

NOMINATION OF AMY L. COMSTOCK

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF AMY L. COMSTOCK, TO BE DIRECTOR OF THE OFFICE
OF GOVERNMENT ETHICS

MAY 12, 2000

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NOMINATION OF AMY L. COMSTOCK

FRIDAY, MAY 12, 2000

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:08 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Fred Thompson, Chairman of the Committee, presiding.

Present: Senators Thompson, Collins, Lieberman, and Levin.

OPENING STATEMENT OF CHAIRMAN THOMPSON

Chairman THOMPSON. Senator Lieberman has been delayed, so we will go ahead and start.

This morning we will be considering the nomination of Amy Comstock to serve as the Director of the Office of Government Ethics. The rules of the Committee on Governmental Affairs mandate that an inquiry be conducted into the experience, qualifications, suitability, and integrity of the nominee to serve in the position to which she has been nominated. The Committee has received all the required information.

In addition, the nominee has responded in writing to prehearing questions submitted by the Committee concerning issues that are relevant to the position for which she has been nominated. Copies of the nominee's biographical information and prehearing responses will be placed in the record as part of this hearing and are available upon request. The financial statements are available for inspection by the public in the Committee offices.¹

In addition, I have received several letters of support for the confirmation of Ms. Comstock, and I would ask that they be included in the Committee record as well.²

Committee staff has reviewed all of the information. In addition, staff has examined the financial disclosure report submitted by the Office of Government Ethics. The Committee's Ranking Member Senator Lieberman and I have reviewed the FBI background investigation report.

Committee rules require that all nominees be under oath while testifying on matters relating to their suitability for office, including the policies and programs which the nominee will pursue if confirmed.

¹The biographical information and pre-hearing questions referred to appear in the Appendix on pages 17 and 24 respectively.

²The letters referred to appear in the Appendix on pages 34 to 40.

So would you please stand and raise your right hand? Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. COMSTOCK. I do.

Chairman THOMPSON. Please be seated. Thank you.

Welcome to the Committee, Ms. Comstock. At this time would you like to acknowledge any members of your family that you might have in the audience today?

Ms. COMSTOCK. I would, Senator. Thank you. My husband, Patrick Morris; my daughter Andrea Morris; my son Daniel Morris; and my mother, Jean Comstock.

Chairman THOMPSON. Thank you. I have a son Daniel myself, so I will remember him.

Would you like to make an opening statement at this time?

**TESTIMONY OF AMY L. COMSTOCK, TO BE DIRECTOR OF THE
OFFICE OF GOVERNMENT ETHICS**

Ms. COMSTOCK. I would. Thank you, Mr. Chairman.

Twelve years ago, I made the decision to build a career in the Federal Government. I regarded public service as an honorable career and was hoping that I would find it rewarding as well. I have, in fact, found it to be both.

As someone who believes in the ideal of public service, it is a particular honor to be before you today participating in the appointments process that was established over 200 years ago, and I have to confess to also being more than a little pleased that my children are here to see their mother participate in that process.

As you already know, I have worked in the field of government ethics for many years. I believe that it is important for the government as a whole and for the success of each agency for there to be a strong Executive Branch ethics program. A strong ethics program is a key component to assuring the taxpayers that the government's business is, in fact, being conducted with impartiality and with integrity. A strong ethics program is equally important for the employees themselves. The vast majority of the people with whom I have worked genuinely want to do the right thing and to follow the rules. But given the sometimes complicated issues that can arise, they need a good ethics program to help them do that.

I have worked closely with the Office of Government Ethics during these years, and I believe that they have done a tremendous job of establishing a program through both regulations and guidance that allows each agency to have its own ethics program tailored to its unique issues and needs, while still ensuring that all Executive Branch employees are held to the same standards and rules.

Growth and change are a part of life, however, and as I indicated in my prehearing questionnaires, I believe that there are some areas where the Executive Branch ethics program can be strengthened and fine-tuned.

If I am confirmed as Director, I am quite aware that I will be beginning my tenure at a very busy time for OGE and the government. The transition season begins for OGE before the election, with many employees preparing to leave government service. While I feel a little bit like a tax lawyer joining a new law firm on April

1, I view this timing as a real opportunity for me, if confirmed as Director, and for OGE. This is a time to take a leadership role to further foster the belief that ethical considerations must be incorporated into the work that agency officials do each and every day and to work through the transition to ensure that each agency has in place a strong ethics program that is utilized by all employees.

Once again, Mr. Chairman, Senator Collins, it is an honor to have been nominated for this position and to be here today.

Chairman THOMPSON. Thank you very much.

The Committee has a few standard questions that we ask of all of our nominees for the record. Is there anything that you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. COMSTOCK. No.

Chairman THOMPSON. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. COMSTOCK. No.

Chairman THOMPSON. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted member of Congress if you are confirmed?

Ms. COMSTOCK. Yes.

Chairman THOMPSON. At this time I have a few policy questions I would like to ask you.

I understand you recently attended a symposium hosted by the Brookings Institution and the Heritage Foundation which served to launch the Presidential Appointee Initiative. It is a matter that many of us have been concerned about, especially on this Committee. Many of us have been concerned about the current Presidential appointment process as being too lengthy and too complex. And one aspect of the appointment process is your agency's review of the nominee's finances in order to determine whether or not there are any conflicts of interest, obviously a very important matter.

But the question has arisen as to whether the requirements that we put on these people who want to come forward for a few years of public service, have gotten so onerous and so complex that we are actually deterring qualified people from entering public service.

Do we require too high of a level of financial disclosure for these nominees, in your opinion?

Ms. COMSTOCK. In my opinion, there are really two parts to that. In order to ascertain whether there's a conflict of interest, I do believe that the Executive Branch financial disclosure form, as I indicated in my questionnaires, asks, in places, for a level of detail that is not needed for a determination, at least at the first cut, of whether there's a conflict of interest, and that information can be difficult to obtain.

Having also been on both sides of this process, being a nominee as well as having reviewed forms for a number of nominees, I think many of the questions that are asked by the administration, the Senate, and on the financial disclosure form ask for the same general information but are asked in slightly different ways or for

slightly different time periods, so that the filer essentially has to dig up and recount, re-evaluate information three times. I think that the process could be streamlined and coordinated.

My experience with the Office of Government Ethics is that they are extremely timely in their review, but in the financial disclosure forms they are implementing statutory requirements. If I'm confirmed as Director, I would like to work with the Office of Government Ethics to see if there are areas where we think we could lessen the burden of financial disclosure without diminishing the information that we need for conflicts analysis and help to coordinate and certainly be a significant party at the table with the White House and the Senate to see if we can find a way to coordinate those forms without lessening the unique needs of each of those entities.

Chairman THOMPSON. Well, this Committee is working on legislation that is designed to raise some of the issues that were raised in this symposium that I referred to, and one proposal is to ask the Office of Government Ethics to provide Congress with its recommendations for streamlining the process, avoiding unnecessary reporting requirements and duplication and that sort of thing.

Would you be supportive of such a request of your office, if confirmed?

Ms. COMSTOCK. I would be very supportive of such a request, Mr. Chairman. I believe that it's very important to do what we can to move the process forward. I would—I have discussed this with the Office of Government Ethics. There is some concern in terms of timing because, as you know, we're entering what might be viewed as their peak season, and this is an extremely important request. And in order to do justice to it, we wouldn't want either changes midstream in the peak season and we are concerned about timing. So I would just ask if we could work with your Committee in terms of timing. But I'm very interested in this issue and believe that we could streamline—we could provide you with some good solid recommendations.

Chairman THOMPSON. Well, good. We will look forward to working together on that.

Just very generally, you will be heading an agency charged with providing overall guidance on a wide variety of ethics issues in the Executive Branch. Do you have a sense of what your priorities will be and the challenges you will be facing? In particular, in this Committee, we are interested in the Federal civil service. Has the Office of Government Ethics, if you know at this point, been able to sufficiently recruit and retain qualified employees in the number that is needed? We are seeing a problem government-wide in this regard. We have just had hearings with regard to cyber terrorism, for example, and the attacks on our computers, and obviously we all know what has been going on around the country there.

One of the things that we are facing—of course, the government has a bigger problem than anybody. People say, What is the government going to do about private industry? First of all, the government can clean up its own house. We are a long way from doing that. Part of that problem is the difficulty in retaining qualified people, getting qualified people to start with and then retaining them. We are coming into an era of specialization. OGE is a dif-

ferent kind of situation, but the same general principles and, I think, questions arise.

Have you had a chance to get a handle on that yet? I know you haven't been there, but you have been liaison with them and I know have dealings with them.

Ms. COMSTOCK. Yes, Mr. Chairman, actually, as you indicated, I have not asked for information that would otherwise not be available to me except in my liaison role. But my experience with the Office of Government Ethics is that they, in fact, have had a fabulous retention record with their employees.

I have worked most closely with the Office of General Counsel in the agency, and I believe they do have strong retention. I don't know for other positions where I might not have as much direct contact, I don't know what their—whether they have recruitment problems. But I do share your concerns about civil service government-wide. That's something I care about.

Chairman THOMPSON. All right. Let me ask you about the well-known mortgage guarantee of the President and the First Lady. To summarize it, it appears that at a particular point in time last fall there was a loan guarantee or the offer of a loan guarantee by a private individual to the President and the First Lady for a home in Westchester, New York. The First Lady and her people, and perhaps the President, indicated at the time that they had run this matter by the Office of Government Ethics and it was permissible for them to accept this loan guarantee.

Mr. Potts, the Director of the Office of Government Ethics, said publicly: We never did pass on that issue as to whether or not it was acceptable for them to accept this loan guarantee. What we passed on was the question of whether or not it was to be disclosed.

