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2d Session

SENATE

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## ACQUISITIONS

### ETHICS IN GOVERNMENT ACT OF 1978

OCTOBER 24 (legislative day, OCTOBER 14), 1978.—Ordered to be printed

Mr. RIBICOFF, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

AS CORRECTED BY SENATE CONCURRENT RESOLUTION 112

[To accompany S. 555]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 555) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill insert the following:

*That this Act may be cited as the "Ethics in Government Act of 1978."*

#### TITLE I—LEGISLATIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

##### COVERAGE

SEC. 101. (a) *Each Member in office on May 15 of a calendar year shall file on or before May 15 of that calendar year a report containing the information as described in section 102(a).*

(b) *Any individual who is an officer or employee of the legislative branch designated in subsection (e) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information as described in section 102(a).*

(1)

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(c) Within thirty days of assuming the position of an officer or employee designated in subsection (e); an individual other than an individual employed in the legislative branch upon assuming such position shall file a report containing the information as described in section 102(b) unless the individual has left another position designated in subsection (e) within thirty days prior to assuming his new position. This subsection shall take effect on January 1, 1979.

(d) Within thirty days of becoming a candidate in a calendar year for any election for the office of Member, or on or before May 15 of that calendar year, which ever is later, but in no event later than seven days prior to the election, and on or before May 15 of each successive year the individual continues to be a candidate, an individual shall file a report containing the information as described in section 102(b).

(e) The officers and employees referred to in subsections (b) and (c) are—

(1) each officer or employee of the legislative branch who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS-16 of the General Schedule; and

(2) at least one principal assistant designated for purposes of this section by each Member who does not have an employee compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS-16 of the General Schedule.

For the purposes of this title, the legislative branch includes the Architect of the Capitol, the Botanic Gardens, the Congressional Budget Office, the Cost Accounting Standards Board, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of the Attending Physician, and the Office of Technology Assessment.

(f) Reasonable extensions of time for filing any report may be granted by the designated committee of the Senate with respect to those filing with the Secretary and by the designated committee of the House of Representatives with respect to those filing with the Clerk but in no event may the extension granted to a Member or candidate result in a required report being filed later than seven days prior to an election involving the Member or candidate. If the day on which a report is required to be filed falls on a weekend or holiday, the report may be filed on the next business day.

(g) Notwithstanding the dates specified in subsection (d) of this section, an individual who is a candidate in calendar year 1978 shall file the report required by such subsection not later than November 1, 1978, except that a candidate for the Senate who has filed a report as of such date pursuant to the Rules of the Senate need not file the report required by subsection (d) of this section.

#### CONTENTS OF REPORTS

SEC. 102. (a) Each report filed pursuant to subsections (a) and (b) of section 101 shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United

States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating \$100 or more in value.

(B) The source and type of income which consists of dividends, interest, rent, and capital gains, received during the preceding calendar year which exceeds \$100 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

- (i) not more than \$1,000,
- (ii) greater than \$1,000 but not more than \$2,500,
- (iii) greater than \$2,500 but not more than \$5,000,
- (iv) greater than \$5,000 but not more than \$15,000,
- (v) greater than \$15,000 but not more than \$50,000,
- (vi) greater than \$50,000 but not more than \$100,000, or
- (vii) greater than \$100,000.

(2) (A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating \$250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of \$35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating \$100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of \$35 or less need not be aggregated for purposes of this subparagraph. A gift need not be so aggregated if in an unusual case, a publicly available request for a waiver is granted.

(C) The identity of the source and a brief description of reimbursements received from any source aggregating \$250 or more in value and received during the preceding calendar year.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds \$1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating \$5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed \$10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse;

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

*With respect to revolving charge accounts, only those with an outstanding liability which exceeds \$10,000 as of the close of the preceding calendar year need be reported under this paragraph.*

*(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale, or exchange during the preceding calendar year which exceeds \$1,000—*

*(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse;*  
*or*

*(B) in stocks, bonds, commodities futures, and other forms of securities.*

*Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.*

*(6) The identity of all positions on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This paragraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.*

*(7) A description of the date, parties to, and terms of any agreement or arrangements with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.*

*(b) Each report filed pursuant to subsections (c) and (d) of section 101 shall include a full and complete statement with respect to the information required by paragraphs (3), (4), (6), and (in the case of reports filed pursuant to subsection (c) of section 101) (7) of subsection (a), as of a date, specified in such report, which shall be not more than thirty-one days prior to the date of filing, and the information required by paragraph (1) of subsection (a) for the year of filing and the preceding calendar year.*

*(c) (1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4) and (5) of subsection (a) are as follows:*

- (A) not more than \$5,000;*
- (B) greater than \$5,000 but not more than \$15,000;*
- (C) greater than \$15,000 but not more than \$50,000;*
- (D) greater than \$50,000 but not more than \$100,000;*
- (E) greater than \$100,000 but not more than \$250,000; and*
- (F) greater than \$250,000.*

*(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the*

property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(d) (1) Except as provided in the last sentence of this paragraph, each report shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed \$1,000 and, with respect to a spouse or dependent child, all information required to be reported in subsection (a) (1) (B) with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gift which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment or a brief description and the value of other gifts.

(C) In the case of any reimbursement which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of the reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(e)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a) and (b) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3));  
or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust under subsection (a)(1)(B) of this section.

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, or a broker, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than \$1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a) (1) (B) of this section but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office. For purposes of this subsection "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 78 of title 15, United States Code and "supervising ethics office" means the designated committee of the House of

*Representatives for those who file their reports required by this title with the Clerk and the designated committee of the Senate for those who file the reports required by this title with the Secretary.*

(4) *An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 18, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than \$1,000.*

(5) (A) *The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—*

*(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and*

*(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (c) (1) of this section.*

(B) *The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (c) (1) of this section.*

(C) *Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—*

*(i) notify his supervising ethics office of such dissolution, and*

*(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (c) of this subsection of each such asset.*

(D) *Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 104, and the provisions of that section shall apply.*

(E) *A copy of each written communication with respect to the trust under paragraph (3) (C) (vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.*

(6) (A) *A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.*

(B) *A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3) (C) of this subsection, or (ii) fail to file any document required by this subsection.*



(C)(i) *The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$5,000.*

(ii) *The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$1,000.*

(7) *Any trust which is in existence prior to the date of the enactment of this Act shall be considered a qualified blind trust if—*

(A) *the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;*

(B) *the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and*

(C) *a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold are filed and made available to the public as provided under paragraph (5) of this subsection.*

(f) *Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.*

#### **FILING OF REPORTS; DUTIES OF CLERK AND SECRETARY**

**SEC. 103.** (a) *The reports required by section 101 of Representatives, Delegates to Congress, the Resident Commissioner from Puerto Rico, officers and employees of the House, candidates seeking election to the House and officers and employees of the Architect of the Capitol, the Botanic Gardens, the Congressional Budget Office, the Government Printing Office, and the Library of Congress shall be filed with the Clerk.*

(b) *The reports required by section 101 of Senators, officers and employees of the Senate, candidates seeking election to the Senate, and officers and employees of the General Accounting Office, the Cost Accounting Standards Board, the Office of Technology Assessment, and the Office of the Attending Physician shall be filed with the Secretary.*

(c) *A copy of each report filed by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk or Secretary, as the case may be, to the appropriate State officer as designated in accordance with section 316(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 439(a)) of the State represented by*

the Member or in which the individual is a candidate, as the case may be, within the seven-day period beginning the day that the report is filed with the Clerk or Secretary.

(d) (1) A copy of each report filed under this title with the Clerk shall be sent by the Clerk to the designated committee of the House of Representatives within the seven-day period beginning the day that the report is filed.

(2) A copy of each report filed with the Secretary shall be sent by the Secretary to the designated committee of the Senate.

(e) In carrying out their responsibilities under this title, the Clerk and the Secretary shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

(f) In order to carry out responsibilities under this title—

(1) the Clerk shall, after consultation with the designated committee of the House of Representatives, and

(2) the designated committee of the Senate shall develop reporting forms and may promulgate rules and regulations.

#### ACCESSIBILITY OF REPORTS

SEC. 104. (a) Except as provided in the second sentence of this subsection, within fifteen calendar days after a report is filed with the Clerk under this title, the Clerk shall make such report available for public inspection at reasonable hours. With respect to reports required to be filed by May 15 of any year, such reports shall be made available for public inspection within fifteen calendar days after May 15 of such year. A copy of any such report shall be provided by the Clerk to any person upon request.

(b) Except as provided in the second sentence of this subsection, within fifteen days after a report is filed with the Secretary under this title, the Secretary shall make such report available for public inspection at reasonable hours. With respect to reports required to be filed by May 15 of any year, such reports shall be made available for public inspection within fifteen calendar days after May 15 of such year. A copy of any such report shall be provided by the Secretary to any person upon request.

(c) Any person requesting a copy of a report may be required to pay a reasonable fee to cover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined by the Clerk or Secretary that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public.

(d) Any report filed under this title with the Clerk or Secretary shall be available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(d) and was

not subsequently elected, such reports shall be destroyed one year after the individual is no longer a candidate for election to the office of Member unless needed in an ongoing investigation.

(e) (1) It shall be unlawful for any person to obtain or use a report—

- (A) for any unlawful purpose;
- (B) for any commercial purpose other than by news and communications media for dissemination to the general public;
- (C) for determining or establishing the credit rating of any individual; or
- (D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such person a penalty in any amount not to exceed \$5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

#### REVIEW AND COMPLIANCE PROCEDURES

SEC. 105. (a) The designated committee of the House of Representatives and the designated committee of the Senate shall establish procedures for the review of reports sent to them under section 103 (d) (1) and section 103 (d) (2) to determine whether the reports are filed in a timely manner, are complete, and are in proper form. In the event a determination is made that a report is not so filed, the appropriate committee shall so inform the reporting individual and direct him to take all necessary corrective action.

(b) In order to carry out their responsibilities under this title the designated committee of the House of Representatives and the designated committee of the Senate, have power, within their respective jurisdictions, to render any advisory opinion interpreting this title, in writing, to persons covered by this title. Notwithstanding any other provisions of law, the individual to whom a public advisory opinion is rendered in accordance with this subsection, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of the advisory opinion, acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any sanction provided in this title.

#### FAILURE TO FILE OR FALSIFYING REPORTS

SEC. 106. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$5,000. No action may be brought under this section against any individual with respect to a report filed by such individual in calendar year 1978 pursuant to section 101 (d).

## DEFINITIONS

*SEC. 107. For the purposes of this title, the term—*

(1) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; net and gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiancé or fiancée of the reporting individual;

(3) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by State and local governments, or political subdivisions thereof, by a foreign government within a foreign country, or by the United States Government.

(D) food and beverages consumed at banquets, receptions, or similar events;

(E) consumable products provided by home-State businesses to a Member's office for distribution; or

(F) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

(4) "honoraria" has the meaning given such term in the Federal Election Campaign Act of 1971;

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

- (B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;
- (8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—
- (A) provided by the United States Government, the District of Columbia, or any State or political subdivision thereof;
- (B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or
- (C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);
- (9) "candidate" means an individual, other than a Member, who seeks nomination for election, or election, to the Congress whether or not such individual is elected, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, (A) if he has taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) if he or his principal campaign committee has taken action to register or file campaign reports required by section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a));
- (10) "Clerk" means the Clerk of the House of Representatives;
- (11) "Secretary" means the Secretary of the Senate;
- (12) "Member" means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;
- (13) "election" means (A) a general, special, primary, or run-off election, or (B) a convention or caucus of a political party which has authority to nominate a candidate;
- (14) "officer or employee of the House" means any individual, other than a Member, whose compensation is disbursed by the Clerk;
- (15) "officer or employee of the Senate" means an individual other than a Senator or the Vice President, whose compensation is disbursed by the Secretary; and
- (16) "designated committee of the House of Representatives and designated committee of the Senate" means the committee of the House or Senate, as the case may be, assigned responsibility for administering the reporting requirements of this title.

#### OTHER LAWS

*Sec. 108.* The provisions added by this title, and the regulations issued thereunder, shall supersede and preempt any State or local law with respect to financial disclosure by reason of candidacy for Federal office or employment by the United States Government.

#### GENERAL ACCOUNTING OFFICE STUDY

*Sec. 109.* (a) Before November 30, 1980, and regularly thereafter, the Comptroller General of the United States shall conduct a study

to determine whether this title is being carried out effectively and whether timely and accurate reports are being filed by individuals subject to this title.

(b) Within thirty days after completion of the study, the Comptroller General shall transmit a report to each House of Congress containing a detailed statement of his findings and conclusions, together with his recommendations for such legislative and administrative actions as he deems appropriate. The first such study shall include the Comptroller General's findings and recommendations on the feasibility and potential need for a requirement that systematic random audits be conducted of financial disclosure reports filed under this title, including a thorough discussion of the type and nature of audits that might be conducted; the personnel and other costs of audits; the value of an audit to Members, the appropriate House and Senate committees, and the public; and, if conducted, whether a governmental or nongovernmental unit shall perform the audits, and under whose supervision.

## TITLE II—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

### PERSONS REQUIRED TO FILE

SEC. 201. (a) Within thirty days of assuming the position of an officer or employee designated in subsection (f), an individual shall file a report containing the information described in section 202(b) unless the individual has left another position designated in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position.

