

Code of Ethics, 12/76

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LAW OFFICES

ALSTON, MILLER & GAINES

1800 M STREET, N.W., SUITE 1000
WASHINGTON, D. C. 20036
202-223-1300

CITIZENS & SOUTHERN
NATIONAL BANK BUILDING
35 BROAD STREET
ATLANTA, GEORGIA 30303
404-588-0300

WASHINGTON, D. C.

ok to me

*J
called
12/14*

December 3, 1976

The Honorable Jimmy Carter
President-Elect of the United States
Box Z
Plains, Georgia 31780

Dear Governor:

Following our meeting in Plains on November 29, I have returned to Washington and touched base again with counsel to the various Senate Committees and with the transition groups here who have studied and made valuable recommendations on the question on conflict of interest. I have also reviewed your earlier speeches. On March 1, 1976 you said the following in your "Code of Ethics" speech:

Complete revelation of all business and financial involvement of all major officials should be required, and none should be continued which constitute a possible conflict with the public interest. I have released an audit of my personal finances and will do so annually throughout my term of office. I will insist that the same requirement apply to the Vice President and to those appointed to major policy-making positions in my Administration. As President, I will seek legislation to make such disclosure mandatory.

You made a similar statement before the American Bar Association in Atlanta in August. A consistent reference was made in your remarks with the Ralph Nader group in Washington. Accordingly, I have revised the materials to call for the making available to the public of sources of income and balance sheet items. At Bob Lipshultz's

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request I enclose an alternate form of Memorandum to nominees which would adhere to the disclosure policies we discussed Monday, subject to what you had said in your speeches.

Consistent with your statement, I would ask you and each of the persons to whom a copy of this letter and the enclosures go to pencil the enclosures carefully and to give me comments back during the course of next week (December 6 through 10) at the address and telephone number below. I met yesterday with Mr. Charles Kirbo and obtained his questions, which are now worked into the questionnaire. The enclosures are:

1. Letter of Commitment from prospective appointees;
2. Questionnaires to be used for personal and financial data of prospective appointees; and
3. A draft of Policy Guidelines as to conflict of interest; financial disclosure; and restrictions after government service.

As you will recall, in Plains, I suggested three post-government restrictions. I am now convinced that the second of my earlier proposals is too severe and would unduly hurt recruitment into the agencies. It is my belief that the two restrictions now set out in paragraphs 5 and 6 of the letter of commitment will suffice. For your reference, my other suggestion was:

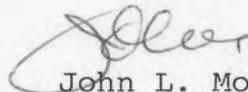
I will not, for two years following termination of my government service, for any fee, commission, salary, or other benefit, deal with or represent in any professional or business capacity myself or anyone other than the United States, by direct or indirect

Page 3
President-Elect
December 3, 1976

appearance, lobbying, or formal or informal
contact with the _____ Depart-
ment or Agency or Division.

With kind regards,

Sincerely,



John L. Moore, Jr.

JLM/db

cc: Senator Walter F. Mondale
Charles Kirbo, Esquire
R. J. Lipshultz, Esquire
Mr. Hamilton Jordan
Jack H. Watson, Jr., Esquire
Stuart Eizenstat, Esquire

LETTER OF COMMITMENT

TO: Honorable Jimmy Carter,
President-Elect of the United States

Date: _____

Dear Sir:

If you nominate me to be _____ of the United States, and in the event I am subsequently confirmed to that post by the Senate, take office, and thus become an employee of the United States, I pledge as follows:

(1) I will comply in all respects with the Federal Conflict of Interest Laws and related regulations applicable to my office, both during and after my term of office.

(2) I have already or will, within 30 days of taking office, file with such officers as you shall direct, as a matter of information fully available to the public as directed by you:

(a) a complete current financial net worth statement which itemizes in detail all assets and all liabilities of myself, my spouse, and other members of my immediate household. All assets and liabilities will be separately itemized and fully described;

(b) a sources of income statement for the year 1975 and for the period of time ending no earlier than 60 days before the above date listing all sources and amounts of all items of value received by me, my spouse, and other members of my immediate household, including, but not limited to, salaries, wages, fees, dividends, capital gains and losses, interest, gifts, rents, royalties, patents, and honoraria.

(3) I will not, while in office, participate in any matter in which any private organization with which I was associated prior to taking office is appearing or has a direct and substantial interest. Moreover, I will immediately cease participation in any matter relating to any private organization as soon as I have entered into negotiations for employment or association with that organization whether as a consultant, employee, partner, or any other relationship of financial value.

(4) I recognize that following termination of my government service, I will be permanently barred by federal law (18 U.S.C. § 207 (a)) from acting on behalf of anyone other than the United States in connection with any matter in which I participated personally and substantially in my governmental capacity. I also recognize that for a period of one year following termination of my government service I will be barred by federal law (18 U.S.C. § 207 (b)) from appearing personally before any court, department or agency on behalf of any one other than the United States in connection with any matter which was under my official responsibility during the last year of my government service. "Official responsibility" as used in the preceding sentence and in paragraph 5 below means the direct administrative or operating authority, whether intermediate or final, and either exerciseable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action.

(5) I will not, for two years following termination of my government service, deal with or represent in any professional or business capacity myself or anyone other than the United States by direct or indirect appearance, or formal or informal contact with any government officer with reference to any matter within my official responsibility in government during the twelve months preceding termination of government service.

(6) I will not accept any employment or compensation either direct or indirect, from any Interested Party as below defined sooner than the earliest to occur of the following events:

(a) the passage of four years from the time I take office and become an employee of the United States;

(b) the passage of the term of office for which I am accepting appointment;

(c) your removing me from my government office or my resignation at your request;

(d) the certification by a reputable physician that ill health requires me to leave government service.

"Interested Party", as used in this undertaking, shall mean any party regulated by the _____ Agency or Department or Division thereof or with which such Agency or

Department or Division thereof has entered into a single contract during the last 12 months of my government service involving the payment of more than \$10,000 by the United States of America or a party negotiating at the time of termination of my government service for a contract involving the payment of more than \$10,000 by the United States of America.

I agree that, if there is any doubt as to the applicability of the foregoing commitments in this Paragraph 6 that I will abide by a ruling thereon by you, if I am a Department or Agency head, or by the Department or Agency I served otherwise.

I understand that you reserve the right to waive the requirements of this Paragraph 6 if you find it to be in the public interest to do so.

(7) I will, while in government service and for two years after leaving government service, file periodically in accordance with regulations to be promulgated by you statements of assets and liabilities and sources of income more particularly described in subparagraphs 1(a) and (b) above.

(8) I agree to give ninety days' notice prior to resignation from government service unless otherwise requested by you.

Very Truly yours,

ACCEPTED:

Jimmy Carter, as President-Elect
of the United States

MEMORANDUM FOR:

FROM: John L. Moore, Jr., Special Counsel to the
Carter-Mondale Transition Group

SUBJECT: PERSONAL AND FINANCIAL DATA

As part of the clearance procedures relating to your proposed appointment, it is requested that you answer the following questions and supply the following information to us. In line with the policies of the new Administration, we expect that the information disclosed will be kept at the Civil Service Commission where it will be available for public review and inspection, except that the income tax returns supplied by you will not be made available to the public unless you direct otherwise.

In order that we might complete all necessary reviews as soon as possible, it is requested that you supply this information at your earliest convenience and, in any event by _____, 1976.

If you have any questions or if this office can be of assistance, please do not hesitate to contact John L. Moore, Jr., who can be reached at either of the addresses shown below. You are requested to make an appointment to visit with him within three business days of receipt of these materials to discuss your response, even if your information is not complete at the time. Of course, Mr. Moore will be happy to consult with your attorney or other advisers.

Suite 1000
1800 M Street
North Building
Washington, D. C. 20036 Telephone: 202-223-1300

or

1200 The Citizens & Southern National Bank Building
Atlanta, Georgia 30303 Telephone: 404-588-0300

OUTLINE OF INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL:

1. Name: (Include any former names used).
2. Address: List current residence address and mailing address.
3. Date and Place of Birth:
4. Marital Status: (Include maiden name of wife or husband's name).
5. Names and Ages of Children:
6. Education: List institution(s), dates attended, degree received and date degree granted.
7. Employment Record: List all positions held since age 21, including the title or description of job, name of employer, location of work, and dates of employment.
8. Government Experience: List any experience in, or association with, federal, state or local governments, including any advisory, consultative, honorary or other part-time service or positions.
9. Memberships: List all memberships and offices held in professional, fraternal, social, scholarly, civic, charitable and other organizations.
10. Honors and Awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

11. Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.
12. Qualifications: State what, in your opinion, qualifies you to serve in the particular position to which you have been nominated.

B. PERSONAL DATA:

1. Have your federal or state tax returns been the subject of any audit or investigation or inquiry at any time?

If so, explain.

2. Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities?

If so, please give full details.

3. Have you accepted contributions in the past concerning which there may be any question as to legality or propriety?

If so, explain.

4. Do you have any campaign funds now on hand?

If so, explain.

5. Have you ever been arrested, charged or held by federal, state, or other law enforcement authorities for violation of any federal, state, county or municipal law, regulation or ordinance? If so, please give full details (do not include traffic violations for which a fine of \$25 or less was imposed).

6. Are you currently under federal, state, or local investigation for a possible violation of a criminal statute? If so, please give full details.

7. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please give full details.

8. Have you ever been sued in any state?

If so, explain.

What court or courts?

If divorced, in what court?

9. What is the condition of your health?

Have you had a physical examination recently?

Who was your physician?

Will you ask that the report of your examination be made available to me?

10. Have you ever had psychiatric or similar treatment?

If so, explain.

11. Do you know of anyone who might take any steps, overtly or covertly, to make your confirmation by the Senate more difficult or seek to attack your appointment?

