The House is planning to include a meals and beverages exception (it has no meals, beverage and entertainment exception at present); raise the \$100 aggregate limit, \$35 de minimus limit, and \$100 disclosure floor to \$200, \$70, and \$200 respectively and adjust those figures biennially for inflation; and expand the definition of "prohibited source" to include everyone other than a relative.)

6. Travel: Non-government paid travel (exclusive of travel paid for by campaign committees) will be limited to 3 days for domestic trips and 7 days for foreign trips, excluding travel time.
7. Executive branch gifts and travel: OGE (for gifts) and GSA (for travel) will be authorized to write rules governing the acceptance of such by executive branch employees. The language will be identical to the Bush proposal, but limited to his branch.
8. Gifts accepted by an employee that are permitted by the rules of his or her agency (including the House and Senate) will be legal to accept. Statutory change.

TITLE IV: OTHER REFORMS

1. Conversion of excess campaign funds of retiring Members elected before January 8, 1980 to personal use is prohibited. (Repeal of the grandfather clause.)
2. OGE is authorized to write conflict of interest rules and grant waivers.
3. The House and Senate Ethics Committee are authorized to request assistance from GAO's Office of Special Investigations in fact

**ADMINISTRATION REQUESTS FOR RELIEF FROM
UNNECESSARY, BURDENSOME ETHICS LAWS AND REGULATIONS
accommodated in the House Ethics bill**

1. Allow executive branch to set regulations to allow acceptance of reasonable gifts
2. Revise existing law prohibiting gifts to superiors to recognize reasonable exemptions
3. Allow disclosure filers to substitute exact disclosure instead of filling out set forms, if authorized by regulation
4. Modify pension/mutual fund exemption to reduce reporting if authorized by regulation
5. Clarify that outside earned income restrictions apply only to political appointees (not civil service)
6. Change 15% cap to be executive level II for all employees
7. Clarify that outside earned income limits do not apply to special government employees (part-time)
8. Technical modifications to clarify that divestiture is required by certificate of divestiture issued by agency, President, or OGE
9. Change "partner" to "general partner" in conflict of interest statute (18 U.S.C. 208)
10. Clarify that ~~non~~-military personnel in White House not be included in limits on outside earned income
11. permit disclosure filing extensions to be issued by agency and OGE
12. Clarify that OGE or agency can make waivers for incidental conflict problems under the criminal conflict of interest statute (18 U.S.C. 208)
13. Permit incidental use of official cars to address problems the President raised with the Speaker and Republican Leader
14. Permit private reimbursement for travel related to official business of executive branch officials
15. Establish commission to study simplification of appointment process as requested by President

Additional requests that may be politically feasible

1. Give the President the authority to grant conflict of interest waivers under 18 U.S.C. 208 (criminal conflict of interest statute) "in the national interest"
2. Repeal section 6 of the Office of Procurement Policy Act (Brooks/Glen)
3. Make qualified blind trusts available post-confirmation (now nominee must check box before confirmation or never be permitted to use blind trust)
4. Repeal and/or conform overlapping and inconsistent Energy Department and DoD conflict of interest and post employment provisions
5. Clarify that persons ordered to divest 90 days prior to enactment of bill be permitted to "roll over" stock and avoid capital gains. Should this be extended to all persons required to sell stock in 1989?
6. In bill or report clarify that new entrants/annual disclosure filers need not report gifts/transactions prior to government service
7. Strike "partner" in 18 U.S.C. 207(g), or amend to read "general partner"
8. Include recertification for SES employees (President called for as part of pay increase for SES, agreement has been reached with SES)
9. Amend quadrennial pay commission changes to (1) reverse ratio of 5 public service experts to 6 randomly selected citizens, and (2) permit the President to select the chairman (under current bill, the commission votes to select)

**Additional requests that are probably not politically feasible
in the House**

1. Repeal of certain general post employment restrictions on executive branch (2 out of 4 existing provisions)

Many technical suggestions were also adopted

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Post
Rm
[Exempt]

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16 necessary. A copy of each such waiver shall be filed with the
17 Committee on Standards of Official Conduct.'`.

BIPARTISAN TASK FORCE ON ETHICS

SUMMARY OF RECOMMENDATIONS

October 18, 1989

The Ethics Reform Task Force has reached agreement on a comprehensive overhaul of House ethics rules and conflict of interest laws that will strengthen and clarify existing rules, while imposing tough new restrictions on outside earned income and acceptance of gifts and free travel.

The Task Force recommendations amount to the most far-reaching government-wide ethics legislation in over a decade. The reform proposals build on the fundamental principles established by the Obey Commission in 1977, and simplify the rules to enhance Members' understanding and compliance.

The statutory changes include many of the reforms in the conflict of interest laws proposed by the President, and would apply to all officers and employees paid at the GS-16 salary rate or above in all three branches.

The Task Force proposes to abolish honoraria in 1991 and limit all other outside earned income to 15 percent of salary; prohibit directors fees, legal fees, and other professional services income; ban gifts over \$200 in value from all sources; limit privately-funded speaking trips to four days with detailed reporting of the dates and itinerary; increase the accountability of Members for the performance of official duties by staff; expand and update financial disclosure requirements; and repeal the grandfather clause on personal use of campaign funds.

The reform package includes a 7.9 percent COLA increase in 1990 and a 25 percent pay raise in 1991. It also establishes in permanent law the principle that any salary increase must be voted on and will not take effect until after an intervening election. The make-up of the Quadrennial Commission would be expanded and modified to include members broadly representative of the public.

The panel also recommends a major revision in the Ethics Committee enforcement procedures by separating the investigative and adjudicative functions within the existing committee structure, and improvements in the committee's educational and interpretive functions.

(over)

3 Diff ways on Ethics
1) Honoraria -
2) Salary by Prohibited Person
3) Ethics Comm -
4) Some Diff -
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HIGHLIGHTS OF ETHICS REFORM PACKAGE

Honoraria/Outside Earned Income

* Freeze honoraria in 1990 at \$26,850, and abolish in 1991. Prohibit any tax advantages from honoraria assigned to charity.

* Limit all outside earned income to 15% of salary in 1991.

* Prohibit directors fees, legal fees and other professional services income, but allow unpaid service on boards of directors.

Compensation

* Provide the 1989 COLA upon enactment and the 1990 COLA in January, for a 7.9% increase (compounded) to \$96,600 in 1990.

* Provide a 25% salary increase in 1991, to about \$125,000.

* Require that any salary increase, in excess of COLA, must be voted on and shall not take effect until succeeding Congress.

Gifts/Travel Expenses

* Ban gifts of more than minimal value, as defined under the Foreign Gifts Act (\$200 as of January 1, 1990), from any source except relatives. Gifts of less than \$75 in value don't count. Exempt gifts of personal hospitality and meals not in connection with overnight lodging. Authorize Ethics Committee waivers.

* Limit privately funded speaking trips or fact-finding events to four days (seven days for foreign travel). Allow spouse or another family member on such trips. Authorize Ethics Committee to grant waivers in exceptional circumstances.

Financial Disclosure

* Require disclosure of source, amount, and recipient of any honoraria assigned to charity, and source and amount of honoraria earned by the spouse.

* Require detailed reporting of travel expenses by including dates and places of travel, and description of expenses provided.

* Broaden categories of value to range up to \$1 million.

* Tighten blind trust requirements to insure independence of trustee, and require disclosure of total value of trust assets.

* Require termination reports 30 days after leaving office.

Campaign Funds

* Repeal grandfather clause as of 1991, and ban conversion to personal use of funds contributed after date of introduction.

CURRENT STANDARDS

USE OF CARS LOCALLY:

- o According to the General Accounting Office, use of cars by spouses is only allowed if:

- (1) the spouse is accompanying an official whose transportation is itself authorized to or from his home and an official function and the spouse's transport does not cause additional expense to the government;

- (2) the spouse of a government official entitled to routine home-to-work transportation is being transported to or from an official or quasi-official function that the government official is attending, the spouse's presence is in the government's interest and circumstances make it awkward or impossible for the official to accompany the spouse enroute; or

- (3) government transportation is necessary for security reasons. This requires a showing of a "clear and present danger."

[Numerous General Accounting Office opinions, most recently in 1985.]

Note: During 1985 hearings on statutory amendments (resulting in the current law), OMB General Counsel Mike Horowitz endorsed this standard and cited it to explain why the legislation did not need to deal specifically with spouses.

- o Except as specified by statute, officials are not entitled to a government car for transport between home and work. Exceptions include: certain named officials; officials at Executive Level I; a set number of other employees specifically designated by the President; and employees designated by agency heads based on emergency, security considerations, or compelling operational considerations. [31 U.S.C. 1344.]
- o General Services Administration (GSA) regulations issued in 1988 to implement this statute state that if an employee is authorized transportation between his/her residence and official duty site, this privilege does not extend to his/her spouse, other relatives, or friends, unless--
 - (1) It is consistent with the agency's policy,
 - (2) They are with the employee when he/she is picked up, and

(3) They are transported to the same place or event.

[41 C.F.R. 101-6.402(f).]

- o Although at first glance, the GSA regulations may seem to cut back on spousal travel permitted under the GAO standard, the GSA Administrator wrote the State Department in September 1989 that the regulations do not affect transport for spouses when they are serving official purposes. Although the letter states that it is for the agency to determine whether the spouse's activity "furthers the mission of the agency," and acknowledges that there may be unique factors at the State Department because of the foreign representational role, the Administrator advised the State Department to check with the House Government Operations Committee Subcommittee on Government Activities and Transportation and to request a GAO opinion.
- o GSA regulations and GAO opinions allow ridesharing on a space available basis if consistent with agency policy and no added distance is travelled. [41 C.F.R. 101-6.402(f).]
- o Spouses are not themselves considered representatives of the United States, except overseas, and cannot 'represent' the Government official at functions he or she does not attend. [1984 and 1985 General Accounting Office opinions.]
- o According to GAO, the fact that a spouse performs services that benefit the government does not meet the requirement that government vehicles be used only for an official purpose: there is virtually never an official purpose for transporting unaccompanied private persons. [1984 GAO Opinion.] (Also, a 1982 GAO Opinion held that Interior Department entertainment funds could not pay for a breakfast for Cabinet spouses hosted by the Secretary's wife.)
- o In practice, most agencies seem to allow Cabinet spouses to accompany the Cabinet member. Agencies split on whether spouses may meet the Cabinet member at an official event. Most agencies do not otherwise allow an unaccompanied spouse to use a government car.

TRAVEL

- o Public funds may be used to pay for private persons invited by a federal official to travel for the purpose of conferring upon official government matters. 5 U.S.C. 5703. The private person must be performing a direct service for the government. Mere attendance at meetings hosted by a federal agency is not sufficient. [1982 GAO Handbook.]
- o Absent special statutory authority, appropriated funds cannot be used to pay for private citizens to travel to meetings. [31 U.S.C. 1345; 1982 and 1983 GAO Rulings.]

- o Agencies with gift-acceptance authority may use donated funds for spousal travel if it would further the agency mission.
- o An official may accept travel for himself and his spouse from a state or local government, if agency regulations permit. [1988 OLC Opinion.]
- o Under DOJ regulations implementing the Training Act, an employee may accept travel for himself and his spouse from a 501(c)(3) provided there is no direct conflict of interest and certain conditions are met. [1988 OLC Opinion.] (Note: the ruling seems to allow DOJ officials to accept travel for a spouse from non-501(c)(3)s too, but that aspect seems to contradict without explanation an earlier opinion.)
- o Spouses may travel on a government plane with an official delegation if the relevant agency determines that they are serving an official function and if there is no incremental cost to the government. [Various GAO Opinions.] Some agencies do not apply the second prong of this test.
- o Spousal expenses on foreign trips may in certain circumstances be borne by the U.S. government, if a spouse's presence on a foreign trip can be said to serve an official function. [1988 OLC Opinion for the Attorney General.]
- o An employee may accept from a foreign government expenses for travel -- wholly inside a foreign country -- for the employee and his/her spouse, if refusal to accept would embarrass the foreign government and if consistent with U.S. interests. [Foreign Gifts and Decorations Act.]
- o The Administration's ethics bill would give all agencies the authority to accept gifts to fund spousal travel.

	<u>with</u>	<u>w/o, joining</u>	<u>w/o, solo.</u>
Agriculture ^{447-7215/4}			
Commerce Marilyn Wagner	OK	OK	Not allowed since 1985. GAO Report.
Defense ^{695-3341 2714}			
Education	OK		
Energy Bill Crane DDC	OK	OK	OK if official Energy fms.
HHS ^{No questions in this Admin. Practically being be difficult} Sandy S.	OK: limited	NO	NO
HUD			
Interior John Trezise 343-4722	OK	Would allow, if attendance OK expected or required - e.g. will. OK from DET.	Has not come up this Admin.
Justice Imis Spousals abor	OK	Not ok from home.	Not currently allowed.
State Jim Throssen	OK	OK	Not allowed.
Transportation Phil Brady	OK	No, but willing to change.	Allowed once when both were invited by the President.
Treasury _____ Tom Archibald	OK	NO but will revisit given GSA req.	NO
Veterans			
VSTR ³¹⁵⁰			
OMB Cob Danus	OK w/no extra distance	NO	NO

EXECUTIVE OFFICE OF THE PRESIDENT
 FY 1990 AUTHORITY FOR EOP AGENCIES AFTER GRAMM-RUDMAN SEQUESTRATION
 November 17, 1989
 (Dollars in 000s)

