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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

26314

B-212647 September 14, 1983

The Honorable William D. Ford
Chairman, Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

This responds to your letter of July 27, 1983, jointly signed by Subcommittee Chairmen Robert Garcia and Mickey Leland concerning certain financial transactions involving United States Postal Service Governor, John McKean, and two members of the White House Staff, Mr. Edwin Meese III, and Mr. Michael Deaver. The transactions occurred in 1981, the year in which Mr. McKean's name was submitted to the President to fill a vacancy on the Postal Service Board of Governors.

You requested that the General Accounting Office review the nature of these transactions, their timing in relation to Mr. McKean's nomination and the comprehensiveness and timeliness of their reporting.

In reviewing this matter, we interviewed Mr. Meese, Mr. Deaver, and Mr. McKean, as well as the President's counsel, Mr. Fielding, and Mr. Pendleton James, former Director of Presidential Personnel. We examined the Financial Disclosure Statements of the three principal parties in light of the pertinent provisions of the Ethics in Government Act, Pub. L. 95-521, as amended. The information we obtained is set forth below and is supplemented by a chronology in Attachment 1 and a list of documents reviewed in Attachment 2. Together with this information we are providing our analysis of the principal parties' compliance with the financial disclosure requirements of the Ethics in Government Act.

PART I - DEAVER-MCKEAN RELATIONSHIP

Mr. Deaver became acquainted with Mr. McKean in 1979 upon the recommendation of a friend. Mr. McKean immediately

began serving as Mr. and Mrs. Deaver's tax advisor and continues to serve in that capacity. His firm, John R. McKean, Accountants, regularly bills and is paid for his services by the Deavers.

Purchase/Lease Transaction

Mr. Deaver terminated his association with Deaver and Hannaford, Inc., in preparation for assuming his position in the Reagan administration. As a result of this termination Mr. Deaver received a $21,000 lump-sum payment that posed an unexpectedly large income tax liability in 1981. Seeking tax planning advice, Mr. and Mrs. Deaver contacted Mr. McKean in August 1981. He suggested that the Deavers enter into a truck purchase/lease arrangement that would provide tax deductions in 1981 to help offset the $21,000 added income. Mr. and Mrs. Deaver agreed to the arrangement and Mr. McKean proceeded to work out the details.

Mr. McKean established an arrangement whereby Mrs. Deaver, under the name of CD Leasing, borrowed $58,889 from Mr. Helmut Moss to purchase a truck from Idaho Peterbilt, Inc., a truck dealer and distributor. Mr. Moss owns a 75 percent interest in Idaho Peterbilt and Mr. McKean owns 25 percent. As explained by Mr. McKean, this transaction entitled the Deavers to deduct depreciation and interest expenses and to take an investment tax credit on their 1981 joint Federal income tax return.

Under the note signed by Mrs. Deaver on October 7, 1981, the $58,889 loan is payable on demand to Mr. Moss and bears interest at the rate of 18 percent per annum. That rate was consistent with the average rate then charged by commercial banks for personal loans. Approximately $14,000 in principal and interest had been paid on the note as of December 31, 1982.

The second part of the arrangement established by Mr. McKean was a lease of the purchased truck to provide rental income sufficient to cover principal and interest payments on the loan. The lease was signed on October 7, 1981, by Mrs. Deaver and Mr. Moss, on behalf of CD Leasing as lessor and Ipelco, Inc., as lessee. Ipelco serves as the leasing entity for Idaho Peterbilt, Inc., and is 75 percent owned by Mr. Moss and 25 percent owned by Mr. McKean. The lease is for a term of 23 months and requires Ipelco to make

rental payments totaling $43,699. According to Mr. McKean, the ultimate lessee is not Ipelco, but Motor West, a partnership in which he has no interest. The Deavers had received rental payments of approximately $22,000 as of December 31, 1982.

According to Mr. McKean, at least two options exist at the expiration of the lease: a new lease or sale of the truck. Mr. McKean is evaluating these alternatives and believes that either will provide proceeds sufficient to retire the Deaver loan within about 6 months.

Mr. McKean stated that this purchase and lease arrangement is a relatively routine tax shelter device, similar to ones that he and his partners have arranged for clients other than Mr. and Mrs. Deaver. No fee was charged for this service other than the regular fee charged on an hourly basis.

