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THE WHITE HOUSE

WASHINGTON

June 26, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Portal-to-Portal

The attached memorandum for Horowitz conveys your suggested changes in the portal-to-portal bill and transmittal letter. You had the Director of Central Intelligence specifically listed in the letter but not the bill; I left him out of the letter on the assumption you decided he would best be covered by the "Cabinet-level status" provisions in the bill, and inadvertently forgot to cross him out of the letter. You questioned the discussion in the letter about the role of the Comptroller General in preparing this bill; I deleted it altogether. If he is not willing to sign off on this version I think it only confusing to discuss his role with respect to previous drafts. Such a tactic would also likely provoke a dispute with the Comptroller over our use of his name, which cannot help get the bill passed. Finally, I could not tell for certain, but I assume you wanted to retain the department head determination requirement for deputy head transportation; the attached draft does so.

Attachment

THE WHITE HOUSE

WASHINGTON

June 26, 1985

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

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

SUBJECT: Portal-to-Portal

Attached is a revised version of the portal-to-portal bill. It makes changes in your June 19 version in Section 1344(a) (3), 1344(b) (2) (A), and 1344(b) (2) (C), and adds a new 1344(b) (2) (G). I have also prepared a revised transmittal letter, in accord with the new version of the bill, and deleting the discussion of preliminary dealings with the Comptroller General. My new letter also expressly rejects the Comptroller General's view of existing law.

Attachments

FFF:JGR:aea 6/26/85
cc: FFFielding
JGRoberts
Subj
Chron

cc: Dwight Ink
Joe Wright

June 26, 1985

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.

The Administration does not concur in the Comptroller's 1983 interpretation of the law; it is inconsistent with known and accepted past practice and Congressional acquiescence in or approval of such practice. 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.

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

- The President;
- 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;
- Principal diplomatic and consular officials;
- Medical officers on out-patient medical services; and
- 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:

- ° The Vice President;
- ° Deputy heads of Cabinet agencies, any individuals deemed by the President to have Cabinet-level status, 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;
- ° The Director of the Federal Bureau of Investigation, White House Chief of Staff, Assistant to the President for National Security Affairs, and the Commandants of the Coast Guard and the Marine Corps;
- ° Persons for whom it is determined, by the President or 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;

° Members and employees of the Congress, as directed by each House, and the Comptroller General of the United States;

° The Chief Justice and Associate Justices of the Supreme Court, as designated by the Chief Justice; and

° Any person afforded protection pursuant to 18 U.S.C. § 3506(a).

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.

The bill would limit the availability of portal-to-portal transportation to those few very senior officials whose duties and responsibilities clearly warrant it. It would not -- and this point should be stressed -- be made available for the personal comfort or convenience of any officials concerned. Nor would it necessarily require the dedication of a vehicle and driver for the exclusive use of any individual. It would, instead, assist a limited number of specific office-holders 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 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

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

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 the President or an agency head makes a determination, which shall be effective for no longer than ninety days and may be renewed 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, the Assistant to the President and Chief of Staff, and the Assistant to the President for National Security Affairs shall be afforded such transportation on a permanent basis. The authority of an agency head 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 any other individuals deemed by the President to have Cabinet-level status; provided that transportation under this subparagraph provided to deputy department heads shall be granted only upon the determination of the department 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 Commandant of the Coast Guard, and the Commandant of the Marine Corps;

" (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

" (G) any person being provided protection pursuant to 18 U.S.C. § 3056 (a).

" (3) principal diplomatic and consular officials."

THE WHITE HOUSE

WASHINGTON

June 26, 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

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cc: FFfielding
JGRoberts
Subj
Chron

June 26, 1985

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The Administration does not concur in the Comptroller's 1983 interpretation of the law; it is inconsistent with known and accepted past practice and Congressional acquiescence in or approval of such practice. 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.

