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BY THE COMPTROLLER GENERAL

Report To The Chairman, Committee On Energy And Commerce House Of Representatives OF THE UNITED STATES

The Reagan-Bush Transition Team's Activities At Six Selected Agencies

Review of Reagan-Bush transition team activities at six agencies revealed that, generally, all but one agency complied with procedures established for disclosing information, most of which was public.

Although no major problems were noted, GAO identified two matters which need to be clarified before the next transition. These involved (1) questions regarding transition team access to classified material and public access to other information provided the transition team; and (2) the need to assure that agencies obtain reimbursement for secretarial support provided the transition team.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-202340

The Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
House of Representatives

Dear Mr. Chairman:

This report is our response to your December 18, 1980, request that we examine the activities of the Reagan-Bush transition team at six Federal agencies which fall within the committee's jurisdiction.

As you requested, we did not obtain agencies' comments on this report; however, the facts were discussed with personnel of affected agencies and their comments were incorporated as appropriate. As arranged with your office, we plan no further distribution of this report until 30 days from its date unless you publicly announce its contents earlier. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT
TO THE CHAIRMAN, COMMITTEE
ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

THE REAGAN-BUSH TRANSITION TEAM'S ACTIVITIES AT SIX SELECTED AGENCIES

D I G E S T

The Chairman, Committee on Energy and Commerce, House of Representatives, requested that GAO examine the activities of the Reagan-Bush transition team at six Federal agencies--Department of the Interior, Department of Transportation, Federal Trade Commission, Environmental Protection Agency, Securities and Exchange Commission, and Nuclear Regulatory Commission--which fall within the committee's jurisdiction. The Chairman also requested that GAO identify and assess the adequacy of transition guidelines and procedures followed by the agencies; examine the activities of the transition team and the information requested and received by it; determine what conflicts of interest, if any, existed; and identify the total costs of the transition process.

GAO's review revealed that five of the six agencies generally followed procedures they established for controlling information disclosures and most of the information requested by and given the team by all six agencies was public. The sixth agency did not generally comply with its internal review procedures.

Federal conflict of interest laws and regulations generally do not apply to transition team members primarily because they are not Federal employees. The transition team did request and obtain some nonpublic information; however, GAO's review of those nonpublic documents did not indicate any advantage to be obtained by either the team members or their known business affiliations.

Although no major problems were noted, GAO did identify two matters which were of concern to the agencies reviewed and which need clarification.

--Some uncertainty about the circumstances in which the public could obtain information or records that were provided to the team arose because the transition team is not a Federal agency and its members are not Federal employees.

--Ambiguity on whether and under what circumstances transition team members should have access to classified material.

Additionally, GAO found that the Presidential Transition Act, General Services Administration (GSA), and Office of the President-elect procedures for obtaining details of agency employees to the transition team were not followed. This resulted in assigning a number of agency secretarial employees to the transition team on a nonreimbursable basis. Also, a transition team leader inappropriately involved himself in agency personnel matters by requesting the agency hire two transition team members.

INFORMATION PROVIDED WITHOUT PROBLEMS

The majority of the documents that had been given to the transition team contained public information. But, the transition team did request and obtain some information which could or normally would be withheld from the public under Freedom of Information Act criteria.

Some uncertainty existed concerning whether an agency could release nonpublic documents to the transition team and subsequently deny them to members of the public who request the same material under the Freedom of Information Act. While the Presidential Transition Act does not give team members the same status as Government employees, some agency officials believed that team members should not be considered members of the public for purposes of having access to information needed by the incoming administration. Some personal information on employees was also obtained which normally would be withheld from the public under the Privacy Act. (See p. 17.)

Each of the six agencies established procedures for controlling information disclosures. Five agencies adopted the policy of providing only public information to the transition team; the Department of the Interior did not use the public versus nonpublic distinction, adopting instead a policy of providing information that was legally releasable and of responding to requests that were reasonable. With few exceptions, five of the agencies complied with their established procedures. At the sixth

agency, the Department of the Interior coordinator did not generally review the Department's responses before they were provided to the team as called for by the Department's procedures. (See p. 8.)

Although members of an incoming administration may need to have access to classified material, the Presidential Transition Act, the statutes, and the Executive order concerning the safeguarding of national security information do not clearly specify whether and under what circumstances transition team members should have access to classified material. Although it was not a problem at the agencies GAO examined--only one confidential document was provided to the team--clarification of the circumstances in which access may be granted would provide greater assurance against unauthorized disclosures. (See p. 19.)

Federal conflict of interest laws and regulations generally do not apply to transition team members primarily because they are not Federal employees. Although GAO identified 13 transition team members connected with business and law firms that had ongoing interests with the agencies where they were working, GAO's review of the nonpublic documents provided the team at the agencies did not indicate any advantage to be obtained by the team members or their known business affiliations. The agencies, however, generally did not have information on transition team members' business interests. (See p. 20.)

GAO believes that it would be beneficial if in future transitions the President of the United States or his designee would provide guidance to executive branch agencies establishing criteria for deciding when records and information that would not be disclosed to the public, including classified material, may be made available to the transition team. This would include establishing appropriate controls over the transition team's disclosure of such information. (See p. 26.)

SIZE AND COST OF THE REAGAN-BUSH TRANSITION

The Chairman requested GAO's opinion on the legal responsibilities of independent regulatory agencies regarding the transition team and information on the size and cost of the transition team.

The Presidential Transition Act directs all Government officers to, among other matters, take appropriate lawful steps to promote an orderly transition. About 100 Federal agencies, including independent regulatory agencies, participated in the Reagan-Bush transition process. It is GAO's opinion that such participation was appropriate and consistent with the Transition Act. (See p. 27.)

Transition costs incurred by the incoming administration were supported by Federal funds appropriated pursuant to the Presidential Transition Act and by funds furnished by two private sources established to provide funds in addition to those appropriated by the Congress. The incoming Reagan administration spent about $1.7 million of the $2 million in Federal funds made available to it. GAO did not have access to the books, records, and accounts for the private funds; therefore, it is unable to report on the total amount of funds raised or the purposes for which the funds were used. (See p. 28.)

The six agencies estimated that about $235,000 in transition-related expenses were charged to their general appropriations. Most of these expenses were incurred for gathering and communicating information about agency operations to the transition team. However, some agency expenses were incurred for salary costs of several agency secretarial and clerical employees who were assigned to the transition team on a nonreimbursable basis and who worked at the transition team's direction on a full-time or substantially full-time basis. The Presidential Transition Act requires that details of agency employees to the transition team be made on a reimbursable basis only. The Presidential Transition Act, Office of the President-elect, and GSA procedures for details of agency employees to the transition team were not followed in every case. (See p. 36.)

At one of the agencies reviewed, GAO found that a Reagan-Bush transition team leader inappropriately involved himself in agency personnel activities by requesting the agency to hire, as secretaries, two members of the transition team. The two team members were hired by the agency during the transition period, and both continued working

directly for the transition team leader on a nonreimbursable basis. (See p. 39.)

RECOMMENDATION TO THE ADMINISTRATOR, GSA

At the beginning of the transition period, the Administrator, GSA, should notify agencies and the Office of the President-elect that the Presidential Transition Act provides that agency employees may only be detailed to the transition team on a reimbursable basis. (See p. 41.)

AGENCY COMMENTS

As requested by Chairman Dingell, GAO did not provide copies of its report to the agencies for their comments. GAO did hold oral discussions of factual matters with agency officials to ensure accuracy.

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DOT	Department of Transportation
EPA	Environmental Protection Agency
FOIA	Freedom of Information Act
FTC	Federal Trade Commission
GAO	General Accounting Office
GSA	General Services Administration
NRC	Nuclear Regulatory Commission
OMB	Office of Management and Budget
OPM	Office of Personnel Management
SEC	Securities and Exchange Commission
SLUC	Standard Level User Charge

Contents

ABBREVIATIONS

DOI	Department of the Interior
DOJ	Department of Justice

CHAPTER 1

INTRODUCTION

A change in the Presidency is a critical event which profoundly affects the entire government. For this reason, it is essential to have a transition mechanism which promotes an orderly change in administrations and the maintenance of an effective Presidency. The Congress recognized this need by enacting the Presidential Transition Act of 1963 (3 U.S.C. 102 note) as a means to establish a formal transition process that would promote continuity in conducting the Federal Government's domestic and foreign affairs.

This report discusses our examination of the activities and cost of the most recent transition at six Federal agencies which are under the jurisdiction of the Committee on Energy and Commerce, House of Representatives. (See p. 3.)

AN ORDERLY TRANSITION IS IN THE NATIONAL INTEREST

A change in the Presidency is a critical event which profoundly affects the entire government regardless of the people involved or the political philosophies they represent. Frequently, we have the national task of terminating the business of one administration, preparing the President-elect and his associates for the duties they will assume on Inauguration Day, and making sure that vital command functions are preserved without an interruption.

For most of this country's history, it was assumed that the outgoing President and Cabinet could pick up their papers and leave on Inauguration Day and that the new President and Cabinet could begin exercising their executive functions at that time with little specific preparation or advance communication between the two administrations. With limited preparation and a lack of authoritative information about previous decisions and pending policy problems, the new President took command of a government without clearly established policy lines. Although new Presidents and their Cabinets began to establish their policies after the inauguration, there was confusion, delay, wasted motion, and frequent inability to make informed responses to changing events during the first few months of new administrations.

Today, maintenance of effective continuity in the executive branch is clearly required. The Federal Government has enormous and highly complex global responsibilities. Although career public servants can manage these activities on the basis of existing policies, changes in conditions and problems occur so rapidly

that constant top-level leadership and managerial control are required. The Government can no longer afford to have a period of slackness at the top with the resulting quick pileup of problems, conflicts, and missed opportunities for achieving program goals.

In addition, since the people expect prompt implementation of the political decisions they made on election day, the President-elect and his associates must become informed in detail about current Government policies and operations so they can begin making informed substantive policy decisions before taking office, and get prepared for problems they will inherit from the outgoing administration. They must establish policy priorities and approve specific proposals for the legislative program they will present to the Congress immediately after the inauguration. They must also examine the budget so that they can promptly request changes which reflect their own policy goals.

PRESIDENTIAL TRANSITION ACT
PROMOTES ORDERLY TRANSITIONS

About 20 years ago, the Congress recognized the problems of Presidential transitions, and thus provided for a more orderly transfer of executive responsibilities. Since then, Presidents-elect have assembled larger staffs and facilities to conduct more extensive transitions.

Before 1963, the transition was an informal process which depended primarily on private funding and volunteer services for support. The old and new administrations had almost no substantive communication on domestic and foreign policy issues. Furthermore. the transition was primarily supported by the funds of the President-elect's party and the efforts of unpaid volunteer staff.

To overcome these problems, the Congress, in 1964, authorized the outgoing President to extend needed Government facilities and services to the President-elect to help him assemble his staff and prepare them for their new responsibilities. The Congress did this by enacting the Presidential Transition Act of 1963, as amended, to promote the orderly transfer of executive power by establishing a formal transition process for maintaining continuity in the Government's domestic and foreign affairs. The act directs Government officials to promote orderly transitions in the Office of the President by taking appropriate lawful steps to avoid or minimize disruptions that might occur because of the transfer in executive power.

To implement the act, the Congress has authorized up to $2 million for the Administrator, General Services Administration (GSA), to provide the facilities and services needed by the President-elect and Vice-President-elect to prepare for the

assumption of their official duties. Services and facilities for which the funds may be used include:

--Suitable office space appropriately equipped with furniture, furnishings, office machines and equipment, and office supplies at the place or places within the United States designated by the President-elect or Vice-President-elect.