12. Please provide any other information which you regard as pertinent or which could be the possible source of embarrassment to you, or to the President, if publicly known.

Without details, is there or has there been anything in your personal life which you feel, if known, may be of embarrassment to the Administration in the event you should be nominated?

What about any near relative?

C. FINANCIAL DATA:

Please note that federal law and regulations governing conflicts of interest require Presidential appointees within 30 days of their entrance on duty to provide reports of specified financial interests as to themselves, their spouses and any blood relation who is a household member. The initial five matters listed below are designed to elicit financial information similar to--although, in some cases, broader in scope than--that which all Presidential appointees are required to provide by Executive Order of the President. The remaining paragraphs in this section seek elaboration on your financial status beyond that which the existing Executive Order and regulations require. As to all matters, please provide the requested information for yourself, your spouse, and any blood relations who are part of your household.

1. List the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions--
 - (A) with which you are now connected as an employee, officer, owner, director, trustee, partner, advisor, attorney, or consultant. (Attorneys and consultants need list only their major clients, but should include all of those whom you represent on a regular basis or which might give rise to an appearance of bias on your part in connection with your proposed appointment.) Any listed relationship or affiliation that you wish to continue during the term of your appointment should be noted with an asterisk.
 - (B) in which you have any continuing financial interests, through a pension or retirement plan, stock bonus, shared income, severance pay agreement, or otherwise as a result of any current or prior employment or business or professional association. As to each financial arrangement, provide all details necessary for a thorough understanding of the way in which the arrangement operates, including information concerning any renewal right you may have if the arrangement

is allowed to lapse and whether lump sum or severance benefits are available in lieu of continuation of the interest.

- (C) in which you have any financial interest through the ownership of stocks, stock options, bonds, partnership interests, or other securities. Any interests held indirectly through trusts or other arrangements should be included. Any listed interests that you wish to retain during your period of government service should be noted with an asterisk.

2. Provide a complete, current financial net worth statement that itemizes in detail and fully describes all assets (including, but not limited to, bank accounts, real estate, securities, trusts, investments, and other financial holdings) and liabilities (including, but not limited to, debts, mortgages, loans and other financial obligations). Assets representing personal or household goods, and liabilities for current and ordinary household and living expenses must be included but need not be separately itemized.

3. List sources and amounts of all items of value received during calendar year 1975 and the portion of 1976 selected by you ending no earlier than 60 days prior to the date of your reply (including, but not limited to, salaries, wages, fees, dividends, capital gains or losses, interests, rents, royalties, patents, honoraria, and gifts other than those of nominal value). In lieu of such a listing for 1975, you may submit a copy of your federal income tax returns for 1975, although the submission of income tax material is not required under this item.

4. Please provide for review by this office (but not for passing on to Senate Committee staff or to the public) copies of your federal income tax returns for 1973, 1974, and 1975.

D. FUTURE EMPLOYMENT RELATIONSHIPS:

1. Will you sever all connections with your present employer, business firm, association or organization if

you are nominated by the President-Elect and confirmed by the Senate?

2. Do you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? Please consider as a "plan" your own desire so to resume employment, etc. but identify whether there may be reciprocity of such desire by your employer, affiliates, etc.

3. Has anybody made a commitment to employ your services in any capacity after you leave government service?

4. If confirmed, do you expect to serve your full term of office?

E. POTENTIAL CONFLICTS OF INTEREST:

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

3. Describe any business relationship, dealing or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

4. Describe any activity during the past ten years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements).

F. LETTER OF COMMITMENT

It is the view of the President-Elect that all officials of government with a substantial policy role in it should agree contractually to certain arrangements beyond the scope of present law and regulations. Please examine the attached letter of commitment. Will you be willing to sign it prior to your formal nomination?

Alternate Form

MEMORANDUM FOR:

FROM: John L. Moore, Jr., Special Counsel to the
Carter-Mondale Transition Group

SUBJECT: PERSONAL AND FINANCIAL DATA

As part of the clearance procedures relating to your proposed appointment, it is requested that you answer the following questions and supply the following information to us. In line with the policies of the new Administration, we expect that the information disclosed will be kept at the Civil Service Commission where it will be available for public review and inspection, except that the values of assets, amounts of liabilities and amounts of income as well as income tax returns supplied by you will not be made available to the public unless you direct otherwise.

In order that we might complete all necessary reviews as soon as possible, it is requested that you supply this information at your earliest convenience and, in any event by _____, 1976.

If you have any questions or if this office can be of assistance, please do not hesitate to contact John L. Moore, Jr., who can be reached at either of the addresses shown below. You are requested to make an appointment to visit with him within three business days of receipt of these materials to discuss your response, even if your information is not complete at the time. Of course, Mr. Moore will be happy to consult with your attorney or other advisers.

Suite 1000
1800 M Street
North Building
Washington, D. C. 20036 Telephone: 202-223-1300

or

1200 The Citizens & Southern National Bank Building
Atlanta, Georgia 30303 Telephone: 404-588-0300

CARTER-MONDALE TRANSITION GROUP
POLICY GUIDELINES
CONFLICTS OF INTEREST; FINANCIAL
DISCLOSURE; AND RESTRICTIONS FOLLOWING
GOVERNMENT SERVICE

It will be the policy of the Carter-Mondale Administration to appoint and nominate for appointment, only persons of high ability who will carry out their official duties without fear or favor and with an equal hand, unfettered by any actual or apparent conflicts of interests. To decree that no person can have any financial interests other than a salary from the Government would seriously limit the ability to recruit the most qualified persons. The Carter-Mondale Administration will require full disclosure of all continuing affiliations and of assets and liabilities of nominees and their immediate families. It is hoped that except in rare circumstances divestiture causing severe tax burdens will be unnecessary if the present laws and regulatory framework are diligently and fairly administered.

The following guidelines pertain to the assets and liabilities of a nominee, the spouse of the nominee, and the nominee's minor child or children, partner, or any organization in which the nominee continues to serve as an officer, director, trustee, partner, or employee while in the government service or any personal organization with which the nominee has negotiated or has any arrangement concerning prospective employment.

All nominees will be expected to comply with all relevant statutes (particularly 18 U.S.C. Section 208) and the rules and practices of the particular Department or Agency served.

If the person is nominated to a Level I or II position divestiture should occur if compliance with the provisions of 18 U.S.C. Section 208 indicates a conflict requiring disqualification from action for the Government more than rarely. Nominees for positions at Level III and other positions in the Government should require divestiture because of conflicts arising under 18 U.S.C. Section 208 only if use of disqualification will seriously impair the capability of the officer to perform the duties of the office to which nominated.

Beyond the requirements of 18 U.S.C. Section 208, persons nominated to positions at Level I or II should divest holdings and liabilities where the nature of the holding or liability is such that it will be broadly affected by governmental monetary and budgetary policies. Generally excepted from requirements of divestiture (unless the particular position indicates continuing conflicts arising in government service with respect to a particular interest) will be made for:

- a. real estate interests whether in the form of ownership of land or participations in partnerships.
- b. well-diversified holdings; e.g. less than a 1% holding of a well-diversified mutual fund or a total of not more than approximately \$200,000 invested in well-diversified assets no one of which exceeds approximately \$20,000 in value.

Blind trusts will be recognized as appropriate methods of divestiture where divestiture is required provided:

- a. the trustee is truly independent;
- b. the assets transferred in trust are either cash or well-diversified assets;
- c. the trustee is given entire discretion to sell or buy without discussion with the government officer or anyone close to such officer and the only reports given to the government officer are the schedules necessary to file with income tax returns (which schedules do not list anything more than totals of taxable items from the trust).

The attention of nominees will be directed to the provisions of 18 U.S.C. Section 209 prohibiting receipt of any compensation from any party other than the United States for government service. While the matter of payments for services prior to entry into government service are properly addressed by legal counsel to the appointee and the organization making the payment, the following general guidelines seem appropriate:

- a. If there is a pre-existing established plan of the particular organization to reward past service upon termination of service to the organization, obviously such plan can be recognized and followed.

- b. If there is no pre-existing established plan of the particular organization it is suggested that a payment in excess of 6 months of salary or in excess of a range of \$25,000 to \$50,000 would need careful examination.

In all events, it is expected that payment of any severance benefits will be completed prior to the nominee's taking office in the Government.

While 18 U.S.C. Section 209(b) allows continuing participation in a bona fide pension, retirement, group life, health or accident insurance, profit sharing, stock bonus, or other employee welfare benefit plan maintained by a former employer, nominees will be asked generally to exercise any stock options prior to commencement of government service (unless, because of the requirements of the Securities Exchange Act, such exercise should occur within a reasonable period after beginning government service in which case the government officer may exercise within such limited period, providing other guidelines are followed concerning conflicts of interests as above stated). Nominees will also be asked not to have contributions made to profit sharing plans by former employers based on earnings of the former employer after the government officer takes office.

Deviations from the foregoing guidelines will only be made with the express consent of the President-Elect with respect to Level I and II appointments and by heads of departments or agencies with reference to other appointments. The reasons for the deviations will be made public.

It is proposed to ask appointees to enter into a letter of commitment, a copy of which is attached, which, in several respects calls for the disclosure of financial information beyond the requirements of existing law and regulations. It is contemplated that the financial disclosure requirements will be made subject to an Executive Order shortly after the new Administration takes office. The attached letter of commitment also describes certain restrictions requested of nominees following government service. Shortly after the new Administration takes office Congress will be requested to take action along the lines spelled out in the attached letter of commitment.

It will be the policy of the new Administration to encourage every Department and Agency of the Government to advise every new employee of existing laws and regulations relating to conflicts of interests and to have a prior screening of such conflicts at the time of appointment. It will be a further policy to encourage Departments and Agencies to institute procedures for continuing policing of conflicts.