McKean Nomination

Mr. McKean stated that he first learned that Mr. Deaver was recommending him for a position on the Postal Service Board of Governors on July 27, 1981, when Mr. Deaver called Mr. McKean to ask if he would be willing to serve. A typed list of candidates for the position prepared by the Office of Presidential Personnel on July 13, 1981, did not include Mr. McKean's name, although his name appears on the document in handwriting. Mr. Pendleton James, Director of Presidential Personnel at the time, stated that Mr. Deaver recommended Mr. McKean for the position during a regular meeting of the "senior personnel panel" on July 31, 1981. This panel consisted of Mr. Deaver, Mr. Meese, Mr. Baker, and Mr. James. According to Mr. James, when Mr. Deaver suggested that Mr. McKean's name be submitted to the President, the other panel members agreed. While the panel ordinarily acted upon recommendations that had been processed through the Office of Presidential Personnel, we were advised that it was not unusual for a recommendation to be initiated and acted upon at a panel meeting.

Mr. McKean explained that he has never discussed the nomination with Mr. Deaver in connection with the truck purchase/lease transaction. He further stated that he had no contact with the White House after Mr. Deaver's call on July 27, 1981, until August 17, 1981, when he learned that the President intended to nominate him to the Board of Governors. Between August 17, 1981, and October 29, 1981, the usual forms and clearances were processed and on November 4, 1981, Mr. McKean was formally nominated by the President.

He was confirmed by the Senate on March 8, 1982, to a term ending in 1986. Governors receive a salary of $10,000 per year plus $300 a day for not more than 30 days of meetings each year.

Mr. McKean indicated that he started thinking about a longer term on the Board of Governors around mid-summer 1982. He believed that a longer term would enhance his position, influence, and effectiveness as a member of that body. Mr. McKean stated that he raised the subject of a longer term during separate discussions with Mr. Deaver and Mr. Meese while he was in Washington for a Board of Governors meeting. Mr. McKean said he was aware that a full 9-year term would become available in December 1982 and had discussed his interest in the longer term with other members of the Board of Governors. Mr. Deaver said he recommended Mr. McKean for a full term because he believed Mr. McKean had been doing a good job. The second nomination was initiated in the latter part of 1982. The President nominated Mr. McKean to a full term on January 26, 1983, and he was confirmed by the Senate on February 24, 1983.

Deaver Financial Disclosure

Under Title II of the Ethics in Government Act, the incumbent of a position described in Section 201(f) is required to file a Financial Disclosure Report, Form 278, on or before May 15th of each year. That annual report covers not only the employee's own financial interests but the income, holdings and liabilities of his or her spouse. Mr. Deaver filed Forms 278 on May 17, 1982, and May 16, 1983. Since May 15th fell on a weekend in 1982 and 1983, both reports, filed on the first workday thereafter, were timely filed.

The Deavers' financial interests related to the truck purchase and lease transactions are properly reported on both Financial Disclosure Reports. On Schedule A of the form filed May 17, 1982, covering income and holdings for calendar year 1981, Mr. Deaver reported receiving rental income of between $2,500 and $5,000 from the "lease of personal property, vis., one new Peterbilt Tractor," and reported the tractor as an asset held for the production of income having a value of between $50,001 and $100,000 based on its price at the date of purchase. Purchase of the tractor in October 1981 was listed on Schedule B of the

Form 278. The liability on the note, shown as payable to "Helmut Moss, c/o Idaho Peterbilt, Inc., 6633 Federal Way, Boise, Idaho 83705" was properly reported on Schedule D. That liability was shown as within the category of amount from $50,001 to $100,000 and was described as follows:

> "Approx. 18.0%, demand note, anticipated amortization period to be less than 48 mos, funded by proceeds from tractor lease 1981."

The tractor, lease and note were shown as financial interests of Mrs. Deaver.

On Schedule A of the Form 278 filed on May 16, 1983, covering calendar year 1982, Mr. Deaver accurately reported Mrs. Deaver's receipt of rental income of between $15,000 and $50,000 attributable to a "Peterbilt Tractor" having an asset value of between $50,001 and $100,000. Mr. Deaver reported the note owed to Helmut Moss as a liability under Schedule D. It is reported in essentially the same manner as for the prior year, except for an indication that the amortization period is anticipated to be 60 rather than 48 months.

PART II - MEESE-MCKEAN RELATIONSHIP

Mr. Meese told us that he was introduced to Mr. McKean by Mr. Deaver in late 1980 or early 1981. Mr. McKean immediately began advising Mr. and Mrs. Meese on tax and other financial matters and continues to serve as the Meeses' tax advisor. His firm regularly bills and is paid by them for his services.

Loans

Mr. McKean stated that Mr. Meese called him in early June 1981 to request a meeting. The two met on June 13, 1981, in Mr. McKean's office where Mr. Meese explained that he was facing "cash flow" problems arising from college tuition expenses for his children and his inability to sell his former residence in La Mesa, California.

