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*Sg*

ID # 298901 CU

WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET

*WH009-021*

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

*304?*

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Jim Marquez

MI Mail Report User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Possible amendment to 31 U.S.C. 1344(b)  
(Portal-to-Portal Transportation)

ROUTE TO: ACTION DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CU HOLL</u>	ORIGINATOR	<u>85, 03, 05</u> <sup>PX</sup>			<u>1 1</u>
<u>CU AT 18</u>	Referral Note: <u>D</u>	<u>85103107</u> <sup>PX</sup>		<u>S</u>	<u>85103117</u>
	Referral Note: _____	<u>1 1</u>			<u>1 1</u>
	Referral Note: _____	<u>1 1</u>			<u>1 1</u>
	Referral Note: _____	<u>1 1</u>			<u>1 1</u>

*mentioned to RRF at Staff meeting*

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Signature  
Permit Reply

DISPOSITION CODES:  
A - Answered C - Completed  
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Type of Response = Initials of Signer  
Code = "A"  
Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

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U.S. Department of  
Transportation

General Counsel

400 Seventh St., S.W.  
Washington, D.C. 20590

MAR 5 1995

MEMORANDUM TO: Fred Fielding  
Counsel to the President

FROM:   
Jim Marquez  
General Counsel

RE: Possible Amendment to 31 U.S.C. 1344(b)  
(Portal-to-Portal Transportation)

I have had several discussions with members of your staff and Mike Horowitz, General Counsel at OMB concerning possible amendments to 31 U.S.C. 1344(b) which would specify positions to be provided exceptions from the general prohibitions of portal-to-portal transportation. If legislation is to be introduced addressing the matter government-wide, we believe it is important that the following positions be covered at the Department of Transportation in any event:

- 1) The Deputy Secretary of Transportation
- 2) The Commandant of the Coast Guard
- 3) Administrator, Federal Aviation Administration

I understand draft proposals are being reviewed in your office which include authorizing exceptions for positions at Executive Level II or higher which would cover The Deputy Secretary and the FAA Administrator. However, the Commandant is an officer in the Armed Services and therefore is not under the Executive Level pay system, but is paid in accordance with the military pay grade system. Notwithstanding, he is as the head of the Coast Guard in a directly comparable position to the Executive Level II officials within the Department of Transportation. Moreover, under the military pay grade system, he is in a 0-10 pay grade serving in the rank of Admiral. Zero to ten is the highest pay grade in the Armed Services. As an Admiral and as the head of an armed service, he is in a position directly comparable to the Members of the Joint Chiefs of Staff. But unlike the Joint Chiefs of Staff, he is not now entitled by statute to portal-to-portal transportation. Accordingly, we believe it is necessary to specifically name the commandant of the Coast Guard as a exception to the prohibition.

I look forward to discussing this matter with you or a member of your staff at your earliest convenience.

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO <i>John Roberts</i>	Take necessary action <input type="checkbox"/>
	Approval or signature <input type="checkbox"/>
	Comment <input type="checkbox"/>
	Prepare reply <input type="checkbox"/>
	Discuss with me <input type="checkbox"/>
	For your information <input type="checkbox"/>
	See remarks below <input type="checkbox"/>
FROM <i>John Cooney</i>	DATE

REMARKS  
*This letter somehow found its way into the OMB correspondence process for response -- where it promptly bogged down, because no one here has the information to respond. We responded to a similar letter from Proxmire to Stockman. It seems to me that you probably have the lead on this. Give me a call, and I'll fill you in on how we justified provision of transportation to Dave notwithstanding the OAD opinion.*

MARK O. HATFIELD, OREG., CHAIRMAN

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## United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

J. KEITH KENNEDY, STAFF DIRECTOR  
FRANCIS J. SULLIVAN, MINORITY STAFF DIRECTOR

March 20, 1985

Mr. Donald Regan  
Chief of Staff  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C.

Dear Mr. Regan:

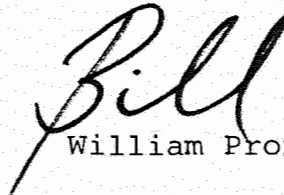
On January 2 I wrote to James Baker regarding White House compliance with the Comptroller General's ruling on the use of federal vehicles for home-to-work transportation of senior staff.

While I realize that the transition has undoubtedly been a factor in delaying the response from the White House, I hope that you will review the enclosed letter and provide me with a response as soon as possible.

When I conducted similar surveys in 1977, 1979 and 1982, the White House has always been most cooperative in providing the information and I hope that you will ask your staff to follow the same policy.

Best wishes.

Sincerely,



William Proxmire, U.S.S.

