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NSC Procedural Manual - Binder 3 [1]

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Doc. No. / Type	Subject/Title	Date	Restriction	Classification
01. List	Presidential Files (2 pp.)	n.d.	(b)(1)	S
02. List	Other Files (2 pp.)	n.d.	(b)(1)	S
03. Memorandum	For the President From: Grant Green Re: Continuity of Functioning of the NSC (3 pp.)	n.d.	(b)(1)	
04. Memorandum	For Robert Kimmitt From: George Van Eron Re: Status Report on Review of Institutional Documents (2 pp.)	1/8/85	(b)(1)	

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Record Group: Bush Presidential Records

Office: National Security Council

Series: H-Files

Subseries: Transition Files

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File Location: NSC Procedural Manual - Binder 3 [1]

Pinksheet Number: MB14499

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3

From: NSMDC --CPUA
To: NSMDC --CPUA -UNCLASSIFIED-

Date and time 07/01/88 15:02:49

NOTE FROM: Maria D. Clark
SUBJECT:

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April 8, 1987

MEMORANDUM FOR THE NSC STAFF

FROM: GRANT S. GREEN, JR.

SUBJECT: NSC's Designated Agency Ethics Official

The maintenance of high standards of honesty, impartiality, and conduct by staff members of the NSC is essential. Likewise, informed judgment is indispensable to the maintenance of such standards. In order to assist you in evaluating ethical matters, I am designating, as of today, Paul S. Stevens as the NSC's Designated Agency Ethics Official (DAEO), as defined by 5 C.F.R. §738.201-738.203.

As a matter of routine, you should seek advice from the NSC DAEO whenever ethical issues arise in the course of your work. Issues on which you should seek legal advice may arise in a variety of contexts. Some of the situations which merit seeking legal advice and a few ethical guidelines are outlined below.

Ethical issues may arise when you are offered, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from certain persons, groups, or corporations. Entities which would create ethical problems in these circumstances include those which have, or are seeking to obtain, contractual or other business or financial relations with the NSC, or have interests which may be substantially affected by the performance or nonperformance of your duties as a member of the NSC staff.

Under Executive Order 11222, government employees must avoid any action, whether or not specifically prohibited elsewhere, which might result in, or create the appearance of, impropriety. Improper conduct includes:

- Using public office for private gain;
- Giving preferential treatment to any organization or person;
- Impeding government efficiency or economy, losing complete independence or impartiality of action;
- Making a government decision outside of official channels;

- Affecting adversely the confidence of the public in the integrity of the government;
- Using federal property of any kind for other than officially approved activities;
- Using directly or indirectly, for the purpose of furthering private interest, official information not made available to the general public, failing to meet all just financial obligations, and receiving any salary or supplementation of an employee's government salary from a private source as compensation for services to the government.

Members of the staff may not have direct or indirect financial interests that conflict, or appear to conflict, with their responsibilities and duties as federal employees. Your annual financial disclosure form will be carefully reviewed to protect both you and the NSC from any appearance of financial impropriety.

Finally, you should be aware that the law places restrictions on government employees regarding their post-government employment activities. The NSC DAEO will provide legal advice concerning these legal restrictions to all departing staff members. In addition, you should feel free to continue to seek advice from the NSC DAEO after leaving government service if you have any questions about the propriety of your post-government employment activities.

The guidance given above is not comprehensive. Attached for your information are copies of statutes, regulations, and an executive order which define in more detail some of the restrictions applicable to members of the NSC staff. You should seek legal advice whenever you believe your actions or situation may raise ethical concerns.

Attachments

Tab I 18 U.S.C. §§207-209

Tab II 3 C.F.R. §100.735-

Tab III Executive Order No. 11222, May 8, 1965

I



§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—

(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3), as to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

(d)(1) Subsection (c) of this section shall apply to a person employed—

(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code [5 USCS §§ 5301 et seq.], or a comparable or greater rate of pay under other authority;

(B) on active duty as a commissioned officer of a uniformed service assigned to pay

grade of O-9 or above as described in section 201 of title 37, United States Code [37 USCS § 201]; or

(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code [5 USCS § 5332], or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978 [5 USCS §§ 1101 et seq.], or positions of active duty commissioned officers of the uniformed services assigned to pay O-7 or O-8, as described in section 201 of title 37, United States Code [37 USCS § 201], may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

(A) an elected official of a State or local government, or

(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965 [20 USCS § 1141(a)], or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954 [26 USCS § 501(c)(3)], and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, 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 and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act [effective July 1, 1979], departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

(As amended Oct. 26, 1978, P. L. 95-521, Title V, § 501(a), 92 Stat. 1864; June 22, 1979, P. L. 96-28, 93 Stat 76.)

§ 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other 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 such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment.

(added Oct. 23, 1962, P. L. 87-849, § 1(a), 76 Stat. 1124; Nov. 16, 1977, P. L. 95-188, Title II, § 205, 91 Stat. 1388.)

~ § 209. Salary of Government officials and employees payable only by United States

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958).

(Added Oct. 23, 1962, P. L. 87-849, § 1(a), 76 Stat. 1125.)

§ 209. Salary of Government officials and employees payable only by United States

(a)-(d) [Unchanged]

(e) This section does not prohibit the payment of actual relocation expenses incident to participation, or the acceptance of same by a participant in an executive exchange or fellowship program in an executive agency: *Provided*, That such program has been established by statute or Executive order of the President, offers appointments not to exceed three hundred and sixty-five days, and permits no extensions in excess of ninety additional days.

(f) This section does not prohibit acceptance or receipt, by any officer or employee injured during the commission of an offense described in section 351 or 1751 of this title [18 USCS §§ 351, 1751], of contributions or payments from an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1954 [26 USCS § 501 (c)(3)] and which is exempt from taxation under section 501(a) of such Code [26 USCS § 501(a)].

(As amended Dec. 29, 1979, P. L. 96-174, § 1, 93 Stat. 1288; Apr. 13, 1982, P. L. 97-171, 96 Stat. 67.)

"(1) the qualification of a United States attorney for such district appointed by the President under section 541 of this title; or

"(2) the expiration of 120 days after appointment by the Attorney General under this section.

"(d) If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court."

SEC. 70. RELOCATION EXPENSES FOR EXCHANGE PARTICIPANTS.

Section 209(e) of title 18, United States Code, is amended by striking out the period at the end and inserting in lieu thereof "or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days."

H



Chapter I—Executive Office of the President

Part

100 Standards of conduct.

101 Public information provisions of the Administrative Procedures Act.

PART 100—STANDARDS OF CONDUCT

Subpart A—General Standards

Sec.

- 100.735-1 Purpose and scope.
- 100.735-2 Definitions.
- 100.735-3 Special Government employees.
- 100.735-4 General standards of conduct.
- 100.735-5 Responsibilities of employees.
- 100.735-6 Interpretation and advisory service; counseling.
- 100.735-7 Disciplinary action.
- 100.735-8 Conflicts of interest.
- 100.735-9 Disqualification because of private financial interests.
- 100.735-10 Additional prohibitions—regular employees.
- 100.735-11 Additional prohibitions—special Government employees.
- 100.735-12 Exemptions and exceptions from prohibitions of conflict of interest statutes.
- 100.735-13 Salary of employee payable only by United States.
- 100.735-14 Gifts, entertainment, and favors.
- 100.735-15 Outside employment and other activity.
- 100.735-18 Financial interests.
- 100.735-17 Use of Government property.
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- 100.735-20 Gambling, betting, and lotteries.
- 100.735-21 General conduct prejudicial to the Government.
- 100.735-22 Miscellaneous statutory provisions.
- 100.735-23 Conduct and responsibilities of special Government employees.
- 100.735-24 Reporting of employment and financial interests—regular employees.
- 100.735-25 Reporting of employment and financial interests—special Government employees.
- 100.735-26 Reviewing statements of financial interests.
- 100.735-27 Supplemental regulations or instructions.

Subpart B—Special Procedures; Counsel to the President

- 100.735-31 Members of part-time committees, boards, and commissions.
- 100.735-32 Special delegation of authority to the Counsel to the President.

Authority: The provisions of this Part 100 issued under Executive Order 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1965 Supp. 5 CFR 735.104.

Source: The provisions of this Part 100 appear at 33 FR 3608, Feb. 29, 1968, unless otherwise noted.

Subpart A—General Standards

§ 100.735-1 Purpose and scope.

(a) The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by regular employees and special Government employees is essential to assure the proper performance of Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of regular employees and special Government employees through informed judgment is indispensable to the maintenance of these standards.

(b) This part is intended to foster the foregoing concepts. It is issued in compliance with the requirements of Executive Order No. 11222 of May 8, 1965, and is based upon the provisions of that order, the regulations of the Civil Service Commission issued thereunder (Part 735 of 5 CFR Ch. I), and the statutes cited elsewhere in this part.

(c) This part, among other things reflects prohibitions and requirements imposed by the criminal and civil laws of the United States. However, the paraphrased restatements of criminal and civil statutes contained in this part are designed for informational purposes only and in no way constitute an interpretation or construction thereof that is binding upon the Federal Government. Moreover, this part does not purport to paraphrase or enumerate all restrictions or requirements imposed by statutes, Executive Orders, regulations or otherwise upon Federal employees and former Federal employees. The omission of a reference to any such restriction or requirement in no way alters the legal effect of that restriction or requirement and any such restriction or requirement, as the case may be, continues to be applicable to employees and former employees in accordance with its own terms. Furthermore, attorneys employed by an agency are subject to the canons of professional ethics of the American Bar Association.

§ 100.735-2 Definitions.

In this subpart:

(a) "Agency" means the following agencies in the Executive Office of the President: The White House Office, the Council of Economic Advisers, the National Security Council, the National Aeronautics and Space Council, the Office of Science and Technology, and the Office of the Special Representative for Trade Negotiations, and any committee, board, commission, or similar group established in the Executive Office of the President.

(b) "Agency head" means the President for the White House Office, the Chairman of the Council of Economic Advisers for the Council of Economic Advisers, the Executive Secretary of the National Security Council for the National Security Council, the Executive Secretary of the National Aeronautics and Space Council for the National Aeronautics and Space Council, the Director of the Office of Science and Technology for the Office of Science and Technology, and the Special Representative for Trade Negotiations for the Office of the Special Representative for Trade Negotiations, and the Chairman or comparable member of any committee, board, commission, or similar group established by the President.

(c) "Employee" or "regular employee" means an officer or employee of an agency but does not include a special Government employee.

(d) "Special Government employee" means an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period

of 365 consecutive days, temporary duties, either on a full-time or intermittent basis.

(e) The term "person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 100.735-3 Special Government employees.

Except where specifically provided otherwise, or where limited in terms or by the context to regular employees, all provisions of this subpart relating to employees are applicable also to special Government employees.

§ 100.735-4 General standards of conduct.

(a) All employees shall conduct themselves on the job in such a manner that the work of their agency is efficiently accomplished and courtesy, consideration, and promptness are observed in dealings with the Congress, the public, and other governmental agencies.

(b) All employees shall conduct themselves off the job in such a manner as not to reflect adversely upon their agency or the Federal service.

(c) In all circumstances employees shall conduct themselves so as to exemplify the highest standards of integrity. An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

- (1) Using public office for private gain;
- (2) Giving preferential treatment to any person;
- (3) Impeding Government efficiency or economy;
- (4) Losing complete independence or impartiality;
- (5) Making a Government decision outside official channels; or
- (6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 100.735-5 Responsibilities of employees.

(a) The Executive Clerk for the White House Office and the Counselor for each other agency shall distribute copies of this subpart to each employee and special Government employee within 30 days after the effective date thereof. In the case of a new employee or special Government employee entering on duty after the date of such distribution, a copy shall be furnished at the time of his entrance on duty. All employees and special Government employees shall familiarize themselves with the contents of this subpart.

(b) Copies of Executive Order 11222, regulations, and statutes referred to in § 100.735-1, together with various explanatory materials are available for inspection in the Office of the Executive Clerk for the White House Office and the Counselor for each other agency at any time during regular business hours. Employees are encouraged to consult these basic materials in any case of doubt as to the proper application or interpretation of the provisions of this subpart.

(c) Attention of all employees is directed to House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service", which is attached to this subpart as Appendix A.

§ 100.735-6 Interpretation and advisory service; counseling.

(a) The agency head shall appoint a Counselor for the agency who shall serve also as the agency's designee to the Civil Service Commission on matters covered by this part. Communications between the Counselor and

§ 100.735-7

Title 3—The President

employee shall be confidential, except as otherwise determined by the agency head.

(b) The Counselor for the agency shall notify all employees and special Government employees of the availability of counseling services, and of how and where such services are available. Such notification shall be made within 90 days after the effective date of this subpart and periodically thereafter. In the case of a new employee or special Government employee appointed after the date of such notification, notification shall be given at the time of his entrance on duty.

§ 100.735-7 Disciplinary action.

(a) A violation of any provision of this subpart by an employee may be cause for appropriate disciplinary action which may be in addition to any penalties prescribed by law. (As to remedial action in cases where an employee's financial interests result in a conflict or apparent conflict of interest, see § 100.735-26.)

(b) Any disciplinary or remedial action taken pursuant to this subpart shall be effected in accordance with any applicable laws, Executive orders, and regulations.

§ 100.735-8 Conflicts of interest.

(a) A conflict of interest may exist whenever an employee has a substantial personal or private interest in a matter which involves his duties and responsibilities as an employee. The maintenance of public confidence in Government clearly demands that an employee take no action which would constitute the use of his official position to advance his personal or private interest. It is equally important that each employee avoid becoming involved in situations which present the possibility, or even the appearance, that his official position might be used to his private advantage.

(b) Neither the pertinent statutes nor the standards of conduct prescribed in this subpart are to be regarded as entirely comprehensive. Each employee must, in each instance involving a personal or private interest in a matter which also involves his duties and responsibilities as an employee, make certain that his actions do not have the effect or the appearance of the use of his official position for the furtherance of his own interests or those of his family or his business associates.

(c) The principal statutory provisions relating to bribery, graft, and conflicts of interest are contained in Chapter 11 of the Criminal Code, 18 U.S.C. 201-224. Severe penalties are provided for violations, including variously fine, imprisonment, dismissal from office, and disqualification from holding any office of honor, trust, or profit under the United States.

§ 100.735-9 Disqualification because of private financial interests.

(a) Unless authorized to do so as provided hereafter in this section, no employee shall participate personally and substantially as a Government employee in a particular matter in which to his knowledge he has a financial interest (18 U.S.C. 208).

(1) For the purposes of this section—

(i) An employee participates personally and substantially in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise;

(ii) A particular matter is a judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter; and

(iii) A financial interest is the interest of the employee himself or his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment.

(b) An employee who has a financial interest (other than a financial interest exempted under paragraph (c) of this section) in a particular matter which is within the scope of his official duties shall make a full disclosure of that interest to the Counselor for the agency in writing. He shall not participate in such matter unless and until he receives a written determination by the agency head pursuant to section 208 of Title 18, United States Code, that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him. If the agency head does not make such a determination he shall direct such remedial action as may be appropriate under the provisions of § 100.735-26.

(c) The financial interests described in this paragraph are hereby exempted pursuant to the provisions of section 208 of Title 18, United States Code, from the restrictions of paragraph (a) of this section and of section 208 of Title 18 as being too remote or inconsequential to affect the integrity of an employee's services in a matter.

(1) Stocks, bonds, policies, properties, or interests in a mutual fund, investment company, trust, bank, or insurance company, as to which the employee has no managerial control or directorship. In the case of a mutual fund or investment company, this exemption applies only where the assets of the fund or company are diversified; it does not apply where the fund or company advertises that it specializes in a particular industry or commodity.

(2) Interest in an investment club: *Provided*, That the fair value of the interest involved does not exceed \$5,000, and that the interest does not exceed one-fourth of the total assets of the investment club.

§ 100.735-10 Additional prohibitions—regular employees.

(a) In addition to the disqualification described in § 100.735-9, a regular employee is subject to the following major prohibitions.

(1) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

(2) He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he participated personally and substantially. See subparagraph (2) of this paragraph.)

(4) He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209). (See § 100.735-13.)

(b) Exemptions or exceptions from the prohibitions described in paragraph (a) of this section are permitted under certain circumstances. For the

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method of obtaining such exemptions or exceptions, see paragraph (d) of § 100.735-12.

§ 100.735-11 Additional prohibitions—special Government employees.

(a) In addition to the disqualification described in § 100.735-9, a special Government employee is subject to the following major prohibitions.

(1) He may not, except in the discharge of his official duties—

(i) Represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205), or

(ii) Represent anyone else in a matter pending before his agency unless he served there no more than 60 days during the previous 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

(2) He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he participated personally and substantially. See subparagraph (2) of this paragraph.)

(b) Exemptions or exceptions from the prohibitions described in paragraph (a) of this section are permitted under certain circumstances; for the method of obtaining such exemptions or exceptions, see paragraph (d) of § 100.735-12.

§ 100.735-12 Exemptions and exceptions from prohibitions of conflict of interest statutes.

(a) Nothing in this subpart shall be deemed to prohibit an employee, if it is not otherwise inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person in a disciplinary, loyalty, or other Federal personnel administration proceeding involving such person.

(b) Nothing in this subpart shall be deemed to prohibit an employee from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, as defined in section 202(b) of Title 18 of the United States Code, provided that the agency head approves.

(c) Nothing in this subpart shall be deemed to prohibit an employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(d) In addition to the exemptions and exceptions described in this section and in § 100.735-9, the conflict of interest statutes permit certain exemp-

tions and exceptions in specific circumstances. The procedure for effecting such exemptions or exceptions is as follows:

(1) Any regular employee or special Government employee who desires approval or certification of his activities as provided for by section 205 of Title 18, United States Code, shall make application therefor in writing to the Counselor for the agency.

(2) A former employee, including a former special Government employee, who desires certification with regard to his activities under section 207 of Title 18, United States Code, shall make application therefor in writing to the Counselor for the agency.

(3) The Counselor for the agency shall report promptly to the agency head all matters reported to him under this subpart which require consideration of approvals, certifications, or determinations provided for in sections 205, 207, or 208 of Title 18, United States Code.

§ 100.735-13 Salary of employee payable only by United States.

(a) No employee, other than a special Government employee or an employee serving without compensation, shall receive any salary, or any contribution to or supplementation of salary, as compensation for his services as an employee, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality (18 U.S.C. 209).

(b) Nothing in this subpart shall be deemed to prohibit an employee from continuing to participate in a bona fide pension, retirement, group life, health, or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer nor from accepting contributions, awards, or other expenses under Chapter 41 of Title 5, United States Code (the former Government Employees Training Act).

§ 100.735-14 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with his agency;

(2) Conducts operations or activities which are regulated by his agency;

or

(3) Has interests which may be substantially affected by the performance or nonperformance of his official duty.

(b) Notwithstanding paragraph (a) of this section, an employee may:

(1) Accept a gift, gratuity, favor, entertainment, loan or other thing of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the family or personal relationships involved are the motivating factors;

(2) Accept food or refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour whom an employee may properly be in attendance;

(3) Accept loans from banks or other financial institutions on customary terms to finance proper or usual activities of employees, such as home mortgage loans; and

(4) Accept unsolicited advertising or promotional materials such as pens, pencils, note pads, calendars, or other items of nominal intrinsic value.

(c) An employee shall not solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a supe-

rior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself. An employee shall not make a donation as a gift to an employee in a superior official position (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness or retirement.

(d) The Constitution (Art. 1, sec. 9, par. 8) prohibits acceptance from foreign governments, except with the consent of Congress, of any emolument, office, or title. The Congress has provided for the receipt and disposition of foreign gifts and decorations in 5 U.S.C. 7342. See also Executive Order 11320, 31 FR 15789, and the regulations pursuant thereto in 22 CFR Part 3 (as added, 32 FR 6569). Any such gift or thing which cannot appropriately be refused shall be submitted to the Counselor for transmittal to the State Department.

§ 100.735-15 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest; or

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) Within the limitations imposed by this section, employees are encouraged to engage in teaching, lecturing, and writing. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for the use of non-public information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of Executive Order No. 11222 of May 8, 1965, shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(c) An employee shall not engage in outside employment under a State or local government, except in accordance with applicable regulations of the Civil Service Commission (Part 734 of 5 CFR Ch. I).

(d) Neither this section nor § 100.735-14 precludes an employee from:

(1) Receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this subpart and for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

(2) Participation in the activities of national or State political parties not proscribed by law. (See paragraph (o) of § 100.735-22 regarding proscribed political activities.)

(3) Participation in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, nonprofit educational or recreational, public service, or civic organization.

(e) An employee who intends to engage in outside employment shall obtain the approval, through his official superior, of his agency head. A record of each approval under this paragraph shall be filed in the employee's official personnel folder.

(f) This section does not apply to special Government employees, who are subject to the provisions of § 100.735-23.

§ 100.735-16 Financial interests.

(a) An employee may not have financial interests which—

(1) Establish a substantial personal or private interest in a matter which involves his duties and responsibilities as an employee (an employee may not have financial interests, except as permitted by § 100.735-9(c) or authorized pursuant to § 100.735-12(d); or

(2) Are entered into in reliance upon, or as a result of, information obtained through his employment; or

(3) Result from active and continuous trading (as distinguished from the making of bona fide investments) which is conducted on such a scale as to interfere with the proper performance of his duties.

(b) Aside from the restrictions prescribed or cited in this subpart, employees are free to engage in lawful financial transactions to the same extent as private citizens. Employees should be aware that the financial interests of their wives of minor children and blood relatives who are full-time residents of their households may be regarded, for the purposes of this section, as financial interests of the employees themselves.

(c) This section does not apply to special Government employees, who are subject to the provisions of § 100.735-23.

§ 100.735-17 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property including equipment, supplies, and other property entrusted or issued to him.

§ 100.735-18 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in paragraph (b) of § 100.735-15, directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 100.735-19 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee, or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which his

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agency determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt.

§ 100.735-20 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 100.735-21 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 100.735-22 Miscellaneous statutory provisions.

Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of his agency and of the Government. In particular, attention of employees is directed to the following statutory provisions:

(a) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned (see §§ 100.735-9, 100.735-10, and 100.735-11).

(b) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(c) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(d) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(e) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (5 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibition against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

§ 100.735-23 Conduct and responsibilities of special Government employees.

(a) A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person whether by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purposes of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(c) A special Government employee who engages in teaching, lecturing, or writing, whether for or without compensation, shall not for such purposes make use of information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for the use of nonpublic information on the basis that such use is in the public interest.

(d) A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

(e) Except as provided in paragraph (f) of this section, a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with his agency anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(f) Notwithstanding paragraph (e) of this section a special Government employee shall be allowed the same latitude as is authorized for regular Government employees by paragraph (b) of § 100.735-14.

(g) Attention of special Government employees is directed to the provisions of § 100.735-3, making the provisions of this subpart generally applicable to their activities.

§ 100.735-24 Reporting of employment and financial interests—regular employees.

(a) Not later than 90 days after the effective date of this subpart, an employee designated in paragraph (d) of this section shall submit to his agency head a statement, on a form made available in the office of the Executive Clerk for the White House Office and the Counselor for each other agency, setting forth the following information:

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational

or other institutions with or in which he, his spouse, minor child or other member of his immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser or consultant; or

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or

(iii) Any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts.

However, an employee need not report any financial interest exempted under § 100.735-9(c) as too remote or inconsequential to affect the integrity of an employee's services in a matter.

(2) A list of the names of his creditors and the creditors of his spouse, minor child or other member of his immediate household, other than those creditors to whom they may be indebted by reason of a mortgage on property which he occupies as a personal residence or to whom they may be indebted for current and ordinary household and living expenses such as those incurred for household furnishings, an automobile, education, vacations, or the like.

(3) A list of his interests and those of his spouse, minor child or other member of his immediate household in real property or rights in lands, other than property which he occupies as a personal residence.

(b) For the purpose of this section "member of his immediate household" means a full-time resident of the employee's household who is related to him by blood.

(c) Each employee designated in paragraph (d) of this section who enters on duty after the effective date of this subpart shall submit such statement not later than 30 days after the date of his entrance on duty, but not earlier than 90 days after the effective date of this subpart.

(d) Statements of employment and financial interests are required of the following:

(1) Employees paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code, except a Presidential appointee required to file a statement of financial interests under section 401 of Executive Order No. 11222 of May 8, 1965.

(2) Employees in classified positions of grade GS-13 or above, or the equivalent thereof.

(e) Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this paragraph, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of 18 U.S.C. 208 or this subpart.

(f) If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf.

(g) Paragraph (a) of this section does not require an employee to submit any information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not con-

ducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

(h) Each agency shall hold each statement of employment and financial interests in confidence. Each person designated to review a statement of employment and financial interests under section 100.735-26 is responsible for maintaining the statement in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this subpart. An agency may not disclose information from a statement except as the Civil Service Commission or the agency head may determine for good cause shown.

(i) The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(j) An employee who believes that his position has been improperly included as one requiring the submission of a statement of employment and financial interests is entitled to obtain a review of his complaint under his agency's grievance procedure.

(k) This section does not apply to special Government employees, who are subject to the provisions of § 100.735-25.

§ 100.735-25 Reporting of employment and financial interests—special Government employees.

(a) A special Government employee shall submit to the agency head a statement of employment and financial interests which reports (1) all current Federal Government employment, (2) the names of all corporations, companies, firms, State or local governmental organizations, research organizations, and educational or other institutions in or for which he is an employee, officer, member, owner, trustee, director, adviser, or consultant, with or without compensation, (3) those financial interests which the agency determines are relevant in the light of the duties he is to perform, and (4) the names of all partnerships in which he is engaged.

(b) A statement required under this section shall be submitted at the time of employment and shall be kept current throughout the term of a special Government employee's service with an agency. A supplementary statement shall be submitted at the time of any reappointment; a negative report will suffice if no changes have occurred since the submission of the last statement.

§ 100.735-26 Reviewing statements of financial interests.

(a) A designee of the agency head shall review the statements required by §§ 100.735-24 and §§ 100.735-25 to determine whether there exists a conflict, or appearance of conflict, between the interests of the employee or special Government employee concerned and the performance of his service for the Government. If the designee determines that such a conflict or appearance of conflict exists, he shall provide the employee with an opportunity to explain the conflict or appearance of conflict. If he concludes that remedial action should be taken, he shall refer the statement to the agency head through the Counselor for the agency designated pursuant to

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§ 100.735-6, with his recommendation for such action. The agency head, after consideration of the employee's explanation and such investigation as he deems appropriate shall direct appropriate remedial action if he deems it necessary.

(b) Remedial action pursuant to paragraph (a) of this section may include, but is not limited to:

- (1) Changes in assigned duties.
- (2) Divestment by the employee of his conflicting interest.
- (3) Disqualification for a particular action.
- (4) Exemption pursuant to paragraph (b) of § 100.735-9 or paragraph (d) of § 100.735-12.
- (5) Disciplinary action.

§ 100.735-27 Supplemental regulations or instructions.

An agency head may issue supplemental and implementing regulations or instructions not inconsistent with this subpart as necessary to carry out the full purpose and intent of Executive Order 11222 and this subpart as may be required by the particular circumstances of his agency. Such regulations or instructions may include but are not limited to, delegations of any authority allowed by law pertaining to the functions placed upon the agency head by this subpart. Such regulations or instructions must be made available to employees and special Government employees in the same manner as this subpart (see § 100.735-5).

Subpart B—Special Procedures; Counsel to the President**§ 100.735-31 Members of part-time committees, boards, and commissions.**

(a) This section applies to each part-time member of a committee, board, or commission appointed by the President (referred to in this section as a Member).

(b) When the Counsel to the President determines that the functions and responsibilities of a committee, board, or commission are such that consistent with the policy and purpose of Executive Order 11222 the Members thereof should submit statements of employment and financial interests, he shall request each Member thereof to submit such a statement to the Chairman of the Civil Service Commission.

(c) A statement of employment and financial interests required under this section shall be submitted not later than 30 days after the Member's receipt of the request therefor from the Counsel to the President, and shall be kept up to date by submission of amended statements of any changes in, or additions to, the information required to be included in the original statement, on a quarterly basis. The statement shall be submitted in the format prescribed by the Chairman of the Civil Service Commission.

(d) The Chairman of the Civil Service Commission shall review each statement of employment and financial interests and any amendment thereto submitted under this section and shall report to the Counsel to the President any information contained in a statement which may indicate a conflict between the financial interests of the Member concerned and the performance of his services for the Government.

§ 100.735-32 Special delegation of authority to the Counsel to the President.

The authority of the President under sections 205 and 208(b) of Title 18, United States Code, to permit certain actions by an officer or employee of

the Government, including a special Government employee, for appointment to whose position the President is responsible, reserved to the President by section 505(c) of Executive Order 11222, is delegated to the Counsel to the President.

PART 101—PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT

Sec.

- 101.1 Executive Office of the President.
- 101.2 Office of Management and Budget.
- 101.3 Council on Wage and Price Stability.
- 101.4 National Security Council.
- 101.5 Council on Environmental Quality.

Source: The provisions of this Part 101 appear at 40 FR 8061, Feb. 25, 1975, unless otherwise noted.

§ 101.1 Executive Office of the President.

Until further regulations are promulgated, the remainder of the entities within the Executive Office of the President, to the extent that 5 U.S.C. 552 is applicable, shall follow the procedures set forth in the regulations applicable to the Office of Management and Budget (5 CFR Ch. III). Requests for information from these other entities should be submitted directly to such entity.

§ 101.2 Office of Management and Budget.

Freedom of Information regulations for the Office of Management and Budget appear at 5 CFR Ch. III.

§ 101.3 Council on Wage and Price Stability.

Freedom of Information regulations for the Council on Wage and Price Stability appear at 6 CFR Ch. VII.

§ 101.4 National Security Council.

Freedom of Information regulations for the National Security Council appear at 32 CFR Ch. XXI.

§ 101.5 Council on Environmental Quality.

Freedom of Information regulations for the Council on Environmental Quality appear at 40 CFR Ch. V.

[42 FR 65131, Dec. 30, 1977]



III

Executive Order 11222**PRESCRIBING STANDARDS OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES**

By virtue of the authority vested in me by Section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

PART I—POLICY

SECTION 101. Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

PART II—STANDARDS OF CONDUCT

SECTION 201. (a) Except in accordance with regulations issued pursuant to subsection (b) of this section, no employee shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from any person, corporation, or group which—

(1) has, or is seeking to obtain, contractual or other business or financial relationships with his agency;

(2) conducts operations or activities which are regulated by his agency; or

(3) has interests which may be substantially affected by the performance or nonperformance of his official duty.

(b) Agency heads are authorized to issue regulations, coordinated and approved by the Civil Service Commission, implementing the provisions of subsection (a) of this section and to provide for such exceptions therein as may be necessary and appropriate in view of the nature of their agency's work and the duties and responsibilities of their employees. For example, it may be appropriate to provide exceptions (1) governing obvious family or personal relationships where the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors—the clearest illustration being the parents, children or spouses of federal employees; (2) permitting acceptance of food and refreshments available in the ordinary course of a luncheon or dinner or other meeting or on inspection tours where an employee may properly be in attendance; or (3) permitting acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans. This section shall be effective upon issuance of such regulations.

(c) It is the intent of this section that employees avoid any action, whether or not specifically prohibited by subsection (a), which might result in, or create the appearance of—

(1) using public office for private gain;

(2) giving preferential treatment to any organization or person;

(3) impeding government efficiency or economy;

- (4) losing complete independence or impartiality of action;
- (5) making a government decision outside official channels; or
- (6) affecting adversely the confidence of the public in the integrity of the Government.

SEC. 202. An employee shall not engage in any outside employment, including teaching, lecturing, or writing, which might result in a conflict, or an apparent conflict, between the private interests of the employee and his official government duties and responsibilities, although such teaching, lecturing, and writing by employees are generally to be encouraged so long as the laws, the provisions of this order, and Civil Service Commission and agency regulations covering conflict of interest and outside employment are observed.

SEC. 203. Employees may not (a) have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with their responsibilities and duties as Federal employees, or (b) engage in, directly or indirectly, financial transactions as a result of, or primarily relying upon, information obtained through their employment. Aside from these restrictions, employees are free to engage in lawful financial transactions to the same extent as private citizens. Agencies may, however, further restrict such transactions in the light of the special circumstances of their individual missions.

SEC. 204. An employee shall not use Federal property of any kind for other than officially approved activities. He must protect and conserve all Federal property, including equipment and supplies, entrusted or issued to him.

SEC. 205. An employee shall not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, official information not made available to the general public.

SEC. 206. An employee is expected to meet all just financial obligations, especially those—such as Federal, State, or local taxes—which are imposed by law.

PART III—STANDARDS OF ETHICAL CONDUCT FOR SPECIAL GOVERNMENT EMPLOYEES

SECTION 301. This part applies to all "special Government employees" as defined in Section 202 of Title 18 of the United States Code, who are employed in the Executive Branch.

SEC. 302. A consultant, adviser or other special Government employee must refrain from any use of his public office which is motivated by, or gives the appearance of being motivated by, the desire for private gain for himself or other persons, including particularly those with whom he has family, business, or financial ties.

SEC. 303. A consultant, adviser, or other special Government employee shall not use any inside information obtained as a result of his government service for private personal gain, either by direct action on his part or by counsel, recommendations or suggestions to others, including particularly those with whom he has family, business, or financial ties.

SEC. 304. An adviser, consultant, or other special Government employee shall not use his position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or persons with whom he has family, business, or financial ties.

SEC. 305. An adviser, consultant, or other special Government employee shall not receive or solicit from persons having business with his agency anything of value as a gift, gratuity, loan or favor for himself or persons with whom he has family, business, or financial ties while employed by the government or in connection with his work with the government.

SEC. 306. Each agency shall, at the time of employment of a consultant, adviser, or other special Government employee require him to supply it with a statement of all other employment. The statement shall list the names of all the corporations, companies, firms, State or local governmental organizations, research organizations and educational or other institutions in which he is serving as employee, officer, member, owner, director, trustee, adviser, or consultant. In addition, it shall list such other financial information as the appointing department or agency shall decide is relevant in the light of the duties the appointee is to perform. The appointee may, but need not, be required to reveal precise amounts of investments. The statement shall be kept current throughout the period during which the employee is on the Government rolls.

PART IV—REPORTING OF FINANCIAL INTERESTS

SECTION 401. (a) Not later than ninety days after the date of this order, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in that Office, and each full-time member of a committee, board, or commission appointed by the President, shall submit to the Chairman of the Civil Service Commission a statement containing the following:

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions—

(A) with which he is connected as an employee, officer, owner, director, trustee, partner, adviser, or consultant; or

(B) in which he has any continuing financial interests, through a pension or retirement plan, shared income, or otherwise, as a result of any current or prior employment or business or professional association; or

(C) in which he has any financial interest through the ownership of stocks, bonds, or other securities.

(2) A list of the names of his creditors, other than those to whom he may be indebted by reason of a mortgage on property which he occupies as a personal residence or to whom he may be indebted for current and ordinary household and living expenses.

(3) A list of his interests in real property or rights in lands, other than property which he occupies as a personal residence.

(b) Each person who enters upon duty after the date of this order in an office or position as to which a statement is required by this section shall submit such statement not later than thirty days after the date of his entrance on duty.

(c) Each statement required by this section shall be kept up to date by submission of amended statements of any changes in, or additions to, the information required to be included in the original statement, on a quarterly basis.

SEC. 402. The Civil Service Commission shall prescribe regulations, not inconsistent with this part, to require the submission of statements of financial interests by such employees, subordinate to the heads of agencies, as the Commission may designate. The Commission shall prescribe the form and content of such statements and the time or times and places for such submission.

SEC. 403. (a) The interest of a spouse, minor child, or other member of his immediate household shall be considered to be an interest of a person required to submit a statement by or pursuant to this part.

(b) In the event any information required to be included in a statement required by or pursuant to this part is not known to the person required to submit such statement but is known to other persons, the person concerned shall request such other persons to submit the required information on his behalf.

(c) This part shall not be construed to require the submission of any information relating to any person's connection with, or interest in, any professional society or any charitable, religious, social, fraternal, educational, recreational, public service, civic, or political organization or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise.

SEC. 404. The Chairman of the Civil Service Commission shall report to the President any information contained in statements required by Section 401 of this part which may indicate a conflict between the financial interests of the official concerned and the performance of his services for the Government. The Commission shall report, or by regulation require reporting, to the head of the agency concerned any information contained in statements submitted pursuant to regulations issued under Section 402 of this part which may indicate a conflict between the financial interests of the officer or employee concerned and the performance of his services for the Government.

SEC. 405. The statements and amended statements required by or pursuant to this part shall be held in confidence, and no information as to the contents thereof shall be disclosed except as the Chairman of the Civil Service Commission or the head of the agency concerned may determine for good cause shown.

SEC. 406. The statements and amended statements required by or pursuant to this part shall be in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, regulation, or order. The submission of a statement or amended statements required by or pursuant to this part shall not be deemed

to permit any person to participate in any matter in which his participation is prohibited by law, regulation, or order.

PART V—DELEGATING AUTHORITY OF THE PRESIDENT UNDER SECTIONS 205 AND 208 OF TITLE 18 OF THE UNITED STATES CODE RELATING TO CONFLICTS OF INTEREST

SECTION 501. As used in this part, "department" means an executive department, "agency" means an independent agency or establishment or a Government corporation, and "head of an agency" means, in the case of an agency headed by more than one person, the chairman or comparable member of such agency.

SEC. 502. There is delegated, in accordance with and to the extent prescribed in Sections 503 and 504 of this part, the authority of the President under Sections 205 and 208(b) of Title 18, United States Code, to permit certain actions by an officer or employee of the Government, including a special Government employee, for appointment to whose position the President is responsible.

SEC. 503. Insofar as the authority of the President referred to in Section 502 extends to any appointee of the President subordinate to or subject to the chairmanship of the head of a department or agency, it is delegated to such department or agency head.

SEC. 504. Insofar as the authority of the President referred to in Section 502 extends to an appointee of the President who is within or attached to a department or agency for purposes of administration, it is delegated to the head of such department or agency.

SEC. 505. Notwithstanding any provision of the preceding sections of this part to the contrary, this part does not include a delegation of the authority of the President referred to in Section 502 insofar as it extends to:

- (a) The head of any department or agency in the Executive Branch;
- (b) Presidential appointees in the Executive Office of the President who are not subordinate to the head of an agency in that Office; and
- (c) Presidential appointees to committees, boards, commissions, or similar groups established by the President.