EXECUTIVE OFFICE OF THE PRESIDENT AGENCY	APPROPRIATION /1	GRH SEQUESTER AMOUNT	POST GRAMM- RUDMAN AUTHORITY	GRH CUT RELATIVE TO APPROPRIATION	NON- DISCRETIONARY AS % OF APPROPRIATION (see Note /3)	TRAVEL AS % OF APPROPRIATION	DISCRETIONARY AS % OF APPROPRIATION (see Note /4)
Compensation of the President	250	0 /2	250	0.0%	NA	NA	NA
The White House Office	30,639	1,539	29,100	5.0%	84%	2.5%	13%
Office of Administration	18,825	927	17,898	4.9%	75%	0.2%	25%
Special Assistance to the President	2,335	121	2,214	5.2%	86%	6.9%	7%
Official Residence of the VP	578	14	564	2.4%	37%	0.9%	62%
Executive Residence	6,898	314	6,584	4.6%	71%	0.1%	24%
Council of Economic Advisors	2,906	154	2,752	5.3%	90%	1.5%	9%
Council on Environmental Quality	1,500	47	1,453	3.1%	91%	2.3%	6%
National Critical Materials Council	400	12	388	3.0%	90%	2.2%	8%
National Security Council	5,409	281	5,128	5.2%	83%	7.4%	9%
National Space Council	1,000	10	990	1.0%	87%	1.8%	11%
Office of Federal Procurement Policy	2,660	130	2,530	4.9%	92%	1.5%	7%
Office of Management and Budget	44,894	2,184	42,710	4.9%	87%	0.8%	13%
Office of National Drug Control Policy	12,000	192	11,808	1.6%	81%	0.2%	17%
Office of Policy Development	3,079	125	2,954	4.1%	95%	1.9%	3%
Office of Science and Technology Policy	2,897	87	2,810	3.0%	89%	6.4%	5%
President's Mgmt. Improvement Fund	500	55	445	11.0%	NA	NA	NA
Unanticipated Needs	1,000	55	945	5.5%	NA	NA	NA
United States Trade Representative	18,000	841	17,159	4.7%	77%	8.4%	15%
TOTAL EOP	155,770	7,088	148,682	4.6%			

NA = NOT APPLICABLE

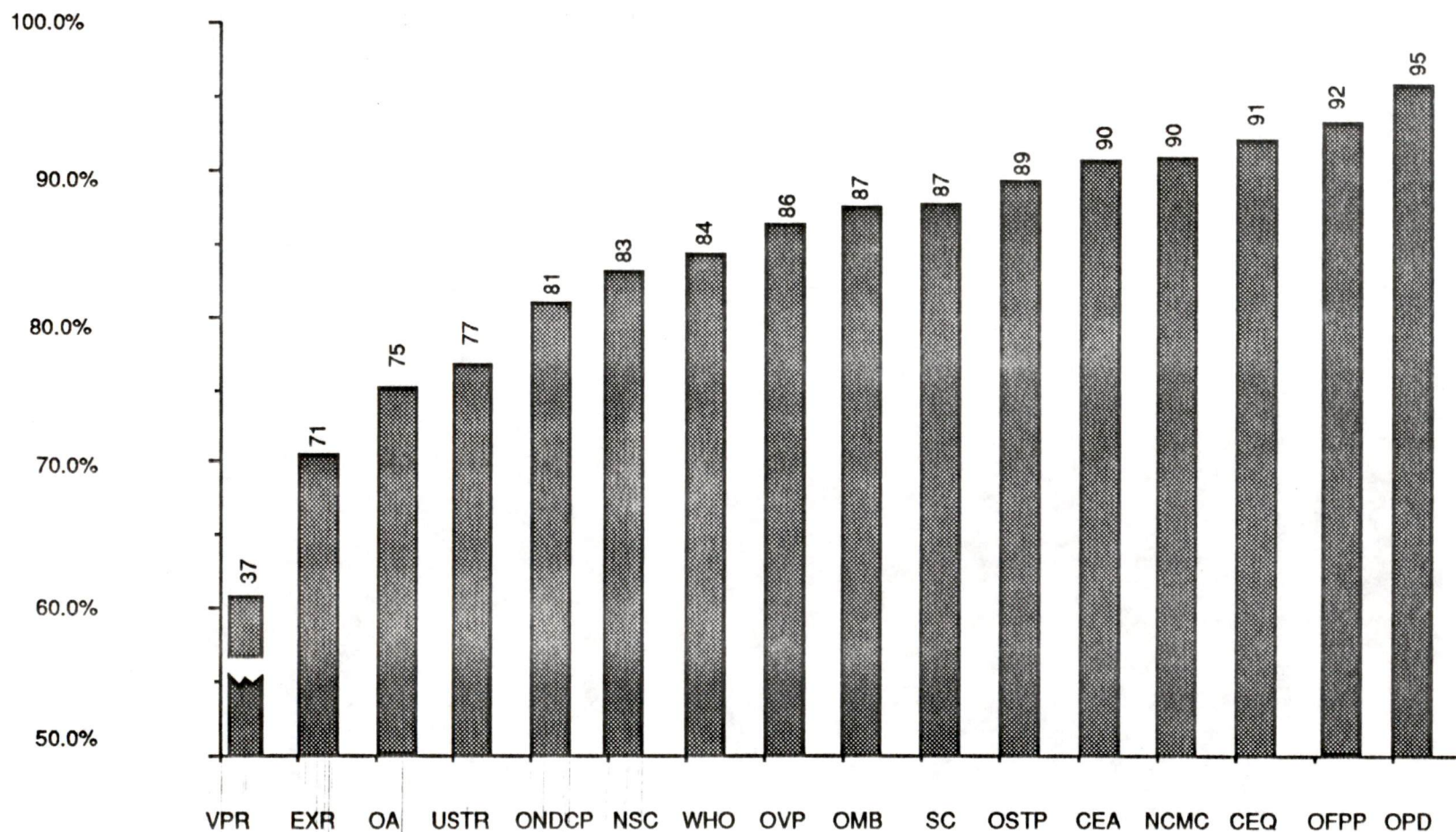
/1 All Amounts Represent Actual Appropriation or Conference Amount

/2 Presidential Compensation Unaffected Under Sequestration

/3 Non-discretionary Represents Salaries, Benefits, Rent, Utilities

/4 Discretionary Represents Equipment, Services, Supplies, Printing, Trans. of Things

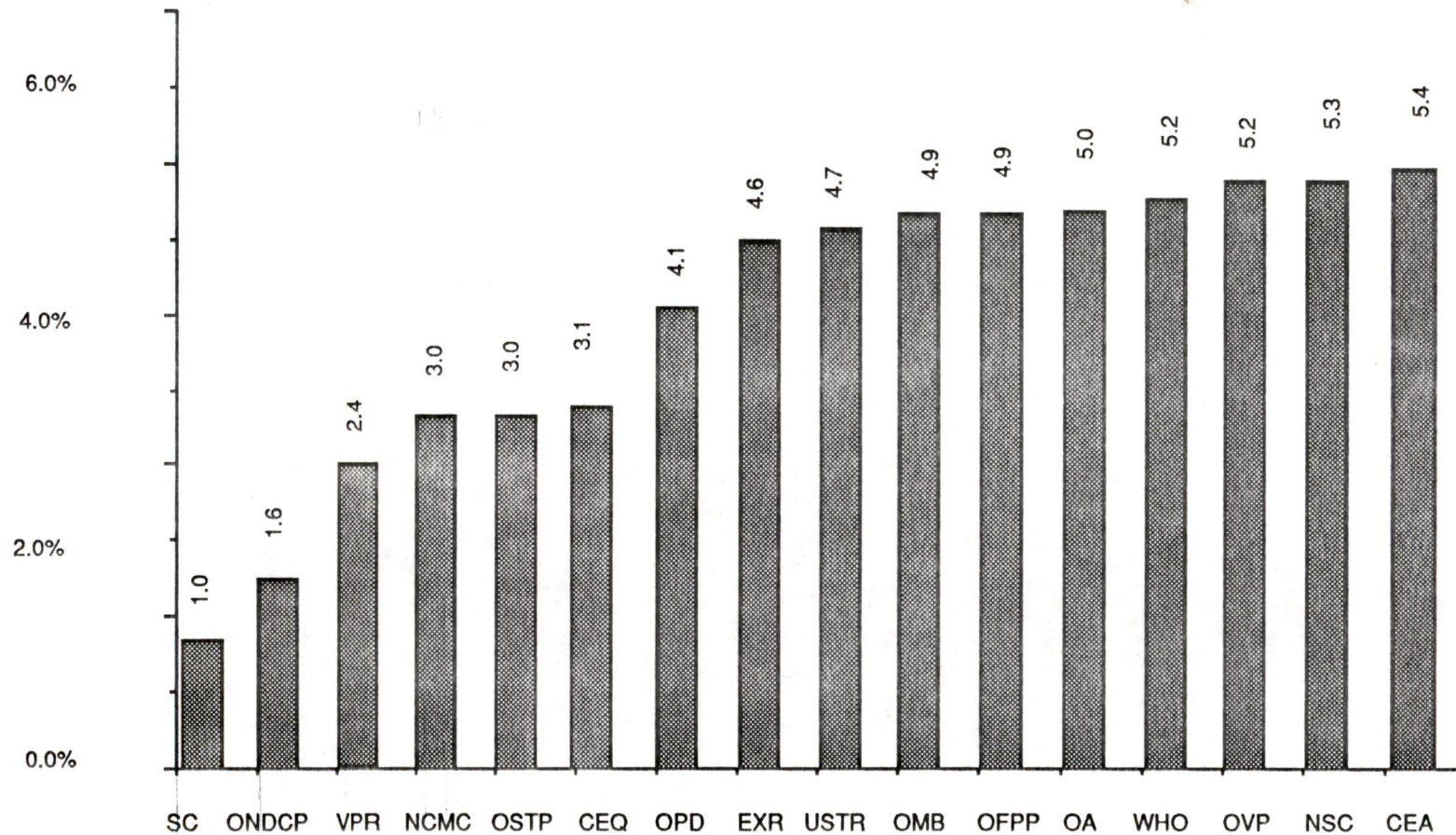
**PERCENT OF EOP AGENCIES' BUDGETS IDENTIFIED AS
NON-DISCRETIONARY**



**THE FARTHER TO THE RIGHT AN AGENCY APPEARS ON THE HORIZONTAL,
THE LESS FLEXIBILITY THE AGENCY HAS IN ITS BUDGET TO ABSORB CUTS.**

NOTE: Non-discretionary defined as personnel, rent, and utilities.

GRAMM-RUDMAN CUT
(AS A PERCENT OF EOP AGENCIES' BUDGETS)



THE FARTHER TO THE RIGHT AN AGENCY APPEARS ON THE HORIZONTAL,
THE GREATER THE PERCENTAGE CUT UNDER GRAMM-RUDMAN.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	From C. Boyden Gray to John H. Sununu Re Attached Draft Guidance on Officerships and Fundraising (2 pp.)	5/1/89	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Ethics Package

Open on Expiration of PRA
(Document Follows)

By JP (NLGB) on 5/12/05

Date Closed:	11/30/2004	OA/ID Number:	29178-004
FOIA/SYS Case #:	1998-0004-F	Appeal Case #:	
Re-review Case #:	2005-0426-S	Appeal Disposition:	
P-2/P-5 Review Case #:		Disposition Date:	
AR Case #:		MR Case #:	
AR Disposition:		MR Disposition:	
AR Disposition Date:		MR Disposition Date:	

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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 P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
 P-3 Release would violate a Federal statute [(a)(3) of the PRA]
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 financial information [(a)(4) of the PRA]
 P-5 Release would disclose confidential advice between the President
 and his advisors, or between such advisors [(a)(5) of the PRA]
 P-6 Release would constitute a clearly unwarranted invasion of
 personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
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 (b)(8) Release would disclose information concerning the regulation of
 financial institutions [(b)(8) of the FOIA]
 (b)(9) Release would disclose geological or geophysical information

THE WHITE HOUSE

WASHINGTON

May 1, 1989

MEMORANDUM FOR GOVERNOR JOHN H. SUNUNU
CHIEF OF STAFF

FROM: C. BOYDEN GRAY *cmg*
COUNSEL TO THE PRESIDENT

SUBJECT: Attached Draft Guidance on Officerships and
Fundraising

Attached for your review is a revised draft of the guidance memorandum on the propriety of federal officials becoming officers of for-profit and non-profit organizations and on participation in fundraising activities. The key differences between this version and the version I sent you earlier are:

- o Rather than outright approve of honorary co-chairmanships of fundraising events, this version leaves that issue to case-by-case agency determinations, as has been past practice. I am concerned that going further could lead to a significant dispute with the Office of Government Ethics.
- o This version states that White House policy has been not to approve honorary co-chairmanships for White House staff and that this policy will continue.
- o This version is addressed to all noncareer political appointees, not just to the Cabinet and White House Office employees.

These changes result from the completion of the clearance process within my office. I will hold off on sending the revised policy to the Office of Government Ethics until we discuss the issue further. Meanwhile, attached for your reference is a list of the pros and cons of allowing honorary co-chairmanships of fundraising events.

To the extent that you may be urged to allow a relaxation of prior standards for White House staff, I caution against that course of action. Apart from anything else, such endorsements carry the risk that an event or cause will later turn out to create some problem or embarrassment, and any such embarrassment will more likely reflect poorly on the President if a White House staff member is involved. I also do not think that the White House has the resources necessary to ensure a careful enough review of each event to avoid any such risk of embarrassment.

Attachments

Should officials be able to serve as honorary co-chair of social events that double as fundraisers?

Pro:

- o The Administration wants to encourage charitable organizations -- note especially the 1000 points of light initiative.
- o The Administration will be heavily criticized by the charitable community if Cabinet officers (who have in many cases previously held such positions) are now precluded from doing so.
- o Since President Bush has lent his name to selected events, it could be incongruous not to let Cabinet members do likewise.

Con:

- o When an official lends his/her name to a fundraiser, he/she becomes associated with the cause, and if the cause encounters any problem or embarrassment (such as excessive expenditures for fundraising, embezzlement, or corrupt leadership), the official -- and the Administration -- could be tarred too.
- o Any time spent screening causes or events to avoid possible embarrassment is apt to be time taken away from official duties.
- o Officials may be accused of displaying favoritism or using public office for private gain in violation of federal ethics orders and regulations.
- o Once an official agrees to co-chair one fundraising event, it may open the door to a flood of such requests.

THE WHITE HOUSE

WASHINGTON

May 4, 1989

MEMORANDUM FOR GOVERNOR JOHN H. SUNUNU
CHIEF OF STAFF

FROM: C. BOYDEN GRAY 
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Recusal Policy for Officials Entering
Government Service

Attached for your review and approval is a guidance memorandum that I propose to issue to agency ethics officers setting forth my general views on when officials entering government should recuse themselves from discussions with their former employers or clients.

Please let me know if you see any problem with my issuance of the memorandum.

Attachment

THE WHITE HOUSE

WASHINGTON

May 4, 1989

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIALS

FROM: C. BOYDEN GRAY
COUNSEL TO THE PRESIDENT

SUBJECT: RECUSAL POLICY

In view of the various inquiries my office has received about when officials should recuse themselves from contacts or dealings with former employers or clients, I wanted to provide you with this written guidance.