WP:lp

TED STEVENS, ALASKA  
LOWELL P. WEICKER, JR., CONNECTICUT  
JAMES A. McCLURE, IDAHO  
PAUL LAXALT, NEVADA  
JAKE GARN, UTAH  
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DALE BUMPERS, ARKANSAS

J. KEITH KENNEDY, STAFF DIRECTOR  
FRANCIS J. SULLIVAN, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON APPROPRIATIONS  
WASHINGTON, DC 20510

January 2, 1985

Dear :

Title 31, Section 638a of the U.S. Code states that government vehicles may only be used for 'official purposes' and 'official purposes' does not include home-to-work transportation for federal employees. That legislation provides a series of very specific exemptions: the President, Secretaries of cabinet Departments (but not Under Secretaries, Assistant Secretaries, heads of agencies or boards), individuals on field service great distances from their offices, diplomatic personnel abroad and physicians on out-patient duty.

As you know, there has been a great deal of confusion regarding the applicability of the statute and its penalties. But that confusion has been definitively resolved by the Comptroller General of the General Accounting Office in an opinion released on June 3, 1983 (B-210555). In that opinion and subsequent responses to agencies, such as the GAO's February 7, 1984 letter to the Office of Personnel Management (B-210555.3), the GAO made the following points:

- \* The prohibition on home-to-work for officials not exempted by law is absolute. It is not acceptable the transportation was provided on an occasional, non-routine basis. There may be no exemptions.
- \* Transportation from the office to official may be provided to non-exempt officials. But that transportation may not involve a stop at the home for agency officials or their spouse.
- \* When the 99th Congress begins, all agency personnel would be liable for financial recovery by the Government, and additional penalties outlined in Title 31, Section 638a, for improper use of government vehicles.

In light of these rulings, I would appreciate a response as soon as possible to the following questions.

- 1) Will the White House staff be in full compliance with the Comptroller General's rulings by the commencement of the 99th Congress?
- 2) What steps have you taken to assure that all White House Officials have been adequately informed of their legal liability under Title 31, Section 638a? Please enclose copies of relevant memoranda and, if no action has been taken, please outline reasons.
- 3) As of January 3rd, what officials of the White House if any, will be eligible to receive home-to-work transportation on an occasional or routing basis?
- 4) If those do not conform to Comptroller General opinions, explain the authority under which this service will be provided.
- 5) Has the White House sought exemptions from the Comptroller General's opinions?

I look forward to hearing from you promptly. It is my intention to make the replies a part of the public record.

Sincerely,

William Proxmire, U.S.S.

WP:1pc



Library References

United States § 70(6).

C.J.S. United States §§ 91, 106.

**§ 1344. Passenger motor vehicle and aircraft use**

(a) Except as specifically provided by law, an appropriation may be expended to maintain, operate, and repair passenger motor vehicles or aircraft of the United States Government that are used only for an official purpose. An official purpose does not include transporting officers or employees of the Government between their domiciles and places of employment except—

- (1) medical officers on out-patient medical service; and
- (2) officers or employees performing field work requiring transportation between their domiciles and places of employment when the transportation is approved by the head of the agency.

(b) This section does not apply to a motor vehicle or aircraft for the official use of—

- (1) the President;
- (2) the heads of executive departments listed in section 101 of title 5; or
- (3) principal diplomatic and consular officials.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 924.)

**Historical and Revision Notes**

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1344(a)	31:638a(c)(2) (1st sentence)	July 16, 1914, ch. 141, § 5(c)(2) (1st sentences), 38 Stat. 508; restated Aug. 2, 1946, ch. 744, § 16(a), 60 Stat. 810.
1344(b)	31:638a(c)(2) (last sentence)	

**Explanatory Notes**

In subsection (a), before clause (1), the words "officers and employees of the Government" are substituted for "officers and employees" for clarity. In clause (2), the words "performing field work requiring transportation" are substituted for "engaged in field work the character of whose duties makes such transportation necessary" to eliminate unnecessary words. The word "agency" is substituted for "department" because of section 101 of the revised title [section 101 of this title] and for consistency with the source provisions restated in the section and section 1341 [section 1341 of this title].

In subsection (b)(2), the words "section 101 of the title 5" are used because of section 7(b) of the Act of September 6, 1966 (Pub.L. 89-554, 80 Stat. 631) [set out as a note preceding section 101 of Title 5, Government Organization and Employees].

In subsection (b)(3), the words "ambassadors, ministers, charges d'affaires" are omitted as being included in "principal diplomatic and consular officials".

**Cross References**

State or local government employee on detail to federal agency deemed to be employee of agency for purposes of this section, see section 3374 of Title 5, Government Organization and Employees.

Suspension without pay for violation of this section, see section 1349 of this title.