PART VI—PROVIDING FOR THE PERFORMANCE BY THE CIVIL SERVICE COMMISSION OF CERTAIN AUTHORITY VESTED IN THE PRESIDENT BY SECTION 1753 OF THE REVISED STATUTES

SECTION 601. The Civil Service Commission is designated and empowered to perform, without the approval, ratification, or other action of the President, so much of the authority vested in the President by Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) as relates to establishing regulations for the conduct of persons in the civil service.

SEC. 602. Regulations issued under the authority of Section 601 shall be consistent with the standards of ethical conduct provided elsewhere in this order.

PART VII--GENERAL PROVISIONS

SECTION 701. The Civil Service Commission is authorized and directed, in addition to responsibilities assigned elsewhere in this order:

(a) To issue appropriate regulations and instructions implementing Parts II, III, and IV of this order;

(b) To review agency regulations from time to time for conformance with this order; and

(c) To recommend to the President from time to time such revisions in this order as may appear necessary to ensure the maintenance of high ethical standards within the Executive Branch.

SEC. 702. Each agency head is hereby directed to supplement the standards provided by law, by this order, and by regulations of the Civil Service Commission with regulations of special applicability to the particular functions and activities of his agency. Each agency head is also directed to assure (1) the widest possible distribution of regulations issued pursuant to this section, and (2) the availability of counseling for those employees who request advice or interpretation.

SEC. 703. The following are hereby revoked:

(a) Executive Order No. 10939 of May 5, 1961.

(b) Executive Order No. 11125 of October 29, 1963.

(c) Section 2(a) of Executive Order No. 10530 of May 10, 1954.

(d) White House memorandum of July 20, 1961, on "Standards of Conduct for Civilian Employees."

(e) The President's Memorandum of May 2, 1963, "Preventing Conflicts of Interest on the Part of Special Government Employees." The effective date of this revocation shall be the date of issuance by the Civil Service Commission of regulations under Section 701(a) of this order.

SEC. 704. All actions heretofore taken by the President or by his delegates in respect of the matters affected by this order and in force at the time of the issuance of this order, including any regulations prescribed or approved by the President or by his delegates in respect of such matters, shall, except as they may be inconsistent with the provisions of this order or terminate by operation of law, remain in effect until amended, modified, or revoked pursuant to the authority conferred by this order.

SEC. 705. As used in this order, and except as otherwise specifically provided herein, the term "agency" means any executive department, or any independent agency or any Government corporation; and the term "employee" means any officer or employee of an agency.

THE WHITE HOUSE.

May 8, 1965.

LYNDON B. JOHNSON

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

March 1, 1988

INFORMATION

MEMORANDUM FOR WILLIAM A. COCKELL
HERMAN J. COHEN
STEPHEN I. DANZANSKY
ROBERT DEAN
FRITZ W. ERMARTH
ALISON FORTIER
D. BARRY KELLY
JAMES A. KELLY
ROBERT E. LINHARD
ROBERT B. OAKLEY
BRENDA S. REGER
PETER W. RODMAN
JOSE S. SORZANO
GEORGE VAN ERON

FROM: NICHOLAS ROSTOW *NR*.

SUBJECT: Ethics: Post-Government Employment Restrictions

This memorandum is for the benefit of all members of the professional staff.

We already have encountered instances in which NSC staffers who recently left the government have contacted former colleagues about ongoing matters. Such contacts raise extremely serious legal and ethical questions. I therefore strongly recommend that you review this memorandum, which summarizes the applicable law, and the attachments, and ensure that members of your respective directorates do likewise. This guidance is primarily for the benefit of the former employees, who may be subject to criminal liability for any improper contacts. It is important for current staff as well; while they are not governed by the legal restrictions, they can become entangled in any investigation that might result in the event of improper contacts, and conceivably could be considered accomplices if they knowingly aid in any such contacts.

Section 207 of Title 18 of the United States Code prohibits a former officer or employee of the United States from engaging in certain acts that take advantage of, or that may create the appearance of an unfair use of, prior government affiliation (Tab II). Section 207 contains three principal restrictions:

- There is a lifetime restriction on any employee's representing (which includes engaging in any oral or written communications with an intent to influence) any other person before any Government agency, or in any proceeding in which the United States has an interest, in connection with any particular matter in which the employee participated personally and substantially.
- There is a two-year restriction on any employee's representing any other person before any Government agency, or in any proceeding in which the United States has an interest, in connection with any particular matter that was actually pending under his official responsibility within one year before he left the Government. (There is a broader prohibition for those at level GS-17 (or OS-7) or above, who also cannot assist someone else by personal appearance in such representation.)
- There is a one-year restriction on any employee at level GS-17 (or OS-7) or above representing any other person in connection with any particular matter that is pending before the NSC or in which the NSC has a direct and substantial interest. This one-year absolute bar on representation before the NSC is without regard to whether the individual worked on the matter involved.

The statute provides felony penalties (two-years' imprisonment and a \$10,000 fine) for knowing violations. Moreover, any current employee who participates in any proscribed contact could be considered to be an accomplice and be subject to the same penalties. Consequently, I strongly urge all members of the professional staff carefully to study the attachments. If circumstances arise in which a former member of the NSC staff contacts members of your directorate concerning any matter before, or involving, the Government, my office should be informed immediately. I think it would be wise for staff to consult with this office prior to engaging in substantive discussions with former employees.

The above discussion of the law is only a summary. I have attached at Tab I a memorandum prepared by the Counsel to the President that addresses these restrictions in more detail. My office will continue to brief members of the staff regarding post-government employment restrictions as they leave government service for private employment. If you have any questions, please contact me.

Attachments

- Tab I - Memorandum from the Counsel to the President
- Tab II - Section 207, Title 18 of the United States Code

cc: Paul Schott Stevens

TAB

I

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR PROSPECTIVE APPOINTEES

FROM: PETER J. WALLISON *PJW*
COUNSEL TO THE PRESIDENT

SUBJECT: Post-Government Service Employment Restrictions
Applicable to Former Senior Government Employees

Every prospective government officer or employee should be acutely aware of the legal restrictions on his or her future employment activities after the period of government service. Section 207 of Title 18 of the United States Code, which was amended by the Ethics in Government Act of 1978 ("the Act"), bars certain acts by former government employees that may create the appearance of an unfair use of their prior government employment and affiliations. In addition, § 207 establishes maximum penalties for violations of the Act of \$10,000, two years imprisonment, or both. With only specific exceptions, the law covers all officials and employees of the Executive Branch, the independent agencies, and the District of Columbia, and includes most special government employees.

Section 207 contains four basic prohibitions, which are discussed briefly below. It is important that all employees familiarize themselves with the specific proscriptions of the law, however; a copy of the Office of Personnel Management Regulations is attached for that purpose. Likewise, attached is a Memorandum on the subject, which was prepared by the Office of Government Ethics.

I. Subsection (a) creates a lifetime prohibition against a former employee's acting as representative in matters in which (a) he or she personally and substantially participated as a government employee, and (b) the government has a direct and substantial interest. In such matters, the former employee may not act as agent for, nor otherwise represent, anyone in any appearance before a court, department, agency, or government official or employee. In addition, he or she may not communicate in any way with the agency, department, etc., on such matters if such communication is made with the intent to influence the receiver.

Please note that this lifetime proscription applies only to those former matters in which the legal rights of specific parties were involved. Consequently, former participation in rulemaking, legislation, policy formulation, or other matters

of general applicability would not fall within the ambit of the subsection. Similarly, former participation in mere ancillary matters would not be covered, unless the ancillary matter proved to be the subject of the later proposed representation. In general, however, the bar is a strict one. If an employee participated personally in the same matter, or directed a subordinate's participation, even though in a different form, and if the rights of specific parties were involved, he or she is forever precluded from representing anyone in any proceeding concerning such matter in which the government has a direct and substantial interest.

II. Subsection (b) (i) contains a two-year restriction on a former employee's representative involvement in any particular matters that were under his or her official responsibility during the last year of government service. During those two-years, the former employee may not represent anyone before, nor communicate with, an agency, department, etc. concerning any matters for which he had direct administrative or operating authority to approve, disapprove, or otherwise direct government actions. Ordinarily, the scope of the former employee's responsibility will be determined by his or her job description, regulation, or a relevant statute. Here, as in subsection (a) of Section 207, discussed supra, the former matter must have involved the rights of specific parties; also, only communications made with the intent to influence are prohibited. It is immaterial that the former employee may not have actually known that the matter was under his or her official responsibility during the final year of employment. Any employee who suspects that such a matter might have been under his or her official responsibility is under a duty to make further inquiry.

III. Subsection (b) (ii) creates a similar, though somewhat narrower, prohibition for Senior Employees.* They are precluded for two years after government employment from representing or assisting in the representation of any person in a matter in which they participated substantially and personally, if the representation or assistance involves a personal appearance before an agency, department, etc. Again, the former participation must have been in the same matter and the rights of specific parties must have been involved. However, Senior Employees are not prohibited from all later representation or assistance; they simply may not appear in person. For example, an employee may participate in a particular matter, leave the government, and later assist persons representing a party in the same matter, so long as he or she does not make a personal appearance in any agency or department proceedings.

* For the purposes of this Summary, all Presidential Appointees should be considered "Senior Employees".

IV. The final proscription of Section 207, and the one which often causes concern among potential appointees, is a one-year "cooling off" period. For one year following the termination of government employment, a Senior Employee may not represent anyone before nor communicate with, his or her former department or agency concerning any particular matter pending before that department or agency. This bar applies regardless of whether the employee participated in or had responsibility for the matter, and regardless of whether the matter was pending when he or she was employed at the agency. It is also inconsequential that the matter does not involve the rights of specific parties. It is a clear Congressional mandate that the Senior Employee have no professional representative contact for a period of one year after government service with his or her former agency.

Although the bar encompasses almost all Senior Employees and their activities, there are certain exemptions. For example, it does not apply to former employees who are subsequently elected to state or local office, or become employees of state and local government agencies, certain institutions of higher education, or particular hospitals and medical research foundations, provided their contact with the department or agency is made on behalf of those new employers. The Section also does not prohibit communication with or representation before Congress, other agencies, the public, or the press. Nor does it preclude the former Senior Employee from contact with his or her former agency if such contact is required by law (e.g., a former S.E.C. Senior Employee would not be prohibited from filing a 10-K form for his client). In addition, the subsection sets forth methods by which the one-year period may apply to less than the entirety of the department or agency.

Section 207 contains numerous miscellaneous provisions for obtaining special exemptions, making certain exempt communications, testifying in court, and barring partners of current employees from certain activities. Because the Act covers such a broad range of conduct and carries such serious penalties for violation, it is imperative that a former employee carefully consult the law and the implementing regulations before making future employment decisions. The Act does not supplant any other laws or codes of professional ethics, so those must be carefully considered as well. Likewise, some departments and agencies have more stringent post-employment restrictions; if in doubt, please consult us.

* * * * *

In summary, the four basic prohibitions imposed by law on post-government service employment of a Presidential appointee may be generally described as follows:

- I. A lifetime proscription against a former government employee acting as a representative in any particular matter in which he or she personally and substantially participated during government service.
- II. A two-year restriction on former government employees acting as a representative in any particular matter for which he or she had official responsibility within the last year of government service.
- III. A two-year restriction on a former Senior Employee assisting, by personal presence, in a representation by formal or informal appearance before the United States in any particular matter in which he or she participated personally and substantially during government service.
- IV. A one-year restriction on a former Senior Employee, precluding any transactions with his or her former department or agency on any particular matter, regardless of prior involvement.

Please let us know if we can be of any further assistance in reviewing this subject with you.

TITLE V - PART 737 - FINAL REGULATIONS CONCERNING
POST EMPLOYMENT CONFLICT OF INTEREST

I. GENERAL

A. The Ethics in Government Act (Pub. L. 95-521) (the Act) broadened and added new restrictions to the existing provisions of 18 U.S.C. §207, which generally prohibit a former Government employee from acting as another person's representative to the Government in matters in which the employee had been involved while in the Government.

1. Post-Employment Generally. It is important to note that nothing in the Act requires a former employee to decline employment with any organization regardless of dealings with that organization while a Government employee.

2. Required Nexus. With the exception of the 207(c) bar, what is prohibited depends upon the former employee's degree of involvement in the matter while with the Government and whether he or she was one of a specified group of high-ranking employees ("Senior Employees").

II. GENERAL RESTRICTIONS APPLICABLE TO ALL FORMER EMPLOYEES

A. Permanent Bar. (5 C.F.R. 737.5) After leaving Government employment, a former employee may not serve as another person's representative to the Government on a case, contractual matter or other similar application or proceeding, formal or informal, in which he or she participated personally and substantially while a Government employee.

1. There are two important limitations to this prohibition which attacks "switching sides." First, the former employee is not restricted unless the matter in which he or she previously participated was (i) a "particular matter involving specific parties" and (ii) is the same matter in which he or she now attempts to represent another before the Government. Thus, where an employee's prior involvement was limited to, say, the design of a program policy, general rulemaking, or technical concepts, he or she is not restricted by this prohibition as to any specific matters which may involve his or her prior work. Second, this bar requires that the employees have been personally involved in the matter in a substantial way.

2. The kind of representation that is restricted includes not only acting as another's attorney or agent, but any other kind of representation or communication made with the intent to influence the United States. This includes promotional and contract representatives.

B. Two-Year Bar. (5 C.F.R. 737.7) This is basically the same bar as above, except that it applies for only two years and covers all particular matters which were actually pending under the former employees "official responsibility" in his or her last year of Government service. An employee's official responsibility is usually defined by statute, regulation, written delegation of authority or job description.

1. There may be times when a former employee is in doubt as to whether a matter was under his or her official responsibility, whether it is the same "particular matter" as that with which he or she was involved or whether the United States still has an interest in the matter. His or her former agency has an obligation to advise promptly

on those questions as provided in the regulations issued by the Office of Personnel Management (5 CFR 737).

III. RESTRICTIONS APPLICABLE ONLY TO SENIOR EMPLOYEES

A. Two-Year Bar on Assisting in Representing. (5 C.F.R. 737.9) For two years after leaving Government employment, a former Senior Employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which he or she could not act as the person's actual representative because of his or her substantial personal participation in the matter while in Government.

1. It is important to note that this restriction does not bar a Senior Employee from assisting on a matter in which he or she participated while in Government but only from assisting "in representing" while personally present at a formal or informal appearance. Thus, such employee could work on a contract with which he or she was involved while in Government and could manage a company, institution or university where such former employee's decisions determine the manner in which his or her organization will perform under a Government contract or grant.

B. One-Year Bar on Attempts to Influence Former Agency. (5 C.F.R. 737.11) For one year after leaving Government employment, a former Senior Employee may not represent anyone in an attempt to influence his or her former agency on a matter pending before, or of substantial interest to, such agency.

1. This "revolving door" provision is different from the previous restrictions in the following ways:

a. It does not require that the former employee have had any prior involvement in the matter.

b. The matters covered are broader; they need not involve specific parties, so the former employee could not, for example, attempt to influence rulemaking or policy formation.

c. It is limited to contact with his or her former agency; he or she may appear before, or act to influence, any other part of the Government in regard to a matter not otherwise covered.

d. The matter must be pending before, or of substantial interest to, his or her former agency.

e. The restriction covers the former employee's self-representation.

2. There are a number of matters to which the restriction does not apply—among these are:

a. Purely social or informational communications.

b. Transmission of filings which do not require Governmental action.

c. Personal matters.

d. Representing oneself in any judicial or administrative proceeding.

e. Any expression of personal views where the former employee has no pecuniary interest.

f. Response to the former agency's request for information.

g. Participation as the principal researcher under Government grants.

IV. WHAT IS A SENIOR EMPLOYEE? (5 C.F.R. 737.25)

A. There are four groups of Senior Employees, two are named automatically by statute: (i) civilians paid at the Executive Level and (ii) active duty uniformed service officers serving in grades 0-9 and above. Two other groups, (iii) civilians at or equivalent to GS-17 or above and (iv)

uniformed service officers in grades 0-7 and 0-8, having significant decision-making or supervisory responsibility, must first be designated by the Director of the Office of Government Ethics before they are chargeable as Senior Employees.

1. Those automatically covered by the statute were made subject to the Act's special restrictions on Senior Employees as of July 1, 1979.
2. Those designated by the Director, OGE, were covered as of February 28, 1980.

V. LIMITATION ON RESTRICTIONS OF 18 U.S.C. §207(c) (5 C.F.R. 737.13)

A. Methods. Two methods exist for limiting the application of 207(c) to less than the entirety of a department of agency.

1. Designation of separate statutory agencies or bureaus under the provisions of 18 U.S.C. §207(e).
2. Designation of non-statutory separate components under the provisions of 18 U.S.C. §207(d)(1)(C).

B. Designation Procedure. Designation of separate statutory agencies and bureaus as well as non-statutory components are to be made by the Director, Office of Government Ethics in consultation with the head of the agency concerned.

1. Agencies may recommend such designations to the Director, Office of Government Ethics.
2. Designations are discretionary.
3. Current designations are set forth in 45 Fed. Reg. 7407, 7419-7420 (1980).

C. Section 207(e) Designations. If a statutory component is designated as "separate," generally, Senior Employees of such component and Senior Employees of the parent agency are not subject to the 207(c) bar as to each others agency.

1. Caveat. The 207(c) bar remains applicable to the former head of a "separate" subordinate agency and to former "Senior Employees" of the parent agency whose official responsibility included supervision of the subordinate agency.

D. Section 207(d)(1)(C) Designations. If a non-statutory component is designated as "separate," then Senior Employees of such component are not subject to the 207(c) bar as to other agencies, bureaus or offices of the parent agency which have separate and distinct subject matter jurisdiction from the agency or bureau in which such Senior Employees served..

1. Caveat. The 207(c) bar remains applicable (i) to former Senior Employees designated by statute (207(d)(1)(A) and 207(d)(1)(B)), and (ii) to former Senior Employees of such component with respect to those bureaus and offices within the parent agency responsible for the supervision or control of such separate component.

2. Note additional qualifications in the designations set forth in §737.32.

3. Unlike separate agencies designated pursuant to §207(e), the limited application of §207(c) may be available for the head of a separate non-statutory component, as determined by the Director, Office of Government Ethics.

VI. EXEMPTIONS - GENERAL

A. Communications made solely for the purpose of furnishing scientific and technological information pursuant to agency procedures are exempt from the prohibition of §207 of title 18 U.S.C.

1. Agencies have the primary responsibility for developing acceptable procedures for such exemptions.

B. A former employee may personally be exempted from the restrictions on post employment activity if the agency head, in consultation with the

Director, Office of Government Ethics, executes a certification, published in the Federal Register, that such former employee:

1. Possesses outstanding qualifications in a scientific, technological, or other technical discipline;
2. Is acting in respect to a particular matter requiring such qualifications; and
3. That the national interest would be served by such former employees participation.

VII. EXEMPTIONS - SPECIFIC

A. The one-year bar found in §207(c) shall not apply to representations on new matters by a former Senior Employee who is:

1. An elected State or local government official, acting on behalf of such government, or
2. Regularly employed by (i) an agency or instrumentality of a State or local government (ii) an accredited degree granting institution of higher education, or (iii) a non-profit hospital or medical research organization, acting on behalf of such organization(s).

VIII. OTHER IMPORTANT FEATURES

A. Fair Notice. There is a "fair notice" provision which ensures that employees who continue in Government employment in reliance on the regulations will not suddenly be made subject to any future changes. Changes which create greater restrictions do not become applicable to an employee unless he or she remains with the Government longer than 5 months after the new rule is first published in final form.

B. Effective Dates. The broadening of the provisions applicable to all employees became effective July 1, 1979. The new provisions applicable to Senior Employees took effect as to Executive level civilian employees and uniformed service officers of the grade of 0-9 and above on July 1, 1979.

Those civilians at GS-17 or above, or in the Senior Executive Service and uniformed service officers in grades 0-7 and 0-8 designated by the Director, OGE, are subject to the Senior Employee restrictions effective February 28, 1980.

Authority: Title V, Ethics in Government Act of 1978 (Pub. L. 95-521)
5 C.F.R. Part 737

file

Friday
February 1, 1980

SECRET

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Part II

Office of Personnel
Management

Post Employment Conflict of Interest;
Restriction of Activities of Certain
Former Federal Employees

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 737

Post Employment Conflict of Interest

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is revising the regulations implementing the restrictions on post employment activity established by Title V of the Ethics in Government Act of 1978. These regulations provide specific guidance to the executive agencies in exercising the administrative enforcement authority; and establish the procedures for making certain determinations and designations under the Act.

EFFECTIVE DATE: March 3, 1980.

FOR FURTHER INFORMATION CONTACT: H. Lawrence Garrett at (202) 632-7642.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management ("OPM") is publishing final regulations to supplement and particularize the restrictions on post employment activity established by Title V of the Ethics in Government Act of 1978 ("the Act"). Interim regulations were published in the Federal Register on April 3, 1979 (44 FR 19974-19988). Changes have been made to conform to the amendments made to 18 U.S.C. 207 by Pub. L. 96-28, signed into law on June 22, 1979. In addition, editorial revisions and other changes have been made in order to simplify and clarify the regulations.

(1) Major Revisions

The following summarizes those provisions of the interim regulations that were changed to reflect the amendments made to Title V of the Act by Pub. L. 96-28.

A. The Subsection 207(b)(ii) Prohibition (§ 737.9)—Assistance in Representation

The language of the Act, as originally enacted, prohibited those designated as Senior Employees from providing assistance in representing any person, other than the United States, "concerning" any formal or informal appearance. The original language was not thought to accurately reflect the intention of Congress in that it allowed for two possible but clearly unintended interpretations: (i) that certain otherwise legitimate activities connected with the management of grants and contracts were barred, and (ii) that the "assistance in representing" bar extended both to matters in which the

former Senior Employee had personally and substantially participated and matters which, although not having personally and substantially participated in them, had been actually pending under his/her official responsibility. The amendments to the Act provide that 18 U.S.C. 207(b)(ii) applies only to that assistance given within two years after leaving Government service, by "personal presence" at an appearance before the Government—for example, a negotiation or proceeding. The amendments further provide that this two-year bar applies only to matters in which the former employee had "personally and substantially" participated.

B. Limitation of Subsection 207(c) Prohibition (§ 737.11)

Subsection 207(c), as added by the Act, prohibits for one year an appearance by a former Senior Employee before his or her former department or agency. However, 18 U.S.C. 207(e), also added by the Act, in most cases removes that prohibition with respect to an appearance of such an individual before a separate statutory agency or bureau (other than the one he had served) within the parent department or agency.

Amendments to 18 U.S.C. 207(d) enacted by Pub. L. 96-28 give the Director of the Office of Government Ethics ("OGE") the authority to further limit the application of the one-year "cooling-off" bar mentioned above. More particularly, although a former Senior Employee will continue to be prohibited from contact with those non-statutory segments of his or her former department or agency where there is potential for unfair influence, he or she may be permitted appearances before "separate and distinct" components of the former department or agency where there exists no such potential. The new permission is not, however, available for those former Senior Employees who held Executive Level positions or for members of the uniformed services who served in pay grades 0-9 and 0-10. Unlike the provisions of 18 U.S.C. 207(e) regarding separate statutory agencies, those of 18 U.S.C. 207(d) make its benefit available in some instances to the former head of a separate component.

The amendments of Pub. L. 96-28 also make the prohibitions of subsection (c) of 18 U.S.C. 207 inapplicable to appearances, communications or representations made by a former Senior Employee who is an elected representative of a State or local government, or a regular employee of (i) such a government, (ii) a non-profit hospital or medical research institution,

or (iii) a degree granting institution of higher education. Such appearances, communications or representations must be made on behalf of such governments or specified organizations in order to be exempt.

C. Modification of Senior Employee Designations (§ 737.25)

Under the original provisions of 18 U.S.C. 207(d)(3) all active duty commissioned officers of a uniformed service assigned to pay grade 0-7 and above were automatically designated by statute as Senior Employees for purposes of subsections (b)(ii) and (c) of 18 U.S.C. 207.

The amendments of Pub. L. 96-28 added a new provision (207(d)(1)(C)), which equalized the treatment of uniformed service officers, in relation to civilian personnel, by specifying that officers serving in pay grades 0-7 and 0-8 shall be made subject to the special restrictions for Senior Employees—(i.e., the two-year assistance bar (207(b)(ii)) and the one-year bar against doing business with one's former agency (207(c))—only if they held positions of "significant decision-making or supervisory responsibility" as designated by the Director, OGE.

Finally, the amendments restricted the civilian employee positions which may be designated, by the Director, OGE as subject to the special restrictions for Senior Employees, to those positions for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17, or which are established in the Senior Executive Service. Essentially, the amendments codify the policy reflected in OPM's interim regulations published on April 3, 1979 (44 FR 19986).

(2) Analysis of Comments

The interim regulations provided a 45 day period for public comment. OPM received comments from 28 agencies, two law firms and two labor organizations. A number of the comments offered specific recommendations for clarifying or modifying specific provisions of the interim regulations. OPM has proposed modification of certain of the regulations, as discussed below. In addition, guidance issued through the Federal Personnel Manual System will address certain other concerns expressed during the public comment period.

A. General

Two commenters asked that the regulations specifically state that Part 737 does not incorporate or supplant restrictions contained in other laws and regulations or in professional codes of

conduct. The recommendations were adopted and incorporated in the final regulations.

Only one commenter felt that, since 18 U.S.C. 207 can be enforced criminally, it was inappropriate for OPM to propound a definitive interpretation of its provisions, and that OPM should state that it is only providing an advisory interpretation. We believe, however, that it would be inappropriate to require Federal employees to make decisions regarding continued employment with the Government on the basis of unclear constraints or otherwise require them to act at their peril. Congress prescribed a relationship between OPM and the Department of Justice, giving the Director, OGE, the responsibility for developing regulations in consultation with the Attorney General. As to matters involving criminal prosecutions, it was decided early that these regulations should have the concurrence of the Attorney General so as to avoid the anomalous result that a particular activity might be viewed as triggering no administrative enforcement, while possibly triggering criminal enforcement. While criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General, the Attorney General has advised that these regulations are consistent with his interpretation for criminal enforcement responsibilities.

One commenter observed that it seems improper to have agencies advise present and former employees as to the requirements of the Act, when agencies also have an obligation to report alleged violations of law to the Department of Justice. (28 U.S.C. 535) OPM sees no such impropriety, but rather regards it the duty of such agencies to advise their employees so as to cause their conduct to conform to the law.

One commenter questioned the absence of any provision in the regulations dealing with a case in which a high-ranking Government official, who awarded a major contract to a private entity, is subsequently hired by the private entity. The regulations do not contain such a provision because the Act does not prohibit such employment, but only restricts the post employment representational activity of a former Government employee in relation to such a contract. Another commenter raised the situation of a former private sector employee, who, as a Government official, awards a contract to his or her former employer. Such a situation is not subject to the provisions of 18 U.S.C. 207 or these regulations, but might trigger 18

U.S.C. 208, given a current interest by such an employee.

One commenter asked for a clarification of when self-representation is permitted under subsections 207 (a), (b) and (c). Self-representation is generally permitted under subsections 207 (a) and (b). OPM will publish Federal Personnel Manual guidance periodically concerning self-representation, and OGE will publish formal advisory opinions concerning self-representation.

It was observed in one comment that since OMB Circular A-76 provides that a contractor must give the right of first refusal for jobs contracted out by an agency to Federal employees, the regulations should address the section 207 problems which might arise. OMB Circular A-76 further provides that the right of first refusal would apply only when consistent with the post employment conflict of interest standards. These regulations, in part, establish the standards controlling whether or not the right of first refusal would apply to a given situation.

B. Definitions

One commenter asked that the regulations be revised to make clear that an independent contractor could never be a "special Government employee" and another asked that it be made clear that a consultant could come within the definition. The definition of "special Government employee" has incorporated the essence of such recommendations.

One comment asked for technical clarifications of the term "Government employee" and questioned the appropriateness of applying the "supervised by" requirement, incorporated by reference to 5 U.S.C. 2104 and 2105, to that term. The Director, OGE, does not consider that the "supervised by" requirement found in 5 U.S.C. 2104 and 2105 contemplates direct supervision by the appointing official in order to find one to be an "officer" or "employee" as defined in sections 2104 and 2105; rather, the requirement encompasses supervision in the broader sense by Federal employees within the department or agency within which they serve.

C. Restrictions on Any Former Government Employee's Acting as Representative as to a Particular Matter in Which the Employee Personally and Substantially Participated

For purposes of § 737.5(b)(3), the act of conveying material to the United States in connection with a formal proceeding or application may be deemed to constitute an "appearance."

There was a suggestion in one comment that the scope of this concept be broadened. Another commenter specifically mentioned that the use of the word "appearance" in Example 1 of § 737.5(b)(3) too narrowly construed the meaning of section 207(a) of title 18 U.S.C. OPM considers the provisions to be consistent with the statutory language.

With respect to what constitutes a "particular matter" for purposes of § 737.5(c)(1), one commenter felt that the term should not be deemed to include the formulation of standard terms to be used in contracts to which the Government is a party. The commenter further urged that as to a specific contract, the validity or meaning of standard terms should not be considered as aspects of the particular matter embodied in the contract in which there was substantial participation—but, should be considered merely ancillary under § 737.5(d)(2). Likewise, it was argued that an attorney who passed upon the legality, as opposed to the desirability, of a particular matter's outcome has dealt with only an ancillary aspect of the matter. This same comment was made with respect to § 737.7(b)(3). The recommendation that formulation of standard terms or clauses to be used generally in contracts not be considered a "particular matter" is appropriate under the statute and has been incorporated in the final regulations. OPM considers that advice concerning the validity or meaning of a standard term or clause embodied in a specific contract is an aspect of the "particular matter" and not merely ancillary under § 737.5(d)(2). Moreover, passing upon the legality, as opposed to the desirability, of a particular contract by an attorney does not constitute involvement with an ancillary aspect of a matter but is, rather, involvement which cannot reasonably be separated from the substantive merits of the particular matter. The final regulations do not, therefore, incorporate the recommendation that such involvement be considered merely ancillary.

An objection was raised in one comment as to the formulation of § 737.5(c)(3) with respect to contractual matters. It was urged that involvement in the preliminary dialogue concerning the subject matter of a contract should not be deemed to constitute the same "particular matter" as that embodied in the executed contract. The text of the final regulations has been altered to further refine the concept concerning the relationship of personal participation to the specificity of a particular matter. In order for such participation to rise to the

level of participation in a particular matter there must be more than the involvement in mere speculative discussion in the formative stages of a matter.

One commenter asked for more detailed guidance as to when a lawsuit, to which the United States is not a party, may be of direct and substantial interest to the United States or to a particular Federal agency for purposes of §§ 737.5(c)(5) and 737.11(e). Such guidance will be published through the formal advisory opinion service on a case-by-case basis.

One commenter felt that there should be some indication of the circumstances in which personal participation should not be deemed "substantial" participation. Such guidance is provided in § 737.5(d).

D. 2-Year Restriction on Any Former Government Employee's Acting as Representative as to a Particular Matter for Which the Employee had Official Responsibility

One commenter felt that an employee should not be considered to have "official responsibility" over that aspect of a particular matter which involves the non-discretionary use of standard contract terms. It was urged that this be considered an ancillary matter under § 737.7(b)(3). OPM believes that if the issue arises in relation to a specific contract then such an aspect would be considered as part of the "particular matter" and not merely ancillary.

One commenter questioned the use of the "actually pending" rule as it is employed in § 737.7(c), and suggested a reformulation of this concept. The concept is accurate as presented; further guidance will be promulgated on a case-by-case basis through the formal advisory opinion service.

It was suggested, correctly, in one comment that the conclusions reached in Example 1 of § 737.7(e) are inconsistent with the rules given in the text. The text of the final regulation has been revised to remove the inconsistency.

E. 2-Year Restriction on a Former Senior Employee's Assisting in Representing as to a Matter in Which the Employee Participated Personally and Substantially

Several Commenters asked for further delineation of permitted activities in the case of a former employee to whom section 207(b)(ii) applies. Such guidance, beyond that presented in the regulations, shall be provided through the formal advisory opinion service.

One commenter inquired as to the propriety of telephone communications

during a negotiation, and as to when such communications should be deemed tantamount to "personal presence." This issue is addressed in § 737.5(b)(3) as it relates to § 737.9. A telephone call would normally constitute a communication, not an appearance, and a former Senior Employee could give assistance regarding (but could not make) such a call.

F. 1-Year Restriction on a Former Senior Employee's Transactions With a Former Agency on a Particular Matter, Regardless of Prior Involvement

One commenter urged that the final regulations clearly reflect that the qualifying language of section 207(d)(2) of the Act, as amended by Pub. L. 96-28, following "1954," in section 207(d)(2)(B), is applicable to both subparagraphs (A) and (B). The final regulations so reflect.

Another comment expressed the view that the section 207(d)(2) exemption is inequitable in that former Senior Employees employed by certain non-profit institutions could not conduct themselves in the same manner permitted former Senior Employees employed by an exempted institution. The Congress drew a clear distinction between those institutions, the employees of which would be exempt from the section 207(c) prohibitions and those who would not. OPM cannot, by regulation, go beyond that which is mandated by law.

Concern was expressed in one comment that the use of the word "hired" in § 737.11 might permit an agency to hire ex-employees as consultants, but not on a product contract basis. It was suggested that the regulations should permit any arrangement in which personal service by an ex-employee is contemplated. The final regulations substitutes "employed" for the word "hired."

One commenter felt that Example 3 of § 737.11(h) unduly broadens the statutory exception for "special knowledge." OPM considers that the example in question reflects a reasonable interpretation of the statute in regard to an area that would not normally create any actual or apparent conflict of interest on the part of a former Senior Employee.

G. Designations of Separate Statutory Agencies or Bureaus

One commenter felt that the regulations should contain a definition of "bureau," and urged the view that separate divisions within an agency do not fall within the exemption of section 207(e). The regulations contain clear guidance as to those separate statutory bureaus or agencies which qualify for

treatment under section 207(e) of title 18 U.S.C. The final regulations further reflect the treatment of a separate and distinct subject matter component of an agency which may be treated separately for section 207(c) purposes (See § 737.25(d).)

H. Partners of Present or Former Government Employees

One commenter asked for regulations pursuant to section 207(g) to cover the situation of current employees and their outside partners. The present regulations, however, are limited solely to post employment conflict of interest.

I. Officials of a State, Officials of Corporations Created by an Act of Congress and Public International Organizations

Greater clarification was requested by one commenter as to whether certain banking institutions and their directors are referred to by the provisions of § 737.23(b)(1). OPM will provide such clarification through the formal advisory opinion service when requested.

Another comment expressed concern about the treatment of former employees who join international organizations. Such former employees, except those serving under the conditions set forth in § 737.23(b)(2), would be subject to the restrictions of the law and these regulations.

J. Standards and Procedures for Designating Senior Employee Positions Pursuant to 18 U.S.C. 207(d)

Several comments raised technical questions concerning the designation of Senior Employee positions under section 207(d). One commenter asked about the situation of a consultant who voluntarily serves without pay in a position for which a rate of pay above GS-16 is authorized. The situation of a special Government Employee who serves for less than 60 days in each of two or more positions, but for a total of 60 days or more, was also presented. Such specific situations will be the subject of formal advisory opinions when requested.

One comment suggested that the regulations should not define "supervisory responsibility" in terms of the number of employees supervised, but in regard to the significance of the activities involved. The interim as well as the final regulations were drafted to emphasize the latter criteria rather than the former. Additional guidance was promulgated by OPM's memorandum to Designated Agency Ethics Officials dated April 26, 1979.

Administrative Enforcement Proceedings

One comment pointed out that in some cases law-enforcement powers are specifically denied to an agency. OPM considers that such situations will have to be addressed on a case by case basis.

Another commenter stated that the regulations should provide, as an alternative to § 737.27, that employees in units for which there is an exclusive representative should have the right of arbitration and to grieve the matters to be covered through the negotiated grievance procedure. The procedures set forth in § 737.27 are applicable only to former Government employees who are alleged to have violated the provisions of 18 U.S.C. 207. The recommended procedure is considered applicable to current rather than former employees and was not, therefore, adopted.

(3) Additional Sections

§ 737.13 of the interim regulations published on April 3, 1979, sets forth the standards and procedures to be applied in connection with designations of separate statutory agencies or bureaus within a department or agency for purposes of 18 U.S.C. 207(c). The Director, OGE, has determined that of those recommendations received, certain agencies and bureaus qualify for designation as separate statutory agencies. Such agencies and bureaus are designated in the new § 737.31 of the regulations.

§ 737.13 of the final regulations also sets forth the standards and procedures to be applied in connection with the designation of certain agencies, bureaus and offices as separate components within a department or agency for purposes of limiting the application of subsection (c) of 18 U.S.C. 207 pursuant to subsection (d)(1)(C) of that provision. The Director, OGE, has determined that of those recommendations received, certain agencies, bureaus and offices qualify for such designation. They are designated in new § 737.32 of the regulations.

(4) Senior Employee Designations

Interim regulations designating Senior Employee positions within certain departments and agencies were published in the Federal Register on September 25, 1979 (44 FR 55147-55160). Editorial revisions have been made and several erroneous designations have been revoked. The previously published designations are incorporated in new § 737.33. The Senior Employee designations listed in § 737.33 do not constitute all of the designations to be made by the Director, OGE, under the

provisions of 18 U.S.C. 207(d)(1)(C). Additional designations for those departments and agencies not listed will be issued in the near future as a separate interim regulation to be incorporated in these regulations upon codification. The effective date of the Senior Employee designations listed in § 737.33 is February 28, 1980. OPM has determined this is a significant regulation for the purposes of E.O. 12044.

(5) Text of Law

For the use of readers in understanding the regulations, the text of Title V of the Ethics in Government Act of 1978 is set forth below: The statutory provisions concerning Post Employment Conflict of Interest appear in Title V of the Ethics in Government Act of 1978 (Pub. L. 95-521) as amended by Pub. L. 96-28, the text of which is as follows:

Title V—Post Employment Conflict of Interest

Sec. 501. (a) Section 207 of title 18, United States Code, is amended to read as follows:

"§ 207 Disqualification of Former Officers and Employees; Disqualification of Partners of Current Officers and Employees

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

"(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

"(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written

communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased knowingly represents or aids, counsels, advises, consults or assists in representing any other person (except the United States), by personal presence at any formal or informal appearance before—

"(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) as to (i) which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee or

"(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

"(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

"(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"(d)(1) Subsection (c) of this section shall apply to a person employed—

"(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

"(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of O-9 or above as described in section 201 of title 37, United States Code, or

"(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only

positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O-7 or O-8, as described in section 207 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

"(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representations by a former officer or employee, who is—

"(A) an elected official of a State or local government, or

"(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) and accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization."