Our understanding is you were the intermediary, perhaps, between Cheryl Mills, the White House Legal Counsel, and either Mr. Potts directly or the Office of Government Ethics in general. Can you tell us what happened with regard to that?

Ms. COMSTOCK. Yes, sir, I'd be happy to. I was asked to determine with the Office of Government Ethics as part of my liaison role whether the loan mortgage guarantee arrangement would be required to be disclosed on the President's public financial disclosure form.

Chairman THOMPSON. All right. Who asked you to do that?

Ms. COMSTOCK. Cheryl Mills.

Chairman THOMPSON. All right.

Ms. COMSTOCK. And I actually cannot—timing, I'd have to look back to determine whether she was Deputy Counsel or Acting Counsel at that time.

Chairman THOMPSON. So what did you do?

Ms. COMSTOCK. So I contacted the Office of Government Ethics. We discussed it.

Chairman THOMPSON. Who did you talk to over there?

Ms. COMSTOCK. Marilyn Glynn in the Office of the General Counsel. We discussed it probably two times, I think two times, and came to the conclusion that under the regulations that apply to the reporting requirements and financial disclosure form that this arrangement did not constitute a gift that needed to be reported, under the gift reg definition.

Chairman THOMPSON. Right. So did you report this back to Ms. Mills?

Ms. COMSTOCK. Yes, I did.

Chairman THOMPSON. And your report to her basically was that it was OGE's opinion it did not need to be disclosed?

Ms. COMSTOCK. On the financial disclosure form.

Chairman THOMPSON. On the financial disclosure forms.

Ms. COMSTOCK. Right.

Chairman THOMPSON. Was there, in fact, any determination by OGE as far as you knew as to whether or not it was permissible to accept the loan guarantee at that point?

Ms. COMSTOCK. No, I never discussed that with them.

Chairman THOMPSON. All right. Then you saw the public statements that were made that, in fact, OGE had, in fact, made a determination that it was permissible for them to accept the loan guarantee, I assume.

Ms. COMSTOCK. I did see them.

Chairman THOMPSON. Then later, I think Mr. Potts said that the President has great latitude in what he can accept and that there was no reason to believe why this would not fall under that general umbrella, I think something along those lines; and if he had been asked, he would have addressed it more specifically. But he was not asked.

Ms. COMSTOCK. That is correct, sir. The President is exempted from the gift acceptance prohibitions by regulation.

Chairman THOMPSON. Do you recall, was Mrs. Clinton officially a Senate candidate at that time?

Ms. COMSTOCK. No, I do not believe that she was.

Chairman THOMPSON. Because that would raise additional questions. I am not sure what the answer to this is, but it looks to me like there are certain requirements that a Senate candidate has in terms of disclosure in addition to those of a President that a greater, perhaps, or certainly different than those of a President. So you have the situation where one spouse is President and the other one is a candidate for the Senate.

Ms. COMSTOCK. Right.

Chairman THOMPSON. And the loan guarantee is for both of them.

Ms. COMSTOCK. That is correct—

Chairman THOMPSON. That would have presented a pretty good law school question, wouldn't it?

Ms. COMSTOCK. It would be. My role was obviously only for the President's financial disclosure form.

Chairman THOMPSON. But it was being used—well, you saw in the news accounts that Mrs. Clinton was using that—well, I said “using”—was discussing that herself. When you knew that OGE had only passed on the disclosure question and that among the First Lady's spokespeople, anyway, they were saying that OGE had passed on the question of whether or not it was acceptable, did you talk to Ms. Mills about that and say there is some disconnect here? Or was there any discussion about that?

Ms. COMSTOCK. There was discussion, sir. There was actually no disagreement either between OGE or myself and anyone I talked to about what the Office of Government Ethics had—the question

that they had answered. I am not familiar with how it became inaccurately, as far as I know, translated.

Chairman THOMPSON. Did you ever talk to Ms. Mills about it?

Ms. COMSTOCK. Not that I recall.

Chairman THOMPSON. Well, in a position such as that, you are advising Executive Branch employees with regard to ethics matters. You are dealing with the Office of Government Ethics. So your responsibility had to do with the President because he was the Executive officer. But OGE's response was being mischaracterized. I guess I find it somewhat unusual that there is no discussion about getting all this straight. Certainly somewhere along the line—I mean, Mr. Potts said that he wrote his letter complaining about this after he says that he had informed the White House that this was incorrect, and they still said it again.

Ms. COMSTOCK. Right. Excuse me, sir. I did—I don't recall discussing it with Ms. Mills. I did discuss it with other people. And if I may take a moment to—

Chairman THOMPSON. See, all I am—the point here, I think the relevant point here has to do with not looking at things too narrowly and having a sensitivity to what is going on around you. You might have done it a little bit differently, perhaps, if you had it to do again in terms of questions that you might have asked.

I would have thought, for example, that the question of whether or not this is permissible would be the logical, the most important question. I am not sure how something could have been prohibited—or you wouldn't have to disclose it and still it would not be permissible. I am not sure how that would work. But I just think that this is a very sensitive kind of situation and it is fraught with all kinds of difficulties and political pressures sometimes and back and forth, and it is very important, as I am sure you know, that you look at not only the narrow question that has been presented to you, but the obvious issues and warning flags that may be out there.

Ms. COMSTOCK. Mr. Chairman, I want to say very firmly that if I ever think that I see a violation or a possibility of a violation, that is my obligation to raise that, and I will always do that regardless of who the individual at issue is.

That was not this case. As I indicated, the President is exempted from the gift acceptance prohibition, so, in fact, whether this financial arrangement would fall within the definition of a gift for the gift acceptance rules, which is a different definition of gift for the gift reporting rules, the answer to that was not viewed as relevant because those regulations do not apply to him.

So what it came down to was two questions: Was it a reportable arrangement? And was it advisable?

I did work on the question of whether it was reportable, but other people were participating in the conversations of whether it was advisable. And I did not see any violations or possible violations that I needed to raise with them. I did not see the need to second-guess their advising on that.

Chairman THOMPSON. All right. Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you very much, Mr. Chairman.

I want to welcome you, Ms. Comstock, to the Committee, and I also want to tell you that I know from firsthand experience that many of the staff members that you will be working with at OGE, assuming that you are confirmed, are very talented. I see many of them behind you, and I worked with them, oh, some 15 years ago when I was Staff Director of the Subcommittee of Governmental Affairs that had jurisdiction over OGE. And, in fact, we did an extensive oversight hearing on the Office of Government Ethics.

The office plays, in my view, an absolutely key role in ensuring that public officials uphold the highest ethical standards. The whole purpose of our ethics laws is to assure the public that Federal officials are making decisions that are free from conflicts of interest. The purpose of the law, thus, is to promote public confidence in the decisions of government officials.

In that regard, I want to talk to you about the issue of an appearance of a conflict of interest. It is my understanding that the current regulations require a Federal official to look not only at whether he or she may have an actual conflict of interest but whether or not a reasonable person looking at the facts of the case would doubt that the decision of the Federal official was made free from any taint of improper influence. Is that accurate?

Ms. COMSTOCK. Yes, Senator. The statute at issue defines what would be a criminal conflict of interest, and then there are also government ethics regulations that cover the appearance of a conflict of interest.

Senator COLLINS. And it is my understanding that you have overseen the ethics programs of some Federal agencies. Did you do that in the capacity of being the designated agency ethics officer?

Ms. COMSTOCK. No. I have in both places, the Department of Education and the White House, I have been the alternate designated agency ethics official.

Senator COLLINS. You were the alternate—

Ms. COMSTOCK. Alternate.

Senator COLLINS [continuing]. Designated—

Ms. COMSTOCK. Second.

Senator COLLINS. But you are familiar with the regulations that govern how an official should deal with the appearance of a conflict of interest?

Ms. COMSTOCK. Absolutely, and I should say that, especially at the Department of Education, I directed the programs, but the structure, the layout was that I was the alternate.

Senator COLLINS. And do you think that the guidance to Federal officials on how to deal with the appearance of a conflict of interest is important for public officials to follow?

Ms. COMSTOCK. Yes, I think it's very important for public officials to follow. The way that I have often viewed these rules and explained them to people who sometimes are angry with me or frustrated at the application of them is that, first off, they're designed—or the attempt is to write them so that they can be applied consistently and fairly to all employees. But the intent in many cases is to pull employees out of a situation where they personally would have to decide what is the right thing to do, what is the wrong thing to do. They're designed to keep them from having that struggle, either having to seek assistance or having to deal with

that themselves. So the regulations I think do a pretty good job in this case on the appearance of a conflict of interest of laying out examples of scenarios of relationships—“covered relationships,” as they are called—that could appear to be a conflict of interest. A former employer with whom you’ve worked for the last year, a relative, an organization that you’re—the term is “active participant” with in your personal capacity, or some other entity or person out there that you have such a close relationship with that if someone, a non-Federal person, was looking at your Federal dealings with them, they might say—they would at least have the question: Is this being done fairly?

And those rules are designed to even keep that question from ever having to be raised.

Senator COLLINS. I think you have captured exactly what the purpose and the essence of those rules are. And I want to tell you about a case that, in my view, was very troubling from the perspective of trying to prevent exactly that kind of concern about whether or not the decision was made fairly.

Senator Thompson and I recently held hearings on the GAO’s findings about certain large Medicare overpayment settlements. GAO found numerous problems with the way these settlements were reached, and, in fact, the Federal Government recovered only about a third of the amount due. And none of the three settlements were handled in the normal course of following the agency’s procedures for settling such overpayment cases.