**§ 1345. Expenses of meetings**

Except as specifically provided by law, an appropriation may not be used for travel, transportation, and subsistence expenses for a meeting. This section does not prohibit—

- (1) an agency from paying the expenses of an officer or employee of the United States Government carrying out an official duty; and
- (2) the Secretary of Agriculture from paying necessary expenses for a meeting called by the Secretary for 4-H Boys and Girls Clubs as part of the cooperative extension work of the Department of Agriculture.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 925.)

**Historical and Revision Notes**

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1345	31:551	Feb. 2, 1935, ch. 4, 49 Stat. 19.
	31:552	June 17, 1935, ch. 271, 49 Stat. 387.

**Explanatory Notes**

In the section, before clause (1), the word "appropriation" is substituted for "no moneys from funds appropriated for any purpose" in 31:551 [former section 551 of this title] for consistency in the revised title. The words "travel, transportation, and subsistence expenses for a meeting" are substituted for "the purpose of lodging, feeding, conveying, or furnishing transportation to, any conventions

or other form of assemblage or gathering" to eliminate unnecessary words. The words "to be held in the District of Columbia or elsewhere" are omitted as unnecessary.

In clause (1), the words "agency from paying" are substituted for "the payment of" for clarity and because of section 101 of the revised title [section 101 of this title].

**Cross References**

Availability of appropriations for expenses of attendance at meetings, see section 4110 of Title 5, Government Organization and Employees.

**§ 1346. Commissions, councils, boards, and interagency and similar groups**

(a) Except as provided in this section—

(1) public money and appropriations are not available to pay—

(A) the pay or expenses of a commission, council, board, or similar group, or a member of that group;

(B) expenses related to the work or the results of work or action of that group; or

(C) for the detail or cost of personal services of an officer or employee from an executive agency in connection with that group; and

(2) an accounting or disbursing official, absent a special appropriation to pay the account or charge, may not allow or pay an account or charge related to that group.



excess of appropriations because complete indemnification of railroad operator for losses within deductibles would not have had such effect, and section of contract solved problem by providing for fixed appropriation, as well as limiting reimbursements to railroad operator to amount of appropriation. National R.R. Passenger Corp. v. U.S., 1983, 3 Cl.Ct. 516.

#### 14. — Defense contracts

Where contracts for long-term lease of thirteen rapid deployment prepositioning ships provided for Navy to indemnify contractors in case of loss of specified tax benefits, General Accounting Office did not consider such contracts to impose indefinite or potentially unlimited contingent liability, in violation of this section; government obligations under contracts were either determina-

### § 1342. Limitation on voluntary services

#### Cross References

Acceptance of voluntary and uncompensated services by National Council on the Handicapped, see section 783(b)(2)(A) of Title 29, Labor.

### § 1344. Passenger motor vehicle and aircraft use

#### Notes of Decisions

#### 1. Persons affected

Subsec. (b)(3) of this section includes only persons who have been properly appointed, or who

ble in advance, or could be avoided through separate action by Navy. 1984, 63 Op.Comp.Gen. 145.

#### 19a. Purchase of food

Although payment on contracts for thermostabilized diced turkey and beef stew entrees for military personnel would violate "Buy-American" provision of Department of Defense Appropriations Act, Dec. 29, 1981, 95 Stat. 1565, because Canadian corporation's operations in preparing those entrees involved production, processing and manufacturing, awards did not violate this section which prohibits officers and employers from authorizing expenditures when funds have not been appropriated. Southern Packaging and Storage Co., Inc. v. U.S., D.C.S.C.1984, 588 F.Supp. 532.

have properly succeeded, to head of diplomatic, consular, or other Foreign Service post, such as an ambassador, minister, charge d'affaires, or similar official. 1983, 62 Op.Comp.Gen. 438.

### § 1345. Expenses of meetings

#### Notes of Decisions

#### 1. Specific appropriations

Use of appropriated funds by National Highway Traffic Safety Administration, to pay travel and

lodging expenses of state officials attending training workshop on odometer fraud, was prohibited by this section, since expenditures were not specifically provided for by appropriation legislation. 1983, 62 Op.Comp.Gen. 531.

### § 1348. Telephone installation and charges

[See main volume for text of (a) to (c)]

(d) Under regulations prescribed by the Secretary of Defense, funds appropriated to the Department of Defense are available to install, repair, and maintain telephone wiring in residences owned or leased by the United States Government and, if necessary for national defense purposes, in other private residences.

(As amended Pub.L. 98-407, Title VIII, § 811(a), Aug. 28, 1984, 98 Stat. 1523.)

1984 Amendment. Subsec. (d). Pub.L. 98-407 added subsec. (d).

Effective Date of 1984 Amendment. Section 811(b) of Pub.L. 98-407 provided that: "The amendment made by subsection (a) [enacting subsec. (d) of this section] shall be effective as of January 1, 1984. Funds appropriated to the Department of Defense may be used to reimburse persons for expenditures made after December 31, 1983, for the installation, repair, and maintenance of telephone wiring in any Government-owned or

leased housing unit before the date of the enactment of this Act [Aug. 28, 1984]."

