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THE WHITE HOUSE

WASHINGTON

May 23, 1985

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

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



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:

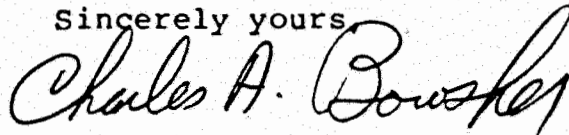
This is in response to your letter dated January 31, 1985, setting forth the views of the Office of Management and Budget regarding the desirability of legislative action to resolve ongoing questions regarding the applicability of the home-to-work transportation prohibition of 31 U.S.C. § 1344.

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,

Handwritten signature of Charles A. Bowsher in cursive script.

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 Bowsler
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.

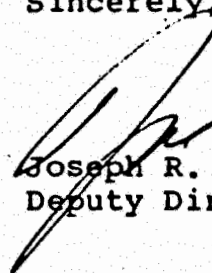
4.) Allowance should be made for provision of such transportation on a temporary basis, under narrowly defined circumstances involving an emergency or highly unusual circumstances presenting safety, security or other operational considerations that make such transportation necessary to the conduct of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

June 10, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Portal-to-Portal

Horowitz has sent you a copy of the latest version of the portal-to-portal bill, which he has also sent to Dwight Ink at GSA. Apparently the plan is for GSA to submit the bill to Congress. Horowitz has also sent a proposed transmittal letter for Ink's signature. After obtaining Ink's expected approval this morning, Horowitz will run the package by Socolar, since the transmittal letter contains representations of GAO support for the bill. Horowitz hopes to have full clearance by close of business today.

In this latest version, Horowitz has added a general Level II provision (Section 1344(b)(2)(B)) rather than a White House Level II and Executive Branch Level II provision, as in the old version. He has kept in, however, the provision for heads and deputy heads of Cabinet departments and three "Cabinet-level or equivalent status" agencies designated by the President (Section 1344(b)(2)(A)). I had thought your suggestion was simply to provide for Executive Branch Level II or above, period. Cabinet heads are of course at Level I and would be covered by a general Level II or above provision. So would deputy secretaries at State, Treasury, Defense, Agriculture, Transportation, and Energy, and the Deputy Attorney General. The six other deputy heads of Cabinet departments -- typically under secretaries rather than deputy secretaries -- are paid at Level III and would lose out if we changed to a straight Level II or above system. John Cooney at OMB advises me that Section 1344(b)(2)(A) was kept in to allow the President flexibility to designate three agencies with "Cabinet level or equivalent status" that would not be covered by a general Level II provision, such as GSA or the VA.

Horowitz's new version retains special treatment for the Joint Chiefs of Staff and the two Under Secretaries of Defense, and adds the Commandant of the Coast Guard. The Comptroller General and the Chairman of the Federal Reserve Board are mentioned separately (since they are not in the Executive Branch). The new version also omits the spousal transportation provision.

If your agreement with Horowitz was to shift to a straight Level II approach, this bill does not do it, because the separate provision for heads and deputy heads of Cabinet and up to three "Cabinet-level or equivalent status" agencies is retained. If your objective was simply to eliminate separate mention of the White House staff in the bill, that goal has been achieved. We should discuss as soon as possible in order to be able to halt Horowitz before he sends the package to Socolar, if necessary.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Mike Horowitz

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Portal-to-Portal Transportation
Draft Bill

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>CUHOLL</u>	ORIGINATOR	<u>85106107</u>		<u> 1 / 1 / </u>
	Referral Note:			
<u>CUAT18</u>	<u>R/D</u>	<u>85106107</u>	<u>S</u>	<u>85106110</u>
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ACTION CODES:

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|---|--|
| A - Appropriate Action | I - Info Copy Only/No Action Necessary |
| C - Comment/Recommendation | R - Direct Reply w/Copy |
| D - Draft Response | S - For Signature |
| F - Furnish Fact Sheet
to be used as Enclosure | X - Interim Reply |

DISPOSITION CODES:

- | | |
|--------------------------|---------------|
| A - Answered | C - Completed |
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- Type of Response = Initials of Signer
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Comments: _____

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

MEMORANDUM

June 7, 1985

To: Fred Fielding
From: Mike Horowitz *MH*
Subject: Portal-to-Portal

Attached is the draft which was sent to Dwight Ink this afternoon.