It is the objective of the new Administration to avoid any conflict which could in any way influence any government officer except in the even interest of all the people.

C
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MEMORANDUM

Merit Selection of Federal Judges and U.S. Attorneys

This memorandum builds upon an options paper prepared earlier and included in the Department of Justice Briefing Book on the subject of improving the courts. That paper considered a range of available options for merit selection of federal judges and recommended that a panel structure be established at the national and district level or somewhere in between to perform the function of seeking out and recommending to the President the names of qualified candidates. The paper cautioned that no steps should be taken with respect to merit selection until a valid measure of the depth of Senate feeling on the subject was taken.

Part I of this memorandum attempts to assess the likely reaction of the Senate to a merit selection proposal and discusses various political considerations in establishing such a system for both federal judges and U.S. attorneys. Part I recommends that before any decision is made with respect to the form and manner of implementation of a merit selection program, Governor Carter should personally consult with key Senators.

President's

Part II of this memorandum pursues, and elaborates upon, another option with respect to merit selection which is a combination of alternatives suggested in the earlier options paper -- the creation of a National* Judicial Selection Commission, to be assisted by local advisory panels in each of the 50 states, the District of Columbia, Puerto Rico and the Virgin Islands.

The question of merit selection is one of some urgency. There will be approximately 25 vacancies in judgeships when Governor Carter takes office on January 20, 1976, and perhaps as many as 75 more judgeships are expected to be created by legislation by the Fall of 1977. If a merit system is to have a significant impact during the first four-years of a Carter Administration, these vacancies must be filled through such a system. Yet, as will be discussed in Part II, it will take at least 60-90 days for a judicial selection commission to become operational, and much longer to do a creditable job of recommending names for some 100 vacancies.

*Some objection has been expressed that referring to the Commission as a National one might unnecessarily offend the Senate.

I. Political Considerations in Establishing A Merit Selection System for Federal Judges and U.S. Attorneys

In developing options for merit selection, we have undertaken to interview a number of persons who are knowledgeable with respect to Senate politics, and especially with respect to the Judiciary Committee. These include members of the staffs of several Senators on the Committee and lobbyists for groups concerned with issues within the jurisdiction of the Committee. The number of interviews was kept small for fear that broader contact might hamper future dealings between Governor Carter and the Senate on this delicate issue.

The question of merit selection is a delicate one politically because of the custom of senatorial courtesy which allows a single Senator, through use of the "blue slip" procedure, to prevent, if he chooses, confirmation of a federal judge or U.S. attorney for his state.¹ In effect

¹A Senator can prevent a hearing on a nomination from being conducted by the Judiciary Committee simply by pocketing a "blue slip" sent to him by the Committee. The "blue slip" practice grew out of the prerogative of a Senator to defeat nominations by declaring a nominee "personally obnoxious" to him. Such a declaration may mean that the Senator and the nominee are personal or political foes, or simply that the Senator has another candidate for the post.

the custom permits the Senators of the party in office, and frequently other Senators as well, to control selection of local Federal officials -- district court judges, U.S. attorneys, and U.S. marshals -- within their states. While none of the merit selection options under consideration need necessarily require Senators to give up their "blue slip" privilege to veto a choice as being "personally obnoxious",² (see Part II below) the options would require that Senators relinquish a substantial amount of control over who is recommended for appointment. Moreover, to be successful, a plan obviously requires that Senators not exercise their "blue slip" veto so as to frustrate the merit selection process. Control of selection of local federal officials is one of the few patronage mechanisms left to Senators, has been used by liberal and conservative Senators alike, and is something almost all will probably be reluctant to give up.

Likely Reaction of Senate to Merit Selection of Judges

There was no consensus among those interviewed on exactly what the reaction of the Senate would be to a proposal for merit selection of federal judges. On the one hand, the

² Indeed, it would be politically dangerous for a president to attempt to interfere with the internal procedures of the Senate by suggesting reform of the "blue slip" practice, although such reform would obviously be of great benefit to a merit system.

Counsel to the Subcommittee on Improvements in Judiciary Machinery expressed the view to the effect that "the President will have a major fight on his hands which he doesn't need in the first months of his Administration." On the other hand, the senior lobbyist for Common Cause suggested that "the 'blue slip' system's time has come," and after an initial stir it will fall easily and quietly and, indeed, will be welcome by a number of Senators.

The middle view between these extremes, and the one we think perhaps most accurate, was expressed best by the Chief Counsel to the Senate Judiciary Committee, Francis Rosenberger, who is one of Senator Eastland's representatives. He said that "under the constitution the President has to make the nominations and the Senate has to vote; the President can make the initial selection any way in the world he wants to." On the other hand, he said he did not think the Senators would ever forgo their right to say a nominee is "personally obnoxious". In sum, his view was that a formal merit system would work (though he objects to the term merit selection because it implies that judges are not presently selected on the basis of merit, an implication he finds inaccurate and distasteful); that a commission could be established to recommend

nominees to the President without significant opposition by the Senate; but that the "blue slip" practice would remain in place and the President would have to be prepared to negotiate occasionally with Senators with respect to nominations and even to eliminate some of the candidates recommended by a commission.

This view was essentially confirmed by representatives of Senators Byrd (Tom Hart) and Kennedy (Tom Susman) who support (and believe their Senators would support) the establishment of a merit process, but who cautioned that any system must continue to have some political input to be acceptable to the Senate. Senator Byrd's representative, when presented, as a hypothetical, with the option discussed in Part II of this memo -- i.e., a national commission, supported by local advisory panels whose members are in part selected by Senators, and retention of "blue slip" practice -- reacted quite favorably saying he was glad we were thinking in realistic terms of preserving Senate input.

And the view is supported by the fact that an increasing number of Senators -- Senators Huddleston, Ford, Chiles, Stone, Percy, Javits and Cranston -- have voluntarily agreed to turn over all or part of the pre-nomination selection process to formal commissions or informal screening committees.

These basically positive views should be kept in mind when the predictable adverse responses and over reactions are voiced by those who have particular vested interests in the status quo.

In summary, it is impossible to state with certainty what Senate reaction to a merit system for selection of federal judges will be until the question has been put to the Senators themselves. It is our assessment, however, that if the proposal is a reasonable one which retains some political input, and if the proper approach is made to the Senate (see discussion below, p. ___), the President-elect can move quickly to establish a merit selection system without seriously damaging his relationship with the Senate.

Likely Reaction to Merit Selection of U.S. Attorneys

Our conclusion is different with respect to the U.S. attorneys. Most of those interviewed believe, although there was disagreement, that Senators will be far less favorably disposed to interference with their control over selection of U.S. attorneys in their states. This is so in large part because Senators have traditionally exercised more personal control over the choice of U.S. attorney. They negotiate directly with the Deputy Attorney General, the Judiciary Committee routinely approves the selection without a hearing, there is little input from the ABA, and public attention is seldom focused. In view of this fact, and since implementation of a formal merit selection system for federal judges alone will be viewed as a serious inroad into Senatorial power, it is suggested that

the wiser course would be to retain for the time being the present method of selecting U.S. attorneys. This is especially true since there is considerable disagreement about whether a national commission should be used in the selection of U.S. attorneys.

Even under the present system there is substantial room for negotiation with Senators, and the President's commitment to merit selection of U.S. attorneys can be reaffirmed without resort to a national selection panel by a proposal along the following lines (an approach substantially concurred in by Deputy Attorney General Tyler) -- (1) the announcement by the President that he is committed to merit selection and, for that reason, intends to review the records of all the 94 U.S. attorneys presently in office and to reappoint Republican office holders where merit warrants it; (2) an expression of concern by the President with the turnover in assistant U.S. attorneys which usually accompanies a change in Administration and a request that assistant U.S. attorneys reconsider before leaving their jobs; and (3) the appointment of a blue-ribbon commission to study the question of selection of U.S. attorneys and to report its findings to the President.

Senate Input in Establishing a Merit System

It was suggested by everyone interviewed that the Senate should be involved as much as possible in the

establishment of a merit process. The suggestions as to the degree of involvement, however, ranged from merely asking key Senators to support the President's proposal to asking the Senate to actually develop a proposal, to conduct hearings and perhaps legislate in the area.³ Again, a response somewhere in between these two extremes was more prevalent and appears to be the most reasonable, given all the circumstances. It is suggested that key Senators (and perhaps eventually all Senators) be contacted by Governor Carter or his representative (see discussion below), told that the Governor is developing a merit selection plan he would like to see put into operation and ask for their advice and support.

There was disagreement among those consulted as to how well-developed and how firm the plan should be as presented to the Senators. It is probably the better view, that the essential elements of a merit system

³ One suggestion was that Governor Carter may wish to orchestrate a scenario in which a group of Senators request him to develop and implement a merit system. This suggestion, however, was not favored by most and is not recommended. In any case, such a response by a group of Senators could very well develop naturally from preliminary contacts by Governor Carter.

(and there may not be many) -- that it be fair and bipartisan, that it produce the best qualified candidates, that it ensure adequate consideration of women and minorities -- be made known to Senators, and that it be made clear that these elements will be insisted upon. Beyond that, the very purpose of contacting Senators is to ascertain exactly what features they would consider essential to a plan. Care must be taken, however, to thwart clearly unacceptable suggestions before they can develop. And, extensive involvement by the Senate in the details of a plan could cause serious and perhaps unacceptable delay in establishing a merit system.