Mr. McKean said that he and Mr. Meese met in McKean's office a second time on June 17, 1981. They determined at this meeting that Mr. Meese would need a total of $60,000--$40,000 initially and $20,000 at a later date. Mr. McKean

wrote a $40,000 check to Mr. Meese on June 25, 1981. Mr. Meese's liability for the $40,000 was recorded in the form of a promissory note executed June 25, 1981. The note obligated Mr. and Mrs. Meese to pay the loan principal on demand to "John R. McKean, Trustee, or order." The stated interest rates on the note were 21 percent per annum from July 1 through September 30, 1981, and thereafter, the greater of Bank of America prime rate or 18 percent. Interest payments were to be made not less than annually.

Mr. McKean stated that Mr. Meese called him in December 1981 to say that he needed the additional $20,000. Mr. McKean wrote a $20,000 check to Mr. Meese on December 28, 1981. A second promissory note, dated December 28, 1981, recorded Mr. and Mrs. Meese's obligation for the $20,000. This note contained the same terms as the first note, except that provision for the 21 percent interest rate was deleted. The 18 percent rate specified in this and the earlier note was consistent with rates then charged by commercial banks for personal loans. Mr. McKean said he has not received any fee for his part in the loan transactions other than the regular fee he charged on an hourly basis.

Mr. McKean sent Mr. Meese a statement on June 4,1982, for the interest due on the first promissory note in the amount of $3,900 for the period from July 1 to December 31, 1981. Mr. Meese made no payments on the interest due. On November 3, 1982, Mr. McKean sent Mr. Meese three separate statements for the interest due on both promissory notes through September 30, 1982. The three statements totaled $12,000 and included the $3,900 previously billed. None of the three was paid by Mr. Meese.

Mr. Meese explained that he initially planned to repay the two promissory notes with the proceeds from the sale of his La Mesa, California, house but was unable to sell that house as quickly as he had hoped. The house was on the market for about 20 months before being sold in September 1982, and then yielded Mr. Meese far less than originally anticipated.

Mr. and Mrs. Meese signed two new promissory notes on November 9, 1982, to succeed the original notes. As with the original notes, the new notes were in the amounts of $40,000 and $20,000 and carried the same terms except

for fixing the interest rate on both at 18 percent per annum with no reference to the prime rate. As of June 30, 1983, Mr. Meese had made no payments on the new notes. Mr. McKean's firm sent Mr. Meese a statement on June 10, 1983, showing total accrued interest of $20,100 as of June 30, 1983, on the original and substitute notes.

In early June 1983 Mr. Meese and Mr. McKean took steps toward consolidating the principal and accrued interest obligations as a secured indebtedness. Mr. and Mrs. Meese met with Mr. McKean in his office on August 20, 1983, at which time Mr. Meese paid $100 of accrued interest. At that meeting Mr. and Mrs. Meese signed an application for a loan of $80,000 from a commercial lender to be secured by a second deed of trust on their McLean, Virginia, residence. Mr. McKean stated that he expects to learn within 60 days whether the Meeses' loan application is approved. He believes the Meeses will be able to begin making regular payments on this obligation now that Mrs. Meese is employed.

One of Mr. McKean's partners told us that the funds used to provide the Meese loans came from an investment pool which the partner established and manages for clients. He said he had established similar investment pools in the past, normally consisting of pension funds that clients wish to invest for maximum return. The investment pool from which the Meese loans were made was established in May 1981 with $100,000 of clients' funds. Two clients initially provided that fund amount.

Mr. McKean's partner said the initial purpose in establishing this pool was to purchase office furniture for the McKean accounting firm and to make other office improvements. He stated that in May 1981 the firm borrowed $40,000 from the pool for these purposes, and in June 1981 arranged two other loans from the pool--one being a loan to Mr. Meese for $40,000 and the other a loan to another client for $20,000. Thus, as of July 1, 1981, the entire $100,000 of investment pool funds had been loaned. In late December 1981 the other client repaid his $20,000 loan and this sum was then used to make the $20,000 loan to Mr. Meese on December 28, 1981. The partner said the McKean firm repaid its $40,000 loan in September 1982, leaving the two Meese loans totaling $60,000 as the only loans still outstanding. At that point the $60,000 was provided by a single lender.

Mr. McKean stated that he considered arranging the Meese loans through commercial banks but did not do so because investment pool money was readily available as long as he could assure the clients a good return on their investment. Mr. McKean's partner assured us that the Meese loans were not unusual, estimating that he has arranged similar loans for perhaps 12 other clients in recent years.

Mr. McKean's partner stated that he did not initially inform the pool investors that Mr. Meese was a borrower but he has since done so. Mr. McKean and his partner disclosed the identities of the lenders to us on a confidential basis and assured us that they conduct no business with the Federal Government. Mr. McKean's partner stated, and Mr. Meese confirmed, that Mr. Meese does not know the identity of the lenders. The partner pointed out that in loan transactions such as this he does not disclose the names of the lenders to the borrower because he sees no reason for doing so.