He will be giving his comments to us on Monday morning. At that time I will take the new draft to Socolar and seek his approval and GAO support. This should be forthcoming given the fact that the new draft largely restricts eligibility as compared with the draft that Chuck Bowsher had earlier signed off on.

Hopefully -- if Ink and Socolar are reasonable and available -- we should have a full signoff by c.o.b. Monday.

Please advise if you have any questions or problems with the bill or transmittal letter.

cc: Joe Wright

A BILL

To authorize the transportation of officers or employees of the Federal government for security reasons, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 2. Title 31, United States Code, Section 1344 is amended to read as follows:

"Sec. 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, which shall be effective for no longer than ninety days and may be renewed by the agency head on a quarterly basis, that an emergency exists or that highly unusual circumstances present safety, security, or other operational considerations which make such transportation 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) the heads and deputy heads of Executive departments listed in section 101 of title 5, 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 subparagraph 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;

"(B) persons in the Executive branch compensated at an annual rate of basic pay equal to, or greater than, that established for Level II of the Executive Schedule pursuant to chapter 11 of title 2, but not including ambassadors-at-large or employees or officers of those agencies specified in section 3502(10) of title 44;

"(C) the Joint Chiefs of Staff, the two Undersecretaries of Defense, and the Commandant of the Coast Guard;

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

"(E) the Comptroller General of the United States and the Chairman of the Federal Reserve Board;

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

"(3) principal diplomatic and consular officials."

Copy sent to
D. Ink on 6/7

Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed for referral to the appropriate committees is a legislative proposal entitled, "To authorize the transportation of officers or employees of the Federal government for security reasons, and for other purposes."

During the past few years, considerable attention has been paid to the question of whether, and under what circumstances, senior government officials may be provided with transportation between their homes and offices ("portal-to-portal" transportation). In 1983, in particular, the Comptroller General issued an opinion in which he disagreed with the Departments of State and Defense with respect to how they had been providing portal-to-portal transportation. He also recommended the enactment of legislation addressing the matter.

The Administration does not necessarily concur in the Comptroller's 1983 interpretation of the law; however, in view of the prevailing uncertainty regarding the scope of the existing statutory provisions, we are forwarding a legislative proposal for the consideration of the Congress to clarify the situation. This proposal is the result of extensive consultations with the Comptroller General concerning the officials, in all three branches of the Federal Government, who might appropriately be provided portal-to-portal transportation.

This proposal was jointly prepared by the Administration and the Comptroller General, who supports its enactment.

Under the Comptroller's 1983 opinion, the following officials are currently eligible for portal-to-portal transportation:

- o The President;
- o The Secretaries of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Labor, State, Transportation, and the Treasury, and the Attorney General;
- o Principal diplomatic and consular officials;
- o Medical officers on out-patient medical services; and
- o Certain officers performing field work.

The Deputy Secretary of Defense, the Under Secretaries of

Defense, and the members of the Joint Chiefs of Staff were subsequently authorized to receive portal-to-portal transportation under section 614(a) of Public Law 98-525.

If enacted, the enclosed legislative proposal would eliminate the needless confusion with respect to who is, and who is not, eligible for portal-to-portal transportation: The draft bill would strictly circumscribe and limit the number of officials who would be eligible. More importantly, the bill would assure that government vehicles are used for purposes related directly to official government business. Nor would coverage be automatic for each listed official. To the contrary, in many instances the draft bill would require an agency head to give his or her personal approval before portal-to-portal transportation could be authorized.