Steps to be Taken

There was a consensus among those interviewed on at least one thing and that is the appropriate steps to be taken in the next few weeks with respect to establishing a merit system. First, Governor Carter should personally contact Senator Eastland, who is the key to smooth implementation of a merit system. That contact should ideally be made before Christmas, since the Senator's response will be significant in making further plans. Governor Carter may also wish to contact Senator Mansfield during this period as a respected elder statesman. Next, Governor Carter should

personally consult with both the democratic and republican leadership of the Senate. These contacts should not be made until after January 5, 1976, when the new leadership will be selected,⁴ but should be made as soon as possible thereafter.

Governor Carter should then contact, probably personally, Senator Kennedy, Speaker O'Neill and Judiciary Chairman, Rodino. And, contacts should be made between a representative of Governor Carter and other key Senators (members of the Judiciary Committee, those defeated in the leadership election, those who have shown particular interest in merit selection including Senators Haskell, Percy, Javits, Chiles, Stone, Huddleston and Ford, and Senators from states that have implemented a merit system for selection of state court judges). A judgment can then be made whether other Senators should be contacted.

In approaching any Senator it is important to keep in mind that the system presently used to select federal judges is not a bad one. A large majority of those selected through

⁴ Any contacts before January 5, 1976, with those running for leadership positions is unlikely to be fruitful since they will not wish to take a stand before the election, and it may place the candidates in an awkward position with respect to their opponents.

the system are good judges, and many Senators are justifiably proud of the care which they take in making their selections. Thus, the approach should be not that the present system is bad, but that it can be made better and, especially, that minorities and women, who need special search efforts, can be more widely represented with use of a new system.

As a final point, a number of Senators, because of their experience, may be able to make a substantial and useful contribution to developing standards to be applied by a national commission in selecting the best qualified candidates and to deciding what outreach, screening and selection procedures are best. They should be invited to do so, perhaps by sending representatives from their staffs (or from the Judiciary Committee staff) to actually participate in setting up a Commission.

If a decision is made to proceed with implementing a merit selection system, or with contacting key Senators to further assess the feasibility of implementing such a system, certain steps should be taken now by Governor Carter's staff so that no time will be lost in setting up a system.

Because of the delicacy of the matter, the need for personal contact with the Senators and the need to make some political judgments, a person of some stature and prominence, close to Governor Carter, should be asked to oversee the program. Contacts should be established with various interest groups such as the ABA and Common Cause who have developed merit proposals and whose support in gaining acceptance of a new system would be invaluable. And the Talent Inventory Program should be alerted to begin a confidential search for potential members of a national commission and its staff. Indeed, Governor Carter may wish to consider as commission members some of those candidates who are not selected to fill cabinet and sub-cabinet posts, keeping in mind that the commission is to be bi-partisan.

II. A National Judicial Selection Commission with Supporting Local Advisory Panels

A national commission for the selection of federal judges, with supporting local advisory boards, presents the advantages of both the national and local approaches. There appear to be two principal reasons why a national commission may be a more attractive option than the use of smaller, local commissions (created either on a state-wide or judicial district-wide basis). First, in effecting a rather sharp departure from past practice -- a departure that may engender some political opposition -- it appears preferable to vest the selection process with as much prestige and visibility as possible. A national commission, selected by the President and somewhat limited in size, seems a more likely way to produce this prestige and visibility than a multitude of state or district panels. Second, a national commission will be able to attract the competent, well-paid staff necessary to do a first-rate job in locating and evaluating candidates for judgeships. Smaller state-wide or district-wide commissions would not only require more staff members in the aggregate, but also may not be able to attract the same quality of staff.

It is extremely important to the ultimate success of a merit system that it produce especially good choices in the initial period when it will be subject to critical scrutiny.

Judicial selection by means of a national commission does not necessarily require that the virtues of a local approach be sacrificed. A principal virtue of state-wide or district-wide selection panels is that panel members could be expected to be more personally familiar with local attorneys from which future judges will be selected. Another is that local panels give at least the appearance of leaving a degree of control of the process in the hands of Senators, especially if Senators are allowed to select some members of the local panels. Both these can be substantially preserved if state-wide advisory panels are created to assist in gathering names of, and accumulating information about, judicial candidates. Senators could be asked to assist in establishing these panels, and they would not necessarily have to be in place in time to assist in the initial recommendations of the national commission.

Creating and Funding a National Commission

The Commission can be implemented by an Executive Order. At the outset, given the political sensitivity, the Order could provide that the Commission will serve for a limited period of time, probably between one and two years. During this period, there are two possibilities for diverting resources for use by the Commission: (1) using Justice Department personnel on loan; or (2) funding the staff from the White House budget. The apparent difficulty with the first proposal is the shortage of available Justice Department personnel. While the second proposal may raise some constitutional concerns, it is in all probability a feasible approach for up to two years.

The commission should consist of from nine to eleven members, selected on the basis of most if not all of the following criteria:

- There should be considerable geographic distribution, perhaps one member for each of the eleven federal judicial circuits.
- The commission should be distinctly bi-partisan, with at least a substantial minority of Republican and Independent members.

- There should be both women and minority members on the commission.
- The ABA Committee on the Judiciary is a significant force to be reckoned with in this process, and a substantial number of members (perhaps 3 or 4) could well be members of that committee or at least persons who have close ties to what might be called the "establishment" bar.
- At the same time, there should be some "non-establishment" lawyers on the commission, perhaps chosen from among the institutional plaintiffs that frequently litigate in the federal courts (the ALCU, the NAACP Legal Defense Fund, environmental groups).
- There should probably be at least one law professor on the panel.
- Non-lawyers should be included.
- From a political perspective, there may be some virtue in including a Senator or a former Senator.
- It may be wise to include a former judge on the panel as well. Active judges should not be involved in the selection of their colleagues.

The national commission option proposed here envisions a full-time staff of approximately 20 persons. The Director should command wide and uniform respect among all groups within the legal community. Like the commission members, the staff members should, ideally, represent a geographical cross-section.

Within 30 days of any decision by the President to implement the option discussed here, it should be possible to have selected a full complement of commission members and staff. It seems likely that, 60 days thereafter, the commission could begin to forward names to the President. However, it seems better to take longer if necessary, than to proceed too speedily and at the risk of having the commission propose names that can be subjected to legitimate criticism.

The Judicial Selection Process

The commission would be responsible for recommending five names to the President for each vacancy. The process would begin with the collection of a very large number of names of possible candidates. The principal sources for such names would be the local advisory panels, to which the Congressional delegations from each state could submit names. In addition, the Attorney General (or the Deputy Attorney General) could submit names on behalf of the President. Members of the legal profession and the public would also be encouraged to submit names through the local panels, but

suggestions made directly to the national commission would not be rejected. Names (and any information) gathered by the local panels would be forwarded to the staff of the national commission.

Once the staff has received names and addresses of prospective judges, the candidates themselves would, in almost every case, be expected to fill out some form of questionnaire to indicate, among other things, the breadth and extent of his or her legal experience, published legal writing, if any, and public interest or community involvement. (Similar questionnaires are now in use in the selection of New York State judges and Administrative Law Judges for federal agencies.) Those submitting questionnaires would be assured that they would be accorded confidential treatment. However, if the individual were included among the list of names recommended to the President, he or she should be told to expect the fruits of the staff investigation -- including the questionnaire submitted -- to be forwarded to the President and (if selected to be the nominee) to the Senate Judiciary Committee upon request.

At some point relatively late in the winnowing down process, the commission would be expected to consult with the ABA's Standing Committee on Judicial Selection and Tenure, which should be asked to continue to evaluate prospective nominees. There should be some effort to have the ABA Committee revise certain of its criteria for fitness, however.

Why?

Many believe, for example, that the legal and trial experience required by the ABA is excessive and excludes many otherwise meritorious candidates.⁵

Prior to the submission of a list of names to the President, the members of the commission would be expected to interview all of the persons still under consideration. To provide some flexibility for the President in selecting from among the names provided, the Commission should not rank its recommendations. Under this proposal, the President would commit himself to nominate a person recommended to him by the Commission. At the same time he would be free -- though it is hard to see that he would ever have occasion to do so -- to reject all the names submitted by the Commission in the first instance and to request that a new list of names be submitted.

Senators from the state in which the vacancy had arisen would be informed of the five names recommended to the President, which, presumably would become public, and of the President's selection. It is at this point that Senators could be expected to enter into negotiation with respect to using their "blue slip" veto power if they objected to a person on the list. Such negotiations should not result in a

⁵ If the ABA does not revise its criteria, the ABA Committee may rate as unqualified or minimally qualified a candidate whom the commission regards as extremely well qualified. If this occurs, the commission may choose to recommend (and the President nominate) the candidate notwithstanding, and to carefully--and publicly-- explain the reasons for disagreement with the ABA.

sacrifice in quality, since even if a Senator were to veto one of the commissions's recommendations, four other persons of outstanding caliber would still be available.

Conclusion

It bears repeating here that there is no unanimity of opinion that the features of the above option are the best ones for a merit selection system. Some think that it is unnecessary and excessively cumbersome and inefficient to have either a national commission or local panels; that the screening could be performed satisfactorily by, for example, a special assistant to the President for judicial selection and his or her staff. Others believe that serious problems are created by the use of local advisory panels instead of establishing direct contact between commission staff and local interest groups. In a world free of political considerations, these suggestions might be better. The above option, however, represents an attempt to accommodate what we perceive now as the likely Senate reaction to a merit system.

C

MEMORANDUM: Briefing Book

SUBJECT: MORE ISSUES IN THE AREA OF CODE OF ETHICS
AND CONFLICTS OF INTEREST

This Memorandum supplements earlier memoranda and the outline of a proposed Executive Order and, therefore, does not repeat the issues and positions therein discussed.

