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**ROUTING AND TRANSMITTAL SLIP**

Date

10/9/85

TO: (Name, office symbol, room number, building, Agency/Posi)	Initials	Date
1. Mike Horowitz		
2. John Cooney		
3. Gordon Wheeler		
4. Arnold Intrater		
✓ 5. John Roberts		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
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FROM: (Name, org. symbol, Agency/Post)  Charles Kolb	Room No.—Bldg. 471 OEOb
	Phone No. 5600

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October 9, 1985

Honorable Jack Brooks

Chairman

Committee on Government Operations

Legislation and National Security Subcommittee

U. S. House of Representatives

Rayburn House Office Building, Room B-373

Washington, D. C. 20515

Dear Mr. Chairman:

Enclosed are responses to the questions which you and Representative Horton submitted for official response in connection with the Subcommittee's September 19, 1985, hearing on the Administration's proposal regarding government vehicles for home-to-work transportation.

I hope that you find these responses helpful and will feel free to contact me or my staff should you need further information. We welcome the opportunity to continue working with the Subcommittee and with GAO to achieve a meaningful and permanent legislative resolution of this longstanding issue.

Again, let me express my appreciation at being invited to testify before the Subcommittee last month.

Sincerely,

**Michael J. Horowitz**

**General Counsel**

1. Why do you think the number of officials legally receiving home-to-work transportation should be increased?

A: It would not be accurate to say that the number of persons who actually receive such transportation would be increased by the Administration's proposal. As the Committee knows, many senior government officials -- for example, the Vice President -- have received such transportation over the past 20 years. We believe the proposal would actually reduce the number of persons who receive such transportation. The Administration's goal in its proposal is to constrain this and future administrations from actually increasing the number of officials receiving portal-to-portal transportation. In the past, the issue has been subject to considerable uncertainty, with the Comptroller General's June 1983 opinion reversing some 40 years of practice under the existing statute. During this period, the Comptroller General has issued numerous opinions which, along with inconsistent agency practice, have muddied the waters. The Administration's proposal reflects an effort to clarify the issue once and for all in a restrictive, government-wide fashion.

In the Executive Branch, under the strictest reading of the GAO opinion, only the President and the heads of the thirteen cabinet agencies are entitled to such transportation. Under the Defense authorization bill passed last year, an

additional ten persons received such transportation.

The Administration's proposal would add the following individuals on a permanent basis:

-- the Vice President;

-- 11 deputy heads of Cabinet agencies (the Deputies at Defense and State already receive transportation);

-- 14 people whose positions are classified at Executive Level II and who are not covered by one of the preceding categories or existing legislation;

-- Also, the proposal specifically names the following senior officials:

The White House Chief of Staff;

The Assistant to the President for National Security Affairs; and

The Commandant of the Coast Guard

-- any other persons the President may determine are of Cabinet rank.

In addition, certain other persons would sometimes qualify because they are under Secret Service protection. This makes

a total of 30 positions we can identify in advance.

2. Why did you include level 2 employees in your proposed legislation?

A: There were several options considered, but we finally chose Executive Level II because, primarily, it followed Congress's own judgment that these positions, as set forth in 5 U.S.C. 5313, reflected the upper levels of government officials. We felt it more appropriate to follow this Congressional determination than to substitute a case-by-case determination.



3. What criteria did the O.M.B. use to determine which government employees should be included in this proposal?

A: In determining which government employees should receive portal-to-portal transportation, OMB employed criteria which would be both restrictive and comprehensive. Thus, the decision to rely principally on Executive Level II was made because:

- It limits transportation to a small number of persons who are designated by the Congress as being at very senior levels of government.
  
- We wanted a uniform, government-wide criterion. If we began selecting agencies for inclusion on a case-by-case basis, the pressure from those not selected would continue, and Congress and the Executive branch will be compelled to address this issue again. Finally, case-by-case resolution would not produce uniform results.

4. For which government officials do you consider home-to-work transportation absolutely essential?

A: We believe that authorization for home-to-work transportation for those individuals covered by the Administration's proposal is important. Our goal has been to limit the overall number of people for whom this transportation would be available, while at the same time providing it to those individuals whose level of government service is such that this transportation would be in the government's interest, not their personal convenience. This feature, in our judgment, would go far in restricting the overall number of officials receiving such transportation.

5. Why is such broad language as "other operational considerations" in subsection (a)(3) used to permit the President or an agency head to authorize temporary use of government vehicles for home-to-work transportation?