In addition to the officials currently authorized on an express basis to receive portal-to-portal transportation, the Administration's proposal would make the following officials expressly and exclusively eligible:

- o The Vice President;
- o Deputy heads of Cabinet agencies, and the head and deputy head of up to three other agencies deemed by the President to have Cabinet-level status, provided, in each instance, that the head of the agency concerned determines, on a non-delegable basis, that coverage is appropriate;
- o Persons in the Executive branch compensated at a rate equal to, or greater than, the rate for Level II of the Executive Schedule;
- o The Director of the Federal Bureau of Investigation and the Commandant of the Coast Guard;
- o Persons for whom it is determined, by the head of an agency on a non-delegable and renewable basis, that safety, security, or other operational reasons make transportation essential for the conduct of official business;
- o Members and employees of the Congress, as directed by each House, and the Comptroller General of the United States; and
- o The Chief Justice and Associate Justices of the Supreme Court, as designated by the Chief Justice.

Some of the persons listed above -- such as the Vice President -- may already receive portal-to-portal transportation under opinions of counsel that transportation of this nature is necessary for security reasons.

As noted previously, the bill would limit the availability of portal-to-portal transportation to those few very senior

officials whose duties and responsibilities, in the view of the Comptroller General, clearly warrant it. It would not -- and this point should be stressed -- be made available for the personal comfort or convenience of the officials concerned. It would, instead, assist a limited number of specific officeholders to discharge their official duties in an efficient and effective manner.

I look forward to working with the Congress in resolving the uncertainties that currently surround the issue of portal-to-portal transportation.

I have sent an identical letter to the President of the Senate.

Sincerely,

Dwight Ink
Acting Administrator

THE WHITE HOUSE

WASHINGTON

June 11, 1985

MEMORANDUM FOR MICHAEL HOROWITZ
COUNSEL TO THE DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal

I have reviewed today's version of the portal-to-portal bill and transmittal letter. Attached are my changes to both items which reflect the desired formula. I've discussed these with Dwight Ink and he is in agreement.

If you have any questions or disagree that these changes should be made, please call me.

Thank you.

FFF:dgh

cc: EFielding
✓ JGRoberts
Subject
Chron

Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed for referral to the appropriate committees is a legislative proposal entitled, "To authorize the transportation of officers or employees of the Federal government for security reasons, and for other purposes."

During the past few years, considerable attention has been paid to the question of whether, and under what circumstances, senior government officials may be provided with transportation between their homes and offices ("portal-to-portal" transportation). In 1983, in particular, the Comptroller General issued an opinion in which he disagreed with the Departments of State and Defense with respect to how they had been providing portal-to-portal transportation. He also recommended the enactment of legislation addressing the matter. As a result, the Administration developed overall (and highly limiting) specifications for a bill defining eligibility for portal-to-portal transportation, and requested the Comptroller General to draft a bill based on those specifications. With regard to Executive branch positions, the Administration's request to the Comptroller General was to designate in the draft bill only those positions which in his judgment were "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."

The attached proposal, submitted as an Administration bill, results from the draft submitted by the Comptroller General, based on Administration specifications, and is supported by the Comptroller General.

The Administration does not necessarily concur in the Comptroller's 1983 interpretation of the law; however, in view of the prevailing uncertainty regarding the scope of the existing statutory provisions, we are forwarding this legislative proposal for the consideration of the Congress to clarify the existing situation.

The following officials are explicitly eligible for portal-to-portal transportation under Title 31 of the United States Code:

- o The President;
- o The Secretaries of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Labor, State, Transportation, and the Treasury, and the Attorney General;
- o Principal diplomatic and consular officials;
- o Medical officers on out-patient medical services; and
- o Certain officers performing field work.

In addition, the Deputy Secretary of Defense, the Under Secretaries of Defense, and the members of the Joint Chiefs of Staff were also explicitly authorized to receive portal-to-portal transportation under section 614(a) of Public Law 98-525.