Termination Benefits

Present law allows, as not violating the prohibition against payment for government services by any party not the government, continuation of bona fide fringe benefit plans. In addition, it has been ruled that cash bonuses on termination of prior service, if paid in recognition of past services, and not to supplement pay while in government service, are lawful. The test as to them is whether the amount of the termination pay is justified - would the prior employer have made a similar payment if the former employee were leaving to undertake service as a college president?

As to fringe benefit plans, option plans are expressly allowed to be continued. If options were granted during private employment, the government employee may continue to hold them and exercise them while in government service. Of course, if the optioned stock creates a conflict of interest other laws may require divestiture or disqualification with reference to the particular corporation.

Query, should the President-Elect propose changes in these areas?

Recommendation:

(1) Termination bonuses should not be outlawed but certain guidelines implemented, such as, no more than six months' pay at the private level; requirement of a formal policy of the particular employer applicable to all employees leaving service to enter non-competitive fields, such policy to have been in force prior to this particular action.

(2) A government employee should not continue to hold or exercise options while in government service but could exercise after nomination and prior to taking office (subject to resolution of conflicts of interest).

Divestiture

Policy Executives: As to the President, the Vice President, all Cabinet Officers, White House Officers, and Executive Office Officers (Office of Management and Budget, Council of Economic Advisers, National Security Council, Civil Service Commission, General Services Administration, and General Accounting Office): Ted Sorenson suggests that divestiture of any major company stocks and other interests ought to be the rule if the particular asset could be deemed to rise or fall in value dependent on general policies and actions of the administration. However, he tended in discussion to be willing to use a "Blind Trust" with gifts to charity of earnings and capital growth during government service if divestiture is impossible or too costly.

Present and Past Practice: Defense has required divestiture of stocks on a list of 5,000 companies which have done more than \$10,000 of business with Defense in the year preceding confirmation. If a Blind Trust is to be used the trustee must be instructed not to acquire any stock on the sensitive list. Other committees have, until recently, been quite accommodating on use of Blind Trusts which are not really blind because of large holdings of a particular company. All committees have been much more rigorous of late and the present climate seems to call for the Sorenson position.

Subordinate Posts: Where a continued holding would create only rare or infrequent possibilities of disqualification not seriously affecting the duties of the particular office, the practice has been not to require divestiture.

Regulatory Agencies: Several have statutes requiring divestiture of stock of regulated companies. Past practice has not gone beyond such statutes. There seems to be no strong argument that members of regulatory agencies should have to divest of stocks outside the regulated industries. But particular study ought to be given to divestiture by members of commissions with broad impact such as the Federal Reserve Board, Federal Trade Commission, and the Securities

and Exchange Commission.

Minor Real Estate Holdings: Of late many people have invested in either developed or undeveloped real estate. While the value of such holdings can go up or down depending on governmental policies and actions there seems to be no strong feeling that these must be divested. Other than the general effect on these holdings there seem few instances when a conflict in a particular case could arise except in a particular tax matter in which case disqualification would be practical in all cases. Query, the political effect of "tax shelter" used by high government officers. It should be noted that at present most real estate holdings could not be divested because of illiquidity.

Blind Trusts: Blind Trusts will be considered adequate divestiture if

(a) Trustee is demonstrably independent.

(b) Trust provisions cede absolute control to Trustee as to sale and purchase of assets and prohibit furnishing of information as to assets held pending government service.

(c) Assets placed in trust are all cash or diversified and no particular asset is of such size and of such tax basis as to make it clear to grantor that the asset has not been sold because of the absence of capital gains tax.

Revolving Door

Most of the study of questions relating to post-government service employment has gone on in the staff of the Senate Committee on Government Operations. Jim Graham, Staff Counsel on Regulatory Reform, has made available to me that portion of his report (not yet considered by the committee), and I attach it as Exhibit A. I apologize for the length of the attachment but the information in it is necessary to understand the recommendations.

Counsel to the Armed Services Committee and the Commerce Committee were not so concerned about employment after

government service as by exploiting valuable contacts in government.

Ted Sorenson was concerned that too onerous restrictions could inhibit recruitment.

The evils to be addressed:

- (a) Too rapid turn-over in regulatory commissioners,
- (b) Financial exploitation (by salary, commission, or fee) of contacts within agencies and departments used after government service.

The Graham proposal addresses (a) but does not address (b) if no bar is imposed in the circumstances.

Moore Recommendation:

(a) A prohibition for two years following government service to represent self or any other person or group by direct or indirect appearance, or formal or informal contact with any officer of government (government-wide) with reference to any matter (including rule-making) within the official responsibility of the officer during his last twelve months in office.

(b) A prohibition for two years following government service, for any fee, commission, salary, or other benefit, to represent self or any other person or group by direct or indirect appearance, lobbying, or formal or informal contacts with anyone in the agency or department in which the officer served within twelve months of termination of government service.

I do not believe any bar as to employment as such is necessary. If politically it is deemed desirable (and it may well be), I would recommend Graham's proposal with one addition, that in no event does the bar extend beyond four years less the term spent in government service.

Financial Disclosure

For three years the Commerce Committee (having confirming authority for the Commerce and Transportation

Departments and most regulatory agencies other than SEC and Federal Reserve Board) has required disclosure in files available for public viewing of three past years of sources of income and a current balance sheet. The Committee has not been aware either of any resistance from nominees or abuses of the information by the public.

Ted Sorenson had some reservations, not about disclosure, which he favors, but about the availability to the public which he feared could hurt recruitment.

If the statements are to be available to the public all concerned seemed to agree that they should be on file at the Civil Service Commission.

The options:

Sources of Income (at nominee's option, copies of tax returns): For three past years; for two past years; for one year past.

Recommendation: Last complete calendar year plus portion of year ending not more than 60 days prior to date of report.

Balance Sheet: All assets; all assets other than personal residence; same but disclosure can be as to values in brackets as to each item (e.g., less than \$5,000, \$5,000 to \$10,000; etc.)

All liabilities; all liabilities than those incurred to buy personal residence.

Recommendation: All liabilities.

Subsequent Reporting:

During Public Service: Present regulations call for initial filing and quarterly updating of lists of financial relations and names of creditors without giving values or amounts; the information is not available for public inspection.

Recommendation: Initial filing of sources of income

and balance sheet items with values and amounts; quarterly updating as to changes in balance sheet items and annual sources of income (or tax returns); all to be available for public inspection.

Post-Government Service: Present regulations require no reporting.

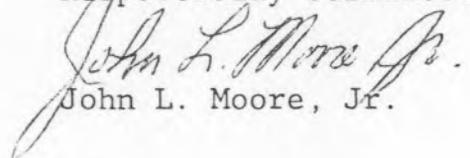
Recommendation: Continue as if in government service for two years following government service. I attach for review and change or approval:

Exhibit B - Contractual Undertaking of Nominees.

Exhibit C - Personal Data Questionnaire to be completed by nominees and processed by Special Counsel to the Transition Group (Moore) for reporting to those making final decisions.

Exhibit D - Further data obtained by present White House Staff - for consideration. If it is to be obtained, who should process the questionnaire?

Respectfully submitted,


John L. Moore, Jr.

The organic acts of almost all regulatory agencies contain no restrictions on post-employment by officers and employees. A major exception is the Consumer Product Safety Commission, which is the only agency reviewed in this study that takes the approach of flatly prohibiting commissioners from accepting certain employment. The Consumer Product Safety Act forbids members from accepting

EXHIBIT A

"employment or compensation from any manufacturers subject" to regulation by the agency for a period of one year following services. 161/ It is at once obvious that the Act contains a major loophole: former CPSC members can accept employment from wholesalers, retailers, suppliers and distributors subject to agency regulation; in that regard, 18 USC 207 applies to any subsequent practice by former regulators. Since only two CPSC members have left the agency since its creation, it is still uncertain what effect the limited or partial prohibition will have on former commissioners. However, our concern about the adverse potential of such restrictions on the government's ability to attract able and experience regulators compels us not to propose that the Act be amended to include those other employment groups within the prohibited category. Indeed, for reasons hereafter detailed, we recommend that the present

restriction on post-employment contained in the Consumer Product Safety Act be repealed.

The organic acts of two other regulatory agencies, Federal Communications Commission and the Federal Reserve Board, place some restrictions on the subsequent careers of former commissioners. Both adopt a similar approach by placing restrictions only on those commissioners who fail to complete the full term to which they were appointed. While the subsequent careers of all regulators are to some extent restricted by 18 USC 207, FRB and FCC members who leave prior to expiration of their full term are faced with additional restrictions. The Communications Act of 1934 prohibits an FCC member who has not served the full term from "representing any person before the Commission in a professional capacity" for a period of one year.^{162/} The FCC provision goes significantly

beyond that of section 207, in that it forbids representation of any person presumably on any matter for a period of one year; the regulator need not have been personally or substantially involved in order for the restriction to apply. The restriction placed on members by the Federal Reserve Act refers, not to participation before the agency, but to the matter of employment in the regulated area. That Act forbids all board members, except those who have completed their terms of office, from "holding any office, position, or employment in any member bank" for a period of two years after leaving office. 163/

Both FRB and FCC restrictions are intended to, and have the effect of, encouraging regulators to complete the terms to which they were appointed; and, in our opinion, rapid turnover of commissioners is a very serious problem. It is not unusual for a

commission to operate with only a bare majority of its members, or to have the addition of new commissioners almost on an annual basis. Many commissioners resign before the expiration of their terms. Of course, all of those problems are heightened measurably when, as is often the case, the regulator initially takes office with little or no knowledge of the functions and issues of an agency; most learn on the job. But even in the case of an experience regulator, brief service can amount to a very minimal contribution. As Frank Wheat-- an experience corporate lawyer who served 5 years on the SEC--commented: "anybody who thinks he can go to Washington and accomplish anything in one or even two years is crazy." ^{164/} While it is not clear that very long service is consistently in the public interest, there can be no doubt that very brief tenure detracts significantly from a commission's stability and effectiveness.