A: "Other operational considerations" is used because it includes various medical, safety, and family circumstances which are difficult to predict in advance. It is simply impossible to imagine all the situations which could arise requiring flexibility in the use of government transportation. For example, the Comptroller General has already authorized the use of government transportation where an individual has certain medical conditions which would preclude driving.

Furthermore, as is explained below in our answer to Question 9, additional reporting requirements will protect against possible abuses. The phrase "other operational considerations" must be viewed in the context of section (a)(3) of the proposal and the very substantial limitations on the authority which it contains.

6. Would this authority be used only in situations similar to those for which the GAO has previously approved temporary home-to-work transportation?

A: The exceptions authority contemplated by "other operational considerations" is intended to be limited while, at the same time, providing flexibility for situations and circumstances which may be difficult to anticipate. As noted already, GAO has, in the past, authorized instances of temporary portal-to-portal transportation. While these cases would probably be included under the proposal, we cannot say that, in the future, there might not be new, unforeseen cases for which such transportation would be necessary.

Again, some degree of flexibility is necessary given the fact that unforeseen circumstances will undoubtedly arise. This question is a proper one and reflects legitimate concern that the car and driver be properly used. We believe, however, that abuses are less likely to occur under the OMB proposal because:

- o only a relatively limited number of persons will receive such transportation,
- o others receiving it by designation will receive it for a limited period of time,

- o decisions to provide such transportation are nondelegable,  
and
  
- o adequate notice of the decisions would serve to further  
limit any potential for abuse.

7. Would you be opposed to a requirement for either an annual report or a report as exceptions are authorized?

A: We would not oppose a requirement that there be annual reporting or a report submitted to GAO within a reasonable period of time after an exception has been authorized. In our judgment, this requirement could go far in relieving any fears that there may be excessive use of home-to-work transportation and in protecting against any such abuse. It could, in short, be the means of providing additional protection against abuse, while at the same time permitting the necessary flexibility for non-designated senior officials.

8. If this proposal were enacted without change, how much will this proposal cost the government annually?

Follow-up Question:

For the record, please provide a breakdown of these costs.

A: We do not know precisely how much the proposal would cost the government annually if enacted without change, but we are willing to accept the Comptroller General's determination in this regard.

The incremental costs of the proposal should not be high, however, since we anticipate that existing automobiles and staff will be used to provide the portal-to-portal transportation. We do not anticipate that this proposal will require the purchase of additional automobiles or the hiring of additional staff.

9. Under this proposal, how many officials authorized to use a government vehicle for home-to-work transportation would also be provided a chauffeur?

A: We do not anticipate there being any changes in the use of drivers under the Administration's proposal. Thus, the existing number of drivers should be sufficient to provide the necessary transportation.



10. Would the provision of home-to-work transportation for these employees be considered income for taxation purposes?

A: We understand that this question is currently being considered by the Internal Revenue Service and believe it appropriate to wait until the Internal Revenue Service offers its guidance on the subject before commenting further.

11. GAO found in its survey that from January to June of this year 79 officials and 7 relatives, who were not authorized, received home-to-work transportation. Do you believe government officials should be required to adhere to the current law until such time as it is changed?

A: As virtually everyone who has looked at this matter has concluded, the current law is subject to varying interpretations. For example, even GAO -- just three months after its June 1983 opinion -- concluded that the State Department's Chief of Protocol was entitled to portal-to-portal transportation on the very grounds rejected in June 1983. [ Until the current law is changed, government officials are required to follow it. ] The considerable uncertainty which the current law has created, however, points to the serious need for legislation to clarify the matter on a government-wide basis.

12. What guidance has OMB provided agencies concerning the implementation of the current law prohibiting the use of government vehicles for home-to-work transportation?

A: The Comptroller General's June 1983 opinion received widespread attention throughout the government. Additionally, given the delay in enforcement, no specific advice was given by the Administration concerning the use of government vehicles. Agencies have been relying on advice provided by their General Counsels concerning questions about the use of government vehicles.

OMB would only have provided government-wide advice ministerially, based on an opinion from the Department of Justice. Pending resolution of this matter through legislation, OMB saw no reason to seek such opinion.

13. Does the Secret Service have separate legal authority to provide home-to-work transportation to any individual whom it considers should be provided protection? If so, please provide the cite to the law.

A: The Secret Service has authority to take the steps necessary to provide such protection. Under 18 U.S.C. 3050, the Secret Service has the authority and the responsibility to take whatever steps are necessary to provide protection services. Home-to-work transportation is an element of that protection.