If enacted, the enclosed legislative proposal would eliminate needless confusion with respect to who is, and who is not, eligible for portal-to-portal transportation. The draft bill would strictly circumscribe and limit the number of officials who would be eligible. It would assure that government vehicles are used for purposes related directly to official government business. Nor would coverage be automatic for each listed official. To the contrary, the draft bill would require an agency head to give his or her personal approval before portal-to-portal transportation could be authorized.

In addition to the officials currently authorized on an express basis to receive portal-to-portal transportation, the Administration's proposal would make the following officials expressly and exclusively eligible:

- o The Vice President;
- o ~~Deputy heads of Cabinet agencies, and the head and deputy head of up to three other agencies deemed by the President to have Cabinet-level status, provided, in each instance that the head of the agency concerned determines, on a non-delegable basis, that coverage is appropriate.~~ *provided, in each instance, that the head of the agency concerned determines, on a non-delegable basis, that coverage is appropriate.*
- o Certain persons in the Executive branch compensated at a rate equal to, or greater than, the rate for Level II of the Executive Schedule;
- o The Director of the Federal Bureau of Investigation and the Commandant of the Coast Guard;

**handwriting reads as follows: provided, in each instance, that the head of the agency concerned determines, on a non-delegable basis, that coverage is appropriate.

- o Persons for whom it is determined, by the head of an agency on a non-delegable and renewable basis, that safety, security, or other operational reasons make transportation essential for the conduct of official business;
- o Members and employees of the Congress, as directed by each House, and the Comptroller General of the United States; and
- o The Chief Justice and Associate Justices of the Supreme Court, as designated by the Chief Justice.

Some of the persons listed above -- such as the Vice President -- may already receive portal-to-portal transportation under opinions of counsel that transportation of this nature is necessary for security reasons.

As noted previously, the bill would limit the availability of portal-to-portal transportation to those few very senior officials whose duties and responsibilities, in the view of the Comptroller General, clearly warrant it. It would not -- and this point should be stressed -- be made available for the personal comfort or convenience of the officials concerned. It would, instead, assist a limited number of specific officeholders to discharge their official duties in an efficient and effective manner. As can be noted, eligibility criteria in the bill largely builds upon (but in some instances is narrower than) Congressional determinations of Executive Level II status.

Finally, department and agency heads are being asked to make sure their organizations adhere strictly to the provisions of whatever legislation is enacted. OMB will look to the President's Council on Integrity and Efficiency to help coordinate the work of the Inspector Generals in assisting these officials in ensuring such compliance.

I look forward to working with the Congress in resolving the uncertainties that currently surround the issue of portal-to-portal transportation.

An identical letter has been sent to the President of the Senate.

The Office of Management and Budget advises that it has no objection to the submission of this legislative proposal to the Congress from the standpoint of the Administration's program.

Sincerely,

Dwight Ink
Acting Administrator

A BILL

To authorize the transportation of officers or employees of the Federal government for security reasons, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 2. Title 31, United States Code, Section 1344 is amended to read as follows:

"Sec. 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, which shall be effective for no longer than ninety days and may be renewed by the agency head on a quarterly basis, that an emergency exists or that highly unusual circumstances present safety, security, or other operational considerations which make such transportation, 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) the heads ~~and deputy heads~~ of Executive departments listed in section 101 of title 5, 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 subparagraph 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;~~
~~SELT~~

"(B) persons in the Executive branch compensated at an annual rate of basic pay equal to, or greater than, that established for Level II of the Executive Schedule pursuant to chapter 11 of title 2, but not including ambassadors-at-large or employees or officers of those agencies specified in section 3502(10) of title 44; provided further that transportation under this subparagraph 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 Joint Chiefs of Staff, the two Undersecretaries of Defense, and the Commandant of the Coast Guard;

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

"(E) the Comptroller General of the United States and the Chairman of the Federal Reserve Board;

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

MORE

"(3) principal diplomatic and consular officials."