--Compensation of office staffs at pay rates not to exceed that of a GS-18. Any Federal employee may be detailed to such staffs on a reimbursable basis at his or her regular rate of compensation.

--Procurement of the services of experts or consultants.

--Travel expenses and subsistence allowances.

--Communications services.

--Printing and binding.

--Postage.

The Administrator may use the funds only to pay obligations incurred by the President-elect and Vice-President-elect from the day following the general election to the day of inauguration.

Since enactment of the Presidential Transition Act, Presidents-elect have assembled more extensive staffs and facilities to conduct their transitions. The first use of Transition Act funds by an incoming administration was in 1968-1969 when the Nixon administration spent the $450,000 made available to it under the act, plus approximately $1 million in private funds. In 1976-1977, the incoming Carter administration spent approximately $1.7 million of the $2 million made available to it pursuant to the act, without any reported private additional assistance. The incoming Reagan administration spent about $1.7 million of the $2 million in Federal funds made available to it, plus an unreported amount of funds solicited from the public.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this report is to respond to the request of the Chairman, Committee on Energy and Commerce, House of Representatives, that we examine and report on the activities of the Reagan-Bush transition team at six Federal agencies--Department of the Interior (DOI), Department of Transportation (DOT), Federal Trade Commission (FTC), Environmental Protection Agency (EPA),

Securities and Exchange Commission (SEC), and Nuclear Regulatory Commission (NRC)--which fall within the committee's jurisdiction. (See appendix.)

We conducted our review at the six agencies, primarily between January and June 1981. At the request of the Chairman, we sought to identify and assess the adequacy of transition guidelines and procedures, examine the activities of the transition team, determine whether public or nonpublic information was requested and received by the team, and identify the total costs of the transition process. At each agency, we examined listings of the information requested by the team, copies of the documents provided in response to team requests, and copies of the guidance used by the agencies in managing the transition process.

At each agency, we requested estimates of the amount of agency funds spent to provide services and to gather and communicate information about agency operations to the transition team. Since agencies were not required to maintain any records of such expenditures, officials generally provided us with expense figures that were based on their recollections of staff time and resources spent to assist and provide information to the transition team. Any agency expenses reimbursed from Transition Act funds were confirmed at GSA.

In addition, we interviewed key agency officials who briefed or otherwise provided information to the transition team. We did not interview any members of the transition team, except those presently employed by the agencies. As requested by Chairman Dingell, we did not provide copies of our report to the agencies for their comments. We did hold oral discussions of factual matters with agency officials to ensure accuracy.

We also examined Federal laws and regulations such as the Presidential Transition Act of 1963, as amended, that are relevant to the transition process. Although the transition team did not use Freedom of Information Act (FOIA) (5 U.S.C. 552) and Privacy Act (5 U.S.C. 552a) procedures for requesting information, in order to address Chairman Dingell's request, we asked agency FOIA and Privacy Act experts to use these procedures as criteria for determining whether information that would not have been made available to the public had been provided to the team. However, we should emphasize that there is no legal requirement that expressly or by clear implication establishes a general rule that transition team members can only have access to information or records that are available to the public.

CHAPTER 2

AGENCIES PROVIDED INFORMATION TO THE TRANSITION TEAM WITHOUT MAJOR PROBLEMS

Chairman Dingell stated in his letter to us that the committee was concerned about the lack of uniform guidance governing the actions of the agencies regarding the transition team. He was concerned that private individuals on the team may have obtained nonpublic information containing sensitive data that could be useful to them or their employers in the private sector.

"Nonpublic information," as used in this report, is information that ordinarily would not be made available to the public under the Freedom of Information Act (FOIA) or otherwise. However, there are no Federal laws or regulations that require agencies to use FOIA criteria in determining whether to disclose records to the transition team.

Each of the six agencies reviewed had established procedures for controlling information disclosures. Five agencies adopted a general policy of providing only public information to the transition team; DOI generally did not use the public versus nonpublic distinction, but adopted instead a policy of providing information that was "legally releasable if the request was reasonable." With few exceptions, five of the agencies complied with their established procedures. The DOI coordinator, however, did not generally review DOI's responses before they were provided to the team as called for by DOI's procedures.

The majority of the documents we reviewed that had been given to the transition team contained public information. Agency officials told us that only public information was provided in briefings of team members. The team did request and obtain some information which could, or normally would, be withheld from the public under FOIA criteria. Also, Federal conflict of interest laws and regulations generally do not apply to transition team members, primarily because they are not Federal employees. Although we identified 13 transition team members connected with business and law firms that had ongoing interests with the agencies where they were working, our review of all agency documents, both public and nonpublic, that the agencies provided to the team did not indicate any advantage to be obtained by the team members or their known business affiliations. The agencies, however, did not generally have information on transition team members' business interests to conduct their own complete conflict of interest examinations.

We noted two issues which should be clarified.

--There was some uncertainty about the circumstances in which the public could obtain information or records that were provided to the team. The uncertainty arose because the transition team is not a Federal agency and team members are not Federal employees.

--The Presidential Transition Act, the statutes, and the Executive order governing the safeguarding of national security information do not clearly specify whether, and under what circumstances, transition team members should have access to classified material. Although it was not a problem at the six agencies reviewed--only one classified document was provided to the team--clarification of team access to classified information could provide greater assurance against unauthorized disclosure.

GENERAL GUIDANCE ALLOWED AGENCY DISCRETION ON WHAT INFORMATION TO GIVE THE TRANSITION TEAM

Federal agencies were given general guidance by the White House on what subjects to cover in the information to be provided the transition team. In addition, the Office of Management and Budget (OMB) issued specific instructions to the agencies which identified certain budget and personnel information that should not be provided to the team. Within those guidelines, agency officials had considerable discretion in deciding on the content, i.e., public or nonpublic, of the information to be provided to transition team members.

On November 10, 1980, Mr. Jack Watson, President Carter's transition coordinator, sent a memorandum to Cabinet and agency heads to confirm and clarify the President's instructions regarding the transition. Mr. Watson instructed them "* * * to be helpful and forthcoming in every way possible." More specifically, he told them to prepare concise briefing materials containing information that would be immediately useful to incoming officials for the following subjects.

--Agency missions, programs, and statutory authorities.

--Basic organization and functions.

--Budgetary and financial information, except for fiscal year 1982.

--Personnel policies and administration--nature and tenure of appointment to major positions, conflict

of interest, compensation and benefits, and supporting services.

--Key senior career personnel.

--Significant interagency relationships.

--Budget and appropriation processes.

--Legislative processes, including legislative clearance requirements.

--Issues and priorities, with emphasis on matters requiring immediate decision and those requiring action during the first quarter of 1981.

The memorandum further stated that the exact content of the transition briefing materials would be determined by each agency.

With some exceptions, the White House let the agencies decide whether the transition team would have access to information that was not available to the public. In two memorandums to agency transition coordinators, OMB provided specific guidance limiting transition team access to certain personnel and budget information.

In a November 21, 1980, memorandum to agency transition coordinators, OMB advised the agencies of an Office of Personnel Management (OPM) opinion that the transition team could have only limited access to personnel information. The memorandum specified that no performance evaluation information or information from a Form SF-171 Personal Qualifications Statement could be provided to the transition team without the express consent of each respective employee because to do otherwise might violate the Privacy Act. Attached was a November 21, 1980, memorandum advising agency personnel directors that the Privacy Act prohibited them from providing transition team members with official personnel folders. Instead, OMB and OPM instructed the agencies to provide the team with resumes or summaries if the information was already public. These instructions did not specify what should be considered resume, summary, or public information. They also did not refer agency officials to OPM regulations (5 C.F.R. §294.701 to §294.703) which specify the types of personnel information that may be disclosed to the general public or to prospective employers.

In a December 23, 1980, memorandum to agency transition coordinators, OMB specified that fiscal year 1982 budget information should not be provided to the transition team. The memorandum stated that certain fiscal year 1982 budget material had been given to the OMB Director-designate, but that departmental budget requests, OMB actions on the requests, and appeals to OMB should remain confidential until President Carter had made his final decisions.

AGENCIES IMPLEMENTED POLICIES AND PROCEDURES TO GENERALLY PROVIDE PUBLIC INFORMATION

Chairman Dingell asked us to learn what had transpired at the agencies regarding the transition; what data requests were made; how the data requests were handled and approved or rejected; and what laws and regulations, if any, were violated or ignored by the agencies or others.

The six agencies reviewed had established procedures that included appointing transition coordinators to work with transition team members and requiring that information requests and responses be controlled by the coordinators. With few exceptions, five of the agencies complied with their established procedures. The DOI coordinator, however, generally did not review DOI responses before they were provided to the team.

Transition coordinators at five agencies used the FOIA and the Privacy Act as guidelines for releasing information to the team, and one used the criteria of reasonableness and legality. Most of the information requested by and provided to the transition team by the six agencies was public information. The transition team did request some information which was or could have been considered nonpublic at the time, and in most cases the agencies provided the information.

The agencies generally complied with established procedures for receiving and responding to requests for information

With few exceptions, five agencies complied with the procedures they established for working with the transition team. The DOI coordinator, however, did not generally review the responses before they were provided to the team.

All six agencies established procedures for controlling the access of transition team members to agency information. These procedures included the following steps.

--Appointment of a single transition coordinator by each agency head.

--Requirement that all transition team information requests be given to the coordinator for clearance and distribution to appropriate agency officials who would then draft the responses.

--Requirement that documented responses be sent to the coordinator for review before being given to the team.

--Requirement that the coordinator arrange all briefings.

Department of the Interior

Although the DOI transition coordinator reviewed the transition team information requests presented to him, he generally did not review the responses provided to the team as provided for in DOI's procedures. In some cases, the coordinator and the team received the information at the same time, and in others, he did not receive a copy at all.

According to the coordinator, he did not always review documents before they were given to the team because he assumed the agency officials providing the material would review it. However, some officials assumed the coordinator would review their material since it was being routed through him and since they had not been instructed to review the material before giving it to him. Although it was not a problem during the transition, information potentially could have been released to the transition team which did not meet DOI's criteria for release.

The transition coordinator also emphasized to the heads of bureaus and offices that they were to make sure that all of their staff understood that no one in DOI was to work directly with anyone on transition matters without going through him. However, some DOI employees and transition team members bypassed the transition coordinator and worked directly with each other. Of the nine DOI employees responsible for responding to transition team requests that we interviewed, eight told us they had worked directly with transition team members. Some contacts were initiated by DOI employees and others by team members. Examples of where the transition coordinator was bypassed included:

--The Director, Office of Outer Continental Shelf Program Coordination, met with a transition team member and discussed fiscal year 1982 budget information which the team member possessed. No record of the meeting was kept and the transition coordinator was not notified of the meeting.

--At his request, a transition team member met with the DOI Deputy Solicitor to ask him to delay further hiring of attorneys under the Solicitor's Honors Program which is used to recruit future law school graduates. For DOI to remain competitive with private law firms, job offers had to be made by December 15. When the request was made, the Department had completed its anticipated hiring, and the request, therefore, did not have any direct effect on the Department's hiring for the Solicitor's Honors Program.

In addition, the DOI transition coordinator required that

> "* * * when briefings are held a summary should be prepared and submitted to me within 48 hours. This summary should include the date of the briefing and list of those in attendance."