#### Notes of Decisions

#### 2. Necessity of telephone service

Necessary certification of long-distance calls, by concerned agency heads, may be implemented by appropriate statistical sampling system. 1984, 63 Op.Comp.Gen. 241.

### § 1349. Adverse personnel actions

#### Notes of Decisions

Authorized purposes 3

Disciplinary proceedings 2

Unauthorized use of motor vehicles 1

#### 1. Unauthorized use of motor vehicles

Arbitrator erred as matter of law in mitigating government employee's removal for unauthorized use of government vehicle to two-week suspension. Devine v. Nutt, C.A.Fed.1983, 718 F.2d 1048.

#### 2. Disciplinary proceedings

Timely disciplinary requirement of collective bargaining agreement entered into between Ameri-

can Federation of Government Employees and Immigration and Naturalization Service was proper subject of bargaining and did not "override" this section mandating penalty for misuse of government vehicle. Devine v. White, 1983, 697 F.2d 421, 225 U.S.App.D.C. 179.

#### 3. Authorized purposes

"Authorized purposes" for use of government vehicle do not include frolics and detours, even at behest of supervisor, in order to procure alcoholic beverages for on-duty consumption. Devine v. Nutt, C.A.Fed.1983, 718 F.2d 1048.

## CHAPTER 15—APPROPRIATION ACCOUNTING

### § 1501. Documentary evidence requirement for Government obligations

#### Notes of Decisions

#### 1. Generally

In accordance with section 504 of Title 5, which authorizes agencies to award attorney fees and expenses to prevailing party, upon final resolution of adversary adjudication, financial obligation, for general purposes of this section, arises when agen-

cy makes award, i.e., when adjudicative officer renders his decision, in response to prevailing party's fee application. 1983, 62 Op.Comp.Gen. 692.

#### 5. Employment contracts

Kinzley v. U.S., 661 F.2d 187 [main volume] 228 Ct.Cl. 620.

### § 1502. Balances available

#### West's Federal Practice Manual

Peculiarities of government contracts, see § 1522.

### § 1511. Definition and application

#### Explanatory Notes

In subsection (a)(1), the words "appropriated amounts" are substituted for "appropriations" for clarity. In clause (3), the word "make" is substituted for "create" as being more precise. The

text of 31:665(d)(2)(5th sentence) is omitted as unnecessary because of section 102 of the revised title.

### § 1535. Agency agreements

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if—

(1) amounts are available;

(2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;

(3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

(b) Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

cc: Official File  
DO Records  
DO Chron  
Mr. Wright  
Mr. Cooney  
OMB #19792

APR 02 1985

Honorable William Proxmire  
United States Senate  
Washington, D.C. 20510

Dear Senator Proxmire:

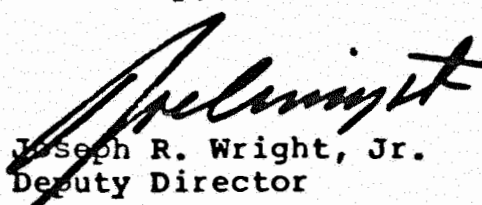
I am responding to your letter to the Director of January 2, 1985, concerning provision of portal-to-portal transportation to officials of the Executive Branch and this agency in light of an opinion of the Comptroller General on this subject.

Based on prior opinions of the Department of Justice and GAO, the provision of portal-to-portal transportation has been authorized for the Director and the Deputy Director of OMB, based on both statutory and security grounds. In particular, the provision of such transportation has been deemed permissible in light of Congress' acquiescence in the longstanding practice of providing such transportation to senior agency officials pursuant to these earlier opinions; and Section 406 of the HUD-Independent Agencies Appropriations Act (Public Law 98-371). This Section, by expressly preventing the use of appropriated funds to provide such transportation to all officials other than the Secretary of HUD and the agencies covered by the bill, demonstrates that Congress knows how to prohibit such transportation when it wishes to do so.

This Office traditionally has given great deference to the Comptroller General's opinions relative to the disbursement and use of public money. This will continue to be true in the future, notwithstanding our differing interpretations of the law in this case.

I strongly agree that the confusion surrounding the provision of portal-to-portal transportation warrants legislative solution and believe a reasonable compromise on this issue can be achieved through legislation more explicitly defining and limiting the availability of such transportation. I look forward to working with the Congress, and most particularly the Comptroller General, to devise such a reasonable and definitive statutory response to the question.

