106TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPT. 106–433 Part 1

AMENDING THE ETHICS IN GOVERNMENT ACT OF 1978 TO REAUTHORIZE FUNDING FOR THE OFFICE OF GOVERNMENT ETHICS

NOVEMBER 2, 1999.—Ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government Reform, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 2904]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 2904) to amend the Ethics in Government Act of 1978 to reauthorize funding for the Office of Government Ethics, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

The amendments are as follows:

79-006

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. REAUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 405 of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking "1997 through 1999" and inserting "2000 through 2003".

(b) EFFECTIVE DATE.—This section shall take effect on October 1, 1999.

SEC. 2. AMENDMENT TO DEFINITION OF "SPECIAL GOVERNMENT EMPLOYEE".

(a) AMENDMENT TO SECTION 202(a).—Subsection (a) of section 202 of title 18, United States Code, is amended to read as follows:

"(a) For the purpose of sections 203, 205, 207, 208, 209, and 219 of this title the term 'special Government employee' shall mean—

"(1) an officer or employee as defined in subsection (c) who is retained, designated, appointed, or employed in the legislative or executive branch of the United States Government, in any independent agency of the United States, or in the government of the District of Columbia, and who, at the time of retention, designation, appointment, or employment, is expected to perform temporary duties on a full-time or intermittent basis for not to exceed 130 days during any period of 365 consecutive days;

"(2) a part-time United States commissioner;

"(3) a part-time United States magistrate;

"(4) an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28;

"(5) a person serving as a part-time local representative of a Member of Congress in the Member's home district or State; and

"(6) a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, who is not otherwise an officer or employee as defined in subsection (c) and who is—

"(A) on active duty solely for training (notwithstanding section 2105(d) of title 5);

"(B) serving voluntarily for not to exceed 130 days during any period of 365 consecutive days; or

"(C) serving involuntarily.".

(b) AMENDMENT TO SECTION 202(c).—Subsection (c) of 202 of title 18, United States Code, is amended to read as follows:

"(c)(1) The terms 'officer' and 'employee' in sections 203, 205, 207 through 209, and 218 of this title shall include—

"(A) an individual who is retained, designated, appointed, or employed in the United States Government or in the government of the District of Columbia to perform, with or without compensation and subject to the supervision of the President, the Vice President, a Member of Congress, a Federal judge, or an officer or employee of the United States or of the government of the District of Columbia, a Federal or District of Columbia function under authority of law or an Executive act;

"(B) a Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving voluntarily in excess of 130 days during any period of 365 consecutive days; and

"(C) the President, the Vice President, a Member of Congress or a Federal judge, but only to the extent specified in any such section.

"(2) As used in paragraph (1), the term 'Federal or District of Columbia function' shall include, but not be limited to—

"(A) supervising, managing, directing or overseeing a Federal or District of Columbia officer or employee in the performance of such officer's or employee's official duties;

"(B) providing regular advice, counsel, or recommendations to the President, the Vice President, a Member of Congress, or any Federal or District of Columbia officer or employee, or conducting meetings involving any of those individuals, as part of the Federal or District of Columbia government's internal deliberative process; or

"(C) obligating funds of the United States or the District of Columbia.".

(c) NEW SECTION 202(f).—Section 202 of title 18, United States Code, is amended by adding at the end the following:

"(f) The terms 'officer or employee' and 'special Government employee' as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces, nor shall they include an individual who is retained, designated, or appointed without compensation specifically to act as a representative of an inter-

est (other than a Federal or District of Columbia interest) on an advisory committee established pursuant to the Federal Advisory Committee Act or any similarly established committee whose meetings are generally open to the public.".

Amend the title so as to read:

A bill to amend the Ethics in Government Act of 1978 to reauthorize funding for the Office of Government Ethics, and to expand the definition of a "special Government employee" under title 18, United States Code.

I. Short Summary of Legislation

H.R. 2904 reauthorizes appropriations for the Office of Government Ethics for fiscal years 2000 through 2003. It also revises and clarifies the definition of the term "special government employee" to make unofficial advisers more accountable to the American people.