DOI officials held 11 briefings for the transition team between November 20 and December 18, 1980, which the transition coordinator did not attend, but no summaries were prepared. A list of these briefings was prepared shortly after January 12, but it did not include the exact subjects discussed.

Department of Transportation

DOT employees generally complied with the procedures established for dealing with the transition team.

There were three instances in which a transition team member at DOT attempted to either bypass the transition coordinator, the transition team leader, or both in obtaining information. In each instance, DOT employees referred the request or their response to the coordinator who then satisfied the request.

--On December 5, a team member requested information directly from the Acting Administrator of the Federal Railroad Administration. The Acting Administrator forwarded the requested information to the DOT transition coordinator, who then gave it to the team.

--On December 16, the same team member again bypassed the transition coordinator and the team leader by requesting information directly from the Associate Administrator for Federal Assistance, Federal Railroad Administration. The transition coordinator learned about this request before it was filled and contacted the team leader to ask that the team member honor the agreement that all requests be made by the team leader to the coordinator. The team leader contacted the team member who then submitted his request as provided by the agreement between the team and DOT. DOT provided the information requested.

--On December 17, the same member bypassed the team leader and directly contacted the transition coordinator to request a briefing by the Acting Administrator of the Federal Railroad Administration. The coordinator arranged for the briefing.

The transition team leader at DOT told us that when this member bypassed him and the coordinator, he was no longer a member of the

transition team but was then helping the Secretary-designate prepare for his confirmation hearings. DOT officials, however, were not told about this change at the time the requests were being made.

In two other instances, DOT employees told us they had provided information directly to the team without it being reviewed by the transition coordinator. The Acting Administrator of the Federal Railroad Administration and the Director of the Office of Policy, Plans and Administration of the Research and Special Programs Administration told us that they had given copies of material jointly to the team and the transition coordinator. Neither recalled exactly what information was involved.

Environmental Protection Agency

EPA employees generally complied with the procedures established for providing information to the transition team. One EPA official bypassed the transition coordinator and supplied information directly to the transition team. The information included descriptions of, and fiscal year 1981 budget data on, EPA categorical grant programs. The official told us that he did not think it was necessary to send the information to the transition coordinator because all the information was public.

Federal Trade Commission

FTC employees generally complied with procedures established for providing information to the transition team. We identified only one instance where the transition team requested information from an FTC employee who then provided the team with documents in response to its request without the prior knowledge of the transition coordinator. The employee later provided the coordinator with a list of the documents. Both the employee and the coordinator told us that the documents contained only public information.

Nuclear Regulatory Commission

NRC employees generally complied with established procedures for providing information to the transition team. The NRC coordinator, however, was not aware of all requests for information and did not review all documents before they were given to the team. Sometimes copies of the information sent directly to the team were later sent to the coordinator. We identified 10 instances in which the transition team dealt directly with NRC's Office of General Counsel. Examples of information provided directly to the team by the Office of General Counsel included

--four briefing books prepared in 1977 and 1978 for the Commissioners by the Office of Policy and Evaluation,

--a list and descriptions of pending adjudicatory matters having special policy significance,

--a list of 43 pending court cases involving NRC, and

--a memorandum with a 20-page attachment discussing reports on the siting of nuclear plants.

Officials of other offices also dealt directly with the team. For example, the team was directly supplied with information on NRC's advisory committees and how it would respond to oil emergencies.

Securities and Exchange Commission

On the basis of interviews with SEC employees and our review of information requested and provided the transition team, we did not identify any deviations from SEC's procedures to provide information to the transition team.

Agencies generally adopted and implemented the policy of providing public information to the transition team

Five agencies adopted the general policy of providing only public information to the transition team. DOI did not use the public versus nonpublic distinction, adopting instead a policy of providing information that was legally releasable if the request was reasonable. The majority of the documents we reviewed that had been given to the transition team by the six agencies contained public information. The team did request and obtain some documents containing information which could or normally would be withheld from the public using FOIA criteria. Some personal information about employees was also obtained that one agency had not previously released to the public.

There was little documentation concerning the specific matters discussed during briefings of transition team members. However, agency officials told us that only public information was discussed.

Regulatory agencies decided to provide public information to the team

The four regulatory agencies--EPA, SEC, FTC, and NRC--adopted and generally implemented the policy of providing only public information to the transition team.

Officials at the regulatory agencies agreed with transition team officials, early on in the transition, to provide only public

information to the team. General Counsels of SEC, FTC, and NRC informally agreed on this with a top transition official at a meeting in November 1980. The SEC transition coordinator told us that the agencies sought this agreement because of uncertainty about whether the transition team was legally entitled to nonpublic information. EPA officials reached a similar agreement with the transition team when the team arrived at the agency in November 1980.

Regulatory agency officials told us that their agreement with the team was implemented by providing the team with documents already in the public domain. With one exception, all the documents we examined contained public information. The exception was a copy of NRC's fiscal year 1981 budget submission to OMB. Had a member of the general public requested the budget submission, it ordinarily would not have been provided. OMB Circular A-10 provides that such documents are "exempt [under FOIA] from mandatory release * * * and an agency should not release such records prior to the expiration of the fiscal year to which such records pertain."

At EPA, we were unable to examine all the documents provided to the transition team. Agency officials did not maintain a record of the information requested by the transition team or copies of the documents provided to it. They could only provide us with copies of documents they remembered giving the team.

Transition team members were briefed by 19 officials at EPA, 15 officials at SEC, and 17 officials each at FTC and NRC. Included were officials in charge of some of the major departments of those agencies. There was no documentation on the briefings, but the officials we interviewed told us that only public information was discussed.

Department of Transportation provided some nonpublic information to the transition team

DOT provided 31 written responses to information requests by the transition team. Briefings by eight officials at DOT were not documented. According to the Acting Secretary of Transportation, the Department used FOIA and Privacy Act criteria for responding to transition team information requests. He further stated that all the information, except for one classified document, is available to the public.

At our request, the expert on FOIA in the DOT Office of General Counsel and the DOT FOIA Officer reviewed the 31 unclassified written responses using FOIA criteria. They determined that 10 of the 31 responses, or 32 percent, contained information which would have been withheld from members of the general public had they requested it at the time it was provided to the transition team. The information, which normally would or could have been exempt from public release under FOIA included

--a letter to OMB from the Secretary of Transportation;

--the Coast Guard's fiscal year 1982 Spring Preview Issue Paper on Capital Investment Plan Strategy;

--a list of key Inspector General investigations;

--a Federal Railroad Administration draft report entitled "Planning, Restructuring and Rehabilitating Improved Rail Freight Systems";

--a memorandum to the Secretary of Transportation from the Administrator, Urban Mass Transportation Administration, concerning the alternate work schedule and flexitime program;

--the anticipated number of persons to be hired under the Intergovernmental Personnel Act;

--a paper proposing the creation of a Surface Transportation Administration within DOT;

--information on two Letters of Intent by the Urban Mass Transportation Administration;

--information on the financial impact of reorganizing Conrail; and

--DOT fiscal year 1981 budget worksheets.

The DOT transition coordinator denied the transition team's request for the official personnel records of senior officials. Instead, he gave the team a copy of a briefing book containing the name, title, duty station, type of appointment, birth date, picture, education, professional experience, and honors and awards for 223 senior department employees. With the exception of birth dates and pictures, the contents of the briefing book had previously been released to the public under a FOIA request. According to DOT's FOIA officer, all 223 individuals had provided either written or verbal consent to releasing most categories of information to the general public. However, because some officials objected to releasing birth dates and pictures, the Office of Public Affairs determined that both categories of information would be withheld from the public for all 223 officials. Believing that the briefing book, in its entirety, had been released to the public, the personnel director released to the team the book which contained all categories of information, including the birth dates and pictures of those officials who had previously objected to its release.

We requested from DOT copies of all written consent forms authorizing release of information for all 223 officials contained

in the briefing book. We received written authorizations releasing all or part of the biographical information for 125 officials. No written authorizations were obtained for the remaining 98, or 44 percent, of the 223 senior officials discussed in the briefing book. DOT's FOIA officer stated that although no written authorizations were obtained, the officials were contacted and verbally consented to releasing most categories of information.

DOT's Director of the Office of Public Affairs felt that written consents were not needed to release any of the information provided to the team, except for birth dates and pictures. In his opinion, disclosure of birth dates and pictures without the officials' consent would constitute a clearly unwarranted invasion of privacy.

On this point, it is clear that the mere fact that employee information is covered by the Privacy Act does not mean it can never be disclosed to the public or to Government officials outside the employee's agency. Assuming an individual does not consent in writing to the disclosure, release may nevertheless be required under FOIA if disclosure would not result in a clearly unwarranted invasion of privacy. See 5 U.S.C. 552a(b)(2) and 552 (b)(6). The oral consent of an employee to disclosure of his/her date of birth and photograph is a factor agencies may consider when determining whether disclosure would constitute an unwarranted invasion of privacy. As for the release of photographs of key agency officials to transition officials without their express consent, we believe an agency could reasonably determine that such a disclosure would not constitute an unwarranted invasion of privacy when made to transition officials who are acquainting themselves with key agency personnel. To the extent that birthdates were released without oral and written consent, DOT officials acknowledged that such disclosures, if any, would have been inconsistent with their disclosure criteria.

DOI officials established a policy of disclosing information that was legally releasable and responding to requests that were reasonable

DOI officials did not use the public information criteria for determining what to disclose to the transition team; instead, they adopted a policy of providing information that was legally releasable and of responding to requests that were reasonable.

DOI provided 94 written responses to the information requests of the transition team and had the team briefed by 77 agency officials. At our request, the Department's Assistant Solicitor who handles FOIA appeals reviewed 35 written agency responses on non-personnel matters and concluded that 15 contained information subject to FOIA disclosure exemptions, portions of which would normally be withheld from the public. He also told us that some personnel

information provided to the transition team was contained in records covered by the Privacy Act and generally not releasable without prior written consent by the agency employee.

DOI's Assistant Solicitor told us that the following information provided to the transition team was exempt from release to the public under provisions of FOIA.

--Portions of seven documents were exempt from public release because they included such information as staff policy advice, opinions and recommendations to the Secretary, and a draft report on Outer Continental Shelf Leasing.

--A list of contracts, in excess of $10,000 which were pending on November 1, 1980, was exempt because it contained anticipated contract cost information that would not be made public in some cases before the contracts were awarded.

--A list of anticipated lawsuits which would be withheld from the public if requested under the FOIA.

At the request of the transition team, the DOI transition coordinator provided detailed information concerning 196 senior career officials. The information provided about these individuals included their name; grade; salary; status; position; date and place of birth; employment history; education; publications; professional activities; membership affiliations; awards and honors; 1980 performance rating; names of spouses and children, if any; and home address.

Because OPM regulations require that prior written consent be obtained before agencies release personnel information covered by the Privacy Act, we examined copies of the released materials to determine in how many cases written consent by the individuals had been obtained. Our examination of all 196 resumes given to the transition team revealed that 129 of the individuals had given written consent, 24 indicated that an oral release had been obtained, and 43 had no indication that permission had been obtained to release the information.

The transition coordinator said that because some of the requested information was not clearly public information, he requested DOI's Personnel Office to contact the individuals involved to ask their approval to release the information. He said the information was not released for individuals who could not be reached or declined to approve the release. According to the transition coordinator, signed release documents were obtained in almost all cases and oral consents to release the information were obtained in the few cases where individuals were on extended leave or travel. In the opinion of the coordinator, if any violation of the Privacy Act occurred, it was a

technical violation and not intentional, since it was his understanding that every person had consented in writing or verbally before the Department released information about them.