As you know, no statute prohibits a federal official from dealing in matters involving or affecting his or her former employer or prior clients, provided that all financial ties with the employer or client have been terminated. Standards of conduct regulations issued pursuant to Executive Order 11222, however, direct employees to avoid any action that may result in or create the appearance of giving preferential treatment to any person, making a government decision outside official channels, or affecting adversely the confidence of the public in the integrity of government. (Although Executive Order 11222 was repealed by Executive Order 12674, the new ethics Executive order, the regulations issued under Executive Order 11222 remain operative until final regulations are issued to implement the new order.)

In general, in order to avoid any appearance of preference toward former employers and clients, I believe that it is desirable for officials entering federal service to recuse themselves, for at least a year, from engaging in private discussions of official business matters with prior employers or clients and/or entertaining individual requests from prior employers or clients for any kind of official action. This one-year cooling-off period would begin to run at the end of the official's prior business relationship with the employer or client.

In providing this guidance, I do not mean to preclude the independent exercise of your judgment about these matters. For example, there may be circumstances in which a recusal of this nature is not practicable and is unnecessary to avoid any appearance of impropriety. There may be other circumstances in which concern for maintaining the appearance of impartial dealings requires a longer period of recusal or a recusal covering a broader scope of activities. These issues will need to be dealt with on a case-by-case basis as you handle the conflict-of-interest reviews for nominees.

If you have any questions, please contact the Office of the Counsel to the President.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
03. Note	From jak to John Sununu Re Honorary Chairmanships (1 pp.)	4/6/89	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Ethics Package

Open on Expiration of PRA
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 By JF (NLGB) on 5/12/05

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PRM. Removed as a personal record misfile.

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 (b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
 (b)(9) Release would disclose geological or geophysical information

THE WHITE HOUSE
WASHINGTON

April 6, 1989

Governor:

We have said "no" to many
of these honorary chairmanships..
if you say yes...you may open
the door to a flood of
similar requests.

jak

*See Boyden Gray
memo attached*

23837

CIVIC SERVICE INCORPORATED

SUITE 870
WASHINGTON SQUARE
1050 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20036
202/785-2070

ROY PFAUTCH
PRESIDENT

TELEX: ITT 4993605 CIVICDC
FACSIMILE: 202/785-1102

March 31, 1989

The Honorable John Sununu
Chief of Staff
Executive Office of the President
The White House
Washington, DC 20500

Dear John:

I am writing to ask you a very personal favor; but, a favor in behalf of a most worthy and merciful cause. On Tuesday, June 27, 1989, at the J. W. Marriott Hotel in Washington, D.C., I will serve as Dinner Chairman for a dinner in behalf of the new Afghan Children's Hospital to be opened next year in Jalalabad, Afghanistan, to treat the many children who have been injured, even maimed in the tragic fighting in that wartorn country.

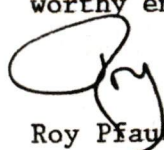
It is my great hope that you will serve as an Honorary Co-Chairman of this event. We would like to enlist a distinguished cadre of Honorary Co-Chairmen to underscore the importance of this effort and the compassion we all feel for these little ones.

Many of us have known Miss Russty Rawding during her service in the Reagan/Bush Administration. She was at White House Personnel and then a key member of John Herrington's team. Russty will be leaving Washington to serve as Managing Director of the new hospital working with Medical Director Dr. Paktiss. In talking with leaders in our own Agency for International Development, I find they share in my feeling of happiness that Russty is taking on this dimension of human service.

Obviously, it takes more than good wishes to bring such a project to fruition. Accordingly, we hope to realize at least \$100,000 clear from the Benefit on June 27. I am happy to report that the expenses for the evening have been underwritten by a generous grant from the American Medical Association through the interest of their Executive Vice President, James H. Sammons, M. D. I am equally happy to report to you that a number of friends have matched my own financial commitment so that we are over halfway towards our goal before even starting our dinner invitations!

To make the evening a resounding success and emphasize reaching out to these children in the name of America's traditional concern and love, I hope we will have your participation on the Committee. The only involvement from you is that, if at all possible, you join us for the Benefit Dinner on June 27. The evening will include a brief "musical production." *and Nancy*

Again, I hope you will join with me as an Honorary Co-Chairman of this effort in which, from our many points of view and politics, we join together in the spirit of what the Washington political community can do when our hearts are in support of a worthy endeavor. Thank you for your consideration!


Roy Pfautch

ST. LOUIS OFFICE: SUITE 2612 ONE MERCANTILE CENTER
ST. LOUIS, MISSOURI 63101 314/436-4185

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
04. Memo	From C. Boyden Gray to John Sununu Re OGE Guidance on Fundraising (1 pp.)	7/17/89	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Ethics Package

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 (b)(9) Release would disclose geological or geophysical information

THE WHITE HOUSE

WASHINGTON

July 17, 1989

MEMORANDUM FOR GOVERNOR JOHN H. SUNUNU
CHIEF OF STAFF

FROM: C. BOYDEN GRAY *CBG*
COUNSEL TO THE PRESIDENT

SUBJECT: OGE Guidance on Fundraising

I have now received a response from the Office of Government Ethics to the draft guidance memo I sent for review in May regarding involvement by government officials with for-profit and non-profit organizations. Copies of both the draft and the OGE reply are attached for reference.

Judge Nebeker's reply states that he can "see no distinction between being a cosignatory of a fundraising letter and serving as cochairman of a social event intending to raise funds for the same non-profit organization." As you may recall, the draft did not take a position on honorary co-chair positions but recommended that Cabinet members wishing to serve in such positions consult the ethics officials at their agencies.

In view of OGE's response, I believe we cannot issue the guidance memorandum in its original form. Rather than have a more restrictive interpretation issued out of the White House, however, it seems preferable to me if we request that OGE embody its advice on this subject into an official OGE opinion that it would circulate throughout the government.

Although OGE's current position is more restrictive than what we had previously contemplated, recent press accounts of HUD activities (attached) have led me to rethink my prior position. I see a real problem when private interests think they can buy favor with the Federal government by endorsing the pet charities of federal officials.

I therefore recommend that we request OGE to issue official guidance describing the limitations on endorsements of fundraising events by federal officials.

Concur _____

Let's discuss _____

Attachments



**United States
Office of Government Ethics**

P.O. Box 14108
Washington, D.C. 20044

June 30, 1989

The Honorable C. Boyden Gray
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Gray:

This is in response to your letter of May 16, 1989, requesting comments and suggestions on a draft memorandum for all noncareer Presidential appointees dealing with participation in the activities of for-profit and non-profit private organizations.

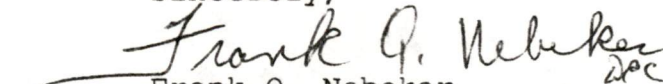
The policy reflected in the section of the draft entitled "General Guidance" would appear to be a matter solely within the discretion of the Administration.

The second paragraph of the section entitled "Fundraising Activities" contains an inaccurate statement of this Office's position. In cautioning that fundraising activities may create an appearance of using public office for private gain, this Office has never indicated that all federal officials must refrain from involvement in the fundraising activities of non-profit organizations. Under the standards of conduct, the appropriate inquiry with respect to private fundraising activities is whether the individual has used or allowed the use of his public office for the gain of the non-profit entity. There are federal officials who may appropriately engage in fundraising activities in a personal capacity, provided no reference is made to their official positions or titles in the course of those activities and provided their fundraising activities are not targeted at the private sector with whom they deal officially. Where the position of a federal official is of such stature that the public will associate his or her name with that position, however, it becomes difficult for that official to engage in fundraising activities, even in a personal capacity, without violating the prohibition against use of public office for private gain. Many to whom your memorandum is addressed fall into the latter category.

I find the next to the last paragraph of the draft memorandum particularly troublesome. This paragraph is addressed to cabinet officials whose names are inevitably associated with their official titles or positions. For this very reason, they even more than other federal officials must diligently refrain from endorsing any private fundraising activity. Having once endorsed the fundraising efforts of a single charity, is it not

preferential treatment to fail to do the same for every other worthwhile non-profit organization? Under the standards of conduct, I see no distinction between being a cosignatory of a fundraising letter and serving as cochairman of a social event intended to raise funds for the same non-profit organization. For this reason, I recommend deletion of this paragraph.

Sincerely,

The signature is written in cursive and includes a large flourish extending to the left.

Frank Q. Nebeker
Director

THE WHITE HOUSE
WASHINGTON

May 16, 1989

Dear Judge Nebeker:

As you may know, a number of government officials have recently asked whether the White House has a policy concerning the propriety of political appointees becoming officers of for-profit and non-profit organizations and participating in fundraising activities. In an effort to provide guidance on these matters, my office has developed the enclosed draft memorandum. In view of the responsibilities of your office, I would appreciate it if you would review the draft and provide me with any comments or suggestions you may have.

If you have any questions, please feel free to call me or contact Amy L. Schwartz of my staff at 456-2674.

Sincerely, **"CRG Signed"**

C. Boyden Gray
Counsel to the President

Attachment

Judge Frank Q. Nebeker
Director
Office of Government Ethics
P.O. Box 14108
Washington D.C. 20044

DRAFT; May 15, 1989

MEMORANDUM FOR ALL NONCAREER PRESIDENTIAL APPOINTEES

FROM: JOHN H. SUNUNU
CHIEF OF STAFF

SUBJECT: Participation in the Activities of For-Profit and
Non-Profit Private Organizations

A number of individuals have asked whether the White House has a policy on government officials holding positions in for-profit or not-for-profit organizations and/or being affiliated with fundraising events for such organizations. This memorandum is intended to provide guidance on these issues.

General Guidance

Following the recommendations of the President's Commission on Federal Ethics Law Reform, the President has sent to Congress ethics reform legislation that would, among other things, prohibit senior employees in the federal government from serving -- with or without compensation -- on the board of directors or board of trustees or as an officer of a for-profit organization. For these purposes, the bill defines a senior employee as one who is required to file a public financial disclosure report (SF-278) under the Ethics in Government Act.

The bill also provides that a senior employee wishing to serve on a board (or in equivalent officer positions) of a non-profit organization would first be required to obtain the approval of his or her supervisor and the designated agency ethics official (DAEO). In granting or denying approval, the DAEO would look to applicable agency standards of conduct, which generally prohibit federal employees from engaging in outside activities incompatible with the full and proper discharge of their official duties (whether on account of a financial or other conflict of interest, competing time demands, or similar factors). In addition, you should recognize that if a government official is an officer in an organization, its financial interests are attributed to the official, to the extent he or she knows about them, under federal conflict-of-interest law.

In view of Administration policy and the pending legislation, the Administration is asking all of you to refrain from serving as a board member or an officer of any for-profit enterprise and to resign from any such positions you currently hold. In addition, we are requesting that you adhere to the case-by-case procedure described above should you wish to retain board membership or an officership in a non-profit organization or to seek such a position in the future. (You should also bear in mind that the

ban on outside earned income in section 102 of Executive Order 12674 prohibits you from receiving compensation in connection with any such position.) This guidance is not intended to supersede any more restrictive review procedure currently in place or to affect current agency practices governing outside activities by employees other than noncareer Presidential appointees.

Fundraising Activities

Questions have also arisen about the appropriateness of federal officials being involved in fundraising activities -- whether or not in connection with service as a board member or officer of a non-profit organization. In discussing fundraising, this memorandum does not address political fundraising activities, which are governed by separate legal and policy provisions.

As a general matter, federal ethical standards prohibit an employee from using public office for private gain or giving preferential treatment to any person or organization. This standard has been interpreted by the Office of Government Ethics to preclude any direct fundraising by federal officials even for charitable causes. Thus, federal officials generally cannot, for example, be co-signatories of fundraising letters for charitable organizations in which they may serve as board members or officers, nor as a general matter should their names appear on the letterheads of letters making fundraising appeals. For the same reason, the Office of Government Ethics also objects to the use of an individual's official title in connection with his or her participation in the activities of a charitable organization.

I recognize that it has been commonplace over the past few years for members of the Cabinet to serve as honorary chair or co-chair of the many Washington D.C. social events that also serve as fundraising events for charities. This guidance does not address that practice, and accordingly Cabinet members wishing to serve as an honorary co-chair for particular events should continue to consult the designated agency ethics official at their agencies on a case-by-case basis to determine whether and/or when such activities are permissible. It has been past White House practice not to approve requests from White House Office officials wishing to serve in these honorary positions, and we will be maintaining that policy.

If you have any questions about this guidance, please contact me or the Office of the Counsel to the President.

H.U.D. Leaders in New York Urged Housing Industry to Give to Causes

Several Hundred Donors Sought Improved Access

By MICHAEL WINERIP
with ERIC SCHMITT

High-ranking officials in the Department of Housing and Urban Development's New York regional office repeatedly solicited the people they regulate — builders, housing managers, architects, lawyers, local housing authority directors — for donations to favorite charities, causes and the going-away parties of these H.U.D. officials.

The fund-raising events, which occurred frequently in the mid-1980's and as recently as last year, involved the previous New York H.U.D. regional administrator, Joseph D. Monticciolo, and the current one, Geraldine McGann.

It is a violation of the Federal ethics code to use "public office or official title for private gain," even if the money goes to charity, according to Mary Brunette, a spokesman for the Secretary of Housing and Urban Development, Jack F. Kemp.

The several hundred who responded by buying tickets to each of these \$150- to \$350-a-plate charity fund-raisers in Mr. Monticciolo's and Mrs. McGann's

honor felt they were improving their access to top H.U.D. officials.

"Does it help you? I'd say yes," said Joseph Barry, a Hoboken builder with several H.U.D. projects who has given generously. "I figured it's not bad to be a good scout and honor the regional administrator. Then I could call Geri McGann or Monticciolo with such-and-such a problem and I think they'd get on the phone more readily."

No Misuse Is Asserted

Those who did not donate wondered if they would suffer when it came to H.U.D. financing. "Maybe if I gave to these things I might have got some favorable treatment. I don't know," said Richard Fox, director of the Plainfield, N.J. Housing Authority. "I just don't have that kind of money."

No one has asserted that money raised at these charity testimonials was misused. Rather, the criticism focuses on whether an official should seek money, for whatever purpose, from people who depend on that official's department for funds.

Miss Brunette said Mr. Kemp had not been aware of the solicitations. But she added: "H.U.D. employees should not use their positions to solicit contributions — even for a charity — from the business and governmental community that they're working with." Violating the Federal ethics code can result in dismissal.