+ provision for spouse transportation.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

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

Name of Correspondent: Mike Horowitz

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>CUHOLL</u>		ORIGINATOR	<u>85106119</u>			<u>1 1</u>
		Referral Note:				
<u>CUAT18</u>		<u>A</u>	<u>85106119</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>			<u>1 1</u>
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MEMORANDUM

June 19, 1985

To: Joe Wright
Fred Fielding

From: Mike Horowitz *MH*

Subject: Portal-to-Portal

On the assumption that the GAO will not support our draft bill, here is my shot at what just might be the final version of the bill and transmittal letters. (I've cleared with Jim Frey that it will be alright to send the bill directly to Brooks and Roth rather than to the Speaker and President Pro-Tem of the Senate.)

If both of you concur, I propose that Dwight be called and asked to sign the transmittal letters tomorrow.

Honorable Jack Brooks
Chairman, House Government Operations Committee
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed for referral to the appropriate committees is a legislative proposal entitled, "To authorize the transportation of officers or employees of the Federal government for security reasons, and for other purposes."

During the past few years, considerable attention has been paid to the question of whether, and under what circumstances, senior government officials may be provided with transportation between their homes and offices ("portal-to-portal" transportation). In 1983, in particular, the Comptroller General issued an opinion in which he disagreed with the Departments of State and Defense with respect to how they had been providing portal-to-portal transportation. He also recommended the enactment of legislation addressing the matter. As a result, the Administration developed overall specifications for a bill defining eligibility for portal-to-portal transportation, and requested the Comptroller General to draft a bill based on those specifications. With regard to Executive branch positions, the Administration's request to the Comptroller General was to designate in a draft bill only those positions which in his judgment were "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."

The attached bill results from the draft prepared by the Comptroller General, based on the above specifications.

The Administration does not necessarily concur in the Comptroller's 1983 interpretation of the law; however, in view of the prevailing uncertainty regarding the scope of the existing statutory provisions, we are forwarding this legislative proposal for the consideration of the Congress to clarify the existing situation.

The following officials are explicitly eligible for ~~porta~~-to-portal transportation under Title 31 of the United States Code:

o- The President;

- o The Secretaries of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Labor, State, Transportation, and the Treasury, and the Attorney General;
- o Principal diplomatic and consular officials;
- o Medical officers on out-patient medical services; and
- o Certain officers performing field work.

In addition, the Deputy Secretary of Defense, the Under Secretaries of Defense, and the members of the Joint Chiefs of Staff were also explicitly authorized to receive portal-to-portal transportation under section 614(a) of Public Law 98-525. Also, subsection 12(g) of Public Law 81-216, the National Security Act Amendments of 1949, creating the Department of Defense, permits the three Secretaries of the respective military departments to be deemed 5 U.S.C. 101 equivalents and thus, in effect, makes them expressly eligible for portal-to-portal transportation. See, 62 Comptroller General 438, 443, footnote 1 (1983).

If enacted, the enclosed legislative proposal would eliminate needless confusion with respect to who is, and who is not, eligible for portal-to-portal transportation. The draft bill would strictly circumscribe and limit the number of officials who would be eligible. The bill would provide that government vehicles are used for purposes related directly to official government business. Coverage would not be automatic for each listed official. In many instances, the draft bill would require an agency head to give his or her personal approval before portal-to-portal transportation could be authorized even though the position is listed in the statute.

In addition to the officials now expressly authorized to receive portal-to-portal transportation, the Administration's proposal would make the following officials expressly and exclusively eligible:

- o The Vice President;
- o Deputy heads of Cabinet agencies, the head and deputy head of up to three other agencies deemed by the President to have Cabinet-level status; the most senior officials in the White House Office; and certain persons in the Executive Branch holding Level II positions in the

Executive Schedule; provided, that, for deputy heads and agency heads of constituent components of Cabinet agencies, the Cabinet Secretary determines, on a non-delegable basis, that coverage is appropriate;

- o The Director of the Federal Bureau of Investigation and the Commandant of the Coast Guard;
- o Persons for whom it is determined, by the head of an agency on a non-delegable and renewable basis, that safety, security, or other operational reasons make transportation essential for the conduct of official business;
- o Members and employees of the Congress, as directed by each House, and the Comptroller General of the United States; and
- o The Chief Justice and Associate Justices of the Supreme Court, as designated by the Chief Justice.