Questions raised concerning the release of nonpublic information to the transition team

There were two issues raised during the transition involving the disclosure of nonpublic information to members of the transition team. These two issues concerned

--whether the public could obtain information or records that were provided to the transition team and

--whether and under what circumstances transition team members should have access to classified material.

Because there is some official information which must be subject to constraints, particularly classified material, criteria are needed to protect such information from unauthorized disclosure during a transition. Although it was not a problem at the six agencies we reviewed, clarification could provide greater assurance against unauthorized disclosures during future transitions.

Some uncertainty about the public's right of access to nonpublic information provided to the transition team

There was some uncertainty concerning whether an agency could release nonpublic documents to the transition team and subsequently deny them to members of the public who request the same material under the FOIA. Although the communication of information to the transition team seems implicit in the Presidential Transition Act, the act does not specifically address the transition team's access to agency records or the types of information to which it should have access.

The FOIA requires disclosure of all records except for documents falling within the scope of nine specific exemptions. When a record is covered by an exemption, disclosure is not necessarily precluded; the agency generally retains the discretionary authority to release the document, subject, of course, to restrictions on the disclosure of classified data and proprietary information. A question developed in the most recent transition concerning whether disclosure of exempt documents to the transition team would preclude an agency from later invoking the exemption as against requests from the general public.

Some agency officials told us that they were unsure whether release of exempt documents to the transition team would preclude them from subsequently denying the documents to members of the public who might request the same information under FOIA. Some DOI officials concluded that the exemption would not be waived because they believed transition team members nad the status of special Government employees. An internal White House memorandum indicated that agency communications with the transition team could be considered " eragency," and therefore exempt from disclosure under the FOIA exemptions for interagency memorandums.

Both of these positions have their weaknesses and are difficult to apply in the context of the transition. First, transition team members do not clearly satisfy the statutory definition of "special government employee," see 18 U.S.C. 202(a), and the Transition Act specifically provides that transition team members shall not be considered Government employees for any purpose except health, pay, and retirement benefits. Second, there is nothing in the Presidential Transition Act or the FOIA to indicate that the Office of the President-elect is an agency of the Government. Under these circumstances the basis for concluding that communications with transition team members are "interagency" in nature seems questionable. The transition team concluded that it was not an agency for any purpose. We believe that legislation would be necessary to clearly establish transition team members as "special government employees" or to establish the Office of the President-elect as an agency of the Government.

We discussed this matter with Justice Department and GSA officials, who explained that there is another, more recognized basis for concluding that FOIA exemptions are not waived when so-called exempt records are disclosed to the transition team. Agencies very often disclose records exempt from mandatory release in order to cooperate with State, local, or foreign agencies, but do not release such records to the general public. Although case law on this issue is limited, the few cases that have considered the question indicate that selective disclosure of exempt material is permissible, provided the difference in treatment is not arbitrary and does not otherwise amount to an abuse of discretion. The basic limitation seems to be that the justification for releasing exempt material to one third party and not another must be reasonable and not unfair. 1/

In May, 1980, the Justice Department's Office of Information Law and Policy issued agencywide guidance that dealt generally with the circumstances warranting the disclosure of exempt

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1/See State of North Dakota v. Andrus, 581 F.2d 177, 180 (8th Cir. 1978); Hallein v. Helms, No. 77-1923 C.D.C. Cir., (filed June 16, 1978); Committee to Investigate Assassinations v. Department of Justice (Cir. No. 3691-70 C.D.C. Cir. 1973).

documents to some third parties and not others. This guidance generally concluded that, absent an abuse of discretion, selective disclosure does not create a corollary right of access to the general public. However, the guidance does not deal specifically with agency disclosures to the transition team.

Transition team access to classified material also needs clarification

Although members of an incoming administration may need to have access to classified material, the Presidential Transition Act, the statutes, and the Executive order concerning the safeguarding of national security information do not clearly specify whether and under what circumstances transition team members should have access to classified material. Although it was not a problem at the agencies we examined--only one confidential document was provided to the team--clarification could provide greater assurance against unauthorized disclosures.

The DOT transition coordinator provided one confidential U.S. Coast Guard document to a transition team member who had been given a temporary security clearance. The document was provided to help the team assess the Coast Guard's ability to fulfill its missions at the time of the transition.

The Presidential Transition Act is silent concerning transition team access to classified information. While not dealing specifically with the transition team, the Atomic Energy Act of 1954, as amended, and Executive Order 12065 provide general guidance regarding access to classified information. 1/ Both require that responsible agency officials grant access to an individual only if it is determined that the individual is trustworthy and that access is necessary to the performance of "official duties." Section 4-301 of the Executive order authorizes case-by-case waivers of the "official duty" requirement, provided the individual to whom access will be granted previously occupied a policymaking position with the Government, or, alternatively, is engaged in a historical research project. Access under section 4-301, which generally does not apply to transition team members, is highly controlled and must be justified in writing.

The term "official duties" is not defined by statute or in the Executive order. And other than the categories of individuals covered under section 4-301's waiver authorization, there is no

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1/Though not relevant here, Executive Order 10865, issued February 23, 1960, establishes more elaborate procedures for granting access to or within private industry (e.g., defense contractors).

inference that the term should be read narrowly and only in connection with the duties performed by Government employees. Although transition team members do not qualify as Government employees, they are participating in a function recognized by statute, namely, the transition of executive power to a new administration.

We believe amplification of the executive's policy on transition team access to classified information would be desirable and would minimize confusion regarding the intended operation of Executive Order 12065 in the transition context.

NO TRANSITION TEAM CONFLICTS OF INTEREST IDENTIFIED

The Chairman requested that we identify any possible conflicts of interest for transition team members who worked at the agencies we reviewed. However, Federal conflict of interest laws and regulations generally do not apply to transition team members, primarily because they are not Federal employees. Although we did identify 13 transition team members who were connected with business and law firms having ongoing interests with the agencies where they were conducting transition activities, our review of the documents provided the team did not indicate any advantage to be gained by the team members or their known business affiliates.

Most agencies made no attempt to ascertain the existence of any conflicts because most transition team members were not Federal employees and, therefore, not subject to Federal conflict of interest statutes. The Office of the President-elect took steps to avoid the appearance of a conflict in staffing and operating the team. These steps, however, did not include providing the agencies with any information about the team members so that they could independently determine the existence of potential conflicts and then guard against those they identified.

Conflict of interest laws do not apply to transition team members

The conflict of interest provisions of the Federal criminal code, 18 U.S.C. §201 et seq., are primarily designed to prevent Government employees from using their public positions for private gain, from losing their impartiality, and from impeding governmental efficiency and economy. For example, Section 208 of Title 18, United States Code, makes it a crime for a Government employee to participate personally and substantially in any particular matter in which he has a financial interest.

As a general proposition, the Federal conflict of interest statutes and the disclosure requirements implemented by Executive order apply only to regular Government employees and special

Government employees. 1/ Transition team members are not covered by these requirements since they are neither regular nor special Government employees. The Transition Act itself provides that transition team members shall not be considered to be employees of the Federal Government, except for purposes of health, retirement, insurance, and certain aspects of employee compensation. 2/

Screening of transition team members by agencies limited, but the transition team took steps to avoid the appearance of conflicts

Except for FTC, the agencies we reviewed did not attempt to identify potential conflicts of interest for their transition team members. The agencies generally relied on the transition team's clearance procedures. FTC merely circulated their team members' names among some headquarters officials.

Officials at all the agencies we reviewed told us that they did not conduct formal conflict of interest checks of team members because team members were not covered by Federal conflict of interest statutes and regulations. Additionally, at three of the agencies--NRC, EPA, and SEC--officials told us that they were aware of their team members and their business affiliations and did not believe they presented a conflict. The FTC transition coordinator told us that he voluntarily conducted an informal check which revealed no apparent conflicts of interest. He circulated the names of transition team members to key senior agency officials at headquarters. These officials responded that they were not aware of any involvement by team members in FTC matters.

Some agency officials who were involved in the transition told us that they thought it was the responsibility of the Office of the President-elect to determine any conflicts of interest. According to a letter signed by the transition director, the Office of

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1/A "special government employee" is an employee of the executive or legislative branch, such as an occasionally needed expert, who is assigned temporary duties not to exceed 130 days during any period of 365 consecutive days. Except for personnel detailed from the agencies to the transition team, transition personnel are not considered employees of the executive or legislative branches.

2/Transition team members who are former officers and employees of the Government are subject to the postemployment prohibitions of 18 U.S.C. 207 with respect to certain matters that were within their area of responsibility while with the Government. Like members of the general public, transition team members also are subject to prohibitions against the proffering of bribes to Government officials. See 18 U.S.C. 201.

the President-elect took some steps to avoid what otherwise might be conflicts of interest and circumstances which might give rise to the appearance of a conflict for transition team members. These steps included providing each team member with standards of conduct, requiring each to fill out a confidential questionnaire, and assigning attorneys to deal with conflict problems. The Office of the President-elect did not provide the agencies with the results of their conflict checking and after the transition team disbanded, the confidential questionnaire forms were destroyed in accordance with an express promise made to team members.

Some team members had ongoing interests at agencies in which they worked

Officials at five agencies identified 13 transition team members who were connected with business and law firms having ongoing interests with the agencies where they were conducting transition activities. However, some of the agencies were not able to conduct complete examinations for all team members because they did not have enough information about team members or their affiliations. Our review of the documents agencies provided to the team did not reveal any public or nonpublic information which could be used to the advantage of the team members and their known business affiliations.

Department of the Interior

There were two transition team members who had business interests involving DOI. One situation was identified for us by DOI's Deputy Ethics Counselor and the other case by a newspaper article which appeared during the transition. Not enough was known about either person to determine if a conflict would have existed had the individuals involved been Federal employees.

At our request, the DOI Deputy Ethics Counselor conducted a limited check of team members and their business affiliations to identify recent potential conflict of interest situations. His analysis was not complete because of the limited information available on the team members. He searched ongoing contracts in the Office of the Secretary. Contracts with other offices and agencies within DOI were not searched because it would have required an extensive amount of time and resources. Also, without specific case titles, he could not learn if transition team members or their firms were involved with cases before DOI.

Regarding contractual relationships, he found that a team member was a manager for an oil company which leases Federal property from DOI for extracting minerals and oil, and which conducts coal mining operations that are regulated by the Department's Office of Surface Mining. The ethics counselor did not represent

this situation as a conflict for the team member, but he did state that financial interests in that company, either through employment or stock ownership, would be prohibited for the majority of Department employees who are assigned to work in the energy and minerals area or to certain high-level positions in the Office of the Secretary.

The second situation at Interior was reported in the December 11, 1980, issue of The Washington Post. The article centered around a transition team member, formerly a DOI official, who is now a partner in a law firm which reportedly had a number of coal industry clients whose activities are regulated by DOI's Office of Surface Mining.

We contacted DOI officials responsible for those matters in which both team members had business interests and confirmed that such officials had no contact with either of the two members during the transition period. Also, we reviewed DOI documents provided to the transition team and did not identify any information which could be used to the advantage of the team members and their known business affiliations. For example, the listing of pending DOI contracts provided the transition team, with the exception of anticipated contract cost, contained information which the public could have obtained from a business journal on governmental procurement actions, entitled the Commerce Business Daily. (See p. 16.) The DOI official who prepared the listing for the team told us that anticipated contract cost figures were not final and "did not necessarily represent the amount of money the agency was willing to spend."