(b) Within five days of the transmittal by the President to the Senate of the nomination of an individual (other than an individual covered by section 301(b) or an individual nominated for appointment to a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code, is O-6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 202(b). Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(c) Within thirty days of becoming a candidate in a calendar year for nomination or election to the office of President or Vice President, as determined by the Federal Election Commission, or on or before, May 15 of that calendar year, whichever is later, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President or Vice President shall file a report containing the information described in section 202(b).

(d) Any individual who is an officer or employee designated in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 202(a).

(e) Any individual who occupies a position designated in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 202(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of that calendar year up to the date the individual left such office or position, unless such individual has accepted employment in another position designated in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are—

(1) the President;

(2) the Vice President;

(3) each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, whose position is classified at GS-16 or above of the General Schedule prescribed by section 5332 of title 5, United States Code, or the rate of basic pay for which is fixed (other than under the General Schedule) at a rate equal to or greater than the minimum rate of basic pay fixed for GS-16; each member of a uniformed service whose pay grade is at or in excess of O-7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(4) each employee appointed pursuant to section 3105 of title 5, United States Code;

(5) any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being a confidential or policymaking character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government;

(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS-16; and

(7) the Director of the Office of Government Ethics and each designated agency official.

(g) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the Director of the Office of Government Ethics established by title IV of this Act, but the total of such extensions shall not extend ninety days.

#### CONTENTS OF REPORTS

SEC. 202. (a) Each report filed pursuant to section 201(d) shall include a full and complete statement with respect to the following:

(1) (A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States

Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating \$100 or more in value.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds \$100 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

- (i) not more than \$1,000,
- (ii) greater than \$1,000 but not more than \$2,500,
- (iii) greater than \$2,500 but not more than \$5,000,
- (iv) greater than \$5,000 but not more than \$15,000,
- (v) greater than \$15,000 but not more than \$50,000,
- (vi) greater than \$50,000 but not more than \$100,000, or
- (vii) greater than \$100,000.

(2) (A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating \$250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of \$35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating \$100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of \$35 or less need not be aggregated for purposes of this subparagraph. A gift need not be so aggregated if, in an unusual case, a publicly available request for a waiver is granted.

(C) The identity of the source and a brief description of reimbursements received from any source aggregating \$250 or more in value and received during the preceding calendar year.

(3) The identity and category of value if any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds \$1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating \$5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed \$10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.



*With respect to revolving charge accounts, only those with an outstanding liability which exceeds \$10,000 as of the close of the preceding calendar year need be reported under this paragraph.*

*(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale, or exchange during the preceding calendar year which exceeds \$1,000—*

*(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse;*  
*or*

*(B) in stocks, bonds, commodities futures, and other forms of securities.*

*Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.*

*(6) (A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.*

*(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of \$5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report under this title, the individual shall include in the report—*

*(i) the identity of each source of such compensation; and*

*(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.*

*The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.*

*(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.*

*(b) Each report filed pursuant to subsections (a), (b), and (c) of section 201 shall include a full and complete statement with respect to the information required by paragraphs (3), (4), (6), and (7) of subsection (a), as of a date, specified in such report, which shall be not*

more than thirty-one days prior to the date of filing, and the information required by paragraph (1) of subsection (a) for the year of filing and the preceding calendar year.

(c) In the case of any individual described in section 201(e), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), and (5) of subsection (a) are as follows:

- (A) not more than \$5,000;
- (B) greater than \$5,000 but not more than \$15,000;
- (C) greater than \$15,000 but not more than \$50,000;
- (D) greater than \$50,000 but not more than \$100,000;
- (E) greater than \$100,000 but not more than \$250,000; and
- (F) greater than \$250,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by subsection (a), (b), or (c) shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed \$1,000 and, with respect to a spouse or dependent child, all information required to be reported in subsection (a)(1)(B) with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse

is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gift which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment or a brief description and the value of other gifts.

(C) In the case of any reimbursement which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of the reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit. Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f) (1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3));

or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust under subsection (a) (1) (B) of this subsection.

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any

*dependent child has a beneficial interest in the principal or income, and which meets the following requirements:*

*(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, or a broker, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—*

*(i) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,*

*(ii) is or has not been an employee of any interested party, or any organization affiliated with any interested party, is not a partner of, or involved in any joint venture or other investment with, any interested party, and*

*(iii) is not a relative of any interested party.*

*(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.*

*(C) The trust instrument which establishes the trust provides that—*

*(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;*

*(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;*

*(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than \$1,000;*

*(iv) the trust return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;*

*(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1)(B) of this section, but such report shall not identify any asset or holding;*

*(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and*

needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by this reporting individual's supervising ethics office. For purposes of this subsection, "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 78 of title 15, United States Code; and "supervising ethics office" means the Office of Government Ethics.

(4) (A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 18, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than \$1,000.

(B) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual appointed to office by the President, by and with the consent of the Senate, or the spouse, dependent child, or minor child of such a person, if—

(i) the Director of the Office of Government Ethics, in concurrence with the Attorney General, finds that—

(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraphs (3) (C) (iii) and (iv) of this subsection, from making public or informing any interested party of the sale of any securities;

(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3) (C) (v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established

prior to the effective date of this Act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3) (A); and

(ii) the reporting individual (other than an individual who is in such an office at the time of enactment of this Act and has an existing trust which is a good-faith attempt to create a blind trust) has informed the Congressional committee considering his nomination at the time his financial disclosure statement is filed with the Committee of his intention to comply with this paragraph.

(5) (A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d).

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d).

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 205 and the provisions of that section shall apply.

(E) A copy of each written communication with respect to the trust under paragraph (3) (C) (i) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6) (A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3) (C) of this subsection or (ii) fail to file any document required by this subsection.

(C) (i) *The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$5,000.*

(ii) *The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$1,000.*

(7) *Any trust which is in existence prior to the date of the enactment of this Act shall be considered a qualified blind trust if—*

(A) *the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;*

(B) *the previous trust instrument is amended or, of such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and*

(C) *a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold is filed and made available to the public as provided under paragraph (5) of this subsection.*

(g) *Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.*

#### FILING OF REPORTS

Sec. 203. (a) *Except as otherwise provided in this subsection, the reports required under this title shall be filed by the reporting individual with the designated agency official at the agency by which he is employed or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.*

(b) *The President and the Vice President shall file reports required under this title with the Director of the Office of Government Ethics.*

(c) *Copies of the reports required to be filed under this title by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency officials, candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.*

(d) Reports required to be filed under this title by the Director shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title.

(e) Each individual identified in section 201 (c) shall file the reports required by this title with the Federal Elections Commission.

(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

(g) The Office of Government Ethics shall develop and make available forms for reporting the information required by this title.

#### FAILURE TO FILE OR FALSIFYING REPORTS

SEC. 204. (a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information that such individual is required to report pursuant to section 202. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed \$5,000.

(b) The head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual he has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.

(c) The President, Vice President, the Secretary concerned, the head of each agency, and the Civil Service Commission, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

#### CUSTODY OF AND PUBLIC ACCESS TO REPORTS

SEC. 205. (a) Each agency shall make each report filed with it under this title available to the public in accordance with the provisions of subsection (b) of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved (if available) which shall be added to such report by such individual's designated agency official or by the Secretary concerned, except that this section does not require public availability of the report filed by any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. In addition, such individuals may be authorized, notwithstanding section 204(a), to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds that such filing is necessary in the national interest.

(b) Each agency shall, within fifteen days after any report is received by the agency under this title, permit inspection of such report by or furnish a copy of such report to any person requesting such



inspection or copy. The agency may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(c)(1) It shall be unlawful for any person to obtain, or use a report—

- (A) for any unlawful purpose;
- (B) for any commercial purpose, other than by news and communications media for dissemination to the general public;
- (C) for determining or establishing the credit rating of any individual; or
- (D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed \$5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report filed with an agency, or transmitted to the Director of the Office of Government Ethics, pursuant to this title shall be retained by such agency or the Office of Government Ethics, or both, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 201(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 201(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President unless needed in an ongoing investigation.

#### REVIEW OF REPORTS

SEC. 206. (a) Each designated agency official or Secretary concerned shall make provisions to ensure that each report filed with him under this title shall be reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports transmitted to him under this title within sixty days after the date of transmittal.

(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, Secretary concerned, or designated agency official, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Government Ethics, Secretary concerned, or designated agency official, after reviewing any report under subsection (a)—

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford him a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

(3) If the Director of the Office of Government Ethics, Secretary concerned, or designated agency official reaches an opinion under paragraph (2) (B) that an individual is not in compliance with applicable laws and regulations, he shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in his opinion be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

- (A) divestiture,
- (B) restitution,
- (C) the establishment of a blind trust,
- (D) request for an exemption under section 208(b) of title 18, United States Code, or
- (E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such regulations as the Director of the Office of Government Ethics or a Secretary concerned, as the case may be, may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position (other than in the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the uniformed services, the Secretary concerned shall take appropriate action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee the matter shall be referred to the head of the appropriate agency for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

(7) For purposes of assisting employees in avoiding situations in which they would not be in compliance with applicable laws and regulations, each Secretary concerned and designated agency official (including the President in the case of the individuals employed in the Executive Office of the President) shall maintain a list of those circumstances or situations which have resulted or may result in noncom-

pliance with such laws or regulations. Such list shall be periodically published, and shall be furnished to those individuals employed within the agency who are required to file reports under this title. The absence of any situation or circumstance from such a list shall not be construed as an indication that an individual in such circumstance or situation would be in compliance with such laws or regulations.

(8) The preceding provisions of this subsection shall not apply in the case of the President or Vice President, or a candidate or nominee for such office.

#### ADDITIONAL REQUIREMENTS

*Sec. 207. (a) The President may require officers and employees in the executive branch (including the United States Postal Service and members of the uniformed services) not covered by this title to submit confidential reports in such form as is required by this title. Subsections (a), (b), and (d) of section 205 shall not apply with respect to any such report.*

*(b) The Director of the Office of Government Ethics may by rule require disclosure in the reports filed pursuant to subsections (a) and (c) of section 202, of gifts received by a dependent child of a reporting individual if the information required to be disclosed does not exceed that which must be reported by a spouse of a reporting individual under this title.*

*(c) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.*

*(d) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, or regulation.*

#### AUTHORITY OF COMPTROLLER GENERAL

*Sec. 208. The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.*

#### DEFINITIONS

*Sec. 209. For the purposes of this title, the term—*

*(1) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; net and gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;*

*(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece,*

husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancée of the reporting individual;

(3) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government;

(D) food and beverages consumed at banquets, receptions, or similar events; or

(E) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

(4) "honoraria" has the meaning given such term in the Federal Election Campaign Act of 1971.

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(9) "Secretary concerned" has the meaning set forth in section 101 (8) of title 10, United States Code, and, in addition, means—

(A) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

(B) the Secretary of Health, Education, and Welfare, with respect to matters concerning the Public Health Service; and

(10) "designated agency official" means an officer or employee who is designated to administer the provisions of this title within an agency.

#### OUTSIDE EARNED INCOME

SEC. 210. Except where the employee's agency or department shall have more restrictive limitations on outside earned income, all employees covered by this title who are compensated at a pay grade in the General Schedule of grade 16 or above and who occupy nonjudicial full-time positions appointment to which is required to be made by the President, by and with the advice and consent of the Senate, may not have in any calendar year outside earned income attributable to such calendar year which is in excess of 15 percent of their salary.

#### EFFECTIVE DATE

SEC. 211. The provisions made by this title shall take effect on January 1, 1979, and the reports filed under section 201(d) on May 15, 1979, shall include information for calendar year 1978.

### TITLE III—JUDICIAL PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

#### PERSONS REQUIRED TO FILE

SEC. 301. (a) Within thirty days of assuming the position of a judicial employee, an individual shall file a report containing the information described in section 302(b).

(b) Within five days of the transmittal by the President to the Senate of the nomination of an individual to be a judicial officer, such individual shall file a report containing the information described in section 302(b). Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(c) Any individual who is a judicial officer or employee during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 302(a).

(d) Any individual who occupies a position as a judicial officer or employee shall on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 302(a) covering the preceding calendar year if the report required by subsection (c) of this subsection has not been filed and covering the portion of that calendar year up to the date the individual left such office or position, unless such individual has accepted employment in another position as a judicial officer or employee.

(e) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the Judicial Ethics Committee established pursuant to section 303(a) of this title (hereinafter in this title referred to as the "Committee"), but the total of such extensions shall not exceed ninety days.

## CONTENTS OF REPORTS

SEC. 302. (a) Each report filed pursuant to section 301(c) shall include a full and complete statement with respect to the following:

(1) (A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating \$100 or more in value.

(B) The source and type of income which consists of dividends, rent, interest, and capital gains received during the preceding calendar year which exceeds \$100 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within—

- (i) not more than \$1,000,
- (ii) greater than \$1,000 but not more than \$2,500,
- (iii) greater than \$2,500 but not more than \$5,000,
- (iv) greater than \$5,000 but not more than \$15,000,
- (v) greater than \$15,000 but not more than \$50,000,
- (vi) greater than \$50,000 but not more than \$100,000, or
- (vii) greater than \$100,000.

(2) (A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating \$250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of \$35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating \$100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of \$35 or less need not be aggregated for purposes of this subparagraph. A gift need not be so aggregated if, in an unusual case, a publicly available request for a waiver is granted.