II. Background and Need for the Legislation

The authorization for the Office of Government Ethics expired on September 30, 1999. Although the Office is a small agency, the functions it performs are important in preserving impartiality and integrity in government operations. Testimony before the Subcommittee on the Civil Service's August 4, 1999 oversight hearing on the Office revealed that, on the whole, the Office has performed its mission very well.

The statutory definition of a special government employee has not been materially revised since its enactment in 1962. Under it, a special government employee is someone who is retained or appointed to perform duties on a full-time or part-time basis with or without compensation for no more than 130 days within 365 consecutive days. This definition does not give adequate notice of who is covered by the definition and therefore covered by conflict-of-interest and financial-disclosure laws. Guidance issued by the Office of Government Ethics and the Department of Justice focuses on whether the advisor is in fact performing a Federal function, but there is no functional test in the statute. Neither the current law nor this Federal agency guidance adequately covers the various situations in which informal advisers in the White House have performed Federal functions and otherwise participated in the government's decision-making or policy-making process in recent years.

At hearings held by the Subcommittee on Government Management, Information, and Technology on June 25, 1996, and May 1, 1997, witnesses concurred that legislative revision of the definition of special government employee was needed. Witnesses suggested that the definition be revised to adopt a functional test, one that concentrates on the nature of the Federal service the advisor is providing, rather than on the advisor's outside interests and affiliations. More recently, similar testimony was received by the Subcommittee on the Civil Service in a hearing held on August 4, 1999.

This revision of the definition of a special government employee is intended to accomplish the following objectives. First, it attempts to capture informal or outside advisors who are not specifically appointed to advisory committees or part-time commissions as representatives of a non-Federal interest. Second, it uses a functional test to consider the nature of the services the person is retained to

provide. The revised definition of a special government employee in H.R. 2904, in the committee's opinion, achieves these objectives.

During the 104th Congress, the House passed similar language in section 5 of H.R. 3452, The Presidential and Executive Office Accountability Act. Although most of that bill was enacted, becoming Public Law 104–331, this language was deleted in conference.

III. Legislative Hearings and Committee Actions

The Committee held no legislative hearings on H.R. 2904. Rep. Joe Scarborough introduced this measure on September 21, 1999. As introduced, the bill merely reauthorized the Office of Government Ethics through fiscal year 2003. It was referred to the Committee on Government Reform, and in addition to the Committee on the Judiciary. The Committee on Government Reform marked up the bill on September 30, 1999. Rep. Stephen Horn offered an amendment in the nature of a substitute, which added section 2 of the bill to revise the definition of "special government employee." The Committee agreed to the Horn amendment by voice vote. Also by voice votes, the Committee adopted H.R. 2904, as amended, and ordered it favorably reported to the House of Representatives.

IV. Committee Hearings and Written Testimony

The Subcommittee on the Civil Service held an oversight hearing on the Office of Government Ethics on August 4, 1999. Witnesses at the hearing were Stephen D. Potts, Director of the Office of Government Ethics, and Gregory S. Walden, an attorney in private practice and a former Assistant Counsel in the White House.

Mr. Potts described the functions and operations of the agency, which, he testified, had "overall responsibility for executive branch policies related to preventing conflicts of interest on the part of officers and employees." The Office administers a program that is primarily preventive, with enforcement entrusted to other executive branch agencies, including the Department of Justice. The Office issues rules and regulations regarding such matters as conflict of interest, post-employment restrictions, standards of conduct, financial disclosure, and ethics training. It also reviews the financial disclosure forms filed by certain individuals nominated for or appointed to Federal office by the President and counsels those individuals on the avoidance of conflicts of interest and, when necessary, recommends appropriate corrective actions. Educating Federal employees about the ethical standards governing their conduct is also an important part of the Office's responsibilities. Toward this end, the Office trains agency ethics officials and assists agencies in conducting their internal ethics training programs. The Office also issues formal and informal guidance on a variety of ethics matters. In limited circumstances, the Office will investigate alleged ethics violations and order corrective action or recommend disciplinary action. In general, however, enforcement falls to individual agencies or the Department of Justice. The Office also evaluates the effectiveness of conflict of interest laws and related statutes and rules and regulations. Mr. Potts also testified that the Office has been enlisted by other executive agencies to provide technical assistance to the anti-corruption efforts of foreign countries.