Sincerely,

  
Joseph R. Wright, Jr.  
Deputy Director

THE WHITE HOUSE  
WASHINGTON

Date 4.9.85

Suspense Date \_\_\_\_\_

MEMORANDUM FOR: *John*

FROM: **DIANNA G. HOLLAND**

**ACTION**

- Approved
- Please handle/review
- For your information
- For your recommendation
- For the files
- Please see me
- Please prepare response for \_\_\_\_\_ signature
- As we discussed
- Return to me for filing

**COMMENT**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NINETY-NINTH CONGRESS

Congress of the United States  
House of Representatives

LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE  
OF THE  
COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-373

WASHINGTON, DC 20515

April 2, 1985

Honorable Charles A. Bowsher  
Comptroller General  
General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear General:

On June 3, 1983 you issued a decision, "Use of Government Vehicles for Transportation Between Home and Work," in which you clarified previous GAO decisions on this topic and more clearly interpreted current law. At that time you indicated that the decision would be prospective only and that it would not be considered effective until the end of the 98th Congress in order to give the Congress an opportunity to consider legislation to amend the law.

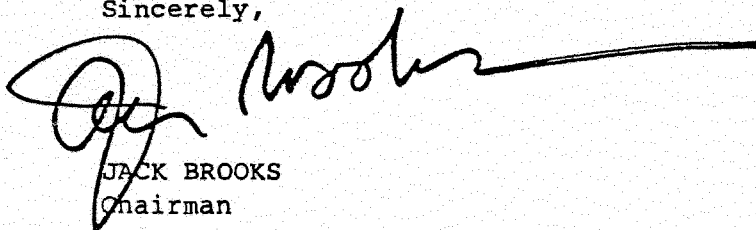
Such legislation was not considered in the 98th Congress. Even though I had asked the Director of the Office of Management and Budget to advise the Committee of any changes that might be needed in current law, the Administration has not proposed any legislation.

I am concerned that some officials may still be using Government vehicles illegally. I would appreciate it, therefore, if you would conduct a review of the use of government vehicles throughout the government to determine whether officials, who are not authorized by law to do so, are using them for transportation between their homes and their places of employment.

Please keep me apprised of the progress of this review, which I hope you will undertake at the earliest possible time.

Meanwhile, with every good wish to you, I am

Sincerely,



JACK BROOKS  
Chairman



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503  
February 2, 1985

*file  
transportation  
portal to portal*

*FFF has seen*

MEMORANDUM FOR FRED FIELDING

FROM: JOE WRIGHT *JW*  
SUBJECT: "Portal-to-portal" Legislation

Fred -- attached is the draft legislative language on the "portal-to-portal" legislation which we just received from Chuck Bowsher of GAO. Brooks is insisting that we send the language/legislation up to the Hill rather than GAO. Roth will handle it either way.

I suggest that we send the language to both of them and ask that they submit the legislation at the request of the Administration. What do you think?

cc: Nancy Risque



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

B-210555

February 1, 1985

Mr. Joseph R. Wright Jr.  
Deputy Director  
Office of Management and Budget

Dear Joe:

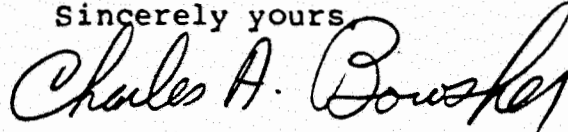
This is in response to your letter dated January 31, 1985, setting forth the views of the Office of Management and Budget regarding the desirability of legislative action to resolve ongoing questions regarding the applicability of the home-to-work transportation prohibition of 31 U.S.C. § 1344.

In response to your request for assistance, we are enclosing a draft of an amended version of section 1344, which we think substantially conforms to the substantive points you made in your January 31 letter. We have somewhat arbitrarily set the cut-off point at executive level II with the addition of a few other persons, based upon prior congressional consideration. Also we have received inquiries concerning the Undersecretaries and Counselor of the Department of State whom you may or may not wish to include in the process of completing work on your legislation.

You also asked about our plans to enforce compliance with existing law during the period that the Congress is considering remedial legislation. As you know, in our decision in 62 Comp. Gen. 438 (1983), we held that the home-to-work transportation prohibition of 31 U.S.C § 1344(a) constituted a "clear prohibition which cannot be waived or modified by agency heads through regulations or otherwise." 62 Comp. Gen. at 441. However, in view of the confused state of the law prior to our decision in that case, we held that we would not question continued use of Government cars to transport heads of non-cabinet agencies and the respective principal deputies of both cabinet and non-cabinet agencies until the end of the Ninety-Eighth Congress. Now that the Ninety-Eighth Congress has ended, our temporary suspension has also ended. While it is not feasible to devote extensive resources to initiating an investigation of compliance with our 1983 decision, if specific instances of alleged violations are brought to our attention, we will, of course, render an appropriate decision.