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

- The President;
- 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;
- Principal diplomatic and consular officials;
- Medical officers on out-patient medical services; and
- 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:

- ° The Vice President;
- ° Deputy heads of Cabinet agencies, any individuals deemed by the President to have Cabinet-level status, 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;
- ° The Director of the Federal Bureau of Investigation, White House Chief of Staff, Assistant to the President for National Security Affairs, and the Commandants of the Coast Guard and the Marine Corps;
- ° Persons for whom it is determined, by the President or 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;

° Members and employees of the Congress, as directed by each House, and the Comptroller General of the United States;

° The Chief Justice and Associate Justices of the Supreme Court, as designated by the Chief Justice; and

° Any person afforded protection pursuant to 18 U.S.C. § 3506 (a).

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.

The bill would limit the availability of portal-to-portal transportation to those few very senior officials whose duties and responsibilities clearly warrant it. It would not -- and this point should be stressed -- be made available for the personal comfort or convenience of any officials concerned. Nor would it necessarily require the dedication of a vehicle and driver for the exclusive use of any individual. It would, instead, assist a limited number of specific office-holders 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 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

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

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 the President or an agency head makes a determination, which shall be effective for no longer than ninety days and may be renewed 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, the Assistant to the President and Chief of Staff, and the Assistant to the President for National Security Affairs shall be afforded such transportation on a permanent basis. The authority of an agency head 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 any other individuals deemed by the President to have Cabinet-level status; provided that transportation under this subparagraph provided to deputy department heads shall be granted only upon the determination of the department 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 Commandant of the Coast Guard, and the Commandant of the Marine Corps;

" (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

" (G) any person being provided protection pursuant to 18 U.S.C. § 3056 (a).

" (3) principal diplomatic and consular officials."

Date 6.26.85

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

Pls. see RFF changes
and prepare to
send to Horowitz
for RFF signature.
Thank you.

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>
	Referral Note:		

- ACTION CODES:**
- A - Appropriate Action
 - C - Comment/Recommendation
 - D - Draft Response
 - F - Furnish Fact Sheet
to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

- DISPOSITION CODES:**
- A - Answered
 - B - Non-Special Referral
 - C - Completed
 - S - Suspended

FOR OUTGOING CORRESPONDENCE:
 Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____



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.

*I need begin
GAO would have to support*

[Signature]

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 portal-to-portal transportation under Title 31 of the United States Code:

o--The President;

it is inconsistent with known and past practice and Congressional acquiescence in the same practice

Mr. [unclear]

- 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, ^{or individuals} ~~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 *and the Marine Corps*
- 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.

What to do about it, what time class, Assoc. Sec. Panel for

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.

No need to reorganize the cabinet, and secure

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.

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Sincerely,

Dwight Ink
Acting Administrator

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

"(2) officers or employees performing field work requiring

~~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 ^{department} ~~agency~~ heads shall be granted only upon the determination of the ^{department} ~~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, ⁹ ~~the two Undersecretaries of Defense,~~ and the Commandant of the Coast Guard, ^{and the Commandant of the Marine Corps;}

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

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(G) any person being provided protection pursuant to USC ←

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transportation between their domiciles and place of employment when the transportation is approved by the head of the agency; and

the President or

the Assistant to the President and Chief of Staff, and the Assistant to the President for National Security Affairs

(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.

Security Affairs

of an agency head

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(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 any other individuals ~~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; ^{SECRET} provided ~~further~~ that transportation ^{Department} under this subparagraph provided to deputy ~~agency~~ heads shall be ^{Department} 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;~~ ~~SECRET~~

"(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;~~ ^{and the Commandant of the Marine Corps;}

"(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

(G) any person being provided protection pursuant to 18 U.S.C. § 3056(a).

"(3) principal diplomatic and consular officials."

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.

It is immaterial with known and accepted past practices and common-sense acquisition in or expansion of such practice

At present,
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. 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; *and individuals*
- 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 Commandants of the Coast Guard, *and the Marine Corps,*
- 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; *and*
- o *Any person afforded protection pursuant to 18 U.S.C. § 3506(c).*

White House Chief of Staff, Assistant to the President for National Security Affairs,

President or the

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.~~

only

It would not require the designation of a vehicle and driver for the exclusive use of any individual.