No Response From Officials

The practice was also criticized by Robert McKay, director of the Council of Large Public Housing Authorities. "It creates a 'You scratch my back and I'll scratch yours' mentality," he said. "What bothers me, it's perceived as the cost of doing business with H.U.D. in the current political climate. The authorities in many cases feel obliged to contribute, and if they don't, then what happens the next time auditors show up from H.U.D.'s regional office?"

Mr. Monticciolo, who ran the department's office that includes New York, New Jersey, Puerto Rico and the Virgin Islands from 1981 to 1988, and Mrs.



The New York Times
Joseph Monticciolo, a former
H.U.D. official in New York.

Continued on Page 26, Column 3

Continued From Page 1

McGann, the administrator since June 1988, did not respond to telephone messages left at their homes.

Those regularly invited to the charity fund-raisers said Mr. Monticciolo was involved in so many partly because he was interested in the charities, partly for the valuable connections he made, and partly for the prestige that came from spearheading these events and being honored at them.

Mrs. McGann was placed on leave this month by Mr. Kemp after an article in The New York Times described how she and others appeared to rig the distribution of department-subsidized homes in her hometown of Island Park, L.I., to favor politically connected villagers and keep out blacks. A Federal grand jury is investigating that matter. In interviews, developers, housing authority directors and elected officials recalled several solicitations involving the regional office, which administers and oversees all department-financed projects in its area.

'Like a Revival'

The Mayor-elect of Jersey City, Gerald McCann, said that while he was Mayor in the mid-1980's, he received a call from Mr. Monticciolo asking him to attend a charity fund-raiser at the Summit House in Jersey City. The Mayor and his housing director, Robert Rigby attended with about 75 others, mainly developers and business people, said Mr. McCann, who was returned to office this month by Jersey City voters.

Mr. Monticciolo was at the meeting in the cocktail lounge with a professional fund-raiser. "They started calling people's names out and asking each how much they would donate," Mr. Rigby said. "It was like a revival. It seemed like the first guy was planted. He said \$500."

"I decided to leave so if they called my name I wouldn't be there," he said. "I didn't think turning them down

would be punitive, but you never know."

As is true for most local housing authorities, virtually 100 percent of the Jersey City authority budget comes from the department. "I don't think there's any question it wasn't right," Mr. Rigby said. "Ultimately our budget would wind up on Joe Monticciolo's desk and I was concerned."

Joseph Barry, owner of the Applied Companies of Hoboken, which has received millions of dollars of department money to build subsidized housing, estimates that he received \$ to 10 charity solicitations, either directly from Mr. Monticciolo or from fund-raisers working with him.

Planning Fund-Raiser

Even when the initial appeal was from a charity, Mr. Barry said: "Monticciolo's name always figured prominently. You knew Joe was in favor of this and you'd respond."

On April 15, 1987, Mr. Barry and several others in the housing industry attended a meeting in the cocktail lounge of the Meadowlands Hilton with Mr. Monticciolo and an official from the City University of New York graduate program. They were planning a fund-raiser for the university that would be in honor of Mr. Monticciolo. "Joe Monticciolo personally asked people to give," said Mr. Barry, who was a chairman of that gala.

Why did Mr. Barry become involved? To help his business, he said. "It's a fact of life of the way business is done."

The City University charity dinner-dance honoring Mr. Monticciolo was held on May 13, 1987, at the Marriott Marquis in Manhattan. Two weeks later, Mr. Monticciolo was awarded an honorary Doctor of Laws degree by the City University.

A Party

After leaving the department on Jan. 3, 1988, Mr. Monticciolo took a job with Eagle Capital Group, a housing investment company that does business with many people who donated to his charity galas.

On Jan. 25, 1988, Mr. Monticciolo was given a going-away dinner at the New York Hilton by the Association Builders & Owners of Greater New York, a trade group.

The charge for developers to attend was \$150. Mr. Barry said Francine Kellman, a special assistant in department's New York office, called to see if he was going.

When asked about calling developers to donate, Ms. Kellman said, "I might have asked people if they were attending. I certainly didn't collect money." Asked why she made the calls, she said, "Just to see if people were going to be there." She said she did not think this conveyed any pressure to attend. "I certainly couldn't do anything for these people," she said. "Whether they attend is up to the individual."

Several people said they were solicited by other New York H.U.D. officials for various charitable events, but they would not speak for attribution.

In February 1988, a month after he left the department, Mr. Monticciolo began organizing a charity fund-raiser honoring Mrs. McGann, a longtime friend, who then held a high-ranking job in the department's New York office and was eventually chosen to succeed Mr. Monticciolo as administrator. The charity he picked was the 52 Association for the Handicapped, which aids disabled veterans, as well as amputees and the blind.

Friends of Senator

The 52 Association had honored Mr. Monticciolo in December 1985, in a fund-raiser also spearheaded by Mr.

Monticciolo. About 550 people attended the \$300-a-plate dinner.

Senator Alfonse M. D'Amato was honorary chairman of the McGann event. Mr. D'Amato, a New York Republican, is a longtime friend of Mr. Monticciolo and Mrs. McGann and played a key role in having both named to the regional administrator post.

The list of 72 vice chairmen and committee members for Mrs. McGann's dinner reads like a Who's Who of people doing business with the department's regional office. Among those

'Joe Monticciolo personally asked people to give.'

listed are Eduardo Bailori, a prominent Puerto Rican businessman, with a major role in the department's projects there; Sheldon Goldstein, whose management group runs several department projects; Michael Levitt, a big H.U.D. builder; and Andrew Berkman, a lawyer whose firm, Brown & Wood, does considerable department-related work.

The letter soliciting donations to the \$350-a-plate event at the New York Hilton on June 2, 1988, included a one-page glowing description of Mrs. McGann. It does not mention any work Mrs. McGann has done for the handicapped or the 52 Association, but that did not surprise donors like Mr. Barry.

'People in the Know'

"She's chosen to be honored so the charity gets money," said Mr. Barry, who was a vice chairman of the affair. "It doesn't matter if the person actually did anything for the charity. It's just by being there they'll attract

money." Mr. Barry bought two tickets and solicited others to buy "one or two tickets," between 10 and 20 tickets, a contribution of \$3,500 to \$7,000.

About 350 people attended Mrs. McGann's gala. Mr. Barry said a large number were people who did business with the department. "Most are people in the know," he said. Mrs. McGann was presented the charity's Medal of Honor Award.

Fund-raising dinners and other special events have become an increasingly important source of revenue for the 52 Association.

Tax records filed with the Internal Revenue Service do not break down income from each event. But last year, for example, the testimonial for Mrs. McGann was one of four fund-raising dinners that earned the charity a total of \$172,252, or 27 percent of the association's income. In 1984, by comparison, an unspecified number of dinners earned the association \$23,948, or 5 percent of total income.

The director of the 52 Association, Allan D. Weinberg, said Mrs. McGann was first introduced to the charity a few years ago by Mr. Monticciolo. She has visited its camp in Westchester County a few times, he said, as well as its ski program for the blind. She was honored, he said, in good part for her drawing power. "If she were a secretary, no one would have been there," he said.

According to records in the New York Attorney General's office, last year the 44-year-old charity received its first-ever H.U.D. grant, of \$56,823, so staff members can tour the state, promoting better access for the handicapped to athletic centers. Mr. Weinberg said he never consulted with Mrs. McGann or Mr. Monticciolo in applying for the grant.

The charity hopes to begin work soon on a new building for its Westchester camp. It is to be called the Joseph D. Monticciolo Dining Pavilion.

Official's Pet Project

Tie to Charity Sparked HUD Investigation

By RONALD J. OSTROW
and DOUGLAS FRANTZ,
Times Staff Writers

WASHINGTON—On the night of April 22, 1988, about 50 people attended a \$1,000-a-plate dinner at the Hyatt Regency Hotel in Denver to raise money for an obscure charity called Food for Africa.

One of the speakers was Thomas T. Demery, whose position as federal housing commissioner at the Department of Housing and Urban Development gave him sway over millions of dollars in HUD grants and subsidies.

Developers and their consultants knew full well that Food for Africa was Demery's favorite charity. He had introduced the charity's South African founder to friends and associates and invited him to a Washington political dinner in 1987 where he met Maureen Reagan, the President's daughter.

So it was no surprise that the audience that night at the Hyatt was dominated by people seeking HUD funds or that the dinner itself was organized and paid for by a former agency official involved in at least 20 HUD-related housing projects.

Charity Connection

An investigation by HUD's inspector general later found that \$290,544 in contributions to the charity over 2½ years—50% of all the money it raised—came from individuals and firms involved in programs administered by Demery.

The HUD inquiry, however, established no direct connection between contributions to the charity and the awarding of HUD grants. And Demery, in a 90-minute interview Friday, denied that a link existed and hotly disputed the way the inspector general calculated HUD-related contributions to the charity.

"The discharge of my duties wasn't linked to anyone who contributed," said Demery, who left HUD with the change of administrations in January. "The facts are that I didn't know who contributed to Food for Africa and it didn't help them."

Nonetheless, the 700-page HUD report on Demery, the charity and a HUD program for rehabilitating low-income housing sparked a congressional investigation that has uncovered evidence of widespread mismanagement and political favoritism within the agency during the Ronald Reagan Administration.

The scandal has mushroomed far beyond Demery and a single housing program to raise questions about former HUD Secretary Samuel R. Pierce Jr. his executive assistant, Deborah Gore Dean, and a host of HUD programs.

Dean and her allies have blamed Demery. Demery, now a real estate investment adviser with Boston Partners in Washington, has hired a high-powered public relations firm, Hill & Knowlton, to help absolve him of responsibility.

"It was like 'Let's Make a Deal' over at HUD," said Stuart E. Weisberg, staff director of the House Government Operations subcommittee on employment and housing, which is leading the inquiry. "The question is who was the big deal maker? Behind door No. 1 you've got Debbie Dean. Door No. 2 is Sam Pierce. And door No. 3 is Tom Demery."

Pierce has said little. In his only appearance so far, he told the employment and housing subcommittee on May 25 that he was not a "hands on" manager during his eight years at the agency's helm. After his appearance, he told reporters cryptically, "I think there is lying going on."

He has been so secretive that he has refused to provide congressional investigators with a telephone number where he can be reached.

But he is willing to call them, and they have asked him to testify again, perhaps as soon as this month, about charges by a former HUD official that he ordered her to approve a HUD project in Durham, N.C., pushed by a longtime Pierce friend and a Republican political strategist.

Considerable attention has focused on Dean, the 34-year-old daughter of a prominent Republican family. She served as Pierce's chief aide until the Senate refused to confirm her for an assistant secretary's post and she left the department to become a housing consultant.

Dean declined to testify before the subcommittee, citing her Fifth Amendment rights. She also declined to be interviewed for this article.

Played Major Role

But other testimony and press accounts have portrayed her as the leader of what some former HUD executives call a "brat pack" of high-ranking officials in their 20s and early 30s. She played a major role in running the \$5-billion housing operation, according to ex-HUD officials, during the two years when the federal housing commissioner's job was vacant before Demery filled it in October, 1986.

Demery was a former commercial real estate broker in Birmingham, Mich., an affluent suburb of Detroit. He had been working as a HUD consultant since 1982, when he set his sights on winning the post of federal housing commissioner, a political appointment.

Demery said that he had not been active politically before, but raised money in 1984 for Reagan's reelection campaign and began pressing political contacts to put his name in for nomination to the HUD post.

In early 1986, he offered to host a fund-raiser for George Bush in Michigan but was turned down.

Later that year, he raised funds for the aborted presidential campaigns of evangelist Pat Robertson and Jack Kemp, who now heads HUD.

When Demery arrived at HUD in late 1986, he quickly ran into conflicts with Dean and some of her colleagues. "Tom was at war with Debbie almost from the start," said a former HUD official who considers himself a friend of both.

In the interview, Demery, 39, said that he considered himself a housing expert and believed that Dean and many others at HUD were inexperienced. Some, he said, were philosophically opposed to providing good housing for the poor and near-poor.

"I did not run with the brat pack," said Demery, who is described by friends as very religious. "I had no desire at all to be even an ex-officio member."

Rebuffed by Pierce, Dean

He acknowledged that he tried three times to fire or transfer his deputy, R. Hunter Cushing, who was a Dean ally and former member of Pierce's executive staff. Each time, he said, he was rebuffed by Dean and Pierce.

Internal HUD documents show that Demery raised questions about Cushing's performance and loyalty as early as Nov. 4, 1986. In a memo to Pierce, he said, "When I call him on the hot line to come to my office, he will usually call Deborah first to find out what it is I could want."

A source close to Cushing said only that "Mr. Cushing was loyal to the secretary and felt that Mr. Demery was acting contrary to the secretary's wishes and pursuing his own agenda." Cushing is expected to testify soon before Congress and, as a Dean ally, to lay blame on Demery.

The failure to remove Cushing undercut Demery's standing with the remainder of his staff, according to former department insiders. In the mind of Demery and others, it also sowed the seeds that led to the inspector general's voluminous report on Demery, Food for Africa and HUD's "moderate rehabilitation program" for low-income housing, known as "mod rehab."

"They didn't drop a dime on me," said Demery, using the colloquialism for squealing on someone. "They dropped a bag of dimes."

The origins of the inspector general's investigation of the mod rehab program have not been made public, but in May, 1988, the office initiated an extensive inquiry that focused on searching for a connection between contributions to Food for Africa and the awarding of HUD grants.

Mod rehab originally was one of three major programs within HUD that offered incentives for develop-

ers to rehabilitate or build housing for low-income and moderate-income families, the handicapped and the elderly. The generous incentives included mortgage guarantees, grants, loans, tax credits and rent subsidies that easily could top \$50 million per project.

The Ronald Reagan Administration eliminated the programs for new construction and substantial rehabilitation and slashed funds for mod rehab. That increased the competition among developers for the remaining supply of money.

The HUD report and interviews with ex-officials found that developers turned to two sorts of consultants in their pursuit of mod rehab funds: Republicans with political connections and ex-HUD officials with close ties to the department.

The going rate for consultants was \$1,000 a unit. A consultant who helped land a grant for a 300-unit project could get a \$300,000 consulting fee.

Among those who received money for arranging grants under mod rehab were former Interior Secretary James G. Watt, who shared in a \$300,000 fee for making a few telephone calls to set up meetings for a developer with Pierce. Joseph Strauss, a former HUD official, got \$1.3 million.