From time to time, the Office will also recommend modifying or repealing existing ethics laws or enacting new ones. In response to questioning, Mr. Potts testified that 18 U.S.C. § 202, which defines the term "special government employee," should be clarified by codifying the elements on which the Office currently considers in determining whether an individual is a special government employee. He pointed out that the Office had supported, and indeed had been "one of the forces behind," legislation introduced by Rep. Mica and Rep. Horn in the previous two Congresses to clarify this definition. (However, he also expressed opposition to tying such legislation to a reauthorization bill.)

Mr. Potts asked Congress to reauthorize the Office for 7 or 8 years. In support of that request, he cited the Office's record over the years, its small size (a budget of $9.1 million for FY 2000 and a workforce of 84 full time equivalent employees), and the fundamental nature of the work it performs.

Mr. Walden testified that he supported both the agency's reauthorization and the clarification of the term "special government employee." In his opinion, the Office "has performed exceptionally well and deserves to be reauthorized." He pointed out that he worked closely with the Office as an Assistant Counsel in the Bush White House and noted that it was the policy and practice of the Bush White House to solicit the Office's advice before making decisions or taking a course of action, and urged future Administrations to follow that practice as well. As an independent agency, he pointed out, the Office helps both to maintain the public's trust in the integrity of the government and protects Federal officials from unwarranted or politically motivated criticism.

In his testimony, Mr. Walden identified several matters that he believes the Office should address: issuing rules to implement the post-employment restrictions in 18 U.S.C. § 207, rules to implement section 209 of the same title, and rules covering such matters as legal defense funds, the outside activities of Federal employees in professional associations, and the expenses that Federal employees may accept for unofficial teaching, speaking, or writing. He also urged more involvement by the Office in ethics investigations and that the Office audit the White House and every Cabinet Department in the second year of a new Administration. Other recommendations included joint ethics training of political appointees by the White House Counsel and the Office and increased attention to training for employees in the field.

Mr. Walden criticized the Office for too narrowly construing section 208, the conflict of interest statute, when it reviewed allegations that Hillary Clinton's stock portfolio created a conflict of interest with her responsibilities as the chairman of the President's Task Force on National Health Care Reform. He argued that the Office's conclusion that health care legislative proposals were too broad to constitute "particular matters" within the meaning of the statute "exempts some conduct that fits the classic notion of a conflict of interest."

In addition, Mr. Walden raised several legislative proposals, including clarification of the definition of "special government employee." The Clinton Administration's "obvious struggle" with the concept in connection with its perhaps unprecedented reliance on

such informal advisers and consultants as Harry Thomason, Paul Begala, Dick Morris, and the numerous outsiders who worked on the Clinton health care proposal, as well as Mrs. Clinton's own unprecedented involvement in governmental affairs, according to Mr. Walden, highlight the need for such clarification. He pointed out that he had testified in support of legislation to do that in both 1996 and 1997 and urged Congress to enact similar legislation before the next President is inaugurated.

Mr. Walden testified that the length of the reauthorization period was a matter for congressional judgment on the best way to ensure regular oversight of the agency.

Both Mr. Walden and Mr. Potts also testified in support of legislation to clarify the definition of "special government employee" before a hearing held by the Subcommittee on Government Management, Information, and Technology on May 1, 1997. Rep. John L. Mica also testified at the same hearing in strong support of that legislation. Testimony received by the Subcommittee on Government Management, Information, and Technology at its June 25, 1996 hearing on H.R. 3452, which included language to revise the definition, is summarized in House Report 104–820.

V. Explanation of the Bill as Reported: Section-By-Section

Section 1. This section authorizes appropriations for the Office of Government Ethics for fiscal years 2000 through 2003.

Section 2. Amendment to Definition of special Government employee. This section amends the definition of special government employee in subsection 202(a) of title 18, United States Code. This amendment is advisable, the Committee believes, because hearings during the 104th Congress before the House Committee on Government Reform and Oversight on the "Travelgate" scandal revealed that certain advisers to the President used their position in the White House and the staff of the Executive Office of the President to promote their own business interests, by encouraging the firing of the White House Travel Office staff. The Committee's report on the Travelgate investigation recommended reforming the definition of special Government employee to include "clear standards" for determining when an individual should be considered to be one. "Investigation of the White House Travel Office Firings and Related Matters," H. Rep. 104–849 at 27 (104th Congress, 2d Session).