Notwithstanding the above, if the Administration's proposed legislation is promptly introduced in the Ninety-Ninth Congress, we will delay until June 1, 1985, any effort to enforce the transportation restrictions with respect to persons who would be eligible for Government home-to-work transportation under the terms of the Administration's bill. For all other persons, the restriction will continue to be in effect. You may wish to issue some guidance to the various departments and agencies in the executive branch who, judging by the many inquiries we have received, are still not clear about the requirements of the law.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles A. Bowsher". The signature is written in dark ink and is positioned above the typed name and title.

Comptroller General  
of the United States

Enclosure



Attachment

Section 1344 of Title 31 as amended (with changes underscored).

§ 1344. Passenger motor vehicle and aircraft use

(a) Except as specifically provided by law, an appropriation may be expended to maintain, operate, and repair passenger motor vehicles or aircraft of the United States Government that are used only for an official purpose. An official purpose does not include transporting officers or employees of the Government between their domiciles and places of employment except--

(1) medical officers on out-patient medical service;

(2) officers or employees performing field work requiring transportation between their domiciles and place of employment when the transportation is approved by the head of the agency; and

(3) when an agency head makes a determination that an emergency exists or that highly unusual circumstances present safety, security, or other operational considerations which make such transportation, on a temporary basis, essential to the conduct of official business, provided that the Director of the Federal Bureau of Investigation shall be afforded such transportation on a permanent basis. The authority to make such a determination is non-delegable. The convenience or comfort of the employees to be transported is not a sufficient reason for the authorization of transportation under this subsection.

(b) This section does not apply to a motor vehicle or aircraft for the official use of--

(1) the President and the Vice President;

(2)(A) such persons in the White House Office, in the discretion of the President, whose compensation is fixed at rates at least equal to the rate of basic pay set for level II of the Executive Schedule pursuant to 3 U.S.C. § 105(a)(2)(A);

(B) the heads and deputy heads of executive departments listed in section 101 of Title 5, the Department of the Army, the Department of the Navy, the Department of the Air Force, and such other agencies deemed by the President to have Cabinet-level status or the equivalent, provided that no more than three such agencies shall be so designated at any time; provided further that transportation under this subsection shall be granted only upon the determination of the agency head that such transportation is appropriate, and provided further that the authority to make this decision shall be non-delegable;

(C) the heads of all other establishments in the Executive Branch whose positions are classified at Level II of the Executive Schedule by section 5313 of Title 5, but not including the heads of those agencies specified in section 3502(10) of title 44;

(D) The Joint Chiefs of Staff, the two Undersecretaries of Defense, and the Deputy Director of the Central Intelligence Agency.

(E) such members and employees of the Congress as each House may by rule direct;

(F) The Comptroller General of the United States; and

(G) the Chief Justice and Associate Justices of the United States, in the discretion of the Chief Justice; or

(3) principal diplomatic and consular officials.

(c) The transportation of the spouse of any officer, employee, or member listed in subsection (b) of this section may be considered as being provided for an official purpose when such transportation is advantageous to the Government and incidental to the performance of official business by the listed officer, employee, or member.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

January 31, 1985

Honorable Charles Bowsher  
Comptroller General of the United States  
General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Chuck:

In recent months, a great deal of attention has been paid to the question whether, and under what circumstances, senior officials of the Executive Branch may be provided with portal-to-portal transportation. This issue was crystallized by an opinion issued by the Comptroller General on June 3, 1983, which disagreed with opinions of the Departments of Defense and State as to when such transportation could be provided and recommended that Congress consider revision of the statutes which authorize its provision.

Although we may have differing interpretations of the current laws, I strongly agree with your position that a legislative solution to the portal-to-portal problem is desirable. The Administration intends to submit legislation to Congress in early 1985 proposing amendments to the current statutes to provide a reasonable and definitive resolution of this question. In light of GAO's long experience with the portal-to-portal issue, I would greatly appreciate your assistance in drafting an appropriate statute.

In our view, a legislative proposal should incorporate at least the following principles:

- 1.) Portal-to-portal transportation should be available to senior officials of the Legislative Branch, in the discretion of the Speaker of the House and the President pro tempore of the Senate.
- 2.) Such transportation should be available to Justices of the Supreme Court, in the discretion of the Chief Justice.
- 3.) Within the Executive Branch, eligibility for portal-to-portal transportation should be restricted to a small number of persons who hold specifically designated senior positions. Those positions should be at such a

high level of responsibility that provision of such transportation can be said to serve the public's interest in the discharge of their vital official duties, rather than the personal comfort or convenience of the persons concerned. Such transportation should not automatically be made available to those eligible. Instead, the head of the agency should be granted discretion to provide such transportation and thus be made accountable for that decision.