14. What are the justifications for providing home-to-work transportation for the deputy heads of executive departments?

A: Under this proposal, the deputy heads of Executive departments would be covered because they are functioning at a level of government service sufficiently high such that the relatively minor additional expense in providing this service is far offset by the additional benefit which the government receives from these individuals being able to devote more time to their official responsibilities. In the major Cabinet agencies, the potential to receive an additional one to two hours of work per day from such officials has obvious significant benefits to the government.

Also, due to the demands on the Cabinet heads, the deputies frequently serve as acting heads of their respective departments. The Comptroller General made this point in his transmittal letter to Chairman Brooks on June 3, 1983, indicating that the individual who occupies the number two position in an agency shares most of the same responsibilities as the agency head and is a reasonable candidate for home-to-work transportation.

15. What is the significance in listing some employees in section (a) and other employees in section (b)?

A: There is no intended significance in listing some employees in section (a) and others in section (b) of the proposal. The employees referenced in section (b) are listed only with reference to portal-to-portal transportation and no other activity.

16. Under what authority is William McFarlane now receiving home-to-work transportation?

A: Mr. McFarlane, the President's National Security Adviser, receives such services pursuant to a 1978 opinion from the Department of Justice.

17. For the record, which employees of the government currently are deemed to have cabinet-level status? What restrictions govern the authority to make such designations?

A: The following individuals are currently deemed to have cabinet-level status: Donald Regan, Chief of Staff; William Casey, Director of Central Intelligence; the Director of the Office of Management and Budget; Clayton Yeutter, the Special Trade Representative; and Vernon Walters, U.S. Ambassador to the United Nations. These designations are made by the President.



18. Why have you determined that 90 days is the minimum time for which the President or an agency head can authorize home-to-work transportation (Subsection (a)(3))?

A: Ninety days or less was selected as a reasonable time for which the President or an agency head could authorize government transportation to an employee who needed it. While the various factors set forth in Subsection (a)(3) are, for the most part, difficult to ascertain in advance, this figure, rather than an open-ended period, was chosen as a reasonable limitation on the authorization to receive such transportation. Moreover, the requirement for quarterly renewal guarantees periodic review of the need for the transportation. If the need for this transportation terminates prior to the end of the 90-day period, then the portal-to-portal transportation should terminate immediately.

19. For the record, please provide more succinct language for subsections (a) (3) and (b) (2) (A) and (B) so as to deter discretionary interpretation.

A: As currently proposed, subsection (a) (3) contains three limitations intended to prevent discretionary interpretation. First, the determination is for 90 days, renewable on a quarterly basis. Second, the determination may be made only under "highly unusual circumstances" or "other operational considerations" making such transportation essential to the conduct of official business. Third, the authority to make such determinations rests with the agency head and is nondelegable.

As for subsections (b) (2) (A) and (B), use of the term "appropriate" is intended to provide the type of flexibility which is necessary for the efficient implementation of the proposal. Moreover in each instance, the provision of such portal-to-portal transportation is only made when it serves the government's interests, not those of the individual.

20. What definition of agency applies in this proposal?

A: The applicable definition of "agency" is the same one which the Congress intended when it originally passed 31 U.S.C. 1344(a)(2). Thus, use of the term "agency" in subsection (a)(3) in the draft legislation is intended to cover the same context in which "agency" was used in the original legislation in subsection 1344(a)(2).

21. What are examples of situations that would be covered by "other operational considerations" in subsection (a)(3) of your proposal?

A: As noted above in our answer to Question 5, examples of "other operational considerations" could include various medical, safety, family circumstances, or duty which are hard to determine in advance. It is important to stress that the Administration's proposal is intended to accomplish two goals: First, it attempts to restrict as much as possible the overall number of government officials receiving such transportation; and second, it seeks to do so in a fashion which preserves flexibility for unanticipated circumstances given the fact that one cannot anticipate all of the circumstances -- such as the unusual job function which formed the basis of the Comptroller General's ruling which permitted such transportation for the State Department's Chief of Protocol -- in advance. Taken together, these features will ensure that the proposed legislation is both limited in scope and yet responsive to genuine needs as they arise.

22. What benefits does the government derive from providing home-to-work transportation to officers and employees of the government?