"(e) For purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

"(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communication solely for the purpose of furnishing scientific or

technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

"(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, 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 and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

"(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

"(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five

years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection."

(b) The item relating to section 207 in the table of sections at the beginning of chapter II of title 18, United States Code, is amended to read as follows:

"207. Disqualification of former officers and employees; disqualification of partners of current officers and employees."

Applicability

Sec. 502 The amendments made by section 501 shall not apply to those individuals who left Government service prior to the effective date of such amendments or in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation, except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation.

Effective Date

Sec. 503 The amendments made by section 501 shall become effective on July 1, 1979. Office of Personnel Management:

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is revising Part 737 of Title 5 of the Code of Federal Regulations, to read as follows:

PART 737—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

Subpart A—General Provisions

- Sec.
737.1 Purpose and policy
737.3 Definitions.

Subpart B—Substantive Provisions

- 737.5 Restrictions on any former government employee's acting as representative as to a particular matter in which the employee personally and substantially participated
737.7 Two-year restriction on any former government employee's acting as representative as to a particular matter for which the employee had official responsibility.
737.9 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.
737.11 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.
737.13 Limitation of restrictions of 18 U.S.C. § 207(c) to less than the whole of a department or agency.

Sec.

- 737.15 Exemption for scientific and technological information.
- 737.17 Exemption for persons with special qualification in a technical discipline.
- 737.19 Testimony and statements under oath or subject to penalty of perjury.
- 737.21 Partners of present or former government employees.
- 737.23 Officials of a State, officials of corporations created by an act of Congress and public international organizations.
- 737.25 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. § 207(d).
- 737.27 Administrative enforcement proceedings.
- 737.29 Effective date of restrictions.
- 737.31 Separate statutory agencies: designations.
- 737.32 Separate components of agencies or bureaus: designations.
- 737.33 "Senior Employee" designations.
- Authority: Pub. L. 95-521, 92 Stat. 1862-1863 (5 U.S.C. Appendix); 92 Stat. 1864-1867 (18 U.S.C. 207).

Note.—The following index of paragraphs is provided for the convenience of the reader; this index will not appear in the CFR.

Subpart A—General Provisions

- 737.1 Purpose and policy.
- (a) Authority.
- (b) Consultation with the Attorney General.
- (c) Policy and limitations.
- 737.3 Definitions.
- (a) Statutory definitions.
- (b) Interpretative definitions.

Subpart B—Substantive Provisions

- 737.5 Restrictions on any former government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.
- (a) 18 U.S.C. 207(a).
- (b) Representation.
- (1) Attorneys and agents.
- (2) Others.
- (3) Appearances; communications made with intent to influence.
- (4) Government visits to other premises.
- (5) Elements of "influence" and potential controversy required.
- (6) Assistance.
- (7) Project responses not included.
- (c) "Particular matter involving a specific party or parties".
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PART 737—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

Subpart A—General Provisions

§ 737.1 Purpose and policy.

(a) Authority: Title IV of the Ethics in Government Act of 1978 ("the Act") established the Office of Government Ethics within the Office of Personnel Management ("OPM"). Section 402(a) of the Act provides in part that the Director, Office of Government Ethics ("the Director") shall provide, under the general supervision of OPM, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency as defined in

section 105 of title 5, United States Code, and shall propose, in consultation with the Attorney General, rules and regulations to be promulgated by the President or by OPM. The purpose of this part is to issue regulations recommended by the Director which give content to the restrictions on post employment activity established by title V of the Act (18 U.S.C. 207) for administrative enforcement with respect to former officers and employees of the executive branch; generally to guide agencies in exercising the administrative enforcement authority reflected in section 18 U.S.C. 207(j); to set forth the procedures to be employed in making certain determinations and designations pursuant to the Act; and to provide guidance to individuals who must conform to the law. Criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General.

(b) *Consultation with the Attorney General.* In proposing these regulations, the Director consulted with the Attorney General as to the content of regulations governing substantive prohibitions as well as other matters. The Attorney General has advised that such regulations are consistent with his opinion as to the interpretation of the Act.

(c) *Policy and limitations.* These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations.

(1) When a former Government employee who has been involved with a particular matter decides to act as the representative for another person on that matter, such "switching of sides" undermines confidence in the fairness of proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

(2) Similarly, when a former high-level employee assists in representing another by personal presence at an appearance before the Government regarding a matter which is in dispute, such assistance suggests an attempt to use personal influence and the possible unfair use of information unavailable to others. Different considerations are involved, however, with respect to assistance given as part of customary supervisory participation in a project funded by a Government contract or grant, since a former employee's knowledge may benefit the project and thus the Government, and regular communications with associates may properly be regarded as inherent in managerial responsibility. Such assistance, when not rendered by

personal presence during an appearance, is not covered by the statute.

(3) When a former Senior Employee returns to argue a particular matter to the employee's former agency in the period immediately following the termination of official employment, it appears that Government-based relationships are being used for private ends.

(4) Former officers and employees may fairly be required to avoid such activities in the circumstances specified by statute and in these regulations.

(5) The provisions of 18 U.S.C. 207 do not, however, bar any former Government employee, regardless of rank, from employment with any private or public employer after Government service. Nor do they effectively bar employment even on a particular matter in which the former Government employee had major official involvement except in certain circumstances involving persons engaged in professional advocacy. Former Government employees may be fully active in high-level supervisory positions whether or not the work is funded by the United States and includes matters in which the employee was involved while employed by the Government. The statutory provisions are not intended to discourage the movement of skilled professionals in Government, to and from positions in industry, research institutions, law and accounting firms, universities and other major sources of expertise. Such a flow of skills can promote efficiency and communication between the Government and private activities, and it is essential to the success of many Government programs. Instead, only certain acts which are detrimental to public confidence in the Government are prohibited.

(6) Departments and agencies have primary responsibility for the administrative enforcement of the post employment restrictions found in the Act. The Department of Justice may initiate criminal enforcement in cases involving aggravated circumstances; agency heads are required to report substantiated allegations of violations of 18 U.S.C. 207 to the Department of Justice and the Director, OGE. It is essential that Title V of the Act be enforced so as to advance its objectives, which include improvement in government efficiency, equal treatment for equal claims, greater public confidence in the integrity of their government, elimination of the use of public office for private gain, and securing the integrity of the government's policy-making processes.

Departments and agencies should avoid enforcement actions that do not advance these objectives but instead frustrate the Government's ability to employ the skilled persons who are needed to make the programs of the Federal Government succeed. Special attention should be given to the need to preserve the free flow of expertise especially in scientific, technological and other technical areas, from private activities to the government.

(7) The examples contained in these regulations are intended to give guidance, but are illustrative, not comprehensive. Each agency may provide additional illustration and guidance in its own regulations, consistent with that contained herein, in order to address specific problems arising in the context of a particular agency's operations.

(8) Agencies have the responsibility to provide assistance promptly to former Government employees who seek advice on specific problems. The Office of Government Ethics will provide advice, promptly, upon request, to designated agency ethics officials in such situations, but will first coordinate with the Department of Justice on unresolved or difficult issues.

(9) These regulations do not supplant restrictions that may be contained in laws other than 18 U.S.C. 207 and do not incorporate restrictions contained in the code of conduct of a profession of which an employee may be a member.

§ 737.3 Definitions.

(a) *Statutory definitions.* The following are defined terms which largely repeat portions of the text of the statute. They are set out here to permit a simplified presentation of statutory requirements in the regulations which follow. Other definitions, which supplement the statutory language, are listed in paragraph (b) of this section and are set forth in detail in the substantive regulations.

(1) "*United States*" or "*Government*" means any department, agency, court, court-martial, or any civil, military or naval commission of the United States, the District of Columbia, or any officer or employee thereof.

(2) "*Agency*" includes an Executive Department, a Government corporation and an independent establishment of the executive branch, which includes an independent commission. (See 18 U.S.C. 6.)

(3) "*Government Employee*" includes any officer or employee of the Executive Branch (as defined in 18 U.S.C. 202 and, e.g., 5 U.S.C. 2104 and 2105); those appointed or detailed under 5 U.S.C. 3374, and a Special Government

Employee, but shall not include an individual performing services for the United States as an independent contractor under a personal service contract.

(4) "Former Government Employee" means one who was, and is no longer, a Government employee.

(5) "Special Government Employee" means an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of three hundred and sixty five consecutive days, temporary duties either on a full time or intermittent basis (18 U.S.C. 202).

(6) "Senior Employee" means an officer or employee named in, or designated by the Director pursuant to, section 207(d) of title 18 U.S.C. to whom 207(b)(ii) and (c) shall apply (See 737.25 below.)

(7) "Particular Government matter involving a specific party" means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.

(b) *Interpretative definitions.* Other terms defined and interpreted in the substantive regulations are:

(1) "Acting as Agent or Attorney": (See § 737.5(b).)

(2) "Actually Pending": (See § 737.7(c).)

(3) "Communicating with Intent to Influence": (See § 737.5(b).)

(4) "Direct and Substantial Interest": (See § 737.11(f).)

(5) "Participate Personally and Substantially": (See § 737.5(d).)

(6) "Particular Matter Involving a Specific Party or Parties": (See § 737.5(c).)

(7) "Particular Matter" (without parties): (See § 737.11(d).)

(8) "Official Responsibility": (See § 737.7(b).)

(9) "Rate of Pay": (See § 737.25(b)(4).)

Subpart B—Substantive Provisions

§ 737.5 Restrictions on any former government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.

(a) *Basic prohibition of 18 U.S.C. 207(a).* No former Government employee, after terminating Government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person in any

formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter such employee participated personally and substantially as a Government employee.

(b) *Representation: Acting as agent or attorney, or other representative in an appearance, or communicating with intent to influence.*

(1) *Attorneys and agents.* The target of this provision is the former employee who participates in a particular matter while employed by the Government and later "switches sides" by representing another person on the same matter.

[NOTE: The examples in these regulations do not incorporate the special statutory restrictions on Senior Employees, except where the terms "Senior Employee" or "Senior" are expressly used.]

Example 1: A lawyer in the Department of Justice personally works on an antitrust case involving Q Company. After leaving the Department, he is asked by Q Company to represent it in that case. He may not do so.

(2) *Others.* The statutory prohibition covers any other former employee, including managerial and technical personnel, who represents another person in an appearance or, by other communication, attempts to influence the Government concerning a particular matter in which he or she was involved. For example, a former technical employee may not act as a manufacturer's promotional or contract representative to the Government on a particular matter in which he or she participated. Nor could such employee appear as an expert witness against the Government in connection with such a matter. (See § 737.19 for specific rules relating to expert witnesses.)

(3) *Appearances; communications made with intent to influence.* An appearance occurs when an individual is physically present before the United States in either a formal or informal setting or conveys material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes for example, correspondence, or telephone calls.

Example 1: An appearance occurs when a former employee meets with an agency employee personally to discuss a matter, or when he submits a brief in an agency administrative proceeding in his own name.

Example 2: A former employee makes a telephone call to a present employee to discuss a particular matter that is not the

subject of a formal proceeding. She has made a communication.

(4) *Government visits to others premises.* Neither a prohibited appearance nor communication occurs when a former Government employee communicates with a Government employee who, at the instance of the United States, visits or is assigned to premises leased to, or owned or occupied by, a person other than the United States which are or may be used for performance under an actual or proposed contract or grant, when such communication concerns work performed or to be performed and occurs in the ordinary course of evaluation, administration, or performance of the actual or proposed contract or grant.

(5) *Elements of "influence" and potential controversy required.* Communications which do not include an "intent to influence" are not prohibited. Moreover, acting as agent or attorney in connection with a routine request not involving a potential controversy is not prohibited. For example, the following are not prohibited: a question by an attorney as to the status of a particular matter; a request for publicly available documents; or a communication by a former employee, not in connection with an adversary proceeding, imparting purely factual information. (See also § 737.11(d) below.)

Example 1: A Government employee, who participated in writing the specifications of a contract awarded to Q Company for the design of certain education testing programs, joins Q Company and does work under the contract. She is asked to accompany a company vice-president to a meeting to state the results of a series of trial tests, and does so. No violation occurs when she provides the information to her former agency. During the meeting a dispute arises as to some terms of the contract, and she is called upon to support Q Company's position. She may not do so. If she had reason to believe that the contractual dispute would be a subject of the meeting, she should not have attended.

(6) *Assistance.* A former employee is not prohibited from providing in-house assistance in connection with the representation of another person.

Example 1: A Government employee administered a particular contract for agricultural research with Q Company. Upon termination of her Government employment, she is hired by Q Company. She works on the matter covered by the contract, but has no direct contact with the Government. At the request of a company vice-president, she prepares a paper describing the persons at her former agency who should be contacted and what should be said to them in an effort to increase the scope of funding of the

contract and to resolve favorably a dispute over a contract clause. She may do so.

(7) *Project responses not included.* In a context not involving a potential controversy involving the United States no finding of a "intent to influence" shall be based upon whatever influential effect inheres in an attempt to formulate a meritorious proposal or program.

Example 1: The employee of Q Company in the previous example is asked to design an educational testing program, which she does and transmits it to the Government. This is not prohibited despite the fact that her well-designed program may be inherently influential on a question of additional funding under the contract. She may not argue for its acceptance.

(c) *"Particular matter involving a specific party or parties."*

(1) *Specific matters vs. policy matters.* The prohibitions of subsections (a) and (b) of 18 U.S.C. 207, are based on the former Government employee's prior participation in or responsibility for a "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties" in which the United States is a party or has a direct and substantial interest. Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an insalutable transaction or related set of transactions between identifiable parties. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter. Therefore, a former Government employee may represent another person in connection with a particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding.

Example 1: A Government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from such a program.

Example 2: A Government employee reviews and approves a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that project.

Example 3: An employee is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities does not restrict the employee after leaving the Government as to particular cases involving the application of such policies, procedures, or regulations.

Example 4: An employee of the Office of Management and Budget participates substantially on the merits of a decision to reduce the funding level of a program, which has the effect of reducing the amount of money which certain cities receive to conduct youth work programs. After leaving the Government she may represent any of the cities in securing funds for its youth program, since her participation was in connection with a program, not a particular matter involving specific parties.

Example 5: An agency attorney participates in drafting a standard form contract and certain "standard terms and clauses" for use in future contracts. He is not thereafter barred from representing a person in a dispute involving the application of such a "standard term or clause" in a particular contract in which he did not participate as a Government employee.

(2) *Technical matters.* In connection with technical work, participation in projects generally involving one or more scientific or engineering concepts, in feasibility studies, or in proposed programs prior to the formulation of a contract will not restrict former Government employees with respect to a contract or specific programs entered into at a later date.

Example 1: A Government employee participates significantly in formulating the "mission need" of a project pursuant to OMB Circular No. A-109, and the award of a contract to Z Company, the purpose of which is to propose alternative technical approaches. He is not barred, after leaving Government service, from representing Q Company which later seeks a contract to manufacture one of the systems suggested by the Z Company.

Example 2: A Government employee, who has worked for years on the design of a new satellite communications system, joins C Company. Later, the Government issues a "request for proposals" ("rfp") to construct the new system, which is circulated generally to industry. The employee proposes to act as C Company's representative in connection with its anticipated proposals for the contract. He may do so. The satellite contract became a particular matter when the rfp was being formulated; it would ordinarily not become one involving a specific party or parties until initial proposals or indications of interest therein by contractors were first received. Moreover, if the employee's work for C Company were limited to the formulation and communication of a proposal in response to the rfp, it would not be prohibited to the extent it involved a communication for the purpose of furnishing scientific or technological information to the Government, exempt under 18 U.S.C. 207(f). See § 737.15 below. (See paragraph (3) below as to a case where the employee's own participation may cause a different result.)

(3) *Relationship of personal participation to specificity.* In certain cases, whether a matter should be treated as a "particular matter involving specific parties" may depend on the

employee's own participation in events which give particularity and specificity to the matter in question. For example, if a Government employee (i) personally participated in that stage of the formulation of a proposed contract where significant requirements were discussed and one or more persons was identified to perform services thereunder and (ii) actively urged that such a contract be awarded, but the contract was actually awarded only after the employee left, the contract may nevertheless be a particular matter involving a specific party as to such former Government employee.

Example 1: A Government employee advises her agency that it needs certain work done and meets with private firm X to discuss and develop requirements and operating procedures. Thereafter, the employee meets with agency officials and persuades them of the need for a project along the lines discussed with X. She leaves the Government and the project is awarded by other employees to firm X. The employee is asked by X to represent it on the contract. She may not do so.

(4) *The same particular matter must be involved.* The requirement of a "particular matter involving a specific party" applies both at the time that the Government employee acts in an official capacity and at the time in question after Government service. The same particular matter may continue in another form or in part. In determining whether two particular matters are the same, the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest.

Example 1: A Government employee was substantially involved in the award of a long-term contract to Z Company for the development of alternative energy sources. Six years after he terminates Government employment, the contract is still in effect, but much of the technology has changed as have many of the personnel. The Government proposes to award a "follow on" contract involving the same objective, after competitive bidding. The employee may represent Q Company in its proposals for the follow-on contract, since Q Company's proposed contract is a different matter from the contract with Z Company. He may also represent Z Company in its efforts to continue as contractor, if the agency determines on the basis of facts referred to above, that the new contract is significantly different in its particulars from the old. The former employee should first consult his agency and request a written determination before undertaking any representation in the matter.

Example 2: A Government employee reviewed and approved certain wiretap

applications. The prosecution of a person overheard during the wiretap, although not originally targeted, must be regarded as part of the same particular matter as the initial wiretap application. The reason is that the validity of the wiretap may be put in issue and many of the facts giving rise to the wiretap application would be involved. *Other examples:* See § 737.5(b)(1), Example 1, and (c), Example 2.

(5) *United States must be a party or have an interest.* The particular matter must be one in which the United States is a party, such as in a judicial or administrative proceeding or a contract, or in which it has a direct and substantial interest. The importance of the Federal interest in a matter can play a role in determining whether two matters are the same particular matter.

Example 1: An attorney participated in preparing the Government's antitrust action against Z Company. After leaving the Government, she may not represent Z Company in a private antitrust action brought against it by X Company on the same facts involved in the Government action. Nor may she represent X Company in that matter. The interest of the United States in preventing both inconsistent results and the appearance of impropriety in the same factual matter involving the same party Z Company, is direct and substantial. However, if the Government's antitrust investigation or case is closed, the United States no longer has a direct and substantial interest in the case.

Example 2: A member of a Government team providing technical assistance to a foreign country leaves and seeks to represent a private contractor in making arrangements with the Government to perform the same service. The proposed new contract may or may not be considered a separate matter, depending upon whether the United States has a national interest in maintaining the original contract. The agency involved must be consulted by the former employee before the representation can be undertaken.

(d) *"Participate personally and substantially."*

(1) *Basic requirements.* The restrictions of section 207(a) apply only to those matters in which a former Government employee had "personal and substantial participation," exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. "Substantially," means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular matter involving a specific party." (See paragraph (c) of this section.) (See also § 737.9(f) below.)

Example 1: If an officer personally approves the departmental budget, he does not participate substantially in the approval of all items contained in the budget. His participation is substantial only in those cases where a budget item is actually put in issue. Even then, the former Government employee is not disqualified with respect to an item if it is a general program rather than a particular matter involving a specific party. The former Government employee may, however, have official responsibility for such matters. (See § 737.7(b).)

Example 2: A Government lawyer is not in charge of, nor has official responsibility for a particular case, but is frequently consulted as to filings, discovery, and strategy. Such an individual has personally and substantially participated in the matter.

(2) *Participation on ancillary matters.* An employee's participation on subjects not directly involving the substantive merits of a matter may not be "substantial," even if it is time-consuming. An employee whose responsibility is the review of a matter solely for compliance with administrative control or budgetary considerations and who reviews a particular matter for such a purpose should not be regarded as having participated substantially in the matter, except when such considerations also are the subject of the employee's proposed representation. (See § 737.7(b)(3) below.) Such an employee could theoretically cause a halt in a program for noncompliance with standards under his or her jurisdiction, but lacks authority to initiate a program or to disapprove it on the basis of its substance.

(3) *Role of official responsibility in determining substantial participation.* "Official responsibility" is defined in § 737.7(b)(1). "Personal and substantial participation" is different from "official responsibility." One's responsibility may, however, play a role in determining the "substantiality" of an employee's participation. For example, ordinarily an employee's forbearance on a matter is not substantial participation. If, however, an employee is charged with responsibility for review of a matter and action cannot be undertaken over his or her objection, the result may be different. If the employee reviews a matter and passes it on, his or her

participation may be regarded as "substantial" even if he or she claims merely to have engaged in inaction.

(e) *Agency responsibility in complex cases.* In certain complex factual cases, the agency with which the former Government employee was associated is likely to be in the best position to make a determination as to certain issues: for example, the identity or existence of a particular matter. Designated agency ethics officials should provide advice promptly to former Government employees who make inquiry on any matter arising under these regulations.

§ 737.7 Two-year restriction on any former Government employee's acting as representative as to a particular matter for which the employee had official responsibility.

(a) *Basic prohibition of 18 U.S.C. 207(b)(1).* No former Government employee, within two years after terminating employment by the United States, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party (3) if such matter was actually pending under the employee's responsibility as an officer or employee within period of one year prior to the termination of such responsibility.

(b) *"Official responsibility."*

(1) *Definition.* "Official responsibility" is defined in 18 U.S.C. 202 as, "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government actions."

(2) *Determining official responsibility.* Ordinarily, the scope of an employee's "official responsibility" is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority. All particular matters under consideration in an agency are under the "official responsibility" of the agency head, and each is under that of any intermediate supervisor having responsibility for an employee who actually participates in the matter within the scope of his or her duties.

(3) *Ancillary matters and official responsibility.* "Administrative" authority as used in the foregoing definition means authority for planning, organizing and controlling matters rather than authority to review or make decisions on ancillary aspects of a

matter such as the regularity of budgeting procedures, public or community relations aspects, or equal employment opportunity considerations. Responsibility for such an ancillary consideration does not constitute responsibility for the particular matter, except when such a consideration is also the subject of the employee's proposed representation.

Example 1: An agency's comptroller would not have official responsibility for all programs in the agency, even though she must review the budget, and all such programs are contained in the budget.

Example 2: Within two years after terminating employment, an agency's former comptroller is asked to represent Q Company in a dispute arising under a contract which was in effect during the comptroller's tenure. The dispute concerns an accounting formula, under the contract, a matter as to which a subordinate division of the comptroller's office was consulted. She may not represent Q Company on this matter.

(4) *Knowledge of matter pending required.* In order for a former employee to be barred from representing another as to a particular matter, he or she need not have known, while employed by the Government, that the matter was pending under his or her official responsibility. However, the former employee is not subject to the restriction unless at the time of the proposed representation of another, he or she knows or learns that the matter had been under his or her responsibility. Ordinarily, a former employee who is asked to represent another on a matter will become aware of facts sufficient to suggest the relationship of the prior matter to his or her former agency. If so, he or she is under a duty to make further inquiry, including direct contact with an agency's designated ethics official where the matter is in doubt.

(5) *Self-disqualification.* A former employee cannot avoid the restrictions of this section on the ground by self-disqualification with respect to a matter for which he or she otherwise had official responsibility. However, self-disqualification is effective to eliminate the restriction of § 207(a).

(c) *"Actually pending."* "Actually pending" means that the matter was in fact referred to or under consideration by persons within the employee's area of responsibility, not that it merely could have been.

Example 1: A staff lawyer in a department's Office of General Counsel is consulted by procurement officers on the correct resolution of a contractual matter involving Q Company. The lawyer renders an opinion resolving the question. The same legal question arises later in several contracts with other companies, but none of the disputes with such companies is referred to

the Office of the General Counsel. The General Counsel has official responsibility for the determination of the Q Company matter. The other matters were never "actually pending" under that responsibility, although as a theoretical matter, such responsibility extended to all legal matters within the department.

(d) *Other essential requirements.* All other requirements of the statute must be met before the restriction on representation applies. The same considerations apply in determining the existence of a "particular matter involving a specific party," a representation in an "appearance," or "intent to influence," and so forth as set forth under § 737.5 above.

Example 1: During her tenure as head of an agency, an officer's subordinates undertook major changes in agency enforcement standards involving occupational safety. Eighteen months after terminating Government employment, she is asked to represent Z Company which believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the agency head terminated her employment. She may represent Z Company because the matter pending under her official responsibility was not one involving "a specific party." (Moreover, the time-period covered by 18 U.S.C. 207(c) has elapsed.)

(e) *Measurement of two-year restriction period.* The statutory two-year period is measured from the date when the employee's responsibility in a particular area ends, not from the termination of Government service, unless the two occur simultaneously. The prohibition applies to all particular matters subject to such responsibility in the one-year period before termination of such responsibility.

Example 1: The Director, Import/Export Division of A Agency retires after 26 years of service and enters private industry as a consultant. He will be restricted for two years with respect to all matters which were actually pending under his official responsibility in the year before his retirement.

Example 2: An employee transfers from a position in A Agency to a position in B Agency, and she leaves B Agency for private employment 9 months later. In 15 months she will be free of restriction insofar as matters which were pending under her responsibility in A Agency in the year before her transfer. She will be restricted for two years in respect of B Agency matters which were pending in the year before her departure for private employment.

§ 737.9 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.

(a) *Basic prohibition of 18 U.S.C. 207(b)(ii).* No former Senior Employee (see § 737.3(6)), within two years after

terminating employment by the United States, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person by personal presence at any formal or informal appearance, (1) before the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter he or she participated personally and substantially.

(b) *Limitation to "representation" assistance by "personal presence" at an appearance.* Section 207(b)(ii) is limited to assistance "in representing" another person by "personal presence" at an "appearance" before the United States. Different in scope from sections 207(a) and 207(b)(i), it does not apply to assistance in connection with an oral or written communication made with an intent to influence which does not involve an appearance. Nor does it bar assistance in preparation for either a formal or informal personal appearance or an appearance by written submission in a formal proceeding where the former employee is not personally present before the Government or a Government employee. The provision is designed to prevent the former Senior Employee from playing any auxiliary role during a negotiation proceeding or similar transaction with the Government so that he or she does not appear to be lending personal influence to the resolution of a matter and cannot do so in fact.

Example 1: A former Senior Employee makes suggestions as to the content of a letter to be sent to the Government on a matter in which he had participated. No violation occurs.

(c) *Managerial and other off-scene assistance.* The statute does not prohibit a former Senior Employee's advice and assistance to his or her organization's representatives which does not involve his or her personal presence at an appearance before the Government. The former Senior Employee's preparation of documents to be presented in any formal or informal proceeding does not constitute personal presence at an appearance, even where submission of such a document might technically constitute an appearance.

Example 1: A former Senior Employee attends a hearing on a matter in which she had participated personally and substantially while in the Government. She speaks with the representative of a private party during the hearing. A violation occurs if the former Senior Employee lends assistance to the representative in that conversation.

Example 2: A Senior Justice Department lawyer personally works on an antitrust case against Z Company. After leaving the Department, she is asked to discuss legal strategy with lawyers representing Z

Company or that same antitrust case, to write portions of a brief and to direct the research of the staff working on the case. Any such aid would not be prohibited by the statute, but would likely be prohibited by professional disciplinary rules.

(d) *Representational assistance.* The statute seeks to prevent a former Senior Employee from making unfair use of his or her prior governmental position by prohibiting all forms of assistance in the representation of another when personally present at an appearance, including giving advice as to how the representation in an appearance should be conducted, supplying information, participating in drafting materials, or dealing with forensic or argumentative matters (such as testimony, methods of persuasion, or strategy of presentation).

(e) *Measurement of restriction period.* The statutory two-year period is measured from the date of termination of employment in the Senior Employee position held by the former employee when he or she participated personally and substantially in the matter involved. (cf. § 737.7(e))

(f) *Other Essential Requirements.* All conditions of the statutory prohibition must be met. Specifically, the former employee, (1) must have been a "Senior Employee," (2) who "participated personally and substantially" (See § 737.5(d) above) in (3) a "particular matter involving a specific party." (See subpart § 737.5(c) above.)

(g) *General Examples:*

Example 1: A Senior Federal Trade Commission Employee, an economist by profession, participates in an investigation involving X Company, and a proceeding is commenced against X Company based on the investigation. After leaving the Commission, he offers to serve as a consultant to the lawyers for X Company on certain economic matters involved in the proceeding. He attends the proceeding and at the close of each day, meets in the lawyers' office to advise them. Such conduct violates the statute.

Example 2: A Senior Employee of the Department of the Treasury participates in a number of projects with universities and financial research institutions funded by Government grants. After leaving the Government, she becomes dean of a graduate school of business which performs work under a number of such grants. She may, in the discharge of her duties, supervise research and advise as to how funds under such a contract should be allocated, whether or not these matters are, or is likely, communicated to her former Department by the graduate school's representatives. (See § 737.11.)

Example 3: A Senior Defense Department official participated personally and substantially in a contract award to F Company for fighter planes. After leaving the Department, the former official goes to work for F Company. Subsequently, F Company

desires to renegotiate prices and a pension provision on the fighter plane contract, matters in which dispute is anticipated. The former official could not attend a meeting with Government employees at which such matters will be discussed and give assistance to those representing F Company in the negotiations. He could generally render advice as long as he remained absent from the negotiations.

Example 4: A Senior Justice Department lawyer participated in an antitrust case against Q Company, which is represented by Y law firm. Immediately after leaving the Department, she goes to work with Y law firm, and assists at a trial representing Q Company in a different antitrust case, not involving the allegations in the Government case. Such assistance would not be barred because it does not occur in connection with the same particular matter.

Example 5: A Senior Employee of the Department of Health and Human Services leaves to take a university position. The former official's new duties include various HHS contracts which the university holds. Some of the contracts were awarded by a division within HHS which was under her official responsibility. She is not barred from assistance in negotiations with respect to such contracts, because the restriction applies only to those matters in which she had participated personally and substantially, not to those matters for which she had official responsibility. Note, however, that any participation by her as a representative would be barred by 18 U.S.C. 207(b)(1) as described in § 737.7 above. (But see § 737.11.)

Example 6: A Senior scientist with the Food and Drug Administration was personally and substantially involved in a licensing proceeding concerning a specific drug. After leaving the FDA, he is employed by the manufacturer of the drug. There he engages in research, indicating that the drug is safe and effective, which his employer later presents to FDA in connection with the proceeding. He assists during this presentation. Such assistance would normally be restricted but may be allowed to the extent that the former official is furnishing scientific information to the Government. (See 18 U.S.C. 207(f) and § 737.15 below.)

Example 7: A former Senior Employee of the Federal Communications Commission leaves the agency to join a graduate school faculty. In one of his courses, which from time to time includes Government employees, he discusses, unfavorably to the Commission, a specific licensing case in which he was personally and substantially involved. The restriction does not apply because the conduct does not occur in connection with any representational activities.

§ 737.11 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.

(a) *Basic prohibition of 18 U.S.C. 207(c).* For a period of one year after terminating employment by the United States, no former Senior Employee, [other than a special Government

employee who serves for fewer than sixty days in a calendar year] shall knowingly act as an agent or attorney for, or otherwise represent, anyone in any formal or informal appearance before, or with the intent to influence, make any written or oral communication on behalf of anyone to (1) his or her former department or agency, or any of its officers or employees, (2) in connection with any particular Government matter, whether or not involving a specific party, which is pending before such department or agency, or in which it has a direct and substantial interest.

(b) *Transactions exempted from the basic prohibition of 18 U.S.C. 207(c).* The prohibition set forth above shall not apply to an appearance, a communication, or representation by a former Senior Employee, who is:

(1) an elected official of a State or local government, acting on behalf of such government, or

(2) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital or organization.

Example 1: A former Senior Employee of the Federal Highway Administration is appointed to the position of Secretary of Transportation for the State of Kansas. He would not be prohibited from transacting business with his former agency concerning new matters on behalf of the State. He would, however, be restricted as to 207(a) and 207(b) matters.

Example 2: A former Senior Employee of the Department of Housing and Urban Development establishes a consulting firm and is engaged by the City of Los Angeles to aid it in procuring a particular grant. He may not represent Los Angeles before his former Department because his "principal occupation or employment" is not with such city.

Example 3: A former Senior Employee of the Department of Education founds a vocational school for the training of legal paraprofessionals and associated staff. He desires to communicate with officials at his former Department for the purpose of establishing a program of assistance to such institutions. He may not do so, since the vocational school is not an "accredited, degree-granting institution of higher education."

(c) *No prior involvement required.* The prohibition contained in this section

applies without regard to whether the former Senior Employee had participated in, or had responsibility for, the particular matter and includes matters which first arise after the employee leaves Government service. The section aims at the possible use of personal influence based upon past Governmental affiliations to facilitate the transaction of business.

(d) *Specific parties unnecessary.* The particular matter in which the former Senior Employee proposes to act before his or her former agency need not be one "involving specific parties," and thus is not limited to disputed proceedings or contracts in which a party has already been identified. However, the restriction does not encompass every kind of matter, but only a particular one similar to those cited in the statutory language, i.e., any judicial or other proceeding, application, request for a ruling or determination, contract, claim, controversy, investigation, charge, accusation, or arrest. Rulemaking is specifically included. Thus such matters as the proposed adoption of a regulation or interpretive ruling, or an agency's determination to undertake a particular project or to open such a project to competitive bidding are covered. Not included are broad technical areas and policy issues and conceptual work done before a program has become particularized into one or more specific projects. The particular matter must be pending before the agency or be one in which the agency has a "direct and substantial interest."

(Note.—Each post employment activity in the examples in this section is assumed to take place within one year of termination of Government employment.)

Example 1: A Senior Employee of the Department of Health and Human Services leaves Government employment for private practice, and shortly thereafter telephones a former associate urging that the Department (a) adopt a new procedure to put a ceiling on hospital costs; (b) not adopt a particular rule proposed for drug testing; and (c) oppose a bill pending in Congress relating to such drug testing. He is prohibited from attempting to influence his former co-worker on any of these matters. The first, not yet pending, is of interest to the Department; the second is pending in the Department; and the third is pending elsewhere, and is of interest to the Department. Note that the former Senior Employee may, however, communicate the same views to Congress, other agencies, the public or the press.

Example 2: A recently retired Senior Employee of the Department of Defense believes that the Department's general emphasis on manned aircraft is not in the national interest. After his departure, he may continue to argue the point to the Department.

(e) *Element of controversy or influence required.* The prohibition on acting as a representative or attempting to influence applies to situations in which there is an appreciable element of actual or potential dispute or an application or submission to obtain Government rulings, benefits or approvals, and not to a situation merely involving, for example: the transmission or filing of a document that does not involve an application for Government benefit, approval or ruling; a request for information; purely social or informational communications; or those required by law or regulations (in situations other than adversary proceedings). Each agency should, after consulting with the Director or the Attorney General, as appropriate, give guidance on the kinds of applications, filings and other matters which are not prohibited by section 207(c).

Example 1: A former Senior Employee of the Internal Revenue Service prepares and mails a client's tax return. This is not a prohibited act. Should any controversy arise in connection with the tax return, the former employee may not represent the client, but may be called upon to state how the return was prepared.

Example 2: A former Senior Employee of the Securities and Exchange Commission prepared and transmitted for filing to the Commission a client's annual report on form 10-K. This is not a violation, because the 10-K is a disclosure report, not intended to obtain a Government benefit or ruling.

Example 3: A former Senior Employee of the Securities and Exchange Commission becomes executive vice-president of a major industrial corporation, registered under the Securities Exchange Act of 1934. Pursuant to Commission regulations, the officers of the corporation are required to sign certain filings on behalf of the corporation, which are transmitted to the Commission. The employee may review, concur or request changes in, and sign any such filing required to be transmitted to the Commission.

(f) *Agency activity or interest in matter.* The restriction applies to the former employee's contacts with his or her former agency in connection with a matter before or of "direct and substantial interest" to the agency.

Example 1: A former Senior Employee of the Securities and Exchange Commission is asked to represent Z Company in a new matter before the Commission, one in which the former employee had no prior involvement. He may not do so.

Example 2: The matter in the foregoing example is referred to the Department of Justice for prosecution, and the former employee is asked for the first time to represent Z Company in the criminal proceeding. The matter is likely to be of direct and substantial interest to the Commission. If so, the former employee may not communicate with the Commission in the

matter. However, the former Senior Employee may communicate with the Commission in order to determine whether it asserts a direct and substantial interest in the criminal proceeding. In the event of a negative answer to the question, the former Senior Employee may communicate with the Commission.

Example 3: In connection with an entirely new matter a former Senior Employee of the Securities and Exchange Commission undertakes the representation of Z Company in private litigation brought by Q Company (e.g., a private action arising under the Securities Exchange Act of 1934). Before the suit was commenced there was no actual expression of interest by the Commission in the matter. As the litigation develops, an important question of statutory interpretation is raised, and the Commission files a brief as *amicus curiae* (friend of the court). The former Senior Employee may respond to the brief and need not withdraw from representation of Z Company, but he may not otherwise communicate with the Commission in the matter. If the Commission were to commence a proceeding or investigation against Z Company on the basis of the same facts involved in the private litigation, the former employee could continue his representation in the private litigation, but could not represent Z Company in the Commission's proceeding until after the expiration of one year from the termination of his employment with the Commission.

(Note.—Where an agency becomes a party to a proceeding subsequent to its commencement, the question whether a former Senior Employee may continue representation should ordinarily be decided by the court on a motion for disqualification in the particular circumstances.)

Example 4: In connection with a new matter, a former Senior Employee of the Federal Food and Drug Administration, since retired to private law practice, is asked to consult and assist in the preparation of briefs to be filed with the Administration on a new particular matter. He may do so, but he should not sign briefs or other communications or take any other action that might constitute an appearance.

(g) *Application or proposals for funding of research.* In connection with any application or proposal for Government funding of research, the restrictions of this section do not prevent a former Senior Employee from assuming responsibility for the direction or conduct of such research and from providing scientific or technological information to the Senior Employee's former agency regarding such research. The former Senior Employee may not, however, submit the application on behalf of the applicant or argue for its approval or funding by the agency.