(C) The identity of the source and a brief description of reimbursements received from any source aggregating \$250 or more in value and received during the preceding calendar year.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds \$1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating \$5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed \$10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds \$10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale, or exchange during the preceding calendar year which exceeds \$1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transactions solely by and between the reporting individual, his spouse, or dependent children.

(6) The identity of all positions held on before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This paragraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government services; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed pursuant to subsections (a) and (b) of section 301 shall include a full and complete statement with respect to the information required by paragraphs (3), (4), (6), and (7) of subsection (a), as of a date, specified in such report, which shall be not more than thirty-one days prior to the date of filing, and the information required by paragraph (1) of subsection (a) for the year of filing and the preceding calendar year.

(c) In the case of any individual described in section 301(d) of this title, any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d) (1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), and (5) of subsection (a) are as follows:

(A) not more than \$5,000;

(B) greater than \$5,000 but not more than \$15,000;

(C) greater than \$15,000 but not more than \$50,000;

(D) greater than \$50,000 but not more than \$100,000;

- (E) greater than \$100,000 but not more than \$250,000; and  
 (F) greater than \$250,000.

(2) For the purpose of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(c) (1) Except as provided in the last sentence of this paragraph, each report required by subsections (a), (b), or (c) shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed \$1,000 and, with respect to his spouse or dependent child, all information required to be reported in subsection (a) (1) (B) with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gift which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment or the value of other gifts.

(C) In the case of any reimbursement which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of the reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse or dependent child's sole financial interest



or responsibility and which the reporting individual has no knowledge of (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f) (1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this subsection with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual other than a judicial officer of the United States need not report the holdings of or the source of income from any of the holdings of—

- (A) any qualified blind trust (as defined in paragraph (3)); or
- (B) a trust—

- (i) which was not created directly by such individual, his spouse, or any dependent child, and
- (ii) the holding or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust under subsection (a) (1) (B) of this section.

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

- (A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, or a broker, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

- (i) is independent of and associated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,
- (ii) is or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and
- (iii) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than \$1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a) (1) (B) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any

information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office. For purposes of this subsection "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 78 of title 15, United States Code; and "supervising ethics office" means the Judicial Ethics Committee.

(4) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purpose of section 208 of title 28, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than \$1,000.

(5) (A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d).

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d).

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 305 and the provisions of that section shall apply.

(E) A copy of each written communication with respect to the trust under paragraph (3) (C) (vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6) (A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (vi) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C), of this subsection or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$5,000.

(ii) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$1,000.

(7) Any trust which is in existence prior to the date of the enactment of this Act shall be considered a qualified blind trust if—

(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold is filed and made available to the public as provided under paragraph (5) of this subsection.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

#### FILING OF REPORTS

SEC. 303. (a) The Judicial Conference of the United States shall establish a Judicial Ethics Committee which shall be responsible for developing the forms for reporting the information required by this title and for receiving and making available, in accordance with the provisions of this title, the reports described in section 301.

(b) Each judicial officer and judicial employee shall file the report required by this title with the Committee and shall file a copy of such report as a public document with the clerk of the court on which he sits or serves.

(c) In the performance of its functions under this title, the Committee, with the approval of the Judicial Conference of the United States, shall—

(1) develop the necessary forms and promulgate such rules and regulations as may be necessary;

(2) monitor and investigate compliance with the requirements of this title;

(3) provide for the availability of reports as required by section 305;

(4) conduct, or cause to be conducted, the reviews required by section 306;

(5) cooperate with the Attorney General in enforcing the requirements of this title;

(6) submit to the Congress and the President recommendations for legislative revision of this title;

(7) perform such other functions as may be assigned by the Judicial Conference of the United States.

(d) The Committee shall, within one hundred and twenty days after the date of enactment of this Act, develop and, with the approval of the Judicial Conference of the United States, promulgate a regulation establishing a method or methods for readily determining, without the necessity for expert appraisal, the fair market value of assets required to be disclosed by this title.

#### FAILURE TO FILE OR FALSIFYING REPORTS

Sec. 304. (a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information that such individual is required to report pursuant to section 302. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$5,000.

(b) The Committee shall refer to the Attorney General the name of any individual the Committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or failed to file information required to be reported.

#### CUSTODY OF AND PUBLIC ACCESS TO REPORTS

Sec. 305. (a) The Committee shall make each report filed with it under this title available to the public in accordance with subsection (b) of this section.

(b) The Committee shall, within fifteen days after any report is received by the Committee under this title, permit inspection by or furnish a copy of such report to any person requesting such inspection or copy. The Committee may require the requesting person to pay a reasonable fee in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(c) (1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such person a penalty in any amount not to exceed \$5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report received by the Committee shall be held in its custody and be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 301(b) and was not subsequently confirmed by the Senate, such reports shall be destroyed one year after the individual is no longer under consideration by the Senate unless needed in an ongoing investigation.

#### COMPLIANCE PROCEDURES

SEC. 306. (a) The Committee shall establish procedures for the review of reports filed with it under this title to determine whether the reports are filed in a timely manner, are complete, and are in proper form. In the event a determination is made that a report is not so filed, the Committee shall so inform the reporting individual and direct him to take all necessary corrective action.

(b) Such procedures shall include provisions for conducting a review each year of financial statements filed in that year by judicial officers and employees to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review.

#### ADDITIONAL REQUIREMENTS

SEC. 307. (a) Nothing in this title shall be construed to prevent the Committee, with the approval of the Judicial Conference of the United States, from requiring officers or employees of the judicial branch not covered by this title to submit confidential financial statements.

(b) The Committee, with the approval of the Judicial Conference, may require disclosure, in the reports filed pursuant to subsections (a) and (c) of section 302, of gifts received by a dependent child of a reporting individual if the information required to be disclosed does not exceed that which must be reported by a spouse of a reporting individual under this title.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law or regulation.

(d) The provisions of this title requiring the reporting of information shall not supersede the requirements of section 7342 of title 5, United States Code.

## DEFINITIONS

*Sec. 308. For the purposes of this title, the term—*

(1) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; net and gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiancé or fiancée of the reporting individual;

(3) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government;

(D) food and beverages consumed at banquets, receptions, or similar events; or

(E) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

(4) "honoraria" has the meaning given such term in the Federal Election Campaign Act of 1971.

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(9) "judicial officer" means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals; United States district courts, including the district courts in the Canal Zone, Guam, and the Virgin Islands; Court of Claims; Court of Customs and Patent Appeals; Customs Court; courts of the District of Columbia and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior; and

(10) "judicial employee" means any employee of the judicial branch of the Government who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who receives compensation at a rate at or in excess of the minimum rate prescribed for grade 16 of the General Schedule under section 5332 of title 5, United States Code.

#### EFFECTIVE DATE

SEC. 309. This title shall take effect on January 1, 1979, and the reports filed under section 301(c) on May 15, 1979, shall include information for calendar year 1978.

### TITLE IV—OFFICE OF GOVERNMENT ETHICS

#### OFFICE OF GOVERNMENT ETHICS

SEC. 401. (a) There is established in the Office of Personnel Management an office to be known as the Office of Government Ethics.

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate.

#### AUTHORITY AND FUNCTIONS

SEC. 402. (a) The Director shall provide, under the general supervision of the Office of Personnel Management, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code.

(b) The responsibilities of the Director shall include—

(1) developing and recommending to the Office of Personnel Management, in consultation with the Attorney General, rules and regulations, to be promulgated by the President, or the Office of Personnel Management pertaining to conflicts of interest and



*ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title II of this Act;*

*(2) developing and recommending to the Office of Personnel Management, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Office of Personnel Management pertaining to the identification and resolution of conflicts of interest;*

*(3) monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title;*

*(4) conducting a review of financial statements to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;*

*(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;*

*(6) interpreting rules and regulations issued by the President or the Office of Personnel Management governing conflict of interest and ethical problems and the filing of financial statements;*

*(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;*

*(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;*

*(9) ordering corrective action on the part of agencies and employees which the Director deems necessary;*

*(10) requiring such reports from executive agencies as the Director deems necessary;*

*(11) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;*

*(12) evaluating, with the assistance of the Attorney General, the need for changes in rules and regulations issued by the Office of Personnel Management and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;*

*(13) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code; and*

(14) providing information on and promoting understanding of ethical standards in executive agencies.

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult when appropriate with the executive agencies affected and with the Attorney General.

(d) Pursuant to the Director's responsibilities under subsection (d) (1), the Director shall, within one hundred and twenty days after the date of enactment of this Act, develop and recommend to the Office of Personnel Management, and the Office of Personnel Management shall promulgate a regulation establishing a method for readily determining, without the necessity for expert appraisal, the fair market value of assets required to be disclosed by this title.

#### ADMINISTRATIVE PROVISIONS

*SEC. 403. Upon the request of the Director, each executive agency is directed to—*

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

*SEC. 404. In promulgating rules and regulations pertaining to financial disclosure, conflict of interest, and ethics in the executive branch, the Office of Personnel Management shall issue rules and regulations in accordance with chapter 5 of title 5, United States Code. Any person may seek judicial review of any such rule or regulation.*

#### AUTHORIZATION OF APPROPRIATIONS

*SEC. 405. There are authorized to be appropriated to carry out the provisions of this title, and for no other purpose—*

(1) not to exceed \$2,000,000 for the fiscal year ending September 30, 1979; and

(2) not to exceed \$2,000,000 for each of the four fiscal years thereafter.

#### ANNUAL PAY

*SEC. 406. Section 5316 of title 5, United States Code, is amended by adding at the end the following new paragraph:*

“(146) Director of the Office of Government Ethics.”.

#### TITLE V—POST EMPLOYMENT CONFLICT OF INTEREST

*SEC. 501. (a) Section 207 of title 18, United States Code, is amended to read as follows:*

**“§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees**

“(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a spe-

cial Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

“(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

“(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

“(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

“(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) concerning any formal or informal appearance before—

“(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

“(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

“(3) which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or in which he participated personally and substantially as an officer or employee; or

“(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

“(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

"(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"(d) Subsection (c) of this section shall apply to a person employed—

"(1) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

"(2) in a position for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, and who has significant decision-making or supervisory responsibility, as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned;

"(3) on active duty as a commissioned officer of a uniformed service assigned to a pay grade of O-7 or above as described in section 201 of title 37, United States Code; or

"(4) in a position designated by the Director of the Office of Government Ethics. Within twelve months from the date of enactment of this subsection, the Director of the Office of Government Ethics shall designate positions, which are not included under paragraph (2) of this subsection and which involve significantly similar to those exercised by persons covered by paragraph (2) of this subsection. On an annual basis, the Director shall review the positions designated pursuant to this paragraph, making additions and deletions as are necessary to satisfy the purposes of subsection (c). Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in exercising his responsibilities under this paragraph.

"(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

"(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the for-

mer officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

"(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

"(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(i) the prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

"(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection."

(b) The item relating to section 207 in the table or sections at the beginning of chapter 11 of title 18, United States Code, is amended to read as follows:

"207. Disqualification of former officers and employees; disqualification of partners of current officers and employees."

## APPLICABILITY

*SEC. 502. The amendments made by section 501 shall not apply to those individuals who left Government service prior to the effective date of such amendments or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation.*

## EFFECTIVE DATE

*SEC. 503. The amendments made by section 501 shall become effective on July 1, 1979.*

TITLE VI—AMENDMENTS TO TITLE 28,  
UNITED STATES CODE

## SPECIAL PROSECUTOR

*SEC. 601. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 37 the following new chapter:*

**"Chapter 39.—SPECIAL PROSECUTOR**

*"Sec.*

*"591. Applicability of provisions of this chapter.*

*"592. Application for appointment of a special prosecutor.*

*"593. Duties of the division of the court.*

*"594. Authority and duties of a special prosecutor.*

*"595. Reporting and congressional oversight.*

*"596. Removal of a special prosecutor; termination of office.*

*"597. Relationship with Department of Justice.*

*"598. Termination of effect of chapter.*

**"§ 591. Applicability of provisions of this chapter**

*"(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives specific information that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense.*

*"(b) The persons referred to in subsection (a) of this section are—*

*"(1) the President and Vice President;*

*"(2) any individual serving in a position listed in section 5312 of title 5;*

*"(3) any individual working in the Executive Office of the President and compensated at a rate not less than the annual rate of basic pay provided for level IV of the Executive Schedule under section 5315 of title 5;*

*"(4) any individual working in the Department of Justice and compensated at a rate not less than the annual rate of basic pay provided for level III of the Executive Schedule under section 5314 of title 5, any Assistant Attorney General, the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;*

"(5) any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President; and

"(6) any officer of the principal national campaign committee seeking the election or reelection of the President.

**"§ 592. Application for appointment of a special prosecutor**

"(a) The Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title has engaged in conduct described in section 591(a) of this title, shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate.

"(b) (1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court specified in section 593(a) of this title, and the division of the court shall have no power to appoint a special prosecutor.

"(2) Such notification shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

"(3) Such memorandum shall not be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

"(c) (1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or prosecution, or if ninety days elapse from the receipt of the information without a determination by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation or prosecution, then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor.