One of GAO’s findings spoke exactly to the issue of the appearance of a conflict of interest. The head of the Health Care Financing Administration at that time, Bruce Vladeck, previously had served on the board of directors, twice, of the hospital whose payment—who was having the payment dispute with HCFA.

In fact, Mr. Vladeck had resigned from the board of directors upon taking his position as the Administrator of the Health Care Financing Administration. It was only a month lag time.

Now, he had served for some 3 years in the position of the Administrator of HCFA before getting involved in the settlement of this case, so here we did not have a case where he was violating the 1-year ban that would apply to an official getting involved in this case.

But what we have here is the head of an agency playing a highly unusual role in directing and getting involved in the settlement of a multi-million-dollar claim in which ultimately the hospital only paid \$25 million of the approximately \$155 million in overpayments. So there was a very large discrepancy between the amount the government felt it was owed and the amount that the case was ultimately settled for. And this official had very close ties to the board members of this hospital, to the head, the administrator of the hospital, and indeed had served on the board of the hospital.

In such a situation—and let me also tell you the important fact that the testimony we had from lower-level civil servants who were involved in the settlement is that never before, except in these three cases, had the administrator gotten involved in directing that a settlement be reached.

In a case like that, would it be prudent for the head of the agency to seek guidance from the agency ethics official and perhaps de-

cide, because of the appearance problem, they recuse themselves from involvement in the dispute?

Ms. COMSTOCK. I think it's always appropriate to seek guidance. One of my goals is to ensure that an ethics program in each agency, that all officials in the agency have enough confidence in that program so that they don't view it as a step of last resort but as normal course of business to reach out and check on many issues. So I think it's always appropriate to seek guidance.

In the facts that you laid out, obviously I need to—

Senator COLLINS. I realize you are not familiar with the case.

Ms. COMSTOCK. I'm not familiar with the case, but given what you've told me, I do want to ask: Did he resign from the board position 1 month before? Or you also mentioned a 3-year period.

Senator COLLINS. One month before taking his position as head of HCFA.

Ms. COMSTOCK. And then 3 years elapsed?

Senator COLLINS. Then 3 years later—

Ms. COMSTOCK. I see. Under the—I still would always advise someone to seek guidance in that situation because, while the regulations set out a standard for an appearance that a reasonable person with knowledge of all the facts, all the relevant facts, how would they view this situation, first off, these regulations are only a minimum of behavior, and I think as Federal officials we can do better sometimes. And some situations simply aren't covered by that.

At the Department of Education, we have, for example, a number of former superintendents of school districts who now are at the Department of Education, and I always advise them that if they as a head of a program at Education would be reviewing a decision that they made as superintendent—I don't care if it was 12 years ago—they need to recuse themselves from that because it simply will—it will raise more questions than it's worth.

This situation would not fall within the 1 year, but I think it is one that should be talked out carefully because, again, the goal is to not draw into question what might otherwise be correct decisions. We now don't know whether that was a correct decision, and that's the waste of time, really, and the lack of credibility in Federal decisionmaking that we want to avoid.

Senator COLLINS. I think you have hit on the key point. Because the normal procedures were not followed in many regards with respect to these overpayment settlements, and because of Mr. Vladeck's personal relationship with the hospital in question, we will never know whether or not the government got a good deal.

Now, we know that the General Accounting Office thinks that the government did not get a good deal, and we know that a lot of the lower-level HCFA employees felt that the government did not get a good deal. But it tainted the whole process, and that is what is of most concern to me. And it also seems to me that even if a Federal official has received guidance on similar cases in the past, it is always wise to go back with the facts of that exact case. Would you agree with that?

Ms. COMSTOCK. I would agree with that. I do need to emphasize, based on the facts that you laid out, it doesn't sound like it's a technical violation, but this is the reason for having a strong ethics

office and a good relationship, because either there are more facts which justify this person being involved; maybe there are facts that we don't understand which would make us feel better about the scenario. In that case I have given employees guidance in writing for their protection many times. Knowledge of all of the relevant facts is an awful lot of facts, and we sat down and worked through all of them. And I think that's important for the employee.

So, yes, I think that this is an area—I really want to work with the DAEO's and all high-level officials to really encourage them to have a close working relationship with their ethics officer.

Senator COLLINS. Thank you very much.

Mr. Chairman, I would ask unanimous consent that the section from the General Accounting Office report that deals with conflict of interest concerns relating to the case that I discussed in which the GAO expressed its opinion that Mr. Vladeck should have been much more concerned about the appearance of his involvement and sought authorization to participate in the negotiations from the ethics officials within the agency be entered into the record.¹

Chairman THOMPSON. It will be made part of the record, without objection.

Senator COLLINS. Thank you. Senator Lieberman.

OPENING STATEMENT OF SENATOR LIEBERMAN

Senator LIEBERMAN. Thanks, Mr. Chairman. And, Ms. Comstock, welcome to you and to your family. Your kids are absolutely adorable.

Ms. COMSTOCK. Thank you.

Senator LIEBERMAN. And irresistible. It is a pleasure to welcome you here.

I had the pleasure of meeting with this nominee, Mr. Chairman. I was very impressed in the discussion that we had. I thought I would take just a moment to put on the record, because I am impressed by it—and I don't know that we see enough of it these days—by your own biographical story, which is that you grew up in Massachusetts, went to Bard College, law degree from the University of Michigan, and then spent a few years in private practice, but then came into public service, and that is the part that I wanted to describe with appreciation, serving in the Department of Education as an attorney in the Educational Equity Division and since then have just kept moving up the ladder.

While at the Department of Education originally, Ms. Comstock won the Younger Federal Attorney Award, which is a national award given annually to five Federal attorneys under the age of 36 for outstanding service and sustained superior contribution. I presume that was relatively recently based on the age that has been— [Laughter.]

Ms. COMSTOCK. Thank you, Senator.

Senator LIEBERMAN. You are welcome. Your husband nodded appreciatively.

Ms. COMSTOCK. He is a smart guy.

Senator LIEBERMAN. Obviously, as we know, currently serving as senior counsel in the Office of General Counsel at the Department

¹The information submitted by Senator Collins appears in the Appendix on page 41.

of Education; prior to that, 15 months as Associate Counsel to the President.

We have broad bipartisan support for your nomination, including receiving letters from Secretary Lamar Alexander, and we always want to mention the name here in this Committee when we receive notification from Senator Howard Baker—I turn graciously to my left—supporting your nomination.

The short of it is I admire your long commitment to public service, and I appreciate your willingness to take on this assignment.

I thought the line of Senator Thompson's questions about Mr. McAuliffe's guarantee of the mortgage were fair questions, and I appreciate your answers. I just want to come back to what may have been your final answer in the series of questions because it is important, which is to say that, in that case—and I presume more generally—when asked a specific question, you would, of course, answer it to the best of your ability, but that in the position you previously held and, in fact, in some of the Education positions you have held that involved ethics, but certainly in the position for which you are nominated, if you saw any ethics violation or any concern that you had beyond the question that was asked, as I heard your response to Senator Thompson, you indicated that you would feel it your responsibility to speak to that concern and that potential violation.

Ms. COMSTOCK. Absolutely, I would, always.

Senator LIEBERMAN. I appreciate that. I understand in your role as Assistant General Counsel for Ethics at the Department of Education you were responsible for implementing the ethics program in that Department. I wonder if you would just take a moment to, if you will, discuss some of the larger challenges you faced in that job, what you have learned from those challenges, and how you think that experience will be applicable to your work as Director of the Office of Government Ethics, if it would be.

Ms. COMSTOCK. Certainly. I think, in fact, sir, one of the greatest challenges in the ethics field is to educate and work with employees to have them understand that these are not technical, bureaucratic rules, but that there is a purpose for protecting themselves as well as protecting the integrity of Federal service, and that is the reason behind these rules, and that to be viewed just as mere technical compliance rules does not really serve them well or the Federal Government.

I believe that the positions that I held at Education especially required a lot of creativity in terms of training and as well in terms of working with the program offices. The standards of conduct go primarily to personal behavior and conflicts of interest between your personal life and your official position, but there are a lot of issues that also arise in terms of, especially at the Department of Education, the role of the Federal Government in partnership arrangements, for example, with non-governmental organizations, and those can be very exciting challenges, and they were at the Department of Education.

I'm a firm believer that two entities with the same goal can achieve a lot more together than they can separately, which actually goes back also to the effort that we might—I hope we under-

take to streamline and coordinate the nominations process. If we work cooperatively, we get a lot farther.

I worked very hard on those efforts at the Department of Education, and I think it benefited the ethics program because it incorporated the work of the ethics program into the work of the Department. If it remains a separate office off in the corner that you only go to when you think you might have a regulatory “cite the reg” violation, I think it will never be a successful program.

Senator LIEBERMAN. I appreciate the answer. As we all know who live this life, in this time in our history we are all on notice that you have got to accept the rules of ethics as more than law or regulation because the public or the media, at least, will go, may well go beyond that. So you are absolutely right. It can't be something over here. It has got to be integrated into the normal conduct of not only our duties but in these times into our lives. And as a friend back in Connecticut who is in State Government says, it is not a question of whether you are doing something illegal. Presumably you were never doing something illegal. It is not a question of whether you do something unethical. Presumably you would always try not to do something unethical. The question is—and this is a tough question—whatever you are doing, presuming it is legal and ethical, can you explain it to the satisfaction of the public when it turns up on the front page of your local newspaper or on the evening news?

I do think that is a frame of mind, and so I appreciate your answer very much.

Again, I thank you for your interest. I appreciate the fact that the Chairman has convened this hearing. I hope we can move your nomination along expeditiously. I know we have a letter from the current holder of this position, Mr. Potts, who tells us he is leaving on August 14, and he hopes that we can confirm you at least certainly before then so there can be a smooth transition. And I share that hope. Thanks very much.