Example 1: A former Senior Employee of the National Institute of Health (NIH), employed by a non-exempt research institute, prepares an application to NIH for a research contract. The application is submitted to NIH by the institute and lists the Senior Employee as principal investigator. The Senior

Employee does not violate 18 U.S.C. 207(c) by preparing the application or by being listed as principal investigator, since these are not representational activities. He may also sign an assurance to NIH as part of the application that he will be responsible for the scientific and technical direction and conduct of the project if an award is made. He may also communicate with NIH to provide scientific or technical information on the application, including presentation to NIH personnel at the research site, so long as he does not argue for approval or funding of the application.

(h) *Personal matters.* Unlike the provisions of subsections 207(a) and (b) the restrictions of this section apply when the former Senior Employee seeks to represent himself or herself. However, they do not apply to appearances or communications concerning matters of a personal and individual nature, such as personal income taxes, pension benefits, or the application of any provision of these regulations to an undertaking proposed by a Senior Employee. (See 18 U.S.C. 207(i).) A former Senior Employee may also appear *pro se* (on his or her own behalf) in any litigation or administrative proceeding involving the individual's former agency. The former employee may not contact his or her former agency in order to secure an item of business, except for (1) discussions in contemplation of being employed by the agency as a consultant or otherwise; or (2) a proposal to furnish scientific or technological information to the Government.

Example 1: Any former Government Employee may contact his or her former agency to seek information or determinations as to matters in question under these regulations or under 18 U.S.C. 207, such as whether a particular matter is considered to have been under the employee's official responsibility, whether a matter is one in which the agency asserts a direct and substantial interest, or whether a current matter is considered to be the same as that in which the employee had been involved.

(i) *Statements based on special knowledge.* The restrictions of the section do not prevent a former Senior Employee from making or providing a statement, which is based on the former Senior Employee's own special knowledge in the particular area that is the subject matter of the statement, provided that no compensation is thereby received, other than that regularly provided by law or regulation for witnesses. (See 18 U.S.C. 207(i).)

Example 1: A former Senior Employee may make any statement of his own views to his former agency on any subject matter in which he has no substantial pecuniary interests, acting on his own behalf.

Example 2: A former Senior Employee is called by his successor at the agency for the

purpose of eliciting some information on a matter in which he had been involved in an official capacity. His response is not prohibited.

Example 3: A former Senior Employee may recommend an individual to her former agency for employment, based on her own personal knowledge of the individual's qualifications and character.

(j) *Measurement of one-year restriction period.* The statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in a particular agency ends, not from the termination of Government service, unless the two occur simultaneously. (See 737.7(e).)

§ 737.13 Limitation of restrictions of 18 U.S.C. § 207(c) to less than that whole of a department or agency.

(a) *Authority.* There are two methods by which the application of the one-year "cooling-off" prohibition of 18 U.S.C. § 207(c) may be limited to less than the entirety of a department or agency. First, 18 U.S.C. 207(e) provides that the Director may by rule designate as "separate" a statutory agency or bureau which exercises functions that are distinct and separate from the remaining functions of the parent department or agency of which it is part. (see 737.31) Second, under the provisions of 18 U.S.C. 207(d)(1)(C), the Director may restrict the application of the prohibition as to a former employee (other than one who served in an Executive Level position or at a uniformed service grade level of O-9 and above) insofar as it affects his or her communications with persons in an unrelated agency or bureau within his former parent department or agency which has separate and distinct subject matter jurisdiction from the agency or bureau in which he or she served. (see 737.32)

(b) *Distinctions between the 18 U.S.C. 207(e) and 207(d)(1)(C) provisions.* (1) The authority granted by 18 U.S.C. 207(e) is applicable solely to a separate statutory agency or bureau, that is, one created by statute or the functions of which are expressly referred to by statute in such a way that it appears that Congress intended that its functions were to be separable. A determination made under this 18 U.S.C. 207(e) does not, however, benefit former heads of the separate statutory agency or bureau. Such a determination does, however, work to the benefit of other employees at Executive Level or at uniformed service grade level of O-9 or above.

(2) The determination made pursuant to § 207(d)(1)(C) is intended to provide similar recognition of separability where the subordinate agency or bureau has been *administratively* created. A

determination of such separability does inure to the benefit of the head of the separate component if he is a Senior Employee designated by the Director. However, the determination is not beneficial to persons, including the head of a separate component, in positions at Executive Level or serving at uniformed service grade level of O-9 above.

(c) *Separate Statutory Components*

(1) *Procedure.* Each agency shall notify the Director, in writing, of any separate statutory agency or bureau which it desires to submit for such designation under 18 U.S.C. 207(e), providing:

(i) A description of the functions of the agency or bureau, indicating the basis on which such functions are claimed to be distinct and separate from the parent organization;

(ii) The separate statutory basis of the agency or bureau; and

(iii) Identification of those positions in the parent agency with official responsibility for supervision of such separate statutory agency or bureau.

(2) *Standards.* A parent agency may propose as a "separate" statutory agency an agency or bureau (i) created specifically by statute, (ii) the functions of which are expressly referred to by statute in such a way as to indicate that a separate component was intended or (iii) which is the successor to either of the foregoing; but a decision as to the sufficiency of the statutory authority as well as the separability of functions shall be reserved to the Director, OGE.

(3) *Effect of designation.* If a subordinate part of an agency is designated as "separate" by the Director, then Senior Employees of such separate agency and those of the parent agency are not subject to the restrictions of section 207(c) as to each other's agencies—except that the prohibition of section 207(c) remains applicable to the former head of a "separate" subordinate agency and to former Senior Employees of the parent agency whose official responsibility included supervision of the subordinate agency.

Example 1: A former Senior Employee of the Product Agency in Executive Department leaves and joins a law firm which represents Q Corporation. Product Agency has been designated by the Director as separate from Executive Department. The former employee is not restricted from representing the Q Corporation on a new matter before the Executive Department.

(d) *Separate Nonstatutory Components*

(1) *Procedure.* Each agency may notify the Director, in writing, of a component agency, bureau or office having separate and distinct subject matter jurisdiction which it desires to submit for

designation under 18 U.S.C. 207(d)(1)(C), providing:

(i) A description of the subject matter jurisdiction of such component, indicating the basis on which such jurisdiction is claimed to be separate and distinct from certain other agencies, bureaus and offices of the parent agency;

(ii) A description of the nature of the connections and interactions between such component and certain other agencies, bureaus or offices of the parent agency indicating the basis on which the component is claimed to be unrelated;

(iii) A statement of the basis on which it is claimed that no potential exists for use by former Senior Employees of such component of undue influence or unfair advantage with respect to the named other agencies, bureaus or offices of the parent agency, based on past Government service; and

(iv) Identification of those organizational units of the parent agency having administrative or operational authority over such component agency, bureau or office.

(2) *Standards.*

(i) A parent agency may propose as "separate" from other parts of a department or agency any agency or bureau having subject matter jurisdiction separate and distinct from one or more other portions of the department or agency accompanied by a showing that there would be no potential for use of undue influence or unfair advantage based upon past Government service if a former employee of one such subordinate agency or bureau communicated with employees of such other portions of the department or agency.

(ii) A determination under this section rests solely with the Director, OGE, and is available only for those subordinate components which would, but for the lack of a statutory basis, qualify for separate agency treatment under 18 U.S.C. 207(e).

(iii) Where one component has supervisory authority over another, the two components may not be considered separate and distinct for purposes of this section.

(iv) The requirement of "separate and distinct subject matter jurisdiction" may be met in at least two ways. First, the substantive areas of coverage may be distinct. For example, an office or bureau within the parent agency may handle only maritime matters. Second, the regional area of coverage may be different. For example, one regional office may, on appropriate facts, be considered separate and distinct from other regional offices and from the

parent agency—except for the bureau or office in the parent agency which is responsible for its supervision.

(v) It is necessary to specify the "unrelated agency or bureau within the same department or agency" as to which it is recommended that post employment communication be permitted. For example, one bureau may involve a subject matter distinct from some, but not all, parts of the parent department. Attempts to fractionalize a department could, however, become deeply complicated and involve difficult judgments and fact-finding. OGE will not usually act on such cases, and submissions should be confined to relatively clear cases.

(3) *Effect of determination.* If a component agency, bureau or office is determined to be separate by the Director, then Senior Employees of such component are not subject to the restrictions of 18 U.S.C. 207(c) and § 737.11 as to the remaining agencies, bureaus or offices of the parent agency (except certain such agencies, bureaus or offices as specified in § 737.32)—except that the prohibition of section 207(c) and § 737.11 shall remain applicable (i) to those former Senior Employees of such component who served in positions designated by 18 U.S.C. 207(d)(1)(A) and (B) and (ii) to former Senior Employees of such component with respect to the parent agency (as defined in § 737.13(e)). Such limited application of 18 U.S.C. 207(c) may be available for the head of a separate component, unlike the limitation of 18 U.S.C. 207(e), as determined by the Director.

Example 1: In the Department of Justice, while the Antitrust Division may be "separate" from other Divisions, it is not separate from the immediate office of the Attorney General.

§ 737.15 *Exemption for scientific and technological information.*

(a) *Exemption.* The making of communications solely for the purpose of furnishing scientific or technological information pursuant to agency procedures is exempt from all prohibitions and restrictions set forth in §§ 737.5-737.11 of these regulations (subsections (a), (b), and (c) of 18 U.S.C. 207). This exemption allows the free exchange of such information regardless of a former Government employee's prior participation in or responsibility for the matter. The former Senior Employee should not argue for the acceptance of a proposal. The exemption is not limited to communications constituting the furnishing of information, but includes those "for the purpose of" doing so. No

violation occurs when, for example, a former Government employee working on a project makes contact to determine the kind and form of information required, or the adequacy of information already supplied, so long as agency procedures are satisfied.

Example 2: A project manager, regardless of prior involvement in a particular matter, may contact the Government to determine deficiencies in system design or performance, furnish scientific or technological information relating to a solution or approach to a problem, seek related information from the Government, advise and supervise others who are involved as to such matters, and meet with Government technical experts for such purpose, provided in each case that there is compliance with such agency regulations as have been issued.

(b) *Necessary information.* Scientific and technological information includes feasibility, risk, cost, and speed of implementation, when necessary to appreciate fairly the practical significance of the information. The Government may and should be fully informed of the significance of scientific and technological alternatives.

(c) *Intent to influence.* The furnishing of meritorious or convincing scientific or technological proposals does not constitute an intent to influence. (See § 737.5(b)(7) above.)

(d) *Expert testimony.* This exemption does not include testimony as an "expert" in adversary proceedings in a matter in which the United States is involved or has an interest. Such testimony is governed by regulations set forth in § 737.19. As to assistance as an expert or consultant, see § 737.9(g). *Example 7.*

(e) *Agency responsibility for procedures.* The primary responsibility for developing procedures to guide activity under this exemption lies with each agency, so that such procedures comport with the particular characteristics of agency programs and needs. Such procedures will be reviewed periodically by the Director. In promulgating procedures, an agency may take into consideration: limiting communications to certain formats which are least conducive to the use of personal influence; segregating, to the extent possible, meetings and presentations involving matters of technical substance from those involving other aspects of the relationship; requiring that the designated agency ethics official be informed of instances where the exemption is used; or employing more restrictive practices in circumstances involving either immediate competition for contracts or applications for grants than in those involving an ongoing project.

§ 737.17 Exemption for persons with special qualification in a technical discipline.

(a) *Applicability.* A former Government employee may be exempted from the restrictions on post employment practices if the head of the agency concerned with the particular matter, in consultation with the Director, executes a certification published in the Federal Register that such former Government employee has outstanding qualifications in a scientific, technological, or other technical discipline; is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by such former Government employee's participation.

(b) *When appropriate.* This exemption should generally be utilized only where the former Government employee's involvement is needed on so continuous and comprehensive a basis that compliance with the procedures adopted for the communication of technical information (see § 737.15), or other actions to isolate the former Government employee from other aspects of the matter, would be burdensome and impractical.

(c) *Certification authority.* Certification should take place at no lower level than the head of the agency, the deputy thereof, or in the absence of both, the acting agency head.

Consultation with the Director shall precede any certification. The exemption takes place upon the execution of the certification, provided that it is transmitted to the Federal Register for publication.

(d) *Agency registry.* An agency may establish a registry for current employees, wherein the nature of their qualifications in one or more technical fields is certified after review by a supervisor, as a basis for establishing such qualifications in connection with, and to expedite, a later request for certification, should the necessity for such request arise.

§ 737.19 Testimony and statements under oath or subject to penalty of perjury.

(a) *Statutory basis.* Section 207(h) provides:

"Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury."

(b) *Applicability.* A former Government employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Government employee. This provision does not, however, allow a

former Government employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c) to testify on behalf of another as an expert witness except: (1) to the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the former Government employee participated, utilizing his or her expertise, or (2) in any proceeding where it is determined that another expert in the field cannot practically be obtained; that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Government employee's testimony is required in the interest of justice.

(c) *Statements under penalty of perjury.* A former Government employee may make any statement required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

§ 737.21 Partners of present or former government employees.

(a) *Scope.* Section 207(g) of 18 U.S.C. prohibits a partner of a current Government employee from acting as agent or attorney before the United States in a particular Government matter in which such Government employee participates, or did participate, personally and substantially. To the extent such section involves the activities of current Government employees and their partners, it is beyond the scope of these regulations.

(b) *Imputation.* Neither the Act nor these regulations impute the restrictions on former employees to partners or associates of such employees. Imputation of the restrictions of sections 207 (b)(ii) and (c) to partners of former employees would be inappropriate for the additional reason that section 207(b)(ii) itself restricts secondary-level activity, and section 207(c) is directed at the exercise of influence personal to the former Senior Employee.

§ 737.23 Officials of a state; officials of corporations created by an Act of Congress and public international organizations.

For purposes of sections 207 (a), (b) and (c) of title 18 U.S.C.:

(a) An official whose powers are established by the constitution of any State of the United States does not act on behalf of "any other person" or "anyone" when acting in his or her official capacity, but rather constitutes the official authority of the State and

(b) A former employee does not engage in unlawful activity when he or she acts on behalf of (1) a corporation specifically created by an Act of Congress if any of its directors is currently appointed by the United States; or (2) any public international organization if he or she serves by nomination or request of the United States or on temporary assignment from any agency.

§ 737.25 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. § 207(d).

(a) *Definitions.* As used in these regulations, "Senior Employee" refers to any person specified in or designated pursuant to 18 U.S.C. 207(d)(1), that is, employed by the United States:

(1) At a rate of pay specified or fixed according to subchapter II of chapter 53 of title 5, U.S.C., generally known as "Executive Level;" or

(2) On active duty as a commissioned officer of a uniformed service in a pay grade of O-9 or above as described in 37 U.S.C. 201, or

(3) In a position in any pay system for which the basic rate of pay is equal to or greater than that for GS-17 as prescribed by 5 U.S.C. 5332 or positions which are established within the Senior Executive Service (SES) pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay grade O-7 and O-8, as described in 37 U.S.C. 201, and who has significant decision-making or supervisory responsibilities, as designated by the Director, pursuant to paragraph (b) of this section.

(b) *Designation procedures.* The following procedures will be followed in designation of Senior Employee positions pursuant to 18 U.S.C. 207(d)(1)(C):

(1) *Positions at GS-17 and 18 level, Senior Executive Service, and pay grades O-7 and O-8 of the uniformed services.* The following are designated effective February 28, 1980, unless exempted as provided in paragraph (b)(2) of this section: all positions classified at GS-17 or above in the General Schedule; those in any other pay system, the rate of pay for which is at least that of grade GS-17; those in the Senior Executive Service; and those active duty uniformed service officers serving in pay grades O-7 and O-8. Each

agency head shall submit to the Director, by May 15, 1979 and on every May 15 thereafter, a report consisting of:

- (i) a description of all positions as set forth in this paragraph; (ii) the agency's recommendation as to those positions that should not be designated, based on standards established in these regulations or any other reason; and (iii) the basis and reasons for each such recommendation. After making such additional inquiries as appear desirable, the Director will determine which positions should be exempt.

Notwithstanding the foregoing, the effective date for Executive Level positions, whether or not included in the Senior Executive Service, is July 1, 1979.

(2) *Standards for designation and exemption.* Positions, or classes of positions, which do not have significant decision-making or supervisory responsibility will be exempted from designation. Initial exemptions will be retroactive. Classes of positions which may be considered for exemption are those in which decision-making responsibility does not regularly extend to major policy issues within the agency or in which supervisory responsibility extends to less than all of a directorate, bureau or department which has major policy or operational responsibility. The foregoing may include, without limitation, special assistants, technical and professional advisors to persons who make policy decisions, those involved primarily in research and technical work, and administrative law judges.

(3) *Senior Executive Service.* The establishment of positions within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978 is the responsibility of the Office of Personnel Management. The choice of an individual to enter or not to enter the Senior Executive Service is not a relevant factor in the designation under these regulations of a position held by such person.

(4) *"Rate of pay."* As used in the definition of Senior Employee, the "rate of pay" is that specified by or pursuant to law without regard to the ceiling limitations of section 5308 or section 5373 of title 5 U.S.C.; except that an individual in an executive level or GS-17 or 18 position is deemed to be employed at the rate of pay specified for that position. Increases in pay due to "steps" are not considered in determining pay grade or level.

(c) *Differential designation.* Where appropriate, the Director may designate positions for purposes of 18 U.S.C. 207(c) without designating the positions for purposes of 18 U.S.C. 207(b)(iii).

Example 1: It may be determined that a given position or class of positions will be restricted as to contact in the first post employment year, but not as to assisting in representation.

(d) *Fair notice of designation.* No Senior Employee designation made pursuant to 18 U.S.C. 207(d)(1)(C) will be effective until the last day of the fifth full calendar month after the first publication of a notice by the Director of intention to designate; except as indicated in paragraph (i) of this section, and as to a person first occupying the position after such notice is published. The designation in paragraph (b)(1) of this section and the comparable designation in the interim regulations of April 3, 1979 (44 FR 19974) constitutes notice.

(e) *"Acting" or temporary positions.* An individual may serve in a position designated pursuant to 18 U.S.C. 207(d) for up to 60 days in an "acting" or temporary capacity without being subject to those restrictions which specially apply to such positions, unless such individual (1) was transferred or detailed from another designated position, or (2) without a significant break in continuity, is named permanently to such position.

(f) *Special Government Employee.* A Special Government Employee who serves on 60 days or less in a given calendar year may serve in a designated position without being subject to the restrictions which specially apply to such position. A Special Government Employee is deemed to serve only on those days actually engaged in work for the Government under his or her Special Government Employee arrangement.

(g) *Publication.* Positions designated by the Director pursuant to 18 U.S.C. 207(d)(1)(C) and not exempted will be published in the Federal Register.

(h) *Computation of time.* An individual who transfers from a designated position to one that is not designated shall compute the commencement of the time periods contained in 18 U.S.C. 207 (b)(ii) and (c) from the time of such transfer, except as indicated in paragraph (i) below. (See § 737.7(e).)

(i) *Position shifting.* In any case where a person transfers from a designated position to one that is not, the agency head shall within one month transmit to the Director a report reciting the functions of each position, the reason for the transfer, and the identities of the prior holder of the position assumed and the successor, if any, to the position departed. If the Director designates the newly assumed position pursuant to section 207(d)(1)(C) of title 18 U.S.C., such designation shall be effective

retroactively to the date of transfer notwithstanding paragraph (d) of this section.

(j) *Revocation of Designations.* In the event the Director determines that a position previously designated should not have been, the designation will be revoked. Except for designations made under paragraph (i) of this section, the revocation may be made retroactive if the initial designation is determined to have been erroneous or if there is a change in standards for designation applicable to the position. Retroactive effect will not be given where the basis for revocation is a change in the functions or importance of a position.

§ 737.27 Administrative enforcement proceedings.

(a) *Basic procedures.* The following basic guidelines for administrative enforcement of restrictions on post employment activities are designed to expedite consultation with the Director as required pursuant to section 207(j) of title 18 U.S.C.

(1) *Delegation.* The head of an agency may delegate his or her authority under this subpart.

(2) *Initiation of administrative disciplinary hearing.* (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the agency head shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. The agency should coordinate any investigation on administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Agency that it does not intend to initiate criminal prosecution.

(ii) Whenever an agency has determined after appropriate review that there is reasonable cause to believe that a former Government employee has violated any of these regulations or 18 U.S.C. 207(a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Government employee with notice as defined in paragraph (a)(3) of this section. Agencies may establish procedures to protect the privacy of former employees as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(3) *Adequate notice.* (i) An agency must provide a former Government employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

(ii) Notice to the former Government employee must include:

A. A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Government employee to prepare an adequate defense;

B. Notification of the right to a hearing; and

C. An explanation of the method by which a hearing may be requested.

(4) *Presiding official.* (i) The presiding official at proceedings under this subpart shall be the agency head or an individual to whom the agency head has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(ii) Appropriate qualifications shall be established for examiners.

(iii) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(5) *Time, date and place.* (i) The hearing shall be conducted at a reasonable time, date, and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Government employee's need for:

(A) Adequate time to prepare a defense properly; and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel.

(ii) To introduce and examine witnesses and to submit physical evidence.

(iii) To confront and cross-examine adverse witnesses.

(iv) To present oral argument, and

(v) To receive a transcript or recording of the proceedings, on request.

(7) *Burden of proof.* In any hearing under this subpart, the agency has the burden of proof and must establish substantial evidence of a violation.

(8) *Hearing decision.* (i) The presiding official shall make a determination exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the agency, either party may appeal the decision to the agency head. The agency head shall base his or her decision on such appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the agency head modifies or reverses the initial decision, he or she shall specify such findings of fact and conclusions of law as are different from those of the hearing examiner.

(9) *Administrative sanctions.* The agency head may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or with the intent to influence, any oral or written communication to, such department or agency on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations may seek judicial review of the administrative determination.

(11) *Consultation and review.* Each agency shall submit a copy of its procedures for administrative enforcement to the Director.

§ 737.29 Effective date of restrictions.

(a) *Persons affected.* Any person who holds a Government position after June 30, 1979, becomes subject to any additional restrictions relating to the holder of that position contained in the amendments to 18 U.S.C. 207 as set forth in these regulations. Restrictions which depend on the designation of a position by the Director shall become applicable on the date such designation becomes effective.

(b) *Fair notice of substantive changes.* No change in the substance of these regulations shall become effective with respect to a Government employee who is adversely affected by such change until and unless such employee remains in a position to which such change is applicable for a period of five months following the first publication of a regulation in final form, reflecting or prescribing such change, or unless such employee accepts such a position after the publication.

§ 737.31 Separate statutory agencies: Designations.

In accordance with the provisions of 18 U.S.C. 207(e) and § 737.13, each of the following departments or agencies is determined, for purposes of 18 U.S.C.

207(c), to have within it separate statutory agencies or bureaus as set forth below:

Parent Agency: DEPARTMENT OF THE TREASURY

Separate Statutory Components:
Bureau of Alcohol, Tobacco and Firearms
Bureau of Engraving and Printing
Bureau of the Mint
Comptroller of the Currency
Internal Revenue Service
United States Customs Service
United States Secret Service

Parent Agency: FEDERAL EMERGENCY MANAGEMENT AGENCY

Separate Statutory Components:
United States Fire Administration
Parent Agency: OFFICE OF PERSONNEL MANAGEMENT

Separate Statutory Components:
Office of Federal Procurement Policy
Office of Government Ethics

Parent Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES

Separate Statutory Components:
Education Division
Food and Drug Administration
Public Health Service
Social Security Administration

Parent Agency: DEPARTMENT OF TRANSPORTATION

Separate Statutory Components:
Federal Aviation Administration
Federal Highway Administration
Federal Railroad Administration
National Highway Traffic Safety Administration

Saint Lawrence Seaway Development Corporation

United States Coast Guard
Urban Mass Transportation Administration

Parent Agency: DEPARTMENT OF LABOR

Separate Statutory Components:
Bureau of Labor Statistics
Mine Safety and Health Administration
Occupational Safety and Health Administration

Parent Agency: DEPARTMENT OF JUSTICE

Separate Statutory Components:
Bureau of Prisons (including Federal Prison Industries, Inc.)

Community Relations Service
Drug Enforcement Administration
Federal Bureau of Investigation
Law Enforcement Assistance Administration

Immigration and Naturalization Service
United States Parole Commission

Parent Agency: DEPARTMENT OF DEFENSE

Separate Statutory Components:
Department of the Army
Department of the Navy
Department of the Air Force
Defense Civil Preparedness Agency
Defense Mapping Agency

Parent Agency: DEPARTMENT OF ENERGY

Separate Statutory Components:
Federal Energy Regulatory Commission

§ 737.32 Separate components of agencies or bureaus: designations.

In accordance with the provisions of 18 U.S.C. 207(d)(1)(C) and § 737.14, each of the component agencies or bureaus as set forth below is determined, for

purposes of 18 U.S.C. 207(c) and this Part 737, to be separate from the remaining agencies and bureaus of its parent agency (except such agencies and bureaus as specified):

Parent Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES

Separate Components:

Health Care Financing Administration

Parent Agency: DEPARTMENT OF TRANSPORTATION

Separate Components:

Alaska Railroad

Parent Agency: DEPARTMENT OF LABOR

Separate Components:

Employment and Training Administration

Employment Standards Administration

Labor-Management Services Administration

Parent Agency: DEPARTMENT OF DEFENSE

Separate Components:

Defense Communications Agency

Defense Intelligence Agency

Defense Nuclear Agency

National Security Agency

Parent Agency: DEPARTMENT OF STATE

Separate Components:

Foreign Service Grievance Board

International Joint Commission, United States and Canada (American Section)

Parent Agency: DEPARTMENT OF JUSTICE

Separate Components:

Office of United States Attorney (for each judicial district (95))—however, each such Office is not designated as separate from the Office of the U.S. Marshal for the same judicial district.

Office of United States Marshal (for each judicial district (95))—however, each such Office is not designated as separate from the Office of the U.S. Attorney for the same judicial district.

§ 737.33 "Senior Employee" designations.

(a) In accordance with § 737.25(b)(1), the following employee positions have been designated as "Senior Employee" positions for purposes of subsections 207(b)(ii) and (c) of title 18 U.S.C., as amended.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (OFFICE OF MANAGEMENT AND BUDGET)

Positions: Grade and Title

GS-18 General Counsel

GS-18 Project Director, Federal Statistical Reorganization

GS-18 Deputy Associate Director, Information Systems Policy

GS-18 Deputy Associate Director, Intergovernmental Affairs

GS-18 Domestic Reorganization Coordinator

GS-18 Deputy Associate Director for Economic and Regional Development Organization

GS-18 Deputy Associate Director for Natural Resources, Energy and Environment Reorganization

GS-18 Deputy Associate Director for General Government Reorganization

GS-18 Deputy Associate Director for Budget Review

GS-18 Deputy Associate Director for International Affairs

GS-18 Deputy Associate Director for National Security

GS-18 Deputy Associate Director for Management, National Security and International Affairs

GS-18 Deputy Associate Director for Health and Income Maintenance

GS-18 Deputy Associate Director for Transportation, Commerce and Housing

GS-18 Deputy Associate Director for Natural Resources

GS-18 Deputy Associate Director for Energy and Science

GS-17 Assistant to the Director for Public Affairs

GS-17 Assistant to the Director for Administration

GS-17 Assistant Director for Legislative Affairs

GS-17 Deputy Assistant Director for Legislative Reference

GS-17 Assistant for Planning and Policy Coordination

GS-17 Deputy Assistant Director for Revaluation

GS-17 Deputy Associate Director for Regulatory Policy and Reports Management

GS-17 Chief, Financial Management Branch, Budget Review

GS-17 Chief, Fiscal Analysis Branch, Budget Review

GS-17 Deputy Chief, International Affairs Division

GS-17 Deputy Chief, National Security Division

GS-17 Associate Deputy Chief, National Security Division

GS-17 Deputy Associate Director for Labor, Veterans and Education

GS-17 Deputy Division Chief (Labor), Labor, Veterans and Education

GS-17 Deputy Associate Director for Management, Human Resources, Veterans and Labor

GS-17 Deputy Division Chief, Transportation, Commerce and Housing

GS-17 Deputy Associate Director for Justice, Treasury and General Management

GS-17 Deputy Division Chief, Natural Resources Division

GS-17 Deputy Division Chief, Energy and Science

GS-17 Deputy Associate Director for Management, Natural Resources, Energy and Science

SES Deputy General Counsel

OFFICE OF FEDERAL PROCUREMENT POLICY

GS-18 Associate Administrator for Systems and Technology

GS-18 Associate Administrator for Regulations and Procedure

GS-17 Associate Administrator for Acquisition Law

GS-17 Assistant Administrator for Logistics

GS-17 Assistant Administrator for Regulations

SES Assistant Administrator for Commercial Products

SES Assistant Administrator for Labor Affairs and Personnel

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (COUNCIL ON ECONOMIC ADVISERS)

Positions: No section 207(d)(1)(C) designations

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (DOMESTIC POLICY STAFF)

Positions: AD Associate Director: (11)

AD Counselor to the President on Aging

AD Special Assistant to the President for Consumer Affairs

AD Expert/Drug Policy

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS)

Positions:

GS-18 General Counsel

GS-17 Assistant Special Trade Representatives(4)

GS-18 Assistant Special Trade Representatives(2)

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (COUNCIL ON ENVIRONMENTAL QUALITY)

Positions:

GS-18 General Counsel

GS-18 Executive Director

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (COUNCIL ON WAGE AND PRICE STABILITY)

Positions:

GS-18 Special Assistant to the Chairperson for Intergovernmental Affairs

GS-18 Deputy Director

GS-18 General Counsel

SES Deputy General Counsel

GS-17 Assistant Director for Operations

SES Assistant Director, Office of Government Programs and Regulations

SES Assistant Director, Office of Price Monitoring

Positions:

SES Associate Director for National Security, International and Space Affairs

SES Associate Director for Human Resources and Social and Economic Services

SES Associate Director for Natural Resources and Commercial Services

SES Senior Policy Analyst

Positions:

SES Associate Director for National Security, International and Space Affairs

SES Associate Director for Human Resources and Social and Economic Services

SES Associate Director for Natural Resources and Commercial Services

SES Senior Policy Analyst

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (OFFICE OF ADMINISTRATION)

Positions: No Section 207(d)(1)(C) designations

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT (OFFICE OF THE VICE PRESIDENT OF THE UNITED STATES)**Positions:**

SES Chief of Staff
 SES Counsel to the Vice President and Deputy Chief of Staff
 SES Executive Assistant to the Vice President
 SES Assistant to the Vice President for National Security Affairs
 SES Assistant to the Vice President and Press Secretary

AGENCY: DEPARTMENT OF AGRICULTURE**Positions:****OFFICE OF THE SECRETARY**

GS-18 Executive Assistant to the Secretary

OFFICE OF THE INSPECTOR GENERAL

GS-18 Inspector General
 GS-17 Director of Investigation
 GS-17 Assistant Inspector General for Investigations
 GS-17 Director of Audit
 GS-17 Assistant Inspector General for Auditing

OFFICE OF GOVERNMENTAL AND PUBLIC AFFAIRS

GS-17 Associate Director

OFFICE OF THE GENERAL COUNSEL

GS-18 Deputy General Counsel

OFFICE OF ADMINISTRATIVE LAW JUDGES

Positions: No section 207(d)(1)(C) designations

OFFICE OF PERSONNEL

GS-18 Director

OFFICE OF EQUAL OPPORTUNITY

Positions: No section 207(d)(1)(C) designations

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

SES Deputy Assistant Secretary for Administration

OFFICE OF OPERATIONS AND FINANCE

GS-18 Director
 GS-17 Director, National Finance Center

OFFICE OF THE DIRECTOR, ECONOMICS POLICY ANALYSIS AND BUDGET

SES Deputy Director for Economics, Policy Analysis, and Budget

OFFICE OF BUDGET, PLANNING AND EVALUATION

SES Director
 SES Deputy Director for Management and Budget

WORLD FOOD AND AGRICULTURAL OUTLOOK AND SITUATION BOARD

SES Chairman

ECONOMICS, STATISTICS, AND COOPERATIVES SERVICE

GS-18 Administrator

GS-18 Deputy Administrator for Statistics
 GS-17 Deputy Administrator for Cooperatives
 GS-17 Deputy Administrator for Economics

OFFICE OF THE ASSISTANT SECRETARY FOR RURAL DEVELOPMENT

SES Deputy Assistant Secretary for Rural Development

RURAL ELECTRIFICATION ADMINISTRATION

GS-17 Deputy Administrator

FARMERS HOME ADMINISTRATION

GS-18 Associate Administrator
 SES Deputy Administrator, Financial and Administrative Operations
 GS-17 Deputy Administrator, Rural Development
 GS-17 Deputy Administrator, Farm and Family Programs
 GS-17 Associate Administrator for Rural Development Policy Management and Coordination

SCIENCE AND EDUCATION ADMINISTRATION

GS-18 Associate Director
 GS-17 Administrator, Human Nutrition Center
 SES Associate Administrator, Human Nutrition Center
 IPA(AD) Head, Competitive Research Grants Office
 IPA(AD) Assistant Director, Higher Education
 GS-17 Assistant Director for Program Management
 SES Chief, International Programs
 GS-18 Deputy Director for Extension
 GS-17 Associate Deputy Director for Extension
 GS-18 Deputy Director, Cooperative Research
 GS-17 Associate Administrator, Cooperative Research
 GS-17 Deputy Director, Administrative Management
 GS-18 Deputy Director for Agricultural Research
 GS-17 Associate Deputy Director, Agricultural Research

OFFICE OF THE ASSISTANT SECRETARY FOR CONSERVATION, RESEARCH, AND EDUCATION

SES Deputy Assistant Secretary for Conservation, Research and Education

SOIL CONSERVATION SERVICE

GS-18 Associate Administrator
 GS-17 Deputy Administrator for Administration
 GS-17 Deputy Administrator for Technical Services
 GS-18 Deputy Administrator for Programs

FOREST SERVICE

GS-18 Associate Chief
 GS-17 Deputy Chief for Administration
 GS-18 Deputy Chief for Research
 GS-17 Associate Deputy Chiefs for Research(2)
 GS-18 Deputy Chief, National Forest Systems
 GS-17 Associate Deputy Chiefs, National Forest Systems(2)

GS-18 Deputy Chief, State and Private Forestry

GS-17 Associate Deputy Chief, State and Private Forestry

GS-18 Deputy Chief for Programs and Legislation

GS-17 Associate Deputy Chief for Programs and Legislation

OFFICE OF THE UNDER SECRETARY FOR INTERNATIONAL AFFAIRS AND COMMODITY PROGRAMS

GS-17 Deputy Under Secretary for International Affairs and Commodity Programs

GS-18 Special Assistant for International Scientific and Technical Cooperation

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

GS-18 Associate Administrator
 GS-18 Deputy Administrator, State and County Operations
 GS-17 Deputy Administrator, Management
 GS-17 Deputy Administrator, Commodity Operations

FEDERAL CROP INSURANCE CORPORATION

GS-18 Manager
 SES Deputy Manager

FOREIGN AGRICULTURAL SERVICE

GS-17 Associate Administrator
 GS-17 Assistant Administrator, Commodity Programs

OFFICE OF THE GENERAL SALES MANAGER

GS-17 General Sales Manager

OFFICE OF THE ASSISTANT SECRETARY FOR FOOD AND CONSUMER SERVICES

SES Deputy Assistant Secretary for Food and Consumer Services

FOOD SAFETY AND QUALITY SERVICE

GS-18 Administrator
 SES Associate Administrator
 SES Deputy Administrator, Commodity Services

GS-17 Deputy Administrator, Meat and Poultry Inspection Field Operations

SES Deputy Administrator, Administrative Management

FOOD AND NUTRITION SERVICE

GS-18 Administrator
 GS-17 Associate Administrator

OFFICE OF THE ASSISTANT SECRETARY FOR MARKETING AND TRANSPORTATION SERVICES

SES Deputy Assistant Secretary for Marketing and Transportation Services

AGRICULTURAL MARKETING SERVICE

GS-17 Deputy Administrator, Marketing Program Operations
 GS-17 Deputy Administrator, Packers and Stockyards

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

GS-18 Associate Administrator
 GS-17 Deputy Administrator, Veterinary Services

GS-17 Deputy Administrator Plant
Protection and Quarantine
GS-17 Deputy Administrator for
Management

FEDERAL GRAIN INSPECTION SERVICE

SES Deputy Administrator, Program
Operations

AGENCY: DEPARTMENT OF COMMERCE

Positions:

OFFICE OF THE SECRETARY

SES Special Assistants to the Secretary of
Commerce(2)

SES Assistant to the Secretary of
Commerce

SES Counsellor to the Secretary of
Commerce

Office of Regional Affairs and Regional Coordination

SES Deputy Under Secretary for Regional
Affairs

SES Chairperson, Federal Regional Council,
Region V

Office of Congressional Affairs

SES Deputy Assistant Secretary for
Congressional Affairs

Office of Public Affairs

SES Counsellor to the Secretary and
Director, Public Affairs

Office of General Counsel

SES Deputy General Counsel

Office of Assistant Secretary for Policy

SES Deputy Assistant Secretary for Ocean,
Resource and Scientific Policy

SES Deputy Assistant Secretary for
International Policy Coordination

SES Deputy Assistant Secretary for
Domestic Economic Policy and
Coordination

Office of Assistant Secretary for Tourism

SES Deputy Assistant Secretary

Office of Minority Business Enterprise

SES Director, Office of Minority Business
Enterprise

SES Deputy Director, Office of Minority
Business Enterprise

SES Special Assistant for Minority
Enterprise

SES Assistant Director for Program
Resources

OFFICE OF ASSISTANT SECRETARY FOR MARITIME AFFAIRS

SES Deputy Assistant Secretary

Office of the General Counsel

SES General Counsel

SES Deputy General Counsel

Policy and Administration

SES Assistant Administrator for Policy and
Administration

Maritime Aids

SES Assistant Administrator for Maritime
Aids

SES Deputy Assistant Administrator
Operations

SES Assistant Administrator for Operations
SES Deputy Assistant Administrator
SES Director, Office of Ship Construction
SES Director, Office of Shipbuilding Costs