"(2) If—

"(A) after the filing of a memorandum under subsection (b) of this section, the Attorney General receives additional specific information about the matter to which such memorandum related, and

"(B) the Attorney General determines, after such additional investigation as the Attorney General deems appropriate, that such information warrants further investigation or prosecution, then the Attorney General shall, not later than ninety days after receiving such additional information, apply to the division of the court for the appointment of a special prosecutor.

"(d) (1) Any application under this chapter shall contain sufficient information to assist the division of the court to select a special prosecutor and to define that special prosecutor's prosecutorial jurisdiction.

"(2) No application or any other documents, materials, or memorandums supplied to the division of the court under this chapter shall be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

"(e) *The Attorney General may ask a special prosecutor to accept referral to a matter that relates to a matter within that special prosecutor's prosecutorial jurisdiction.*

"(f) *The Attorney General's determination under subsection (c) of this section to apply to the division of the court for the appointment of a special prosecutor shall not be reviewable in any court.*

**"§ 593. Duties of the division of the court**

"(a) *The division of the court to which this chapter refers is the division established under section 49 of this title.*

"(b) *Upon receipt of an application under section 592 (c) of this title, the division of the court shall appoint an appropriate special prosecutor and shall define that special prosecutor's prosecutorial jurisdiction. A special prosecutor's identity and prosecutorial jurisdiction shall be made public upon request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such special prosecutor would be in the best interests of justice. In any event the identity and prosecutorial jurisdiction of such prosecutor shall be made public when any indictment is returned or any criminal information is filed.*

"(c) *The division of the court, upon request of the Attorney General which may be incorporated in an application under this chapter, may expand the prosecutorial jurisdiction of an existing special prosecutor, and such expansion may be in lieu of the appointment of an additional special prosecutor.*

"(d) *The division of the court may not appoint as a special prosecutor any person who holds or recently held any office of profit or trust under the United States.*

"(e) *If a vacancy in office arises by reason of the resignation or death of a special prosecutor, the division of the court may appoint a special prosecutor to complete the work of the special prosecutor whose resignation or death caused the vacancy. If a vacancy in office arises by reason of the removal of a special prosecutor, the division of the court may appoint an acting special prosecutor to serve until any judicial review of such removal is completed. Upon the completion of such judicial review, the division of the court shall take appropriate action.*

**"§ 594. Authority and duties of a special prosecutor**

"(a) *Notwithstanding any other provision of law, a special prosecutor appointed under this chapter shall have, with respect to all matters in such special prosecutor's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—*

*"(1) conducting proceedings before grand juries and other investigations;*

*"(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such special prosecutor deems necessary;*



"(3) appealing any decision of a court in any case or proceeding in which such special prosecutor participates in an official capacity;

"(4) reviewing all documentary evidence available from any source;

"(5) determining whether to contest the assertion of any testimonial privilege;

"(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

"(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General; and

"(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case in the name of the United States.

"(b) A special prosecutor appointed under this chapter shall receive compensation at a per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5.

"(c) For the purposes of carrying out the duties of the office of special prosecutor, a special prosecutor shall have power to appoint, fix the compensation, and assign the duties, of such employees as such special prosecutor deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS-18 of the General Schedule under section 5332 of title 5.

"(d) A special prosecutor may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such special prosecutor's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such special prosecutor's duties.

"(e) A special prosecutor may ask the Attorney General or the division of the court to refer matters related to the special prosecutor's prosecutorial jurisdiction. A special prosecutor may accept referral of a matter by the Attorney General, if the matter relates to a matter within such special prosecutor's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the special prosecutor shall notify the division of the court.

"(f) A special prosecutor shall, to the extent that such special prosecutor deems appropriate, comply with the written policies of the Department of Justice respecting enforcement of the criminal laws.

**"§ 595. Reporting and congressional oversight**

"(a) A special prosecutor appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such special prosecutor. These statements and reports shall contain such information as such special prosecutor deems appropriate.

"(b) (1) In addition to any reports made under subsection (a) of this section, and before the termination of a special prosecutor's office under section 596(b) of this title, such special prosecutor shall submit to the division of the court a report under this subsection.

"(2) A report under this subsection shall set forth fully and completely a description of the work of the special prosecutor, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such special prosecutor which was not prosecuted.

"(3) The division of the court may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as the division deems appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a report under this section available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may in the discretion of such division be included as an appendix to such report.

"(c) A special prosecutor shall advise the House of Representatives of any substantial and credible information which such special prosecutor receives that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

"(d) The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any special prosecutor appointed under this chapter, and such special prosecutor shall have the duty to cooperate with the exercise of such oversight jurisdiction.

"(e) A majority of majority party members or a majority of all non-majority party members of the Committee on the Judiciary of either House of the Congress may request in writing that the Attorney General apply for the appointment of a special prosecutor. Not later than thirty days after the receipt of such a request, or not later than fifteen days after the completion of a preliminary investigation of the matter with respect to which the request is made, whichever is later, the Attorney General shall provide written notification of any action the Attorney General has taken in response to such request and, if no application has been made to the division of the court, why such application was not made. Such written notification shall be provided to the committee on which the persons making the request serve, and shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgment prejudice the rights of any individual.

**"§ 596. Removal of a special prosecutor; termination of office**

"(a) (1) A special prosecutor appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for extraordinary impropriety, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such special prosecutor's duties.

"(2) If a special prosecutor is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, delete or postpone publishing any or all of the report. The division of the court may release any or all of such report in the same manner as a report released under section 595(b) (3) of this title and under the same limitations as apply to the release of a report under that section.

"(3) A special prosecutor so removed may obtain judicial review of the removal in a civil action commenced before the division of the court and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief. The division of the court shall cause such an action to be in every way expedited.

"(b) (1) An office of special prosecutor shall terminate when (A) the special prosecutor notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such special prosecutor or accepted by such special prosecutor under section 594 (e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions and (B) the special prosecutor files a report in full compliance with section 595(b) of this title.

"(2) The division of the court, either on its own motion or upon suggestion of the Attorney General, may terminate an office of special prosecutor at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the special prosecutor or accepted by such special prosecutor under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of termination, the special prosecutor shall file the report required by section 595(b) of this title.

**"§ 597. Relationship with Department of Justice**

"(a) Whenever a matter is in the prosecutorial jurisdiction of a special prosecutor or has been accepted by a special prosecutor under section 594(e) of this title, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d) of this title, and except insofar as such special prosecutor agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

*"(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which a special prosecutor participates in an official capacity or any appeal of such a case or proceeding.*

**"§ 598. Termination of effect of chapter**

*"This chapter shall cease to have effect five years after the date of the enactment of this chapter, except that this chapter shall continue in effect with respect to then pending matters before a special prosecutor that in the judgment of such special prosecutor require such continuation until that special prosecutor determines such matters have been completed."*

*(b) The tables of chapters for title 28 of the United States Code and for part II of such title 28 are each amended by inserting immediately after the item relating to chapter 37 the following new item:*

*"39. Special prosecutor."*

*(c) There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any special prosecutors appointed under chapter 39 (relating to special prosecutor) of title 28 of the United States Code in the carrying out of functions under such chapter.*

**ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT SPECIAL PROSECUTORS**

*SEC 602. (a) Chapter 3 of title 28 of the United States Code is amended by adding at the end the following:*

**"§ 49. Assignment of judges to division to appoint special prosecutors**

*"(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing special prosecutors.*

*"(b) Except as provided under subsection (f) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.*

*"(c) In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.*

*"(d) The Chief Justice of the United States shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.*

*"(e) Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.*

*"(f) Except as otherwise provided in chapter 39 of this title, no member of such division of the court who participated in a function*

conferred on the division under chapter 39 of this title involving a special prosecutor shall be eligible to participate in any judicial proceeding concerning a matter which involves such special prosecutor while such special prosecutor is serving in that office or which involves the exercise of such special prosecutor's official duties, regardless of whether such special prosecutor is still serving in that office."

(b) The table of sections for chapter 3 of title 28 of the United States Code is amended by adding at the end the following item:

"49. Assignment of judges to division to appoint special prosecutors."

**DISQUALIFICATION OF OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF JUSTICE AND ANNUAL REPORT OF ATTORNEY GENERAL**

*Sec. 603. (a) Chapter 31 of title 28 of the United States Code is amended by adding at the end the following:*

**"§ 528. Disqualification of officers and employees of the Department of Justice**

"The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

**"§ 529. Annual report of Attorney General**

"Beginning on June 1, 1979, and at the beginning of each regular session of Congress thereafter, the Attorney General shall report to Congress on the activities and operations of the Public Integrity Section or any other unit of the Department of Justice designated to supervise the investigation and prosecution of—

"(1) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a Federal Government officer, employee, or special employee, if such violation relates directly or indirectly to such individual's Federal Government position, employment, or compensation;

"(2) any violation of any Federal criminal law relating to lobbying, conflict of interest, campaigns, and election to public office committed by any person, except insofar as such violation relates to a matter involving discrimination or intimidation on grounds of race, color, religion, or national origin;

"(3) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a State or local government officer or employee, if such violation relates directly or indirectly to such individual's State or local government position, employment, or compensation; and

"(4) such other matters as the Attorney General may deem appropriate.

Such report shall include the number, type, and disposition of all investigations and prosecutions supervised by such Section or such

unit, except that such report shall not disclose information which would interfere with any pending investigation or prosecution or which would improperly infringe upon the privacy rights of any individuals."

(b) The table of sections for chapter 31 of title 28 of the United States Code is amended by adding at the end thereof the following:

"528. Disqualification of officers and employees of the Department of Justice.

"529. Annual report of Attorney General."

#### EFFECTIVE DATE

Sec. 604. Except as provided in this section, the amendments made by this title shall take effect on the date of the enactment of this Act. The provisions of chapter 39 of title 28 of the United States Code, as added by section 601 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 591 of such title 28, if the Attorney General determines that—

(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of the enactment of this Act; or

(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act.

### TITLE VII—SENATE LEGAL COUNSEL

#### ESTABLISHMENT OF OFFICE OF SENATE LEGAL COUNSEL

Sec. 701. (a) (1) There is established, as an office of the Senate, the Office of Senate Legal Counsel (hereinafter referred to as the "Office"), which shall be headed by a Senate Legal Counsel (hereinafter referred to as the "Counsel"); and there shall be a Deputy Senate Legal Counsel (hereinafter referred to as the "Deputy Counsel") who shall perform such duties as may be assigned to him by the Counsel and who, during any absence, disability, or vacancy in the position of the Counsel, shall serve as Acting Senate Legal Counsel.

(2) The Counsel and the Deputy Counsel each shall be appointed by the President pro tempore of the Senate from among recommendations submitted by the majority and minority leaders of the Senate. Any appointment made under this paragraph shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any person appointed as Counsel or Deputy Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

(3) (A) Any appointment made under paragraph (2) shall become effective upon approval by resolution of the Senate. The Counsel

and the Deputy Counsel shall each be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Counsel or Deputy Counsel, respectively, is appointed except that the Senate may, by resolution, remove either the Counsel or the Deputy Counsel prior to the termination of any term of service. The Counsel and the Deputy Counsel may be reappointed at the termination of any term of service.

(B) The first Counsel and the first Deputy Counsel shall be appointed, approved, and begin service within ninety days after the effective date of this title, and thereafter the Counsel and Deputy Counsel shall be appointed, approved, and begin service within thirty days after the beginning of the session of the Congress immediately following the termination of a Counsel's or Deputy Counsel's term of service or within sixty days after a vacancy occurs in either position.

(4) The Counsel shall receive compensation at a rate equal to the annual rate of basic pay for level III of the Executive Schedule under section 5314 of title 5 of the United States Code. The Deputy Counsel shall receive compensation at a rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5 of the United States Code.

(b)(1) The Counsel shall select and fix the compensation of such Assistant Senate Legal Counsels (hereinafter referred to as "Assistant Counsels") and of such other personnel, within the limits of available funds, as may be necessary to carry out the provisions of this title and may prescribe the duties and responsibilities of such personnel. The compensation fixed for each Assistant Counsel shall not be in excess of a rate equal to the annual rate of basic pay for level V of the Executive Schedule under section 5316 of title 5 of the United States Code. Any selection made under this paragraph shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any individual selected as an Assistant Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during his term of service. The Counsel may remove any individual appointed under this paragraph.

(2) For purposes of pay (other than the rate of pay of the Counsel and Deputy Counsel) and employment benefits, right, and privileges, all personnel of the Office shall be treated as employees of the Senate.

(c) In carrying out the functions of the Office, the Counsel may procure the temporary (not to exceed one year) or intermittent services of individual consultants (including outside counsel), or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(d) The Counsel may establish such policies and procedures as may be necessary to carry out the provisions of this title.

(e) The Counsel may delegate authority for the performance of any function imposed by this title except any function imposed upon the Counsel under section 706(b) of this title.

(f) The Counsel and other employees of the Office shall maintain the attorney-client relationship with respect to all communications between them and any Member, officer, or employee of the Senate.