The Committee believes that such advisers should have been considered special government employees under the current tests used to interpret section 202. However, the Committee also deems it advisable to implement its earlier recommendation by amending the statute to make it completely clear that, in the future, similarly situated informal advisers would be special government employees and therefore subject to conflict-of-interest and financial-disclosure laws.

Since it was introduced in the criminal conflicts of interest statutes, the term "special Government employee" has always referred to a component of the larger categories of "officer" and "employee." To make this clear, subsection (c) of 18 U.S.C. § 202 is amended by adding a definition for those terms and by referring to that definition in defining "special Government employee." There is a three-part test for determining whether someone is an "officer" or "em-

ployee." First, the individual must be retained, designated, appointed, or employed, with or without compensation, by a Federal (or District of Columbia) official or employee. Second, the individual must be subject to the supervision of a Federal (or District of Columbia) official or employee. And, third, the individual must carry out a Federal (or District of Columbia) function as defined by this amendment. Both the three-part test for "officer" and "employee" and the definition of a Federal (or District of Columbia) function are intended to codify longstanding interpretations of the terms applied by the Department of Justice and the Office of Government Ethics.

In general, subsection (a) provides that a special Government employee must be an officer or employee and meet two additional criteria: (1) the individual must serve in the legislative or executive branch of government; and (2) when retained, designated, appointed, or employed, the individual must not be expected to perform temporary duties on a full-time or intermittent basis, for more than 130 days during any period of 365 consecutive days. Current law provides that persons in certain positions shall be considered "special Government employees." The amendment continues to include those positions.

Because of past confusion, the Committee wishes to stress that a formal act of retention, designation, appointment, or employment is not necessary for an individual to be considered an "officer" or "employee" or a "special Government employee" for purposes of criminal conflicts of interest law. On the other hand, individuals who provide advice to Federal (or District of Columbia) officials or employees will not be considered "officers," "employees," or "special Government employees" unless they are subject to supervision by a Federal (or District of Columbia) official or employee and perform a Federal function, as defined in this amendment. Whether an individual is supervised by a Federal (or District of Columbia) official or employee is often the basis for determining whether that individual is an independent contractor or an "officer" or "employee."

The Committee does not intend that an individual be considered an "officer," "employee," or "special Government employee" based solely upon comments or advice to a Federal (or District of Columbia) official or employee. In order to allay fears that simply giving informal advice to such an official or employee will subject an individual to criminal sanctions under conflicts of interest law, the amendment to section 202(c) identifies three non-exclusive substantive activities that are considered Federal (or District of Columbia) functions. They are:

1. Supervising, managing, directing, or overseeing a Federal or District of Columbia officer or employee in the performance of such officer's or employee's official duties.

2. Participating in the Federal or District of Columbia government's internal deliberative process by, for example, providing regular advice, counsel, or recommendations to the President, the Vice President, a Member of Congress, or any other Federal or District of Columbia officer or employee, or conducting meetings involving any of those individuals.

3. Obligating funds of the United States or the District of Columbia.

The definition of "officer" and "employee" would, of course, continue to include regular, salaried individuals formally employed by the government, such as persons who fit within the definitions of 5 U.S.C. §§ 2104 and 2105, regardless of whether they engage in any of the activities described by these three criteria.

The amendment also provides for a new subsection (f), which describes positions that are not to be considered as "officers," "employees," or "special Government employees" for the purpose of chapter 11 of title 18, United States Code. Consistent with current law, the subsection states that enlisted members of the Armed Forces are not to be so considered.

Subsection (f) also codifies a long-standing interpretation of section 202 that permits certain individuals to function as representatives of interested parties on advisory bodies. It recognizes that from time to time the Government solicits the advice of parties with a financial or other stake in a particular matter by appointing individuals to serve as their voice on advisory committees under the Federal Advisory Committee Act or similar bodies whose meetings are generally open to the public. To apply the conflict of interest restrictions in such situations would almost always defeat the purpose of seeking the advice of interested groups. Individuals representing such groups have been called "representatives," and that term is used in this new subsection.