Ms. COMSTOCK. Thank you, Senator.

Senator LIEBERMAN. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you. Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Mr. Chairman. And let me note my admiration of your many accomplishments, not the least of which is that you got a law degree from the University of Michigan Law School.

Ms. COMSTOCK. I did. Wonderful law school.

Senator LEVIN. I have no further questions. [Laughter.]

Over the years, Congress has expressed concern about the unevenness of ethics programs among the various agencies, and we have taken some steps to try to avoid that unevenness. What is your opinion about the consistency of ethics programs among the agencies and whether OGE is doing a good job to try to achieve that consistency?

Ms. COMSTOCK. I believe there is still some unevenness in the ethics program. I'm happy to say that the Office of Government Ethics has often cited the Department of Education as having an excellent ethics program. I'd like to think I contributed to that.

I do believe there is some unevenness, and I think it needs to be addressed. As a matter of fact, I know there's some unevenness, in my own experience.

The way that the Executive Branch ethics program is structured, obviously the Office of Government Ethics is responsible for overseeing these programs and providing leadership in policies. But the structure would fall apart without strong programs and strong designated agency ethics officials in each agency and department. It depends on that.

I believe that we have a few opportunities to work to strengthen the programs in various agencies. One is with the transition arising, coming forward, the new people coming in. It's the best opportunity to explain to people coming into the Federal Government this structure and the need for a strong DAEO, if it's someone who is going to be appointed, and for the close working relationship that they need to establish with that person.

I also believe, in terms of OGE's regular contact with the agencies, that the program reviews that OGE conducts of agencies every 3 years, I believe—maybe every 4—could address quality issues more. My experience with it is that they have been more technical in terms of timeliness, and I would like to see that move towards providing technical assistance, quality—advice on the quality of advice that the agency offices give to the employees, and those—at this time those are the two areas that I'm thinking of.

Senator LEVIN. Current law requires a 1-year cooling-off period for most top-level government officials from lobbying their former agencies, as reference has been made. The President has required that his own top officials agree to an additional 4 years.

Ms. COMSTOCK. Correct.

Senator LEVIN. Making this a 5-year cooling-off period relative to those Presidential appointees.

What is your personal opinion about the 1-year requirement under current law versus the 5-year requirement required by the President? And should we amend the 1-year requirement and make it stricter?

Ms. COMSTOCK. My opinion, based on my own experience as well as numerous conversations with people who are thinking of coming into government service, is that the 1-year statutory cooling-off period for high-level government officials, which, depending on their position, could either apply to their own agency or to high-level government officials across the Executive Branch, is appropriate. The 1 year requirement seems to adequately balance the need for a cooling-off period so that one can't immediately benefit from the access and the power you might still have in your former agency while not being so lengthy that it makes it difficult for you to find another job in your field, and I don't think we really want to have rules that require that the government service be your last position in life.

So, actually, my opinion is that the 1 year is appropriate.

Senator LEVIN. You have mentioned a number of times in your answers to prehearing questions some concerns that you have about the burdens which are imposed on top Federal employees in filing their financial disclosure forms, including with respect to evaluation of the value of their assets. The forms don't require pre-

cise amounts at the moment. They use ranges. But there is still in many instances a burdensome evaluation problem.

Would you take a look at those forms as well as the forms that have to be filled out by people who have been nominated for office after you are confirmed, if you are confirmed—which hopefully you will be promptly? Would you take a look at those forms and recommend where we can, consistent with a high level of ethical concern, reduce the burdens on applicants and on form filers? We try to do this for the public. We require OMB to go through forms and try to reduce paperwork requirements, and I think it would be useful here, as well. There is always a fear if we reduce or change any of these that there will be an accusation that we are weakening our ethics laws. And I think this Committee surely doesn't want to do anything like that, and I don't want to do anything like that. But I would like to reduce the burdens where we can consistent with a high level of ethics.

If you could, after confirmation, go through these forms and make recommendations as to where forms could be simplified and make life a little bit easier for people either in office or being considered for office without any reduction of ethical concerns, I think you would be making a contribution. Could you do that?

Ms. COMSTOCK. I will commit to doing that. If the purpose of the forms is to highlight areas of potential conflict of interest, I do believe there are places where the Office of Government Ethics could recommend to this Committee that legislative changes be made that would not diminish the conflicts analysis.

Senator LEVIN. Thank you.

And then, Mr. Chairman, I just had a request. I understand that Senator Collins put a portion of a GAO report relative to Dr. Vladeck in the record, and I think for completeness and fairness, I would ask that his testimony relative to the recusal request that he did make on a similar matter be placed in the record where he was told by his DAEO that he should not have recused himself.¹ It was testimony along that line. I don't remember precisely—

Chairman THOMPSON. I was going to leave the record open for about 10 days, so within that time, would you like to submit the relevant portion?

Senator LEVIN. I would. Thank you, Mr. Chairman.

Chairman THOMPSON. All right. That will be made a part of the record.

Thank you very much.

I may say to both my colleagues while we are here—we discussed it briefly earlier—on the point Senator Levin was making that I think it is a very good point. We have talked with Ms. Comstock about working with us perhaps with some bipartisan legislation to streamline the nomination process, for example. I think that we are all coming to the conclusion now that perhaps it is becoming too burdensome for people who want to do some public service.

We are awfully concerned because we still see these numbers that in this time of peace and prosperity, the level of public trust in public institutions is still going down, especially among our young people. And we have tried to respond to that with ethical

¹The information submitted by Senator Levin appears in the Appendix on page 43.

rules and disclosure rules, both in the Legislative Branch and the Executive Branch, and all of that is good. But I think we are coming to the point now where we realize it is a point of diminishing returns. You can make things so burdensome that you defeat your purpose, and you are never going to be able to address that overall public perception issue with paperwork. It is going to be things more basic than that.

So we have to do what we ought to do, but maybe not more than what we ought to do. So that is what we look forward to working with you on and trying to strike that balance. I know much of this, most of it, is in the form of regulation as opposed to legislation. But perhaps we can work together on some legislation that will set some new parameters.

I would suggest we leave the record open for 10 days. Without objection, we will provide for any additional written questions that might be submitted for the record. We appreciate your testimony very much today and your public service, and we look forward to moving promptly on this nomination.

Senator Lieberman, do you have any further comment?

Senator LIEBERMAN. None at all. I thank the nominee for her interest. I think she is a superb choice for this position, and I do look forward to working together with you, and with you, Ms. Comstock, on the overall problem that the Chairman has talked about. I know you talked about it earlier, which is the way in which we can maintain obviously an appropriate ethical standard and filter, but also make it easier for people to come into public service. I mean, this is circular.

Obviously, one of the reasons why the public has this disregard, particularly young people, is because of their perception that the standard of ethics is not as high as it should be here.

On the other hand, we have set up some bureaucratic hurdles that discourage some of the best people from coming in, and I think together we can overcome those two ironies or difficulties and both raise up public perception of people in public life, but also encourage thereby more good people to come in.

Ms. COMSTOCK. I hope so.

Senator LIEBERMAN. So thank you very much. I wish you and your family well.

Ms. COMSTOCK. Thank you.

Senator LIEBERMAN. Thanks, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

The hearing is adjourned.

[Whereupon, at 11:00 a.m., the Committee was adjourned.]

APPENDIX

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. Biographical Information

1. **Name:** (Include any former names used.)

Amy Louise Comstock (Amy Comstock Burton 1987-1989)

2. **Position to which nominated:**

Director, Office of Government Ethics

3. **Date of nomination:**

October 8, 1999

4. **Address:** (List current place of residence and office addresses.)

Home: -----
Office: (through January, 2000) White House Counsel's Office Room 136 Eisenhower Executive Office Building Washington D.C. 20502
(after January, 2000) Office of the General Counsel U.S. Department of Education 400 Maryland Avenue, S.W. Washington, D.C.
5. **Date and place of birth:**

October 25, 1959

6. **Marital status:** (Include maiden name of wife or husband's name.)

Married to Patrick Joseph Morris

7. **Names and ages of children:**

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

University of Michigan Law School, 1983-1986, J.D., 1986
 Bard College, 1977-1981, B.A., 1981

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Associate Counsel to the President, White House Counsel's Office, The White House, Washington D.C., 10/98 - present. (On detail from U.S. DoED. At the end of January, 2000, I will be returning to the U.S. DoED as Senior Counsel in the Office of the General Counsel).

Assistant General Counsel, U.S. Department of Education, Washington, D.C., 1993-1998. (For the first four years I worked part-time, sharing this position with another mother of young children).

Executive Assistant to the General Counsel, U.S. Department of Education, Washington D.C., 1989-1993

Attorney, U.S. Department of Education, Washington D.C., 1988-1993.

Associate Attorney, Beveridge & Diamond, Washington D.C., 1986-1988

Summer Associate, Beveridge & Diamond, New York, NY, Summer 1985

Summer Associate, Stroock & Stroock & Lavan, New York, NY, Summer 1984

Admissions Counselor, Bard College, Annandale-on-Hudson, NY, 1981-1983

Secretary, Brandeis University, Waltham, MA, Summer 1981

10. **Government Experience:**

See above

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

None presently.

12. **Memberships:** List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Virginia State Bar
District of Columbia Bar

13. **Political affiliations and activities:**
(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

- (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.

None

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Senior Leadership Program, Council for Excellence in Government, 1996
Federal Bar Association, Younger Federal Lawyers Award, 1994
U.S. Department of Education, Distinguished Service Award, 1994
U.S. Department of Education, Performance Awards, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998.
Kerr, Russell & Weber Award, University of Michigan Law School, 1985
Dorothy Dulles Bourne Scholar, Bard College, 1980-1981.
Muriel DuGre Scholar, Bard College, 1979-1980.