## ACCOUNTABILITY OF OFFICE

*SEC. 702. (a) The Office shall be directly accountable to the Joint Leadership Group in the performance of the duties of the Office.*

*(b) For purposes of this title, the Joint Leadership Group shall consist of the following Members:*

*(1) The President pro tempore (or if he so designates, the Deputy President pro tempore) of the Senate.*

*(2) The majority and minority leaders of the Senate.*

*(3) The Chairman and ranking minority Member of the Committee on the Judiciary of the Senate.*

*(4) The Chairman and ranking minority Member of the committee of the Senate which has jurisdiction over the contingent fund of the Senate.*

*(c) The Joint Leadership Group shall be assisted in the performance of its duties by the Secretary of the Senate.*

## REQUIREMENTS FOR AUTHORIZING REPRESENTATION ACTIVITY

*SEC. 703. (a) The Counsel shall defend the Senate or a committee, subcommittee, Member, officer, or employee of the Senate under section 704 only when directed to do so by two-thirds of the Members of the Joint Leadership Group or by the adoption of a resolution by the Senate.*

*(b) The Counsel shall bring a civil action to enforce a subpoena of the Senate or a committee or subcommittee of the Senate under section 705 only when directed to do so by the adoption of a resolution by the Senate.*

*(c) The Counsel shall intervene or appear as amicus curiae under section 706 only when directed to do so by a resolution adopted by the Senate when such intervention or appearance is to be made in the name of the Senate or in the name of an officer, committee, subcommittee, or chairman of a committee or subcommittee of the Senate.*

*(d) The Counsel shall serve as the duly authorized representative in obtaining an order granting immunity under section 707 of—*

*(1) the Senate when directed to do so by an affirmative vote of a majority of the Members present of the Senate; or*

*(2) a committee or subcommittee of the Senate when directed to do so by an affirmative vote of two-thirds of the members of the full committee.*

*(e) The Office shall make no recommendation with respect to the consideration of a resolution under this section.*

## DEFENDING THE SENATE, A COMMITTEE, SUBCOMMITTEE, MEMBER, OFFICER, OR EMPLOYEE OF THE SENATE

*SEC. 704. (a) Except as otherwise provided in subsection (b), when directed to do so pursuant to section 703(a), the Counsel shall—*

*(1) defend the Senate, a committee, subcommittee, Member, officer, or employee of the Senate in any civil action pending in any court of the United States or of a State or political subdivision thereof, in which the Senate, such committee, subcommittee, Member, officer, or employee is made a party defendant and in which there is placed in issue the validity of any proceed-*



ing of, or action, including issuance of any subpoena or order, taken by the Senate, or such committee, subcommittee, Member, officer, or employee in its or his official or representative capacity; or

(2) defend the Senate or a committee, subcommittee, Member, officer, or employee of the Senate in any proceeding with respect to any subpoena or order directed to the Senate or such committee, subcommittee, Member, officer, or employee in its or his official or representative capacity.

(b) Representation of a Member officer, or employee under subsection (a) shall be undertaken by the Counsel only upon the consent of such Member, officer, or employee.

#### INSTITUTING A CIVIL ACTION TO ENFORCE A SUBPENA

SEC. 705. (a) When directed to do so pursuant to section 703(b), the Counsel shall bring a civil action under any statute conferring jurisdiction on any court of the United States (including section 1364 of title 28 of the United States Code, as added by subsection (f) (1) of this section), to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened failure or refusal to comply with, any subpoena or order issued by the Senate or a committee or a subcommittee of the Senate authorized to issue a subpoena or order.

(b) Any directive to the Counsel to bring a civil action pursuant to subsection (a) of this section in the name of a committee or subcommittee of the Senate shall, for such committee or subcommittee, constitute authorization to bring such action within the meaning of any statute conferring jurisdiction on any court of the United States.

(c) It shall not be in order in the Senate to consider a resolution to direct the Counsel to bring a civil action pursuant to subsection (a) in the name of a committee or subcommittee unless—

(1) such resolution is reported by a majority of the members voting, a majority being present, of such committee or committee of which such subcommittee is a subcommittee, and

(2) the report filed by such committee or committee of which such subcommittee is a subcommittee contains a statement of—

(A) the procedure followed in issuing such subpoena;

(B) the extent to which the party subpoenaed has complied with such subpoena;

(C) any objections or privileges raised by the subpoenaed party; and

(D) the comparative effectiveness of bringing a civil action under this section, certification of a criminal action for contempt of Congress, and initiating a contempt proceeding before the Senate.

(d) The provisions of subsection (c) are enacted—

(1) as an exercise of the rulemaking power of the Senate, and, as such, they shall be considered as part of the rules of the Senate, and such rules shall supersede any other rule of the Senate only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change such rules (so far as relating to the procedure

*in the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.*

*(e) A report filed pursuant to subsection (c) (2) shall not be receivable in any court of law to the extent such report is in compliance with such subsection.*

*(f) (1) Chapter 35 of title 28 of the United States Code is amended by adding at the end thereof the following new section:*

**“§ 1364. Senate actions**

*“(a) The United States District Court for the District of Columbia shall have original jurisdiction, without regard to the amount in controversy, over any civil action brought by the Senate or any authorized committee or subcommittee of the Senate to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal or failure to comply with, any subpoena or order issued by the Senate or committee or subcommittee of the Senate to any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof. This section shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpoena or order issued to an officer or employee of the Federal Government acting within his official capacity.*

*“(b) Upon application by the Senate or any authorized committee or subcommittee of the Senate, the district court shall issue an order to an entity or person refusing, or failing to comply with, or threatening to refuse or not to comply with, a subpoena or order of the Senate or committee or subcommittee of the Senate requiring such entity or person to comply forthwith. Any refusal or failure to obey a lawful order of the district court issued pursuant to this section may be held by such court to be a contempt thereof. A contempt proceeding shall be commenced by an order to show cause before the court why the entity or person refusing or failing to obey the court order should not be held in contempt of court. Such contempt proceeding shall be tried by the court and shall be summary in manner. The purpose of sanctions imposed as a result of such contempt proceeding shall be to compel obedience to the order of the court. Process in any such action or contempt proceeding may be served in any judicial district wherein the entity or party refusing, or failing to comply, or threatening to refuse or not to comply, resides, transacts business, or may be found, and subpoenas for witnesses who are required to attend such proceeding may run into any other district. Nothing in this section shall confer upon such court jurisdiction to affect by injunction or otherwise the issuance or effect of any subpoena or order of the Senate or any committee or subcommittee of the Senate or to review, modify, suspend, terminate, or set aside any such subpoena or order. An action, contempt proceeding, or sanction brought or imposed pursuant to this section shall not abate upon adjournment sine die by the Senate at the end of a Congress if the Senate or the committee or subcommittee of the Senate which issued the subpoena or order certifies to the court that it maintains its interest in securing the documents, answers, or testimony during such adjournment.*

"(c) In any civil action or contempt proceeding brought pursuant to this section, the court shall assign the action or proceeding for hearing at the earliest practicable date and cause the action or proceeding in every way to be expedited. Any appeal or petition for review from any order or judgment in such action or proceeding shall be expedited in the same manner.

"(d) The Senate or any committee or subcommittee of the Senate commencing and prosecuting a civil action or contempt proceeding under this section may be represented in such action by such attorneys as the Senate may designate.

"(e) A civil action commenced or prosecuted under this section, may not be authorized pursuant to the Standing Order of the Senate 'authorizing suits by Senate Committees' (S. Jour. 572, May 28, 1928).

"(f) For the purposes of this section the term 'committee' includes standing, select, or special committees of the Senate established by law or resolution."

(2) The table of sections of such chapter 85 is amended by adding at the end thereof the following new item:

"1364. Senate actions."

(g) Nothing in this section shall limit the discretion of—

(1) the President pro tempore of the Senate in certifying to the United States Attorney for the District of Columbia any matter pursuant to section 104 of the Revised Statutes (2 U.S.C. 194); or

(2) the Senate to hold any individual or entity in contempt of the Senate.

#### INTERVENTION OR APPEARANCE

SEC. 706. (a) When directed to do so pursuant to section 703(c), the Counsel shall intervene or appear as *amicus curiae* in the name of the Senate, or in the name of an officer, committee, subcommittee, or chairman of a committee or subcommittee of the Senate in any legal action or proceeding pending in any court of the United States or of a State or political subdivision thereof in which the powers and responsibilities of Congress under the Constitution of the United States are placed in issue. The Counsel shall be authorized to intervene only if standing to intervene exists under section 2 of article III of the Constitution of the United States.

(b) The Counsel shall notify the Joint Leadership Group of any legal action or proceeding in which the Counsel is of the opinion that intervention or appearance as *amicus curiae* under subsection (a) is in the interest of the Senate. Such notification shall contain a description of the legal action or proceeding together with the reasons that the Counsel is of the opinion that intervention or appearance as *amicus curiae* is in the interest of the Senate. The Joint Leadership Group shall cause said notification to be published in the Congressional Record for the Senate.

(c) The Counsel shall limit any intervention or appearance as *amicus curiae* in an action or proceeding to issues relating to the powers and responsibilities of Congress.

#### IMMUNITY PROCEEDINGS

SEC. 707. When directed to do so pursuant to section 703(d), the Counsel shall serve as the duly authorized representative of the Senate

or a committee or subcommittee of the Senate in requesting a United States district court to issue an order granting immunity pursuant to section 201 (a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6005).

#### ADVISORY AND OTHER FUNCTIONS

**SEC. 708.** (a) *The Counsel shall advise, consult, and cooperate with—*

(1) *the United States Attorney for the District of Columbia with respect to any criminal proceeding for contempt of Congress certified by the President pro tempore of the Senate pursuant to section 104 of the Revised Statutes (2 U.S.C. 194);*

(2) *the committee of the Senate with the responsibility to identify any court proceeding or action which is of vital interest to the Senate;*

(3) *the Comptroller General, the General Accounting Office, the Office of Legislative Counsel of the Senate, and the Congressional Research Service, except that none of the responsibilities and authority assigned by this title to the Counsel shall be construed to affect or infringe upon any functions, powers, or duties of the aforementioned;*

(4) *any Member, officer, or employee of the Senate not represented under section 704 with regard to obtaining private legal counsel for such Member, officer, or employee;*

(5) *the President pro tempore of the Senate, the Secretary of Senate, the Sergeant-at-Arms of the Senate, and the Parliamentarian of the Senate, regarding any subpoena, order, or request for withdrawal of papers presented to the Senate which raises a question of the privileges of the Senate; and*

(6) *any committee or subcommittee of the Senate in promulgating and revising their rules and procedures for the use of congressional investigative powers and with respect to questions which may arise in the course of any investigation.*

(b) *The Counsel shall compile and maintain legal research files of materials from court proceedings which have involved Congress, a House of Congress, an office or agency of Congress, or any committee, subcommittee, Member, officer, or employee of Congress. Public court papers and other research memoranda which do not contain information of a confidential or privileged nature shall be made available to the public consistent with any applicable procedures set forth in such rules of the Senate as may apply and the interests of the Senate.*

(c) *The Counsel shall perform such other duties consistent with the purposes and limitations of this title as the Senate may direct.*

#### DEFENSE OF CERTAIN CONSTITUTIONAL POWERS

**SEC. 709.** *In performing any function under this title, the Counsel shall defend vigorously when placed in issue—*

(1) *the constitutional privilege from arrest or from being questioned in any other place for any speech or debate under section 6 of article I of the Constitution of the United States;*

(2) *the constitutional power of the Senate to be judge of the elections, returns, and qualifications of its own Members and to punish or expel a Member under section 5 of article I of the Constitution of the United States;*

(3) the constitutional power of the Senate to except from publication such parts of its journal as in its judgment may require secrecy;

(4) the constitutional power of the Senate to determine the rules of its proceedings;

(5) the constitutional power of Congress to make all laws as shall be necessary and proper for carrying into execution the constitutional powers of Congress and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof;

(6) all other constitutional powers and responsibilities of the Senate or of Congress; and

(7) the constitutionality of Acts and joint resolutions of the Congress.

#### CONFLICT OF INCONSISTENCY

SEC. 710. (a) In the carrying out of the provisions of this title, the Counsel shall notify the Joint Leadership Group, and any party represented or person affected, of the existence and nature of any conflict or inconsistency between the representation of such party or person and the carrying out of any other provision of this title or compliance with professional standards and responsibilities.

(b) Upon receipt of such notification, the members of the Joint Leadership Group shall recommend the action to be taken to avoid or resolve the conflict or inconsistency. If such recommendation is made by a two-thirds vote, the Counsel shall take such steps as may be necessary to resolve the conflict or inconsistency as recommended. If not, the members of the Joint Leadership Group shall cause the notification of conflict or inconsistency and recommendation with respect to resolution thereof to be published in the Congressional Record of the Senate. If the Senate does not direct the Counsel within fifteen days from the date of publication in the Record to resolve the conflict in another manner, the Counsel shall take such action as may be necessary to resolve the conflict or inconsistency as recommended. Any instruction or determination made pursuant to this subsection shall not be reviewable in any court of law.

(c) For purposes of the computation of the fifteen day period in subsection (b)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which the Senate is not in session because of an adjournment of more than three days to a date certain are excluded.

(d) The Senate may by resolution authorize the reimbursement of any Member, officer, or employee of the Senate who is not represented by the Counsel for fees and costs, including attorneys' fees, reasonably incurred in obtaining representation. Such reimbursement shall be from funds appropriated to the contingent fund of the Senate.

#### PROCEDURE FOR CONSIDERATION OF RESOLUTIONS TO DIRECT THE COUNSEL

SEC. 711. (a) (1) A resolution introduced pursuant to section 703 shall not be referred to a committee, except as otherwise required under section 705(c). Upon introduction, or upon being reported if

required under section 705(c), whichever is later, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. A motion to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to.