Commercial Development

SES Assistant Administrator for
Commercial Development

SES Deputy Assistant Administrator for
Commercial Development

Regional Offices

Position No section 207(d)(1)(C) designations

U.S. Merchant Marine Academy

SES Superintendent

INDUSTRY AND TRADE ADMINISTRATION

Office of Assistant Secretary for Industry and
Trade Administration

SES Deputy Assistant Secretary

BUREAU OF INTERNATIONAL ECONOMIC POLICY AND RESEARCH

GS-17 Deputy Assistant Secretary

SES Deputy Director

Bureau of Trade Regulation

SES Deputy Assistant Secretary for
SES Deputy Director

Bureau of East-West Trade

GS-17 Deputy Assistant Secretary and
Bureau Director

SES Deputy Bureau Director

Bureau of Export Development

SES Deputy Assistant Secretary, National
Export Expansion Coordinator & Bureau
Director

SES Deputy Director

Bureau of Domestic Development

SES Deputy Assistant Secretary for
SES Deputy Director

Bureau of Field Operations

SES Deputy Assistant Secretary

OFFICE OF ASSISTANT SECRETARY FOR ADMINISTRATION

SES Deputy Assistant Secretary

Office of the Controller

SES Controller

Office of Budget and Program Evaluation

SES Director

SES Deputy Director, Budget

Office of Procurement and Automatic Data Processing Management

SES Director

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SES Deputy Assistant Secretary

Office of Planning and Policy Coordination

SES Director

SES Chief Counsel

Office of International Affairs

SES Director

Office of Federal Systems and Spectrum Management

SES Associate Administrator for
SES Deputy Associate Administrator

Office of Policy Analysis and Development

SES Associate Administrator

SES Deputy Associate Administrator

Office of Telecommunications Applications

SES Associate Administrator

Institute for Telecommunications Sciences

SES Associate Administrator

SES Deputy Associate Administrator

OFFICE OF THE CHIEF ECONOMIST

SES Chief Economist

SES Deputy Chief Economist

SES Director for Federal Statistical Policy &
Standards

Bureau of Economic Analysis

SES Director

SES Deputy Director

Bureau of the Census

SES Deputy Director

Demographic Fields

SES Associate Director for

Electronic Data Processing

SES Associate Director for

Statistical Standards and Methodology

SES Associate Director for

Field Operations

SES Associate Director for

Economic Fields

SES Associate Director

OFFICE OF ASSISTANT SECRETARY FOR SCIENCE AND TECHNOLOGY

SES Deputy Assistant Secretary

Office of Environmental Affairs

SES Deputy Assistant Secretary

Office of Product Standards

SES Deputy Assistant Secretary

National Technical Information Service

SES Director

SES Deputy Director

NATIONAL BUREAU OF STANDARDS

SES Deputy Director

SES Associate Director for International
Affairs

Office of Associate Director for Programs,
Budget and Finance

SES Associate Director

Institute for Basic Standards

SES Director

SES Deputy Director

National Measurement Laboratory

SES Director

SES Deputy Director for Resources &
Operations

National Engineering Laboratory

SES Director

SES Deputy Director

Institute for Computer Sciences and Technology

SES Director
 SES Deputy Director
 SES Associate Director for Teleprocessing and Supporting Communications Technology
 SES Associate Director for Automatic Data Processing Standards

OFFICE OF ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT

(Economic Development Administration)

SES Deputy Assistant Secretary

Office of Chief Counsel

SES Chief Counsel

Office of Special Projects

SES Director

Economic Development Policy and Planning

SES Deputy Assistant Secretary

Economic Development Operations

SES Deputy Assistant Secretary
 SES Director Local Public Works

Office of Public Works

SES Director

PATENT AND TRADEMARK OFFICE

GS-18 Deputy Commissioner

Board of Patent Interferences

Position: No section 207(d)(1)(C) designations

Office of Assistant Commissioner for Patents

GS-18 Assistant Commissioner
 SES Deputy Assistant Commissioner

Office of Assistant Commissioner for Trademarks

GS-17 Assistant Commissioner

Office of the Solicitor

SES Solicitor
 SES Deputy Solicitor

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

GS-17 Special Counsel for Law of the Sea

Office of the General Counsel

SES General Counsel
 SES Deputy General Counsel

Office of Policy and Planning

SES Assistant Administrator for Policy and Planning

Coastal Zone Management

SES Assistant Administrator

National Marine Fisheries Service

SES Assistant Administrator for Fisheries
 SES Deputy Assistant Administrator

Office of Research and Development

SES Assistant Administrator for Research and Development

Environmental Research Laboratories

SES Director

Office of Sea Grants

SES Director

Oceanic and Atmospheric Services

SES Assistant Administrator
 SES Deputy Assistant Administrator

National Weather Service

SES Director
 SES Deputy Director

National Ocean Survey

GS-08 Director
 SES Deputy Director

Environmental Data and Information Service

SES Director
 SES Deputy Director

National Environmental Satellite Service

SES Director
 SES Deputy Director

NOAA CORPS

GS-08 Director

AGENCY: DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Positions:****OFFICE OF THE SECRETARY**

SES Executive Assistants to the Secretary (2)
 SES Assistant to the Secretary for International Affairs
 SES Assistant to the Secretary for Labor Relations

OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING

SES Deputy Assistant Secretary, Multifamily Housing Programs
 SES Deputy Assistant Secretary, Single-Family Housing and Mortgage Activities
 SES Deputy Assistant Secretary, Public Housing and Indian Programs
 SES Director, Office of Policy and Program Development

OFFICE OF THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT

SES Deputy Assistant Secretary for Interprogram and Area-wide Concerns
 SES Deputy Assistant Secretary for Urban Policy

OFFICE OF THE ASSISTANT SECRETARY FOR NEIGHBORHOODS, VOLUNTARY ASSOCIATIONS, AND CONSUMER PROTECTION

SES General Deputy Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection
 SES Deputy Assistant Secretary for Neighborhoods and Consumer Affairs
 SES Deputy Assistant Secretary for Regulatory Functions/Office of Interstate Land Sales Registration

OFFICE OF THE ASSISTANT SECRETARY FOR FAIR HOUSING AND EQUAL OPPORTUNITY

SES Deputy Assistant Secretary for Operations and Management

SES General Deputy Assistant Secretary for Fair Housing and Equal Opportunity

OFFICE OF THE ASSISTANT SECRETARY FOR POLICY DEVELOPMENT AND RESEARCH

SES Deputy Assistant Secretary for Research
 SES Director, Division of Housing Research
 SES Director, Division of Energy Building Technology and Standards
 SES Director, Division of Evaluation
 SES Director, Division of Community Conservation Research
 SES Deputy Assistant Secretary for Policy Development
 SES Director, Division of Government Capacity Building
 SES Deputy Assistant Secretary for Economic Affairs
 SES Director, Office of Program Planning and Administration

OFFICE OF THE GENERAL COUNSEL

Position: No section 207(d)(1)(C) designations

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

SES Deputy Assistant Secretary for Administration

OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION AND INTERGOVERNMENTAL RELATIONS

SES Deputy Assistant Secretary for Legislation and Intergovernmental Relations

OFFICE OF THE INSPECTOR GENERAL

Position: No section 207(d)(1)(C) designations

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

SES Vice President (Mortgage Finance)
 SES Vice President (Mortgage Backed Securities)

NEW COMMUNITY DEVELOPMENT CORPORATION

SES Deputy General Manager for New Community Development Corporation

FEDERAL DISASTER ASSISTANCE ADMINISTRATION

SES Administrator
 SES Deputy Administrator

FIELD OFFICES**Region I**

SES Regional Administrator
 SES Deputy Regional Administrator
 SES Director, Boston Area Office

Region II

SES Regional Administrator
 SES Deputy Regional Administrator
 SES Director, New York Area Office
 SES Director, Newark Area Office

Region III

SES Regional Administrator/Chairperson Federal Regional Counsel
 SES Deputy Regional Administrator
 SES Director, Philadelphia Area Office

Region IV

SES Regional Administrator
 SES Deputy Regional Administrator
 SES Director, Atlanta Area Office

Region V

SES Regional Administrator
 ES Deputy Regional Administrator
 SES Director, Detroit Area Office
 SES Director, Chicago Area Office
 SES Director, Columbus Area Office

Region VI

SES Regional Administrator
 SES Deputy Regional Administrator
 SES Director, Dallas Area Office

Region VII

SES Regional Administrator
 SES Deputy Regional Administrator

Region VIII

SES Regional Administrator/Chairperson
 Federal Regional Counsel
 SES Deputy Regional Administrator

Region IX

SES Regional Administrator
 SES Deputy Regional Administrator
 SES Director, San Francisco Area Office
 SES Director, Los Angeles Area Office

Region X

SES Regional Administrator
 SES Deputy Regional Administrator

AGENCY: DEPARTMENT OF STATE

Positions:

FA01 Chief of Mission, Bangkok
 FO01 Deputy Assistant Secretary, A/SY
 FA01 Chief of Mission, Bucharest
 FR01 Deputy Representative, S/AR
 FANC Chief of Mission, Canberra
 FO01 Assistant Chief of Mission, Berlin
 FO01 Principal Officer, Sao Paulo
 FA01 Chief of Mission, Bogota
 FR01 Deputy Assistant Secretary, H
 FR01 Deputy Assistant Secretary, EB/TRA
 FO01 United States Representative, USM
 FA01 Rome
 FA01 Chief of Mission, Rangoon
 FO01 Deputy Chief of Mission, Guatemala
 FR01 Deputy Director for Planning, S/P
 FA01 Chief of Mission, Khartoum
 FO01 Principal Officer, Montreal
 FO01 Principal Officer, Guayaquil
 RU01 Deputy Assistant Secretary, PA
 FO01 Deputy Chief of Mission, New Delhi
 FA01 Chief of Mission, Lisbon
 FA01 Chief of Mission, La Paz
 FA01 Chief of Mission, Berlin
 FO01 Deputy Chief of Mission, Vienna
 FA01 Chief of Mission, Tunis
 FA01 Chief of Mission, Ouagadougou
 FA01 Chief of Mission, Ndjamena
 FANC Chief of Mission, London
 FO01 Inspector General, S/IG
 FO01 Deputy Chief of Mission, Warsaw
 RU01 Deputy Assistant Secretary, OES
 FO01 Principal Officer, Leningrad
 FA01 Chief of Mission, Georgetown
 FO01 Deputy Assistant Secretary, ARA
 FA01 Chief of Mission, Bamako
 FO01 Deputy Assistant Secretary, EB/ORF
 FA01 Ambassador at Large, S/SLG
 FANC Chief of Mission, Buenos Aires
 FANC Chief of Mission, Brussels
 FA01 Chief of Mission, Add. Ababa
 FO01 Deputy Chief of Mission, Buenos Aires
 FA01 Chief of Mission, Valletta
 FA01 Chief of Mission, Dakar

FO01 Principal Officer, Naples
 FA01 Chief of Mission, Suva
 FO01 Director of Management Operations, M/MO

FO01 Deputy Chief of Mission, Islamabad
 FA01 Chief of Mission, Bujumbura
 FO01 Principal Officer, Bombay
 FO01 Deputy Assistant Secretary, NEA
 FA01 Chief of Mission, Conakry
 FO01 Deputy Chief of Mission, Caracas
 FO01 Deputy Chief of Mission, Bern
 FA01 Chief of Mission, Kinshasa
 FO01 Principal Officer, Sydney
 FA01 Chief of Mission, Beirut
 FO01 United States Representative, Vienna-

MBFR

FA01 Chief of Mission, Maputo
 FA01 Chief of Mission, San Salv
 FO01 Principal Officer, Rio De Jan
 FA01 Chief of Mission, Abu Dhabi
 FO01 Principal Officer, Toronto
 FO01 Deputy Chief of Mission, Panama
 FO01 Deputy Chief of Mission, Ankara
 FO01 Deputy Assistant Secretary, NEA
 FO01 Deputy Chief of Mission, The Hague
 RU01 Deputy Assistant Secretary, A/OPR
 RU01 Deputy Assistant Secretary, M/MED
 FO01 Deputy Chief of Mission, Tripoli
 FO01 Director, Asian Develop, Asian DEV

BK

FA01 Chief of Mission, Pretoria
 FA01 Chief of Mission, Reykjavik
 GS-17 Deputy Legal Advisor, L
 FO01 Principal Officer, Milan
 FA01 Chief of Mission, Port O Spain
 FA01 Chief of Mission, Port Louis
 FO01 Deputy Chief of Mission, Jakarta
 FANC Chief of Mission, Rome
 FO01 Deputy Chief of Mission, Moscow
 FA01 Chief of Mission, Sofia
 FR01 Director Political Military, PM/OD
 FO01 Deputy Assistant Secretary, DGP/PER
 FA01 Chief of Mission, Seoul
 FO01 Deputy Chief of Mission, Brussels

NTO

FANC Chief of Mission, New Delhi
 FA01 Chief of Mission, Quito
 FO01 Deputy Assistant Secretary, EUR
 FO01 Deputy Assistant Secretary, ARA
 FR01 Deputy Assistant Secretary, ARA
 FO01 Deputy Assistant Secretary, AF
 FO01 Deputy Assistant Secretary, OES/ENP
 FANC Chief of Mission, Algiers
 FA01 Chief of Mission, Kathmandu
 FO01 Deputy Assistant Secretary, IO
 FO01 Principal Officer, Munich
 FR01 Dep US Representative, Vienna-MBFR
 FO01 Deputy Chief of Mission, Rome
 FA01 Chief of Mission, Lilongwe
 FO01 Deputy Assistant Secretary, CA
 FR01 Deputy Assistant Secretary, EB
 FO01 Principal Officer, Istanbul
 FANC Chief of Mission, Niamey
 FANC Chief of Mission, Tegucigalpa
 FO01 Principal Officer, Johannesburg
 FR01 Deputy Assistant Secretary, AP
 FA01 Chief of Mission, PRT-AU-PRN
 FANC Chief of Mission, The Hague
 RU01 Deputy Director PM, PM/AC
 FANC Chief of Mission, Budapest
 RU01 Assistant Secretary, EB
 FO01 Deputy Assistant Secretary, AF
 FANC Chief of Mission, Stockholm
 FO01 Deputy Chief of Mission, Tunis
 FO01 Dep US Representative, IAEA Vienna
 FANC Chief of Mission, Singapore

FO01 Deputy Director, Policy Analysis and Reso, S/P

FA01 Chief of Mission, Newakchott
 FO01 Deputy Chief of Mission, Ankara
 FA01 Chief of Mission, Santiago
 FO01 Principal Officer, Havana
 FA01 Chief of Mission, Kingston
 FANC Chief of Mission, Nairobi
 FO01 United States Representative, Vienna
 FO01 Principal Officer, Frankfurt
 FO01 Dep US Representative, USUN
 FANC Chief of Mission, Oslo
 FA01 Chief of Mission, Tel Aviv
 FO01 Principal Officer, Dhahran
 FA01 Chief of Mission, Freetown
 FA01 Chief of Mission, Lusaka
 FA01 Chief of Mission, Luxembourg
 FANC Chief of Mission, Mexico D.F.
 FA01 Chief of Mission, Caracas
 FO01 Principal Officer, Vancouver
 FA01 Chief of Mission, Kuwait
 FO01 Deputy Director of Management Operation, M/MO

FANC Chief of Mission, Tokyo
 FANC Chief of Mission, Copenhagen
 FO01 Deputy Director INR, INR/DD
 GS-18 Deputy Legal Advisor, L
 FO01 Deputy Chief of Mission, Stockholm
 FA01 Chief of Mission, Jakarta
 FO01 Deputy Chief of Mission, Cairo
 GS-17 Deputy Director for Coord, INR/DDC
 FANC Dep US Representative, IO, OIC/

MTN

FA01 Chief of Mission, Prague
 FR01 Deputy Assistant Secretary, EB/ED
 FO01 Deputy Inspector General, S/IG
 GS-17 Deputy Legal Advisor, L
 FO01 Deputy Assistant Secretary, NEA
 FA01 Chief of Mission, Kuala Lumpur
 FO01 Deputy Chief of Mission, Athens
 FO01 Principal Officer, Karachi
 FANC Chief of Mission, Panama
 FA01 Chief of Mission, Manila
 FO01 Deputy Chief of Mission, Tehran
 FO01 Deputy Chief of Mission, Pretoria
 FO01 Principal Officer, Jerusalem
 FA01 Chief of Mission, Gaborone
 RU01 Deputy Assistant Secretary, OES/

NET

FO01 Deputy Director PM, PM/AS
 FO01 Deputy Assistant Secretary, EA
 FO01 Dep US Representative, Geneva
 FA01 Chief of Mission, Port Moresby
 RU01 Deputy Chief of Mission, Brussels
 FA01 Chief of Mission, Bridgetown
 FO01 Deputy Director for Personnel, PER/

FCA

FO01 Deputy Executive Secretary, S/S
 FA01 Chief of Mission, Mogadiscio
 FA01 Chief of Mission, Montevideo
 FO01 US Rep to Tex Sur Body of, US MIS

GEN

FR01 Deputy Assistant Secretary, EB/TCA
 FO01 Deputy Chief of Mission, Berlin
 FR01 Spec Rep of Sec Pan Treaty, S/PTA
 FO01 Principal Officer, Melbourne
 FO01 Deputy Chief of Mission, Lima
 FO01 Deputy Assistant Secretary, GP/PER
 FA01 Chief of Mission, Helsinki
 FO01 Deputy Chief of Mission, Vientiane
 FR01 United States Representative, EA/PLA
 FO01 Deputy Chief of Mission, Lisbon
 FO01 Deputy Chief of Mission, OECD Paris
 FANC United States Representative, OECD Paris
 FR01 Scientific & Tech Aff Off, UNESCO
 PRS

FA01 Chief of Mission, Brasilia
 FA01 Chief of Mission, Caracas
 FR01 Deputy Assistant Secretary, HA/HR
 FANC Chief of Mission, Nassau
 RU01 Deputy Legal Adviser, L
 FO01 Principal Officer, Casablanca
 FA01 Chief of Mission, Damascus
 FANC Chief of Mission, Wellington
 FANC Chief of Mission, Dublin
 FO01 Deputy Chief of Mission, Tokyo
 FO01 Principal Officer, Hong Kong
 FR01 Spec Adv to the Sec for S/MS
 FR01 Deputy Assistant Secretary for A/FBO
 FA01 Chief of Mission, Accra
 FANC Chief of Mission, Yaounde
 FANC Chief of Mission, Maragua
 FO01 Dep US Representative, US MIS GEN
 FA01 Chief of Mission, DAR-ES-SAL
 GS-18 Director FSI Institute, M FSI
 FO01 Deputy Chief of Mission, Canberra
 FA01 Chief of Mission, Abidjan
 FO01 Deputy Chief of Mission, Seoul
 FO01 Deputy Assistant Secretary, NEA
 FO01 Dep US Representative, USUN
 FA01 Chief of Mission, Nicosia
 FO01 Deputy Chief of Mission, London
 FO01 Deputy Assistant Secretary, EA
 FO01 Principal Officer, Rotterdam
 FO01 SA to Sec & Exec Sec of S/S
 FR01 Deputy Assistant Secretary, OES/APT
 FO01 Assistant Secretary, A
 FA01 Chief of Mission, Libreville
 FR01 United States Representative,
 UNESCO PRS
 FO01 Deputy Chief of Mission, Manila
 FO01 Dep US Representative, ARA/USOAS
 FANC United States Representative, US
 MIS GEN
 FA01 Chief of Mission, Amman
 FO01 Deputy Assistant Secretary, EUR
 FANC Chief of Mission, Bern
 FANC Chief of Mission, San Jose
 FO01 United States Representative, USUN
 FANC Chief of Mission, Jidda
 FA01 Chief of Mission, Asuncion
 FO01 Coordinator, T/CST
 FANC Chief of Mission, Vienna
 FANC Chief, US Liaison Office, Beijing
 FANC Chief of Mission, Colombo
 FO01 Deputy Chief of Mission, Lagos
 FA01 Chief of Mission, Santo Dom.

AGENCY: DEPARTMENT OF THE TREASURY

Positions:

OFFICE OF THE SECRETARY

GS-18 Inspector General

OFFICE OF THE ASSISTANT SECRETARY FOR DOMESTIC FINANCE

GS-18 Deputy Assistant Secretary, Debt Management
 GS-18 Deputy Assistant Secretary, Capital Markets Policy
 GS-17 Deputy Assistant Secretary, State and Local Finance

OFFICE OF THE ASSISTANT SECRETARY FOR INTERNATIONAL MONETARY AFFAIRS

CG-18 Deputy Assistant Secretary for International Monetary Affairs
 CG-18 Deputy Assistant Secretary for Developing Nations Finance
 CG-18 Deputy Assistant Secretary, Trade and Investment Policy

CG-18 Deputy Assistant Secretary, Commodities and Natural Resources

OFFICE OF THE ASSISTANT SECRETARY FOR TAX POLICY

GS-18 Deputy Assistant Secretary, Tax Policy
 GS-18 Deputy Assistant Secretary, Tax Policy and Director, Office of Tax Analysis

LEGAL DIVISION

GS-18 Deputy General Counsel, Office of the General Counsel
 GS-18 Assistant General Counsel and Director, Tax Legislative Counsel, Office of the General Counsel
 GS-18 Deputy to the General Counsel for Tax Affairs, Office of the General Counsel
 GS-18 International Tax Counsel and Director, Office of International Tax Counsel, Office of the General Counsel

OFFICE OF CHIEF COUNSEL—CUSTOMS

SES Chief Counsel
 SES Deputy Chief Counsel

OFFICE OF CHIEF COUNSEL—COMPTROLLER OF THE CURRENCY

GS-17 Chief Counsel
 SES Deputy Chief Counsel

CUSTOMS SERVICE

GS-18 Deputy Commissioner
 GS-18 Assistant Commissioner
 GS-17 Assistant Commissioner, Regulations and Rulings
 GS-17 Assistant Commissioner, Investigations
 GS-17 Assistant Commissioner, Administration
 SES Assistant Commissioner, Enforcement Support
 SES Assistant Commissioner, Office of Security and Audit

BUREAU OF ALCOHOL TOBACCO AND FIREARMS

GS-18 Director
 GS-17 Deputy Director
 SES Assistant Director, Regulatory Enforcement
 SES Assistant Director, Criminal Enforcement
 SES Assistant Director, Inspection
 SES Chief Counsel
 SES Deputy Chief Counsel

OFFICE OF CHIEF COUNSEL—ATF

GS-17 Chief Counsel
 SES Deputy Chief Counsel

BUREAU OF ENGRAVING AND PRINTING

GS-18 Director
 GS-17 Deputy Director
 SES Legal Counsel

BUREAU OF GOVERNMENT FINANCIAL OPERATIONS

GS-18 Commissioner

BUREAU OF THE MINT

GS-18 Director
 SES Associate Director for Technology
 SES Legal Counsel

BUREAU OF PUBLIC DEBT

GS-18 Commissioner of Public Debt

U.S. SECRET SERVICE

SES Legal Counsel

OFFICE OF THE COMPTROLLER OF THE CURRENCY

CG-17 Deputy Comptroller for Special Examinations
 CG-17 Chief National Bank Examiner
 CG-17 Deputy Comptroller of the Currency, Special Surveillance
 CG-17 Deputy Comptroller, Multinational Banking
 CG-17 Deputy Comptroller, Research and Economic Programs
 SES Deputy Comptroller for Administration
 SES Senior Advisor to the Comptroller
 SES Director, Bank Organization and Structure
 SES Deputy Comptroller, Customer and Community Programs
 SES Deputy Comptroller of the Currency for Interagency Coordination
 SES Chief Counsel
 SES Deputy Chief Counsel

OFFICE OF CHIEF COUNSEL—INTERNAL REVENUE SERVICE

SES Deputy Chief Counsel, General
 SES Deputy Chief Counsel, Litigation
 SES Deputy Chief Counsel, Technical

INTERNAL REVENUE SERVICE

SES Assistant Commissioner (EEO)
 SES Assistant Commissioner (Compliance)
 SES Assistant Commissioner (Technical)
 SES Assistant Commissioner (Resources Management)
 SES Assistant Commissioner (Planning & Research)
 SES Assistant Commissioner (Taxpayer Service & Returns Processing)
 SES Assistant Commissioner (Inspection)
 SES Assistant Commissioner (Data Services)
 SES Regional Commissioner, North Atlantic Region
 SES Regional Commissioner, Midwest Region
 SES Regional Commissioner, Western Region
 SES Regional Commissioner, Southeast Region
 SES Regional Commissioner, Central Region
 SES Regional Commissioner, Southwest Region
 SES Regional Commissioner, Mid-Atlantic Region

OFFICE OF THE GENERAL COUNSEL

SES Deputy General Counsel

U.S. SECRET SERVICE

SES Legal Counsel

U.S. CUSTOMS SERVICE

SES Chief Counsel
 SES Deputy Chief Counsel

AGENCY: ACTION

Positions:

FR-1 Assistant Director for Policy and Planning
 FR-1 Assistant Director for Recruitment and Communications
 FR-1 Assistant Director for Compliance
 FR-1 Deputy Associate Director for Peace Corps

FR-1 Deputy Director for Peace Corps Programs
 FR-1 Regional Director for Latin America
 FR-1 Regional Director for Africa
 FR-1 Regional Director North Africa, Near East, Asia and Pacific Regional Office
 SES Executive Officer
 SES General Counsel
 SES Deputy Associate Director for Domestic and Anti-Poverty Operations
 SES Assistant Director for Administration and Finance
 SES Executive Assistant for Programs

AGENCY: ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Positions:
 SES Executive Secretary
 SES Executive Director

AGENCY: ADVISORY COUNCIL ON HISTORIC PRESERVATION

Positions:
 SES Principal Deputy Executive Director
 SES Deputy Executive Director

AGENCY: AMERICAN BATTLE MONUMENTS COMMISSION

Positions:
 O-8 Secretary

AGENCY: APPALACHIAN REGIONAL COMMISSION

Positions: No section 501(c)(2) designations

AGENCY: CIVIL AERONAUTICS BOARD

Positions:
 SES Managing Director, Office of Managing Director
 SES Director, Bureau of Carrier Accounts & Audits
 SES General Director, Bureau of Domestic Aviation and Bureau of International Aviation
 SES Director, Bureau of Domestic Aviation
 SES Deputy Director, Bureau of Domestic Aviation
 SES Director, Bureau of International Aviation
 SES Deputy Director, Bureau of International Aviation
 SES Director, Office of Economic Analysis
 SES General Counsel, Office of the General Counsel
 SES Deputy General Counsel, Office of the General Counsel
 SES Director, Bureau of Consumer Protection
 SES Deputy Director, Bureau of Consumer Protection
 SES Director, Office of Human Resources
 SES Comptroller, Office of Comptroller
 SES Director, Office of Community & Congressional Relations

AGENCY: COMMODITY FUTURES TRADING COMMISSION

Positions:
 SES Deputy Executive Director
 SES Director, Division of Enforcement
 SES Deputy Director, Division of Enforcement

SES Chief Economist, Division of Economics and Education
 SES Deputy Chief Economist, Division of Economics and Education
 SES Director, Division of Trading and Markets
 SES Deputy Director, Division of Trading and Markets
 SES Director, Division of Management, Program Planning and Evaluation
 SES Regional Director, Central Region
 SES Regional Director, Eastern Region
 SES Deputy General Counsel, Office of General Counsel

AGENCY: CONSUMER PRODUCT SAFETY COMMISSION

Positions:
 SES General Counsel
 SES Deputy General Counsel
 SES Executive Director
 SES Deputy Executive Director
 SES Associate Executive Director for Engineering and Science
 SES Associate Executive Director for Hazard Identification and Analysis
 SES Associate Executive Director for Field Operations
 SES Associate Executive Director for Administration
 SES Associate Executive Director for Compliance and Enforcement
 SES Associate Executive Director for Communications
 SES Director, Office of Program Management
 SES Director, Office of Strategic Planning

AGENCY: ENVIRONMENTAL PROTECTION AGENCY

Positions:
 SES Regional Administrator, Region I, Boston
 SES Regional Administrator, Region II, New York
 SES Regional Administrator, Region III, Philadelphia
 SES Regional Administrator, Region IV, Atlanta
 SES Regional Administrator, Region V, Chicago
 SES Regional Administrator, Region VI, Dallas
 SES Regional Administrator, Region VII, Kansas City
 SES Regional Administrator, Region VIII, Denver
 SES Regional Administrator, Region IX, San Francisco
 O-7 Regional Administrator, Region X, Seattle
 SES Associate Assistant Administrator for Research and Development
 SES Associate Assistant Administrator for Planning and Management
 SES Associate Assistant Administrator for Management Reform
 SES Associate Assistant Administrator for Program Management and Policy
 SES Deputy Assistant Administrator for Management and Agency Services
 SES Deputy Assistant Administrator for Resource Management
 SES Deputy Assistant Administrator for Planning and Evaluation
 SES Deputy Assistant Administrator for Water Enforcement
 SES Deputy Assistant Administrator for Mobile Source and Air Pollution
 SES Deputy Assistant Administrator for General Enforcement
 SES DAA, Mobile Source Air Pollution Control
 SES Deputy Assistant Administrator for Radiation Programs
 SES Deputy Assistant Administrator for Noise Abatement and Control
 SES Deputy Assistant Administrator for Water Program Operations
 SES Deputy Assistant Administrator for Water Planning and Standards
 SES Deputy Assistant Administrator for Solid Waste
 SES Deputy Assistant Administrator for Drinking Water
 SES Deputy Assistant Administrator for Festivals Programs
 SES Deputy Assistant Administrator for Program Integration and Information
 SES Deputy Assistant Administrator for Testing and Evaluation
 SES Deputy Assistant Administrator for Chemical Control
 SES Deputy Assistant Administrator for Monitoring and Technical Support
 SES Deputy Assistant Administrator for Health and Ecological Effects
 SES Deputy Assistant Administrator for Air Land and Water Use
 SES Deputy Assistant Administrator for Energy, Minerals and Industry
 SES General Counsel
 SES Deputy General Counsel
 SES Deputy Inspector-General for Audits
 SES Deputy Inspector-General for Inspection
 SES Executive Assistant (technical) to the Administrator
 SES Assistant to the Deputy Administrator
 SES Director of Environmental Review
 SES Director of Legislation
 SES Director, Registration Division (OTS)
 SES Director, Control Action Division (OTS)
 SES Director, Premanufacturing Review Division (OTS)
 SES Director, Criteria and Assessment Office—RTP (ORD)
 SES Staff Director, Regulatory Council
 SES Deputy Staff Director, Regulatory Council

AGENCY: EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Positions:
 SES Associate General Counsel, Trial Division
 SES Executive Director
 SES Deputy Executive Director
 SES Director, Office of Special Projects and Programs
 SES Director, Office of Program Planning and Evaluation
 SES Deputy General Counsel

AGENCY: EXPORT-IMPORT BANK OF THE UNITED STATES

Positions:
 GS-18 General Counsel
 GS-17 Deputy General Counsel
 GS-17 Senior Vice President, Exporter Credits, Guarantees and Insurance

GS-17 Senior Vice President Policy Analysis and Communications
 GS-17 Senior Vice President Director Credits or Annual Guarantees
 GS-17 Senior Vice President International Affairs

AGENCY: FARM CREDIT ADMINISTRATION

Positions:

SES Senior Deputy Governor
 SES Chief of Staff to the Senior Deputy Governor
 SES General Counsel
 SES Deputy Governor, Office of Supervision
 SES Assistant Deputy Governor, Office of Supervision
 SES Deputy Governor, Office of Finance
 SES Deputy Governor and Chief Examiner
 SES Deputy Governor, Office of Administration
 SES Director, Administrative Division

AGENCY: FEDERAL COMMUNICATIONS COMMISSION

Positions:

SES General Counsel
 SES Chief Broadcast Bureau
 SES Chief Scientist
 SES Chief Common Carrier Bureau
 SES Chief Field Operations Bureau
 SES Deputy Chief Broadcast Bureau
 SES Executive Director
 SES Managing Counsel Compliance & Litigation Task Force
 SES Chief Private Radio Bureau
 SES Chief, Opinions and Review
 SE Deputy Chief Scientist
 SE Deputy Chief, Common Carrier Bureau
 SES Chief, Office of Plans and Policy
 SES Deputy General Counsel
 SES Chief, Cable Television Bureau
 SES Deputy Chief, Cable Television Bureau
 SES Deputy Chief, Field Operations Bureau

AGENCY: FEDERAL DEPOSIT INSURANCE CORPORATION

Positions:

AD-18 Executive Secretary and Deputy to the Chairman
 AD-18 Assistant to Chairman
 AD-18 Assistant to Director
 GG-17 Director, Office of Employee Relations
 GG-17 Director, Office of Personnel Management
 AD-18 Controller
 AD-18 Director, Division of Management Systems and Financial Statistics
 GG-17 Deputy Director, Division of Management Systems and Financial Statistics
 GG-17 Director, Corporate Audits
 AD-18 Acting General Counsel
 AD-18 Director, Division of Bank Supervision
 GG-17 Deputy Directors, Division of Bank Supervision(2)
 GG-17 Deputy Director, Division of Liquidation
 AD-18 Director, Division of Liquidation
 -18 Director, Division of Research
 -18 Counsel to the Chairman of Board of Directors
 GG-18 Special Assistant to the Chairman

AGENCY: FEDERAL ELECTION COMMISSION

Positions: No Section 207, d(1)(C) designations

AGENCY: FEDERAL ENERGY REGULATORY COMMISSION

Positions:

SES Executive Director, Office of the Executive Director
 SES Director, Office of Electric Power Regulation
 SES Deputy Director, Office of Electric Power Regulation
 SES Director, Office of Pipeline and Producer Regulation
 SES Deputy Director, Office of Pipeline and Producer Regulation
 SES General Counsel, Office of General Counsel
 SES Deputy General Counsel, Office of General Counsel
 SES Director, Office of Regulatory Analysis
 SES Chief Accountant, Office of Chief Accountant
 SES Deputy Chief Accountant, Office of Chief Accountant
 SES Director, Office of Enforcement
 SES Director, Office of Opinions and Review
 SES Deputy Director, Office of Opinions and Review

AGENCY: FEDERAL HOME LOAN BANK BOARD

Positions:

GS-18 General Counsel
 GS-18 Director, Office of District Banks
 GS-18 Director, Office of Community Investment
 GS-18 Director, Office of Economic Research
 GS-18 Director, Federal Savings and Loan Insurance Corporation
 GS-17 Director, Office of Industry Development
 GS-17 Executive Assistant to the Chairman

AGENCY: FEDERAL HOME LOAN MORTGAGE CORPORATION

Positions:

AD President—Chief Executive Officer
 AD Executive Vice President—Chief Operating Officer
 AD Executive Vice President—Chief Administrative Officer
 AD Senior Vice President—General Counsel
 AD Regional Senior Vice President—Los Angeles
 AD Executive Vice President—Chief Financial Officer

AGENCY: FEDERAL LABOR RELATIONS AUTHORITY

Positions:

GS-18 Members of the Panel (7)
 SES Executive Director of the Authority
 SES Deputy Executive Director of the Authority
 SES Chief, Representation and Unfair Labor Practice Division

SES Deputy General Counsel of the Authority

AGENCY: FEDERAL MARITIME COMMISSION

Positions:

SES General Counsel
 SES Managing Director
 SES Director, Bureau of Ocean Commerce Regulation
 SES Deputy Director, Bureau of Ocean Commerce Regulation
 SES Deputy General Counsel, Division of Reports, Opinions and Statistics
 SES Deputy General Counsel, Division of Legislation, Orders and Legal Research and Assistance
 SES Director, Bureau of Hearing Counsel
 SES Director, Bureau of Certification and Licensing
 SES Director, Bureau of Enforcement
 SES Director, Bureau of Industry Economics
 SES Secretary

AGENCY: FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Positions:

SES Executive Director
 SES General Counsel

AGENCY: FEDERAL RESERVE SYSTEM

Positions:

FRO-I Secretary of the Board
 FRO-I Staff Director for Monetary and Financial Policy
 FRO-I Staff Director for Management
 FRO-I Director, Division of Research and Statistics
 FRO-I General Counsel
 FRO-I Director, Division of Banking Supervision and Regulation
 FRO-I Director, Division of International Finance
 FRO-I Staff Director for Federal Reserve Bank Activities
 FRO-II Assistants to the Board
 FRO-II Deputy Staff Director for Monetary and Financial Policy
 FRO-II Director, Division of Federal Reserve Bank Examination and Budgets
 FRO-II Director, Division of Consumer Affairs
 FRO-II Director, Division of Data Processing
 FRO-II Director, Division of Federal Reserve Bank Operations
 FRO-II Executive Secretary, Federal Bank Examination Council
 FRO-II Deputy General Counsel
 FRO-II Director, Division of Personnel
 FRO-III Controller
 FRO-III Assistant to the Board

AGENCY: FEDERAL TRADE COMMISSION

Positions:

SES Director, Office of Policy Planning
 SES General Counsel
 SES Deputy General Counsel
 SES Director, Bureau of Competition
 SES Deputy Directors, Bureau of Competition
 SES Director, Bureau of Consumer Protection

SES Deputy Directors Bureau of Consumer Protection
 SES Director, Bureau of Economics
 SES Executive Director
 SES Assistant to the Chairman
 SES Policy Director, Office of Policy Planning
 SES Deputy Director, Bureau of Economics

AGENCY: FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

Positions: No section 207(d)(1)(C) designations

AGENCY: GENERAL SERVICES ADMINISTRATION

Positions:

OFFICE OF THE ADMINISTRATOR

SES Special Assistant to the Administrator
 ES Assistant Administrator for Field Operations
 ES Assistant Administrator for External Affairs
 ES Deputy Assistant Administrator for External Affairs
 ES Director of Information Security Oversight
 ES Assistant Administrator for Acquisition Policy
 ES Deputy Assistant Administrator for Acquisition Policy
 ES Director, Acquisition Management and Review Directorate
 ES Director, Contract Clearance Directorate
 ES Director, Acquisition Policy Directorate

OFFICE OF MANAGEMENT, POLICY AND BUDGET

ES Assistant Administrator for Management, Policy and Budget
 ES Deputy Assistant Administrator for Management, Policy and Budget
 ES Director of Finance
 ES Director of Budget
 ES Director of Data Systems
 ES Director of Planning and Analysis

AUTOMATED DATA AND ELECTRONIC COMMUNICATIONS SERVICE (ADTS)