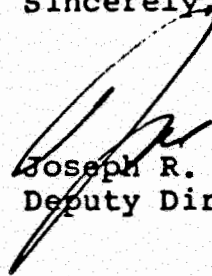
4.) Allowance should be made for provision of such transportation on a temporary basis, under narrowly defined circumstances involving an emergency or highly unusual circumstances presenting safety, security or other operational considerations that make such transportation necessary to the conduct of government business.

5.) Provisions of such transportation to spouses should be permitted only in the most restrictive conditions, along the lines set forth in prior GAO opinions.

Your June 1983 opinion stated that, in light of the continuing confusion surrounding the provision of portal-to-portal transportation, enforcement of the opinion would be deferred as to certain, cited positions until the end of the 98th Congress in order to permit time for a legislative solution. Would you please advise us on what you propose to do with respect to enforcement of your opinion in the interim while the 99th Congress considers remedial legislation.

I look forward to working with you and members of Congress to devise an appropriate answer to this question.

Sincerely,



Joseph R. Wright, Jr.  
Deputy Director

THE WHITE HOUSE  
WASHINGTON

April 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Portal-to-Portal Legislation

As discussed at this morning's staff meeting.

Attachment



THE WHITE HOUSE

WASHINGTON

April 30, 1985

MEMORANDUM FOR JOSEPH WRIGHT  
DEPUTY DIRECTOR  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING *Orig. signed by FFF*  
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal

You have asked if I have any objections to requesting a Department of Justice opinion to counter the General Accounting Office opinion on the portal-to-portal statute. In light of our representations to the Hill in this area, I think such a course of action would be regarded by the Hill as duplicitous and would exacerbate rather than help solve the problems in this area.

As you know, we have succeeded in obtaining a somewhat extended moratorium on GAO "enforcement" of its opinion on the basis of our representations that we would submit a legislative cure for the problems caused by that opinion. To shift gears suddenly and request a Justice opinion that could undermine the GAO position would, I think, show bad faith, and cause not only the Hill members with whom we have been dealing but also GAO officials to feel that they have been "taken" in granting the moratorium. The result could well be immediate and vigorous GAO enforcement efforts that would cause considerable embarrassment to the Administration.

The fact that we would also submit the legislative package as we pursued the Justice opinion strikes me as likely to be insufficient to mollify the Hill and GAO, both of which have hitherto been cooperative. It seems to me that we have chosen a legislative solution to this problem and, to coin a phrase, we should "stay the course."

FFF:JGR:aea 4/30/85  
cc: FFFielding  
JGRoberts  
Subj  
Chron

THE WHITE HOUSE  
WASHINGTON

April 30, 1985

MEMORANDUM FOR JOSEPH WRIGHT  
DEPUTY DIRECTOR  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal

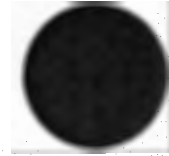
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## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET



- O - OUTGOING
- H - INTERNAL
- I - INCOMING  
Date Correspondence Received (YY/MM/DD)   1  /  1  /

Name of Correspondent: Joe Wright

MI Mail Report                      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Portal - to - Portal Registration

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR	<u>85104129</u>
	Referral Note:	<u>  1  /  1  /  </u>
<u>CUAT 18</u>	<u>A</u>	<u>  1  /  1  /  </u>
	Referral Note:	<u>  1  /  1  /  </u>
		<u>  1  /  1  /  </u>
	Referral Note:	<u>  1  /  1  /  </u>
		<u>  1  /  1  /  </u>
	Referral Note:	<u>  1  /  1  /  </u>
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to be used as Enclosure
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**FOR OUTGOING CORRESPONDENCE:**  
 Type of Response = Initials of Signer  
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Comments: \_\_\_\_\_

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 Always return completed correspondence record to Central Files.  
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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 27, 1985

MEMORANDUM FOR FRED FIELDING

FROM: JOE WRIGHT *JWR*  
SUBJECT: Portal-to-portal Legislation

I spent some time talking to Jack Brooks about the portal-to-portal legislation last week and told him that we would have a legislative package up to the committee sometime in May -- I mentioned that there would be final clearance. He said that this was fine but that he was going to keep the pressure on and request GAO to begin auditing around the June time frame in case the legislation doesn't come up.

Meanwhile -- Mike Horowitz continues to believe that it is a bad idea to send legislation up and that it won't go anywhere -- he feels that we should request a DOJ opinion that would nullify the GAO position last year. I talked to Ed Meese about this yesterday and he has no problem with pursuing this dual route. I also think it's a good idea and asked Mike Horowitz to prepare the necessary request -- do you have any problems with this?

cc: Tom Dawson

THE WHITE HOUSE

WASHINGTON

May 1, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Portal-to-Portal

Joe Wright has asked for your views on permitting individual agencies (in this instance, the Department of Justice) to ask for portal-to-portal authority in their own authorization bills. He thinks the agencies should be permitted to do this since "we probably will not get a total bill through."