Philip D. Winn, current ambassador to Switzerland and a former Colorado Republican Party chairman, was part of a loose group of ex-HUD officials whose projects received \$29 million in tax credits alone from the federal government.

Watt's Influence

Strauss acknowledged in congressional testimony that he hired Watt for one project because of his influence. Strauss also contributed \$15,000 to Food for Africa.

Winn gave \$6,000 to the charity, and one of his business associates, Joseph M. Queenan, contributed \$36,000 and organized the fundraiser at the Denver Hyatt in April, 1988.

The Denver fund-raiser was timed to coincide with a trip by Demery to the area on HUD business and it was one of eight events across the country he attended while a HUD official, according to the HUD report. Each event was organized by individuals or firms doing business with HUD.

At the Denver dinner, Demery gave a short talk about Food for Africa and about a trip he made to Mozambique at his own expense in 1986 to view the charity's efforts to distribute food to starving people. He also introduced Peter Pretorius, the South African who founded the organization.

"Demery said it was his favorite charity," recalled Barbara MacRavey Richards, an official in HUD's Denver regional office, who had been told to attend the event by a superior because it would look bad if the tables were not full.

The turnout was still disappointing, and Queenan, the organizer and former head of housing in the Denver office, wound up contributing \$35,000 to make the evening a success, according to records and his lawyer.

E. Lawrence Barcella, a Washington attorney representing Queenan, said that his client had met Pretorius a year earlier and organized the dinner because he had "come to believe in the charity."

Barcella said that Queenan basically had promised Pretorius that the event would raise a specific amount of money. But the lawyer said that the dinner was not connected with Queenan's extensive HUD business.

"Queenan certainly didn't believe there was any causal relationship between the contribution

and getting favorable consideration from Tom Demery," said Barcella, who added that Queenan is expected to testify before Congress in the coming weeks.

The HUD inspector general's office found no direct connection between contributions to the charity and HUD grants.

While the report was being completed, the office recommended to Pierce in late 1988 that Demery be removed from making decisions on mod rehab grants because of questions about the charity and a perception of widespread favoritism in the program.

Demery, in a reply to Pierce, defended the integrity of the mod rehab program and said that no one had received favorable treatment at HUD as a result of contributions to Food for Africa.

"I did not run with the brat pack," said Demery, who is described by friends as very religious. "I had no desire at all to be even an ex-officio member."

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Strauss acknowledged in congressional testimony that he hired Watt for one project because of his influence. Strauss also contributed \$15,000 to Food for Africa.

Winn gave \$6,000 to the charity, and one of his business associates, Joseph M. Queenan, contributed \$36,000 and organized the fund-raiser at the Denver Hyatt in April, 1988.

The Denver fund-raiser was timed to coincide with a trip by Demery to the area on HUD business and it was one of eight events across the country he attended while a HUD official, according to the HUD report. Each event was organized by individuals or firms doing business with HUD.

At the Denver dinner, Demery gave a short talk about Food for Africa and about a trip he made to Mozambique at his own expense in 1986 to view the charity's efforts to distribute food to starving people. He also introduced Peter Pretorius, the South African who founded the organization.

"Demery said it was his favorite charity," recalled Barbara MacRavey Richards, an official in HUD's Denver regional office, who had been told to attend the event by a superior because it would look bad if the tables were not full.

The turnout was still disappointing, and Queenan, the organizer and former head of housing in the Denver office, wound up contributing \$35,000 to make the evening a success, according to records and his lawyer.

E. Lawrence Barcella, a Washington attorney representing Queenan, said that his client had met Pretorius a year earlier and organized the dinner because he had "come to believe in the charity."

Barcella said that Queenan basically had promised Pretorius that the event would raise a specific amount of money. But the lawyer said that the dinner was not connected with Queenan's extensive HUD business.

"Queenan certainly didn't believe there was any causal relationship between the contribution

and getting favorable consideration from Tom Demery," said Barcella, who added that Queenan is expected to testify before Congress in the coming weeks.

The HUD inspector general's office found no direct connection between contributions to the charity and HUD grants.

While the report was being completed, the office recommended to Pierce in late 1988 that Demery be removed from making decisions on mod rehab grants because of questions about the charity and a perception of widespread favoritism in the program.

Demery, in a reply to Pierce, defended the integrity of the mod rehab program and said that no one had received favorable treatment at HUD as a result of contributions to Food for Africa.

Although the HUD report kicked off the congressional inquiry in May, the employment and housing subcommittee has put the issue aside to deal with hotter matters raised in recent weeks.

U.S. Rep. Tom Lantos (D-San Mateo), chairman of the subcommittee, said that he does not believe laws were violated in connection with the charity. But he said the contributors were trying to ingratiate themselves with Demery.

"If you had a pattern like this, it is clear that you want to curry favor with the individual whose favorite charity that is," Lantos said. "Eyebrows can be raised, but not much else."

Researcher Leslie Eringaard in Detroit contributed to this article.

Order in the court

By Glen Elsasser

WASHINGTON—In the 1970s, William Rehnquist was a maverick justice whose conservative views won him the nickname "the Lone Ranger." Now, as chief justice, he is leading the U.S. Supreme Court in a conservative direction but stopping short of making too sharp a break with the past.

With few exceptions, Rehnquist and the conservative bloc on the court controlled the major cases this term, Rehnquist's third as chief justice. Appointed by President Nixon in 1972, he was frequently the sole dissenter in his early years there. With retirements and the arrival of three new justices in the 1980s, however, his views have begun to predominate.

The chief justice's efforts were most apparent in the abortion ruling last Monday, the final one of the 1988-89 term and the most scrutinized case in many years.

In that ruling, the court for the first time carved out an exception to its 1973 decision in *Roe v. Wade*, which established a woman's right to an abortion. By a bare majority, Rehnquist and four other justices—Byron White, Sandra Day O'Connor, Antonin Scalia and Anthony Kennedy—upheld a Missouri regulation requiring physicians to determine whether the fetus could survive outside the womb if a woman seeking an abortion was believed to be at least 20 weeks pregnant.

The ruling marked the first breach of *Roe*, which barred state interference with a woman's abortion decision during the first six months of pregnancy. Other provisions upheld by the

court—Missouri's ban on the use of public employees or public facilities for abortions—were more predictable and less controversial.

The ruling dominated the term despite an array of turbulent issues in other cases involving civil rights, the death penalty and freedom of expression.

Lawyers in the abortion case were heard April 26, the term's last day of oral arguments, and the justices voted two days later at their weekly conference.

John Kane, a clerk for Rehnquist in the mid-1970s and now a lawyer and commentator on the court, sees Rehnquist in the Missouri case as narrowing earlier abortion decisions. At the same time, Kane said, the chief justice seemed bent on dispelling the notion the court had changed its mind because of the influence of Reagan appointees O'Connor, Scalia and Kennedy.

In his opinion, Rehnquist vented his doubts about *Roe* but stopped short of overruling it. Instead, he encouraged states to try their hand at dealing with the politically divisive issue.

Although the five justices voted to uphold the Missouri law, the chief justice's opinion attracted the votes of only two of them—Kennedy, the court's newest member, and White, who along with Rehnquist cast dissenting votes in *Roe*. In separate, concurring opinions, Scalia and O'Connor each agreed that the viability testing re-

quirements were constitutional but came to their conclusion through reasoning different from Rehnquist's.

"Rehnquist doesn't often lose the court," Kane said. "One can speculate the chief justice had the votes when he came out of the conference. But in the opinion-writing process he lost O'Connor and Scalia."

In his opinion, Scalia, never at a loss for words, complained that the court should have overruled *Roe*.

"The outcome of today's case will doubtless be heralded as a triumph of judicial statesmanship," Scalia said. "It is not that, unless it is statesmanlike needlessly to prolong this court's self-awarded sovereignty over a field where it has little proper business."

O'Connor was typically cautious in a ruling that impinged on women's rights. In a her separate opinion, which delayed the court's announcement of its decision, O'Connor said the fetal testing did not conflict with prior rulings. She saw no need to discuss *Roe*'s flaws and seemed concerned that the court had only two months to prepare its ruling.

"When the constitutional invalidity of a state's abortion statute actually turns on the constitutional validity of *Roe v. Wade*," she said, "there will be time enough to re-examine *Roe*. And to do so carefully."

The Missouri abortion ruling clearly put a strain on the justices' usual collegial relationships. Justice Harry Blackmun, the author of *Roe* and the court's watchdog on abortion rights, skewered Rehnquist and the majority for what he called their "cowardice and illegitimacy."

Typically, Rehnquist took great pains in his response to keep the exchange on an intellectual rather than a personal level. Perhaps he wanted to avoid offending the feisty Blackmun. The 80-year-old justice had a falling out with Rehnquist's predecessor and Blackmun's old boyhood friend, Chief Justice Warren Burger, during Burger's final years on the court. Rehnquist replaced Burger as chief justice when Burger retired in 1986.

Under Rehnquist, there has been an unusual consistency. David O'Brien, author of "Storm Center: The Supreme Court in American Politics," points out that Rehnquist filed dissenting opinions only 10 times in the last term. According to O'Brien, O'Connor broke with Rehnquist 12 times; Scalia, 8 times; Kennedy, 7 times; and White only twice.

O'Brien, who teaches government at the University of Virginia, describes this conservative bloc as very tight. Such a bloc is critical to the court's handling of cases. The votes of four justices, for example, are needed to schedule a case for oral argument, the first hurdle for appeals. Once the justices have heard a case, however, it takes five votes to produce a majority opinion.

Developers Contributed To HUD Official's Charity

Demery Denies Donations Affected Decisions

By John Ward Anderson
Washington Post Staff Writer

October 1986 was a watershed month for a fledgling, little-known charity called FOOD for Africa. The director of its U.S. fund-raising arm, Thomas T. Demery, resigned to take a top position with the Department of Housing and Urban Development, and the organization discovered a wellspring of new donors: Developers who stood to benefit from the housing programs Demery began to administer.

In the 20 months after Demery became assistant secretary for housing, more than half of FOOD's donations in the United States—\$285,700 of \$546,000—came from developers, consultants, architects, mortgage bankers and others involved in HUD programs that Demery oversaw, according to records that the charity provided to HUD investigators. In the nine months before Demery's appointment, FOOD had collected about \$34,000, including \$5,000 from companies that did business with HUD.

Tens of thousands of dollars were raised at 10 fund-raisers, some calling for donations of as much as \$1,000 a plate, held at plush hotels around the country. All were sponsored by developers, former HUD officials who had become private consultants and mortgage banking

companies, according to a HUD inspector general's report. Demery, who attended eight of the affairs, was sometimes listed on programs as "honoree" or "guest speaker" and frequently was introduced by his HUD title, the report said.

Demery, who paid for his travel and lodging, did not solicit donations at the events, according to some who attended.

Some contributors to FOOD later became beneficiaries of Demery's actions, HUD investigators concluded. In one case, Demery overruled regional HUD officials in Denver and approved 145 units of moderate-rehabilitation housing for Casper, Wyo., 127 units of which eventually went to a group of developers that included some of FOOD's biggest donors, the report said.

Based on these findings, HUD Inspector General Paul A. Adams recommended last October that Demery be removed from the decision-making process in the moderate-rehabilitation program, which new HUD Secretary Jack Kemp recently suspended for 1989 because of allegations of favoritism. The moderate-rehabilitation program provides rent subsidies so developers can profitably renovate rental housing for low-income people.

See FOOD, A7, Col. 1

FOOD, From A1

Adams found no evidence of wrongdoing but concluded that there was a "perception of favoritism." In his October letter to then-HUD Secretary Samuel R. Pierce Jr., Adams said Demery may have violated the department's standards of conduct, which prohibit any employee from "directly or indirectly" soliciting anything of value from a person or business "with interests that may substantially be affected by this department." No action was taken on Adams's recommendation.

Demery, in recent interviews, said there was no connection between his activities for FOOD and his role at HUD. He accused the HUD investigators of using circumstantial evidence and unproved allegations to cast his relationship with FOOD in an unjustifiably negative light.

He said his decision in the Casper project had nothing to do with FOOD donations but was based on information provided by local officials in Casper, who he said were better informed than HUD officials in Denver.

In interviews with HUD investigators and separate interviews with The Washington Post, dozens of those who attended fund-raisers for FOOD said that they had never heard of the organization beforehand or knew that it is a South African-based relief group that operates orphanages and distributes food and other supplies to refugees in war-torn Mozambique. Many said they went primarily to meet Demery.

WASHINGTON POST
JULY 9, 1989

Those who attended said they left the events impressed by descriptions of FOOD's effort in Mozambique. They said that Demery, 39, a born-again Christian who helped found the organization in 1985, appeared deeply committed to the charity.

"It was a terrific piece of fund-raising, a delightful evening where I went away saying, 'That was really well-done,'" said Steven J. Rioff, whose company, M.B. Associates, contributed \$500 at an October 1987 fund-raiser in Boston. Rioff's company is involved in a number of HUD-funded projects; he said he went to the event because "friends" asked him to support FOOD and "billed it as one of Tom Demery's favorite charities."

In retrospect, he said, perhaps Demery had let his commitment to the charity cloud his judgment and "in some sense didn't think about the public implications of his job. . . . If I had a charitable organization I was committed to helping, I would actively use a network to get as much [money] as I could. Tom Demery said, 'How can I best raise money as quickly as possible? I'm going to tap that network.' The wisdom of his doing so is another matter."

Demery said, however, that he never discussed projects with developers at the fund-raisers and in the few cases where he later learned that a FOOD donor was involved in a HUD project, he recused himself from the project. "Some people might think that I knew who gave [to FOOD] . . . but the facts are that I didn't know who gave and it did not make a difference," he said.

"Nowhere in any of the 700 pages [of the audit report], in any financial records they examined, in any document, in any interview, was there even a hint that Tom Demery solicited, was ever made aware of or had any knowledge of who contributed to FOOD for Africa," he said. "Those are the facts contained in the report and mysteriously absent from its conclusion."

He said the controversy has severely hampered the non-profit, tax-exempt organization's fund-raising efforts and damaged its ability to provide clothes, food, medicine and housing in Mozambique. "This worthwhile charity has suddenly been drug through the mud," he said. "Kids are dying because of this."