ES Deputy Commissioner, ADTS
 ES Assistant Commissioner, Office of Policy and Planning, Program Management Officer
 ES Assistant Commissioner, Office of Agency Services and Procurement, Program Management Officer
 ES Assistant Commissioner, Office of Systems Engineering and Operations, Supervisory Electronics Engineer
 ES Executive Director, ADTS, Program Management and Policy Planning Officer
 ES Director, Voice Communications Systems Division, Supervisory Electronics Engineer
 ES Director, Advanced Planning and Research Division, Supervisory Electronics Engineer
 ES Director, Data Communications Systems Division, Supervisory Electronics Engineer

FEDERAL PROPERTY RESOURCES SERVICE (FPRS)

SES Commissioner, Federal Property Resources Service
 SES Deputy Commissioner, Federal Property Resources Service
 SES Assistant Commissioner, Office of Real Property
 SES Assistant Commissioner, Office of Personal Property
 SES Assistant Commissioner, Office of Property Management
 SES Assistant Commissioner, Office of Stockpile Disposal

FEDERAL SUPPLY SERVICE (FSS)

SES Deputy Commissioner, FSS
 SES Director, Quality Assurance and Reliability Office
 SES Director, Office of Program Review and Resource Management
 SES Director, Office of Programs and Requirements
 SES Director, Office of Contracts
 SES Director, Office of Requirements
 SES Deputy Director, Office of Contracts
 SES Director, Office of Supply

NATIONAL ARCHIVES AND RECORDS SERVICE (NARS)

SES Deputy Archivist
 SES Executive Director

PUBLIC BUILDINGS SERVICE (PBS)

SES Deputy Commissioner, PBS
 SES Assistant Commissioner for Program Support
 SES Assistant Commissioner for Space Planning and Management
 SES Assistant Commissioner for Buildings Management
 SES Assistant Commissioner for Construction Management
 SES Deputy Assistant Commissioner for Construction Management
 SES Assistant Commissioner for Contracts
 SES International Projects Officer
 SES Deputy Assistant Commissioner for Construction Programs

TRANSPORTATION AND PUBLIC UTILITIES SERVICE (TPUS)

SES Assistant Commissioner, Office of Transportation and Travel Management
 SES Deputy Commissioner, TPUS
 SES Assistant Commissioner for Public Utilities
 SES Assistant Commissioner for Motor Equipment

OFFICE OF GENERAL COUNSEL (OGC)

SES General Counsel
 SES Deputy General Counsel

GSA BOARD OF CONTRACT APPEALS

Positions: No section 207(d)(1)(C) designations

REGIONAL OFFICES

SES Regional Administrator, Region 1 (Boston)
 SES Regional Administrator, Region 2 (New York)
 SES Regional Administrator, Region 3 (Philadelphia)
 SES Regional Administrator, Region 4 (Atlanta)

SES Regional Administrator, Region 5 (Chicago)
 SES Regional Administrator, Region 6 (Kansas City)
 SES Regional Administrator, Region 7 (Fort Worth)
 SES Regional Administrator, Region 8 (Denver)
 SES Regional Administrator, Region 9 (San Francisco)
 SES Regional Administrator, Region 10 (Auburn)
 SES Regional Administrator, National Capital Area (Washington, DC)

OFFICE OF HUMAN RESOURCES AND ORGANIZATION

SES Assistant Administrator for Human Resources and Organization

AGENCY: INTERNATIONAL COMMUNICATION AGENCY

Positions:

GS-17 Executive Assistant to the Director
 FSIO-1 Director, Congressional and Public Liaison
 FSIO-1 Chief, Congressional Liaison Office
 SES General Counsel
 SES Deputy General Counsel
 FSIO-1 Deputy Associate Director for Educational and Cultural Affairs
 GS-18 Director for Institutional Relations
 FSIO-1 Director of Cultural Centers and Resources
 GS-17 Director, Office of Academic Programs

THE DIRECTORATE FOR BROADCASTING (THE VOICE OF AMERICA)

FSIO-1 Deputy Associate Director
 SES Director of Administration
 FSIO-1 Director, Office of Programs
 SES Director of Engineering and Technical Operations

THE DIRECTORATE FOR MANAGEMENT

FSIO-1 Director of Administrative Services
 SES Director of Comptroller Services
 SES Director of Personnel Services
 SES Director, Office of Systems Technology

THE DIRECTORATE FOR PROGRAMS

SES Director of Exhibits Service
 FSIO-1 Director of Press and Publication Services
 FSIO-1 Director of Television and Film Service
 FSIO-1 Deputy Associate Director
 SES Executive Officer
 FSIO-1 Director of African Affairs
 SES Deputy Director of African Affairs
 FSIO-1 Director of European Affairs
 FSIO-1 Deputy Directors of European Affairs (2)
 FSIO-1 Deputy Director of European Affairs (Exchanges)
 FSIO-1 Director of East Asian and Pacific Affairs
 FSIO-1 Deputy Directors of East Asian and Pacific Affairs (2)
 FSIO-1 Director of American Republic Affairs
 FSIO-1 Deputy Director of American Republic Affairs
 FSIO-1 Director of North African, Near Eastern and South Asian Affairs

FSIO-1 Deputy Director of North African and Near Eastern Affairs
 FSIO-1 Deputy Director of South Asian Affairs
 FSIO-1 Public Affairs Officers of Class I Posts

AGENCY: INTERSTATE COMMERCE COMMISSION

Positions:

SES Managing Director
 SES General Counsel
 SES Director, Bureau of Operations
 SES Director, Bureau of Investigations and Enforcement
 SES Director, Bureau of Traffic
 SES Director, Bureau of Accounts
 SES Director, Office of Proceedings
 SES Director, Office of Policy and Analysis/
 Rail Services Planning Office
 SES Assistant Managing Director
 SES Deputy General Counsel
 SES Associate Director, Office of Proceedings
 SES Associate Director, Office of Policy and Analysis/Rail Services Planning Office

AGENCY: NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Positions:

OFFICE OF THE ADMINISTRATOR

Positions: No section 207(d)(1)(C) designations

OFFICE OF THE COMPTROLLER

SES Deputy Comptroller

OFFICE OF LEGISLATIVE AFFAIRS

SES Director, Legislative Affairs
 SES Deputy Director, Legislative Affairs

OFFICE OF THE CHIEF ENGINEER

SES Chief Engineer, NASA
 SES Deputy Chief Engineer, NASA

OFFICE OF SPACE AND TERRESTRIAL APPLICATIONS

SES Deputy Associate Administrator for Space and Terrestrial Application

OFFICE OF GENERAL COUNSEL

SES Deputy General Counsel, NASA

OFFICE OF PROCUREMENT

SES Director of Procurement
 SES Deputy Director of Procurement

OFFICE OF EXTERNAL RELATIONS

SES Associate Administrator for External Relations
 SES Deputy Associate Administrator for External Relations

OFFICE OF SPACE TRANSPORTATION SYSTEM ACQUISITION

SES Deputy Associate Administrator for Space Transportation System Acquisition

OFFICE OF MANAGEMENT OPERATIONS

SES Deputy Associate Administrator for Management Operations

OFFICE OF THE CHIEF SCIENTIST

Positions: No section 207(d)(1)(C) designations

OFFICE OF AERONAUTICS AND SPACE TECHNOLOGY

SES Deputy Associate Administrator for Aeronautics and Space Technology

OFFICE OF SPACE SCIENCE

SES Deputy Associate Administrator for Space Science

OFFICE OF SPACE TRACKING AND DATA SYSTEMS

SES Deputy Associate Administrator for Space Tracking and Data Systems

OFFICE OF EQUAL OPPORTUNITY PROGRAMS

SES Director of Equal Opportunity Programs
 SES Deputy Director of Equal Opportunity Programs

INSPECTOR GENERAL

SES Deputy Inspector General

AMES RESEARCH CENTER

SES Director, NASA Ames Research Center
 SES Deputy Director, NASA Ames Research Center

DRYDEN FLIGHT RESEARCH CENTER

SES Director, NASA Dryden Flight Research Center
 SES Deputy Director, NASA Dryden Flight Research Center

GODDARD SPACE FLIGHT CENTER

SES Director, NASA Goddard Space Flight Center
 SES Deputy Director, NASA Goddard Space Flight Center

JOHNSON SPACE CENTER

SES Director, NASA Johnson Space Center
 SES Deputy Director, NASA Johnson Space Center

KENNEDY SPACE CENTER

SES Director, NASA Kennedy Space Center
 SES Deputy Director, NASA Kennedy Space Center

LANGLEY RESEARCH CENTER

SES Director, NASA Langley Research Center
 SES Deputy Director, NASA Langley Research Center

LEWIS RESEARCH CENTER

SES Director, NASA Lewis Research Center
 SES Deputy Director, NASA Lewis Research Center

MARSHALL SPACE FLIGHT CENTER

SES Director, NASA Marshall Space Flight Center
 SES Deputy Director, NASA Marshall Space Flight Center

NATIONAL SPACE TECHNOLOGY LABORATORIES

SES Manager, National Space Technology Laboratories
 SES Deputy Manager, National Space Technology Laboratories

Wallops Flight Center

SES Director, NASA Wallops Flight Center

SES Associate Director, NASA Wallops Flight Center

AGENCY: NATIONAL COMMISSION ON THE INTERNATIONAL YEAR OF THE CHILD

Positions:

GS-17 Executive Director

AGENCY: NATIONAL CREDIT UNION ADMINISTRATION

Positions:

SES General Counsel
 SES Assistant Administrator for Examination and Insurance
 SES Assistant Administrator for Administration and Regional Coordination
 SES Assistant Administrator for Asset Management, Fiscal Affairs, and Information Systems
 SES Assistant Administrator for Internal Audit and Investigation
 SES Assistant Administrator for Research and Analysis
 SES Regional Directors (6)
 SES Director, Office of Policy Analysis
 SES Deputy Director, Examination and Insurance
 SES Deputy General Counsel

AGENCY: NATIONAL ENDOWMENT FOR THE ARTS

Positions:

GS-18 Deputy Chairman for Policy and Planning
 GS-17 Deputy Chairman for Programs
 GS-17 Deputy Chairman, Federal Council on the Arts and the Humanities
 SES Director of Media Arts
 SES Director of Architecture, Planning and Design
 SES Director of Federal-State Partnership
 SES Director of Expansion Arts
 SES Director of Museums
 SES General Counsel
 SES Director of Program Coordination

AGENCY: NATIONAL LABOR RELATIONS BOARD

Positions:

SES Solicitor
 SES Executive Secretary
 SES Deputy General Counsel
 SES Director, Office of Appeals

AGENCY: NATIONAL SCIENCE FOUNDATION

Positions:

SES Director, Office of Audit and Oversight
 SES Director, Office of Government & Public Programs
 SES Director, Office of Planning & Resources Management
 SES Director, Office of Small Business Research & Development
 SES Deputy Assistant Director, Science Education
 SES Deputy Assistant Director, Astronomical Atmospheric, Earth & Ocean Sciences
 SES Deputy Assistant Director, Mathematical & Physical Sciences & Engineering
 SES Deputy Assistant Director, Scientific, Technological & International Affairs

SES Deputy Assistant Director,
Administration
SES Deputy Assistant Director Biological
Behavioral, & Social Sciences
SES General Counsel

AGENCY: NATIONAL TRANSPORTATION SAFETY BOARD

Positions:

SES Managing Director
SES Deputy Managing Director
SES General Counsel
SES Deputy General Counsel
SES Director Bureau of Accident
Investigation
SES Director Bureau of Technology

AGENCY: OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Positions:

SES Executive Director
SES General Counsel

AGENCY: OFFICE OF PERSONNEL MANAGEMENT

Positions:

SES Assistant Director, Office of
Intergovernmental Personnel Programs
SES Deputy Associate Director for
Standards and Selection Methods
SES Assistant Director, Office of Labor-
Management Relations
SES Director, Office of Planning and
Evaluation
SES Deputy Associate Director for Staffing,
Staffing Services Group
SES Chairman, Federal Prevailing Rate
Advisory Committee
SES Deputy Associate Director for Benefits
Policy, Compensation Group
SES General Counsel, Office of the General
Counsel
SES Director—Southeast Regional Office
SES Executive Director, President's
Commission on Personnel Interchange
SES Director, Retirement and Insurance
Division, Compensation Group
SES Assistant Director for Agency
Compliance and Evaluation, Agency
Relations Group
SES Director, Office of Administrative Law
Judges, Executive Personnel and
Management Development Group
SES Assistant Director for Staffing, Staffing
Services Group
SES Deputy Associate Director for
Compensation Operations, Compensation
Group
SES Director—Eastern Regional Office
SES Director, Retirement Operations
Branch, Compensation Group
SES Director—Great Lakes Regional Office
SES Director—Mid-Atlantic Regional Office
SES Director—Southwest Regional Office
SES Director—Western Regional Office
SES Assistant Director, Insurance
Operations Branch, Compensation Group
SES Director, Federal Executive Institute
SES Chief, Medical Operations Branch,
Compensation Group
SES Deputy Assistant Director for Labor-
Management Relations

SES Chief, Personnel Research and
Development Center, Staffing Services
Group

SES Assistant Director, Office of
Affirmative Employment Programs
SES Deputy Assistant Director for Grants
Administration, Office of

Intergovernmental Personnel Programs
SES Director, President's Commission on
White House Fellows

SES Deputy Assistant Director for
Personnel Management Assistance, Office
of Intergovernmental Personnel Programs

SES Director, Office of Management
SES Deputy Associate Director for
Personnel Investigations

AGENCY: PENSION BENEFIT GUARANTY CORPORATION

Positions:

GS-17 Deputy Executive Director
GS-17 General Counsel
GS-17 Director, Office of Program
Operations

AGENCY: POSTAL RATE COMMISSION

Positions:

GS-18 General Counsel of Commission
GS-18 Director of Planning and Operations

AGENCY: PRESIDENTIAL COMMISSION ON WORLD HUNGER

Positions:

SES Executive Director

AGENCY: RAILROAD RETIREMENT BOARD

Positions:

GS-17 Chief Executive Officer
GS-18 Director, Bureau of Retirement
Claims
GS-17 Director of Research
GS-17 General Counsel
GS-17 Chief Actuary
SES Deputy Executive Officer
SES Director, Bureau of Data Processing
and Accounts
SES Director, Bureau of Unemployment and
Sickness Insurance
SES Director, Bureau of Budget and Fiscal
Operations

AGENCY: SECURITIES AND EXCHANGE COMMISSION

Positions:

SES General Counsel
SES Director, Division of Corporation
Finance
SES Director, Division of Corporate
Regulation
SES Director, Division of Enforcement
SES Director, Division of Investment
Management
SES Director, Division of Market Regulation
SES Deputy Director, Division of
Corporation Finance
SES Deputy Director, Division of Market
Regulation
SES Chief Accountant of the Commission
SES Deputy Chief Accountant
SES Executive Director
SES Regional Administrator, New York

SES Regional Administrator, Chicago
SES Regional Administrator, Los Angeles
SES Deputy Director, Division of
Enforcement

SES Principal Associate General Counsel

AGENCY: SMALL BUSINESS ADMINISTRATION

Positions:

SES Director, Office of Business
Development
SES Associate Administrator for Policy,
Planning and Budgeting
SES Director, Office of Program
Development
GS-18 Assistant Administrator for Data
Management Services
SES Regional Director, Region I
SES Regional Director, Region II
SES Regional Director, Region III
SES Regional Director, Region IV
SES Regional Director, Region V
SES Regional Director, Region VI
SES Regional Director, Region VII
SES Regional Director, Region VIII
SES Regional Director, Region IX
SES Regional Director, Region X
SES Special Assistant to the Administrator
and Director, Equal Employment
Opportunity and Compliance
SES General Counsel
GS-17 Deputy General Counsel
SES Chief Counsel for Advocacy
SES Associate Administrator for
Procurement Assistance
SES Associate Administrator for
Management Assistance
SES Director, Office of Field Management

AGENCY: TENNESSEE VALLEY AUTHORITY

Positions: No section 207(d)(1)(C)
designations

AGENCY: UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

Positions:

SES General Counsel
SES U.S. Commissioner, SCC
SES Public Affairs Adviser
SES The Special Assistant
SES The Counselor
SES Chief Scientist
SES GAC Executive Director
SES Administrative Director
SES Chief of Operations Analysis
SES Deputy General Counsel
SES Ambassador to CD, D
SES Deputy Assistant Director, MA
SES Deputy Public Affairs Adviser, PA
SES Representative to MBFR
SES Special Assistant, PA
SES Senior Negotiator for Arms Trl. WEC

AGENCY: UNITED STATES RAILWAY ASSOCIATION

Positions:

AD President
AD Vice President and General Counsel
AD Vice President Finance
AD Vice President Operations and
Marketing

AGENCY: WATER RESOURCES
COUNCIL

Positions

SES Director

SES Chairman, Great Lakes Basin
Commission

SES Chairman, Missouri River Basin
Commission

SES Chairman, New England River Basin
Commission

SES Chairman, Ohio River Basin
Commission

SES Chairman, Pacific Northwest River
Basin Commission

SES Chairman, Upper Mississippi River
Basin Commission

(18 U.S.C. 207(d)(1)(C))

(FR Doc. 80-2528 Filed 1-31-80; 4:45 am)

BILLING CODE 6325-01-M

TAB

II

§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—

(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3), as to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

(d)(1) Subsection (c) of this section shall apply to a person employed—

(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code [5 USCS §§ 5301 et seq.], or a comparable or greater rate of pay under other authority;

(B) on active duty as a commissioned officer of a uniformed service assigned to pay

grade of O-9 or above as described in section 201 of title 37, United States Code [37 USCS § 201]; or

(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code [5 USCS § 5332], or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978 [5 USCS §§ 1101 et seq.], or positions of active duty commissioned officers of the uniformed services assigned to pay O-7 or O-8, as described in section 201 of title 37, United States Code [37 USCS § 201], may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

(A) an elected official of a State or local government, or

(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965 [20 USCS § 1141(a)], or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954 [26 USCS § 501(c)(3)], and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, 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 and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act [effective July 1, 1979], departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

(As amended Oct. 26, 1978, P. L. 95-521, Title V, § 501(a), 92 Stat. 1864; June 22, 1979, P. L. 96-28, 93 Stat 76.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments (with effective dates):

1978. Act Oct. 26, 1978 (effective 7/1/79, as provided by § 503 of said Act), substituted section and catchline for former one which read:

"§ 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

"(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility—

"Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both: Provided, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

"(c) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with 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 is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

"Shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

"A partner of a present or former officer or employee of the executive branch of the

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

February 1, 1988

MEMORANDUM FOR NICHOLAS ROSTOW

FROM: PAUL SCHOTT STEVENS *PS*
SUBJECT: NSC's Designated Agency Ethics Official

Effective today, you will assume the duties of Designated Agency Ethics Official (DAEO) for the NSC, as defined by 5 C.F.R., §738.202 and 738.203. Jonathan R. Scharfen will continue to serve as the NSC's Alternate DAEO.

2/1/88

Nick —

Please so advise the Office of Government Ethics.

PS

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

February 1, 1988

MEMORANDUM FOR THE NATIONAL SECURITY COUNCIL STAFF

FROM: PAUL SCHOTT STEVENS *PS*
SUBJECT: NSC's Designated Agency Ethics Official

The maintenance of high standards of honesty, impartiality, and conduct by staff members of the NSC is essential. Likewise, informed judgment is indispensable to the maintenance of such standards. In order to assist you in evaluating ethical matters, the former Executive Secretary previously designated me as the NSC's Designated Agency Ethics Official (DAEO), as defined by 5 C.F.R. §738.202-738.203. In light of recent staff changes, I am now designating Nicholas Rostow to replace me as the NSC's DAEO. Given the importance of ethical issues, I repeat below the advice Grant Green previously gave to the staff in this regard.

As a matter of routine, you should seek advice from the NSC DAEO whenever ethical issues arise in the course of your work. Issues on which you should seek legal advice may arise in a variety of contexts. Some of the situations that merit seeking legal advice and a few ethical guidelines are outlined below.

Ethical issues may arise when you are offered, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from certain persons, groups, or corporations. Entities that would create ethical problems in these circumstances include those having, or seeking to obtain, contractual or other business or financial relations with the NSC, or having interests that may be substantively affected by the performance or nonperformance of your duties as a member of the NSC staff.

Under Executive Order 11222, government employees must avoid any action, whether or not specifically prohibited elsewhere, that might result in, or create the appearance of, impropriety. Improper conduct includes:

- Using public office for private gain;
- Giving preferential treatment to any organization or person;

- Impeding government efficiency or economy, losing complete independence or impartiality of action;
- Making a government decision outside of official channels;
- Affecting adversely the confidence of the public in the integrity of the government;
- Using federal property of any kind for other than officially approved activities;
- Using directly or indirectly, for the purpose of furthering private interest, official information not made available to the general public, failing to meet all just financial obligations, and receiving any salary or supplementation of an employee's government salary from a private source as compensation for services to the government.

Members of the staff may not have direct or indirect financial interests that conflict, or appear to conflict, with their responsibilities and duties as federal employees. Your annual financial disclosure form will be carefully reviewed to protect both you and the NSC from any appearance of financial impropriety.

Finally, you should be aware that the law places restrictions on government employees regarding their post-government employment activities. The NSC DAEO will provide legal advice concerning these legal restrictions to all departing staff members. In addition, you should feel free to continue to seek advice from the NSC DAEO after leaving government service if you have any questions about the propriety of your post-government employment activities.

The guidance given above is not comprehensive. You should continue to seek legal advice from Nicholas Rostow whenever you believe your actions may raise ethical concerns.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 26, 1988

ACTION

MEMORANDUM FOR PAUL SCHOTT STEVENS

FROM: NICHOLAS ROSTOW *NR*

SUBJECT: NSC's Designated Agency Ethics Official

Now that you are the Executive Secretary, I recommend that you relinquish your duties as NSC Designated Agency Ethics Official (DAEO) and appoint me, under 5 C.F.R. §738.202(b), as DAEO. Jonathan Scharfen should continue to serve as the Alternate DAEO.

At Tab I is a memorandum for your signature appointing me as the DAEO.

At Tab II is a memorandum to the staff for your signature informing them that I am the new DAEO. This memorandum also repeats the advice Grant Green gave the staff in his earlier memorandum on this subject.

RECOMMENDATION

That you sign the memoranda at Tabs I and II.

Approve _____

Disapprove _____

Attachments

Tab I - Stevens Memorandum to Rostow

Tab II - Stevens Memorandum to the Staff

THE WHITE HOUSE
WASHINGTON

November 16, 1981

MEMORANDUM FOR NSC STAFF

FROM: RICHARD V. ALLEN *Allen*

SUBJECT: Coordination of Memos Dealing with
Middle East Issues

As I mentioned at today's staff meeting, I would appreciate your sending all memos (both action and information) dealing with the Middle East (including North Africa) through Geoff Kemp. As the issues in that region become increasingly complicated and sensitive, it is important that Geoff, as the senior staff member for that region, be kept informed about all aspects of Middle East policy.

The purpose is not to filter views and recommendations, but rather is to ensure proper coordination in all respects.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

459981

October 13, 1987

TR175

INFORMATIONNatl Sec Advisor
has seen

MEMORANDUM FOR FRANK C. CARLUCCI

FROM: PAUL SCHOTT STEVENS *PS*SUBJECT: The Ethics and Public Policy Center November 17
Invitation and Mr. Matt Schaeffer's Book RequestQuestion One

White House Counsel advises that in light of the fact that President Reagan previously addressed the Ethics and Public Policy Center, and that the Center is a 501(C)(3) organization under the Internal Revenue Code, you may participate in the November 17 annual Ethics and Public Policy Center Dinner in honor of Soviet dissident Bukovsky. (Fritz Ermarth informs me that Mr. Bukovsky is a legitimate Soviet dissident worthy of this sort of public recognition.) You may also serve on the honorary dinner committee and may lend your name, although without mentioning your official title, on the invitations as long as the event is not in any way a fund raiser.

Question Two

Under Executive Order 11222 and White House policy, you may not write a "quotable" sentence to appear on the cover of Mr. Schaeffer's book titled "Winning the Countertrade War." The Executive Order directs all federal employees to avoid any action which might result in or create the appearance of using public office for private gain. The Office of Government Ethics (OGE) interprets this provision to include private gain for third parties such as Mr. Schaeffer. Furthermore, OGE and White House Counsel agree that this provision would also act as a bar to using just your name on the book cover. This is so because you are sufficiently well known that it is likely many readers will automatically make the association between you and your office. Finally, White House Counsel generally advises against this sort of thing in order to avoid any appearance of commercializing the White House.

Fritz Ermarth concurs.

COPY
from ORM

MEMORANDUM

4834

NATIONAL SECURITY COUNCIL

August 12, 1981

ACTION

MEMORANDUM FOR ALLEN J. LENZ

FROM: ROBERT M. KIMMITT *Bob*

SUBJECT: Ethics Guidelines

At Tab I for your signature is a memorandum to the Staff on gift and travel policy. It attaches at Tab A Fred Fielding's memoranda on these subjects.

The memorandum also mentions, and attaches at Tab B, a form to be used each time a Staff member requests to travel at someone else's expense.

You may wish to convert these various items into Staff Notices or Instructions.

RECOMMENDATION:

That you sign the memorandum at Tab I.

Approve _____

Disapprove _____

Attachments

Tab I - Memo to Staff
Tab A - Ethics Guidelines
Tab B - Travel Form

NATIONAL SECURITY COUNCIL

INFORMATION

MEMORANDUM FOR NSC STAFF

FROM: ALLEN J. LENZ

SUBJECT: Ethics Guidelines

Attached at Tab A for your individual review and retention are copies of White House guidelines on gifts and travel. These guidelines should be read carefully, and questions either now or in the future should be forwarded to Bob Kimmitt, who will consult with the Counsel's office as required.

As a result of the travel guidelines, it is necessary that you provide full details each time that you request permission to travel, other than leave travel at your own expense. Attached at Tab B is a form that will be submitted henceforth with all travel requests.

Attachments

Tab A - Ethics Guidelines
Tab B - Travel Form

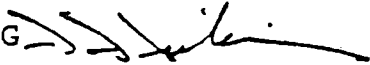
MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 4, 1981

MEMORANDUM FOR THE WHITE HOUSE STAFF

FROM: FRED F. FIELDING 

SUBJECT: Acceptance of Gifts, Loans, Entertainment,
Favors, and Gifts From Foreign Governments

This memorandum outlines the law and White House policy concerning acceptance of gifts and entertainment which may be offered to members of the White House staff. The receipt of gifts from foreign governments or from subordinates is governed by statute as are the disclosure requirements related to gifts. Additional restrictions are imposed by Executive Order 11222 and the White House Standards of Conduct (3 C.F.R. 100.735-14), (which are currently being revised).

This memorandum merely highlights the important aspects of those laws and regulations. Specific questions should be referred to the Counsel's Office.

I. Gifts

- A. A member of the White House staff may not solicit or accept a gift, favor, entertainment, loan or any other thing of monetary value from a corporation or person he knows or has reason to believe --
1. has, or is seeking to obtain, contractual or other business dealings with any department or agency in the Executive Branch;
 2. conducts activities regulated by any department or agency in the Executive Branch; or
 3. has any interest which may be substantially affected by the staff member's performance of his job. Please note this latter group may include persons in the federal government as well as those outside the government.

B. Unless circumstances would otherwise create an appearance of a conflict of interest, the limitations on acceptance of gifts do not preclude --

1. gifts, favors, entertainment, loans or other things of monetary value from friends or relatives when the circumstances make it clear that the family or personal relationship involved is the motivating factor;
2. acceptance of refreshments or entertainment of nominal value in the course of a luncheon or dinner meeting, provided there is no pattern of such entertainment from a single source;
3. acceptance of loans from financial institutions on customary terms to finance proper or usual activity of employees, such as funding the purchase of a house, automobile or similar expenditure;
4. acceptance of advertising or promotional items such as pens, calendars or other items of nominal value; or
5. acceptance of awards for meritorious service for achievement presented by a professional, civic, charitable or educational organization.

C. Federal law prohibits a staff member from giving a gift to another staff member of higher rank or soliciting funds for such a gift. This restriction does not prevent contributions for gifts on unique occasions such as a wedding or the birth of a child, or in case of illness, nor does it preclude exchanges of gifts of nominal value on traditional occasions.

D. Staff members who are required to file public financial disclosure reports are reminded that they are obligated to report annually --

1. gifts of transportation, lodging, food or entertainment aggregating \$250 or more from any one source (other than a relative); and

2. other gifts valued over \$35 received from any source (other than a relative) if the aggregate value is \$100.

II. Gifts From Foreign Governments

- A. Federal law prohibits any government official from accepting a gift from a foreign government or subdivision or from a public multinational organization if the value is more than \$100 (judged by U.S. retail value). If the gift cannot be refused without embarrassment to the government of the foreign country or the United States, it may be accepted but it becomes the property of the United States.
- B. Gifts over \$100 in value should be turned over to the White House Gift Unit where they will be recorded, for purposes of the annual report on foreign gifts, and subsequently turned over to the General Services Administration for disposition.
- C. Gifts under \$100 received from a foreign government may be retained by the staff member but must be reported on the annual public financial disclosure form under the same conditions as domestic gifts.

III. Return of Proscribed Gifts

Any proscribed gift should be returned to the donor, accompanied by a written explanation of the reasons for its necessary return. It is recommended that you retain a copy of this letter in your files. When the return of a gift is not possible for any reason, the gift should be forwarded to the Office of the Counsel to the President with a written explanation of the infeasibility of its return. The gift will then be turned over to charity.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 4, 1981

MEMORANDUM FOR THE WHITE HOUSE STAFF

FROM: FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT: Acceptance of Transportation and
Travel-Related Expenses

The following discussion is designed to provide general guidance regarding the circumstances under which you may or may not accept travel-related expenses (transportation, lodging, food, entertainment), or reimbursement of same. Since such situations are often unique, guidelines must be general in scope. You are, however, strongly urged to seek specific advice in regard to any proposed trip prior to accepting the invitation or request.

A. Official Travel

In each instance for which you will seek Government payment of expenses, approval shall be obtained through the Staff Secretary's Office prior to acceptance of the invitation or request.

Whenever you are traveling on official business of the Government, traveling to attend a function or give a speech as the representative of the White House or the Administration, all travel-related expenses must be paid from appropriated funds. These funds may be from the White House Office appropriations, or the appropriations of a particular Department or Agency, depending on the circumstances of your travel.

There is one major exception to this general rule. If you are traveling to attend a training seminar, meeting or conference sponsored by a non-profit organization granted tax-exempt status under the law (Section 501(c)(3) of the Internal Revenue Code), that organization may pay for your

normal, reasonable travel expenses under most circumstances unless the acceptance of such expenses creates an actual or apparent conflict of interest with your official duties. Such payment shall never be solicited by a staff member. In each instance where such an offer of payment or reimbursement is made, you should check with the Counsel's office before acceptance of the invitation for a determination of (a) the tax exempt status of the organization, and (b) the propriety of accepting the proffered expenses.

You may, of course, accept food or refreshments of nominal value in the ordinary course of your meeting or while in attendance at functions where you are otherwise properly in attendance. Likewise, it is acceptable to stay at the private residence of your host if this would be appropriate under the circumstances of your visit.

Ordinarily, all official travel should be on commercial transportation. In a very unique circumstance, where private or chartered aircraft or other means of transportation is the only transportation available the individual or corporation providing the transportation must be reimbursed. In this regard, please bear in mind that this restriction generally prohibits accepting free transportation while on official business if someone offers you a ride on a private plane that is otherwise going to the same destination as yours.

B. Official Travel Abroad

Normally, the U.S. Government should pay the cost of official travel abroad. However, the Foreign Gifts and Decorations Act, 5 U.S.C. §7342, permits a Government official to accept transportation and lodging while abroad from a foreign government or international governmental organization if refusal to accept would embarrass the foreign government or the United States. This does not permit acceptance of travel expenses to or from the United States.

The rules applicable to officials also apply to an accompanying spouse except that Government funds may not be used to pay for the spouse's transportation to or from the United States nor may a foreign government do so.

C. Travel on Political Campaigns

If an official travels for a political committee or on behalf of a particular candidate, Government funds may not be used to cover travel or lodging expenses. These should be paid by the appropriate committee or campaign fund.

The Federal Election Commission has detailed rules on allocating costs when a trip combines both political and official activities. Staff should consult the Counsel's Office before undertaking such trips.

D. Personal Travel

It is sometimes difficult to determine whether travel to and attendance at a particular event should be deemed to be "official" travel or personal travel. Very often you may be invited to attend a conference or meeting or to make a presentation where the circumstances do not make clear whether the invitation is being issued to you in your private or official capacity. Likewise, there are some instances where you may wish to attend a meeting, but you would not normally be officially requested or directed to attend.

As a rule of thumb, if your travel is in furtherance of your official duties or the Administration's policies, it should be considered as "official" travel for purposes of determining whether you may accept expenses. If not, your travel may be deemed personal.

When your travel is not official, but for personal business or pleasure, the law provides that you may not accept or be reimbursed for normal, ordinary travel expenses from non-Government sources if the individual or organization so providing it:

- 1) has, or is seeking to obtain, contractual or other business relations with your agency;
- 2) conducts business or activities that are controlled or regulated by your agency;
- 3) otherwise has interests that may be substantially affected by the performance or non-performance of your official duty.

In the case of all White House personnel, these prohibitions must be scrupulously observed. If there is any doubt as to the appropriateness of accepting travel expenses or reimbursement, it must be resolved in favor of not accepting. These limitations do not apply when the gift of transportation or travel expenses is a result of an obvious friend of the family or close personal relationship, and it is clear that the relationship is the motivation for the gift. Again, any doubt must be resolved in favor of not accepting. Remember that the appearance of a conflict often creates far greater problems and embarrassment than a true conflict.

Some other rules of thumb in regard to personal travel:

- o You may accept normal and reasonable expenses in connection with travel to receive a personal award or honor, if not otherwise proscribed by the business activity of the individual or organization.
- o If you hold an official position in a professional organization, or serve on a board or committee, you may accept reimbursement for travel expenses while attending meetings if reimbursement of such expenses is customary for others in similar positions, and the position is personal to you rather than by virtue of your position in the White House.
- o Except under the most unusual or special circumstances, travel on corporate aircraft shall not be accepted. This is a constant and recurring source of embarrassment to Government officials.
- o Questions of legality aside, you should not accept any gift of travel expenses which you are not willing to have discussed in the press.

E. Travel Expenses of Spouse/Family Members

Except in the most unusual circumstances, Government funds are not available to cover the travel expenses for a spouse or other family member accompanying a staff member on official business. Such expenses may not be accepted from the sponsor of the event you are attending, or from any third party, except under those few circumstances where a personal gift would be acceptable.

Other than on official Government-paid travel, in evaluating whether travel expenses of your spouse or other family members may be accepted, you must be guided by the same restrictions that are

applicable to your acceptance of such expenses or reimbursement. You must always be alert to avoid embarrassing appearances and if you accept such reimbursement, the amount must appear to be reasonable.

F. Honoraria

In connection with travel, it is the policy of the Administration that White House personnel should not accept an honorarium for any speaking, teaching, writing or appearance, on a subject which is in any way related to your official position, or to the operations or activities of the White House or the Administration. Further, you may not designate a charity to receive such honoraria.

This restriction does not preclude the acceptance of a personal award, honorary degree, etc., or from accepting a suitable memento of a function in which you were honored.

G. Public Reporting Requirements (Not applicable to all Staff Members)

Subject to certain exclusions you are required to report, on Schedule C of your annual Financial Disclosure Report (SF 278), "Gifts and Reimbursements," the source, description and approximate value of gifts of transportation, lodging, food, and entertainment aggregating \$250 or more in the preceding year from one source which were received by you, your spouse or dependent children, or the reimbursement for the same.

H. Additional Information

If you have any questions regarding the propriety of accepting transportation and/or travel-related expenses, you are urged to contact the Office of the Counsel to the President for further guidance. Except in emergency situations, such consultations and clearance should be obtained prior to accepting an invitation or request to travel.

PRESIDENTIAL RECORDS ACT

The ownership, maintenance and disposition of Presidential documents are governed by the Presidential Records Act, 44 U.S.C. §§ 2201-07 (the "Act"). The Act's requirements must be followed by White House and Executive Office staff. Pending issuance of regulations by the Archivist of the United States, the following guidance should be followed with respect to these records.

I. Types of Records Covered by the Act

The Act defines "Presidential records" to include not only the official documents written and received by the President but also the official records created or received by his staff. While the Act requires that staff members adequately document the performance of the President's constitutional, statutory and ceremonial duties, the decision whether information should be memorialized in the first instance remains with each staff member. For example, it is within the discretion of a staff member to dispose of scratch pads, unimportant notes to one's secretary and the like, provided this is done contemporaneously and is based upon a determination that creation of a record is not required in the circumstance. "Presidential records" encompass any form of memorializing information, including but not limited to written documents, models, pictures, films and audio and electronic recordings. Records relating to political activities which are undertaken in the course of carrying out the President's official or ceremonial duties are Presidential records (e.g., political briefing papers for official trips and official meetings are Presidential records. Records relating to political activities not associated with the President's official duties are not Presidential records (e.g. materials for political and campaign-related meetings and trips.)

Private papers, which staff members might keep in their offices, such as insurance claim forms or purely personal correspondence, are personal, not Presidential records. Personal records include phone logs, visitor logs, notes, diaries or journals that are kept by a staff member exclusively for his or her own use and reference, are not accessible to others on the staff and are not used for transacting

government business. Personal documents and files should be segregated and stored separately from official records.

II. Units of the Executive Office of the President Covered by the Act

All records of the White House Office, the Office of Policy Development, the Council of Economic Advisers and the Intelligence Oversight Board are Presidential records.

Records of the Office of Management and Budget, the Office of the United States Trade Representative, the Council on Environmental Quality, and the Office of Administration are federal, not Presidential, records.

The records of the National Security Council staff are federal records if they were received or created in connection with the work of the statutorily-created National Security Council (including any interagency groups convened under National Security Council auspices). Additionally the NSC's internal administrative records are federal records. The records of the National Security Council staff are Presidential records if they were received or created for the President, the Assistant to the President for National Security, his Deputy or a member of the White House staff independently of any meeting or policy and staff actions of the NSC or its various groups.