Certain actions by the selecting authority are required if individuals are to be considered "representatives" under subsection (f), and certain limitations are imposed on their actions. First, the authority of a particular agency or entity to select a "representative" (as opposed to a "special Government employee") for an advisory body and the designation of the individual to serve as a "representative" is a determination to be made by the government selecting authority at the time of the individual's retention, designation, or appointment. This status is conferred by the government, not determined by the individual. (However, the agency should make the status of the individual known at the time of selection so that the individual is clear as to his or her obligations under the criminal conflicts laws.) Second, a "representative" may provide only advice to the government. Individuals who have any authority to take actions other than providing advice will be governed by conflicts laws. Third, "representatives" cannot receive any salary or other compensation from the government for their services. (For the purposes of this subsection, the payment of travel expenses and a per diem to defray the individual's expenses in attending a meeting of the committee or other body is not considered compensation.) Finally, a "representative's" advice is generally provided in a public meeting. A public forum has a twofold purpose: (1) the public can be aware that advice from interested parties has been sought, and (2) individuals or organizations whose views are to be expressed by the "representative" can judge whether the advice given accurately or adequately reflects their interest. Individuals and organizations are free to impress upon the "representative" the views they expect him or her to express.

VI. Committee Oversight Findings

Pursuant to rule XIII, clause (3)(c)(1) of the Rules of the House of Representatives, the results and findings for those oversight activities are incorporated in the recommendations found in the bill and in this report.

VII. Budget Analysis and Projections

The budget analysis and projections required by section 308(a) of the Congressional Budget Act of 1974 are contained in the estimate of the Congressional Budget Office.

VIII. Cost Estimate of the Congressional Budget Office

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 13, 1999.

Hon. Dan Burton,
Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2904, a bill to amend the Ethics in Government Act of 1978 to reauthorize funding for the Office of Government Ethics, and to expand the definition of a "special government employee" under title 18, United States Code.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2904—A bill to amend the Ethics in Government Act of 1978 to reauthorize funding for the Office of Government Ethics, and to expand the definition of a "special government employee" under title 18, United States Code

Summary: H.R. 2904 would reauthorize the Office of Government Ethics (OGE) for fiscal years 2000 through 2003. In addition, the bill would apply the definition of a special government employee to individuals who provide regular advice or counsel to the President, Vice President, a Member of Congress, or a federal judge. Special government employees are individuals who provide temporary services to the government. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 2904 would result in additional discretionary spending of $29 million over the 2001–2004 period (Public Law 106–58 appropriated $9.1 million to the OGE for fiscal year 2000). This estimate assumes an adjustment for anticipated inflation in 2002 and 2003. Without such an adjustment, we estimate additional spending would total $27 million over the 2001–2004 period. Because H.R. 2904 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 2904 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act

(UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2904 is shown in the following table. For the purposes of this estimate, CBO assumes that the estimated authorization level will be appropriated by the start of each fiscal year and that outlays will follow the historical spending pattern of the OGE. In addition, we estimate that expanding the definition of a special government employee would not significantly increase the costs to federal agencies and Congressional offices to review any additional financial disclosure forms required of such employees. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—				
	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION					
OGE spending under current law:					
Budget Authority[1]	9	0	0	0	0
Estimated outlays	9	1	0	0	0
Proposed changes:					
Estimated Authorization Level	0	9	10	10	0
Estimated outlays	0	8	10	10	1
OGE spending under H.R. 2904:					
Estimated Authorization Level[1]	9	9	10	10	0
Estimated outlays	9	9	10	10	1

[1] The 2000 level is the amount appropriated for that year.

Pay-as-you-go considerations: None.

Intergovernmental and private sector impact: H.R. 2904 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: John R. Righter.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

IX. Statement of Constitutional Authority

Pursuant to rule XIII, clause 3(d)(1), the Committee finds that clauses 1 and 18 of Article I, Sec. 8 of the U.S. Constitution grant Congress the power to enact this law.

X. Committee Recommendation

On September 30, 1999, a quorum being present, the Committee ordered the bill, as amended, favorably reported by voice vote to the House for consideration.

XI. Congressional Accountability Act; Public Law 104–1; Section 102(B)(3)

H.R. 2904 applies to special Government employees in the legislative branch.