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,

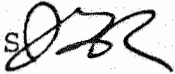
Dwight Ink
Acting Administrator

THE WHITE HOUSE

WASHINGTON

June 11, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Portal-to-Portal

Horowitz has submitted a new version of the portal-to-portal bill, and has asked for your clearance by close of business today, if possible. I relayed to Horowitz your marginalia at the bottom of my June 10 memorandum (attached); he added the "determination of the agency head" language from proposed Section 1344(b) (2) (A) to Section 1344(b) (2) (B) as well to respond to your concerns. This change means that transportation is available to (1) heads and deputy heads of the Cabinet departments, (2) heads and deputy heads of up to three agencies designated by the President to have Cabinet-level status or the equivalent, and (3) Executive branch Level IIs, in all three cases only when the agency head determines that such transportation is appropriate.

I told Horowitz it was my understanding that you wanted the Cabinet heads to have portal-to-portal automatically, without the need for a determination, but he said he could not make that change in view of negotiations with Ink and Bowsher. I also pointed out the problem with the cover letter, on page 3, where it states "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." Horowitz intends this to be read as indicating that the Comptroller General has reviewed and approves of the bill, and not that the bill itself requires any approval by the Comptroller General before portal-to-portal may be provided. I can see how both readings are possible; any confusion should dissipate upon a reading of the bill, which clearly has no provision for Comptroller General approval. I suggested that the sentence nonetheless be clarified to remove the confusion, but Horowitz would not change it because, according to him, it was the strongest statement of Comptroller General approval of the bill he could get past the Comptroller General.

The cover letter has been expanded to discuss the role of the Comptroller General in developing the bill, and contains, in paragraph 3, a specific statement that the Comptroller General supports the bill. I thus see no reason for Horowitz

to insist on the confusing language discussed above, but also do not want to delay this process any further in nit-picking with Horowitz. My own view is that we should clear the bill and simply reiterate our comments on the confusing language in the letter. The bill is close to a straight Level II with agency discretion approach, which you suggested in the first place.

Attachment

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. I would have preferred to have Cabinet heads have automatic portal-to-portal, with no need for a self-interested determination of appropriateness, but will not insist on the point if you think it would imperil the concurrence of GAO and others.

With respect to the transmittal letter, I must reiterate my concern that the statement on page 3 that "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" is confusing. It can easily be read as suggesting that under the bill the approval of the Comptroller General is required before portal-to-portal can be provided. The latest version of the letter clearly indicates Comptroller General support of the bill in the third paragraph, and accordingly I see no need to introduce confusion by retaining the reference to the Comptroller General in the quoted language.

FFF:JGR:aea 6/11/85
cc: FFFielding
JGRoberts
Subj
Chron



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: June 11

TO: John Roberts

FROM: Mike Horowitz *MH*

While final clearance from Ink and Bowsler is necessary, I believe that this version is likely to be acceptable to them. If possible your thoughts and Fred's before c.o.b. today would be of great value so that the letter can go out by that time.

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;
- 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;

- 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;

"(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

"(3) principal diplomatic and consular officials."



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

Autos

B-210555.10

August 19, 1985

The Honorable William Proxmire
United States Senate

Dear Senator Proxmire:

This is in response to your letter dated May 28, 1985, requesting that this Office "review the current practice, and legality, of chauffeur service for top staff of the Office of Management & Budget and the White House." We have answered the specific questions posed in your May 28 letter in the discussion of the pertinent circumstances and applicable law set forth below. In general, we have concluded that no person at the Office of Management and Budget (OMB) or on the White House staff may regularly receive Government transportation for travel between his home and his workplace under the law as it is presently worded.

