

THE WHITE HOUSE

WASHINGTON

October 14, 1992

Dear Mr. Potts:

This letter responds to your letter of August 12, 1992, containing the results of the review of the White House Office's ethics program conducted by the Office of Government Ethics (OGE) under Section 402 of the Ethics in Government Act, as amended. This letter also responds specifically to the four recommendations contained in your letter, all of which pertain to financial disclosure requirements.

General comments. We are pleased that OGE recognizes that our Office's "continuing emphasis on counseling and advice services, as well as education and training, are the strong points of [our] program[,] and that "Supplemental written guidance and ethics officials' frequent contact with WHO employees are very responsive and address ethics issues and questions as they arise." We are also pleased that OGE identified no conflict-of-interest issue in the course of its review of a sampling of thirty-seven public financial disclosure reports.

Although OGE's description of this Office's ethics responsibilities notes our Office's review of the financial disclosure reports of persons under consideration for Presidential appointment, OGE apparently did not review our performance of this responsibility in the course of its review.

As you know, the review of financial disclosure reports of prospective Presidential appointees is critical to ensuring the public's confidence in the integrity of the Executive Branch, a cardinal objective of this President. We consider this review responsibility to be a primary, not ancillary, part of the White House Office's ethics program. Our Office devotes a considerable amount of attention and resources to the ethics review of prospective Presidential appointees, as well we should. Clearance by our Office, which is based in large part on our ethics review, is a necessary predicate to nomination by the President.

For many prospective appointees, our review of their financial interests and their outside affiliations during the White House clearance process, and the ethics advice we provide in the course of this review, is their first real introduction to the various ethics restrictions to which they will be subject during their Federal appointment. Their commitment to take all necessary and appropriate measures to avoid a conflict of interest or even the appearance of impropriety is made at this time.

Moreover, we have established an excellent working relationship

with agency ethics officials and with your Office. Together, our effort in the nomination and appointment process has been a significant benefit to the Administration. Our mutual success can be judged by the virtual absence of ethics issues from the confirmation process over the past four years as well as the paucity of reports and allegations of ethics lapses by Presidential appointees in this Administration.

We now turn to the specific recommendations contained in your letter.

The public financial disclosure system. The OGE review made three recommendations:

- (1) Improve procedures for identifying and notifying new entrants of the filing requirements and monitoring their filing;
- (2) Ensure that filers are aware of and comply with filing deadlines and procedures to obtain an extension of time of waiver of the late filing fee;
- (3) Review all public reports within sixty days.

We believe we have satisfied all three recommendations.

(1) Since January 1992, procedures have been in place to ensure that all new entrants are identified and notified of the filing requirements. New entrants consist of all officials who enter the White House as a Commissioned Officer, White House officials who are promoted to the status of a Commissioned Officer, and White House officials who are given a raise in pay that makes them a public filer based on their rate of pay. The White House Personnel Office distributes the public financial disclosure form to all new entrant Commissioned Officers as part of the ethics materials they are given upon entry to the White House. For those White House officials who become new entrants as a result of promotion, the White House Personnel Office notifies the Executive Assistant to the Counsel to the President of the fact and date of promotion, and the Executive Assistant sends the form to the official. As a back-up, for all new entrants, the White House Personnel Office notifies the Alternate Designated Agency Ethics Official of the fact of the hiring or promotion and the official start date or date the promotion becomes effective.

On a monthly basis, the White House Personnel Office sends our Office payroll lists of White House Office employees, divided into six pay categories, with an "additions and deletions" report, and includes copies of all personnel actions designating the applicable pay category for a specific employee. The Administrative Officer of the Office of Policy Development (OPD) also sends our office a monthly listing of OPD personnel,

including a separate listing of changes in personnel, broken down by salary level.

These lists enable our Office to alert White House Office and OPD employees to the public filing requirements to which they may be subject as a result of a promotion in pay or becoming a Commissioned Officer. These lists also assist our Office in identifying those officials who will be subject to a cooling-off period when they leave the White House so that we may brief them on the applicable post-employment restrictions in a timely manner.

Since January 1992, a procedure has been in place to monitor the filing of reports. The Executive Assistant to the Counsel to the President maintains a master list of all public filers and calls the office of any filer whose report has not been filed within a week it is due.

(2) All new entrant and incumbent filers are aware of the filing deadline and of the late filing fee. Since January 1992, the Executive Assistant to the Counsel to the President has sent to each new entrant a short memorandum attached to the financial disclosure form. The memorandum emphasizes the late filing fee, but purposefully does not inform the filer of the procedures to obtain an extension of time or to request a waiver of the late filing fee, and does not even note the 30-day grace period.