Some of the persons listed above -- such as the Vice President -- may already receive portal-to-portal transportation under opinions of counsel that transportation of this nature is necessary for security reasons.

As noted previously, the bill would limit the availability of portal-to-portal transportation to those few very senior officials whose duties and responsibilities, in the view of the Comptroller General, clearly warrant it. It would not -- and this point should be stressed -- be made available for the personal comfort or convenience of the officials concerned. It would, instead, assist a limited number of specific officeholders to discharge their official duties in an efficient and effective manner. Moreover, it would be more limited than what Congress had authorized last year in extending entitlement for portal-to-portal transportation to two Level III Under Secretaries in the Defense Department. It should be emphasized that eligibility under the bill for this type of transportation is based on Executive Level II status, as already determined by the Congress.

It should be noted that department and agency heads are being asked to make sure their organizations adhere strictly to the provisions of whatever legislation is enacted. The Office of Management and Budget will look to the President's Council on Integrity and Efficiency to help coordinate the work of the

Inspectors General in assisting these officials in ensuring compliance.

I look forward to working with the Congress in resolving the uncertainties that currently surround the issue of portal-to-portal transportation.

An identical letter has been sent to the Chairman of the Senate Governmental Affairs Committee.

The Office of Management and Budget has advised that it has no objection to the submission of this legislative proposal to the Congress from the standpoint of the Administration's program.

Sincerely,

Dwight Ink
Acting Administrator

A BILL

To authorize the transportation of officers or employees of the Federal government for security reasons, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 2. Title 31, United States Code, Section 1344 is amended to read as follows:

"Sec. 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, which shall be effective for no longer than ninety days and may be renewed by the agency head on a quarterly basis, that an emergency exists or that highly unusual circumstances present safety, security, or other operational considerations which make such transportation, 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) the heads and deputy heads of Executive departments listed in section 101 of title 5, 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, and such persons as may be designated by the President from among the positions authorized by section 105(a)(2)(A) of title 3; provided further that transportation under this subparagraph provided to deputy agency heads 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;

"(B) other persons in the Executive branch designated at Level II of the Executive Schedule pursuant to section 5313 of title 5, but not including ambassadors-at-large; provided further that in the case of such persons whose agencies are constituent elements of Executive departments listed in Section 101 of title 5, transportation under this subparagraph shall be granted only upon the determination of the Executive department head that such transportation is appropriate, and provided further that the authority to make this decision shall be non-delegable;

"(C) the Joint Chiefs of Staff, the two Undersecretaries of Defense, and the Commandant of the Coast Guard;

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

"(E) the Comptroller General of the United States;

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

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- O - OUTGOING
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Date Correspondence Received (YY/MM/DD) 1 / 1

Name of Correspondent: Michael Haronitz

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Partial to Partial

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>CUHOLL</u>	ORIGINATOR	<u>85.06.19</u>			<u>1 / 1</u>
	Referral Note:				
<u>CUAT18</u>	<u>A</u>	<u>85.06.19</u>		<u>S</u>	<u>85.06.19</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

MEMORANDUM

June 19, 1985

TO: Fred Fielding
FROM: Mike Horowitz *MH*
RE: Portal-to-Portal

Here's the latest draft, which the GAO now takes the position is required in order for them to give their (needed) support. As you can see, the GAO changes:

- o limit to 5 the Presidential 3 U.S.C. 105(a)(2)(A) Level II designations who can receive the service; and
- o remove Presidential discretion to designate three Cabinet-equivalent agencies whose heads and deputy heads can receive the service.