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None.

16. **Speeches:** Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

No formal speeches. Have moderated and served as panel member at the annual Office of Government Ethics conference.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

To my knowledge, the President nominated me for this position based on my experience and reputation in directing the ethics programs in both the U.S. Department of Education and the White House.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I bring to this position a strong commitment to public service and significant experience in the field of government ethics. I have been a career government attorney for over 11 years and have directed the ethics programs in two agencies for the last six. I hope to bring to the position of Director of the Office of Government Ethics the extensive skills and experience that I have gained over the years, including:

- Experience in interpreting and applying ethics statutes, regulations, and policies;
- Experience in working with high level government officials, including members of the cabinet and agency heads, to integrate government ethics requirements into the work of their agency;
- Experience working directly with the Office of Government Ethics in its implementation of its government-wide programs and initiatives; and
- Experience in government agency management.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate.

Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.

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

No.

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

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

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

None.

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.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 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.

None.

4. Describe any activity during the past 10 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.

None, other than providing comments on behalf of my government employer.

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 copies of any trust or other agreements.)

Should a conflict or appearance of conflict arise, I would willingly sever any business relationship, resign any outside position, or divest of any financial holding.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for 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, provide details.

No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

If confirmed by the Senate, I will be the first Director of the Office of Government Ethics to come to the office with a background in the field of government ethics. This experience will allow me to focus immediately on issues facing the office. In addition, I will bring to the office experience as a career government attorney under three presidential administrations.

E. FINANCIAL DATA

Financial Data - On file with the Committee on Governmental Affairs.

AFFADAVIT

Amy L. Comstock being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Amy L. Comstock

Subscribed and sworn before me this 21st day of DECEMBER, 1999

E. A. Smith
Notary Public

E. A. Smith
Notary Public, District of Columbia
My Commission Expires July 31, 2002

Pre-hearing Questionnaire for
Amy L. Comstock to be
Director of the Office of Government Ethics

Current Responsibilities

1. **Please describe your official duties as Associate Counsel to the President in the Office of White House Counsel. What have been your primary responsibilities in that position? What specific matters have you worked on while in that position?**

I was detailed to the White House from the Department of Education from October 1999 through January 2000. I was responsible for providing and directing guidance for all White House employees regarding Federal ethics laws, particularly conflicts of interest and post-employment matters, and served as liaison with the Office of Government Ethics (OGE). I was responsible for planning and conducting the annual ethics training for all employees and for ethics clearance of Senate-confirmed Presidential nominations. I also advised on matters regarding the appropriate relationship between the federal government and private entities and on events that are co-sponsored with other agencies. My detail ended in January 2000, when I returned to the Department of Education.

Role and Responsibilities of Director of OGE

1. **How do you view the role of Director of OGE? What do you consider your primary responsibilities a Director of OGE?**

As set forth in the statute establishing OGE, the Director is responsible for providing leadership and overall direction of executive branch policies related to preventing conflicts of interest on the part of executive branch employees. It is the responsibility of the Director to ensure that executive branch ethics laws and policies are implemented and to ensure that agency ethics officials are provided the information, guidance, and materials that they need to perform their functions within their own agencies. When necessary, it is also the responsibility of the Director to order corrective action if it is found that a particular agency is not fulfilling its responsibilities under the Ethics in Government Act. As the head of a separate agency, the Director is also responsible for the management of OGE and its employees in fulfilling OGE's mission.

Issues and Priorities

1. **What are the most important policy issues facing the Office of Government Ethics (OGE)? Please explain the issues and why you consider them most important.**

As a practitioner, I am familiar with the issues facing agency ethics programs and officials. I am not, however, aware of deliberations or initiatives internal to OGE. It may

be that, if confirmed, I will learn of new issues or considerations that might influence my views. Accordingly, my views might change when I learn of new matters under consideration at OGE.

Each of these possible priorities is premised on the understanding that the first responsibility of the OGE Director is to ensure that each Department and agency has a strong ethics program. If, at any time, I determined that there was a problem with a particular ethics program, addressing that problem would be a top priority.

Based on my experience with government ethics issues, I believe that the following are the most important policy issues facing OGE:

- As discussed in question No. 3 of this section, I am concerned that agencies vary in the quality of advice given to special government employees (SGE's). If an SGE is not given appropriate guidance about his or her exposure under the conflicts statutes and regulations, he or she cannot guard against violations. I have personally spoken with many SGE's or potential SGE's who are initially unaware that their "volunteer" or part-time status brings them within the scope of the statutes and rules governing all federal employees, albeit with some exceptions. If confirmed, I would like to work with agencies to ensure that all SGE's are properly identified and trained;
- The application of the rules governing employees' participation in the activities of professional associations. I believe that, especially in certain professions, employees and the agency can benefit from participation in professional associations. I also believe that, to the extent possible, rules governing participation in professional associations should be applied consistently throughout the executive branch although currently the application of those rules varies greatly from agency-to-agency; and
- As discussed in question No. 5 of this section, the burden placed on nominees and annual filers of public financial disclosure forms to ascertain and disclose various levels of income and asset values needs to be balanced with the value of the information received. The law currently requires filers to ascertain with precision the value of a given asset while, for the purposes of the ethics laws, all that is generally necessary is to know what the asset is and whether it exceeds a certain dollar amount. Filers have justifiably expressed to me their dismay that so much work is required for the form alone and not for future substantive purposes.

2. What are the most important operational issues facing OGE? Please explain the issues and why you consider them most important.

Without knowing what initiatives OGE is currently considering, I believe that OGE information and materials should be accessible via the latest available technology. In addition, I believe that OGE should treat as a very high priority making the SF 278

(public financial disclosure form) and the SF 450 (confidential financial disclosure form) available to be filed in electronic format for all employees and nominees.

3. **Currently, H.R. 2904, a bill reauthorizing the Office of Government Ethics, includes provisions to codify the definition of “special government employees” in an attempt to bring these persons who volunteer for federal service within the scope of the criminal conflict of interest laws. What are your views on this proposal?**

Under 18 U.S.C. 202, the Department of Justice and OGE already interpret special government employees to be within the scope of the criminal conflict of interest laws, including 18 U.S.C. 208, although there are some statutory limitations in 18 U.S.C. 203 and 205. Therefore, I do not believe that the portion of H.R. 2904 that amends 18 U.S.C. 202 is necessary, although I do not object to it.

I believe that special government employees, like all federal employees, should remain within the scope of the criminal conflict of interest statutes when they are taking official action. I have been concerned at times, however, that SGE's are not always sufficiently informed about the criminal and regulatory restrictions that apply to them. If confirmed as Director, I will work to ensure that all agencies adequately inform SGE's about the criminal and regulatory restrictions that apply to them.

4. **In November 1999, OGE was requested by several consumer-advocacy groups, led by Ralph Nader, to review former Treasury Secretary Robert Rubin's alleged violation of current post-employment restrictions by discussing a major financial services bill with his successor, Lawrence Summers. OGE Director Potts responded by letter that OGE is not an investigatory agency and that the current law expressly prohibits OGE from making any finding or determination that any criminal law has been violated. Do you agree with Director Potts' interpretation of the statute? If so, should OGE be granted authority to investigate alleged violations of the Ethics in Government Act? Should OGE be allowed to make a finding that a criminal provision of the Ethics in Government Act has been violated?**

Although OGE does have authority to investigate possible violations of a rule, regulation, or executive order, the Ethics in Government Act, 5 U.S.C. 402(f)(5), specifically prohibits the Director of OGE from making any finding that a violation of any criminal law has occurred. In my experience, individual agencies, generally through their Inspectors General, investigate possible violations of criminal provisions and, if necessary, refer the matter to the Department of Justice for prosecution. I have never had reason to believe that this system is not working efficiently. OGE, properly in my view, generally leaves findings on rules, regulations, and Executive Orders to the affected agency, but can and should step in if a situation arises where the rules are not being enforced in a particular case or if it appears that a systemic problem exists.

5. **Some government interest groups and individual scholars have criticized the**

current presidential appointment process as too lengthy and complex. These critics say that part of the problem lies with the current ethics laws which require detailed financial disclosure in order to assure against potential conflicts of interest. These critics believe that the current ethics laws are unnecessarily burdensome and deter potential qualified people from serving in government. Do you believe the current ethics laws require too high a level of financial disclosure? Do you believe the process needs to be streamlined? What changes in the current ethics law would you advocate in an attempt to improve the nominations process?

The financial disclosure required of nominees is the same as is required annually of high-level government employees. In general, therefore, any changes proposed to the financial disclosure requirements for nominees should apply to other filers as well.

As stated earlier, I believe that the current financial disclosure law requires too great a level of detail about the value of a holding and the amount of income generated during the reporting period. As a result of the requirements under the current law, nominees must disclose ranges of asset values and income even though the majority of the time, that information is not needed to resolve conflicts. For example, if a stock holding is worth less than \$25,000, an employee has a potential for a conflict of interest, although the regulations provide a limited exemption. Once the stock holding exceeds \$25,000, however, the regulatory exemptions promulgated by OGE no longer resolve the conflict; only divestiture, recusal, or an individual waiver under 18 U.S.C. 208(b)(1) can resolve a conflict. Yet, the law requires that the asset value and income be disclosed; a process that can be quite burdensome for filers. While the actual value of the asset and income generated may be relevant to an ethics official when determining whether to grant an individual waiver, that information is not needed to determine whether the employee has a conflict of interest. I have personally spoken with many nominees who believe that the process is too burdensome. To the extent that we are seeking information that is unlikely to be used to resolve the conflict, I agree.