A memorandum is also attached to the financial disclosure form that is given to incumbents. Our office notes the deadline and late filing fee in a memorandum requesting that the official submit the form in draft so that our office can review it informally and return the draft form with comments and recommended revisions. Again, the memorandum does not inform the filer of extension or waiver procedures, and does not even note the 30-day grace period.

We wish to discourage requests for extensions of time simply because of the heavy workload and demanding schedule of White House officials. We also believe that apprising officials that there is no personal consequence to filing late so long as it is within the grace period would not promote filing on time. As a filing deadline approaches, we discuss with the filer or the filer's assistant whether an extension of time is needed. Our office drafts the request for extension based on the information provided by the filer, and ensures that the filer signs the request before the filing deadline.

All incumbent reports for calendar year 1991 were timely filed this year; fifty-six officials filed by May 15, and another eight officials filed within the extension of time granted on May 15. No report was filed later than June 10.

(3) Public disclosure reports are now being reviewed within sixty days of filing. In fact, since December 1991, new entrant reports have been reviewed on average within fifteen days of their receipt, and no new entrant report has been reviewed later than sixty days. Termination reports submitted since December 1991 have been reviewed on average within twelve days; in only one case did the review take more than sixty days. (One new entrant report and one termination report that were timely filed and reviewed within thirty days have not been certified, pending resolution of a few remaining issues.) During this time the White House Office experienced a significant deal of turnover as a result in the two changes in the Chief of Staff position, and the departure of several officials to work on the campaign. In addition, for the many new entrants to the White House who were not required to file a report because they moved from one covered position to another within thirty days, our Office reviewed their most recent financial disclosure report on average within thirty days.

This year, a majority of incumbent reports that were required to be filed were reviewed and certified before the May 15 filing deadline. All sixty-nine incumbent reports but one were reviewed within sixty days of receipt; only three reports were not certified within sixty days of filing (one remains pending as of this date), in each case because more time was needed to answer questions and make appropriate revisions. We have followed up as appropriate in all cases.

In the future, for those reports that are not reviewed and certified within sixty days of filing because additional information requested from the filer is pending, we will place a notation to this effect on the report, as recommended by OGE.

The confidential financial disclosure system. OGE concluded that the White House Office has not yet established a confidential financial disclosure system. This is not accurate. All employees of the White House Office, the Office of Policy Development, the President's Foreign Intelligence Advisory Board, the President's Intelligence Oversight Board and the Executive Residence who are not a Commissioned Officer but who are paid a rate of pay between GS-13 and GS-15 are required to complete, upon entry to the White House, a Confidential Statement of Financial Interests (OA-39), as well as a Personal Data Statement, which relates in part to an employee's past and present financial interests, fiduciary obligations and other outside affiliations. This system is required by 3 C.F.R. 100.735-24 (which has now been superseded by 5 C.F.R. 2634.902(c), effective October 5, 1992) and has been in place throughout this Administration.

For the most part during this Administration, these reports were filed in a timely manner. And since December 1991, confidential

reports have been reviewed on average within ten days of filing. However, our Office has not required employees to file annual confidential reports, anticipating -- incorrectly -- OGE's issuance of new confidential filing requirements during this time.

The OGE review recommends that we establish a "confidential financial disclosure system that will meet the requirements of the confidential financial disclosure regulations" published as an interim rule in April 1992 (after OGE completed its review of our Office) and not made effective until October 5, 1992. We believe we have already satisfied this recommendation.

New Subpart I of Part 2634 requires the White House Office to determine the employees who meet the definition of the term "confidential filer." 5 C.F.R. 2634.904. The White House Office has done that. We provided each office and component head with a complete and updated list of employees of that office or component and a relevant summary of the criteria used to determine who should be required to file a confidential report. We asked each of them to return their list noting the employees, if any, who they believe fit the criteria. In many cases, we discussed the filing criteria with the office or component head, or with their deputy or executive assistant.

We now have assembled a list of "confidential filers." However, as you know, the new confidential financial disclosure form, SF-450, has not yet been distributed, and in August OGE authorized agencies to delay the October 31 filing deadlines for both new entrant and annual filers because of form availability problems. The White House Office is poised to disseminate the SF-450 to "confidential filers" once the forms are received.

In closing, your letter notes that OGE will schedule a "brief follow-up review" within six months of your letter. We invite OGE to schedule this follow-up review at any time following your receipt of our response. Please contact Gregory S. Walden of my staff to schedule a mutually convenient time.

Sincerely,



C. Boyden Gray
Counsel to the President

The Honorable Stephen D. Potts
Director
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20500