A: The principal benefit that the government derives by providing portal-to-portal transportation is additional work from those people being driven. The officials receiving this transportation are generally at a level of government service where the demands are, in many instances, quite extraordinary. Providing such transportation actually enables the government to receive additional efforts from these officials and, (at the same time, may mean that they can spend more time with their families.) Additionally, this service may be particularly important for those officials living in areas not readily serviced by taxis or other means of public transportation. Furthermore, for those government officials having sensitive national security responsibilities, providing transportation also carries with it increased, secure accessibility to the White House, the Situation Room, and the nation's defense installations primarily through sophisticated communications systems including, where necessary, scrambler phones. This crucial benefit would be unavailable were these individuals required to spend substantial time each day commuting in their own vehicles or in public transportation.

The responsibilities imposed on the officials covered by this

legislation require their being available by phone even while commuting between office and home. The demands of their jobs continue beyond the physical confines of their offices, making their home-to-work transportation an extension of their offices. The increasing complexity of the issues dealt with by Cabinet heads, their principal deputies, and the principal assistants to the President and the increasing need for an immediate reaction makes their availability while commuting a work-related necessity.

23. How will this proposal alter the current motor pool operations in the agencies?

A: I do not believe this proposal will alter substantially the current motor pool operations in various agencies. There may be instances in which there is more overtime called for, but this cannot be estimated at this time.

24. How many government employees located outside the continental United States currently receive government-furnished home-to-work transportation? For the record, please provide a listing of the categories of employees provided such service, together with the number of employees in each category.

A: We do not yet know how many government employees located outside the continental United States currently receive government-furnished portal-to-portal transportation. We are seeking to obtain this information from the Department of State.



25. In what instances is the exception provided in current law for "medical officers on out-patient medical service" used so as to justify retaining it in this proposal?

A: We do not know the basis for this exception or why it is needed.

26. What criteria should be used to determine if an official's activities may be properly considered field work?

A: We do not have any opinion as to the criteria for determining what is or is not "field work". In essence, the Administration's proposal simply adopted the existing statutory language, added certain clarifying provisions, and left untouched the existing provisions governing field work.

27. How will an official's safety and security be ensured by the use of a government car?

A: In some instances, government vehicles have additional safety and security enhancements. Furthermore, it follows that having a professionally trained driver will, in and of itself, enhance the official's safety and security. In instances where there are motor pools, a government vehicle -- which may be a different car from day to day -- may be harder to identify and associate with a particular official. This would not be the case were the official using a private car or public transportation.

Finally, drivers who are trained in special security tactics will obviously be able to provide additional safety and security. In recent years, terrorist incidents have been escalating in frequency around the world. While to date there have been very few such instances of this nature domestically, we should nonetheless consider -- and prepare for -- the possibility that one day our highest officials could face such threats. Prudence dictates that we undertake such measures now and that doing so is not only cost-effective but a means of protecting this country's vital security interests.

28. How could the temporary authorizations for 90 days, renewable on a quarterly basis, be checked?

A: Temporary authorizations could be reported to GAO either annually or within a reasonable period of time after their authorization.

Mr. Horton's Questions

1. When former Director Stockman transmitted this proposal to Chairman Brooks, he wrote that 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."

A. What specific disagreements do you have with the Comptroller's 1983 interpretation of the law?

A: We do not concur in the Comptroller General's 1983 interpretation of the law since it is inconsistent with known and accepted past practice as well as Congressional acquiescence in or approval of such practice.

B. Was that 1983 interpretation the first time OMB was aware of a difference of opinion with GAO on this matter?

A: Yes.

C. Would you trace for us the history of OMB's difference of opinion with GAO on this matter?

A: The difference first arose when GAO issued its government-wide opinion in June 1983. Since that date, efforts have been made to resolve the matter

legislatively. The Comptroller General announced several moratoria on the enforcement of the opinion in order to permit Congress an opportunity to consider legislation to resolve the uncertainties in this area.

2. What has been GAO's role, if any, in the preparation of this proposal?

A: OMB has had extensive discussions with the Comptroller General over the months preceding the hearing on the principles surrounding when portal-to-portal transportation is appropriate. We have achieved substantial agreement on the details of this issue, and we hope that further efforts by OMB, GAO, and the Subcommittee will produce a comprehensive resolution on a government-wide basis.

3. Why does the proposal include the Congress, the Comptroller General, and the Supreme Court? What reason, if any, is there to consider those separately from Executive branch officials?

A: The Administration's proposal contained a provision covering the Congress, the Comptroller General, and the Supreme Court in an attempt to be comprehensive. However, the Administration defers to the Congress and to the Chief Justice of the Supreme Court with regard to their respective interests.



4. Why does your proposal not include specific authority for spouses of government officials under certain circumstances, as defined in GAO opinions?