In terms of streamlining the process, having been on both sides of the nominations process, I believe that the financial information required by the Ethics in Government Act, the White House, and the Senate could be coordinated so that the filer would meet the statutory requirements, but still provide the same information sought by all three entities. If confirmed as Director of OGE, I would seek to work with the White House and the Senate to improve coordination, understanding that any significant improvements cannot be achieved by OGE alone.

6. **Does OGE need any new or amended laws to help it carry out its assigned mission?**

Based on my experience, I believe OGE has the statutory authority it needs to carry out its mission. My perspective on this question could change if I am confirmed and, as Director, learn that there are areas where greater authority is needed.

7. **Does OGE need any additional or different resources—whether they are financial, human capital, or physical—to carry out its assigned mission for the next five years?**

Without having worked at OGE, I hesitate to speculate on the answer to this question and, since my nomination, I have neither sought nor has OGE offered information on its resource needs. I have reviewed OGE's Annual Performance Plans for recent years and those reports did not indicate to me that current resources are inadequate.

8. **If confirmed, what will be your three highest priorities at OGE?**

Again, my perspective may change if I am confirmed and assume the position as Director. At present, based on my experience in the field of government ethics, my highest priorities would be:

- clarifying the application of ethics rules to federal employees who wish to participate in the activities of professional associations;
- ensuring that there is adequate guidance and training for agencies and employees regarding the unique issues surrounding special government employees;
- expanding program reviews to better assess the quality of an agency's ethics program; and
- electronic filing of the financial disclosure forms for nominees and current federal employees.

Each of these issues is discussed in greater detail elsewhere in this questionnaire.

As stated earlier, each of these possible priorities is premised on the understanding that the first responsibility of the OGE Director is to ensure that each Department and agency has a strong ethics program. If, at any time, I determined that there was a problem with a particular ethics program, addressing that problem would be a top priority.

9. **How do you plan to communicate to Congress on efforts to address OGE issues?**

I would always respond fully to all inquiries and requests for testimony. In addition, I understand that Annual Performance Plans with Explanatory Notes are submitted each year to Congress. If confirmed, I would also like to sit down with the Chairs of the relevant Senate and House committees to determine if they have other concerns that I should address.

Government-wide Views

1. **What is your perception of the status of ethics in the federal government? Are ethics problems becoming more common? Are certain types of ethics problems of growing concern?**

One of the challenges of assessing ethics problems is that it is difficult to objectively measure whether ethics problems are becoming more common. Even increased or decreased prosecutions would not accurately measure deterred behavior or explain whether the change reflected altered behavior of prosecutors or government employees generally. My personal experience, however, is that a dramatic shift has occurred in the number and quality of questions that are brought to ethics officials. I believe that the ethics community in general is seeing a greater number of questions that exhibit a more detailed and sophisticated understanding of ethics rules and issues. It is my personal belief that executive branch employees are now more aware of the existence of the ethics rules and the importance of the issue than they were when I began working in the field of government ethics. If confirmed, I would seek to establish open and close communication with the Designated Agency Ethics Officials (DAEO's) and the Department of Justice to determine what issues they believe are becoming more common or are of concern.

2. **What types of conflicts of interest pose the most significant problems in the federal government today? In your view, what needs to be done to deal more effectively with these conflicts of interest?**

I believe that our current rules have done a fairly effective job of alerting employees to the issues surrounding financial conflicts of interest. I do believe, however, that positions in non-governmental organizations is an area that still results in unintended or unperceived conflicts, especially where the outside position is uncompensated and for a non-profit organization. I believe that employee training is the most effective tool for dealing with this and other conflicts.

3. **What data do you believe OGE should rely on to gauge the severity of ethics problems in the federal government and to assess its progress toward minimizing any ethics problems?**

I understand that this is an issue with which OGE has been grappling for years. It is extremely difficult to measure whether a program has changed the behavior and awareness of employees. As I stated in response to question No. 1 of this section, if confirmed, I would seek to establish open and close communication with the DAEO's and the Department of Justice to determine what issues they see as problems. If the problems appear to be government-wide, I would seek to address them through the means available to OGE to address systemic problems: regulatory amendments, training, or, if necessary, legislative changes. If, however, the problems arising were unique to particular agencies, I would work with that agency to address the issue.

As stated later in this questionnaire, I also believe that the process used by OGE for periodically reviewing agency ethics programs should be expanded to better assess the quality of each program. Expanded reviews may be an additional opportunity to address

problems that either arise within one agency or which appear to be government-wide.

It is also my understanding that OGE has recently begun the process of requesting contractor proposals to conduct a survey of federal employees. The purpose of the survey is to assess executive branch ethical culture and measure ethics program effectiveness, from an employee perspective. If confirmed, I will take an active role in overseeing this process to ensure that the information obtained is used effectively.

Regulatory Actions

1. **OGE is required to issue regulations on standards of ethical conduct that cover the executive branch as a whole. Each agency is also required to issue regulations on standards of ethical conduct (to be issued jointly with the concurrence of OGE) which supplement for each agency the OGE-issued executive branch standards. What is the status of this effort? Has OGE completed its work on issuing the required regulations? How many agencies were required to issue supplemental regulations, how many have done so, and how many have not done so? For those agencies that have not issued the required regulations, what is OGE doing to ensure that this statutory requirement is implemented? When does OGE expect that all agencies will have issued their regulations?**

OGE issued its financial disclosure regulations in 1992 and the Standards of Conduct in 1993. The regulations governing the application of 18 U.S.C. 208 were issued in 1996. It is my understanding that the regulations implementing 18 U.S.C. 207 and 209 are in process.

No agency is required to issue supplemental regulations and I do not know whether particular agencies are still pursuing supplemental regulations. If agencies wish to publish supplemental regulations, they are required to issue them jointly with OGE. If confirmed, I would ensure that those that are still pursuing supplemental regulations complete the process.

2. **OGE is required to issue regulations specifying the responsibilities of executive branch agencies to develop and implement orientation and annual ethics training courses. What is the status of this effort? Has OGE completed its work on issuing the required regulations? How many agencies were required to develop and implement training courses, how many have done so, and how many have not done so? For those agencies that have not developed and implemented the required courses, what is OGE doing to ensure that agencies comply with the training requirements? When does OGE expect that all agencies will have developed and implemented the required courses?**

The regulations on training requirements were revised in 1997 and it is my understanding that a "Plain English" version of those regulations will be published as an Interim Rule

shortly. These regulations require that live training be provided by all agencies and includes training through written materials as an option for some employees. As far as I know, all agencies comply with this regulatory requirement. I do expect, however, that the quality of the training courses varies among the agencies. If confirmed as Director, I would work with agencies to ensure that they provide the highest quality training possible. As stated elsewhere in this questionnaire, it is my current view that reviews of agency ethics programs should be expanded to include evaluation and assistance regarding the quality of an agency's ethics program, including the training program.

In addition, OGE's annual questionnaire that is completed by all agencies requires that agencies disclose the number of employees who were required to receive ethics training and the number who actually received the training. At this time I am not familiar with OGE's policies if it finds that an agency is not complying with the training requirements. Of course, if confirmed, I will review this and all other matters under OGE's jurisdiction.

Effectiveness Evaluations

1. **OGE has a responsibility to evaluate the effectiveness of the Ethics in Government Act, the conflict of interest laws, and other related statutes, and to recommend appropriate new legislation or amendments. As OGE Director,**
 - (a) what criteria do you believe is appropriate for OGE to use to measure the effectiveness of these statutes;
 - (b) what specific statutory provisions do you believe need to be evaluated by OGE;
 - (c) do you believe OGE should have a leadership role in evaluating the effectiveness of agency-specific ethics statutes, including whether agency-specific requirements that are more restrictive than government-wide requirements are warranted and effective (and recommending appropriate changes to Congress); and
 - (d) are you satisfied with past OGE efforts to fulfill this part of OGE's mission? If you are satisfied with OGE's past efforts, please identify the past OGE efforts that you believe demonstrate OGE's leadership in this area. If you are not satisfied, what more will you do as OGE Director to provide leadership in evaluating the effectiveness of the government's ethics laws?

The ethics statutes contain prohibitions regarding conflicts, post-employment, and non-official representations before the government when employed by the government. All these provisions address the crucial issue of ensuring that the actions taken by all federal officials are based solely on the merits of the issue and are in the best interests of the government, and not the personal interests of the employee or another. I believe that the statutory provisions are appropriate, but they establish what is minimally acceptable. As a program, we must strive for behavior that far exceeds the standard for what might be criminal. In order to maintain the public trust we should avoid even the appearance of a conflict.

I believe that OGE has fulfilled its statutory responsibility to oversee programs to ensure that conflicts of interest do not occur in the executive branch. I do believe, however, that there are opportunities to improve in the areas discussed in this questionnaire. In addition, if I am confirmed as Director my understanding about OGE's fulfillment of its statutory responsibilities may change.

Because neither of the federal agencies at which I have worked has agency-specific ethics statutes, I am not familiar with issues arising in such agencies. If confirmed as OGE Director, I would familiarize myself with such issues and work with the relevant agencies to devise solutions, including amended legislation, if necessary.

As a general matter, however, I agree with the goal embodied in the Ethics in Government Act that the same ethics standards should apply to all employees of the executive branch, regardless of the agency to which they are assigned.