(FYI, Socolar felt quite firmly about the first change; much less about the second -- which is subject to further discussion.)

In addition, Socolar thought it unwieldly to exempt 5 U.S.C. 5313 independent agency heads from Section (b)(2)(B) of the draft when the sole effect was the exclusion of the Chairman of the NRC -- at a cost of an unduly complex draft. I agree and Section (b)(2)(B), as you can see, simply accepts Congress' rank list of important positions on the basis of the Level II designations of Section 5313.

One further change that I have put in to Section (b)(2)(B) relates to the non-delegable certification of appropriateness. It was put in at your suggestion, but is a bit unwieldly in the current draft because it requires self-certification by some agency heads and is also somewhat unclear about the status of EOP certifications. My formulation, which restricts the required agency head certifications to persons "whose agencies are constituent elements of Executive departments listed in Section 101 of title 5," appears to me to do the trick, but you may have other thoughts.

I believe that if we sign on to the limit of 5 for the 3 U.S.C. 105(a)(2)(A) Level II positions, a transmittal letter can be drafted and signed within a couple of hours.

Let's talk and please advise.

cc: Joe Wright

A BILL

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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"(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, which shall be effective for no longer than ninety days and may be renewed by the agency head on a quarterly basis, that an emergency exists or that highly unusual circumstances present safety, security, or other operational considerations which make such transportation, 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) the heads and deputy heads of Executive departments listed in section 101 of title 5 and such persons, not to exceed five, as may be designated by the President from among the positions authorized by section 105(a)(2)(A) of title 3; provided further that transportation under this subparagraph provided to deputy agency heads 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;

"(B) other persons in the Executive branch designated at Level II of the Executive Schedule pursuant to section 5313 of title 5, but not including ambassadors-at-large; provided further that in the case of such persons whose agencies are constituent elements of Executive departments listed in Section 101 of title 5, transportation under this subparagraph shall be granted only upon the determination of the Executive department head that such transportation is appropriate, and provided further that the authority to make this decision shall be non-delegable;

"(C) the Joint Chiefs of Staff, the two Undersecretaries of Defense, and the Commandant of the Coast Guard;

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"(E) the Comptroller General of the United States;

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Name of Correspondent: Dwight Ink

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

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<u>CUNHOLL</u>	ORIGINATOR	<u>85/06/25</u>			<u>1 / 1</u>
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<u>CUAT 18</u>	<u>A</u>	<u>85/06/25</u>			<u>1 / 1</u>
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June 25, 1985

Honorable Michael Horowitz
Counsel to the Director
Office of Management and Budget
Old Executive Office Building, Room 472
Washington, DC 20503

Dear Mr. *Mike* Horowitz:

The draft letter for transmitting the portal-to-portal legislation to Congress looks fine. However, we have not yet cleared the questions and answers on White House staff.

My principal remaining concern relates to the fact that the legislation authorizes up to 25 Executive Level II White House staff. This means that we must be in a position to explain that, despite the law, the President will designate only a much smaller number, preferably a maximum of 5.

If we were called upon to explain the difference between the 25 now legally entitled in the views of GAO and Senator Proxmire and the 87 authorized by this legislation, I believe we might generate a surprising amount of negative publicity. The President's strong position on waste and abuse will be perceived as applying only to the government workers and not to the political leadership of this Administration. If, however, we can say that the practical effect is only 67 (87 - 20 White House staff) because of White House staff limitations, I believe we have a reasonably defensible position, although I would prefer an even smaller number.

In handling this area for President Ford, I found that Senator Proxmire and others are able to escalate this issue to ridiculous heights. The chauffeuring of high officials, especially White House staff, has a highly symbolic negative image in the eyes of the man and woman on the street.

Dwight

DWIGHT LNK
Acting Administrator

cc: Honorable Fred Fielding ✓
Counsel to the President
The White House