Permitting each agency to pursue its own portal-to-portal solution will surely doom any omnibus bill, and will result in unfairness in the portal-to-portal area: agencies with good relations with their authorization committees will secure portal-to-portal for their officials while officials of the same rank at other agencies will not have the service. In addition, an agency-by-agency approach will make it difficult for some sensitive entities -- e.g., the White House -- to request portal-to-portal legislation on their own. I do not know why Wright is suddenly so pessimistic about an omnibus bill. Unless we are at the point of abandoning that approach altogether, I recommend not permitting agencies to seek individual relief from the GAO opinion.

Attachment

THE WHITE HOUSE

WASHINGTON

May 1, 1985

MEMORANDUM FOR JOSEPH WRIGHT  
DEPUTY DIRECTOR  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF (a)  
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal

You have asked for my views on permitting individual agencies (in particular, the Department of Justice) to seek relief from the GAO portal-to-portal opinion through their own authorization processes. I have two main objections to proceeding on an agency-by-agency basis: First, unfairness in the provision of portal-to-portal service would inevitably result as agencies with good relations with their authorization committees secure the service for their officials while officials of the same rank at other agencies are denied the service. Second, an agency-by-agency approach would make it very difficult for sensitive entities -- such as the White House -- to seek portal-to-portal authorization on their own.

I think permitting agencies to proceed on their own to obtain relief from the GAO opinion would doom any omnibus bill. I have not been advised as yet that there is no hope for an omnibus bill, and so long as there is a realistic chance of passage of such a bill I would recommend not permitting the agencies to proceed on their own.

FFF:JGR:aea 5/1/85  
cc: FFFielding  
JGRoberts  
Subj  
Chron

THE WHITE HOUSE

WASHINGTON

May 1, 1985

MEMORANDUM FOR JOSEPH WRIGHT  
DEPUTY DIRECTOR  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal

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cc: FFFielding  
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Subj  
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- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1



Name of Correspondent: Joe Wright

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Portal-to-Portal

**ROUTE TO:**

**ACTION**

**DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUNHOLL</u>	<u>ORIGINATOR</u>	<u>85,05,01</u>			<u>1 1</u>
	Referral Note:				
<u>CUAT18</u>	<u>AID</u>	<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
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		<u>1 1</u>			<u>1 1</u>
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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 30, 1985

NOTE FOR: FRED FIELDING

FROM: JOE WRIGHT *JW*

Lowell Jensen asked if we would give DOJ the approval for them to go for "portal-to-portal" legislation through their own authorization process. He wanted to make sure that this would not screw up our government-wide effort. My feeling is that we should let agencies go on their own because we probably will not get a total bill through. What do you think?

cc: Mike Horowitz

THE WHITE HOUSE

WASHINGTON

May 23, 1985

MEMORANDUM FOR DONALD T. REGAN  
ASSISTANT TO THE PRESIDENT  
CHIEF OF STAFF

Orig. signed by FWF

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal Legislation

On June 3, 1983, GAO issued its opinion strictly interpreting the current portal-to-portal statute, 31 U.S.C. § 1344, to the effect that home to work transportation was permissible only for the heads of the Cabinet departments and principal diplomatic officers. Comp. Gen. Op. B-210555. The opinion granted a "moratorium" on enforcement of this new view of the law until the close of the 98th Congress, to give Congress and the Administration time to develop new portal-to-portal legislation. GAO has extended the moratorium informally, and key members of Congress have acquiesced in this extension, on the basis of our representations that the Administration would be submitting a bill. As you know, we delayed submitting legislation to avoid a possible distraction in the budget effort.

Our time is running out. Under pressure from the Hill, GAO is conducting a detailed survey of portal-to-portal service throughout the Government. Senator Proxmire has also been seeking such information, and wants to know why we are not complying with the 1983 GAO opinion. Two full years have elapsed since the GAO opinion, and if we fail to introduce legislation now GAO will have no choice but to begin enforcing that opinion. Enforcement will likely take the form of seeking reimbursement from officials not covered by 31 U.S.C. § 1344 who have been receiving portal-to-portal: yourself and Mr. McFarlane at the White House, and numerous Deputy Secretaries and other officials throughout the Executive branch.

These demands for reimbursement are likely to be considerably more embarrassing to the Administration than the introduction of legislation seeking expanded portal-to-portal authority. In any event, I think it would be bad faith for the Administration not to introduce such legislation at this point, after having been granted an extended enforcement moratorium on the basis of representations that we would do so.

Attached is the latest version of proposed legislation worked out by Joe Wright with Chairman Jack Brooks and GAO. I recommend that OMB be authorized to submit this to Congress as an Administration bill without further delay.

Attachment

FFF:JGR:aea 5/23/85

cc: FFfielding

JGRoberts

Subj

Chron