A. Are there any circumstances, in your judgment, which would warrant government transportation for spouses? if so, what are those circumstances?

A: The Comptroller General has already issued reasonable guidance with respect to when spouses of government officials may be transported at government expense. We believe that, for example, when an official is going to an official function and the spouse is attending, the spouse may be permitted to ride in the government vehicle. As to any future attempt to include such a specific provision in the proposal, the Administration defers to the Congress for appropriate language.

B. What efforts, if any, did GAO make to include language for spouses in this proposal?

A: The Comptroller General offered such language, but it was not included because it was felt, at the time, that such a provision would only complicate the proposal and the much-needed reforms.

5. What is your view of GAO's interpretation of the term "heads" of Executive departments? Do you consider the term "heads" to be synonymous with "principal officers" of Executive departments, as maintained by legal advisors at both Defense and State?

A: For purposes of the Administration's proposal, the "heads" of Executive departments are the "principal officers" of those departments, i.e., the Cabinet Secretary or agency head, where appropriate, and the principal deputy.

6. What is your view of GAO's determination that government transportation for security reasons is not authorized without "specific evidence of 'clear and present danger' and a showing that use of a government vehicle would increase protection" of the government official riding in the vehicle?

A. Is GAO's formulation of a security justification too restrictive?

A: The "clear and present danger" standard is too restrictive because it implies that there must be specific knowledge of imminent danger. In fact, an official may be the subject of threats or other danger which, while not necessarily imminent, nonetheless raise sufficient concerns that prudence calls for providing such transportation as a means of precaution. We would favor a different formulation which would permit a nondelegable security determination to be made based on a realistic assessment of whether the official faces a serious threat.

B. Would you favor an amendment to your proposal which would require a report to Congress when a security determination is made within an agency?

A: The Administration would not object to listing the officials receiving transportation for security reasons

and the times at which it was provided. We feel, however, that the individual bases upon which such security determinations are made should remain confidential.

THE WHITE HOUSE

WASHINGTON

October 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Portal-to-Portal

You have asked for my comments on Chris Hicks's memorandum to Mr. Regan, analyzing the portal-to-portal bill that Chairman Brooks is prepared to introduce. I have no quarrel with Hicks's analysis, nor with the recommendation of Hicks and Horowitz that we support the bill. I have attached a copy of the bill itself for your information (the marginalia are not mine).

The main problem with the Brooks bill from our point of view is not the scope of coverage -- which will work out to about the same as our bill -- but the manner in which the service is authorized. The Brooks bill has precisely what we tried to avoid -- discretion in the President to choose who does and does not receive portal-to-portal. The President may choose six officials in the EOP and ten others in executive agencies, with no salary level limitation.

Aside from these chosen sixteen, the Brooks bill authorizes portal-to-portal for the Cabinet Secretaries and the United States Trade Representative, one principal deputy for each of these if authorized by the Secretary, ambassadors abroad and the ambassador to the United Nations, the Deputy Secretary of Defense and Under Secretaries of Defense, as well as the Secretaries of the Air Force, Army, and Navy, and the Joint Chiefs and the Commandant of the Coast Guard. The Director of the CIA and FBI, and the Chairman of the Fed, are also covered. There is also authority for temporary emergency portal-to-portal, and for those receiving Secret Service protection.

I think we should support the bill, *faute de mieux*. If we do not support this bill we will end up with no bill, and I think the current confusion is intolerable. The exercise of the President's discretion will doubtless become a major controversy, but at this point I think that is unavoidable.

Latest development: Congressman Bob Walker (R-PA) has told Brooks he will offer amendments to the bill restricting Congressional portal-to-portal. Walker apparently views this as an opportunity to embarrass the Democratic leadership on the Hill. Unless we get Walker to back off, Brooks will not proceed with the bill.

THE WHITE HOUSE  
WASHINGTON  
October 28, 1985

*Jelen -  
your comments ASAP, pls  
so I can respond to  
DTR in this  
analysis.*

MEMORANDUM FOR DONALD T. REGAN  
FROM: Christopher Hicks *CH*  
SUBJECT: Portal-to-Portal Revisited

Chairman Brooks is prepared to introduce a Portal-to-Portal Bill that is little changed from the Administration's August submission. I concur in Mike Horowitz's recommendation (attached at Tab A) that we support the bill.

The Administration's proposal would have resulted in 58 officials being specifically eligible for portal-to-portal transportation (exclusive of general categories such as Ambassadors and some separate existing statutory provisions that various agencies have used in the past).