(2) With respect to a resolution pursuant to section 703(a), the following rules apply:

(A) If the motion to proceed to the consideration of the resolution is agreed to, debate thereon shall be limited to not more than ten hours, which shall be divided equally between, and controlled by, those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to the resolution shall be in order. No motion to recommit the resolution shall be in order, and it shall not be in order to reconsider the vote by which the resolution is agreed to.

(B) Motions to postpone, made with respect to the consideration of the resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(C) All appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to the resolution shall be decided without debate.

(b) For purposes of this title, other than section 703, the term "committee" includes standing, select, and special committees of the Senate established by law or resolution.

(c) The provisions of this section are enacted—

(1) as an exercise of the rulemaking power of the Senate, and, as such, they shall be considered as part of the rules of the Senate, and such rules shall supersede any other rule of the Senate only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

#### ATTORNEY GENERAL RELIEVED OF RESPONSIBILITY

SEC. 712. (a) Upon receipt of written notice that the Counsel has undertaken, pursuant to section 704(a) of this title, to perform any representational service with respect to any designated party in any action or proceeding pending or to be instituted, the Attorney General shall—

(1) be relieved of any responsibility with respect to such representational service;

(2) have no authority to perform such service in such action or proceeding except at the request or with the approval of the Senate; and

(3) transfer all materials relevant to the representation authorized under section 704(a) to the Counsel, except that nothing in this subsection shall limit any right of the Attorney General under existing law to intervene or appear as *amicus curiae* in such action or proceeding.

(b) The Attorney General shall notify the Counsel with respect to any proceeding in which the United States is a party of any deter-

mination by the Attorney General or Solicitor General not to appeal any court decision affecting the constitutionality of an Act or joint resolution of Congress within such time as will enable the Senate to direct the Counsel to intervene as a party in such proceedings pursuant to section 706.

#### PROCEDURAL PROVISIONS

SEC. 713. (a) Permission to intervene as a party or to appear as *amicus curiae* under section 706 of this title shall be of right and may be denied by a court only upon an express finding that such intervention or appearance is untimely and would significantly delay the pending action or that standing to intervene has not been established under section 2 of article III of the Constitution of the United States.

(b) The Counsel, the Deputy Counsel, or any designated Assistant Counsel or counsel specially retained by the Office shall be entitled, for the purpose of performing his functions under this title, to enter an appearance in any proceeding before any court of the United States or of a State or political subdivision thereof without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this subsection shall not apply with respect to the admission of any such person to practice before the United States Supreme Court.

(c) Nothing in this title shall be construed to confer standing on any party seeking to bring, or jurisdiction on any court with respect to, any civil or criminal action against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of a House of Congress, any office or agency of Congress, or any officer or employee of a House of Congress or any office or agency of Congress.

#### TECHNICAL AND CONFORMING AMENDMENTS

SEC. 714. (a) Section 3210 of title 39 of the United States Code, is amended—

(1) by striking out “and the Legislative Counsels of the House of Representatives and the Senate” in subsection (b) (1) and inserting in lieu thereof “the Legislative Counsels of the House of Representatives and the Senate, and the Senate Legal Counsel”; and

(2) by striking out “or the Legislative Counsel of the House of Representatives or the Senate” in subsection (b) (2) and inserting in lieu thereof “the Legislative Counsel of the House of Representatives or the Senate, or the Senate Legal Counsel”.

(b) Section 3216 (a) (1) (A) of such title is amended by striking out “and the Legislative Counsels of the House of Representatives and the Senate” and inserting in lieu thereof “the Legislative Counsels of the House of Representatives and the Senate, and the Senate Legal Counsel”.

(c) Section 3219 of such title is amended by striking out “or the Legislative Counsel of the House of Representatives or the Senate” and inserting in lieu thereof “the Legislative Counsel of the House of Representatives or the Senate, or the Senate Legal Counsel”.

(d) Section 8 of the Act entitled “An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending

*June thirtieth, eighteen hundred and seventy-six, and for other purposes," approved March 3, 1875 (2 U.S.C. 118), shall not apply to officers of the Senate.*

#### SEPARABILITY

*SEC. 715. If any part of this title or any amendment made by this title, is held invalid, the remainder of the title and any amendment made by this title shall not be affected thereby. If any provision of any part of this title or of any amendment made by this title, or the application thereof to any person or circumstance is held invalid, the provisions of other parts and of any amendment made by this title and their application to other persons or circumstances shall not be affected thereby.*

#### CONTINGENT FUND

*SEC. 716. The expenses of the Office shall be paid from the contingent fund of the Senate in accordance with the paragraph under the heading "UNDER LEGISLATIVE", relating to the contingent fund of the Senate, of the Act of October 1, 1988 (28 Stat. 546; 2 U.S.C. 68), and upon vouchers approved by the Counsel.*

#### EFFECTIVE DATE

*SEC. 717. This title shall take effect on January 3, 1979.*

*And the House agree to the same.*

*That the House recede from its amendment to the title of the bill.*

ABRAHAM RIBICOFF,  
HENRY M. JACKSON,  
EDMUND S. MUSKIE,  
CHARLES H. PERCY,  
JACOB K. JAVITS,

*Managers on the Part of the Senate.*

GEORGE E. DANIELSON,  
RICHARD PREYER,  
PATRICIA SCHROEDER,  
SAMUEL STRATTON,  
DAVID R. OBEY, (except  
for title VI)  
HERBERT E. HARRIS,  
JAMES R. MANN,  
ROMANO L. MAZZOLI,  
BOB ECKHARDT,  
BENJAMIN A. GILMAN,  
CARLOS J. MOORHEAD,  
BILL FRENZEL,  
ROBERT W. KASTENMEIER,

*Managers on the Part of the House.*



## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 555) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report: The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The House recedes from its amendment to the title of the bill.

The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

### TITLE I—LEGISLATIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

This title is based upon title I of S. 555 as passed by the House (formerly H.R. 1) and title III of S. 555 as passed by the Senate. The provisions of the House and Senate bills were very similar. The principal explanation of these provisions can be found in the report submitted to the House on this title (95-574) and the report submitted to the Senate on S. 555 (No. 95-170) and the floor debates in the House and the Senate on this legislation. The principal substantive differences between the House and Senate provisions on Legislative personnel financial disclosure requirements are described below.

S. 555 as passed by the Senate contained one title (title III) covering financial disclosure for officers and employees of all three branches of the Government. The Senate agreed to the House bill's format providing for separate titles covering financial disclosure for officers and employees of each branch of the Federal Government.

The Senate bill required a disclosure report to be filed within 30 days after a Member, officer or employee of the legislative branch left the position in the legislative branch covered by the financial disclosure requirements. This report would cover the portion of the calendar year up to the date the individual left such position and a report would be required covering the previous calendar year if the person held his position for 60 days or more in that year and no disclosure report

had yet been filed covering that year. The House bill had no comparable provision. The Senate receded to the House and the conferees decided to leave the issue of the filing of reports upon leaving the legislative branch to be resolved in the House and Senate rules as each body sees fit.

The House bill provided for a statutory advisory opinion process. The Senate bill had no comparable provision although the Senate rules contain such a procedure. The Senate receded to the House on this issue.

The House bill required the disclosure of the value of income over \$100 received by a reporting individual. The Senate bill had an identical provision with respect to earned income but permitted the reporting of unearned income by use of categories of value. This was done because the assets from which the unearned income is derived were reported by category of value. The House receded to the Senate on this issue with an amendment replacing the term "unearned income" with the phrase "dividends, interest, rent and capital gains."

The conferees intend that whenever the use of a category of value is permitted, a reporting individual is not prohibited from reporting the exact value or any other additional information the reporting individual desires. Thus, when reporting a liability, the reporting individual, in order to accurately reflect his financial position, may want to indicate that the loan was paid off prior to the end of the calendar year. Such information is not required by this legislation but is permissible.

The Senate bill contained authority for the committee of the House and Senate administering the financial disclosure requirements to grant a waiver of the requirements of reporting gifts other than food, lodging, transportation or entertainment which exceed \$100 in value. Such a waiver could only be granted in an unusual case. The House bill had no comparable provision. The House receded to the Senate with an amendment providing that the request for the waiver and the waiver itself must be publicly available. The publicly available application for waiver need not be specific with respect to describing the gifts in question especially if the gift is personal property such as a work of art.

The Senate bill had a provision permitting a reporting individual to subtract the value of gifts he gave to a particular source from the value of gifts he received from that source in the same calendar year in determining whether he had received reportable gifts from that source. This was to cover normal relationships where friends exchange gifts of over \$100 which are of comparable value. In such a case, the reporting individual has not financially benefitted from the receipt of a gift from that source. The House bill had no comparable provision. The Senate receded to the House on this issue. The conferees intend that the type of situation covered by this Senate provision could be taken care of by the granting of a waiver as described above.

The Senate bill required the disclosure of all interests in real property with a fair market value in excess of \$1,000. This would cover a personal residence. The House bill required disclosure of an interest in property (including real property) only if it is held in a trade or business, or for investment or the production of income. This would require reporting of all real property except a personal residence. Under the House bill, if a reporting individual rented a portion of a

personal residence for any period of time, the residence would be used for the production of income and would have to be reported. Because it is highly unlikely that a personal residence would create a conflict of interest and because considerable information about the value of a personal residence is a matter of public record, the Senate receded to the House on this issue. A reporting individual who wished to report his personal residence would, of course, be permitted to do so.

The Senate bill provisions with respect to the reporting of assets, loans, and transactions covered such item whether held directly or indirectly. The House bill had no such language. The Senate receded to the House on this issue because the conferees agreed that their intent was to cover each asset, liability or transaction of a reporting individual even if the asset is not in the individual's name. If a partnership is made up of a reporting individual and his spouse as partners, and a series of securities and items of real property are held by the partnership, it would not be sufficient to just report ownership of the partnership. Each of the assets, liabilities and transactions of the partnership would have to be reported. However, if the partnership is active in a trade or business, such as running a store, individual assets or liabilities of the partnership need not be reported. There will be many situations which fall between these examples. The conferees intend to leave the task of further interpretation to the committees of the House and Senate administering the financial disclosure provisions.

The Senate bill required reporting of liabilities owed over \$2,500 to any source other than a relative at any time during the calendar year. The House required disclosure of liabilities of over \$5,000 as of the close of the calendar year to any source other than a relative, except for certain mortgages on a personal residence, and a loan secured by a personal motor vehicle or household furniture or appliances. The Senate receded to the House with an amendment changing the threshold to \$10,000 but covering loans held at any time during the calendar year.

There are several exceptions to this rule. A revolving charge account would be valued at the close of the calendar year. Loans secured by household furniture or appliances and a loan secured by a personal motor vehicle would not have to be reported if it was limited in amount to the purchase price of the vehicle, furniture or appliance. The maximum amount of the loan during the calendar year would be reported. A reporting individual would be free to add additional information if he so desired, such as the fact that the loan had been paid off in the calendar year.

The conferees intend that the exception for a mortgage secured by real property which is a personal residence is also limited to mortgages which do not exceed the fair market value of the residence.

The Senate bill required the disclosure of the identity of certain positions held during the year covered by the financial disclosure report. The House legislative branch disclosure provisions had no comparable provision. The House receded to the Senate with an amendment eliminating the reporting of positions held as an agent and adding labor organizations as entities covered by this provision. Positions solely of an honorary nature would be excluded from this provision.

The conferees do not intend to require reporting of the fact that a reporting individual is honorary chairman of some organization. However, if the individual is on the board of directors and attends director's meetings or has operational responsibilities for the organization, the position must be reported. A position would still be honorary and therefore not covered by this provision if the individual was honorary chairman of an organization and simply went to a banquet given by the organization. Such a situation does not contain the active participation which the conferees intend be present in order for reporting to be required under this provision.

The Senate bill had categories of value for reporting assets, liabilities and transactions going as high as \$5 million. The highest category of value in the House bill was \$100,000 or over. The Senate receded to the House with an amendment adding one additional category of value to the House provision so that the highest category of value is \$250,000 or more.

The Senate bill required disclosure of the source of earned income and certain gifts received by dependents. The House bill had no comparable provision. The Senate receded to the House on this issue. The conferees believe that a gift to a dependent child could be used as a means of giving things of considerable value to the family of a reporting individual with the intent of influencing the reporting individual. However, the conferees believe that existing House and Senate rules which flatly prohibit Members, officers, and employees from accepting gifts valued at over \$100, directly or indirectly, (e.g., through a dependent child), from any individual or organization with a direct interest in legislation before the Congress, addresses this problem. The conferees believe that this issue should be dealt with in the rules of the Senate and the House in future Congresses, as each body determines is appropriate.

The Senate bill contained permissible methods of valuing certain reportable holdings. The House bill had no comparable provision. The House receded to the Senate on this issue. As is made clear in the definition of "value" found in this title, no one is required to use any of the methods of valuation permitted by this paragraph. The term "value" is defined as a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable. It is always acceptable for an individual to use a good faith estimate of the value of an item if the exact value is not known nor easily obtainable.

The Senate bill contained detailed provisions with respect to the use of blind trusts. The House bill contained a more general provision on this subject. The House receded to the Senate on this issue.

The House bill's definition of "gift" excluded food, lodging, transportation or entertainment provided by a state or local government. The Senate bill had no such provision. The Senate receded to the House on this issue.