The records of the Office of Science and Technology Policy are federal records; however, those records produced or received by the Director of OSTP in his role as Science Advisor to the President are Presidential records and should be segregated as such.

III. Maintenance of Presidential Records

The law imposes an affirmative obligation on staff members to document adequately the performance of the President's constitutional, statutory and ceremonial duties. Staff members are urged to document the performance of their duties and preserve these records in complete and orderly files. Personal records should be kept apart from official records and clearly labeled as such. Moreover, those officials or units which maintain both Presidential records and federal records should file them separately with a clear indication of whether they are Presidential or federal.

Assistance in distinguishing between Presidential, federal and personal records can be obtained from the Office of the Counsel to the President. Assistance in establishing file systems can be obtained from the White House Office of Records Management.

IV. Disposition and Destruction of Presidential Records

Once a decision is made to memorialize and maintain information as a Presidential record it becomes the property of the United States and may be disposed of only in accordance with procedures established by the Archivist of the United States. The Act prohibits the disposal of Presidential records unless those records no longer have administrative, historical, informational, or evidential value. Moreover, before disposing of any records the President must notify the Archivist and under some circumstances appropriate Congressional committees.

The White House Office of Records Management ("ORM") maintains records disposal schedules, which have been approved by the Archivist, for certain recurring types of disposable papers, such as form letter public mail, anonymous public mail, unsuccessful and unsolicited applications for employment, and enclosures received in public mail. If you have a recurring type of disposable material in your office, you may wish to request that ORM enter it on the records disposal schedule. Before you dispose of any documents, contact ORM to determine whether the category of items involved has been approved for disposal. Such prior notice is not necessary for destruction of exact duplicates of documents which are being maintained, or for copies of officially published documents, such as printed reports, etc.

ORM can also arrange for storage of records which are to be preserved, but for which there is no longer a current need. Offices are encouraged to develop systematic records retirement schedules, reserving filing space for those records for which there is a current need.

V. Legal Control of Presidential Records

Presidential records remain in the custody and control of the President during his term of

Office and are not accessible to the public under the Freedom of Information Act. In contrast, federal records are accessible to the public under the provisions of the Freedom of Information Act.

Upon completion of the Administration, the Archivist acquires custody of Presidential records. However, the President may assert control for twelve years over public access to certain categories of records. Basically, these categories are: (a) security classified items; (b) documents related to appointments to Federal office; (c) items specifically exempted from disclosure by other statutes; (d) trade secrets and commercial or financial information; (e) confidential communications requesting or submitting advice between the President and his advisers, or between such advisers; and (f) personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Thereafter, public access is determined by the Freedom of Information Act, subject in all cases to the President's right to invoke any Constitutional privilege against disclosure.

VI. Records that May be Retained by Staff Members Upon Departure

To insure that the President maintains the maximum controls permitted by law, staff members may not remove copies of Presidential records from their offices either now or at the end of the Administration. When a staff member leaves the White House, he or she shall deliver all files and records to ORM at the White House or, in the case of the National Security Council staff, to the Executive Secretariat of the National Security Council. Federal records shall be left with the appropriate agency. Staff members may remove only those records which are purely personal.

The foregoing is designed to provide general guidance with respect to the Presidential Records Act. Specific questions of coverage or interpretation should be addressed to the Counsel's Office. Assistance in records maintenance and storage can be obtained from the White House of Records Management.

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

5785

August 5, 1988

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: NICHOLAS ROSTOW *NR*.

SUBJECT: Presidential and Other Records in the Custody of
the NSC

At Tab A is an inventory of the principal categories of documents in the custody of the National Security Council (NSC). The inventory is divided into presidential and other records and is forwarded to you for your comments.

A. Summary

Historically, the NSC staff has maintained records generated or received in the course of its business in two systems: "presidential records" and "institutional records." This distinction reflected the NSC's dual mission as described in NSDD 266: the Assistant to the President for National Security Affairs (the "National Security Advisor") both advises the President and manages the work of the NSC as a Council. The NSC staff assists the National Security Advisor in both of these capacities.

A functional test has been used to distinguish between presidential and institutional records. As a general matter, presidential records were those records associated with the National Security Advisor's and NSC staff's advisory functions independent of NSC or NSC subgroup meetings, and institutional records were those records associated with their management functions involving the statutory NSC interagency process. The practice also has been to use the category of presidential records as the catch-all -- if a document is not an institutional record (as defined) then it is a presidential record (unless it is a "personal record," or it does not rise to the level of a "record" at all).

I believe that the enactment of the Presidential Records Act, 44 U.S.C. 2201 et seq., requires a change in this approach. The definition of presidential records in that Act should govern -- documents meeting the definition should be classified as presidential records, those that do not are some other kind of records (whether called institutional, agency, personal, or nonrecords). This approach will require a substantial change in characterization -- for example, many documents related to NSC meetings that were previously considered institutional will now be considered presidential.

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White House Guidelines

E.O. 13526, SEC 3.4 (b), September 11, 2006

By *WJ* NARA, Date *9/9/9*

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B. Statutory Framework

The Federal Records Act requires Federal agencies to create and maintain a minimum record of their activities. The Act provides:

The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

44 U.S.C. 3301. The Act defines records to include:

. . . all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

44 U.S.C. 3301.

The Presidential Records Act, 44 U.S.C. 2201 et seq., requires the preservation of "presidential records," and provides that at the end of an Administration presidential records are to be turned over to the Archivist. The term "presidential records" is defined as:

documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term--

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(A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

44 U.S.C. 2201(2). The Presidential Records Act also provides that the President

shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional duties are adequately documented and that such records are maintained as presidential records pursuant to the requirements of this section and other provisions of law.

44 U.S.C. 2203(a).

As provided in section 2201, agency records by definition are not presidential records. These two terms cover the field as far as "records" are concerned, except for purely "personal records."* See H. Rep. No. 95-1487, 95th Cong., 2d Sess. 3 (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 5732, 5734 (1978) ("The intent [of the Presidential Records Act] is that all records which are neither agency records subject to [the Freedom of Information Act (FOIA)] nor personal records would fall within the ambit of Presidential records.")

* The Presidential Records Act defines "personal records" as:

all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an affect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.

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The distinction between presidential and agency or institutional records has several important consequences, including:

(1) presidential records must be transferred to a President's Library (if any) at the end of an Administration. As a general rule, all presidential documents (including the original and all copies*) are supposed to be removed and transferred to the Presidential Library at the end of the Administration; (2) institutional records are subject to FOIA, presidential records are not; (3) there may be differences in terms of access by Congress or private parties in litigation.

(footnote continued from previous page)

Such term includes --

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President's own election to the office of the Presidency, and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

44 U.S.C. 2201(3). The Federal Records Act does not contain a definition of personal records. As discussed below, it would probably be more analytically precise to think of "personal records" as defined in the Presidential Records Act as not being "records" at all.

* As discussed below, the Presidential Records Act does not require the transfer of copies "produced only for convenience of reference, when such copies are clearly so identified." In practice, however, all copies apparently have been transferred.

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C. Inventory of Types of Records in the Custody of the NSC

In responding to document requests made during the various investigations of the Iran-Contra matter, we conducted an inventory of documents located in NSC files. The inventory encompassed not only Secretariat records and the files of NSC professional staff, but also those of the White House Situation Support Staff (WHSSS), which includes the Situation Room.

From this inventory, we have developed a listing of the categories of documents maintained in NSC custody, and endeavored to differentiate between those that are presidential and those that are not. If the category appeared to meet the test in the Presidential Records Act ("materials . . . created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President"), it was treated as presidential. All other categories of documents are listed as "other." The results of this review, by category and type of records, are reflected at Tab A.

This list represents a substantial change from past practice and better reflects the nature of the documents. I believe it is consistent with, and arguably is required by, the Presidential Records Act. (The legislative history of the Presidential Records Act provides that "that which is now subject to FOIA would remain so and that which is not now subject to FOIA would be subject to the Presidential Records Act." H. Rep. No. 95-1487, 95th Cong., 2d Sess. 11 (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 5732, 5742 (1978). In context, the legislative history appears to discuss what is or is not an "agency" for the purpose of FOIA, not whether particular documents are presidential or not. Id. In any event, even if the Presidential Records Act was not intended to alter the category in which particular documents belong - presidential versus agency -- I believe that the test set forth herein more accurately categorizes records than the historical approach used at the NSC.) ~

Tab A does not include documents, such as perishable intelligence publications from other agencies, which are not retained by the NSC staff. Nor does it include electronic messaging (including "PROFS" notes) as a separate category. In my view, such messages

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are best characterized as substitutes for telephone conversations, and do not, in general, rise to the level of "records."* We are working on a separate memorandum dealing with electronic mail and would appreciate guidance from your office in this regard.

D. Request to Retain Presidential Records

The NSC would like to keep copies of the following presidential records after January 20, 1989: (1) NSDDs and NSSDs; (2) NSC and NSC subgroup meeting data (agendas, minutes, and related memoranda); (3) Findings and Memoranda of Notification; and (4) presidential documents contained in the WHSSS filing system that chronicle decision-making during crises and other national security events.

In accordance with the Presidential Records Act, the originals of these documents would be transferred to the Archivist and the retained copies would be identified as copies.**

E. Guidance Requested

Mindful of the President's personal interests in this matter, the traditional prerogatives of his office, and the importance both of observing the requirements of the Presidential Records Act and of properly implementing the President's instructions in NSDD 266, I would appreciate your concurrence and any advice you may have concerning NSC's proposed approach to these issues.

Attachment

Tab A Proposed Listing of NSC Presidential and Institutional Records

* Where a PROFS note or other electronic mail contains information "appropriate for preservation" as evidence of one of the items listed in the Federal Records Act, or "necessary to assure . . . adequate[] document[ation]" of one of the items listed in the Presidential Records Act, that information must be preserved either in the form of a separate record or by printing out and retaining a copy of the note. In that case, the resulting document would be an institutional or presidential record depending on the subject matter and context in accordance with the general rules stated herein.

** As noted above, the Presidential Records Act specifically allows for the retention of "extra copies of documents produced only for convenience of reference, when such copies are clearly so identified." 44 U.S.C. 2201(2)(B)(iv).

UNCLASSIFIED

with ~~SECRET~~ attachment

~~SECRET~~

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. List	Presidential Files (2 pp.)	n.d.	(b)(1)	S

Collection:

Record Group: Bush Presidential Records
Office: National Security Council
Series: H-Files
Subseries: Transition Files
WHORM Cat.:
File Location: NSC Procedural Manual - Binder 3 [1]

Date Closed: 9/4/2019	OA/ID Number: 99017-006
FOIA/SYS Case #: 2019-1493-S	Appeal Case #:
Re-review Case #:	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

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

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

Deed of Gift Restrictions

- C(1) Closed by Executive Order 13526, governing access to national security information
- C(2) Closed by statute or by the agency which originated the information
- C(3) Closed in accordance with restrictions contained in donor's deed of gift [formerly listed as only C]
- PRM. Removed as a personal record misfile

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

- P-2 Relating to the appointment to Federal office [(a)(2) 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]

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. List	Other Files (2 pp.)	n.d.	(b)(1)	S

Collection:

Record Group: Bush Presidential Records
Office: National Security Council
Series: H-Files
Subseries: Transition Files
WHORM Cat.:
File Location: NSC Procedural Manual - Binder 3 [1]

Date Closed: 9/4/2019	OA/ID Number: 99017-006
FOIA/SYS Case #: 2019-1493-S	Appeal Case #:
Re-review Case #:	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

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

- (b)(1) National security classified information
- (b)(2) Release would disclose internal personnel rules and practices of an agency
- (b)(3) Release would violate a Federal statute
- (b)(4) Release would disclose trade secrets or confidential or financial information
- (b)(6) Release would constitute a clearly unwarranted invasion of personal privacy
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- (b)(9) Release would disclose geological or geophysical information concerning wells

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- P-2 Relating to the appointment to Federal office [(a)(2) 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]

UNCLASSIFIED
NSC/S PROFILE

RECORD ID: 8805557
RECEIVED: 28 JUL 88 14

TO: POWELL

FROM: ROSTOW

DOC DATE: 28 JUL 88
SOURCE REF:

KEYWORDS: LEGAL ISSUES

PERSONS:

SUBJECT: SHULTZ REQUEST RE STORING DOCUMENTS AT HERITAGE FOUNDATION IN
CALIFORNIA

ACTION: NOTED BY POWELL

DUE DATE: 01 AUG 88

STATUS: C

STAFF OFFICER: ROSTOW

LOGREF:

FILES: ~~W~~ NS

NSCIF:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION
POWELL

FOR CONCURRENCE

FOR INFO
ROSTOW

MENAN
VAN ELON

COMMENTS:

DISPATCHED BY _____ DATE _____ W/ATTCH: YES NO

OPENED BY: NSAPK

CLOSED BY: NSCLG

DOC 1 OF 1

UNCLASSIFIED

UNCLASSIFIED
ACTION DATA SUMMARY REPORT

RECORD ID: 8805557

DOC ACTION OFFICER

001 POWELL
001

CAO ASSIGNED ACTION REQUIRED

Z 88072909 FOR INFORMATION
X 88080114 NOTED BY POWELL

UNCLASSIFIED

National Security Council
The White House

System #

Package #

DOCLOG

5557
A/O

22 JUL 29 A 9: 25

SEQUENCE TO

HAS SEEN

DISPOSITION

Bob Perito

1

✓

I

Marybel Batjer

Paul Stevens

2

PM

R

John Negroponte

3

Colin Powell

4

CV

Paul Stevens

5

PM

Review

Situation Room

West Wing Desk

6

N

NSC Secretariat

7

N

I = Information

A = Action

R = Retain

D = Dispatch

N = No further Action

cc: VP

Duberstein

Other

COMMENTS

Should be seen by:

(Date/Time)

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

July 28, 1988

INFORMATION

MEMORANDUM FOR COLIN L. POWELL

FROM: NICHOLAS ROSTOW Nat Sec Advisor
has seen

SUBJECT: Shultz Request Concerning Documents

Secretary Shultz has requested that copies of most of the documents he "originated, reviewed, signed, or received" while Secretary of State be sent to the Hoover Institution in California. The documents copied would include classified documents up to the Top Secret level. The precise details of the proposal are not yet finalized, but the plan is to have the documents housed at a secure facility where the Secretary and his research assistants alone would have access. It is contemplated that the proposal would be cost free for the government, but details of the arrangement remain to be worked out. Secretary Shultz has recused himself from any involvement in arranging this matter, and action has been assigned to Deputy Secretary Whitehead.

Classified information is involved, and, therefore, State Department lawyers and the State security office contacted the Information Security Oversight Office (ISOO), which oversees classification issues. Because the NSC oversees ISOO, and because ISOO is concerned about the proposal on policy and appearance grounds, we were invited by the Director of ISOO to attend a meeting at ISOO with State Department personnel to discuss the proposal. In addition to our interest in overseeing the protection of classified information, we also have an interest because a number of NSC institutional records would be included among those copied and sent to California. The proposal also involves presidential documents and issues of Executive privilege; we therefore informed Culvahouse's office. Although Culvahouse did not send a representative to the initial meeting, we have kept him informed. His office now has concerns about the proposal, and intends to send a representative to the meeting on Monday.

At the initial meeting (which Dan Levin attended on my behalf), Dan raised the following potential concerns:

- whether the proposal adequately dealt with the requirements of the Presidential Records Act;
- whether providing these documents could complicate Freedom of Information Act litigation for the same documents;

- whether security would be adequate;
- whether there was an appearance of impropriety in negotiating this arrangement on behalf of a sitting Secretary of State;
- whether the arrangement was truly cost free for the government; and
- whether we wanted to establish this procedure as a precedent for all Cabinet officers.

These were expressed as personal concerns rather than NSC staff positions. State said that they would consider these issues and get back to us. We have not heard further from them, although a meeting is scheduled on Monday to discuss this matter.

I believe that we have equities deriving from our oversight role with respect to ISOO and from the NSC documents among those at issue. The policy issue and the potential appearance of impropriety also raise important questions for the administration as a whole. GAO already is conducting an investigation into the disposition of records by senior administration officials. I believe that we should consider carefully whether to establish a precedent that any sitting Cabinet officer can make arrangements to transfer the classified documents on which he worked to the facility of his choice.

State's Assistant Legal Adviser for Management has informed my office on a confidential basis that he has important reservations about the proposals. His views may well prevail. I predict Monday's meeting will air the community's concerns and that State will then resolve the problem in a manner consistent with them. No action is required by you at this time.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 19, 1988

MEMORANDUM FOR THE NSC STAFF

FROM: PAUL SCHOTT STEVENS 

SUBJECT: Records

It is important that you begin now to review documents in your custody in preparation for the eventual transfer of all official records to a depository at the end of the administration. You do not want to wait until November to begin this process.

Regardless of your personnel status during and after the transition, all presidential and NSC records of the Reagan Administration, including those convenience files in the possession of staff officers, will be reviewed and retired or stored before the start of the new administration.

All data stored electronically will be subject to a similar process of review and disposition.

The schedule for implementing the program outlined in this memorandum takes into account the somewhat slower pace that normally characterizes the summer months, the availability of additional personnel resources in the Secretariat to assist staff officers in organizing their files, and the hope that most of this work can be completed before the busier months of the fall and the transition. Clearly some directorates will have heavier schedules than others and the deadlines indicated are meant to be suggestive of the pace and progress we would like to achieve.

I. Personal Records: (Phase I, Deadline: June 15, 1988)

No later than June 15, 1988, all of the files you believe are personal in nature should be segregated from official records and available for review prior to being removed from the complex. This is in your interest. In more hectic days ahead, your personal files could be inadvertently mingled with official records. I will ask each staff officer to certify completion of this requirement.

Once your personal files are ready, please inform Brenda Reger (or, in her absence, Nancy Menan), the staff of whose directorate will review them and authorize their release. Under no circumstances should any records be removed from the complex absent such authorization.

It is also recommended that any personal mail you are now receiving at the office be redirected to your home address so that it will not be lost during the transition period.

The definition of what constitutes a personal record is very narrow and only will relate to a very small number -- or perhaps none -- of the documents in your files. Documents produced in the course of your normal duties are considered to be official records and must be formally retired at the end of the Administration.

Personal files are described in the Presidential Records Act as:

The term "personal records" means all documentary materials, or any reasonably segregable portion thereof of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory or other official or ceremonial duties of the President.

Attached is an excerpt from the White House Staff Manual which provides additional information on personal and presidential records.

To qualify as personal, a record must be unclassified and may not relate to White House or NSC business. Some examples are: personal correspondence, personal financial records and personal photos. Again, these items must be filed separately and may be removed only after approval by the staff of the Information Policy directorate.

II. Official Records: (Phase II, Deadline: August 15, 1988)

No later than August 15th, all official records in your custody should be assembled, in an orderly fashion, and prepared for transfer to the Secretariat for retirement or storage. It is recommended that you transfer to the Secretariat as soon as possible all files that you no longer need. Secretariat staff will contact your office and help you box these records.

The following steps should be taken immediately to prepare your office files for transfer:

1. All originals of LOGGED items must be returned to the Secretariat. These are either presidential or federal records and must be retained by the NSC or the National Archives. This includes outstanding X system items that should be sealed in an "EYES ONLY" envelope and given to the Executive Secretary for appropriate disposition.

2. To help ensure that retired official records include a complete set of materials originated or utilized under your tenure, copies may be retained among your retired official files of those original records turned over to the Secretariat for disposition.

3 Under no circumstances may any original official records/files be destroyed. This is strictly prohibited by law.

A. Chron Files:

Most staff members maintain CHRON (also identified as convenience or subject files) copies of materials that they have originated and that have been processed, in the various systems, through the Secretariat. Chron files may include other materials (such as reports from other agencies). These files should be assembled and maintained in good order.

Those files to be retained are traditionally sent to the appropriate presidential library to document the employee's contribution as a member of the president's staff. It is in your best interest to ensure that these files are maintained in good order, both for the historical record and also in the event that you later wish to gain access to the files. Such access is limited to those files that you created.

An employee may not retain copies of classified documents. Copies of unclassified documents he or she originated may be retained only after review and approval by the Information Policy directorate and after the original record has been returned to and accounted for by the Secretariat.

It is strongly recommended that you begin to review your files and to maintain them in a manner that allows both easy identification and separation later this year.

B. Special Cases:

Intelligence Documents

All serial-numbered intelligence documents, including publications coming from the intelligence community such as NIEs or DIA appraisals, MUST be returned to the Secretariat for disposition. They cannot be destroyed by you or left in your chron files.

Freedom of Information

All FOI/EO cases should be acted upon immediately and returned with your recommendations, to the Office of Information Policy for final disposition.

Pre-NSC Service

Classified materials brought to the NSC by detailees from other agencies, which predate your service on the NSC staff, must be maintained separately from all other records/files. These materials must be so identified and may only be removed from the NSC in accordance with established procedures authorized by the Information Policy directorate.

III. Wrap-Up: (Phase III, Deadline: December 1, 1988)

No later than December 1, 1988, you should have in your possession only the current month of files in your office. All X items, FOI/EO cases (completed) and intelligence documents should be returned to the Secretariat.

Bob Perito, George Van Eron, and the Secretariat staff will be available to answer any questions you may have and otherwise to assist you throughout this effort. Your cooperation in this important undertaking will be greatly appreciated.

Attachment

PRESIDENTIAL RECORDS ACT

The ownership, maintenance and disposition of Presidential documents are governed by the Presidential Records Act, 44 U.S.C. §§ 2201-07 (the "Act"). The Act's requirements must be followed by White House and Executive Office staff. Pending issuance of regulations by the Archivist of the United States, the following guidance should be followed with respect to these records.

I. Types of Records Covered by the Act

The Act defines "Presidential records" to include not only the official documents written and received by the President but also the official records created or received by his staff. While the Act requires that staff members adequately document the performance of the President's constitutional, statutory and ceremonial duties, the decision whether information should be memorialized in the first instance remains with each staff member. For example, it is within the discretion of a staff member to dispose of scratch pads, unimportant notes to one's secretary and the like, provided this is done contemporaneously and is based upon a determination that creation of a record is not required in the circumstance. "Presidential records" encompass any form of memorializing information, including but not limited to written documents, models, pictures, films and audio and electronic recordings. Records relating to political activities which are undertaken in the course of carrying out the President's official or ceremonial duties are Presidential records (e.g., political briefing papers for official trips and official meetings are Presidential records. Records relating to political activities not associated with the President's official duties are not Presidential records (e.g. materials for political and campaign-related meetings and trips.)

Private papers, which staff members might keep in their offices, such as insurance claim forms or purely personal correspondence, are personal, not Presidential records. Personal records include phone logs, visitor logs, notes, diaries or journals that are kept by a staff member exclusively for his or her own use and reference, are not accessible to others on the staff and are not used for transacting

government business. Personal documents and files should be segregated and stored separately from official records.

II. Units of the Executive Office of the President Covered by the Act

All records of the White House Office, the Office of Policy Development, the Council of Economic Advisers and the Intelligence Oversight Board are Presidential records.

Records of the Office of Management and Budget, the Office of the United States Trade Representative, the Council on Environmental Quality, and the Office of Administration are federal, not Presidential, records.

The records of the National Security Council staff are federal records if they were received or created in connection with the work of the statutorily-created National Security Council (including any interagency groups convened under National Security Council auspices). Additionally the NSC's internal administrative records are federal records. The records of the National Security Council staff are Presidential records if they were received or created for the President, the Assistant to the President for National Security, his Deputy or a member of the White House staff independently of any meeting or policy and staff actions of the NSC or its various groups.

The records of the Office of Science and Technology Policy are federal records; however, those records produced or received by the Director of OSTP in his role as Science Advisor to the President are Presidential records and should be segregated as such.

III. Maintenance of Presidential Records

The law imposes an affirmative obligation on staff members to document adequately the performance of the President's constitutional, statutory and ceremonial duties. Staff members are urged to document the performance of their duties and preserve these records in complete and orderly files. Personal records should be kept apart from official records and clearly labeled as such. Moreover, those officials or units which maintain both Presidential records and federal records should file them separately with a clear indication of whether they are Presidential or federal.

Assistance in distinguishing between Presidential, federal and personal records can be obtained from the Office of the Counsel to the President. Assistance in establishing file systems can be obtained from the White House Office of Records Management.

IV. Disposition and Destruction of Presidential Records

Once a decision is made to memorialize and maintain information as a Presidential record it becomes the property of the United States and may be disposed of only in accordance with procedures established by the Archivist of the United States. The Act prohibits the disposal of Presidential records unless those records no longer have administrative, historical, informational, or evidential value. Moreover, before disposing of any records the President must notify the Archivist and under some circumstances appropriate Congressional committees.

The White House Office of Records Management ("ORM") maintains records disposal schedules, which have been approved by the Archivist, for certain recurring types of disposable papers, such as form letter public mail, anonymous public mail, unsuccessful and unsolicited applications for employment, and enclosures received in public mail. If you have a recurring type of disposable material in your office, you may wish to request that ORM enter it on the records disposal schedule. Before you dispose of any documents, contact ORM to determine whether the category of items involved has been approved for disposal. Such prior notice is not necessary for destruction of exact duplicates of documents which are being maintained, or for copies of officially published documents, such as printed reports, etc.

ORM can also arrange for storage of records which are to be preserved, but for which there is no longer a current need. Offices are encouraged to develop systematic records retirement schedules, reserving filing space for those records for which there is a current need.

V. Legal Control of Presidential Records

Presidential records remain in the custody and control of the President during his term of

Office and are not accessible to the public under the Freedom of Information Act. In contrast, federal records are accessible to the public under the provisions of the Freedom of Information Act.

Upon completion of the Administration, the Archivist acquires custody of Presidential records. However, the President may assert control for twelve years over public access to certain categories of records. Basically, these categories are: (a) security classified items; (b) documents related to appointments to Federal office; (c) items specifically exempted from disclosure by other statutes; (d) trade secrets and commercial or financial information; (e) confidential communications requesting or submitting advice between the President and his advisers, or between such advisers; and (f) personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Thereafter, public access is determined by the Freedom of Information Act, subject in all cases to the President's right to invoke any Constitutional privilege against disclosure.

VI. Records that May be Retained by Staff Members Upon Departure

To insure that the President maintains the maximum controls permitted by law, staff members may not remove copies of Presidential records from their offices either now or at the end of the Administration. When a staff member leaves the White House, he or she shall deliver all files and records to ORM at the White House or, in the case of the National Security Council staff, to the Executive Secretariat of the National Security Council. Federal records shall be left with the appropriate agency. Staff members may remove only those records which are purely personal.

The foregoing is designed to provide general guidance with respect to the Presidential Records Act. Specific questions of coverage or interpretation should be addressed to the Counsel's Office. Assistance in records maintenance and storage can be obtained from the White House of Records Management.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

March 28, 1988

ACTION

MEMORANDUM FOR PAUL SCHOTT STEVENS

FROM: ROBERT PERITO *RP*
SUBJECT: Disposition of Records

It is important that the staff begin organizing their files in preparation for the presidential transition. Attached at Tab I is a memorandum for your signature directing the staff to begin this process.

In support, Van is planning to have Brian, Art and two others available to assist the staff in organizing and retiring their files. Additional part-time staff is being hired now in order to have the resources necessary to support this project.

JE George Van Eron, *Bender* Brenda Reger, *MD* Mary Dix, Michael Donley, and *MD* Nicholas Rostow concur.

RECOMMENDATION

That you sign the memorandum to the staff at Tab I.

Approve *RP*

Disapprove _____

Attachment

Tab I - Memorandum to the Staff

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

March 28, 1988

ACTION

MEMORANDUM FOR PAUL SCHOTT STEVENS

FROM: ROBERT PERITO *RP*
SUBJECT: Disposition of Records

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In support, Van is planning to have Brian, Art and two others available to assist the staff in organizing and retiring their files. Additional part-time staff is being hired now in order to have the resources necessary to support this project.

JE
George Van Eron, *Brenda* Brenda Reger, *Mary* Mary Dix, *MD* Michael Donley, and *Nichols* Nichols Rostow concur.

RECOMMENDATION

That you sign the memorandum to the staff at Tab I.

Approve _____

Disapprove _____

Attachment

Tab I - Memorandum to the Staff

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR THE STAFF

FROM: PAUL SCHOTT STEVENS

SUBJECT: Records

It is important that you begin now to review and prepare all official presidential and institutional records/files, as well as your personal records/files, in your office, for eventual transfer to a depository at the end of the administration. You do not want to wait until November to begin this process.

Regardless of your personnel status during and after the transition, all presidential and NSC records of the Reagan Administration, including those in the possession of staff officers, will be reviewed and retired before the start of the new administration.

The disposition of electronic data is included in the definition of "records and files."

The schedule for implementing the program outlined in this memorandum takes into account the slow down which normally occurs over the summer, the availability of additional personnel resources in the Secretariat to assist officers in organizing their files, and the hope that most of this work can be completed before the busier months of the fall and the transition. Clearly some directorates will have heavier schedules than others and the deadlines indicated are meant to be suggestive of the pace and progress we would like to achieve.

I. Personal Records: (Phase I, Deadline: June 15, 1988)

No later than June 15, 1988, all of your personal files should be separated from official records and removed from the complex. This is in your best interest. In more hectic days ahead, your personal files could be inadvertently attached to official records. I will ask each staff officer to certify completion of this requirement.

Once your personal files are ready, please inform the Senior Director for Information Policy and Security Review, Brenda Reger, and she will review them and authorize their release.

It is also recommended that any personal mail you are now receiving at the office, be redirected to your home address so that it will not be lost during the transition period.

The definition of what constitutes a personal record is very narrow and only will relate to a very small number -- or perhaps none -- of the documents in your files. Documents produced in the course of your normal duties are considered to be official records and must be formally retired at the end of the Administration.

Personal files are described in the Presidential Records act as:

The term "personal records" means all documentary materials, or any reasonably segregable portion thereof of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory or other official or ceremonial duties of the President.

Attached is an excerpt from the White House Staff Manual which provides additional information on personal and presidential records.

To qualify as personal, a record must be unclassified and may not relate to White House or NSC business. Some examples are: personal correspondence, financial bills and personal photos. These items must be filed separately and may be removed ONLY AFTER approval by the NSC Senior Director for Information Policy and Security Review.

II. Official Records: (Phase II, Deadline: August 15, 1988)

No later than August 15th, your official NSC and presidential records should be assembled, in an orderly fashion, and prepared for transfer to the appropriate government records depository. It is recommended that you transfer to the Secretariat all files that you no longer need. Secretariat staff will contact your office and help you box these records.

The following steps should be taken immediately to prepare your office files for transfer:

1. All originals of LOGGED items must be returned to the Secretariat. These are either presidential or federal records and must be retained by the NSC or the National Archives. This includes outstanding X system items that should be sealed in an "EYES ONLY" envelope and given to the Executive Secretary for appropriate filing.

2. To ensure that a complete record remains in the office files, copies (i.e., chron files) may be substituted where originals were turned over to the Secretariat for disposition.

3 Official original records/files CANNOT, by law, be destroyed.

A. Chron files

Most staff members maintain CHRON (also identified as convenience or subject files) copies of materials that have been processed, in the various systems, through the Secretariat. Chron files may include other materials (such as reports from other agencies). These files should be assembled and maintained in good order.

Those files to be retained are traditionally sent to the appropriate presidential library to document the employee's contribution as a member of the president's staff. It is in your best interest to ensure that these files are maintained in good order, both for historical record and also in the event that you later wish to gain access to the files. Such access is limited to those files that you created.

An employee may not retain copies of classified documents. Copies of unclassified documents he or she originated may be retained only after review and approval by the Office of Information Policy and Security Review, and the original document has been returned to the Secretariat.

It is strongly recommended that you begin to review your files and to maintain them in a manner that allows both easy identification and separation later this year.

B. Special Cases:

Intelligence Documents

All serial-numbered intelligence documents, especially publications coming from the intelligence community such as NIEs or DIA appraisals, MUST be returned to the Secretariat for disposition. They cannot be destroyed by you or left in your chron files.

Freedom of Information

All FOI/EO cases should be acted upon immediately and returned with your recommendations, to the Office of Information Policy and Security Review for final disposition.

Pre-NSC Service

Classified material brought to the NSC by detailees from other agencies, which predate your service on the NSC staff, must be maintained separately from all other records/files. These materials must be so identified and may only be removed from the NSC in accordance with established security procedures authorized by the Office of Information Policy and Security Review.

III. Wrap-Up: (Phase III, Deadline: December 1, 1988)

No later than December 1, 1988, you should have in your possession only the current month of files in your office. All X items, FOI/EO cases (completed) and intelligence documents should be returned to the Secretariat.

Secretariat staff will be available to assist you throughout this effort.

Attachment

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The Act defines "Presidential records" to include not only the official documents written and received by the President but also the official records created or received by his staff. While the Act requires that staff members adequately document the performance of the President's constitutional, statutory and ceremonial duties, the decision whether information should be memorialized in the first instance remains with each staff member. For example, it is within the discretion of a staff member to dispose of scratch pads, unimportant notes to one's secretary and the like, provided this is done contemporaneously and is based upon a determination that creation of a record is not required in the circumstance. "Presidential records" encompass any form of memorializing information, including but not limited to written documents, models, pictures, films and audio and electronic recordings. Records relating to political activities which are undertaken in the course of carrying out the President's official or ceremonial duties are Presidential records (e.g., political briefing papers for official trips and official meetings are Presidential records. Records relating to political activities not associated with the President's official duties are not Presidential records (e.g. materials for political and campaign-related meetings and trips.)

Private papers, which staff members might keep in their offices, such as insurance claim forms or purely personal correspondence, are personal, not Presidential records. Personal records include phone logs, visitor logs, notes, diaries or journals that are kept by a staff member exclusively for his or her own use and reference, are not accessible to others on the staff and are not used for transacting

government business. Personal documents and files should be segregated and stored separately from official records.

II. Units of the Executive Office of the President Covered by the Act

All records of the White House Office, the Office of Policy Development, the Council of Economic Advisers and the Intelligence Oversight Board are Presidential records.

Records of the Office of Management and Budget, the Office of the United States Trade Representative, the Council on Environmental Quality, and the Office of Administration are federal, not Presidential, records.

The records of the National Security Council staff are federal records if they were received or created in connection with the work of the statutorily-created National Security Council (including any interagency groups convened under National Security Council auspices). Additionally the NSC's internal administrative records are federal records. The records of the National Security Council staff are Presidential records if they were received or created for the President, the Assistant to the President for National Security, his Deputy or a member of the White House staff independently of any meeting or policy and staff actions of the NSC or its various groups.

The records of the Office of Science and Technology Policy are federal records; however, those records produced or received by the Director of OSTP in his role as Science Advisor to the President are Presidential records and should be segregated as such.

III. Maintenance of Presidential Records

The law imposes an affirmative obligation on staff members to document adequately the performance of the President's constitutional, statutory and ceremonial duties. Staff members are urged to document the performance of their duties and preserve these records in complete and orderly files. Personal records should be kept apart from official records and clearly labeled as such. Moreover, those officials or units which maintain both Presidential records and federal records should file them separately with a clear indication of whether they are Presidential or federal.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

— See WH Office
Staff Manual
for completion.

January 7, 1988

MEMORANDUM FOR PATRICIA MACK BRYAN

FROM: PAUL SCHOTT STEVENS *PS*

SUBJECT: Staff Handbook -- Presidential Records Act

The NSC staff concurs with the revisions to the Staff Handbook, with the following additions:

- On page two, section II, insert at the end of the fourth sentence (line 11): , including any interagency groups convened under National Security Council auspices. Additionally, the NSC's internal administrative records are federal records.
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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

9162
Re-do

January 7, 1988

ACTION

MEMORANDUM FOR PAUL SCHOTT STEVENS

FROM: NICHOLAS ROSTOW *NR*

SUBJECT: Staff Handbook -- Presidential Records Act

Attached at Tab I is a memorandum from you to Patricia Bryan containing the NSC staff's comments on the proposed revisions to the staff handbook with respect to presidential records.

The second proposed change (to page 2) would make the Handbook consistent with existing record-keeping and record-designating practices.

By NR.
Brenda Reger concurs.

RECOMMENDATION

That you sign the memorandum at Tab I.

Approve *NR*

Disapprove _____

Attachments

- Tab I - Stevens Memorandum to Bryan
- Tab II - Presidential Records Act

**NATIONAL SECURITY COUNCIL
EXECUTIVE SECRETARIAT STAFFING DOCUMENT**

TIME STAMP

RECEIVED

SYSTEM LOG NUMBER: 9162

URGENT

07 DEC 11 AID 51

ACTION OFFICER: ROSTOW DUE: COB, 14 DEC

- | | |
|---|--|
| ☐ Prepare Memo For President | ☐ Prepare Memo Stevens to Peterson / Murr |
| ☐ Prepare Memo For Powell/Negroponte | ☒ Appropriate Action |
| ☐ Prepare Memo _____ | to _____ |

CONCURRENCES/COMMENTS*

PHONE* to action officer at ext. 6538

- | FYI | FYI | FYI |
|------------------------------------|-------------------------------------|--|
| ☐ Batjer | ☐ Henhoeffer | ☐ Perina |
| ☐ Bemis | ☐ Herbst | ☐ Porter |
| ☐ Brooks | ☐ Howard | ☒ Reger |
| ☐ Burns | ☐ Howland | ☐ Rodman |
| ☐ Childress | ☐ Jameson | ☐ Rosenberg |
| ☐ Cobb | ☐ Kelly | ☐ Ross |
| ☐ Cockell | ☐ Kelly | ☐ Rostow |
| ☐ Cohen | ☐ Kimberling | ☐ Saunders |
| ☐ Collins | ☐ Kissell | ☐ Scharfen |
| ☐ Danzansky | ☐ Ledsky | ☐ Snider |
| ☐ Dean | ☐ Lewis | ☐ Sorzano |
| ☐ Donley | ☐ Linhard | ☐ Steiner |
| ☐ Douglass | ☐ Mahley | ☐ Tahir-Kheli |
| ☐ Ermarth | ☐ Matthews | ☐ Tarbell |
| ☐ Farrar | ☐ McNamara | ☐ Tice |
| ☐ Flower | ☐ Melby | ☐ Tillman |
| ☐ Fortier | ☐ Michael | ☐ Tobey |
| ☐ Frazier | ☐ Miskel | ☒ VAN ERON |
| ☐ Grimes | ☐ Oakley | ☒ COURTNEY |
| ☐ Heiser | ☐ Paal | ☐ _____ |

INFORMATION ☒ Stevens ☐ Courtney ☒ Secretariat
☐ Powell (advance) ☐ Negroponte (advance) ☐ _____

COMMENTS

Logged By RC

Return to Secretariat

THE WHITE HOUSE

WASHINGTON

December 11, 1987

MEMORANDUM FOR CHARLES NICHOLAS ROSTOW
SPECIAL ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS AND LEGAL ADVISER

WILLIAM H. COURTNEY ✓
DEPUTY EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

FROM: PATRICIA MACK BRYAN *PMB*
ASSOCIATE COUNSEL FOR THE PRESIDENT

SUBJECT: Staff Handbook -- Presidential Records Act

At A.B. Culvahouse's request, I attached for your review and comment Counsel's Office proposed redraft of the Presidential Records Act portion of the staff handbook. Most of the changes are suggested for purposes of clarity. Specifically, you should be aware of the substitute language on the records of the National Security Council, found on page 2. I understand that while the proposed language may, on its face, seem to allow more records to be classified as "Presidential" rather than federal, in practice it will not, because the only functions of the Assistant to the President for National Security and his Deputy are as advisers to the President. Please let me know if my understanding is incorrect.