The Brooks proposal identifies 61 positions, but eliminates some of the separate existing authorities (e.g., the Deputy Director of the CIA is currently authorized an automobile -- he will lose that authority). A short list of positions that we could identify as losing portal-to-portal transportation is attached (Tab B).

The Administration proposal tried to establish a "neutral" test for portal-to-portal transportation -- one in which the President would not have to exercise discretion -- by authorizing transportation for the specific, identified positions listed at Level II of the Executive Schedule. The Brooks Bill adopts most of the specifically identified positions (adding some -- Undersecretaries of DOD, e.g.), but rejects the Executive Level II approach. Instead, the President is authorized to choose up to six officials in the EOP and 10 others in the government to receive portal-to-portal transportation. The 16 positions are not identified by title or salary levels. Accordingly, the President has added flexibility, but the choices have to be made on a case by case basis by the President.

Spousal travel, as Mike Horowitz indicates, is not addressed in the bill. Some language is to be inserted in the Committee report to establish that some spousal use of a car is authorized, but there is a risk that such travel will be more difficult to support in the future.

cc: Fred Fielding



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

1985 OCT 25 PM 12:26

October 24, 1985

MEMORANDUM

TO: Joe Wright  
Fred Fielding  
✓Chris Hicks

FROM: Mike Horowitz **MH**

SUBJECT: Portal-to-Portal Update

1. The subcommittee staff has completed a mark-up of its latest draft which includes authorization for most of the positions covered in our original proposal. The draft now contains the following significant revisions:

- o Portal-to-portal is authorized for the President; Vice President; 6 EXOP officers or employees, as designated by the President; and no more than 10 officers or employees of Executive agencies, as designated by the President.
- o Level I officials and their principal deputies are authorized to receive such transportation, but in the latter group only upon the non-delegable determination by the Department head that such transportation is appropriate.
- o The Directors of Central Intelligence and the FBI are specifically covered, as are the Chairman of the Board of Governors of the Federal Reserve System, the U.S. Ambassador to the United Nations, the Secretaries of the Air Force, Army, and Navy, the five members of the Joint Chiefs of Staff, and the Commandant of the Coast Guard.
- o The legislation is exclusive: portal-to-portal transportation may only be provided for those officials specified in this bill. Use of non-appropriated funds will not -- as in the past -- be a basis for anyone receiving such transportation.
- o Overseas use under the Foreign Service Act of 1980 and use by the two Under Secretaries of Defense who were covered by the 1984 Defense Authorization Act will be continued.
- o Spousal coverage will be addressed in the accompanying Committee Report rather than in the bill itself; the result is expected to conform to the Comptroller General's

current interpretation which allows transportation when spouses are included in official duties.

In short, of the approximately 61 positions in the Administration's proposal, we have managed to retain almost every position, the omissions being the Deputy Secretaries of the Air Force, Army, and Navy.

2. A shortcoming in the Committee's draft was deletion of the fieldwork provision -- a fact which could have had a major impact on the Secret Service and other law-enforcement agencies. At Treasury alone approximately 6100 field law-enforcement agents currently have official cars (which they drive directly from home to their daily assignments), and their functions could be seriously disrupted were the fieldwork provision deleted. However, Charles Kolb on my staff has reached an agreement with the Subcommittee staff to restore the fieldwork provision in order to avoid potential disruptions. (The staff have also deleted existing provisions concerning medical officers -- apparently a noncontroversial change.)

3. Finally, the Subcommittee's draft permits agency heads on a nondelegable basis (and the President, on a delegable basis in the case of the EXOP) to authorize portal-to-portal for up to 15 calendar days based on highly unusual circumstances presenting a clear and present danger, an emergency, or other similarly compelling operational considerations which make such transportation essential to the conduct of official business. Agency heads, on a nondelegable basis, may also determine whether the authorization shall be continued for 90 additional calendar days. Notification must be provided promptly to the House Committee on Government Operations and the Senate Committee on Governmental Affairs. I strongly opposed inclusion of the "clear and present danger" language but believe that we can live with it if "similarly" were dropped as a restraint on "compelling operational considerations." On balance, under the draft language, I think we have a good argument that flexibility exists where it's needed, but I am concerned, as indicated, that "similarly" might be read to constrain the flexibility intended by the third criterion.