The Senate has been concerned about the problem of tenure for some time. Evidence of that interest is the frequently-asked question at Senate hearings whether the nominee intends to serve the entire term to which he or she was appointed. The response is always affirmative, but the premature resignations continue. It is also not a problem of recent vintage. Sixteen years ago, the Senate expressed its concern in a resolution:

" . . . it is the sense of the Senate that individuals appointed to administrative and policy-making posts should be willing to serve ^{for} a period long enough to permit them to contribute effectively ⁱⁿ ~~to~~ their assigned tasks. . . ." 165/

Yet there are positive aspects to the matter of rapid turnover which cannot fairly be overlooked. Of the twenty-one FMC and SEC members who have left office since 1961, eleven served four years

or more. Six served less than three years; but one of those resigned for health reasons, another quit due to scandal, and a third commissioner was not reappointed. SEC members served an average 4.1 years, and the commissioners of the FMC, 4.3 years. At the SEC, chairmen served about thirty-three months on the average, ^{166/} which seems to be about the standard time for other commissions. Also the average tenure of the two commissions we studied compares favorably to that of other commissions. ^{167/} Overall, it is important to note, regulatory commissioners spend significantly longer periods in office than other political executives, including administrators, cabinet and sub-cabinet members. ^{168/} (For example, FAA Administrators--who do not have set terms--averaged 3.1 years in office.) As such, disappointment with commission tenure may be partially a result of expectations created by the set term. The usual tenure for other

federal offices suggests that a commissioner could make an effective contribution over a four year period--and that, of course, is the real issue.

We remain convinced, however, that very short tenure by some commissioners is a matter of serious concern. In that regard, the approach taken in the Federal Reserve Act has substantial merit. In effect, it encourages regulators to complete the full terms to which they were appointed--or suffer the consequences of not being employed by the regulated interests for a two year period. Moreover, short service is very much a related question to conflict of interest as applied to post-employment. Restrictions upon those who resign before their terms expire addresses a major problem of appearances of conflict of interest: there is widespread public concern about regulators who serve short periods, resign in mid-term, and

then devote expertise gained during government service to personal advantage. To many, such service and subsequent employment is simply "cashing-in" on the regulatory experience. For a period of time, such restrictions will all but eliminate potential post-employment conflict of interest problems for those who chose to resign before completion of their term of office. For those reasons, we propose that the FRB approach, with modifications, be applied to all multi-member regulatory commissions. Specifically, we recommend that the organic acts of those agencies be amended to include the following provision:

- 1) A Commissioner shall not accept any employment or compensation, either direct or indirect, from any party other than the United States, subject to regulation by the Commission for a period extending until the expiration of the term to which the

Commissioner was appointed, except that this provision shall not apply to any Commissioner

(a) who has served in that office for a total of [five] [seven] [fourteen] ^{169/} years, or (b) who is removed from office as either member or chairman by the President, or (c) who certifiably resigns from office on account of ill-health.

- 2) Each agency shall formulate rules to insure that commissioners who resign prior to the expiration of their terms of office report any employment for the period over which this restriction applies.
- 3) This provision will apply to the following agencies: Civil Aeronautics Board, Consumer Product Safety Commission, Federal Communications Commission, Federal Maritime Commission, Federal Power Commission, Federal Reserve Board, Federal Trade Commission, Interstate Commerce Commission, Nuclear Regulatory Commission, and the Securities and Exchange Commission.
- 4) Present restrictions on post-employment practices contained in the Federal Reserve Act, Communications Act, and the Consumer Product Safety Act are to be repealed.

We are firmly committed to the notion that commissioners should serve the full terms to which they are appointed in order to make a maximal contribution to agency effectiveness. We further believe that if a commissioner serves a full term--whether it be five, seven or fourteen years--that contribution has been made. For that reason, an exception is made for those commissioners who serve for that number of years whether in a single term, or over several separate terms. In other words, if a commissioner is selected for a vacancy appointment of two years, then is reappointed and serves three years of a five year term, then there are no restrictions since a full term of five years was served. Obviously, any person, who accepts a short or interim term, completes it and departs, is not subject to the restrictions of our proposal; in that case, the term to which he or she was appointed has been fully served. Of the ~~nine~~^{ten} agencies

in this study with commissioners appointed for set terms, ^{five}~~six~~ are appointed for five year terms, ^{four}~~three~~ for seven years, and one for fourteen years. 171/ Another exception is made for those regulators whose departure is involuntary, either because of Presidential action or ill-health. When a commissioner is removed from office by the President, the departure is clearly involuntary. The same may also be the case when a Chairman is removed and replaced by the President. We believe that when that occurs, it would be inadvisable to require the former chairman to return to commissioner status in order to avoid the restriction; potentially, the subsequent loss of interest that often results in that situation would hinder rather than help commission effectiveness. Finally, we do not believe that it is appropriate to impose the restrictions in any case where it can be certified that the reason for resignation was ill-health.

But in all other cases, a commissioner who resigns prior to fulfillment of the responsibility to complete the term to which they were appointed does so with the understanding that they cannot be employed by industries subject to regulation by the Commission until that term expires.

CONTRACTUAL UNDERTAKING

TO: Honorable Jimmy Carter,
President-Elect of the United States Date: _____

Dear Sir:

In consideration of your nomination of me to be _____ of the United States, and in the event I am subsequently confirmed to that post by the Senate, take office, and thus become an employee of the United States, I agree as follows:

(1) I have already or will, within 30 days of taking office, file with such officers as you shall direct, as a matter of information fully available to the public as directed by you:

(a) a complete current financial net worth statement which itemizes in detail all assets and all liabilities of myself, my spouse, and other members of my immediate household. All assets and liabilities will be separately itemized and fully described;

(b) a sources of income statement for the year 1975 and for the period of time ending no earlier than 60 days before the above date listing all sources and amounts of all items of value received by me, my spouse, and other members of my immediate household, including, but not limited to, salaries, wages, fees, dividends, capital gains and losses, interest, gifts, rents, royalties, patents, and honoraria.

(2) I will not, for two years following termination of my government service, represent myself or any other person by direct or indirect appearance, or formal or informal contact with any government officer with reference to any matter within my official responsibility in government during the twelve months preceding termination of government service. "Official responsibility" as used in the preceding sentence means the direct administrative or operating authority, whether intermediate or final, and either exerciseable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action.

Exhibit B

(3) I will not, for two years following termination of my government service, for any fee, commission, salary, or other benefit, represent myself or any other person, by direct or indirect appearance, lobbying, or formal or informal contact with any person serving in the _____ Department or Agency.

(4) I will, while remaining an employee of the United States, immediately cease participation in any matter relating to any person, partnership, corporation, or any other entity as soon as I have entered into negotiations for employment, whether as a consultant, full-time employee, advisor, or any other relationship involving any item of value in exchange with any such person or entity.

(5) I will, for two years after leaving government service, file periodically in accordance with regulations to be promulgated by you statements of assets and liabilities and sources of income more particularly described in subparagraphs 1(a) and (b) above.

Very truly yours,

ACCEPTED:

Jimmy Carter, as President-Elect
of the United States

EXHIBIT B

MEMORANDUM FOR:

FROM: John L. Moore, Jr., Special Counsel to the
Carter-Mondale Transition Group

SUBJECT: PERSONAL DATA STATEMENT

As part of the clearance procedures relating to your proposed appointment, it is requested that you answer the following questions and supply the following information to us. In line with the policies of the new Administration, we expect that the information disclosed will be kept at the Civil Service Commission where it will be available for public review and inspection.

In order that we might complete all necessary reviews as soon as possible, it is requested that you supply this information at your earliest convenience and, in any event by _____, 1976.

If you have any questions or if this office can be of assistance, please do not hesitate to contact John L. Moore, Jr., who can be reached at P.O. Box 2600, Washington, D.C. 20013 (telephone number: 202-472____). You are requested to make an appointment to visit with him within three business days of receipt of these materials to discuss your response, even if your information is not complete at the time.

OUTLINE OF INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL:

1. Name: (Include any former names used).
2. Address: List current residence address and mailing address.
3. Date and Place of Birth:
4. Marital Status: (Include maiden name of wife or husband's name).
5. Names and Ages of Children:
6. Education: List institution(s), dates attended, degree received and date degree granted.
7. Employment Record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of employment.
8. Government Experience: List any experience in, or association with, federal, state or local governments, including any advisory, consultative, honorary or other part-time service or positions.
9. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable and other organizations.
10. Honors and Awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

11. Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.
12. Qualifications: State what, in your opinion, qualifies you to serve in the particular position to which you have been nominated.

B. FINANCIAL DATA:

Please note that federal law and regulations and the policies of the new Administration governing conflicts of interest require the disclosure of the information requested in Questions 1 through 8 as it pertains to you, your spouse, and other immediate members of your household.

1. The names of all corporations, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions with which you are now connected as an officer, owner, director, trustee, partner, advisor, or consultant. Those organizational affiliations which you wish to continue during the term of your appointment should be noted with an asterisk. (Please note that in the case of an attorney's client listing, it is only necessary to provide the names of major clients and those which might present a potential conflict or appearance of conflict with your proposed appointment. Please list the major clients as discussed in the previous sentence even if you intend to sever your connection with private practice during government service.)

2. The names of all corporations, partnerships, or other institutions in which you have any financial interests through the ownership of stock, stock options, bonds, equity capital, or other arrangements, including trusts. Any interests you wish to retain during your period of government service should be noted with an asterisk.