I would appreciate any comments you have as soon as possible, as the Staff Manual is to be sent to the printers within the next couple of days.

Attachment

PRESIDENTIAL RECORDS ACT

The ownership, maintenance and disposition of Presidential documents are [now] governed by the Presidential Records Act, 44 U.S.C. §§ 2201-07 (the "Act"). [which became effective January 20, 1981]. The Act's requirements [creates important new rules that] must be followed by White House and Executive Office staff. Pending issuance of regulations by the Archivist of the United States, the following guidance should be followed with respect to these records.

I. [What] Types of Records [are] Covered by the Act[?]

The Act defines "Presidential records" to include not only the official [those] documents written and received by the President but also [all of] the official records created or received by his staff. While the Act requires that staff members adequately document the performance of the President's constitutional, statutory and ceremonial duties, the decision whether information should be memorialized in the first instance remains with each staff member. For example, it is within the discretion of a staff member to dispose of scratch pads, unimportant notes to one's secretary and the like, provided this is done contemporaneously and is based upon a determination that creation of a record is not required in the circumstance. [The term] "Presidential records" encompass any form of memorializing information, including but not limited to, [not only] written documents, [but also] models, pictures, films and audio and electronic recordings. [Official materials] Records relating to political activities which are undertaken in the course of carrying out the President's official or ceremonial duties are Presidential records [official] (e.g., political briefing papers for official trips and official meetings are Presidential records). Records relating to political activities not associated with the President's official duties are not Presidential records (e.g. materials [as opposed to those] for political and campaign-related meetings and trips.)

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II. [Which] Units of the Executive Office of the President
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All records of the White House Office, [are Presidential records. The records of] the Office of Policy Development, the Council of Economic Advisers and the Intelligence Oversight Board are Presidential records [as well].

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The [Most] records of the Office of Science and Technology Policy are federal records; however, those records produced or received by the Director of OSTP in his role as Science Advisor [which relate solely to the role of that Office as advisors] to the President are [may be considered] Presidential records and should be segregated as such.

III. Maintenance of [How Should] Presidential Records [be Maintained?]

The law imposes an affirmative obligation on staff members to document adequately the performance of the President's constitutional, statutory and ceremonial duties. Staff members are urged to document the[ir] performance of their duties and preserve these records in complete and orderly files. Personal records should be kept apart from official records and clearly labeled as such. Moreover, those officials or units which maintain both Presidential records and federal records should file them separately with a clear indication of whether they are Presidential or federal.

Assistance in distinguishing between Presidential, federal and personal records can be obtained from the Office of the Counsel to the President. Assistance in establishing file systems can be obtained from the White House Office of Records Management.

IV. Disposition and Destruction of [May] Presidential Records
[be Destroyed or Otherwise Disposed of?]

Once a decision is made to memorialize and maintain information as a Presidential record it becomes [Presidential records are] the property of the United States and may be disposed of only in accordance with procedures established by the Archivist of the United States [Archives]. The Act prohibits the disposal of Presidential records unless those records no longer have administrative, historical, informational, or evidentiary value. Moreover, before disposing of any records the President must notify the Archivist and under some circumstances appropriate Congressional committees. [without the approval of the Archivist of the United States or certain Congressional committees.]

The White House Office of Records Management ("ORM") maintains records disposal schedules, which have been approved by the Archivist, for certain recurring types of disposable papers, such as form letter public mail, anonymous public mail, unsuccessful and unsolicited applications for employment, and enclosures received in public mail. If you have a recurring type of disposable material in your office, you may wish to request that ORM enter it on the records disposal schedule. Before you dispose of any documents, contact [this office] ORM to determine whether the category of items involved has been approved for disposal. Such prior notice is not necessary for destruction of exact duplicates of documents which are being maintained, or for copies of officially published documents, such as printed reports, etc.

ORM can also arrange for storage of records which are to be preserved, but for which there is no longer a current need. Offices are encouraged to develop systematic records retirement schedules, reserving filing space for those records for which there is a current need.

V. [Who Has] Legal Control of Presidential Records[?]

[While] Presidential records [are the property of the United States, they] remain in the custody and control of the President during his term of Office and are not accessible to the public under the Freedom of Information Act. In contrast, federal records are accessible to the public under the provisions of the Freedom of Information Act.

Upon completion of the Administration, the Archivist acquires custody of Presidential records. However, the President may [and has] assert[ed] control for twelve years over public access to certain categories of records. [which are particularly sensitive.] Basically, these categories are: (a) security classified items, (b) documents related to appointments to Federal office, (c) items specifically exempted from disclosure by other statutes, (d) trade secrets and commercial or financial information, (e) confidential communications requesting or

submitting advice[,] between the President and his advisers, or between such advisers; and (f) personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Thereafter, public access is determined by the Freedom of Information Act, subject in all cases to the President's right to invoke any Constitutional privilege against disclosure.

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To insure that the President maintains the maximum controls permitted by law, staff members may not remove copies of Presidential records from their offices either now or at the end of the Administration. When a staff member[s] leaves the White House, he or she shall [should] deliver all files and records to ORM at the White House. Federal records shall [should] be left with the appropriate agency. Staff members may remove only those records which are purely personal.

The foregoing is designed to provide general guidance with respect to the Presidential Records Act. Specific questions of coverage or interpretation should be addressed to the Counsel's Office. Assistance in records maintenance and storage can be obtained from the White House Office of Records Management.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 7, 1988

MEMORANDUM FOR PATRICIA MACK BRYAN

FROM: PAUL SCHOTT STEVENS *PS*
SUBJECT: Staff Handbook -- Presidential Records Act

The NSC staff concurs with the revisions to the Staff Handbook, with the following additions:

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THE WHITE HOUSE

WASHINGTON

December 11, 1987

MEMORANDUM FOR CHARLES NICHOLAS ROSTOW
SPECIAL ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS AND LEGAL ADVISER

WILLIAM H. COURTNEY ✓
DEPUTY EXECUTIVE SECRETARY
NATIONAL SECURITY COUNCIL

FROM: PATRICIA MACK BRYAN *PMB*
ASSOCIATE COUNSEL FOR THE PRESIDENT

SUBJECT: Staff Handbook -- Presidential Records Act

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

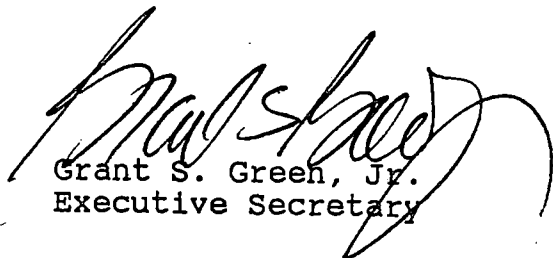
October 5, 1987

MEMORANDUM FOR DAVID VAN TASSEL
Acting Deputy Assistant Archivist
for Presidential Libraries
National Archives and Records Administration

SUBJECT: NSC Continuity and Presidential Records

Attached is a draft memorandum to the President on steps the NSC is undertaking, and might undertake, to enhance the continuity of functioning of the NSC. In NSDD 266 the President requested recommendations to this end.

We would like to get the memorandum to the President by the end of the week, and would very much appreciate your comments on it. Please convey them to Bill Courtney (456-6534) or Jock Scharfen (395-5026). Thanks.


Grant S. Green, Jr.
Executive Secretary

Attachment
As stated

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

October 5, 1987

MEMORANDUM FOR A.B. CULVAHOUSE

FROM:

GRANT S. GREEN, JR.

SUBJECT:

NSC Continuity and Presidential Records

Attached is a draft memorandum to the President on steps the NSC is undertaking, and might undertake, to enhance the continuity of functioning of the NSC. In NSDD 266 the President requested recommendations to this end. We have also requested comments from the National Archives and Records Administration.

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Attachment

As stated

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
03. Memorandum	For the President From: Grant Green Re: Continuity of Functioning of the NSC (3 pp.)	n.d.	(b)(1)	

Collection:

Record Group: Bush Presidential Records
Office: National Security Council
Series: H-Files
Subseries: Transition Files
WHORM Cat.:
File Location: NSC Procedural Manual - Binder 3 [1]

Date Closed: 9/4/2019	OA/ID Number: 99017-006
FOIA/SYS Case #: 2019-1493-S	Appeal Case #:
Re-review Case #:	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

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

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

Deed of Gift Restrictions

C(1) Closed by Executive Order 13526, governing access to national security information
C(2) Closed by statute or by the agency which originated the information
C(3) Closed in accordance with restrictions contained in donor's deed of gift [formerly listed as only C]
PRM. Removed as a personal record misfile

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

P-2 Relating to the appointment to Federal office [(a)(2) 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]

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

September 11, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE
COUNSEL TO THE PRESIDENT

FROM: PAUL SCHOTT STEVENS

SUBJECT: Presidential and Institutional Records
in the Custody of the NSC

As I explained in my July 1, 1987, memorandum on Presidential Findings, the National Security Council (NSC) staff has from its inception maintained records generated or received in the course of its business in two systems; one presidential and the other institutional. The NSC Secretariat manages both presidential records, with guidance from the National Security Advisor and other White House officials, and institutional records. As you know, all Presidential records are eventually transferred to the outgoing President's library. Access to a former President's presidential records is controlled by that President's personal representative; usually his National Security Advisor when the documents involved contain national security information.

In responding to document requests made during the various investigations of the Iran/contra matter, it became evident that not all records in the custody of the NSC had been properly logged into the Secretariat's system of records. Indeed, the Tower Board noted that the NSC "as an institution also needs some means to assure adequate records and memory." E. Muskie, J. Tower and B. Scowcroft, President's Special Review Board, V-4 (1987). The NSC has taken steps to correct this problem and insure that all records in the custody of the NSC, no matter how sensitive, are placed into accountable channels in the Secretariat system of records.

One of the steps taken by the NSC to improve records accountability involved an inventory of records, whether properly logged into the Secretariat's system or not, located in the NSC staff. This inventory encompassed not only the NSC staff proper but also the White House Situation Room and the White House Situation Support Staff. It did not include the staff's personal or office files. (Mr. Carlucci wrote a memorandum shortly after

assuming his duties as the National Security Advisor instructing the staff that all action and information documents must be logged into the Secretariat's system of records.) The product of this inventory, a listing of the categories of documents maintained by the NSC, is attached at Tab I.

This division between presidential and institutional records is consistent with the dual record system traditionally maintained by the NSC; a system which reflects the NSC's dual mission, as most recently described in NSDD 266. The division also facilitates the transfer of presidential records to the President's Library at the end of the Administration. (The NSC's traditional record management practices are explained in further detail in the memorandum attached at Tab II.)

Where a type of document belongs, either in the presidential or institutional files, is not always clear on first reading. The kind of analysis described in my July 1, memorandum on Presidential Findings was undertaken with respect to the documents at Tab I before listing them as presidential or institutional.

Your office clearly has strong, if not preeminent, equities in distinguishing between presidential and institutional records. With this in mind, I would appreciate your office reviewing our proposed division between presidential and institutional records.

Attachments

- | | |
|--------|---|
| Tab I | Proposed Listing of NSC Presidential and Institutional Records |
| Tab II | Memorandum describing NSC Traditional Presidential and Institutional Records Management Practices |

National Archives



Washington, DC 20408

JUN 23 1987

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FG006-12

Mr. Grant Green
Executive Secretary
National Security Council
Old Executive Office Building
Washington, DC 20508

Dear Mr. Green:

Thank you for your memorandum of June 17 regarding
implementation of the Tower Board Recommendations.
I would be happy to meet with you and designate a
representative to the working group considering measures
to ensure adequate record keeping.

For your information, in connection with assuring necessary
access by the incumbent President to a former President's
records, I enclose a copy of the Presidential Records Act
and our draft regulations for implementing that Act.
Section 2205 of the law and Section 1270.44 of the
regulations deal with access to a former President's
records.

We look forward to working with you on this important
matter.

Sincerely,

FRANK G. BURKE
Acting Archivist
of the United States

Enclosures

NSC #8704798

PRESIDENTIAL RECORDS

(44 U.S.C. Chapter 22)

Sec.

- 2201. Definitions.
- 2202. Ownership of Presidential records.
- 2203. Management and custody of Presidential records.
- 2204. Restrictions on access to Presidential records.
- 2205. Exceptions to restricted access.
- 2206. Regulations.
- 2207. Vice-Presidential records.

§ 2201. Definitions

As used in this chapter—

(1) The term "documentary material" means all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including but not limited to, audio, audio-visual, or other electronic or mechanical recordings.

(2) The term "Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory,

or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) The term "personal records" means all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or, circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President's own election to the office of the Presidency; and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

(4) The term "Archivist" means the Archivist of the United States.

(5) The term "former President," when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

§ 2202. Ownership of Presidential records

The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

§ 2203. Management and custody of Presidential records

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, his staff, or units or individuals in the Executive Office of the President the function of which is to advise and assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During his term of office, the President may dispose of those of his Presidential records that no longer have administrative, historical, informational, or evidentiary value if—

(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

(2) the Archivist states that he does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that he does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Administration and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever he considers that—

(1) these particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

(f) (1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this Act.

(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

(3) The Archivist is authorized to dispose of such Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

§ 2204. Restrictions on access to Presidential records

(a) Prior to the conclusion of his term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relating to appointments to Federal office;

(3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers; or

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b)(1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

(A)(i) the date on which the former President waives the restriction on disclosure of such record, or

(ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President, or his agents.

(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (c) until the earlier of—

(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to section 2203(d)(1); or

(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in his discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or his designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

(c)(1) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, except that paragraph (b)(5) of that section shall not be available for purposes of withholding any Presidential record, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Administration. Access to such records shall be granted on nondiscriminatory terms.

(2) Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President.

(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

(e) The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.

§ 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to section 2204—

(1) the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted

access to Presidential records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent President if such records contain information that is needed for conduct of current business of his office and that is not otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the Presidential records of a former President shall be available to such former President or his designated representative.

§ 2206. Regulations

The Archivist shall promulgate in accordance with section 553 of title 5, United States Code, regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

(1) provisions for advance public notice and description of any Presidential records scheduled for disposal pursuant to section 2203(f)(3);

(2) provisions for providing notice to the former President when materials to which

access would otherwise be restricted pursuant to section 2204(a) are to be made available in accordance with section 2205(2);

(3) provisions for notice by the Archivist to the former President when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have; and

(4) provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies regarding materials which may be subject to section 552(b)(7) of title 5, United States Code.

§ 2207. Vice-Presidential records

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

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APR 17 1981

REGULATIONS IMPLEMENTING THE PRESIDENTIAL RECORDS ACT

Part 1270 -- PRESIDENTIAL RECORDS

Subpart A -- General Provisions

1270.10 Scope of part

These regulations implement the provisions of the Presidential Records Act of 1978, Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201-07 (1982 and Supp. 1987)), by setting forth the policies and procedures governing preservation and protection of, disposal of, and access to the Presidential and Vice-Presidential records created during a term of office of the President or Vice President beginning on or after January 20, 1981.

1270.12 Application

(a) These regulations apply to all Presidential records created during a term of office of the President beginning on or after January 20, 1981.

(b) Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President,

with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository.

1270.14 Definitions

For the purposes of this Part --

(a) The terms "documentary material", "Presidential records", "personal records", "Archivist", and "former President" have the meanings given them by 44 U.S.C. 2201(1)-(5), respectively.

(b) The term "agency" has the meaning given it by 5 U.S.C. 551(1)(a)-(d) and 552(e).

(c) The term "Presidential archival depository" has the meaning given it by 44 U.S.C. 2101(1).

(d) The term "Vice-Presidential records" means documentary materials, or any reasonably segregable portion thereof, created

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or received by the Vice President, his immediate staff, or a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the Vice President. The term includes documentary materials of the kind included under the term "Presidential records."

(e) The term "filed" means the date something is received in the office of the official who is to receive it.

Subpart B -- Actions Taken on Behalf of Former President

1270.20 Designation of Person or Persons to Act for Former President

(a) A President or former President may designate some person or persons to exercise, upon the death or disability of the President or former President, any or all of the discretion or authority granted to him by 44 U.S.C. 2204.

(b) When a President or former President designates a person or persons to act for him pursuant to (a)(1), he shall notify the Archivist in writing of this decision prior to either his death or disability.

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(c) The notice required by (a)(2) shall be in writing, and shall include the following information:

(1) The name(s) of the person or persons designated to act for the President or former President;

(2) The current addresses of the person or persons designated; and

(3) The records, identified with reasonable specificity, over which the designee(s) will exercise discretion or authority.

1270.22 In those instances where a President has specified, in accordance with 44 U.S.C. 2204, restrictions on access to Presidential records, but has not made a designation under section 1270.20 of this subpart, the Archivist shall, upon the death or disability of a President or former President, exercise the discretion or authority granted to a President or former President by 44 U.S.C. 2204.

Subpart C -- Disposal of Presidential Records

1270.30 Disposal of Presidential Records by Incumbent President

A President may, while in office, dispose of any Presidential records which in his opinion lack administrative, historical, informational, or evidentiary value if one of the following two sets of requirements is satisfied:

(a) (1) The President has obtained the written views of the Archivist concerning the proposed disposal; and

(2) The Archivist states that the records proposed for disposal are not of special interest to the Congress and that consultation with the Congress concerning the proposed disposal is not in the public interest; or

(b) (1) The President has obtained the written views of the Archivist concerning the proposed disposal;

(2) The Archivist states either that the records proposed for disposal may be of special interest to the Congress, or that consultation with the Congress concerning the proposed disposal is in the public interest; and

(3) The President submits copies of the proposed disposal schedule to the Committees on Rules and Administration and Governmental Affairs of the Senate and the Committees on House Administration and Government Operations of the House of Representatives at least sixty calendar days of continuous session of Congress in advance of the proposed disposal date. Should the continuity of a session be broken before a proposed disposal schedule has lain before Congress for sixty calendar days, the provisions of 44 U.S.C. 2203(d) are to be followed when continuity of session is broken.

1270.32 Disposal of Presidential Records in the Custody of the Archivist

(a) The Archivist may dispose of Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation.

(b) When Presidential records are scheduled for disposal pursuant to (a), the Archivist shall publish a notice of this

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disposal in the Federal Register at least sixty days before the proposed disposal date.

(c) The notice required by (b) shall include the following:

(1) A reasonably specific description of the records scheduled for disposal; and

(2) A concise statement of the reason why the Archivist believes the records can be disposed of.

(d) Publication in the Federal Register of the notice required by (b) shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code (5 U.S.C. 701-06 (1982 and Supp. 1986)).

Subpart D -- Access to Presidential Records

1270.40 Identification of Restricted Records

Once an incumbent President has placed restrictions on access to certain information contained in Presidential records, the Archivist or his designee shall identify the Presidential records, or any reasonably segregable portion thereof, affected and shall restrict public access to the information contained in these records until the earlier of --

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(a) (1) The date on which the former President waives the restriction on disclosure of the record or information contained within, or

(2) The expiration of the period of restriction specified under 44 U.S.C. 2204(a) for the category of information under which a certain record, or a portion thereof, was restricted; or

(b) A determination by the Archivist that the former President or his agents has placed in the public domain a restricted record or a reasonably segregable portion thereof, or any significant element or aspect of the information contained in a restricted record or a reasonably segregable portion thereof.

1270.42 Denial of Access to Public; Right to Appeal

(a) Any person denied access to a Presidential record (hereinafter "the requestor") because of a determination that the record or a reasonably segregable portion thereof was (A) properly restricted under 44 U.S.C. 2204(a), and (B) not placed in the public domain by the former President or his agents, may file an administrative appeal with the Assistant Archivist for Presidential Libraries (NL), Washington, DC 20408.

(b) Appeals shall be filed no later than ten working days after the requestor receives written notification that access to Presidential records has been denied.

(c) Appeals shall be in writing and shall set forth the reason why the requestor believes access to the records sought should be allowed. The requestor shall identify the specific records sought.

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(d) Upon receipt of an appeal, the Assistant Archivist for Presidential Libraries shall have thirty working days from the date an appeal is filed to consider the appeal and to respond in writing to the requestor. The Assistant Archivist's response shall state whether the Presidential records requested are to be released and the basis for this determination. The decision of the Assistant Archivist is final.

1270.44 Exceptions to Restricted Access

(a) Notwithstanding any restrictions on access imposed pursuant to section 2204 or these regulations, and subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available in the following instances:

(1) Pursuant to subpoena or other judicial process properly issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(2) To an incumbent President if the records sought (A) contain information which is needed for the conduct of current business of his office and (B) are not otherwise available;

(3) To either House of Congress, or, to the extent of matter within its jurisdiction, to a Congressional committee or subcommittee if the records sought (A) contain information which is needed for the conduct of business within its jurisdiction and (B) are not otherwise available.

(b) Requests by an incumbent President, a House of

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Congress, or a Congressional committee or subcommittee pursuant to paragraph (a) of this section should be addressed to the Archivist. All requests should be in writing and should, where practicable, identify the records sought with reasonable specificity.

(c) Presidential records of a former President shall be available to the former President or his designated representative upon request.

1270.46 Notice of Intent to Disclose Certain Presidential Records

(a) The Archivist or his designee shall notify a former President or his designated representative whenever a Presidential record, the disclosure of which might adversely affect any rights and privileges the former President may possess, may be disclosed. The notice given shall identify the records with reasonable specificity. In the case of records to be disclosed in accordance with section 1270.⁴⁴~~32~~, the notice shall also:

- (i) Identify the requestor and the nature of the request;
- (ii) State whether the requested records contain materials to which access would otherwise be restricted pursuant to 44 U.S.C. 2204(a) and identify the category of restriction within which the record to be disclosed falls; and
- (iii) List the date of the request.

(b) If, after receiving the notice required by subsection

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(a) of this section, an affected former President raises rights or privileges which he believes should preclude the disclosure of a Presidential record, and it is nevertheless determined, in whole or in part, that the record in question will be disclosed, the Archivist shall notify the former President or his representative of this determination. This notice shall be similar in form to the notice required by subsection (a) of this section, except that the notice required by this subsection shall also:

- (i) Be in writing;
- (ii) State the basis upon which the record is being disclosed; and
- (iii) Specify the date on which the record will be disclosed.

Notice under this subsection shall be given to the affected former President or his representative at least five working days prior to the release of the records requested.

Subpart E -- Presidential Records Compiled for Law Enforcement Purposes

1270.50 Consultative Procedures to be Established

The Archivist shall, no later than January 21, 1989, establish procedures for consultation between NARA and appropriate Federal agencies regarding investigatory materials compiled for

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law enforcement purposes which may be subject to section 552(b) (7) of title 5, United States Code.

1270.52 Notification

(a) The procedures established under this subpart for consultation shall provide for the notification, in writing, of appropriate Federal agencies. This notice shall include the following:

- (1) A description of the records in question;
- (2) Statements that the records described are investigatory records compiled for law enforcement purposes and may be subject to the exemption provided by section 552(b) (7) of the FOIA for records of this type; and,
- (3) A contact person at NARA.

(b) The notice described in (a) shall also include an invitation to the head of the Federal agency being notified to consult with NARA about the records described in the notice. This consultation may include review of the records for information which may affect the agency's activities or operations.

NATIONAL SECURITY COUNCIL EXECUTIVE SECRETARIAT STAFFING DOCUMENT

TIME STAMP

SYSTEM LOG NUMBER

4798

ACTION OFFICER

Stevens

DUE

25 JUN

☐ Prepare Memo For President

☐ Prepare Memo Green to Peterson / Murr

☐ Prepare Memo For Carlucci / Powell

☒ Appropriate Action

☐ Prepare Memo

to

CONCURRENCES/COMMENTS*

PHONE* to action officer at ext.

6538

FYI

☐ Batjer

☐ Bemis

☐ Brooks

☐ Burns

☐ Childress

☐ Cobb

☐ Cockell

☐ Cohen

☐ Collins

☐ Danzansky

☐ Dean, B.

☐ Donley

☐ Douglass

☐ Ermarth

☐ Farrar

☐ Flower

☐ Fortier

☐ Grimes

FYI

☐ Henhoeffer

☐ Howard

☐ Kelly, B.

☐ Kelly, J.

☐ Kimberling

☐ Kissell

☐ Kraemer

☐ Linhard

☐ Mahley

☐ Major

☐ Mathews

☐ McNamara

☐ Oakley

☐ Paal

☐ Platt

☐ Porter

☐ Pugliaresi

☐ Reger

FYI

☐ Rodman

☐ Rosenberg

☐ Ross

☐ Rostow

☐ Saunders

☐ Scharfen

☐ Smith

☐ Sommer

☐ Sorzano

☐ Steiner

☐ Stevens

☐ Tahir-Kheli

☐ Thompson

☐ Tice

☐ Tillman

☐ Tobey

INFORMATION

☒ Green

☐ Carlucci (advance)

☒ *Cour May*

☐ Powell (advance)

☒ Secretariat

4568

COMMENTS

*4/26
P.S. Returned copy.
No further action.*

Logged By

DM

Return to Secretariat

NSC/S PROFILE

UNCLASSIFIED

ID 8704798

RECEIVED 23 JUN 87 19

T GREEN

FROM BURKE, FRANK G

DOCDATE 23 JUN 87

KEYWORDS: FOIA

ACCESS

NSDD

SUBJECT: RECORD KEEPING SUGGESTIONS FM NATL ARCHIVES

ACTION: APPROPRIATE ACTION

DUE: 25 JUN 87 STATUS C

FILES WH

FOR ACTION

FOR CONCURRENCE

FOR INFO

STEVENS

GREEN

COURTNEY

COMMENTS

REF#

LOG

NSCIFID

(MC CF)

ACTION OFFICER (S)

ASSIGNED

ACTION REQUIRED

DUE

COPIES TO

C 6/26 No Further Action Per Stevens

DISPATCH

W/ATTCH FILE

(C)

THE WHITE HOUSE

WASHINGTON

October 13, 1987

MEMORANDUM FOR GRANT S. GREEN, JR.
SPECIAL ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS

FROM: ARTHUR B. CULVAHOUSE, JR. *AB*
COUNSEL TO THE PRESIDENT

SUBJECT: NSC Continuity of Functioning and
Presidential Records

I have reviewed the above-referenced memorandum to the President concerning access to the President's records after he leaves office. In my view, there is no need to ask the President to authorize the National Security Council to "work with" the Counsel to the President. My office is prepared to work with you in every way possible to develop procedures for timely access to the President's records. The President's authorization would be required at such time as we are prepared to recommend the implementation of NSC access to Presidential records.

Since there is no legal requirement that the President authorize members of his Administration to work together and we are prepared to work with you on this matter, I do not believe the proposed memorandum to the President is necessary at this preliminary stage, although I do not object to its being presented to the President if the NSC deems obtaining such authorization to be prudent.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
04. Memorandum	For Robert Kimmitt From: George Van Eron Re: Status Report on Review of Institutional Documents (2 pp.)	1/8/85	(b)(1)	

Collection:

Record Group: Bush Presidential Records
Office: National Security Council
Series: H-Files
Subseries: Transition Files
WHORM Cat.:
File Location: NSC Procedural Manual - Binder 3 [1]

Date Closed: 9/4/2019	OA/ID Number: 99017-006
FOIA/SYS Case #: 2019-1493-S	Appeal Case #:
Re-review Case #:	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

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

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

Deed of Gift Restrictions

- C(1) Closed by Executive Order 13526, governing access to national security information
- C(2) Closed by statute or by the agency which originated the information
- C(3) Closed in accordance with restrictions contained in donor's deed of gift [formerly listed as only C]
- PRM. Removed as a personal record misfile

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

- P-2 Relating to the appointment to Federal office [(a)(2) 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]

MEMORANDUM

NATIONAL SECURITY COUNCIL

ACTION

August 17, 1984

MEMORANDUM FOR ROBERT M. KIMMITT
PAUL B. THOMPSONVIA: G. VAN ERON *for*FROM: CATHY MILLISON *clm*

SUBJECT: Review of Files

Ralph and I completed our work at Warrenton on Wednesday. We reviewed approximately 60 boxes of material and accumulated 3 boxes of papers and intelligence documents which will be returned to NSC this week.

We found some originals (approximately 30) which should have been returned to NSC/S prior to being "retired", but the majority of the material that we pulled ~~were~~ intelligence documents. This included 1 complete NID, pages torn from intelligence documents, copies of pages from NIDs and other intelligence publications.

Some of the boxes were in excellent condition (Pipes, Blair, Rentschler and Tyson). Others looked as though non-related material had been "stockpiled" for future filing in appropriate folders and never filed. One box (Sydell Gold's) contained nothing but copies of Daily News Summaries. We did not review staff boxes from Kimmitt (16) or Guhin (15) because of their familiarity with the system and their secretarial support.

In coordination with Paul and Brenda we will prepare a memo to circulate to the staff informing them of the results of our review and instructing them on what the boxes should contain.

RECOMMENDATION:

That you approve the drafting of the memorandum to the Staff.

Approve K Disapprove

cc: Brenda Reger

*Very good work and
results. Let's keep
the project going.*

*Bob
8/18*

MEMORANDUM

NATIONAL SECURITY COUNCIL

UNCLASSIFIEDINFORMATION

August 8, 1984

MEMORANDUM FOR: ROBERT M. KIMMITT
 VIA PAUL B. THOMPSON

FROM: GEORGE VAN ERON *V*

SUBJECT: Staff Box Inventory

Per Bob's request, a list of Staff boxes accumulated under the Reagan Administration follows:

	<u>IN COUNTRY</u>	<u>5th floor</u>	<u>3rd floor</u>
Fontaine	22		
Sapia-Bosch	2	4	
Tyson	22	1	
Blair	6		
Tanter	2		
Rentschler	2	4	6
Gold	8		
Pipes	6		
Stearman	3		
Shoemaker	3		
Lord	2	8	
Guhin	15		
Kimmitt	16	29	28
Kraemer	8	11	9
Reed	1		
Kaminsky	3		
Lenz	1		
Deal	1		
D. Gregg		2	
Russell		6	2
Bailey		5	
Sigur		1	
Myer		4	
Lord		8	
Helm		1	4
Pollock			1
Laux			6
Posa			3
Kemp			5
North			5
TOTALS	<u>123</u>	<u>73</u>	<u>60</u>

(OVER)

UNCLASSIFIED

Cathy Millison and Ralph Bellamy will go to the country on August 13th through 15th to review the boxes.

cc: Brenda Reger

UNCLASSIFIED

MEMORANDUM

NATIONAL SECURITY COUNCIL

November 5, 1983

MEMORANDUM FOR THE NSC STAFF

FROM: ROBERT M. KIMMITT *Bob*
SUBJECT: Presidential Diary

The Daily Diary kept by Ellen J. Jones of the Presidential Appointments and Scheduling Office is maintained as an unclassified log.

Please ensure that, if the names and affiliations of attendees are classified (i.e., intelligence agents), we take care that the list provided for the Diary does not reveal any classified information. In those cases, a classified and an unclassified list should be submitted, and the classified listing would not be forwarded to Ms. Jones.

Attachment

Ryan to Kimmitt Memorandum, October 31, 1983

THE WHITE HOUSE

WASHINGTON

October 31, 1983

MEMORANDUM FOR: ROBERT KIMMITT
FROM: FREDERICK J. RYAN, JR.
SUBJECT: Presidential Diary

A Presidential Diary is being maintained by Ellen M. Jones of the Presidential Appointments and Scheduling Office. The Diary is a comprehensive log of all the President's telephone calls, meetings, briefings, visitors, recreational and social activities, and travel.

The log is used by the Appointments and Scheduling staff in reviewing previous participation and planning of a balanced schedule for the President.

Other uses of the Daily Diary include responding to press inquiries, coordination of memos for the President's file, preparation of briefing papers, action memos or other Administration reports, and personal use by the President. With the increasing demand for accountability, the log has proven to be an invaluable source document for White House legal matters. The log also provides a record of lasting interest for future scholarly research.

It is the responsibility of the Project Officer for each Presidential event to prepare a confirmed list of actual attendees including their event to prepare a confirmed list of actual attendees including their full names and business titles. This list must be received in Presidential Appointments and Scheduling within five days after each event.

Thank you for your cooperation.

NATIONAL SECURITY COUNCIL

INFORMATION

February 9, 1981

MEMORANDUM FOR: NSC STAFF

FROM: JAMES W. NANCE *JW*

SUBJECT: Staff Instruction: Presidential
Records Act

You should have received and read Peter McPherson's memorandum on the Presidential Records Act (Tab A). As noted in the memorandum, there is a legal distinction between Presidential records, which are government property, and personal papers, which are the property of staff members. The purpose of this staff instruction is to define more clearly what constitutes personal papers, and to advise you that such papers should be kept separate from Presidential records.

The Presidential Records Act defines personal papers, in part, as

all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes--

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business

Papers that meet the above definition are your personal property and may be retained or disposed of as you desire. Items such as telephone or appointment logs may also be considered personal papers if they are employed as the functional equivalents of a diary or journal, rather than as instruments for transacting government business.

Definitional questions are sure to continue, even after the Counsel's office provides further advice on this subject. Please direct your questions on this subject to Bob Kimmitt.

THE WHITE HOUSE

WASHINGTON

January 28, 1981

MEMORANDUM FOR THE WHITE HOUSE STAFF
VICE PRESIDENT'S OFFICE

FROM: PETER McPHERSON *P.M.*
ACTING COUNSEL TO THE PRESIDENT

The Presidential Records Act, which went into effect on January 20, 1981, provides that Presidential Records are the property of the United States government and must be protected and preserved as such. Presidential Records are defined as matters "created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President, whose function is to advise and assist the President." A similar provision applies to the Office of the Vice President. Approval of the Archivist is needed to destroy these materials.

Not included in the term Presidential Records are materials of a private or personal nature which do not relate to or have any effect upon the carrying out of the President's or the Vice President's duties. Insofar as is possible the White House staff should try to segregate personal materials from Presidential Records.

This office has started to prepare regulations dealing with Presidential Records. We and the United States Archivist will prepare a manual of procedures to deal with our shared statutory obligations. It is important to keep the following guidelines in mind:

1. Do not destroy the originals of any document which could be viewed as Presidential Records, as defined above. Duplicative copies may be destroyed.

2. Keep personal matters segregated from official documents, preferably through the use of separate filing systems.
3. Any materials brought from the outside, e.g. Transition files and reports, are not per se Presidential Records. However, if such materials are used by the President or his advisers in the course of their duties, they then become subject to the Act and may not be destroyed or removed.

The Act just went into effect, and until detailed guidelines are issued there will of course be uncertainty about how the Act should be applied. At this time, we ask that you consider the definition of Presidential Records given above to make sure that you do not destroy or remove any documents which may be Presidential Records.

MEMORANDUM

0153

NATIONAL SECURITY COUNCIL

ACTION

February 5, 1981

MEMORANDUM FOR: RICHARD V. ALLEN
JAMES W. NANCE

FROM: ROBERT M. KIMMITT *Rob*

SUBJECT: Presidential Records Act

At Tab A is Peter McPherson's memorandum on the Presidential Records Act. As you requested, I have prepared a staff instruction, for Admiral Nance's signature, on the distinction between Presidential records and personal papers.

RECOMMENDATION:

That Admiral Nance sign the staff instruction at Tab I.

Attachment

cc: Brenda Reger

SIGNED
2/11/81

NATIONAL SECURITY COUNCIL

INFORMATION

February 9, 1981

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MEMORANDUM

NATIONAL SECURITY COUNCIL

ACTION

February 5, 1981

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JAMES W. NANCE

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SUBJECT: Presidential Records Act

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RECOMMENDATION:

That Admiral Nance sign the staff instruction at Tab I.

Attachment

cc: Brenda Reger

SIGNED
2/7/81

RECEIVED 30 JAN 81 13

TO

ALLEN

FROM MCPHERSON, P

DOCDATE 28 JAN 81

KEYWORDS: ADMINISTRATIVE

SUBJECT: PRESIDENTIAL RECORDS ACT

ACTION: PREPARE INFO MEMO TO ALLEN DUE: 01 FEB 81 STATUS S FILES

FOR ACTION

FOR COMMENT

FOR INFO

~~REGER~~
Kimmitt~~KIMMITT~~
Reger

TYSON

COMMENTS

REF#

LOG

NSC/FID

(D /)

ACTION OFFICER (S) ASSIGNED

ACTION REQUIRED

DUE

COPIES TO

Allen/Nance x 2/5 For Sig 2/7 CTV
C 2/9 Nance sgd memo to Staff RK, BR, CT

DISPATCH

W/ATTCH

FILE

(C)

MEMORANDUM

NATIONAL SECURITY COUNCIL

December 12, 1980

MEMORANDUM FOR: THE NSC STAFF

FROM: CHRISTINE DODSON *CD*

SUBJECT: File Disposition

In wrapping up the review of your files, I want you to give first priority to turning over items that are not in the system. It is critical for me to have everything in this category, as we have started assigning numbers and can run into mind-boggling troubles trying to avoid giving the same item more than one number. We have to work from copies occasionally so the fact you do not have any originals does not simplify matters.

To get the Outside the System items out first, you may have to go through the files just looking for them, ahead of the normal schedule for reviewing the file. But please do so. If you need, make an extra copy for yourselves but turn in the original or one copy if no original is found right away.

Please get to me all Outside the System items by next Wednesday, COB.