Environmental Protection Agency

When EPA officials, at our request, searched for potential conflicts of interest involving their transition team members, they found that none of the team members or their affiliations were involved in any EPA litigation or investigations. They did learn that a grant had been given to a university which employed a team member as a professor, but he was not listed on any of the grant materials. In any event, according to EPA officials, only public information was provided to the transition team.

Securities and Exchange Commission

In a May 11, 1981, letter to us, the SEC's General Counsel, stated that

> "The Commission has no record of awarding any contracts and/or grants to either members of the transition team or their affiliations within the last three fiscal years."

With regard to identifying cases with the agency in which team members or their affiliates were involved, he stated that

> "* * * the Commission does not maintain retrievable records of attorneys and their affiliations who may represent parties who are involved in cases before or with the Commission, * * * as far as otherwise can be determined, no transition team members or their affiliates were involved in cases before or with the Commission within the last three fiscal years."

According to SEC's General Counsel, all the documents provided the transition team contained only information available to the public.

Nuclear Regulatory Commission

When NRC officials searched for competing interests involving their transition team members, at our request, they learned that NRC had awarded, in October 1980, a contract to the former employer of a transition team member. This ongoing contract is for performing an environmental assessment of the impact of uranium recovery operations on surface and ground water. An NRC official told us that the team member was not involved with the contract, either during his employment with the contractor, or during his involvement with the transition team. Copies of all documents provided the transition team were on file at NRC's public document room.

Federal Trade Commission

When FTC officials searched, at our request, for competing interests involving transition team members, they learned that four members or their firms were involved with the agency--one had a contract with FTC, one was currently representing a business firm before FTC, and two were associated with law firms representing clients before FTC. We did not identify any information given to the team which concerned the team members' business interests. All the documents provided the transition team which we reviewed contained public information.

FTC officials found that one team member had a recent contract with the agency. That team member was awarded a $3,000 personal services contract, which was completed in May 1979, to examine the costs and benefits of immunizing freight classification systems from the antitrust laws.

FTC officials also found that one attorney on the team had personally represented parties in a matter before the Commission. The team member represented a business firm, as a member of its in-house counsel, before FTC in an investigation of the firm's advertising. The same firm's counsel, without the team member's

involvement, had represented the firm in three prior cases before the Commission.

An additional two attorneys on the team were associated with law firms which had represented parties in eight different matters before FTC. Apparently, the two attorneys were not involved in the cases.

Department of Transportation

There were five team members at DOT who were associated with business interests involved with the Department. Of these, four team members were associated with organizations which had contracts with DOT. Our review of the documents provided to the transition team, including nonpublic information, did not disclose any information that would be of advantage to the four members or their business interests.

--One team member was working for a firm which had active contracts with the Federal Railroad Administration and the Office of the Secretary of Transportation.

--Another team member was associated with a research firm which had active contracts with the Federal Railroad Administration, the Federal Aviation Administration, the Urban Mass Transit Administration, and the Research and Special Programs Administration.

--A third team member was a professor at a university which had an active contract with the Research and Special Programs Administration.

--The fourth team member was associated with a policy analysis center which had several contracts with DOT.

The fifth team member was an attorney actively representing a railroad and an affiliated company before the Federal Railroad Administration. The firms were seeking a loan from the Administration to finance the purchase and operation of part of another railroad which was bankrupt. We did not identify any documents containing nonpublic information being provided to the transition team. A public listing of Federal Railroad Administration loan applications which included the above companies was provided to the transition team.

CONCLUSIONS

The agencies were given uniform guidance concerning the general topics they were to address in the information they

provided to the transition team. Although the agencies had considerable discretion in deciding on the content of the information they provided to the team, they generally chose to provide it with public information.

There was some confusion among the agencies reviewed concerning the release of nonpublic information to transition team members and its subsequent denial to members of the public who request the same information under FOIA. We believe the agencies would find it useful if guidance on selective disclosure specifically addressed the release of exempt information to the transition team. Also, the circumstances under which transition team members should have access to classified material should be clarified.

Federal conflict of interest laws and regulations generally do not apply to transition team members primarily because they are not Federal employees. Although some team members were associated with business and law firms having ongoing interests with the agencies where they were conducting transition activities, we did not identify any information given to them which pertained to their private or business interests. However, the agencies generally did not have enough information about the transition team members' private or business interests to conduct complete conflict of interest examinations. In any event, most of the information contained in the documents we reviewed was available to the general public upon request.

We believe it would be beneficial if in future transitions the President or his designee would provide guidance to executive branch agencies on the criteria for determining when records and information that would not be disclosed to the public, including classified material, may be made available to the transition team. This would include the establishment of appropriate controls over the transition team's disclosure of such information. It should be recognized, however, that the content of guidance on records and information disclosure may differ from transition to transition. Those differences could well depend upon the incumbent President's views on the requirements of the transition involved and the type of cooperative relationship established between the administration and the Office of the President-elect.

CHAPTER 3

SIZE AND COST OF THE REAGAN-BUSH TRANSITION

Chairman Dingell also requested our opinion on the legal responsibilities and limitations of independent regulatory agencies regarding the transition team and on the extent to which the transition team was federally funded at each agency.

Additionally, he wanted us to examine the costs and any other matters related to the work of agency staff in helping conduct the transition and the expenditure of agency funds in excess of monies authorized by the Presidential Transition Act.

The Presidential Transition Act directs all Government officers, among other matters, to take appropriate lawful steps to promote an orderly transition. About 100 Federal agencies, including independent regulatory agencies, participated in the Reagan-Bush transition process. The independent regulatory agencies' participation was consistent with the Transition Act.

Transition costs incurred by the incoming administration were supported by Federal funds appropriated pursuant to the Presidential Transition Act and apparently by funds furnished by two private sources established to provide funds in addition to those appropriated by the Congress. Because we did not have access to the books, records, and accounts for these private funds, we are unable to report on the total amount of funds raised or the purposes for which the funds were used.

The six agencies we reviewed estimated that about $235,000 in transition-related expenses was charged to their general appropriations. Most of these expenses were for gathering and communicating information about agency operations to the transition team. We identified several instances where agency secretarial and clerical employees were assigned to the transition team and worked exclusively at the transition team's direction on a full-time or substantially full-time basis. For these employees, the agencies and the transition team failed to follow Transition Act and GSA procedures and requirements for detailing agency employees to the transition team. The Transition Act does not authorize the nonreimbursable assignment of any agency employee to the transition team.

INDEPENDENT REGULATORY AGENCIES PARTICIPATED IN THE TRANSITION

The Presidential Transition Act directs "all officers of government," among other matters, to take appropriate lawful

steps to avoid or minimize disruptions in the transfer of power and to otherwise promote an orderly transition. The law does not exclude the governmental officers that head independent regulatory commissions or agencies from carrying out this responsibility. It was on this basis that the independent regulatory agencies participated in the transition. We believe such participation was appropriate and consistent with the Transition Act.

TRANSITION TEAM EXPENSES WERE SUPPORTED BY PUBLIC AND PRIVATE FUNDS

Transition-related expenses incurred by the Reagan-Bush transition team were paid from funds appropriated pursuant to the Presidential Transition Act and by funds furnished by two private foundations. The Presidential Transition Trust was established separately from the transition team to undertake certain transition activities before the general election. After the election, the Presidential Transition Foundation, Inc., was formed to fund transition activities. The transition activities actually funded from this source were not made known to us.

Appropriated funds were used for authorized purposes

The Congress appropriated $2 million for GSA to pay for expenses incurred by the incoming administration during the transition. In addition, GSA expended over $100,000 in Public Building Fund monies to provide office space for the transition team. Expenditure of these funds was made in accordance with authorizing legislation.

The Transition Act authorizes the Administrator of GSA to provide each President-elect and Vice-President-elect with office space, staff, and certain services enumerated in the act. The Congress appropriated $2 million to pay for the authorized transition expenses of the incoming Reagan administration.

In a report 1/ to the Chairman, House Committee on Government Operations, we reported that as of January 31, 1981, about $1.7 million of the $2 million appropriation had been obligated. These obligations and expenditures of Transition Act funds were made in accordance with the act. A GSA official told us on December 23, 1981, that the Federal funds spent by the Reagan administration on the transition totaled $1,746,544.

1/"Audit of Reagan Presidential Transition Expenditures" (GGD-81-50, Mar. 2, 1981).

Most of the Transition Act funds used for personnel

The bulk of the funds, about $1.3 million, was used for personnel compensation and benefits for a portion of the 1,559 staff members on the transition team. The members of the transition team were divided into senior staff, located at the transition headquarters office, and field staff, located at approximately 100 different Federal agencies. There were 311 staff who received salaries from appropriated funds, including 8 employees who were detailed from Federal agencies on a reimbursable basis, and an additional 331 staff who each received a token payment of $1.00. The remaining 917 members received no remuneration from Transition Act funds.

The remaining $400,000 in transition funds was obligated for rent, communications, utilities, travel, printing, reproduction, supplies, transportation, and other services.

Obligations for rent, communications, and utilities included rental costs for office equipment and maintenance services by GSA for the principal transition team offices which were located at 1726 M Street, N.W., Washington, D.C., and postage expenses (both penalty mail and postage meter mail) and telephone services.

Costs incurred for travel included charter aircraft furnished by the Department of Defense for several trips taken by the President-elect and Vice-President-elect and in-flight services, car rentals and gas, and travel expenses of the transition team.

Printing and reproduction costs consisted primarily of photocopying services, using equipment supplied and maintained by GSA, including the preparation of building entrance passes.

Office supplies such as envelopes, stationery, and subscriptions to newspapers were purchased from GSA self-service stores and commercial suppliers.

Transportation obligations included moving furniture and equipment into the building at 1726 M Street, N.W., and for express delivery service.

Expenses for other services included contract guards at 1726 M Street, N.W.; temporary secretarial services; and services provided to the President-elect at Blair House.

Transition team office space rental waived by GSA

GSA expended over $100,000 in Public Building Fund monies for the office space that was used by the transition team for its transition headquarters. This was done under authority of the

Federal Property and Administrative Services Act of 1949, as amended, by exempting the transition team from the requirement to pay rent for the office space.

GSA charges for furnished space and services at rates comparable to commercial rates. This is called the Standard Level User Charge (SLUC) and may include the cost of space and services such as heating, air conditioning, electricity, protection, and cleaning. However, an exemption may be granted if GSA determines that charging the SLUC would be infeasible or impractical.

In October 1976, GSA determined that the space required by President-elect Carter and Vice-President-elect Mondale could be exempt from SLUC charges because the space assigned was already in GSA's inventory and charging for it would be infeasible or impractical. For similar reasons GSA determined, in November 1980, that the exemption remained in effect and did not charge the Transition Act appropriation for the space used. This decision was authorized by 40 U.S.C. 490(j) The costs of other space or services acquired specifically for transition purposes were charged to the Transition Act appropriation.

GSA provided 58,765 square feet of office space at no cost to the Office of the President-elect in the leased building located at 1726 M Street, N.W., Washington, D.C. GSA's 5-year lease on the building began in September 1978 and provides for annual lease payments of $9.57 per square foot. GSA's cost for the portion of the building occupied by the Office of the President-elect during the period from November 5, 1980, to January 20, 1981, amounted to about $117,000. GSA also provided furniture and equipment consisting of 886 chairs, 412 desks, 274 tables, 185 filing cabinets, and 254 other miscellaneous office items. Since these items were in GSA's inventory, they were provided without charge to the Transition Act appropriation.