According to Demery, his role in the charity began in 1985, when Peter Pretorius, the head of FOOD who lives in South Africa, visited Demery's church in Bloomfield, Mich., and described his efforts to provide relief to the people of Mozambique. To see conditions first hand, Demery visited Mozambique with Pretorius, who is a minister with Jesus Alive Ministries, which Pretorius founded. In May 1986, they incorporated The Federal Organization of Distribution (FOOD) for Africa, with Pretorius as president and Demery as secretary, to fund Pretorius's efforts.

In its literature, the charity says donations are used exclusively to distribute—not purchase—supplies for refugees in Mozambique. Using a small plane and a few trucks and vans, the organization said it distributed about 200 tons of food in the country in 1988 and currently feeds 40,000 to 50,000 people a week. It also said it has built "Life Centers" in Mozambique that house 300 orphans.

Demery, a real estate and mortgage broker who worked in Ronald Reagan's successful 1980 presidential campaign, administered several of HUD's biggest programs, including \$225 million in moderate-rehabilitation funds awarded annually, before leaving the agency in Janu-

ary when the administration changed.

Adams's report, which sparked a congressional investigation and is under review by the Justice Department, concluded that there were widespread irregularities in the moderate-rehabilitation program. Among the allegations under investigation are influence peddling by politically well-connected people and the award of moderate-rehabilitation units to specific projects and developers, without a competitive selection process.

Pierce, in an impromptu news conference after testifying before a House subcommittee in May, made an explicit connection between the charitable donations and Demery's decisions at HUD. "[If] you wanted the guy [Demery] to look at you favorably, you gave to his favorite charity," Pierce said.

In an April 17 memorandum to Kemp, Adams recommended that the HUD general counsel "reassess" Demery's participation in FOOD for Africa while working for HUD.

Adams's report said that Demery's dealings with projects in Casper, Wyo., and Richland, Wash., illustrated what Adams called a "strong sense of impropriety."

Records show that 10 people and

companies seeking the units sponsored three fund-raisers and made at least 22 donations to FOOD totaling more than \$81,000 in a 15-month period before and after the units were awarded. Some of the same donors were involved in numerous other moderate-rehabilitation projects during the same period.

All the people and companies, or their attorneys, who were contacted by The Post or interviewed by the inspector general, said that there was no connection between their donations and HUD's award of moderate-rehabilitation units. They said they supported FOOD because it was a worthwhile charity.

In the Richland case, one development team was led by two former HUD officials, Philip Winn and J. Michael Queenan. On Sept. 2, 1987, they visited the executive director of the Richland Housing Authority and, providing "the exact language," asked her to write to Demery and request moderate-rehabilitation funding for 158 units, the number later approved, according to the audit report.

About six months earlier, Winn had given a \$5,000 donation to FOOD, according to the charity's records, and as the request was reviewed by HUD, the donations

continued. Queenan; Robert Silvestri, an architect working on the project, and former HUD employee Ronny L. Mahon, a financial consultant who was assisting with applications, each gave \$1,000. Tennessee-based Benton Mortgage Co., which was to co-insure the project, gave \$2,000.

Benton recently was placed on probation from HUD's co-insurance program through Nov. 1 for failure to follow "prudent underwriting practices" on many moderate-rehabilitation loans, according to a HUD audit of the company.

In February 1988, HUD headquarters approved the Richland units, but the HUD office in Denver held up the award because the first advertisement, to which only Winn and Queenan responded, "did not satisfy the competitive process," according to the audit report.

Over the next three months, Winn, Mahon and Silvestri contributed \$1,000 each to FOOD, and Benton Mortgage gave \$5,000.

When the units were re-advertised, four other development companies submitted proposals, and the award eventually went to a development concern represented by Judith S. Siegel, president of the Landex Corp. of Warwick, R.I., who had given \$1,000 to FOOD and

helped organize an October 1987 fund-raiser for the charity in Boston, according to the audit report.

Meanwhile, Queenan and Silvestri, joined by Raymond Baker of Gold Crown Corp. in Denver and Lance Wilson, former executive assistant to HUD secretary Pierce, also were seeking funding for 145 moderate-rehabilitation units in Casper, again with mortgage co-insurance by Benton.

Wilson and Baker were also FOOD donors. Baker made three donations to FOOD totaling \$7,000, while Wilson contributed \$3,250 and cosponsored a fund-raiser at the Ritz Carlton Hotel in New York City in March 1987, according to FOOD records.

Many of the people involved in the Richland and Casper projects attended a Queenan-sponsored FOOD fund-raiser in Denver on April 28, 1988, according to the inspector general's report. Queenan donated \$35,000 of his company's money, invited several dozen associates in the housing and development communities and picked up the \$1,000-a-plate tab for a number of them.

After the dinner, Benton Mortgage donated another \$7,000 to FOOD, and Baker gave \$3,000. E. Lawrence Barcella Jr., Queenan's

attorney, said his client had pledged beforehand to FOOD's Pretorius that the dinner would raise a minimum amount, "and he [Queenan] ended up raising that amount, but a large chunk came out of his own pocket."

Denver HUD officials, reviewing the Casper proposal, concluded that only 38 moderate-rehabilitation units were needed and that building more would hurt other projects in the area. Demery overruled them, ordering that all 145 units be funded.

Demery, in an interview, said his decision was correct. "The units were rented. There was no detriment to surrounding projects. And everything the locals said would come to pass occurred," he said. That assessment was shared by Sharon Shore, executive director of the Casper Housing Authority.

Funding for 127 of the 145 units went to Springhill Associates, a development partnership that included Wilson, Baker, Queenan and Silvestri with Benton Mortgage as co-insurer, according to Mahon.

Staff writers Gwen Ifill and David B. Ottaway and special correspondent Allister Sparks contributed to this report.

THE WHITE HOUSE

WASHINGTON

April 7, 1989

MEMORANDUM FOR GOVERNOR JOHN H. SUNUNU
CHIEF OF STAFF TO THE PRESIDENT

FROM: C. BOYDEN GRAY *cm*
COUNSEL TO THE PRESIDENT

SUBJECT: Implementation of Ethics Commission
Recommendations

Per your request, attached is an annotated list of the recommendations of the President's Commission on Federal Ethics Law Reform. An asterisk indicates a recommendation that we are implementing. Specific changes in recommendations are noted in the margins.

In addition to what is shown on the list, the bill would make a number of other changes that were not featured in the ethics commission's recommendations. For example,

- The provisions on campaign finance reform were not in the commission report.
- The Justice Department has proposed, and the bill includes, a number of additional changes to the independent counsel statute designed to make the statute more reasonable.
- The proposed uniform authority for agency acceptance of reimbursement of employee travel expenses includes the authority to accept such reimbursement for the expenses of the spouse of a qualifying employee. Acceptance would be allowed when the spouse has been invited to accompany the employee while that employee is performing services for the agency.

Please let me know if you have any questions.

Attachment

II. SUMMARY OF RECOMMENDATIONS

- * Recommendation 1: The Commission recommends that the conflict-of-interest statute, 18 U.S.C. § 208, be extended to non-Member officers and employees of the judiciary and Congress, but not to Members of Congress themselves.
- * Recommendation 2: The Commission recommends (1) that the Office of Government Ethics, in collaboration with the Department of Justice, issue interpretive regulations relating to financial conflicts of interest under 18 U.S.C. § 208; and (2) that legislation be enacted granting the Office of Government Ethics the authority to issue rules providing for general waivers under § 208(b)(2).
- * Recommendation 3: The Commission recommends (1) that agencies granting waivers under § 208(b) be required to consult with the Office of Government Ethics in advance, and provide that office with a copy of any waiver granted; (2) that further consideration be given to the mechanism for granting waivers for employees of the legislative branch; and (3) that legislation be enacted granting the President authority to waive the provisions of § 208(a) in situations where the national interest so requires. *Propose to give this authority to OGE* *where practicable*
- * Recommendation 4: The Commission recommends that legislation be enacted to grant tax relief to persons who are required to divest assets in order to avoid conflicts of interest.
- * Recommendation 5: To respond to certain unique circumstances that pose unusual conflict of interest issues, the Commission recommends (1) the enactment of legislation authorizing waivers from 18 U.S.C. § 208(a) for advisory committee members where the appointing authority determines, after review of financial disclosure forms, that the need for a member's expertise outweighs the potential for conflict of interest; and (2) that limitations on the activities of partners of federal employees (18 U.S.C. § 207(g)) apply only when the government employee and the partner are general partners, not when the government employee is a limited partner.
- Recommendation 6: The Commission recommends (1) that federal employees in all three branches be prohibited from receiving honoraria, (2) that existing criminal prohibitions against supplementing government salaries apply to all three branches, and (3) that senior

executive & judiciary only and only as to speeches in official capacity

executive & judiciary only

15%

In the case of Congress, honoraria don't count against the 15%.

employees in all three branches be covered by a uniform percentage cap on outside earned income, but that the President have authority to exempt categories of earned income from the cap that do not present significant issues of ethical propriety or interfere with the full performance of job duties.

* Recommendation 7:

The Commission recommends that senior federal employees in all three branches of government be prohibited from serving on the boards of directors of for-profit commercial enterprises (whether or not compensated) and that requests by such employees to serve on the boards of directors of nonprofit organizations be subject to review on a case-by-case basis.

* Recommendation 8:

only as to acceptance of reimbursement for travel

The Commission recommends the following changes in the laws and regulations governing acceptance of gifts: (1) enactment of uniform gift acceptance authority government-wide; (2) enactment of a uniform maximum value for gifts to individuals; and (3) enactment of revisions to the current statutory bar on gifts to supervisors.

* Recommendation 9:

Several statutes proposed for repeal.

The Commission recommends that restrictions in 18 U.S.C. § 208 on negotiation for employment be amended to extend to Members and employees of the legislative and judicial branches. We further recommend that Congress reconsider the necessity of retaining statutes applying special restrictions to specified categories of employees. To the extent that Congress feels that such supplementary restrictions are necessary, those prohibitions should be consolidated into § 208.

* Recommendation 10:

The Commission recommends that the one-year cooling-off period presently applicable to Senior Employees of the executive branch be extended to the legislative and judicial branches and their senior staff. As to all three branches, the bar should permit self-representation by the former employee on particular matters involving the former employee specifically.

* Recommendation 11:

The Commission recommends that Congress enact legislation that adds a new provision to 18 U.S.C. § 207 creating a two-year post-employment bar, for executive and legislative branch personnel, against the use or disclosure of certain specifically defined, non-public information in connection with representing a party to the government or in connection with aiding or advising a party in such a representation. Such legislation should include: (1) a provision that includes non-public procurement-related proprietary or source selection information within the scope of the restriction; and (2) if specifically definable, a provision that includes non-public information as

to the government's position and strategy in international trade, disarmament, and finance negotiations.

* Recommendation 12: The Commission recommends amending the 18 U.S.C. § 207(b)(i) two-year official responsibility bar to add a knowledge requirement.

* Recommendation 13: The Commission recommends repeal of the 18 U.S.C. § 207(b)(ii) two-year prohibition against Senior Employees assisting in a representational effort by personal presence.

* Recommendation 14: The Commission recommends that the Executive Office of the President be treated as one agency for the purpose of the one-year cooling off period.

* Recommendation 15: The Commission recommends that the receipt of compensation not be included as an essential element of any post-employment restriction.

Recommendation 16:

↓
Replaced by the
President's
policy of
exact disclosure
Crowned to
the newest
\$1000

The Commission recommends that the public financial disclosure reporting system mandated by the Ethics in Government Act of 1978 be continued, but the floors of the highest categories of value for reporting of income and assets should be raised, there should be broader ranges of values within the categories, and specified statutory reporting requirements should be replaced by general requirements, with an authorization for the Office of Government Ethics to impose detailed reporting requirements by regulation. In addition, for ~~non-career~~ appointees, the reporting requirements for liabilities should be expanded to include mortgages on personal residences and loans from specified relatives.

all

* Recommendation 17: The Commission recommends that financial reporting requirements and review be made more uniform across the three branches of government.

* Recommendation 18: The Commission recommends that a coordinating committee composed of ethics officials of the three branches of Government study ways to simplify the Presidential appointment process by reducing the number and complexity of forms to be completed by potential appointees.

* Recommendation 19: The Commission recommends revision, updating and reissuance of Executive Order 11222 to emphasize the President's commitment to the highest ethical standards for executive branch employees.

- * **Recommendation 20:** The Commission recommends that the Office of Government Ethics be directed by executive order to consolidate all executive branch standards of conduct regulations into a single set of regulations. Individual agencies could supplement these regulations with stricter standards with the approval of the Office of Government Ethics. The Office of Government Ethics should also issue a comprehensive ethics manual.

- * **Recommendation 21:** The Commission recommends that executive branch agencies should be responsible for training their employees concerning ethics requirements, but an agency should obtain the Office of Government Ethics approval of its annual plan for training and awareness activities.

- * **Recommendation 22:** The Commission recommends that Congress appoint an independent ethics official, to be confirmed by both houses, who would head a permanent ethics office that would investigate allegations of misconduct, report findings publicly to the ethics committee of the appropriate house, and recommend appropriate sanctions.

- * **Recommendation 23:** The Commission believes that a White House Ethics Council or similar body could be helpful in preserving high ethical standards in the executive branch.

- * **Recommendation 24:** *Propose statutory exemption from the Federal Advisory Committee Act, to facilitate a Council.* The Commission recommends the addition of misdemeanor and civil penalties as sanctions for violations of 18 U.S.C. §§ 203-209 but recommends that willful violations of these laws should continue to be punishable as felonies.

- * **Recommendation 25:** The Commission recommends that Chapter 11 of title 18 of the United States Code be amended to allow the Attorney General to seek injunctive relief for all violations of 18 U.S.C. §§ 203-209.

- * **Recommendation 26:** The Commission recommends the strengthening of administrative debarment procedures for former government employees who violate the post-employment restrictions in 18 U.S.C. § 207.