The House bill excluded from the definition of "gift" consumable products provided by home-State businesses to a Member's office for distribution. The Senate bill had no comparable provision. The Senate receded on this issue. This provision is intended to cover an item such as peanuts or oranges given by a home-State business to a Member for general distribution to the public in a Member's office. This is not intended to cover gifts of liquor or prepared foods to be used at receptions or on other occasions.

The Senate bill provided for periodic random audits by the General Accounting Office of financial disclosure statements filed under this act. There was no comparable provision in the House bill. The Senate recedes to the House on this issue. Whether or not random audits would be performed would be left to the Senate and the House in their respective rules. In addition, the Senate receded to the House and accepted the House provision requiring the General Accounting Office to study the desirability of conducting such audits and the proper way to conduct them if they are desirable.

The conferees are aware that the Senate rules presently contain a provision requiring such audits. While S. 555 does not bar the Senate from deciding to conduct such audits, the conferees believe it would be fair and appropriate if the random audits under the Senate rule were suspended until early next year when the full Senate will have a chance to conform its financial disclosure rules to this statute and consider the desirability of random audits in light of the final action taken on this legislation. The conferees believe it would be appropriate for the Senate Ethics Committee to consider such action.

Nonincumbent candidates for the office of Member in the 1978 general election are required to file a disclosure statement under this act prior to the election. However, in recognition of the short period of time for candidates to comply with the disclosure requirement, the conference agreement provides that candidates will not be subject to any sanction under the act for failure to file this year. Senate candidates who have already filed this year under the Senate rules do not have to file a statement under this act this year.

## TITLE II—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

This title is based upon title II of S. 555 as passed by the House (formerly H.R. 1) and title III of S. 555 as passed by the Senate. The provisions of the House and Senate bills were very similar. The principal explanation of these provisions can be found in the reports submitted to the House on this title (95-800; 95-642 (pts. I and II)) and the report submitted to the Senate on S. 555 (No. 95-170) and the floor debates in the House and Senate on this legislation. The principal substantive differences between the House and Senate provisions on executive financial disclosure requirements are described below.

S. 555 as passed by the Senate contained one title (title III) covering financial disclosure for officers and employees of all three branches of the Government. The Senate agreed to the House bill's format providing for separate titles covering financial disclosure for officers and employees of each branch of the Federal Government.

The House bill required public disclosure reports to be filed by all political appointees, even if they earn less than the equivalent of a person at the GS-16 level, unless the Director of Government Ethics exempts them from the filing requirement. The Senate had no comparable provision. The Senate receded on this issue.

The House bill directs that the description of a reporting individual's official position (if available) be put on the financial disclosure statement. The Senate bill had no comparable provision. The Senate receded on this issue. The conferees believe that the official position

need not be described if such a description by itself would create problems for our intelligence agencies which might result in no public report being filed.

The provision in this title permitting extensions of time for the filing of required reports by nominees is not intended to in any way limit the congressional committee considering the nominee's confirmation. If that committee wants the information prior to the time the Director of Ethics gets the report due to the granting of an extension, the committee can require the report earlier or require any other information it deems appropriate.

The review of reports provided in this title is not intended by the conferees to in any way interfere with the authority of the Justice Department to enforce those laws dealing with conflict of interests. This provision provides a systematic review to identify problems and resolve them as best as possible. However, this review procedure is in no way a condition precedent to taking action to enforce any law or regulation.

The conferees intend that the reviewing of these reports can be delegated by the officials assigned the responsibility to conduct the review to other officials in their office under their direct supervision.

The Senate bill had a provision providing an exemption from disclosure for undercover intelligence agents. The House bill had a similar but somewhat broader provision. The Senate receded to the House provision with an amendment. The resulting limited exemption would be used for those individuals who are or may be undercover and whose identity as an intelligence officer must remain confidential. This authority would also allow the President to make a determination that certain reports shall not be made public under circumstances where disclosure of the report for other reasons would reveal sensitive information about our intelligence agencies which he believes should not be public.

In addition, this section provides authority for the President to authorize the filing of additional reports by intelligence officers in those instances where this is necessary to protect their cover status; in such cases, of course, the officers—if subject to the bill's reporting requirements—would file full reports with their agency.

Finally, the conferees intend that any outside review of confidential reports filed by officers in intelligence agencies would be under security procedures determined by the relevant intelligence agency and approved by the President.

The provisions defining the contents of financial disclosure statements are virtually identical to the corresponding provisions for the legislative branch contained in title I of the conference report. Reference should be made to the portion of the statement of managers explaining those provisions for an explanation of the changes made in the contents of the disclosure reports to be filed by officers and employees of the executive branch.

The Senate bill contained provisions with respect to the use of blind trusts. The House bill contained a more general provision on this subject. The House receded to the Senate with an amendment proposed by the administration to deal with a particular problem faced by political appointees in the executive branch who have high level responsibility covering relatively broad subject areas. For a full explanation of the blind trust provisions reference should be made to the report

submitted by the Senate Governmental Affairs Committee to the Senate explaining the blind trust provisions in the Senate bill (S. Rept. 95-639).

The conferees felt that the blind trust provisions contained in the Senate bill, which provided that an asset placed in a blind trust is covered by section 208 of title 18 until the reporting individual is told that asset has been sold, would not be a practicable means of handling the situation where an individual who is appointed by the President to a high-level position has a large number of well-diversified assets and the position will involve decisions touching on a broad range of issues affecting a large number of subject areas.

The amendment agreed to by the conferees permits the Office of Government Ethics and the Attorney General to provide limited relief from the coverage of section 208 when such an individual establishes a blind trust subject to the provisions in this amendment. Nevertheless the individual still has to meet all the requirements provided for the independence of the trustee, and the requirements which specify the provisions required to be put into the trust document, which the requirements are set forth in detail in the Senate provision on blind trusts which was accepted by the conferees.

The conferees believe that the key to this provision being effective is the close scrutiny by the congressional committee considering the confirmation of the nominee. Therefore, the intent to use this device, and the decision by the Director of the Office of Government Ethics in concurrence with the Attorney General that the proposed blind trust meets the requirements of this provision, must be made available at the time the congressional committee considers the individual's confirmation. The conferees intend the congressional committee to closely examine the proposed arrangement to make sure that trustee is truly independent, that the trust portfolio is adequately diversified, that there are not investments in the trust in entities having substantial activities in the area of the reporting individual's primary area of responsibility.

With respect to an existing blind trust held by a present member of the executive branch, that trust must be conformed upon the effective date of this statute to meet all the requirements of the blind trust provisions. The trust document would have to be altered or a written agreement entered into to meet all the requirements, and the trust document and the identity of the trustee would have to be approved by the Director of the Office of Government Ethics. The only difference provided for an incumbent executive branch official having an existing blind trust is that that arrangement need not be submitted to a congressional committee since there is no confirmation procedure ongoing. However, the conferees intend that the official would consult with the committee which handled his confirmation to inform it of his intentions to take advantage of this section.

This provision is not intended to cover every device which has been called a blind trust by a government official. The conferees intend for the Director of the Office of Government Ethics and the Attorney General to closely examine any such instruments that exist and determine whether there has been a good faith effort to establish a blind trust. Arrangements which contain one asset which is unlikely to be disposed of but is to be managed by a trustee are desirable means for

a government official to provide for someone else to handle his time-consuming business affairs while he is performing his government duty. However, such an arrangement is not a blind trust. Such an arrangement should be permitted and encouraged but the assets contained in that trust or arrangement would have to be disclosed each year and would still be subject to section 208. Only in situations where there is the diversification referred to in this amendment and, therefore, the real possibility of the trust becoming blind, would this provision apply.

The House bill contained a provision limiting the outside earned income of presidential appointees to 15 percent of their Government salary. The Senate bill had no comparable provision. The conferees believe that existing laws and agency regulations currently prohibit or severely restrict outside earned income by high-level officials of the executive branch. The conference agreement does not include this House provision.

#### TITLE III—JUDICIAL PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

This title is based upon title III of S. 555 as passed by the House (formerly H.R. 1) and title III of S. 555 as passed by the Senate. The provisions of the House and Senate bills were very similar. The principal explanation of these provisions can be found in the report submitted to the House on this title (No. 95-800) and the report submitted to the Senate on S. 555 (No. 95-170) and the floor debates in the House and the Senate on this legislation. The principal substantive difference between the House and Senate provisions on Judicial Personnel Financial Disclosure Requirements are described below.

S. 555 as passed by the Senate contained one title (title III) covering financial disclosure for officers and employees of all three branches of the Government. The Senate agreed to the House bill's format providing for separate titles covering financial disclosure for officers and employees of each branch of the Federal Government.

The Senate bill covered judges sitting on the courts of the District of Columbia. The House had no comparable provision. The House receded to the Senate on this issue.

The provisions defining the contents of financial disclosure statements are virtually identical to the corresponding provisions for the legislative branch contained in title I of the conference report. Reference should be made to the portion of the statement of managers explaining those provisions for an explanation of the changes made in the content of the disclosure reports to be filed by judges and employees of the judicial branch.

This title, while containing blind trust provisions similar to those in titles I and II, does not permit the use of a blind trust by a judicial officer. The conferees did not want to in any way alter the application of the Judicial Disqualification Act. Therefore, only judicial employees could use the blind trust provisions.

#### TITLE IV—OFFICE OF GOVERNMENT ETHICS

The provisions in the House and Senate bills creating the Office of Government Ethics were essentially identical. Two provisions in the



Senate bill, to provide for audits of financial disclosure statements and to establish a formal advisory opinion service under the control of the Director of the Office of Government Ethics, were not in the House bill. One provision, to require rules and regulations pertaining to financial disclosure, conflict of interest and ethics in the executive branch to be promulgated in accordance with chapter 5 of title 5, United States Code, and to give standing to "any person" to seek judicial review of any such rule or regulation, was not in the Senate bill.

The House accepted the Senate provision for advisory opinions. The Senate accepted the House provision concerning rules and regulations and standing for judicial review. The Senate receded on its provision requiring audits.

A technical change, to reflect changes made by Executive Reorganization Plan No. 2 of 1978, was adopted. All references to the Civil Service Commission were changed to the Office of Personnel Management to reflect this reorganization, which transfers the functions of the Civil Service Commission (redesignated as the Merit Systems Protection Board under this reorganization plan) with regard to ethical conduct and financial disclosure to the Office of Personnel Management. Reference to the Office of Personnel Management, including the power of the Office of Personnel Management to take personnel actions, is not intended to preclude use of those authorities and powers which rest with the Merit Systems Protection Board and its Special Counsel under the Reorganization Plan or under the Civil Service Reform Act of 1978.

#### TITLE V—POST-EMPLOYMENT CONFLICT OF INTEREST

Title V is a revision of 18 U.S.C. 207, which is the major statute concerning restrictions on postservice activities by officials and employees of the executive branch. The conference report contains four major subsections.

Subsection (a) and (b) establish restrictions based upon the degree of personal knowledge and association a former official or employee had with a particular matter: a lifetime ban for certain matters in which the official participated personally and substantially while in office; and a 2-year ban for certain matters under the officer's official responsibility during the last year of Government service. The length of those prohibitions are unchanged from present law, except for increasing the "official responsibility" prohibition for 1 to 2 years. The more intimate and extensive the involvement of the official, the greater the restriction is on the official's later involvement in those matters after leaving Government service on behalf of private parties.

Subsection (c) prohibits a former high-ranking officer or employee from contacting his former department or agency, for a period of 1 year, on matters of business pending before that department or agency, regardless of the nature of that proceeding or the degree of association the official had with that matter. Subsection (g), concerning partners of current Federal officials, is unchanged in substance from the present law.

Title V also contains criminal sanctions, and a provision allowing an administrative remedy, for violations of its provisions.

The major differences between the Senate bill and the House amendment were as follows:

(1) *Prohibition under 18 U.S.C. 207(a) (lifetime ban)*

The two elements of the House amendment on 18 U.S.C. 207(a) were that a former official—

(a) “knowingly acts as agent or attorney . . . or otherwise represents \* \* \* in any formal or informal appearance before.”;

(b) “or, with the intent to influence, make any written or oral communication \* \* \* to \* \* \*”

The Senate bill provision on 18 U.S.C. 207(a) stated that a former official may not knowingly “aid, assist or represent” on certain matters.

The conference adopted the House provision. It is understood that the two elements of the House language, as set forth above, are each independent of the other for the purposes of a violation of any subsection in which those terms appear. It is also understood that the terms, “agent or attorney, or otherwise represents”, as used in subsections (a), (b), and (c), are intended to include appearances in any professional capacity, whether as attorney, consultant, expert witness, or otherwise.

2. *Two year “aiding and assisting” provision 18 U.S.C. 207(b)(ii)*

The House amendment established a 2-year restriction against a former official who “aids or assists in representing \* \* \* in any formal or informal appearance before” an agency or department on certain matters.

The comparable provision in the Senate bill (mentioned in 1 above) was a lifetime ban.

The conference provides, in subsection (b)(ii), for a two year restriction against a former official who “knowingly represents, or aids, counsels, advises, consults, or assists in representing any other person (except the United States) concerning any formal or informal appearance before \* \* \*”. It is the intention of the conference that this provision will prohibit a former officer or employee from subsequent consultation on a matter, in which he was personally and substantially involved while in office, even though he is not representing a party in that matter.