3. The names of any creditors (separately stating those to whom you may be indebted by reason of a mortgage on property used as a personal residence or to whom you may be indebted for current and ordinary living expenses), setting forth the amount of such debt, and any additional information deemed relevant to explain the transaction.

4. All your interests in real property, setting forth the nature of your interest, the type of property, and the address.

5. The names of all corporations, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions, with which you have any continuing financial interests through present employment or by reason of a pension or retirement plan, stock bonus, profit sharing, or other arrangement as a result of any current or prior employment or business or professional association. Also, supply such details as are necessary for a thorough understanding of such continuing financial interests. Particular attention should be devoted to any severance agreements which may be contemplated.

6. Provide a complete, current financial net worth statement which itemizes in detail all assets (including, but not limited to, bank accounts, real estate, securities, trusts, investments, and other financial holdings) and all liabilities (including, but not limited to, debts, mortgages, loans and other financial obligations) of yourself, your spouse, and other immediate members of your household. All assets and liabilities should be separately itemized and fully described.

7. List sources and amounts of all items of value received during each of the last three years (including, but not limited to, salaries, wages, fees, dividends, capital gains or losses, interest, gifts, rents, royalties, patents and honoraria). (In lieu of the above, you may submit copies of your federal income tax returns for these years, but their submission is not required). In addition, please list all such sources and amounts for the portion of the current calendar year ending on a date not more than 60 days ago.

8. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, executory contracts and other future benefits which you expect to derive from current or previous business relationships, professional services and firm memberships, employers, clients and customers.

C. FUTURE EMPLOYMENT RELATIONSHIPS:

1. Will you sever all connections with your present employer, business firm, association or organization if you

are nominated by the President-Elect and confirmed by the Senate?

2. Do you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? Please consider as a "plan" your own desire so to resume employment, etc. but identify whether there may be reciprocity of such desire by your employer, affiliates, etc.

3. Has anybody made a commitment to employ your services in any capacity after you leave government service?

4. If confirmed, do you expect to serve your full term of office?

D. POTENTIAL CONFLICTS OF INTEREST:

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

3. Describe any business relationship, dealing or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

4. Describe any activity during the past ten years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

F. CONTRACTUAL UNDERTAKING:

It is the view of the President-Elect that all officials of government with a substantial policy role in it should agree contractually to certain arrangements beyond the scope of present law and regulations. Please examine the attached contractual undertaking. Will you be willing to sign it prior to your formal nomination?

8. Have you ever been arrested, charged or held by federal, state, or other law enforcement authorities for violation of any federal, state, county or municipal law, regulation or ordinance? If so, please give full details (do not include traffic violations for which a fine of \$25 or less was imposed).
9. Are you currently under federal, state, or local investigation for a possible violation of a criminal statute? If so, please give full details.
10. Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? If so, please give full details.
11. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please give full details.
12. Have you ever been involved in civil litigation, or administrative or legislative proceedings of any kind, either as plaintiff, defendant, respondent, witness or party in interest, which may be sufficiently controversial or so intimately related to the area of work for which you are being considered, that your involvement may be appropriate for consideration by the committee of the Senate to which your nomination will be submitted. If so, please give full details.
13. Have you ever run for political office, served on a political committee, or been identified in a public way with a particular political organization, candidate or issue? If so, please describe.
14. Have you ever been publicly identified, in person or by organizational membership, with a particularly controversial ^{*}/ national or local issue? If so, please describe.
15. Have you ever submitted oral or written views to any government authority (executive or legislative) or the news media, on any particularly controversial ^{*}/ issue other than in an official governmental capacity? If so, please describe.

16. Have you ever written any particularly controversial ^{*}/_— books or articles? If so, please list them, giving the citations, titles and dates.

17. Have you ever had any association with any person or group or business venture which could be used, even unfairly, to impugn or attack your character and qualification for this position?

18. Do you know anyone who might take any steps, overtly or covertly, to make your confirmation by the Senate more difficult or seek to attack your appointment?

19. Please provide any other information which you regard as pertinent or which could be the possible source of embarrassment to you, or to the President, if publicly known.

* Reference to "particularly controversial" is intended to focus on issues that could be used, even unfairly, against you.

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CARTER-MONDALE TRANSITION GROUP
POLICY GUIDELINES
CONFLICTS OF INTEREST; FINANCIAL
DISCLOSURE; AND RESTRICTIONS FOLLOWING
GOVERNMENT SERVICE

It will be the policy of the Carter-Mondale Administration to appoint and nominate for appointment, only persons of high ability who will carry out their official duties without fear or favor and with an equal hand, unfettered by any actual or apparent conflicts of interests. To decree that no person can have any financial interests other than a salary from the Government would seriously limit the ability to recruit the most qualified persons. The Carter-Mondale Administration will require full disclosure of all continuing affiliations and of assets and liabilities of nominees and their immediate families. It is hoped that except in rare circumstances divestiture causing severe tax burdens will be unnecessary if the present laws and regulatory framework are diligently and fairly administered.

The following guidelines pertain to the assets and liabilities of a nominee, the spouse of the nominee, and the nominee's minor child or children, partner, or any organization in which the nominee continues to serve as an officer, director, trustee, partner, or employee while in the government service or any private organization with which the nominee has negotiated or has any arrangement concerning prospective employment.

All nominees will be expected to comply with all relevant statutes (particularly 18 U.S.C. Section 208) and the rules and practices of the particular Department or Agency served.

If the person is nominated to a Level I or II position divestiture should occur if compliance with the provisions of 18 U.S.C. Section 208 indicates a conflict requiring disqualification from action for the Government more than rarely. Nominees for positions at Level III and other positions in the Government should require divestiture because of conflicts arising under 18 U.S.C. Section 208 only if use of disqualification will seriously impair the capability of the officer to perform the duties of the office to which nominated.

Beyond the requirements of 18 U.S.C. Section 208, persons nominated to positions at Level I or II should divest holdings and liabilities where the nature of the holding or liability is such that it will be broadly affected by governmental monetary and budgetary policies. Generally excepted from requirements of divestiture (unless the particular position indicates continuing conflicts arising in government service with respect to a particular interest) will be made for:

- a. real estate interests whether in the form of ownership of land or participations in partnerships.
- b. savings certificates and accounts and U.S. and other governmental securities.
- c. other holdings which are well-diversified; e.g. less than a 1% holding of a well-diversified mutual fund or a total of not more than approximately \$500,000 invested in well-diversified assets.

Blind trusts will be recognized as appropriate methods of divestiture where divestiture is required provided:

- a. the trustee is truly independent;
- b. the assets transferred in trust are either cash or well-diversified assets;
- c. the trustee is given entire discretion to sell or buy without discussion with the government officer or anyone close to such officer and the only reports given to the government officer are the schedules necessary to file with income tax returns (which schedules do not list anything more than totals of taxable items from the trust).

The attention of nominees will be directed to the provisions of 18 U.S.C. Section 209 prohibiting receipt of any compensation from any party other than the United States for government service. While the matter of payments for services prior to entry into government service are properly addressed by legal counsel to the appointee and the organization making the payment, the following general guidelines seem appropriate:

- a. If there is a pre-existing established plan of the particular organization to reward past service upon termination of service to the organization, obviously such plan can be recognized and followed.

- b. If there is no pre-existing established plan of the particular organization it is suggested that a payment in excess of 6 months of salary or in excess of a range of \$50,000 to \$75,000 would need careful examination.

In all events, it is expected that payment of any severance benefits will be completed prior to the nominee's taking office in the Government or within a reasonable time thereafter.

While 18 U.S.C. Section 209(b) allows continuing participation in a bona fide pension, retirement, group life, health or accident insurance, profit sharing, stock bonus, or other employee welfare benefit plan maintained by a former employer, nominees will be asked generally to exercise any stock options prior to commencement of government service (unless, because of the requirements of the Securities Exchange Act, such exercise should occur within a reasonable period after beginning government service in which case the government officer may exercise within such limited period, providing other guidelines are followed concerning conflicts of interests as above stated). Nominees will also be asked not to have contributions made to profit sharing plans by former employers based on earnings of the former employer after the government officer takes office.

Deviations from the foregoing guidelines will only be made with the express consent of the President-Elect with respect to Level I and II appointments and by heads of departments or agencies with reference to other appointments. The reasons for the deviations will be made public.

It is proposed to ask appointees to enter into a letter of commitment, a copy of which is attached, which, in several respects calls for the disclosure of financial information beyond the requirements of existing law and regulations. It is contemplated that the financial disclosure requirements will be made subject to an Executive Order shortly after the new Administration takes office. The attached letter of commitment also describes certain restrictions requested of nominees following government service. Shortly after the new Administration takes office Congress will be requested to take action along the lines spelled out in the attached letter of commitment.

It will be the policy of the new Administration to encourage every Department and Agency of the Government to advise every new employee of existing laws and regulations relating to conflicts of interests and to have a prior screening of such conflicts at the time of appointment. It will be a further policy to encourage Departments and Agencies to institute procedures for continuing policing of conflicts.

It is the objective of the new Administration to avoid any conflict which could in any way influence any government officer except in the even interest of all the people.

MEMORANDUM FOR:

FROM: John L. Moore, Jr., Special Counsel to the
Carter-Mondale Transition Group

SUBJECT: PERSONAL AND FINANCIAL DATA

As part of the clearance procedures relating to your proposed appointment, it is requested that you answer the following questions and supply the following information to us. In line with the policies of the new Administration, we expect that the information disclosed will be kept at the Civil Service Commission where it will be available for public review and inspection, except that the income tax returns supplied by you will not be made available to the public unless you direct otherwise. For your information a copy of guidelines concerning conflicts of interest, financial disclosure, and restrictions following government service is enclosed.