The information available to us at this time indicates that at OMB, the former Director was receiving daily Government home-to-work transportation until his recent departure from Government service. The Deputy Director of OMB received such transportation during the first 3 months of this year (until April 5, 1985), but now drives himself to and from his office. The White House has not responded to our inquiries to date and we were unable to verify the information provided in your May 28 letter that the Counselor to the President, the Chief of Staff, the Deputy Chief of Staff, and the Assistant to the President for National Security Affairs receive Government home-to-work transportation. We have therefore answered your questions with respect to the White House staff in general terms, making a working assumption that the information provided to you 3 years ago is still true for the present incumbents of the positions you identified.

The provision of home-to-work transportation to Government employees is governed by 31 U.S.C. § 1344 (1982) which provides that a vehicle may be operated with appropriated funds "only for an official purpose." The term, "official purpose," with few exceptions, "does not include transporting officers or employees of the Government between their domiciles and places of employment * * *." 31 U.S.C. § 1344(a). In our decision in 62 Comp. Gen. 438 (1983), we concluded that some of our previous decisions interpreting 31 U.S.C. § 1344 included "overly broad language which implied exceptions to the statutory prohibition which we did not intend." We then set out to restate the law as unequivocally as possible.

We held that unless certain narrow exceptions apply, "agencies may not properly exercise administrative discretion to provide home-to-work transportation to their officers and employees, unless otherwise provided by statute." 62 Comp. Gen. at 447.

Section 1344(a) of title 31 provides exemptions from the home-to-work prohibition for medical officers performing outpatient services and certain employees performing field work. In our opinion, these exemptions do not apply to OMB and White House staff. Further, section 1344(b) exempts a small group of officials from the home-to-work prohibition. That group includes the President, the heads of cabinet departments specifically listed in section 101 of title 5, and "principal diplomatic and consular officials." 31 U.S.C. § 1344(b) (1982). Because no person at OMB or on the White House staff falls within this group of officials, and we are aware of no other pertinent authority, we conclude that, in the absence of any information which would support an exception, no person at OMB or on the White House staff may properly receive Government home-to-work transportation.

As your May 28 letter indicates, OMB cites section 406 of Public Law 98-371, the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1985, in support of its position that home-to-work transportation for the Director and Deputy Director of OMB is authorized. That section reads:

"Sec. 406. None of the funds provided in this Act to any department or agency may be expended for the transportation of any officer or employee of such department or agency between his domicile and his place of employment, with the exception of the Secretary of the Department of Housing and Urban Development, who, under title 5, United States Code, section 101, is exempted from such limitation." 98 Stat. 1237.

OMB, in its April 2, 1985, letter to you, points out that section 406, "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."

OMB's argument seems to be that because Congress in section 406 specifically prohibited home-to-work transportation for Department of Housing and Urban Development

employees (with the exception of the Secretary), and has enacted no similar prohibition for OMB, Congress intends that there be no home-to-work prohibition applicable to OMB. We cannot agree with OMB's contention. We are aware of no precedent or statutory authority which would support such a legal theory. OMB's position ignores the permanent prohibition of 31 U.S.C. § 1344. Were we to accept OMB's argument and apply it to all agencies other than HUD, it would effectively repeal the home-to-work transportation prohibition of 31 U.S.C. § 1344. We are not aware of anything that shows that Congress intended such a result.

You point out that OMB also asserts "security grounds" as justification for the provision of home-to-work transportation to the former Director and the Deputy Director. In 54 Comp. Gen. 855 (1975) this Office recognized that a legitimate fear of violent criminal or terrorist activities could warrant an exception to the home-to-work prohibition for Government employees exposed to such danger. In order to justify the use of a Government vehicle for home-to-work transportation on the basis of such a threat, there must be a "clear and present danger" of violent criminal or terrorist activities directed at the employee in question and it must be clear that the furnishing of Government transportation would provide protection not otherwise available. 54 Comp. Gen. at 858. A determination that a threat to the safety of an employee justifies home-to-work transportation should be made with great circumspection. This Office would consider it an abuse of discretion if speculative or remote fears of terrorism were used to justify home-to-work transportation of employees. B-210555.3, February 7, 1984.