4. Chairman Brooks has accommodated our concerns in a fashion permitting coverage of virtually everyone that we initially wanted in our proposal. I strongly recommend that we signal our support of the Subcommittee's latest draft, assuming that we are satisfied with the report language when we receive it.

cc: Gordon Wheeler  
Arnold Intrater



Officials Who Currently Have  
Portal-to Portal Transportation Under  
Authorities Eliminated by the Brooks Proposal

1. Administrator -- Agency for International Development
2. Director -- Arms Control and Disarmament Agency
3. Deputy Director of the CIA
4. Secretary, Smithsonian Institute

The first two positions listed are at Executive Level II and would have been eligible again under the Administration's proposal.

There may be others in the Administration who are affected, but we do not have access to complete lists of portal-to-portal users -- for example, any agency that has non-appropriated funds available could have been making portal-to-portal available since the current statute does not apply to non-appropriated fund expenditures. The Brooks proposal closes off that option.

We did not list officials who lose their current authority to use automobiles, but whose authority is reinstated elsewhere in the proposal (e.g., the Director of the CIA).

99TH CONGRESS  
1ST SESSION

H. R. \_\_\_\_\_

IN THE HOUSE OF REPRESENTATIVES

Mr. BROOKS (for himself, Mr. HORTON, [see attached list of additional cosponsors]) introduced the following bill; which was referred to the Committee on \_\_\_\_\_

A BILL

To restrict the use of government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment, and for other purposes.

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

1 That section 1344 of title 31, United States Code, is amended  
2 to read as follows:

3 §1344. Passenger carrier use

4 (a)(1) Funds available to an executive agency, ~~by~~  
5 ~~appropriation or otherwise,~~ may be expended by the executive  
6 agency for the maintenance, operation, or repair of any  
7 passenger carrier only to the extent that such carrier is  
8 used to provide transportation for official purposes.

9 Notwithstanding any other provision of law, transporting any  
10 individual other than those listed in subsections (b) and (c)  
11 between such individual's residence and such individual's  
12 place of employment is not transportation for an official  
13 purpose.

14 (2) For purposes of paragraph (1), transportation  
15 between the residence of an officer or employee and various  
16 locations that is required for the performance of field work  
17 is transportation for an official purpose, when approved in  
18 writing by the head of the agency.

19 (b) A passenger carrier may be used to transport  
20 between residence and place of employment the following  
21 officers and employees of executive agencies:

22 (1)(A) the President and the Vice President;

23 (B) ~~no more than 6 officers or employees in the~~  
24 ~~Executive Office of the President, as designated by the~~

25 ~~President;~~ (C) \* was delegable under previous draft  
is now non-delegable see page 5 line 5

A) plus to appropriate funds.

B) This is the same as the one in the previous draft.

1            ~~“(C) no more than 10 additional officers or~~  
 2            ~~employees of executive agencies, as designated by the~~  
 3            ~~President:~~ (D) also non-delegable now (see note pg 2) and

This  
 revision  
 which prohibits  
 the term  
 executive  
 agencies of  
 executive  
 branch must  
 it holder to  
 add to the  
 6 EOP  
 positions

4            “(2)(A) officers compensated at Level I of the  
 5            Executive Schedule pursuant to section 5312 of title 5,  
 6            United States Code; and

7            “(B) a single principal deputy to an officer  
 8            described in subparagraph (A) of this paragraph, when a  
 9            determination is made by such officer that such  
 10           transportation is appropriate;

11           “(3) principal diplomatic and consular officials  
 12           abroad, and the United States Ambassador to the United  
 13           Nations;

14           “(4) the Deputy Secretary of Defense and Under  
 15           Secretaries of Defense, the Secretary of the Air Force,  
 16           the Secretary of the Army, the Secretary of the Navy, the  
 17           Joint Chiefs of Staff, and the Commandant of the Coast  
 18           Guard;

19           “(5) the Director of the Central Intelligence Agency  
 20           and the Director of the Federal Bureau of Investigation;

21           “(6) the Chairman of the Board of Governors of the  
 22           Federal Reserve System;

23           “(7) an officer or employee with regard to whom the  
 24           head of an executive agency makes a determination, which  
 25           shall be effective for no longer than 15 calendar days,

*(H) Howowitz is now fighting to take this word out as being too strict a measure. In my opinion the whole discussion of temporary 15 to 180 days usage is more than we could or should have expected.*

1 that highly unusual circumstances present a clear and  
 2 present danger, that an emergency exists, or that other  
 3 similarly compelling operational considerations make such  
 4 transportation essential to the conduct of official  
 5 business.