In order that we might complete all necessary reviews as soon as possible, it is requested that you supply this information at your earliest convenience and, in any event by

If you have any questions or if this office can be of assistance, please do not hesitate to contact John L. Moore, Jr., who can be reached at either of the addresses shown below. You are requested to make an appointment to visit with him within three business days of receipt of these materials to discuss your response, even if your information is not complete at the time. Of course, Mr. Moore will be happy to consult with your attorney or other advisers.

Suite 1000
1800 M Street
North Building
Washington, D.C. 20036

Telephone: 202-223-1300

or

1200 Citizens and Southern National Bank Building
Atlanta, Georgia 30303

Telephone: 404-588-0300

OUTLINE OF INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL:

1. Name: (Include any former names used).
2. Address: List current residence address and mailing address.
3. Date and Place of Birth:
4. Marital Status: (Include maiden name of wife or husband's name).
5. Names and Ages of Children:
6. Education: List institution(s), dates attended, degree received and date degree granted.
7. Employment Record: List all positions held since age 21, including the title or description of job, name of employer, location of work, and dates of employment.
8. Government Experience: List any experience in, or association with, federal, state or local governments, including any advisory, consultative, honorary or other part-time service or positions.
9. Memberships: List all memberships and offices held in professional, fraternal, social, scholarly, civic, charitable and other organizations.
10. Honors and Awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

11. Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

B. PERSONAL DATA:

1. Have your federal or state tax returns been the subject of any audit or investigation or inquiry at any time?

If so, explain.

2. Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities?

If so, give full details.

3. Have you ever been arrested, charged or held by federal, state, or other law enforcement authorities for violation of any federal, state, county or municipal law, regulation or ordinance? If so, please give full details (do not include traffic violations for which a fine of \$25 or less was imposed).

4. Are you currently under federal, state, or local investigation for a possible violation of a criminal statute? If so, please give full details.

5. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please give full details.

6. Have you ever been involved in civil litigation, or administrative or legislative proceedings of any kind, either as plaintiff, defendant, respondent, witness or party in interest, which may be sufficiently controversial or so

intimately related to the area of work for which you are being considered, that your involvement may be appropriate for consideration by the committee of the Senate to which your nomination will be submitted. If so, please give full details.

7. What is the condition of your health?

Have you had a physical examination recently?

Who was your physician?

8. Have you ever had psychiatric or similar treatment?

9. Without details, is there or has there been anything in your personal life which you feel, if known, may be of embarrassment to the Administration in the event you should be nominated?

What about any near relative?

C. FINANCIAL DATA:

Please note that federal law and regulations governing conflicts of interest require Presidential appointees within 30 days of their entrance on duty to provide reports of specified financial interests as to themselves, their spouses and any blood relation who is a household member. The initial five matters listed below are designed to elicit financial information similar to--although, in some cases, broader in scope than--that which all Presidential appointees are required to provide by Executive Order of the President. The remaining paragraphs in this section seek elaboration on your financial status beyond that which the existing Executive Order and regulations require. As to all matters, please provide the requested information for yourself, your spouse, and any blood relations who are part of your household.

1. List the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions--

- (A) with which you are now connected as an employee, officer, owner, director, trustee, partner, advisor, attorney, or consultant. (Attorneys and consultants need list only their major clients, but should include all of those whom you represent on a regular basis or which might give rise to an appearance of bias on your part in connection with your proposed appointment.) Any listed relationship or affiliation that you wish to continue during the term of your appointment should be noted with an asterisk.
- (B) in which you have any continuing financial interests, through a pension or retirement plan, stock bonus, shared income, severance pay agreement, or otherwise as a result of any current or prior employment or business or professional association. As to each financial arrangement, provide all details necessary for a thorough understanding of the way in which the arrangement operates, including information concerning any renewal right you may have if the arrangement is allowed to lapse and whether lump sum or severance benefits are available in lieu of continuation of the interest.
- (C) in which you have any financial interest through the ownership of stocks, stock options, bonds, partnership interests, or other securities. Any interests held indirectly through trusts or other arrangements should be included. Any listed interests that you wish to retain during your period of government service should be noted with an asterisk.

2. Provide a complete, current financial net worth statement that itemizes in detail all assets. (including,

but not limited to, bank accounts, real estate, securities, trusts, investments, and other financial holdings) and liabilities (including, but not limited to, debts, mortgages, loans and other financial obligations). Assets representing personal or household goods, and liabilities for current and ordinary household and living expenses must be included but but need not be separately itemized.

3. List sources and amounts of all items of value received during calendar year 1975 and the portion of 1976 selected by you ending no earlier than 60 days prior to the date of your reply (including, but not limited to, salaries, wages, fees, dividends, capital gains or losses, interests, rents, royalties, patents, honoraria, and gifts other than those of nominal value). In lieu of such a listing for 1975, you may submit a copy of your federal income tax returns for 1975, although the submission of income tax material is not required under this item.

4. Please provide for review by this office (but not for passing on to Senate Committee staff or to the public) copies of your federal income tax returns for 1973, 1974, and 1975.

D. FUTURE EMPLOYMENT RELATIONSHIPS:

1. Will you sever all connections with your present employer, business firm, association or organization if you are nominated by the President-Elect and confirmed by the Senate?

2. Do you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

3. Has anybody made a commitment to employ your services in any capacity after you leave government service?

4. If confirmed, do you expect to serve your full term of office?

E. POTENTIAL CONFLICTS OF INTEREST:

1. Describe any business relationship, dealing or financial transaction which you have had during the last five years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

2. Describe any activity during the past five years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

3. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements).

F. LETTER OF COMMITMENT

It is the view of the President-Elect that all officials of government with a substantial policy role in it should agree contractually to certain arrangements beyond the scope of present law and regulations. Please examine the attached letter of commitment. Will you be willing to sign it prior to your formal nomination?

LETTER OF COMMITMENT

TO: Honorable Jimmy Carter,
President-Elect of the United States

Date: _____

Dear Sir:

If you nominate me to be _____ of the United States, and in the event I am subsequently confirmed to that post by the Senate, take office, and thus become an employee of the United States, I pledge as follows:

(1) I will comply in all respects with the Federal Conflict of Interest Laws and related regulations applicable to my office, both during and after my term of office.

(2) I have already or will, within 30 days of taking office, file with such officers as you shall direct, as a matter of information fully available to the public as directed by you:

(a) a complete current financial net worth statement which itemizes in detail all assets and all liabilities of myself, my spouse, and other members of my immediate household. All assets and liabilities will be separately itemized and fully described;

(b) a sources of income statement for the year 1975 and for the period of time ending no earlier than 60 days before the above date listing all sources and amounts of all items of value received by me, my spouse, and other members of my immediate household, including, but not limited to, salaries, wages, fees, dividends, capital gains and losses, interest, gifts, rents, royalties, patents, and honoraria.

(3) I will not, while in office, participate in any matter in which any private organization with which I was associated prior to taking office is appearing or has a direct and substantial interest. Moreover, I will immediately cease participation in any matter relating to any private organization as soon as I have entered into negotiations for employment or association with that organization whether as a consultant, employee, partner, or any other relationship of financial value.

(4) I recognize that following termination of my government service, I will be permanently barred by federal law (18 U.S.C. § 207 (a)) from acting on behalf of anyone other than the United States in connection with any matter in which I participated personally and substantially in my governmental capacity. I also recognize that for a period of one year following termination of my government service I will be barred by federal law (18 U.S.C. § 207 (b)) from appearing personally before any court, department or agency on behalf of any one other than the United States in connection with any matter which was under my official responsibility during the last year of my government service. "Official responsibility" as used in the preceding sentence and in paragraph 5 below means the direct administrative or operating authority, whether intermediate or final, and either exerciseable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action.

(5) I will not, for two years following termination of my government service, deal with or represent in any professional or business capacity myself or anyone other than the United States by direct or indirect appearance, or formal or informal contact with any government officer with reference to any matter within my official responsibility in government during the twelve months preceding termination of government service.

(6) Neither I nor any partner or business or professional associate of mine will accept any employment or compensation either direct or indirect, from any Interested Party as below defined sooner than the earliest to occur of the following events:

(a) the passage of four years from the time I take office and become an employee of the United States;

(b) the passage of the term of office for which I am accepting appointment;

(c) your removing me from my government office or my resignation at your request; or

(d) ill health or other serious personal circumstance requires me to leave government office.

"Interested Party", as used in this undertaking, shall mean any party directly regulated by the _____ Agency or Department or Division thereof or with which such Agency or Department or Division thereof has entered into a single contract or made a grant or granted a

license or permit during the last 12 months of my government service involving the payment or grant of a license or permit having a value of more than \$10,000 by the United States of America or a party negotiating at the time of termination of my government service for a contract, grant, license, or permit involving the payment or grant of license or permit having a value of more than \$10,000 by the United States of America. "Directly regulated" as used in the preceding sentence shall mean that the particular Interested Party was, during the last 12 months of my government service the subject of any adjudication, licensing, or rule-making, by the above named Agency or Department or Division insofar as such rule-making directly affected such Interested Party in a substantial and particular way.

I agree that, if there is any doubt as to the applicability or interpretation of the foregoing commitments in this Paragraph 6 that I will abide by a ruling thereon by you, if I am a Department or Agency head, or by the Department or Agency I served otherwise.

I understand that you reserve the right to waive the requirements of this Paragraph 6 if you find it to be in the public interest to do so.

(7) I will, while in government service and for two years after leaving government service, file periodically in accordance with regulations to be promulgated by you statements of assets and liabilities and sources of income more particularly described in subparagraphs 2(a) and (b) above.

(8) I agree to give ninety (90) days' notice prior to resignation from government service unless otherwise requested by you.

Very truly yours,

ACCEPTED:

Jimmy Carter, as President-Elect of
the United States