In addition, GSA furnished about 2,500 square feet of space at no cost to the Vice-President-elect in the federally owned building located at 734 Jackson Place, N.W., Washington, D.C. The Vice-President-elect also used, at no cost, about 1,000 square feet of onhand office space assigned to the Office of Science and Technology Policy in the New Executive Office Building in Washington, D.C.

Private funds were used in addition to appropriated funds

We identified two private foundations which were established to fund transition-related costs incurred by the Office of the President-elect. Because we did not have access to the books, records, and accounts for these private funds, we are unable to report on the

total amount of funds raised or the purposes for which the funds were used.

Private trust established to pay for pre-transition expenses

The Presidential Transition Trust was established to undertake certain transition activities before the November 4, 1980, general election. The purposes of the Trust, as set forth in the Trust document, were

--to receive donations from individuals not to exceed $5,000 per person;

--to pay expenses incurred in gathering information about the critical jobs in a possible new administration and the identification of personnel who would be qualified to fill those jobs, including computer work, recordkeeping, clerical activities, and similar efforts associated with this personnel function;

--to pay expenses incurred in liaison activities with GSA in preparation for any Presidential transition after the 1980 election; and

--to provide accountings to the general public on a periodic basis which conform with the reporting requirements (quarterly) established by the Federal Election Commission for principal campaign committees of a Presidential candidate.

According to a Trust spokesman, as of November 30, 1981, no accountings have been made public by the Trust.

We reviewed transition files maintained by GSA and identified a number of pre-election activities undertaken by Reagan-Bush organization representatives whose salaries may have been paid from Trust funds. The activities included numerous discussions, written exchanges, and meetings between GSA and Reagan-Bush representatives regarding

--legal matters pertaining to the Transition Act;

--the roles of various Government agencies in the transition process; and

--problems of prior transition efforts.

Private foundation established to pay for transition expenses

The Presidential Transition Foundation, Inc., was established on November 5, 1980, as a private nonprofit corporation. The purposes for which the corporation was established include the following:

> "(a) to facilitate an orderly transfer of the power of the executive branch of the United States Government from the Administration of President Jimmy Carter to the Administration of President-elect Ronald Reagan, and
>
> "(b) to receive funds from any lawful source for the above purpose."

Although we were unable to verify this information, according to a June 9, 1981, United Press International article, about $500,000 was donated to the private Foundation which was established because "the Reagan team considered insufficient the $2 million in Government money for the transition." The article cites a Foundation spokesman as the source for the information. According to the article, the Foundation spokesman also indicated that the funds generated by the Foundation were kept separate and spent on the same things as the Government money--salary, travel, etc.,--and that the Foundation would be audited by a national public accounting firm and the results made public.

Information on private funds not available

On two occasions we attempted unsuccessfully to gather information on the nature and purposes of the two funds. In a January 28, 1981, meeting with a representative of both private funds, we requested and were denied access to the books, records, and accounts for both. On May 5, 1981, we wrote an official of the Executive Office of the President requesting general information on the amount of money available and types of transition-related expenses paid or charged to either fund, the Trust or Foundation. We also requested that the Office explain the rationale for charging certain transition-related expenses to the Presidential Transition Foundation and not the Federal appropriation. We received a letter dated June 15, 1981, from an Executive Office official indicating that they "were attempting to formulate a response." As of December 31, 1981, we had not received a reply to our request.

AGENCY TRANSITION COSTS

The six agencies we reviewed reported that it cost them about $235,000 for transition-related expenses, including: salaries of professional staff, clerical staff, and messengers; stationery supplies; office space; and photocopying. These expenses varied from a low amount of $5,000 at SEC to a high of nearly $183,000 at DOI.

The amount of expenses was related to the volume of requests for agency information generated by the transition team at each agency. Although much of the information was already available, the agencies did have to incur extra costs to support the transition process. The agencies essentially used their own judgment to determine what type and level of costs they would absorb in promoting an orderly transition.

The agencies were not required to maintain any records on transition-related expenses. For the most part, expense figures were based on agency recollections of staff time spent working on transition-related matters.

Department of the Interior

According to figures provided to us by a DOI official, that agency spent an estimated $182,600 in assisting the transition. Following is a breakdown of DOI estimates of personnel and other costs incurred in assisting the transition team.

Personnel

Professional	8,731 hours @ $18.36 an hour =	$160,301.16
Clerical	3,079 hours @ $6.39 an hour =	19,674.81
Other Costs	(copying, supplies, services, etc.) =	2,652.00
	Total	$182,627.97

We identified at least 96 requests for information by the DOI transition team. DOI employees were required to convert oral requests to written ones, in accordance with DOI transition procedures. Of the six agencies we reviewed, DOI had the largest volume of information requested by and provided to the team.

Department of Transportation

DOT spent an estimated $27,700 in assisting the transition effort. According to a DOT official, this included professional and clerical personnel costs as well as other costs incurred for

photocopying. Also included were five full-time secretaries assigned to work for the team on a nonreimbursable basis at the request of the transition team leader. (See p. 39 for further discussion.) DOT did not maintain any record of the costs incurred in providing information to the team. The cost estimates were obtained by telephone from each of DOT's administrations.

We identified 41 requests for agency information made by the DOT transition team. The agency provided 32 written and 4 oral responses and did not respond to 5 requests. According to the transition coordinator, much of the written response information had already been prepared for the incoming Secretary, thereby reducing the need to create new documents for the team.

Environmental Protection Agency

An EPA official estimated that EPA incurred costs of approximately $6,000 for gathering and communicating information on agency activities to the transition team. These costs consisted of professional personnel expenditures only.

In addition, EPA provided secretarial services and office space to the transition team from about November 18 through mid-December 1980. A number of EPA secretaries took turns on a part-time basis for 3- or 4-hour periods to answer the telephones and provide clerical assistance to the transition team while continuing their EPA duties for the remainder of the work week. EPA officials were unable to provide us with an estimate of these costs.

We identified three consolidated written information requests containing 43 questions submitted by the transition team at EPA. Much of the information provided to the team consisted of existing documentation. According to the assistant transition coordinator, a 15-page briefing paper which summarized current key environmental issues facing EPA, required the most amount of preparation by EPA officials.

Nuclear Regulatory Commission

NRC estimated that it spent about $6,563 in assisting the transition team. This included $3,833 for secretarial services, $400 for courier/messenger services, and $2,330 in professional salaries. The professional salary figure was based on NRC spending approximately 120 professional staff hours in gathering, preparing, and communicating information to the transition team.

After the Commission received Congressman Dingell's December 11, 1980, letter of inquiry concerning, among other things, the funds expended by NRC in relation to transition matters, discussions among NRC staff raised the question of whether NRC was

required by the Transition Act to bill GSA for any transition-related expenses incurred.

NRC staff reviewed the Transition Act and its legislative history and concluded that NRC was required to seek reimbursement from GSA. In a February 25, 1981, letter to GSA's Acting Administrator, the Chairman of the NRC requested reimbursement from Transition Act funds for $4,233 in personnel expenses--$3,833 for secretarial and $400 for courier/messenger services. NRC did not seek reimbursement for other transition-related expenses, such as stationery supplies provided to the team, because it did not maintain records on such costs.

GSA denied payment of NRC's claim, citing its statutory responsibility to pay only claims for transition expenses submitted from the President-elect, Vice-President-elect, or their duly authorized designee. In a March 12, 1981, letter to NRC's Chairman, GSA's Assistant Administrator stated that

> "* * * acceptance by GSA of such requests from any other sources would, in our opinion, not only be violative of the law but would render control and management of the funds appropriated by Congress to carry out the provisions of the Act impossible."

NRC did not maintain any centralized record of transition team requests for agency information. However, in response to team requests, NRC provided agency documentation to the team in seven major installments. Much of this information concerned Commission reports and publications already available to the general public.

Securities and Exchange Commission

The SEC transition liaison estimated that SEC incurred transition-related costs of approximately $5,000. These costs consisted of only professional personnel expenditures of 325 staff hours costing an estimated $15.40 per hour.

The Commission did not provide the transition team with any secretarial services or any administrative support for the 2 weeks the team was located at SEC headquarters. The team was provided one office with the usual furnishings.

The transition team at SEC made one written and three oral requests for information. The major team request was for a written response to 20 questions concerning SEC's structure, responsibilities, and operations. The team's oral requests were for briefings by the heads of SEC's major offices and divisions.

Federal Trade Commission

The FTC estimated it incurred transition-related costs of approximately $7,200. These costs included only personnel expenditures for 317 professional staff hours costing $18 an hour and 183 secretarial support staff hours costing $8 an hour. For about a 5-week period, FTC provided the transition team with three offices containing the usual office furnishings.

The transition team at FTC made 16 written requests for agency documentation. In addition, an unknown number of FTC documents and reports available from the agency's public reference room were requested and provided to the team. According to an FTC official who assisted the transition coordinator, most of the information provided to the team was readily available and generally required minimal preparation by agency staff.

AGENCY EMPLOYEES IMPROPERLY ASSIGNED TO TRANSITION TEAM ON A NONREIMBURSABLE BASIS

During the course of our review, we identified several instances where agency secretarial and clerical employees were assigned to the transition team and worked exclusively at the transition team's direction on a full-time or substantially full-time basis. Although some agency officials referred to these employees as "details," the Transition Act, GSA, and Office of the President-elect procedures for obtaining a detail were not followed and the appropriate requests from authorized transition officials were never submitted. As a result, the support staff employees were never formally detailed to the transition team, and, with the exception of NRC, the agencies did not request reimbursement for the salaries involved.

Despite the failure to follow the procedures required for details, the employees were the functional equivalent of detailees. The tasks they were assigned were indistinguishable from the work performed by support staff hired directly by the Office of the President-elect. In our opinion, however, the Transition Act, as amended in 1976, does not authorize the nonreimbursable assignment of any agency employee to the transition team.

We believe that for future transitions, GSA, in conjunction with the agencies and the Office of the President-elect, needs to rigorously monitor compliance with the Transition Act's detailee requirements, as they pertain to all Government employees, and fully enforce the procedures that must be followed to obtain a detail. The practice of assigning agency employees to work for the team on a nonreimbursable basis is inappropriate and should be discontinued. Under the Transition Act, personnel for the support staff of the President-elect may be obtained from two sources. First, they may be hired directly from the private sector

with Transition Act funds. And second, they may be obtained under the detailee provisions of the act, subject to the requirement that the detail be on a reimbursable basis.

Presidential Transition Act and GSA require that agencies be reimbursed for employees detailed to a transition team

The Presidential Transition Act of 1963, as amended, authorizes the Administrator, GSA, upon request of the President-elect, the Vice-President-elect or their designate(s), to detail to the transition team any Government employee, provided the head of the employee's agency consents to the detail. A "detail" is the temporary assignment of an employee to a different position for a specified period, with the employee returning to his/her regular duties at the end of the detail (Chapter 300, Federal Personnel Manual, Subchapter 8). While detailed under the Transition Act, the employee is responsible only to the President-elect or the Vice-President-elect for the performance of his/her duties.

Before 1976, the Presidential Transition Act specifically provided that these details could be made on a reimbursable or nonreimbursable basis. The 1976 amendments to the Transition Act changed this, however, and deleted the authorization for nonreimbursable details. The purpose of this change was to require that details to the transition team be made on a reimbursable basis only, and that the detailing agency be reimbursed from the transition appropriation. See S. Rept. 1322, 94th Cong., 2d sess. (1976) and 122 Congressional Record 9383 (1976).