Here, OMB has merely asserted "security grounds," with no further explanation, as justification for the home-to-work transportation of the former Director and the Deputy Director. In our view, this assertion, standing alone without further explanation of the specific nature of the threat and the added protection afforded by Government transportation, does not establish the existence of circumstances warranting Government home-to-work transportation.

On the other hand, to the extent that security measures are justified, home-to-work transportation at Government expense may be authorized.

Your May 28 letter indicates that OMB spokesmen, in statements to the media, have asserted that the Director's position has "Cabinet-level rank" and, accordingly, the Director is entitled to Government home-to-work transportation. OMB apparently contends that the Director should be numbered among the "heads of executive departments listed in section 101 of title 5," who are exempt from the home-to-work prohibition under 31 U.S.C. § 1344(b). However that may be, under the law as it presently stands OMB is not a cabinet agency and its Director is not entitled to rely on the exception. In this connection you are doubtless aware that the Administration has submitted proposed legislation on this subject.

Finally, you have specifically asked whether top White House and OMB staff are subject to the penalties prescribed in law for knowing violation of the home-to-work prohibition and, if so, how these penalties would be invoked. The penalty for violation of 31 U.S.C. § 1344 is set forth in 31 U.S.C. § 1349(b) (1982) as follows:

"(b) An officer or employee who willfully uses or authorizes the use of a passenger motor vehicle or aircraft owned or leased by the United States Government (except for an official purpose authorized by section 1344 of this title) or otherwise violates section 1344 shall be suspended without pay by the head of the agency. The officer or employee shall be suspended for at least one month, and when circumstances warrant, for a longer period or summarily removed from office."

We are aware of no reason why White House or OMB staff would not be subject to this provision. The appropriate penalty is mandatory and would be invoked if a determination by the agency head is made that a willful violation of section 1344 had taken place. In the case of both Mr. Stockman and Mr. Wright, as a non-cabinet agency head and his second-in-command, our 1983 decision established a moratorium on enforcement of the prohibition against non-cabinet agency heads and the second-in-command of cabinet and non-cabinet level agencies, until the end of the 98th Congress in order to afford the executive branch an opportunity to submit an amendment to the existing prohibition that might expand the

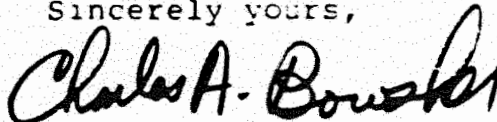
exemptions. That moratorium has now expired.^{1/} Mr. Stockman had continued to use Government transportation until his departure from Government service and Mr. Wright continued to do so until April 5, 1985. They did so on advice of counsel that they qualified for an exemption on several other grounds. The advice was mistaken in our view, but there may not be grounds for a finding that Mr. Stockman or Mr. Wright "willfully" disregarded the prohibition.

Similarly, we assume that if White House staff members utilized such transportation, they did so with advice of counsel. While such transportation is not permitted by the statute, and we have received no information regarding any applicable exception to the prohibition, its use probably would not amount to "willfull" disregard of the law by the staff members involved.

Nevertheless, irrespective of concerns of willfulness, the fact remains that on the present record unauthorized use of Government vehicles for home-to-work transportation did occur. It is our view on that record, that the officers and employees on the White House staff who might be involved should immediately cease such use of Government vehicles unless adequate justification is provided.

We hope that we have been of assistance. Unless we hear otherwise from your office, this letter will be available for release to the public 30 days from today.

Sincerely yours,



Comptroller General
of the United States

^{1/} In a letter to OMB dated February 1, 1985, we offered to delay our enforcement of the home-to-work restrictions until June 1, 1985, "if the Administration's proposed legislation is promptly introduced in the Ninety-Ninth Congress." Since the legislation was not introduced, there was no extension of our enforcement moratorium beyond the end of the 98th Congress.