2. **OGE periodically reviews the effectiveness of agencies' ethics programs. OGE has reported that a majority of agencies maintain strong ethics programs, and that this accounts for the recent decline in OGE recommendations to improve the effectiveness of agencies' ethics programs. Do you believe the scope and thoroughness of the OGE reviews of agencies' ethics programs is adequate? If not, how should the effectiveness reviews be improved?**

I do believe that the quality of ethics programs has improved in recent years. I would, therefore, expect a decline in OGE recommendations to improve agency ethics programs. I have discussed the audit process with many colleagues although I have personally experienced reviews of only one agency's ethics program. My opinion is that in those reviews too much emphasis is placed on reviewing timeliness of financial disclosure reports, with too little emphasis on the quality of advice given to employees. While timeliness of report filing is important, the avoidance of conflicts is the ultimate goal. If employees are well educated about potential conflict situations and have available to them reliable ethics information, conflicts are avoided altogether. If confirmed, I would explore expanding ethics reviews to include the quality of training and accuracy of advice and seek to ensure that OGE is playing an active role in being available to agencies to ensure that they are getting the information and support that they need.

3. **A 1995 GAO report (GGD-95-81FS) identified the various types of remedial actions that had been taken by Senate-confirmed political appointees in DOE and EPA to resolve situations that had been identified as actual or potential conflicts of interest. Do you think a similar disclosure of the results of conflict-of-interest restrictions in individual agencies would contribute to an improved understanding of the effectiveness of these restrictions? If you believe that greater disclosure of the results of applying conflict of interest restrictions would be beneficial, how do you think this should be achieved? Should it be done in connection with OGE's periodic assessments of agencies' ethics programs? Should it be done by agencies**

themselves? Should disclosure be done annually or on some other basis?

I have reviewed the 1995 report and agree with the basic premise of such publications that sharing information publicly and with DAEO's increases the understanding of and compliance with ethics requirements. As a practitioner, I have always found that having actual scenarios and fact patterns to share with clients strengthened my training courses and individual counseling sessions. OGE currently sends to DAEO's periodic summaries of prosecutions under 18 U.S.C. 201-209 that I also find helpful. The level of detail included in this report, however, is great and I assume required significant resources. Before committing to such publications on a regular basis, I would want to carefully balance the effort with the benefits. If confirmed as Director, I would analyze this and other methods of providing DAEO's with up-to-date information about "real life" ethics issues.

4. **In a 1993 report (GGD-93-85), GAO compared OGE policies and procedures for dealing with corrections to financial disclosure reports of executive branch personnel to the policies and procedures applicable to judicial personnel. When corrections were required to financial disclosure reports, GAO found that OGE did not require the signature of the person making the financial disclosure on the correction report. In contrast, in the judicial branch, correction reports lacking an original signature by the person making the financial disclosure were sent back for the signature. GAO's 1993 report also said that OGE-requested information to clarify or correct an executive branch official's financial disclosure report was most often submitted by agency officials without a clear indication that the information was reviewed and approved by the official who made the disclosure. Is this procedure still the OGE practice? If so, do you believe the practice represents the best approach OGE can take to deal with report corrections made in response to OGE reviewer comments? Does the approach adequately ensure that the official making the disclosure is taking responsibility for the accuracy of that disclosure?**

The public financial disclosure form, as originally submitted or as corrected, is signed by the filer. That signature is the certification that the information in the form is correct. I would never recommend to any DAEO or filer that anyone have the authority to amend the form without first confirming the change with the filer. I am aware, however, that some filers have given their agents the authority to make changes to their forms without conferring with them first. In general, I do not believe that this is a good practice because it risks encouraging an attitude that the filer is not personally responsible for all the information on the form, although, especially with wealthy filers, someone other than the employee may have the most precise information. If confirmed, I will inquire as to the extent and nature of changes to the financial disclosure forms that OGE believes are being made without the knowledge and consent of the filer.

LAMAR ALEXANDER

October 26, 1999

The Honorable Fred Thompson
Chairman
Government Affairs Committee
340 Dirksen Senate Office Building
Washington, D.C. 20510-6250

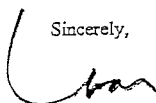
Re: Amy L. Comstock

Dear Senator Thompson:

I am writing to you regarding Amy Comstock, who has been nominated by President Clinton to be the Director of the Office of Government Ethics. During my tenure as Secretary of Education, Ms. Comstock served as Executive Assistant to the General Counsel. Ms. Comstock held that position as a career attorney. As Executive Assistant, Ms. Comstock demonstrated strong legal and management skills and a commitment to public service. Ms. Comstock provided guidance to the General Counsel on ethics and management issues and worked on many initiatives that were priorities of the Bush Administration. Her outstanding work during that time was the basis for her receiving the Federal Bar Association Younger Federal Lawyers Award in 1994. I understand that since I left the Department of Education, Ms. Comstock has been a leader in the ethics community with an outstanding professional record as a career government attorney.

I hope that you will give Ms. Comstock's nomination timely and careful consideration.

Sincerely,



Lamar Alexander

LA/kd

cc: Senator John I. Lieberman
Mark Childress

ARTHUR B. CULVAHOUSE, JR.

SUITE 500 WEST
555 13TH STREET, N.W.
WASHINGTON, D.C. 20004-1109

April 26, 2000

The Honorable Fred Thompson
Chairman
Committee on Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510-6250

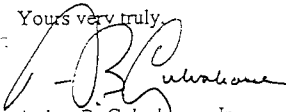
Re: Amy Comstock

Dear Fred:

I am advised that Amy Comstock has been nominated by the President to be Director of the Office of Government Ethics. Based on my experience in working with Ms. Comstock in both the Bush and Clinton Administrations, I believe that she would be an excellent Director of OGE.

I have worked cooperatively with Ms. Comstock when she was a career attorney at the Department of Education while Lamar Alexander was Secretary of Education, and most recently as the attorney in the Office of White House Counsel responsible for ethics compliance by nominees and appointees for Executive Branch positions. (Notwithstanding my party affiliation, I continue to represent senior-level nominees and appointees with complex financial holdings in complying with the myriad ethics and financial disclosure requirements imposed by law and U.S. Senate nominating committees.) I found Ms. Comstock to be an exceedingly competent and level-headed attorney, who is well-versed in the applicable law and lore. More importantly, I believe that she will be a hands-on manager and a faithful interpreter of, and adherent to, congressional intent in passing the Ethics in Government Act (and amendments thereto), and that she will not countenance the administrative creation of new barriers to successful individuals (and individuals with successful spouses) entering into government service.

If you or the Committee staff has any questions regarding my experience with Ms. Comstock, please do not hesitate to contact me at (202) 383-5388.

Yours very truly,

Arthur B. Culvahouse, Jr.

SAKS
INCORPORATED

JEFFREY C. MARTIN
Senior Vice President of Compliance & Government Affairs

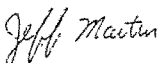
April 14, 2000

The Honorable Fred Thompson
Chairman
Governmental Affairs Committee
340 Dirksen Senate Office Building
Washington, DC 20510-6250

Dear Senator Thompson:

As a native Tennessean and a supporter of your leadership, I am writing to express my enthusiasm for the confirmation of Amy Comstock to be Director of the Office of Government Ethics. Amy is a career, non-partisan government attorney who worked very effectively for me when I was General Counsel of the Department of Education in 1991-1992. Moreover, I understand Governor Alexander, who was Secretary of Education at that time, also supports Amy's prompt confirmation. I hope you and your colleagues give prompt consideration and approval to Ms. Comstock's nomination.

Sincerely,


Jeffrey C. Martin



May 4, 2000

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Senator Fred Thompson
 Chairman
 Governmental Affairs Committee
 U.S. Senate
 340 Dirksen Senate Office Building
 Washington, DC 20510-6250

Dear Senator Thompson:

I understand that Amy Comstock has been nominated by the President to be the Director of the Office of Government Ethics. Through my work at the Council for Excellence in Government, I have known Ms. Comstock since 1996 and strongly support her confirmation.

If confirmed, Ms. Comstock will bring to OGE a strong background in government ethics coupled with strong managerial and leadership skills. In 1996, while serving as the Assistant General Counsel for Ethics at the Department of Education, Ms. Comstock was chosen by the Department to be one of 20 senior career executives to participate in the Department's first Senior Leadership Program, a program led by the Council for Excellence in Government. Her performance in that program, and what I know of her work since then, assure me that Ms. Comstock has the skills and experience necessary to do an excellent job as Director. In addition, I know that she shares our mutual concern that the government ethics program, while it must maintain impartial decision-making and implement the spirit and intent of the Ethics in Government Act, should not have the effect of deterring qualified people from entering public service.

If you, or a member of your staff, wish to discuss Ms. Comstock's qualifications further, please feel free to call me.

Sincerely,

Patricia McGinnis
 President and CEO



United States
Office of Government Ethics
 1201 New York Avenue, NW., Suite 500
 Washington, DC 20005-3917

December 29, 1999

The Honorable Fred D. Thompson
 523 Dirksen Senate Office Building
 Washington, DC 20510-4203

ATTN: Hannah Sistare, Republican
Staff Director/Counsel

Dear Senator Thompson:

As you are aware, President Clinton has nominated Ms. Amy Comstock to be my successor as Director of the U. S. Office of Government Ethics (OGE). I and my OGE colleagues have had the good fortune of working with Ms. Comstock for the past six years. She was an ethics officer at the Department of Education (DOE) from July 1993 to October 1998 and subsequently served as an ethics counselor at the White House from October 1998 to the present. Both when she was at the DOE and at the White House, OGE staff members and I had extensive contacts with Ms. Comstock. In all instances she was knowledgeable, diligent and professional. Moreover, she exhibited outstanding interpersonal skills. When the White House Counsel asked OGE to recommend a career ethics official to be detailed to lend assistance, Ms. Comstock was recommended by OGE and was employed by the Counsel's office. Her performance there has been outstanding.