- * **Recommendation 27:** Assuming the continued use of an Independent Counsel mechanism, the Commission recommends that Congress enact legislation to extend the scope of the Independent Counsel statute to cover the legislative branch.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
05. Memo	From C. Boyden Gray to POTUS Re Decision on Whether to Include Restrictions on Political Action Committees and/or the Use of Campaign Funds in the Administration's Ethics Reform Legislation (5 pp.)	4/4/89	P-5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Ethics Package

Open on Expiration of PRA
 (Document Follows)

By JF (NLGB) on 12/12/07

Date Closed:	11/30/2004	OA/ID Number:	29178-004
FOIA/SYS Case #:	1998-0004-F	Appeal Case #:	
Re-review Case #:	2005-0426-S	Appeal Disposition:	
P-2/P-5 Review Case #:		Disposition Date:	
AR Case #:		MR Case #:	
AR Disposition:		MR Disposition:	
AR Disposition Date:		MR Disposition Date:	

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
 P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
 P-3 Release would violate a Federal statute [(a)(3) of the PRA]
 P-4 Release would disclose trade secrets or confidential commercial or
 financial information [(a)(4) of the PRA]
 P-5 Release would disclose confidential advice between the President
 and his advisors, or between such advisors [(a)(5) of the PRA]
 P-6 Release would constitute a clearly unwarranted invasion of
 personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
 (b)(2) Release would disclose internal personnel rules and practices of an
 agency [(b)(2) of the FOIA]
 (b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
 (b)(4) Release would disclose trade secrets or confidential or financial
 information [(b)(4) of the FOIA]
 (b)(6) Release would constitute a clearly unwarranted invasion of
 personal privacy [(b)(6) of the FOIA]
 (b)(7) Release would disclose information compiled for law enforcement
 purposes [(b)(7) of the FOIA]
 (b)(8) Release would disclose information concerning the regulation of
 financial institutions [(b)(8) of the FOIA]
 (b)(9) Release would disclose geological or geophysical information

THE WHITE HOUSE

WASHINGTON

100 APR -4 PM 3:17

April 4, 1989

MEMORANDUM FOR THE PRESIDENT

FROM: C. BOYDEN GRAY *CBG*
COUNSEL TO THE PRESIDENT

SUBJECT: Decision on Whether to Include Restrictions
on Political Action Committees and/or the use
of Campaign Funds in the Administration's Ethics
Reform Legislation

I. POLITICAL ACTION COMMITTEES

1. ANALYSIS

PACs, a creature of 1970's campaign reform, are entities formed by corporations, labor unions, trade associations, or membership associations which accept voluntary contributions and use such funds to support candidates for federal office or political parties. They are permitted to contribute up to \$5,000 per election to political committees of congressional or Presidential candidates, \$5,000 per calendar year to other PACs, and \$15,000 per calendar year to national political party committees.

By contrast, individuals may only contribute \$1,000 per election cycle to congressional or Presidential candidates, and, unlike PACs, individuals are further subject to a \$25,000 per calendar year cap for all contributions to federal candidates.

PACs have proliferated in the last 15 years, increasing in numbers from 608 in 1974 to approximately 4,200 in 1988. During that same time period, PAC contributions to House and Senate candidates have increased from approximately \$12.5 million in 1974 to nearly \$150 million last year.

The concern about PACs is that they artificially enhance the influence of special interests and contribute to the high incumbency re-election rate (currently running at 98%). Proposals to ban or limit PACs have proliferated in recent years, the most recent serious legislative effort being the Senatorial Election Campaign Act (S-137), which was introduced in the 101st Congress by Sens. Mitchell, Boren and Byrd. Among other things, the legislation would limit to \$100,000 the amount a House candidate could accept from all political action committees, and would limit Senate candidates to a total amount varying with the

population of the state. A companion bill, H.R. 14, has been introduced in the House by Reps. Coelho, Synar and Leach.

A significant problem with S-137 and H.R. 14 is that by imposing a "ceiling" on contributions to any one candidate, a legitimate First Amendment freedom of expression issue arises because a PAC would be prohibited from contributing anything to a candidate committee that had reached the ceiling. An alternative approach which lessens this potential problem is to limit the amount any one PAC can contribute.

2. RECOMMENDATION

We recommend proposing sweeping reductions in the amounts that a PAC can contribute, by putting them on the same footing as individuals, i.e., reducing permissible contributions to individual candidates from \$5,000 to \$1,000 and capping calendar year PAC contributions to federal candidates at \$25,000. This would put PAC giving to candidates back largely where it was in 1974, although some of this money could shift to the political parties (a good result) and independent committees.

- | | |
|-------------|---|
| <u>Pro:</u> | <ul style="list-style-type: none"> -- Lessens the influence wielded by PACs while avoiding First Amendment issues that would be raised by a "ceiling" on aggregate receipts. -- Would strengthen the party organizations relative to the special interests. -- Would treat corporations and labor PACs the same for contribution purposes. |
| <u>Con:</u> | <ul style="list-style-type: none"> -- This approach may cause PACs to proliferate. instead of one PAC giving \$5,000, several new PACs could be established to give the same aggregate amount. (Note that current FEC non-affiliation rules would limit such expansion.) -- PACs were not addressed by the Ethics Commission, and PAC reform is sufficiently controversial that inclusion in the proposed ethics legislation may cause some Members who would otherwise support the bill to oppose it. -- Limiting PAC giving to candidates may increase contributions through "independent expenditures" which can not be controlled by the party or a candidate. |

- By not affecting the Unions' other political activities, these reforms could arguably reduce relative corporate influence vis-a-vis unions, because unions will be able to continue to organize members and engage in campaign activities (by manning phone banks, for example).

Before any Administration proposal on PAC contributions is unveiled, the House and Senate Republicans who have been most active on this issue should be consulted. Some of the Republican proposals to date have coupled decreasing PAC contributions with raising limits for individual contributions.

3. DECISION

_____ Approve

_____ Reject

_____ Other

II. USE OF EXCESS CAMPAIGN FUNDS

1. ANALYSIS

Under current law, excess campaign funds can be used by Members of the House and Senate for at least five purposes:

- (1) Under a grandfather clause, House Members who were in Congress on January 8, 1980 can convert such funds to personal use after leaving office*;
- (2) Funds can be "rolled over" to be used in the next election;
- (3) In the Senate, funds can be used to reimburse Members for ordinary and reasonable expenses incurred in connection with official duties;
- (4) Funds can be donated to charitable organizations; or
- (5) Funds can be transferred to a local, state or national party committee.

The grandfather clause may present the most egregious ethics problem. Essentially, campaign contributors are unwittingly supplementing Congressional salaries and pensions.

*Senate rules bar current and former Members from using campaign funds for personal purposes. There is a question, of course, as to the enforceability of this rule as to former Senators.

The use of such excess funds in a subsequent campaign also raises ethical issues. A contributor may not want to support a subsequent race. Moreover, by rolling over, incumbents can avoid limitations on contributions that may be imposed on a subsequent, more costly campaign by building a "warchest" from contributions raised during an earlier race.

Excess funds being used to reimburse Senators for expenses incurred as a Senator permits Senators to augment appropriated funds for official purposes (in a manner that the Executive branch cannot). This practice should be halted because of the ethical problem of augmentation and because it would move us closer to parity between the branches in this area.

Finally, just as Executive branch employees may not direct private funds to charities or party committees that the employee could not accept, Congress should be prohibited from doing so.

Options

- A. From an effective date forward, prohibit all uses of excess campaign funds and require any of such funds to be contributed to the U.S. Treasury. All existing "warchests" would be permitted to continue, except that House Members would not be permitted to use such excess funds for personal use and Senators would not be able to use them for defraying official expenses.

Pro: -- If a Congressional candidate does not use campaign contributions for their intended purpose, i.e., that election, none of the five options for use of such excess funds enumerated above is proper. Each option poses ethical or parity problems, or both.

Con: -- This is an extremely sensitive issue for Members and its inclusion may jeopardize the entire bill.

- B. Ban the two most obvious problems: (1) House Members using excess funds for personal purposes under the "grandfather clause", and (2) Senators using excess funds to defray official expenses.

Pro: -- Of all permissible uses of excess funds, these practices are the most troublesome from an ethics perspective.

-- A prohibition on these two practices is likely to have a far friendlier reception on the Hill than a wholesale ban on future excess funds.

Con: -- The "grandfather clause" and the Senate reimbursement for expenses have rich legislative histories and exposing them and promoting their elimination will be offensive to some Members, including some who are senior and influential.

2. RECOMMENDATION

We recommend option B. This middle approach prohibits the two most problematic current practices without eliciting the firestorm of Hill opposition which is likely to result from a wholesale ban. This approach will lead to less Hill opposition in large part because these two practices are difficult to defend and are likely to be popular with the public and the press. Should this approach be adopted, consultation with key Members prior to its announcement would be critical.

3. DECISION

_____ Approve option A

_____ Approve option B

_____ Other _____

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

April 12, 1989

EXECUTIVE ORDER

- - - - -

PRINCIPLES OF ETHICAL CONDUCT
FOR GOVERNMENT OFFICERS AND EMPLOYEES

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered as follows:

PART I - PRINCIPLES OF ETHICAL CONDUCT

Section 101. Principles of Ethical Conduct. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

- (a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- (b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- (d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- (e) Employees shall put forth honest effort in the performance of their duties.
- (f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- (g) Employees shall not use public office for private gain.
- (h) Employees shall act impartially and not give preferential treatment to any private organization or individual.
- (i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

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(j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(l) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.

(m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

Sec. 102. Limitations on Outside Earned Income. No employee who is appointed by the President to a full-time noncareer position in the executive branch, including all full-time employees in the White House Office and the Office of Policy Development, shall receive any earned income for any outside employment or activity performed during that Presidential appointment.

PART II - OFFICE OF GOVERNMENT ETHICS AUTHORITY

Sec. 201. The Office of Government Ethics. The Office of Government Ethics shall be responsible for administering this order by:

(a) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations that establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable.

(b) Developing, disseminating, and periodically updating an ethics reference manual for employees of the executive branch describing the applicable statutes, rules, decisions, and policies.

(c) Promulgating, with the concurrence of the Attorney General, regulations interpreting the provisions of the general conflict-of-interest statute, section 208 of title 18, United States Code, and the statute prohibiting supplementation of salaries, section 209 of title 18, United States Code.

(d) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations establishing a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978. Such regulations shall include criteria to guide agencies in determining which employees shall submit these reports.

(e) Ensuring that any implementing regulations issued by agencies under this order are consistent with and promulgated in accordance with this order.

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Sec. 202. Executive Office of the President. In that the agencies within the Executive Office of the President (EOP) currently exercise functions that are not distinct and separate from each other within the meaning and for the purposes of section 207(e) of title 18, United States Code, those agencies shall be treated as one agency under section 207(c) of title 18, United States Code.

PART III - AGENCY RESPONSIBILITIES

Sec. 301. Agency Responsibilities. Each agency head is directed to:

(a) Supplement, as necessary and appropriate, the comprehensive executive-branch-wide regulations of the Office of Government Ethics, with regulations of special applicability to the particular functions and activities of that agency. Any supplementary regulations shall be prepared as addenda to the branch-wide regulations and promulgated with the concurrence of the Office of Government Ethics.

(b) Ensure the review by all employees of this order and regulations promulgated pursuant to the order.

(c) Coordinate with the Office of Government Ethics in developing annual agency ethics training plans. Such training shall include mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or nonpublic financial disclosure reports, all employees who are contracting officers and procurement officials, and any other employees designated by the agency head.

(d) Where practicable, consult formally or informally with the Office of Government Ethics prior to granting any exemption under section 208 of title 18, United States Code, and provide the Director of the Office of Government Ethics a copy of any exemption granted.

(e) Ensure that the rank, responsibilities, authority, staffing, and resources of the Designated Agency Ethics Official are sufficient to ensure the effectiveness of the agency ethics program. Support should include the provision of a separate budget line item for ethics activities, where practicable.

PART IV - DELEGATIONS OF AUTHORITY

Sec. 401. Delegations to Agency Heads. Except as provided in section 402 and except in the case of the head of an agency, the authority of the President under section 208(b) of title 18, United States Code, to grant exemptions to individuals, is delegated to the head of the agency in which an individual requiring an exemption is employed or to which the individual is attached for purposes of administration.

Sec. 402. Delegations to the Counsel to the President. The authority of the President under section 208(b) of title 18, United States Code, to grant exemptions for Presidential appointees to committees, commissions, boards, or similar groups established by the President is delegated to the Counsel to the President.

Sec. 403. Delegation Regarding Civil Service. The Office of Personnel Management and the Office of Government Ethics, as appropriate, are delegated the authority vested in

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the President by 5 U.S.C. 7301 to establish general regulations for the implementation of this Executive order.

PART V - GENERAL PROVISIONS

Sec. 501. Revocations. The following are hereby revoked:

- (a) Executive Order No. 11222 of May 8, 1965.
- (b) Executive Order No. 12565 of September 25, 1986.

Sec. 502. Savings Provision.

(a) All actions already taken by the President or by his delegates concerning matters affected by this order and in force when this order is issued, including any regulations issued under Executive Order 11222, Executive Order 12565 or statutory authority, shall, except as they are irreconcilable with the provisions of this order or terminate by operation of law or by Presidential action, remain in effect until properly amended, modified, or revoked pursuant to the authority conferred by this order or any regulations promulgated under this order. Notwithstanding anything in section 102 of this order, employees may carry out preexisting contractual obligations entered into before the date of this order.

(b) Financial reports filed in confidence (pursuant to the authority of Executive Order No. 11222, 5 C.F.R. Part 735, and individual agency regulations) shall continue to be held in confidence.

Sec. 503. Definitions. For purposes of this order, the term:

(a) "Contracting officers and procurement officials" means all such officers and officials as defined in the Office of Federal Procurement Policy Act Amendments of 1988.

(b) "Employee" means any officer or employee of an agency, including a special Government employee.

(c) "Agency" means any executive agency as defined in 5 U.S.C. 105, including any executive department as defined in 5 U.S.C. 101, Government corporation as defined in 5 U.S.C. 103, or an independent establishment in the executive branch as defined in 5 U.S.C. 104 (other than the General Accounting Office), and the United States Postal Service and Postal Rate Commission.

(d) "Head of an agency" means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(e) "Special Government employee" means a special Government employee as defined in 18 U.S.C. 202(a).

Sec. 504. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

GEORGE BUSH

THE WHITE HOUSE,
April 12, 1989.