6 (c) A passenger carrier may be used to transport  
 7 between residence and place of employment any person for whom  
 8 protection is specifically authorized pursuant to section  
 9 3056(a) of title 18, United States Code or for whom  
 10 transportation is authorized pursuant to section 28 of the  
 11 Foreign Service Act (22 U.S.C. 2700).

12 (d)(1) Any determination made under paragraph (7) of  
 13 subsection (b) shall be in writing and shall include the name  
 14 and title of the officer or employee affected, the reason for  
 15 such determination, and the duration of the authorization for  
 16 such officer or employee to use a passenger carrier for  
 17 transportation between residence and place of employment.

18 (2) If a clear and present danger, an emergency, or a  
 19 similarly compelling consideration described in subsection  
 20 (b)(7) extends or may extend for a period in excess of 15  
 21 calendar days, the head of the executive agency shall  
 22 determine whether authorization under subsection (b)(7) shall  
 23 be extended beyond 15 calendar days up to a period of 90  
 24 additional calendar days. Determinations made under this  
 25 paragraph may be reviewed by the head of such agency, and,

1 where appropriate, subsequent determinations may be made  
2 whether such danger, emergency, or consideration continues to  
3 exist and whether an additional extension, not to exceed 90  
4 calendar days, may be authorized.

5 ~~“(3) The authority to make designations under paragraphs~~  
6 ~~(1)(B) and (1)(C) and to make determinations pursuant to~~  
7 ~~paragraphs (2)(B) and (7) of subsection (b) and paragraph (2)~~  
8 ~~of this subsection may not be delegated, except that, with~~  
9 ~~respect to the Executive Office of the President, the~~  
10 ~~President may delegate his authority under such paragraph (7)~~  
11 ~~to an officer in such Executive Office. No determination~~  
12 ~~under this section may be made solely or principally for the~~  
13 ~~comfort or convenience of the officer or employee.~~

*the  
with  
time*

14 ~~“(4) Notification of each designation or determination~~  
15 ~~made under paragraphs (1)(B), (1)(C), (2)(B), and (7) of~~  
16 ~~subsection (b) and paragraph (2) of this subsection,~~  
17 ~~including the name and title of the officer or employee~~  
18 ~~affected, the reason for any such determination under such~~  
19 ~~paragraph (7), and the expected duration of the~~  
20 ~~authorization, shall be transmitted promptly to the Committee~~  
21 ~~on Government Operations of the House of Representatives and~~  
22 ~~the Committee on Governmental Affairs of the Senate.~~

23 ~~“(e) As used in this section--~~

24 ~~“(1) the term ‘passenger carrier’ means a passenger~~  
25 ~~motor vehicle, aircraft, boat, ship, or other similar~~

1 means of transportation that is owned or leased by the  
2 United States Government; and

3 `` (2) the term `executive agency' has the meaning  
4 given by section 103 of this title and includes any  
5 executive department, military department, Government  
6 corporation, Government-controlled corporation, or other  
7 establishment in the executive branch of the Government  
8 (including the Executive Office of the President and the  
9 Smithsonian Institution), any independent regulatory  
10 agency, or any nonappropriated fund instrumentality.'`.

11 SEC. 2. (a) Title 10, United States Code, is amended--

12 (1) by striking out section 2637 thereof; and

13 (2) in the table of contents of chapter 157 thereof,  
14 by striking out the item pertaining to section 2637.

15 (b) Section 636(a)(5) of the Foreign Assistance Act of  
16 1961 (22 U.S.C. 2396(a)(5)) is amended by striking out

17 `` (without regard to the limitations contained in section 5  
18 of Public Law 63-127, as amended (31 U.S.C. 638a(c)(2)) and  
19 section 201 of Public Law 85-468 (31 U.S.C. 638c))'`.

20 (c) Section 48 of the Arms Control and Disarmament Act  
21 (22 U.S.C. 2588) is amended by striking out ``without regard  
22 to the limitations contained in section 78(c) of title 5 of  
23 the United States Code'`.

24 (d) Section 303 of the State Department Basic Authorities  
25 Act of 1956 (22 U.S.C. 2678) is amended by striking out

1 subsection (b).

2 (e) Section 8(a)(1) of the Central Intelligence Agency  
3 Act of 1949 (50 U.S.C. 403j(a)(1)) is amended by striking out  
4 ``transportation of officers and employees of the Agency in  
5 Government-owned automotive equipment between their domiciles  
6 and places of employment, where such personnel are engaged in  
7 work which makes such transportation necessary, and  
8 transportation in such equipment`` and inserting in lieu  
9 thereof ``transportation in Government automotive  
10 equipment``.