3. *Prohibition under 18 U.S.C. 207(c) (1-year “no contact”)*

The two elements of the House amendment on 18 U.S.C. 207(c) were that a former official—

(a) “knowingly acts as agency or attorney . . . or otherwise represents \* \* \* in any formal or informal appearance before.”;

(b) “or, with the intent to influence, make any oral or written communication \* \* \* to \* \* \*”

The Senate bill covered any former official, who “knowingly—(1) makes any appearance or attendance before, or (2) make any written or oral communication to, and with the intent to influence the action of \* \* \*”

The Senate bill also included in 18 U.S.C. 207(c) those matters “pending” before the former agency. The House amendment had the same language, but also prohibits contact with the former agency on

any matters "in which such department or agency has a direct and substantial interest \* \* \*"

The conference adopted the House prohibition, with the modification that 18 U.S.C. 207(c) will include self-representation. The conference also adopted the House language, contained in subsection (c)(3), to prohibit contact by a former official with his former agency, either on matters pending before that agency or on matters in which the former agency has a direct and substantial interest. Thus contact is proscribed, even though the matter is pending elsewhere and not before the agency itself, provided that the agency has a "direct and substantial interest" therein.

#### *4. Coverage under 18 U.S.C. 207(c)*

A. The House amendment would have applied subsection (c) to those Federal employees, GS-16 and above, who are in positions "excepted from the competitive service by reason of being of a confidential or policymaking character \* \* \*"

The Senate bill would have applied to all Federal employees who are classified GS-16 and above.

B. The House amendment would have authorized the Director of the Office of Government Ethics to expand the coverage of 18 U.S.C. 207(c) to include any other officer or employee "who has a role in the formulation of agency policy that is substantially similar to that exercised" by those positions expressly enumerated.

The Senate bill had no comparable provision.

The conference adopted the House provision on coverage, but with the following modification in subsection (d)(4):

Within twelve months from the date of enactment of this Act, the Director of the Office of Government Ethics shall designate positions, which are not included under paragraph (2) of this subsection and which involve significant decision-making authority, or other duties which are substantially similar to those exercised by persons covered by paragraph (2) of this subsection. On an annual basis, the Director shall review the positions designated pursuant to this paragraph, making additions and deletions as are necessary to satisfy the purposes of subsection (c). Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in exercising his responsibilities under this paragraph.

It is the intention of the conference that the Director of the Office of Government Ethics must classify positions, as subject to subsection (c), which involve significant decisionmaking authority, or other duties substantially similar to the class of positions automatically included under subsection (d)(2). It is emphasized that this paragraph is intended to be independent of the other paragraphs in subsection (d). Thus the Director of the Office of Government Ethics is thereby authorized to classify any executive branch positions which, in his judgment, involve significant decisionmaking authority, or other duties substantially similar to those positions covered by subsection (d)(2). In that classification the Director is not limited by grade levels, nor is he limited by consideration of whether the position is or is not included within the competitive service.

Also on the coverage issue, the conference adopted a new subsection (d) (2), which is discussed in point 6, *infra*.

*5. Exceptions under 18 U.S.C. 207*

A. Subsection (i) of the House amendment excepted from coverage, under 18 U.S.C. 207 (a), (b), (c), and (g), "testimony under oath" or "statements required to be made under penalty of perjury." The House bill also excepted from coverage any "testimony", "statement" or "communication" if no compensation is received therefore.

The Senate bill adopted, for the purposes of 18 U.S.C. 207(c) only, any appearance or attendance by former employees "concerning matters of a personal and individual nature, such as personal income taxes or pension benefits \* \* \*"

The conference adopted the House provision, excepting from 18 U.S.C. 207 (a), (b) and (c) "testimony under oath" and "statements required to be made under penalty of perjury." For the purposes of subsection (c), the conference also adopted the Senate provision excepting contact concerning "matters of a personal and individual nature", and, as modified, the exception in the House amendment for statements, based on the former official's special knowledge, for which no compensation is received.

B. Subsection (f) of the House amendment excepted from coverage, under 18 U.S.C. 207 (a), (b), and (c), "the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned with the particular matter \* \* \*"

The Senate bill had no comparable provision.

The conference adopted the House provision. It is understood that this provision applies to communications that are made "solely for the purpose of furnishing scientific or technological information" and without the intent to influence.

*6. Exception to 18 U.S.C. 207(e) for licensed professionals*

The House amendment provided that 18 U.S.C. 207(c) shall not apply to a "person who is a member in standing before, and is licensed or certified to practice in a profession by, any Federal or State licensing or certifying authority for such profession," provided that certain conditions are met.

The Senate bill had no comparable provision.

The conference substitute provided, as a new subsection (d) (2), the following:

(2) in a position for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, and who have significant decisionmaking or supervisory responsibility as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned; or

It is the intention of the conference that the designation required by this paragraph shall occur no later than 12 months of the date of enactment of this subsection.

*7. Waiver provisions under 18 U.S.C. 207*

Subsection (f) of the House amendment modified the waiver standard to include an officer or employee who has "outstanding qualifica-

tions in a scientific, technological, or other specialized discipline" and required that waivers be issued by agencies in consultation with the Director of the Office of Government Ethics.

The Senate bill did not contain the language on "other specialized discipline", and would not have required consultation with the Office of Government Ethics.

The conference adopted the requirement that agencies consult with the Director of the Office of Government Ethics in issuing waivers, and added to the waiver standard the words, "other technical discipline". It is the intention of the conference that waivers not be issued on the grounds of outstanding qualifications in law economics, political science, or other nontechnical discipline.

#### *8. Administrative remedy*

The Senate bill provided an administrative procedure for violations of 18 U.S.C. 207. The Senate bill provided that, after notice and opportunity for a hearing, the head of an agency or department, in which the former official served, may make a finding that such person has violated either subsection (a), (b), or (c) of the statute. Upon such finding, the agency or department head may prohibit that person from making any appearance or attendance before that department or agency for a period not to exceed 5 years, or may take other appropriate disciplinary action.

The House amendment contained no comparable provision.

The conference adopts the Senate provision, with a modification that such disciplinary action shall be subject to review in a U.S. district court.

#### *9. Effective date and applicability*

The House amendment had an effective date of July 1, 1979. The Senate bill provisions on 18 U.S.C. took effect upon adoption.

The conference adopted the House provision. It is noted that officers and employees, who leave office prior to the effective date of the act, are subject to the former provisions of 18 U.S.C. 207.

### TITLE VI—AMENDMENTS TO TITLE 28, UNITED STATES CODE

The Senate bill, in title I, provided a mechanism for the appointment of temporary special prosecutors on an ad hoc basis in appropriate, limited circumstances. While the House amendment contained no similar provisions, there is legislation pending before the House, H.R. 9705, which contains substantially the same provisions as title I of the Senate bill, H.R. 9705 was reported favorably by the House Committee on the Judiciary on June 19, 1978, by a vote of 24 to 6.<sup>1</sup>

The conferees have agreed to provide a mechanism for the appointment of temporary special prosecutors. Title VI of the Conference Report establishes a mechanism that is substantially the same as title I of the Senate bill and H.R. 9705. When the Attorney General receives specific information that a specified individual may have violated a Federal criminal law, the Attorney General conducts a preliminary investigation of the matter, which may last for up to 90 days. If the Attorney General concludes at the end of the preliminary investiga-

<sup>1</sup> See House Report No. 95-1307. The provisions of title I of the Senate are discussed in Senate Report No. 95-170.

tion that further investigation, or prosecution, is warranted, the Attorney General must apply to a special division of the Court of Appeals for the District of Columbia, which is established by this legislation, for the appointment of a special prosecutor. However, if the Attorney General concludes at the completion of the preliminary investigation that the matter is so unsubstantiated that it warrants no further investigation, the Attorney General need take no further action and no special prosecutor would be appointed.

The individuals covered by this legislation are (1) the President and Vice President; (2) Cabinet and Cabinet-level officials (someone serving in a position listed in section 5312 of title 5, United States Code); (3) high-ranking White House officials (someone working in the Executive Office of the President who is compensated at a rate not less than the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code); (4) high-ranking Justice Department officials, such as an assistant attorney general and the Director of the FBI, as well as the Director and Deputy Director of Central Intelligence and the Commissioner of Internal Revenue; (5) any individual who held any of the above-mentioned offices during the incumbency of the President or the previous President, if that President was of the same political party; and (6) any officer of the principal national campaign committee seeking the election or reelection of the President.

A special prosecutor, when appointed, serves only until completion of the investigation or prosecution he was appointed to handle. The special prosecutor is given full authority to investigate and prosecute the matter, thereby ensuring independence of judgment. At the same time, however, a special prosecutor is required to file periodic reports with Congress and cooperate with the oversight jurisdiction of the House and Senate Judiciary Committees, thereby insuring accountability. The special prosecutor can be removed from office by the personal action of the Attorney General, but only for extraordinary impropriety, physical disability, mental incapacity or another condition substantially impairing the performance of his duties. The Attorney General's removal power is not unchecked; a removed special prosecutor is entitled to contest his removal in a civil action heard by the appointing court.

The Senate bill had listed among the individuals covered by the legislation "a national campaign manager or chairman of any national campaign committee seeking the election or reelection of the President." The Justice Department expressed the concern that this provision could be construed to cover individuals chairing any one of the hundreds of campaign committees which spring up during a national campaign ("Youth for Carter," "Doctors for Ford," etc.). This result was unintended, and the conference amended this provision to cover only the officers of the principal national campaign committee seeking election or reelection of the President.

The Senate bill was written so as to take effect immediately upon enactment. The conferees recognized, however, that such a provision might, in some circumstances, lead to the appointment of a special prosecutor where it would be unduly disruptive to the orderly and efficient handling of an ongoing case. The conferees believe that the provisions should take effect upon enactment of the legislation, but

they decided to provide limited exceptions in a narrow range of circumstances. Since these exceptions are designed to accommodate a rather brief transitional period, and since the provision uses the term "directly related" and "related" the conferees intend and expect that the exceptions will be narrowly construed to accommodate the transitional period.

The first situation is where the Attorney General determines that the specific information he receives is directly related to a prosecution already pending.<sup>2</sup> In this context, the use of the term "directly related" to a pending prosecution requires that the information furnished to the Attorney General concerning an individual covered by the legislation would relate to a prosecution then pending against that individual.

The second situation is where the Attorney General determines that the specific information is related to a matter which has been presented to a grand jury, if the information is received by the Attorney General within one hundred and eighty days of the date of enactment. The third situation is where the Attorney General determines that the specific information is related to a pending investigation, if the information is received within 90 days of the date of enactment.

In the context of exceptions (2) and (3), the conferees intend that the term "related" be given a more liberal construction. In those cases, information concerning a covered individual could be "related" to a matter before the grand jury or to a matter under investigation if it pertained to the same incidents or transactions or course of conduct being investigated.

The Senate bill included a provision to establish an Office of Government Crimes within the Department of Justice. The House amendment contained no comparable provision. The conferees agreed to delete this provision and to add instead a provision requiring that the Attorney General report annually to the Congress about the activities of the Public Integrity Section of the Justice Department's Criminal Division.

The investigation and prosecution of violations of Federal criminal law involving the integrity of public officials and government officers and employees is a matter of great importance. The Attorney General has charged the Public Integrity Section of the Justice Department's Criminal Division with the responsibility for supervising such investigations and prosecutions. The conferees support the Attorney General in the priority and emphasis that the Justice Department is giving to law enforcement activities with respect to corruption and misconduct by public officials and government officers and employees. The conferees urge the Attorney General to maintain the Public Integrity Section and to continue such law enforcement activities in a vigorous manner.

Because of the importance of such law enforcement activities, the conferees believe that it would assist the Congress in its oversight function to require the Attorney General to report annually on the efforts of the Department of Justice to investigate and prosecute Federal offenses involving the integrity of public officials and government officers and employees. While this provision does not require that the

<sup>2</sup> A "prosecution" cannot be "pending" until an indictment is returned or an information is filed.

Attorney General centralize in one section or unit all of the Justice Department's law enforcement activities in this area, the conferees expect the Attorney General to consult with the Judiciary Committees of both Houses of Congress before substantially altering the scope of authority or mandate of the Public Integrity Section of the Criminal Division.

#### TITLE VII—OFFICE OF SENATE LEGAL COUNSEL

The Senate bill establishes an Office of Congressional Legal Counsel to defend the Constitutional powers of Congress in proceedings before the courts and confers jurisdiction on the courts to enforce Congressional subpoenas. The managers on the part of the House recede and concur in an amendment of the Senate which establishes an Office of Senate Legal Counsel and confers jurisdiction on the courts to enforce Senate subpoenas.

The appropriate committees in the House have not considered the Senate's proposal to establish a joint, House-Senate Office of Congressional Legal Counsel. The Senate has twice voted to establish a joint office. Because the House is not prepared to agree to a Joint Office at this time, the Senate desires to establish its own Office of Senate Legal Counsel to defend its interest in court. The managers agree that the Senate Legal Counsel should, whenever appropriate, cooperate and consult with the House in litigation matters of interest to both houses.

The appropriate committees in the House also have not considered the Senate's proposal to confer jurisdiction on the courts to enforce subpoenas of House and Senate committees. The Senate has twice voted to confer such jurisdiction on the courts and desires at this time to confer jurisdiction on the courts to enforce Senate subpoenas.

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**END**