To implement the Transition Act's detailee provisions, GSA entered into an agreement with the Office of the President-elect. According to this agreement, a letter requesting a detailee would be submitted to the agency head by one of two named officials of the Office of the President-elect or their designee. A copy of this letter would be sent to the GSA Comptroller so that once the request was approved, the detailing agency would be reimbursed.

Historically, most detailee requests were for professional employees who were experts in a particular subject matter. However, it is clear that in prior transitions there were occasions where secretarial and clerical personnel were detailed to the transition team. 1/ The Transition Act draws no distinction between support staff and professional staff, and contains no

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1/"Federal Assistance For Presidential Transitions: Recommendations For Changes In Legislation" (GGD-76-29, Mar. 2, 1981, pp. 6 to 9.)

authorization for the nonreimbursable detail of any Government employee, regardless of the employee's job classification. 1/

Unreimbursed secretarial costs incurred at five of the six agencies reviewed

With the exception of SEC, the agencies we reviewed assigned secretarial employees to work for the transition team on a nonreimbursable basis. As shown below, some of the agencies provided us with estimates of the salary costs of the assigned employees.

Department of the Interior

Two DOI employees were made available to the transition team--one on a reimbursable basis for 9 days at a salary cost of $1,226, and the other on a nonreimbursable basis for about 6 weeks at a salary cost of $3,317. In the first case, the Executive Assistant to the Secretary of the Interior received a letter from the Director, Women's Liaison in the Office of the President-elect, formally requesting that a Department official be detailed to the Women's Liaison group. The request was approved by the DOI transition coordinator and, according to GSA records, the detailee assisted the team for the period January 12 to 20, 1981, with DOI being reimbursed for her salary costs.

In the second case, DOI's transition coordinator assigned a DOI employee to work with the transition team performing general secretarial duties for the team and acting as the coordinator's representative. As representative, she did such administrative tasks as scheduling briefings of team members by agency officials. The employee was physically located in office space occupied by team members and performed her duties on a full-time basis from November 12 through December 31, 1980. During that period she worked at the specific direction of the team as well as the direction of the transition coordinator. The transition coordinator told us that he did not seek reimbursement for the secretary's salary because she was not formally requested by the team and did not require DOI to assume any incremental costs.

1/The relevant provision of the Transition Act, as amended, provides that "(A)ny employee of any agency of any branch of Government may be detailed to such staffs on a reimbursable basis with the consent of the head of the agency * * *" 3 U.S.C. 102 note.

Nuclear Regulatory Commission

At the request of the Reagan-Bush transition team leader, NRC provided the team with the use of three secretaries, two on a part-time basis and one full time. All three were located in the transition office and performed general secretarial duties for the transition team, including typing, telephone answering, filing, and other clerical duties. According to NRC's transition coordinator, the Commission's Chairman was aware of and approved the team leader's request for secretarial assistance. None of the secretaries were formally requested in accordance with the Transition Act or GSA detailee procedures.

NRC reported to us that the costs of secretarial help for the transition team was $3,833. That figure was based upon the actual daily rate of the three employees, plus 10 percent for overhead.

Environmental Protection Agency

According to the assistant to EPA's transition liaison, at the request of the Reagan-Bush transition team leader, EPA assigned secretaries to work for the team for about 3 or 4 hours per day. Various secretaries took turns answering telephones and providing general clerical assistance to the team for about a 5-week period ending in mid-December 1980. EPA officials were unable to estimate for us the amount of these secretarial salary costs.

Federal Trade Commission

According to the assistant to FTC's transition coordinator, at the request of the Reagan-Bush transition team leader, FTC provided, for a 5-week period, one secretary to work for the transition team on a part-time daily basis. Physically located with the transition team and working at their direction, the secretary performed general clerical duties including answering telephones, opening transition team mail, typing, and scheduling interviews for transition team members. FTC was unable to estimate for us the amount of these secretarial salary costs.

Department of Transportation

During the transition period, DOT assigned five secretaries to work full time for the transition team on a nonreimbursable basis at a total salary cost of $9,246. Two of the five employees were transition team members who were hired by DOT during the transition and assigned to the team.

The Reagan-Bush transition team began its work at DOT on November 18, 1980, when its team leader met with DOT's transition coordinator to discuss the arrangements for conducting transition work. At that time the team leader requested clerical assistance

from the Department to aid the team with typing, telephone answering, and other general secretarial duties. In response, DOT's coordinator had a secretary assigned on November 19, 1980, from the Office of the Secretary of Transportation to the transition team on a nonreimbursable basis. The secretary was physically located in office space provided to the transition team and worked full time for the team through January 20, 1981.

On November 28, 1980, the team leader sent a memorandum to DOT's coordinator in which he stated:

> "* * * phone calls, typing, and reproduction requirements are creating a burden which we cannot handle with our current support staff. Can you give us two additional secretaries on loan?"

The Department responded by sending two secretaries to the team on December 1, 1980--one assigned from the Federal Aviation Administration and the second from the Federal Highway Administration. Both secretaries were physically located at the team's offices and performed general secretarial duties on a full-time basis through January 20, 1981. Other than reporting to their former offices for payroll and attendance purposes, all three secretaries worked exclusively for the transition team while they were detailed.

According to the Department's personnel director, in early December 1980 the transition team leader made a request to the transition coordinator (Acting Assistant Secretary for Administration) to hire two members of the transition team who were working as volunteers.

On December 18, 1980, the two team members were hired by DOT's transition coordinator as temporary secretaries and assigned to work for the team. The secretaries, one a grade GS-6 and the other a GS-7, were hired under temporary appointment authority delegated to the Department from OPM. OPM authorizes Federal Departments to make temporary appointments for up to 700 hours to positions at grade GS-7 and below. OPM allows agencies to use this delegated authority or fill such positions through OPM competitive registers if it better serves the agency's staffing needs. According to the Department's personnel director, DOT did not request a certificate from OPM's competitive register because it knew who would be appointed. He further stated that both team members met the minimum qualification standards for the positions.

Both members were detailed to the team through January 20, 1981, at a total unreimbursed salary cost of $2,709. They performed general secretarial duties along with assisting the team leader in conducting interviews of various DOT and non-DOT employees familiar with transportation issues.

We believe that poor judgment was exercised by the team leader in this situation. If the team leader believed that the secretaries

were needed, the transition team should have hired them and paid them from the Transition Act appropriation. It should also be noted that the team leader's actions were inconsistent with two of the standards of conduct which were established for members of the transition team by the Office of the President-elect. These standards cautioned team members not to become involved in personnel decisions of an agency or to persuade or coerce agency officials to provide financial benefit to anyone. By requesting DOT to hire the team members, the team leader injected himself into personnel actions of the agency.

CONCLUSIONS

According to a GSA official, about $1.7 million of the $2 million appropriated by the Congress was spent for transition expenses of the incoming Reagan administration. Additional transition costs were apparently incurred by two private foundations. Counsel for these funds denied us access to the books, records, and accounts for these private funds. Thus, we were unable to report on the total amount of funds raised or the purposes for which the funds were used.

The six agencies we reviewed estimated that about $235,000 in expenses was charged to their general appropriations for providing services and for gathering and communicating information about agency operations to the transition team. We identified several instances where agency secretarial and clerical employees were improperly assigned to the transition team on a nonreimbursable basis, and worked exclusively at the transition team's direction on a full-time or substantially full-time basis.

The Transition Act does not authorize the nonreimbursable assignment of any agency employee to the transition team. Should GSA initiatives to promote compliance with the Transition Act's detailee requirements prove unsuccessful, remedial legislation may become necessary. This legislation could take the form of a requirement that reimbursement be provided for the assignment of any employee to the transition team, including those assignments for which the Office of the President-elect fails to formally request a detail.

Also, a Reagan transition team leader exercised poor judgment by involving himself in personnel activities at one of the agencies we reviewed.

RECOMMENDATION

We recommend that, at the beginning of the transition period, the Administrator, GSA, notify agencies and the Office of the President-elect that the Presidential Transition Act provides that agency employees may only be detailed to the transition team on a reimbursable basis.

APPENDIX

Congress of the United States

House of Representatives

Committee on Interstate and Foreign Commerce
Room 2123, Rayburn House Office Building
Washington, D.C. 20515

December 18, 1980

The Honorable Elmer B. Staats
Comptroller General of the United States
U. S. General Accounting Office
441 G Street, N.W.
Washington, D. C. 20548

Dear Mr. Staats:

Enclosed is a copy of a letter we sent to the Department of Energy and a copy of a similar letter to the Federal Communications Commission concerning the activities of these agencies in regard to the Presidential transition teams at these agencies. We also sent such letters to other agencies within our Committee's jurisdiction. These are: The Department of Transportation, the Department of the Interior, the Environmental Protection Agency, the Nuclear Regulatory Commission, the Federal Energy Regulatory Commission, the Security and Exchange Commission, the Interstate Commerce Commission, the Consumer Product Safety Commission, the Federal Trade Commission, and the Food and Drug Administration.

As indicated in these letters, the Committee plans to examine these matters in the 97th Congress. We request that the General Accounting Office begin immediately to examine for our Committee the actions of the transition teams at some of these agencies, particularly DOT, EPA, DOI, NRC, SEC and FTC. Our Committee is concerned about the lack of uniform standards, guidelines, criteria, and rules governing the actions of these agencies in regard to the transition teams. Many of the transition team members are not Federal employees, although some may be paid from Federal funds appropriated pursuant to the Presidential Transition Act of 1963. Yet there appears to be some evidence that information that has not been readily available to the public may have been made available to these non-Federal employees. Such information may be classified or may include budget, confidential, enforcement, and other sensitive data that could be useful to many of these people or their employers when they return to their private sector duties. While we recognize the need for an orderly transfer of authority from one Administration to another, we are concerned that an overzealous transition team may seek and obtain data that goes beyond the bounds of that needed to achieve such a transfer.

Your agency can be helpful in learning what is transpiring at these agencies regarding transition teams, what data requests have been made, how they have been handled and approved or rejected, what conflict-of-interests, if any, exist, and what laws and regulations, if any, have been violated or ignored by the agencies or others, as well as other matters.

In conducting this inquiry, we request that GAO seek to determine what basic information the President-elect needs to obtain from various agencies in order to achieve a relatively smooth transition, recognizing that as of January, he and his officials will be Federal employees. In short, we believe

that some basic information about personnel, agency operations, agency laws and requirements, and agency budgets are probably quite necessary. However, we question whether it is necessary for the transition team, for example, to obtain copies of "existing Department studies, papers or memoranda prepared since January 1, 1980" regarding issues, such as was requested by the transition team at the Energy Department prior to a December 1, 1980 briefing by the Economic Regulatory Administration. Also, we want to learn why it is necessary or desirable for establishing transition teams for nearly every governmental agency, including independent regulatory agencies. All of these activities at Federal agencies result in many man-hours of effort by these agencies and dollar expenditures over and above the funds authorized by the Presidential Transition Act of 1973. We expect the GAO to examine these costs and related matters.

We request that the GAO begin now, while the transition is still underway. The data we have requested from the agencies will be available to you. We urge that you include discussions with the transition teams and ascertain to what extent each is Federally funded and what Federal laws apply to these teams as a result of such funding.