XII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104–4; SECTION 423

H.R. 2904 does not impose any Federal mandates on state, local, or tribal governments, or the private sector, and it does not preempt any state or local law.

XIII. FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP.) SECTION 5(b)

The Committee finds that H.R. 2904 does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

XIV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 405 OF THE ETHICS IN GOVERNMENT ACT OF 1978

AUTHORIZATION OF APPROPRIATIONS

SEC. 405. There are authorized to be appropriated to carry out this title such sums as may be necessary for each of fiscal years [1997 through 1999] *2000 through 2003*.

SECTION 202 OF TITLE 18, UNITED STATES CODE

§ 202. Definitions

[(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term "special Government employee" shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, a part-time United States commissioner, a part-time United States magistrate, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee. Notwithstanding section 29(c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Re-

serve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms "officer or employee" and "special Government employee" as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.]

(a) For the purpose of sections 203, 205, 207, 208, 209, and 219 of this title the term "special Government employee" shall mean—

(1) an officer or employee as defined in subsection (c) who is retained, designated, appointed, or employed in the legislative or executive branch of the United States Government, in any independent agency of the United States, or in the government of the District of Columbia, and who, at the time of retention, designation, appointment, or employment, is expected to perform temporary duties on a full-time or intermittent basis for not to exceed 130 days during any period of 365 consecutive days;

(2) a part-time United States commissioner;

(3) a part-time United States magistrate;

(4) an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28;

(5) a person serving as a part-time local representative of a Member of Congress in the Member's home district or State; and

(6) a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, who is not otherwise an officer or employee as defined in subsection (c) and who is—

(A) on active duty solely for training (notwithstanding section 2105(d) of title 5);

(B) serving voluntarily for not to exceed 130 days during any period of 365 consecutive days; or

(C) serving involuntarily.

* * * * * * *

[(c) Except as otherwise provided in such sections, the terms "officer" and "employee" in sections 203, 205, 207 through 209, and 218 of this title shall not include the President, the Vice President, a Member of Congress, or a Federal judge.]

(c)(1) The terms "officer" and "employee" in sections 203, 205, 207 through 209, and 218 of this title shall include—

(A) an individual who is retained, designated, appointed, or employed in the United States Government or in the government of the District of Columbia to perform, with or without compensation and subject to the supervision of the President, the Vice President, a Member of Congress, a Federal judge, or an officer or employee of the United States or of the government of the District of Columbia, a Federal or District of Columbia function under authority of law or an Executive act;

(B) a Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving voluntarily in excess of 130 days during any period of 365 consecutive days; and

(C) the President, the Vice President, a Member of Congress or a Federal judge, but only to the extent specified in any such section.

(2) As used in paragraph (1), the term "Federal or District of Columbia function" shall include, but not be limited to—

(A) supervising, managing, directing or overseeing a Federal or District of Columbia officer or employee in the performance of such officer's or employee's official duties;

(B) providing regular advice, counsel, or recommendations to the President, the Vice President, a Member of Congress, or any Federal or District of Columbia officer or employee, or conducting meetings involving any of those individuals, as part of the Federal or District of Columbia government's internal deliberative process; or

(C) obligating funds of the United States or the District of Columbia.

* * * * * * *

(f) The terms "officer or employee" and "special Government employee" as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces, nor shall they include an individual who is retained, designated, or appointed without compensation specifically to act as a representative of an interest (other than a Federal or District of Columbia interest) on an advisory committee established pursuant to the Federal Advisory Committee Act or any similarly established committee whose meetings are generally open to the public.

MINORITY VIEWS

We support the amendment to the Ethics in Government Act of 1978 to reauthorize funding for the Office of Government Ethics, and with one exception, join in the Majority report. The exception concerns the statement in the report that "certain advisors to the President used their position in the White House and the staff of the Executive Office of the President to promote their own business interests, by encouraging the firing of the White House Travel Office staff." The minority views provided in House Report 104–849, "Investigation of the White House Travel Office Firings and Related Matters," reflect our views on the Travel Office investigation.

HENRY A. WAXMAN.
ELIJAH E. CUMMINGS.
MAJOR R. OWENS.
EDOLPHUS TOWNS.
PATSY T. MINK.
CAROLYN B. MALONEY.
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CHAKA FATTAH.
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