#

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Memo	From C. Boyden Gray to John H. Sununu Re Affiliation of Government Officials with Private Organizations and Fundraising Activities (1 pp.)	4/20/89	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff to the President, Office of the
Series: Sununu, John, Files
Subseries: White House Offices File
WHORM Cat.:
File Location: Ethics Package

Open on Expiration of PRA
 (Document Follows)

By JP (NLGB) on 5/12/05

Date Closed:	11/30/2004	OA/ID Number:	29178-004
FOIA/SYS Case #:	1998-0004-F	Appeal Case #:	
Re-review Case #:	2005-0426-S	Appeal Disposition:	
P-2/P-5 Review Case #:		Disposition Date:	
AR Case #:		MR Case #:	
AR Disposition:		MR Disposition:	
AR Disposition Date:		MR Disposition Date:	

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
 P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
 P-3 Release would violate a Federal statute [(a)(3) of the PRA]
 P-4 Release would disclose trade secrets or confidential commercial or
 financial information [(a)(4) of the PRA]
 P-5 Release would disclose confidential advice between the President
 and his advisors, or between such advisors [(a)(5) of the PRA]
 P-6 Release would constitute a clearly unwarranted invasion of
 personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
 (b)(2) Release would disclose internal personnel rules and practices of an
 agency [(b)(2) of the FOIA]
 (b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
 (b)(4) Release would disclose trade secrets or confidential or financial
 information [(b)(4) of the FOIA]
 (b)(6) Release would constitute a clearly unwarranted invasion of
 personal privacy [(b)(6) of the FOIA]
 (b)(7) Release would disclose information compiled for law enforcement
 purposes [(b)(7) of the FOIA]
 (b)(8) Release would disclose information concerning the regulation of
 financial institutions [(b)(8) of the FOIA]
 (b)(9) Release would disclose geological or geophysical information

THE WHITE HOUSE

WASHINGTON

April 20, 1989

Rec'd COS

APR 20 1989

6:40 pm

MEMORANDUM FOR GOVERNOR JOHN H. SUNUNU
CHIEF OF STAFF

FROM: C. BOYDEN GRAY *cmg*
COUNSEL TO THE PRESIDENT

SUBJECT: Affiliation of Government Officials with Private
Organizations and Fundraising Activities

In connection with your meeting tomorrow with Roy Pfautch, I thought you would be interested in a copy of the attached draft memorandum on the propriety of federal officials becoming officers of for-profit and non-profit organizations and on participation in fundraising activities.

I must emphasize that this is only a draft and that it will need to be polished significantly and reviewed by the Office of Government Ethics before it can be issued. Nonetheless, I wanted to share it with you at this time, because I know that Pfautch is very interested in making sure that Cabinet officials can serve as honorary co-chairman of charitable fundraising events. The memorandum would allow such service, but within certain safeguards to avoid conflict of interest.

Please let me know if you have any questions.

Attachment

DRAFT

Draft; 4/20

MEMORANDUM FOR THE CABINET AND FOR WHITE HOUSE OFFICE AND OFFICE
OF POLICY DEVELOPMENT EMPLOYEES

FROM: JOHN H. SUNUNU
CHIEF OF STAFF

SUBJECT: Participation in the Activities of For-Profit and
Non-Profit Private Organizations

A number of individuals have asked whether the White House has a policy on individuals holding officer positions in for-profit or not-for-profit organizations and/or being affiliated with fundraising events for such organizations. This memorandum is intended to provide guidance on these issues.

General Guidance

Following the recommendations of the President's Commission on Federal Ethics Law Reform, the President has sent forward to Congress ethics reform legislation that would, among other things, prohibit senior employees in the federal government from serving -- with or without compensation -- on the board of directors (or in equivalent officer positions) of for-profit organizations. For these purposes, the bill defines a senior employee as one who is required to file a public financial disclosure report (SF-278s) under the Ethics in Government Act.

The bill also provides that a senior employee wishing to serve on the board (or in another officer position) of a non-profit organization would be required to obtain the approval of his or her supervisor and the designated agency ethics officials (DAEO) at his or her agency. In granting or denying approval, the DAEO would look to the applicable agency standards of conduct, which generally prohibit federal employees from engaging in outside activities incompatible with the full and proper discharge of their official duties (whether on account of a financial or other conflict of interest, competing time demands, or similar factors). In addition, it is currently the case that, if an official is an officer in an organization, its financial interests are attributed to the official, to the extent he or she knows about them, for the purposes of federal conflict-of-interest law.

In view of the President's policy and the pending legislation, I am asking all of you to refrain from any service on the board of any for-profit enterprise and to resign from any such positions you currently hold. In addition, I am requesting that you adhere to the procedure described above should you wish to retain or

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obtain a position on the board of a non-profit organization. Although this guidance is addressed only to senior employees, it is not in any way intended to affect the current practice of your agencies regarding other employees or to supersede any more restrictive review procedure that you may currently have in place.

Fundraising Activities

Questions have also arisen about the appropriateness of federal officials being involved in fundraising activities -- both in connection with service as an officer of a non-profit organization and otherwise.

As a general matter, federal ethical standards prohibit an employee from using public office for private gain. This standard has been interpreted by the Office of Government Ethics to preclude any direct fundraising by federal officials even for charitable causes. Thus, federal officials cannot, for example, be co-signatories of fundraising letters for charitable organizations in which they may serve as officers, nor as a general matter should their names appear on the letterheads of letters making fundraising appeals. For the same reason, the Office of Government Ethics also objects to the use of an individual's official title in connection with his or her participation in the activities of a charitable organization.

Notwithstanding the above considerations, it has been commonplace over the past few years for members of the Cabinet to serve as honorary co-chair of the many Washington D.C. social events that also serve as fundraising events. Provided that this is handled carefully and with sensitivity to conflict of interest considerations, this practice remains permissible. Officials wishing to serve as co-chair of such events should be careful not to engage in any direct solicitation of funds. They should also be extremely careful to avoid taking or tolerating any action that suggests that a person or organization that makes a contribution to the cause for which the government official is serving as honorary chair will in any way be treated differently than any other person or organization doing business with the government official or his or her agency. Cabinet members wishing to serve as honorary co-chair for particular events should consult the designated agency ethics official at their agencies.

If you have any questions about this guidance, please contact me or the Office of the Counsel to the President.

THE WHITE HOUSE

WASHINGTON

May 16, 1989

MEMORANDUM FOR GOVERNOR JOHN H. SUNUNU
CHIEF OF STAFF

FROM: C. BOYDEN GRAY *cm*
COUNSEL TO THE PRESIDENT

SUBJECT: Charitable Organizations and Fundraising

You had asked about the advice my office has given regarding political appointees serving on the boards of directors of non-profit organizations and political appointee involvement in social events that double as fundraisers for such organizations. As you know, my office has been assembling a general guidance memo on these issues, which I am sending to the Office of Government Ethics (OGE) for review. In accord with the President's legislative package, the guidance would prohibit all memberships on the boards of profit-making organizations, while allowing memberships on boards of non-profit organizations, subject to case-by-case review by the designated agency ethics official.

As far as fundraisers go, I am not aware that my office has provided any advice at all about attendance by Cabinet officials or others. The policy memorandum as currently drafted doesn't touch on the issue, which would have the effect of leaving it to each agency ethics official and the Office of Government Ethics. (If an official has been offered free tickets, then the agency in question would presumably apply the routine analysis under its individual standards of conduct regulations as to whether the gift of tickets is acceptable or not in view of the identity of the donor and the particular circumstances at hand.)

I am also unaware of any Cabinet official asking my office whether it is appropriate to agree to be "honored" by a fundraiser. There have been various inquiries about the permissibility of officials agreeing to serve as the honorary co-chairmen of fundraising events. In response, we have told agencies that the White House had not yet adopted a policy. The draft guidance memorandum proposes to leave this issue to agencies and OGE, as has been the case in the past. As to White House staff, however, we have continued the prior Administration's unwritten policy of disapproving requests to serve as honorary co-chairman of fundraising events.

Please let me know if you have any questions.

THE WHITE HOUSE
WASHINGTON

September 27, 1989

MEMORANDUM FOR GOVERNOR JOHN H. SUNUNU
CHIEF OF STAFF

FROM: C. BOYDEN GRAY *CMH*
COUNSEL TO THE PRESIDENT

SUBJECT: Attached Draft Guidance on White House Staff
Holding Positions in Outside Organizations

Attached for your review and comment, if you wish, is a guidance memorandum that I propose to issue regarding requests by White House and Office of Policy Development staff to serve on the boards of outside for-profit and non-profit entities. The memorandum generally summarizes existing policy as opposed to creating new policy. My office has received a number of inquiries on this subject and I believe that general guidance would be extremely useful.

I have sent it to the Office of Government Ethics for a review of its accuracy, and anticipate hearing back from OGE within the next two weeks. Unless I hear otherwise, it is my intention to issue it once OGE concurs.

Please let me know if you have any questions. *7*

Attachment

DRAFT: September 26, 1989

MEMORANDUM FOR WHITE HOUSE OFFICE AND OFFICE OF POLICY
DEVELOPMENT STAFF

FROM: C. BOYDEN GRAY
COUNSEL TO THE PRESIDENT

SUBJECT: Serving on the Boards of For-Profit and Non-Profit
Private Organizations

My office has received a number of requests from White House staff members about the permissibility of holding positions on the boards of private organizations. This memorandum provides general guidance on that subject.

In accord with recommendations of the President's Commission on Federal Ethics Law Reform that have been adopted by President Bush, Presidential appointees are not permitted to hold positions as officers, directors, or trustees of for-profit entities. Affiliations as officers, directors or trustees of non-profit organizations are permitted, with the approval of the Designated Agency Ethics Official, if the affiliations are consistent with the full and proper discharge of the employee's job in view of applicable ethical standards, as described below.

o Conflict of Interest

Financial Conflicts -- Individuals who are officers, directors or trustees (as opposed to mere members) of private organizations (including non-profit organizations) are deemed by the general criminal conflict-of-interest statute (18 U.S.C. 208) to share the financial interests of the outside organization. As applied by the Office of Government Ethics (OGE), this means that absent a waiver, a public official who serves in such a position cannot, in the course of his or her official business, deal directly with the organization in which he or she serves. An official who has a position with an outside organization also must recuse himself or herself from personal and substantial participation in any matter -- including a policy matter -- that would have a direct and predictable effect on the organization -- including any financial interests of the organization (such as investments) of which the official knows. As a result of these considerations, it is ordinarily not appropriate for an individual to hold an outside position with an organization that has more than

incidental dealings with the individual or the individual's office or that has interests that would be significantly affected by the activities of that office.

Other Conflicts -- An outside position may be inconsistent with the full and proper discharge of an employee's job even if it does not create a financial conflict of interest. For example, an outside position can present a conflict if its demands detract from the employee's ability to perform his or her Government duties and responsibilities. In addition, when a White House employee is affiliated as an officer, director, or trustee of an outside organization, there is a heightened potential for embarrassment if the organization is likely to take positions inconsistent with Administration policy.

o Official Title, Time, Resources and Non-Public Information

An individual's affiliations with non-profit organizations are generally private activities, rather than official acts as a representative of the U.S. government. It is inappropriate for a Federal employee's government title to be used as his or her title in connection with a private affiliation with an outside entity. Similarly, it is impermissible for an individual to use government resources -- including supplies, secretarial services, equipment etc. -- in connection with an outside position or to use, for the benefit of the private organization, any government information not generally available to the public.

o Contacts with the Federal Government

As noted in the above discussion of conflict-of-interest considerations, a public official who serves on an outside organization's board cannot deal with that organization in the course of his or her government job. Because of separate constraints, a public official also generally cannot step outside his or her government position to assist an outside organization in its dealings with the Federal government.

o Outside Earned Income

Executive Order 12674 precludes most White House Office and Office of Policy Development employees from receiving any outside earned income for services performed during their current government positions. This would prevent receipt of compensation for service as an officer, director or trustee of a non-profit organization (although it would generally

not prevent reimbursement of reasonable travel expenses associated with organization business).

o Avoidance of Use of Public Office for Private Gain

Ethics standards prohibit the use of public office for private gain, including the gain of a non-profit organization. This issue tends to arise most often in the course of certain kinds of fundraising. Accordingly, the Office of Government Ethics prohibits Federal employees from soliciting contributions from people or entities with which they do government business. (See OGE Opinion 88 x 6.) It is also longstanding White House policy that White House employees not act as honorary co-chairmen for private charitable fundraising efforts. In cases in which a White House employee is otherwise properly affiliated with a non-profit organization, there may be instances in which the organization's fundraising could involve use of the individual's name (but not Federal title) on the organization's letterhead. These instances should be discussed with Counsel's office staff in advance for analysis on a case-by-case basis.

The above bullets focus on ethical standards particularly relevant to service on the boards of outside non-profit organizations. In serving on an outside board, Federal employees also continue to be governed by the remainder of the general ethical standards embodied in the Executive Office of the President Standards of Conduct regulations.

To date, my office has approved requests from a number of individuals to serve on boards of particular organizations, including a non-profit educational foundation, a charitable foundation, and a medical school. If you have any questions or wish to request approval of a position with a particular organization, please feel free to contact my office.

THE WHITE HOUSE

WASHINGTON

July 18, 1989

MEMORANDUM FOR GOVERNOR JOHN H. SUNUNU
CHIEF OF STAFF

FROM: C. BOYDEN GRAY *cm*
COUNSEL TO THE PRESIDENT

SUBJECT: Conflict-of-Interest Exemptions

My staff has prepared amendments to the Standards of Conduct for the Executive Office of the President that would broaden the existing exemptions from the conflict-of-interest law, 18 U.S.C. 208. As you know, there are two types of exemptions under the statute: (1) exemptions granted individually by the appointing official and (2) general exemptions, enacted by rule. The latter type may be enacted when the particular financial interest involved is too remote or too inconsequential to affect the integrity of an employee's services. Existing regulatory exemptions cover such interests as diversified mutual funds.

The proposed new exemptions would cover such things as de minimis holdings of publicly traded corporate stocks or bonds, many pensions and retirement interests, and, as to general policy issues, the employment interest of an individual on leave of absence from a nonprofit college or university. I believe enactment of these regulations would make a significant contribution to rationality in the application of the conflict-of-interest law.

Proceeding with these regulations would require: (1) clearance by the Office of Government Ethics, (2) clearance by the agency heads in the Executive Office of the President; and (3) a delegation of authority by the President to an individual who would sign the regulatory package. This last step would entail clearance of the full regulatory package through the White House, via Jim Cicconi's office.

Do you have any objection to my proceeding with this course of action? (Please let me know if you would like to review a copy of the ten page draft regulatory package at this stage.)

No objection *✓*

Let's discuss *let me see*

7/21/89

Date