As part of your examination of these matters, we request that you examine the legal responsibilities and limitations of independent regulatory agencies in regard to the transition teams and provide to us an opinion concerning these matters. The members of these agencies generally have fixed terms, although the President may designate a new Chairman. Except for their budgets, they generally are not subject to the direction and control of the President. Their functions are regulatory in nature.

We request that within three to six months the GAO provide a report of your findings and conclusions. The report should include recommendations, if any, for legislation and administrative actions. As is our usual practice, we request that you not provide a draft copy of your report to any agency or transition team member. We will release the report and obtain agency and other views. Oral discussions of factual matter to ensure accuracy is, however, encouraged.

Please keep our staff (David Finnegan and David Schooler) informed of your plans to carry out our request and your progress. Our staff will also be examining these matters and we may hold hearings before and after your report is issued. Undoubtedly, we will want you to testify as to your findings and conclusions at those hearings.

Sincerely,

John D. Dingell
Member
Committee on Interstate and Foreign Commerce

JDD:Frm

Enclosures

GAO note: During our review, the Committee on Interstate and Foreign Commerce was reorganized and renamed the Committee on Energy and Commerce, and Congressman Dingell was elected chairman.

Congress of the United States
House of Representatives
Committee on Interstate and Foreign Commerce
Room 2123, Rayburn House Office Building
Washington, D.C. 20515

December 11, 1980

The Honorable Charles W. Duncan
Secretary
U. S. Department of Energy
Forrestal Building
1000 Independence Avenue, S. W.
Washington, D. C. 20585

Dear Mr. Secretary:

As you know, section 2 of the Presidential Transition Act of 1963 states:

> "Sec. 2. The Congress declares it to be the purpose of this Act to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a President and the inauguration of a new President. The national interest requires that such transitions in the office of President be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both domestic and foreign. Any disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the United States and its people. Accordingly, it is the intent of the Congress that appropriate actions be authorized and taken to avoid or minimize any disruption. In addition to the specific provisions contained in this Act directed toward that purpose, it is the intent of the Congress that all officers of the Government so conduct the affairs of the Government for which they exercise responsibility and authority as (1) to be mindful of problems occasioned by transitions in the office of President, (2) to take appropriate lawful steps to avoid or minimize disruptions that might be occasioned by the transfer of the executive power, and (3) otherwise to promote orderly transitions in the office of President."

It is the clear intent of the Congress that the Executive branch agencies, subject to the control of the President, take appropriate steps to ensure an orderly transition of authority from one Administration to another. However, the above Act does not set any guidelines or standards to ensure that such actions are properly carried out in accordance with the requirements and limitations of law applicable to each agency. Apparently, no government-wide regulations or guidelines exist to govern these activities. Some agencies appear to have adopted ad hoc practices and procedures for carrying out the spirit and intent of the 1963 Act. Some may have none at all. This may account for recent news media articles and other information available to the Committee which indicate that some aspects of the transition activities may either not be in accordance with law or raise questions of improper or questionable conduct. Our Committee is concerned about this question and plans to examine the matter in detail early in the 97th Congress to determine what, if any, actions we may want to take to improve this process and provide adequate safeguards for future transitions.

We expect your agency to cooperate with the transition team in accordance with the spirit and intent of the 1963 Act, but, in doing so, to ensure that all provisions of law and regulations applicable to your agency and its employees and officials are fully complied with, and to ensure that the transition team does not delay, influence, or otherwise affect any actions or decisions that your agency plans to take prior to January 20, 1981. We expect any violations of laws by anyone to be promptly reported, investigated, and, where appropriate, the violators punished.

In order to facilitate our Committee's examination of these matters, we request that you respond to the following matters by not later than close of business on January 8, 1981:

1. Please identify the person or persons within your agency designated to work with the transition team for your agency as a whole and for each component thereof. Please include the telephone number of each such person.

2. Please provide to us a copy of all letters, memoranda, notes, or other documents issued by you or any other official of your agency providing guidelines, criteria, or other information relative to your agency's and that of its employees and officers role in cooperating with, assisting, and informing the transition team.

3. Please identify each of the transition team members at your agency since the election, indicating whether they are Federal employees or non-Federal employees and if they are non-Federal employees, please indicate their affiliation. Please also indicate, consistent with applicable provisions of law, which if any, of the transition team members have clearances to obtain and review sensitive, classified, secret, and other similar documents.

4. (a) What office and packing space has been provided to the transition team?

(b) Are any agency personnel providing secretarial, clerical, or administrative services to the team? Are these services provided on a reimbursable basis? Please explain.

(c) What other services or equipment are provided to the team? Are those services provided on a reimbursable basis?

5. Please describe to us the procedures or criteria followed by your agency for fulfilling requests for briefings and written and other information, including access to agency documents and files.

6. Please provide a table showing each request made by the team, or any member thereof, for agency information, proposed agency actions or decisions, files, documents, agency plans, enforcement actions, personnel information, budget information, and other documents, and for briefings. Please state when each request was made, the nature of the request, the person making it, the date of the agency response, the agency response, and the date of any briefing and the participants. Please indicate to what extent the information was not available to the public.

7. Have classified, secret, confidential, sensitive information or documents including financial and enforcement data or data that relates to matters of a competitive nature or to procurement activities, been requested and/or made available to the team by any agency employee or official? Please indicate who requested such materials or received them and for what purpose and the date they were provided and by whom.

8. Please provide an estimate of the man-hours and funds expended by your agency in relation to transition matters.

We reiterate that our request for the above data should not be considered by you or any other person in the agency or on the transition team as a criticism of the way the transition has thus far operated within your agency or as a suggestion that your agency should be less cooperative with the team.

If your agency has any questions concerning our request, our counsels (Mr. Finnegan or Mr. Schooler 225-1030) will be glad to discuss the matters with you in order to facilitate an early reply.

Enclosed is a copy of this letter for the transition team leader at your agency. We request that you promptly provide it to that person. We invite that person to provide information to us concerning the guidelines, criteria, and other limitations or directives that the team is operating under within your agency, as well as to provide such other comments as that person deems appropriate.

With best wishes,

Sincerely,

John D. Dingell
Member
Committee on Interstate and Foreign Commerce

JDD:Frm

Enclosure

cc: The Honorable Elmer B. Staats
Comptroller General of the United States
U. S. General Accounting Office

Congress of the United States
House of Representatives
Committee on Interstate and Foreign Commerce
Room 2125, Rayburn House Office Building
Washington, D.C. 20515

December 11, 1980

The Honorable Charles D. Ferris
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Chairman:

As you know, section 2 of the Presidential Transition Act of 1963 states:

> "Sec. 2. The Congress declares it to be the purpose of this Act to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a President and the inauguration of a new President. The national interest requires that such transitions in the office of President be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both domestic and foreign. Any disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the United States and its people. Accordingly, it is the intent of the Congress that appropriate actions be authorized and taken to avoid or minimize any disruption. In addition to the specific provisions contained in this Act directed toward that purpose, it is the intent of the Congress that all officers of the Government so conduct the affairs of the Government for which they exercise responsibility and authority as (1) to be mindful of problems occasioned by transitions in the office of President, (2) to take appropriate lawful steps to avoid or minimize disruptions that might be occasioned by the transfer of the executive power, and (3) otherwise to promote orderly transitions in the office of President."

It is the clear intent of the Congress that the Executive Branch agencies, subject to the control of the President, take appropriate steps to ensure an orderly transition of authority from one Administration to another. However, the above Act does not set any guidelines or standards to ensure that such actions are properly carried out in accordance with the requirements and limitations of law applicable to each agency. Apparently, no government-wide regulations or guidelines exist to govern these activities. Some agencies appear to have adopted ad hoc practices and procedures for carrying out the spirit and intent of the 1963 Act.

Some may have none at all. This may account for recent news media articles and other information available to the Committee which indicate that some aspects of the transition activities may either not be in accordance with law or raise questions of improper or questionable conduct. In addition, it is not clear as to the extent the Act applies to independent regulatory agencies such as yours which generally are not under the control of the President, yet we understand that transition team members are at your agency.

Our Committee is concerned about these questions and plans to examine the matter in detail early in the 97th Congress to determine what, if any, actions we may want to take to improve this process and provide adequate safeguards for future transitions, particularly in regard to independent agencies.

We do not object to your agency cooperating with the transition team in accordance with the spirit and intent of the 1963 Act, but, in doing so, to ensure that all provisions of law and regulations applicable to your agency and its employees and officials are fully complied with, to ensure that the transition team does not delay, influence, or otherwise affect any actions or decisions that your agency plans to take and to ensure that your agency's independent regulatory status is carefully observed. We expect any violations of laws by anyone to be promptly reported, investigated, and, where appropriate, the violators punished.

In order to facilitate our Committee's examination of these matters, we request that you respond to the following matters by not later than close of business on January 8, 1981:

1. Please identify the person or persons within your agency designated to work with the transition team for your agency as a whole and for each component thereof. Please include the telephone number of each such person.

2. Please provide to us a copy of all letters, memoranda, notes, or other documents issued by you or any other official of your agency providing guidelines, criteria, or other information relative to your agency's and that of its employees and officiers role in cooperating with, assisting, and informing the transition team.

3. Please identify each of the transition team members at your agency since the election, indicating whether they are Federal employees or non-Federal employees and if they are non-Federal employees, please indicate their affiliation. Please also indicate, consistent with applicable provisions of law, which if any, of the transition team members have clearances to obtain and review sensitive, classified, secret, and other similar documents.

4. (a) What office and packing space has been provided to the transition team?

   (b) Are any agency personnel providing secretarial, clerical, or administrative services to the team? Are these services provided on a reimbursable basis? Please explain.

   (c) What other services or equipment are provided to the team? Are those services provided on a reimbursable basis?

5. Please describe to us the procedures or criteria followed by your agency for fulfilling or denying requests for briefings and written and other information, including access to agency documents and files that are not also available to the public.

6. Please provide a table showing each request made by the team, or any member thereof, for agency information, proposed agency actions or decisions, files, documents, agency plans, enforcement actions, personnel information, budget information, and other documents, and for briefings. Please state when each request was made, the nature of the request, the person making it, the date of the agency response, the agency response, and the date of any briefing and the participants. Please indicate to what extent the information was not available to the public.

7. Have classified, secret, confidential, sensitive information or documents, including financial and enforcement data or data that relates to matters of a competitive nature or to regulatory actions, been requested and/or made available to the team by any agency employee or official? Please indicate who requested such materials or received them and for what purpose and the date they were provided and by whom and the authority for providing them.

8. Please provide an estimate of the man-hours and funds expended by your agency in relation to transition matters.

We reiterate that our request for the above data should not be considered by you or any other person in the agency or on the transition team as a criticism of the way the transition has thus far operated within your agency or as a suggestion that your agency should be less cooperative with the team, consistent with the law and your independent status.

If your agency has any questions concerning our request, our counsels (Mr. Finnegan or Mr. Schooler 225-1030) will be glad to discuss the matters with you in order to facilitate an early reply.

Enclosed is a copy of this letter for the transition team leader at your agency. We request that you promptly provide it to that person. We invite that person to provide information to us concerning the guidelines, criteria, and other limitations or directives that the team is operating under within your agency, as well as to provide such other comments as that person deems appropriate.

With best wishes,

Sincerely,

John D. Dingell
Member
Committee on Interstate and Foreign Commerce

JDD:Frm

Enclosure

cc: The Honorable Elmer B. Staats
Comptroller General of the United States
U. S. General Accounting Office

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