United States
Office of Government Ethics
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March 6, 2002

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Henry A. Waxman
Ranking Member
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Mr. Waxman:

We have reviewed HR 3843, the Federal Information Technology Workforce and Acquisition Improvement Act. While we defer to the Office of Personnel Management on the need for this program, this bill does have deficiencies in the manner in which the ethics laws would or would not apply to the participants. General ethics restrictions that should be applicable to the private sector employees who come into the Government need to be expanded and clarified and the ethics standards that will apply to at least some of the employees who go to the private sector under this program need to be clarified. This would need to be addressed in order to protect properly the individuals as well as the Government.

First, Government employees who would go to the private sector will pursuant to this bill's terms be serving on a detail that is a regular federal work assignment. Thus, all conflict of interest laws will continue to apply to them while carrying out their responsibilities at the private company. However, while the normal expense of an employee plus any supplemental pay will be provided to the employee through his or her employing agency rather than the private company host, there appears to be an additional benefit the employee may take directly from the private corporation. This would arise from an insurance policy under 3703(b). This benefit, if accepted directly, will implicate 18 U.S.C. § 209 for both the recipient and the payer.

Second, the bill improperly attempts to exempt the private sector individuals who serve in the Government from the executive branch gifts statute (5 U.S.C. § 7353(a)(1)), from the bribery statute (18 U.S.C. § 201) and from the restriction on supplementation of salary from <u>any</u> source (18 U.S.C. § 209), not just the employer from which they came. Payment by the private sector employer of the salary of the individual while he or she works in the Government would need to be dealt with

in 3704(b)(1) rather than simply exempting the individual from the criminal statute governing supplementation of Government salary from <u>any</u> private source. As an exchange program, either the Government or the private employer (or a combination) should be the only source of his or her salary during the pendency of this program. Further there should be no attempt to exempt individuals who serve in the executive branch from the restrictions against accepting bribes, or accepting gifts and gratuities from prohibited sources. Thus, we strongly object to the inclusion of the exception in 3704(b)(2)(A), and the exclusion of the references to sections 201 and 209 in 3704(b)(3)(B).

While we defer to the Office of Federal Procurement Policy with regard to the appropriate application of the Procurement Integrity Act, we believe that the reference now contained in 3704(b)(3)(G) of the draft is an error. Further if these individuals do find themselves engaged in the type of significant procurement activities or have access to the sensitive contract information specified in the Procurement Integrity Act, we are not aware of any justification for exempting these individuals from the current restrictions, except to the extent that it would prohibit them from returning to their employer at the end of the detail.

Finally, we also note that 3705 would allow a Government contractor to write the expenses of this program off as a direct cost of a fixed price or time and material contract with the Government. Please note however, that the private sector individuals, pursuant to 18 U.S.C. § 208 and ethics regulations, will not be allowed to participate in any matter that has an affect upon the financial interests of the private employer, including the contract for which these costs become "expenses." This "expensing" provision may unfortunately create the appearance that the individuals coming into the Government under this program will be able to continue to carry out duties under the same contract with the private employer while in the Government or that the Government employees who are detailed to the private contractor may represent that contractor to the Government during their detail. Both activities, if engaged in, would trigger a criminal conflict of interest statute.

We are happy to work with the Committee on these issues. We understand that other agencies may have other concerns with H.R. 3843 which will be communicated separately.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Amy L. Comstock

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Director