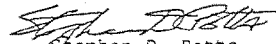
Because of the positive experiences my staff and I have had with Ms. Comstock, I recommend her confirmation as Director of OGE with enthusiasm and confidence.

I also would like to take this opportunity to encourage action on Ms. Comstock's nomination early in the next session of Congress. I have begun to explore post-OGE opportunities and have become aware that some may require my departure from OGE late next spring. To assure the smoothest possible transition, Ms. Comstock and I would prefer to have a period of about 30 days for her to work with me before I depart.

The Honorable Fred D. Thompson
Page. 2

Thank you very much for your support of the executive branch ethics program. I believe Ms. Comstock will be an able, vigorous and independent Director thus assuring a successful continuation of OGE's crucial role in preventing conflicts of interest and promoting public service as a public trust.

Sincerely,



Stephen D. Potts
Director

EDWARD C. STRINGER

EDWARD C. STRINGER
25 CONSTITUTION AVENUE
SAINT PAUL, MN 55155

April 13, 2000

Senator Fred Thompson
340 Dirkson Senate Office Building
Washington, D.C. 20510-6250

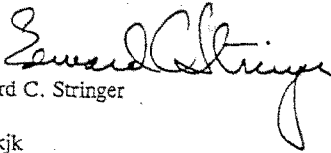
Dear Senator Thompson:

Amy L. Comstock has been nominated by the President as Director of the Office of Government Ethics. I am writing in support of her Senate confirmation.

In 1989 I was appointed by President George Bush to serve as General Counsel in the U. S. Department of Education. Ms. Comstock was then a staff attorney in the department and in only a matter of a few weeks she came to my attention as unusually bright and hardworking—a practical problem solver blessed with good judgment and a keen sense of fair play. I appointed her as my Executive Assistant and enjoyed working with her until the fall of 1991 when I left government service. After my departure, my understanding is that her career at the Education Department shifted more toward ethics enforcement during the tenure of Secretary Lamar Alexander, and thereafter as associate counsel to the President responsible for the White House Ethics Program.

Ms. Comstock is a person of strong intellect, high energy, and unquestioned integrity and I urge you to support her candidacy for appointment as Director of the Office of Government Ethics.

Yours very truly,



Edward C. Stringer

ECS:kjk

United States General Accounting Office

GAO

Report to the Chairman, Permanent
Subcommittee on Investigations,
Committee on Governmental Affairs,
United States Senate

February 2000

HCFA

Three Largest
Medicare
Overpayment
Settlements Were
Improper



B-284138

**Conflict-of-Interest
Concerns**

The Standards of Ethical Conduct instruct government officials not to participate in a matter if a reasonable person with knowledge of the relevant facts would question their impartiality, unless authorization to participate has been received from an appropriate agency ethics official.⁵⁷ Although Mr. Vladeck's participation in the settlement of the hospital's debt occurred more than a year after he had left the hospital's Board of Directors, in our view Mr. Vladeck should have been concerned about the appearance of his involvement and sought authorization to participate in the negotiations from appropriate agency officials.⁵⁸

We also learned that Mr. Vladeck had failed to disclose his previous affiliation with the home health agency's Advisory Committee on the public financial disclosure forms he filed upon his appointment. Our inability to interview Mr. Vladeck prevents us from assessing whether this omission was intentional and a violation of law.⁵⁹

**HCFA's Unsatisfactory
Response to Our
Questions**

We interviewed Sheree Kanner, HCFA's current Chief Counsel, and Michelle Snyder, HCFA's current Chief Financial Officer, who were unable to advise us about HCFA's claims collection processes or provide an opinion on whether the three settlements discussed above complied with the Federal Claims Collection Act. Subsequently we were advised that HCFA would provide us written correspondence addressing these specific issues and its opinion about the legal sufficiency of the three settlements. Michael Hash, HCFA's Deputy Administrator, sent us a letter that neither addressed these issues nor expressed HCFA's view of the three settlements. Mr. Hash and Ms. Snyder both informed us, however, that a working group is examining "debt collection" issues and they expect it to make recommendations in the future.

⁵⁷ 5 C.F.R. § 2635.502(a)(2) (1998).

⁵⁸ Government employees are prohibited from participating in a particular matter that is likely to have a direct and predictable effect on the financial interest of entities in which they served as an officer or employee within the previous year. *Id.* § 2635.502.

⁵⁹ 18 U.S.C. § 1001 (Supp. IV 1998).

In The Matter Of:

*Oversight of HCFA's Settlement Policies: Did
HCFA Give Three Providers Special Treatment*

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Governmental Affairs; March 28, 2000

Page 149

(1) that also have payment disputes with Medicare, that also are
 (2) running in the red, that are also under tremendous pressure
 (3) and that are also doing the very valuable work of serving
 (4) our elderly and disabled citizens?
 (5) Mr. Vladeck, I would hope as a matter of practice that
 (6) HCFA would never have payment disputes pending that were 10
 (7) years old for any provider, yes, Senator.
 (8) Senator Collins. I would agree with that, but why
 (9) should this provider be moved to the head of the line?
 (10) Mr. Vladeck. Because this provider came to our
 (11) attention as one that had already issued layoff notices and
 (12) at which the data would suggest served as poor and needy a
 (13) population as any in the United States, except perhaps for
 (14) that of the L.A. County Health Department.
 (15) Senator Collins. All of us agree that the mission of
 (16) Medicare is essential. None of us wants to see seniors or
 (17) disabled people or the poor lose their access to services.
 (18) But is it fair to give special treatment to one provider
 (19) when hospitals all across the Nation are providing the kinds
 (20) of services that you have just described?
 (21) Mr. Vladeck. I never directed anyone, nor do I believe
 (22) that what HHC received in this settlement was special
 (23) treatment, as you are characterizing it. I do not think
 (24) they got special treatment.
 (25) Senator Collins. Well, we have heard from everyone who

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(1) has testified today that this was an unusual situation. Mr.
 (2) Booth says it was the only time in his more than 30 years
 (3) that the Administrator asked him to settle a matter. The
 (4) lower-level HCFA officials from the regions have testified
 (5) that they were shocked by the terms of the settlement. The
 (6) GAO reviewed 96 settlements, every settlement over \$100,000,
 (7) and found that these 3 did, in fact, receive special
 (8) treatment. So you are contesting that the standard process
 (9) was followed in these 3 cases?
 (10) Mr. Vladeck. No, I am saying the standard process was
 (11) not acceptable in these 3 cases and it is not acceptable in
 (12) many other cases and that is why we sought to change it, and
 (13) that is why I, again, as I said in my statement, would be
 (14) happy to work with the Subcommittee on making further
 (15) changes in the process.
 (16) Senator Collins. You mentioned that you served as a
 (17) member of the board of directors of HHC. Could you tell us
 (18) what years you served?
 (19) Mr. Vladeck. I do not recall exactly without the
 (20) documents in front of me, but I served, I believe, from
 (21) approximately 1986 to approximately 1989, and then from
 (22) sometime in 1991, I guess, until I resigned immediately
 (23) before joining the Federal Government.
 (24) Senator Collins. So you were on the board immediately
 (25) prior to becoming the Administrator of HCFA, is that

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(1) correct?
 (2) Mr. Vladeck. That is correct.
 (3) Senator Collins. I want to tell you what my concern is
 (4) about the conflict of interest issue. The whole purpose of
 (5) our ethics laws and regulations is to foster public
 (6) confidence in the integrity and the impartiality of
 (7) decisions made by Government officials, and that is why the
 (8) regulations include provisions that encourage public
 (9) officials, if they have any doubt about how a reasonable
 (10) person would pursue their actions, whether it would be
 (11) perceived as a conflict of interest, whether or not it is an
 (12) actual conflict of interest, but whether there is a
 (13) perception of a lack of impartiality, there is a process set
 (14) up that encourages public officials to avoid the appearance
 (15) of a conflict by getting advice from the designated agency
 (16) ethics official.
 (17) Did you do that in this case? Did you consider doing
 (18) it? Did you receive authorization from your agency ethics
 (19) official to get so involved in a reimbursement dispute that
 (20) involved a hospital on which you had sat on the board
 (21) immediately prior to coming to HCFA?
 (22) Mr. Vladeck. Madam Chairman, I believe Senator Levin
 (23) has already entered into the record a document from the
 (24) ethics office of the Department of Health and Human Services
 (25) of which I was aware that made it quite explicit that any

Page 152

(1) disqualification on my part on Health and Hospitals
 (2) Corporation issues would last for 1 year after my
 (3) appointment as Administrator, in addition to which I do not
 (4) believe the question has ever been raised before you have
 (5) raised it implicitly right now in the course of all these
 (6) investigations as to whether I consulted with anyone on the
 (7) appropriateness of my working on this HHC issue.
 (8) Senator Collins. That is what I am asking.
 (9) Mr. Vladeck. And the answer is, yes, I did. And the
 (10) fact is that a year earlier, on an unrelated New York State
 (11) policy matter, I had recused myself from working on an 1115
 (12) Medicaid waiver application from New York State because of
 (13) the extent and nature of my involvements with many
 (14) organizations—permit me to finish, please—in New York
 (15) State prior to my appointment as Administrator, and I was
 (16) advised in writing by the HCFA ethics officer that my
 (17) decision to recuse myself in that instance was not justified
 (18) by the law, was not required, and was an excessive reaction
 (19) to the issues of appearance. And while it did not speak
 (20) specifically to the HHC issues, I understood that guidance
 (21) in the context of the earlier ruling about HHC to be pretty
 (22) clear guidance on whether or not I should disqualify myself
 (23) on New York State matters.
 (24) Senator Collins. Senator Levin?
 (25) Senator Levin. In each of the settlements which were