Mr. McKean's partner also said that the client providing the funds for the Meese loans at this time has not demanded payment of interest or principal. The partner explained that this client has sufficient retirement income and, for tax purposes, would prefer to defer interest income from the Meese loans until another tax year. He said that this client is satisfied as long as interest continues to accrue and the borrower is a good credit risk.

McKean Nomination

Mr. Meese stated that he first learned of Mr. McKean's candidacy for the Board of Governors position when Mr. Deaver suggested Mr. McKean's name at a meeting of the "senior personnel panel" in July of 1981. As to Mr. McKean's nomination to a longer term on the Board, Mr. Meese said that he did not initiate that recommendation but participated in the senior personnel panel meeting when it was discussed and approved for forwarding to the President.

Mr. Meese stated that there is no connection between the loans and Mr. McKean's nominations to the Board of Governors. He and Mr. McKean both stated that they have never discussed Mr. McKean's appointments in connection with the personal financial transactions involved.

Meese Financial Disclosure

Under Schedule D of Form 278, incumbents filing the Financial Disclosure Report due May 15 of each year are required to identify and give the category of amount of liabilities owed to any creditor which exceeded $10,000 at any time during the preceding calendar year, unless that liability falls within one of the exceptions noted in Section 202(a)(4) of the Ethics in Government Act. The two original demand notes for $40,000 and $20,000 payable by their terms to "John R. McKean, Trustee, or order" are not within any of the statutory exceptions and are shown as "Liabilities" under Schedule D of the Financial Disclosure Reports filed by Mr. Meese on May 17, 1982, and May 16, 1983, covering calendar years 1981 and 1982, respectively. Since May 15 fell on a weekend in 1982 and 1983, both reports, filed the next workday, were timely filed.

On both Forms 278 Mr. Meese reported the "Name and Address of Creditor" as "J. R. McKean, One California Street, San Francisco, California" and indicated that each of the two notes was for an amount between $15,001 and $50,000. In the block for reporting the "Type of Liability," including the date, interest rate and terms, Mr. Meese gave the following description of his liabilities under the two notes:

> "Promissory Note (7/81), the higher of 18% or prime at Bank America; interest payable annually; principal on demand.
>
> "Promissory Note (12/81) terms same as above."

The category of amount is properly indicated for each note. But for a technical discrepancy in failing to note the 21 percent rate of interest payable for the first 3 months under the note for $40,000 and to indicate the substitution of notes executed in November 1982, Mr. Meese described the type of liability in the manner contemplated by the instructions accompanying the Form 278.

As designated ethics official for the White House, Mr. Fielding has determined that there is a technical error in Mr. Meese's failure to indicate that Mr. McKean is the creditor in his capacity as trustee. We have been advised

that Mr. Meese intends to amend the two forms to show "McKean, Trustee" in the space for reporting the name of the creditor.

Even with the technical correction contemplated a question remains whether Mr. Meese's failure to identify the actual lenders rather than the trustee meets the requirement of Section 202(a)(4) of the Ethics in Government Act that:

> "Sec 202. (a) Each report filed pursuant to section 201(d) shall include a full and complete statement with respect to the following:
>
> * * * * *
>
> "(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed $10,000 at any time during the preceding calendar year * * *."

This particular question is not addressed in the regulations at 5 C.F.R. Part 734 or the instructions accompanying the Form 278.

There is legislative history interpreting the similarly stated liabilities disclosure provision of S. 555 as passed by the Senate, which indicates that an employee may not interpose a trustee to avoid disclosing the identity of the person to whom the liability is actually owed. The following statement appears in the Senate Report to accompany S. 555:

> "* * * The identity of a personal liability owed should include the name of the person or corporation to which the liability is owed. If the liability is nominally placed in the name of a fiduciary or agent of the reporting individual, that liability and the identity of the person to whom it is owed must be reported. * * *" S. Rep. No. 170, 95th Cong., 1st Sess. 119 (1977).

While statements made by Congresswoman Schroeder at 124 Cong. Rec. 30,421 regarding the House version of S. 555

suggest that an employee need report the identity of the actual creditor only "if known," her remarks appear to reflect the more specific language contained in an earlier bill tailored to meet her expressed concern that commercial loans may be discounted in the ordinary course of business to other than the original lender without the employee's knowledge. See 124 Cong. Rec. 9,359 and 11,278 (1978).

In this case we have been assured that Mr. Meese does not know the identity of the lenders. His inability to disclose their identity raises a question whether Government employees may "blind" their liabilities by interposing a trustee into the debtor-creditor relationship. Section 202(f) of the Ethics in Government Act exempts from disclosure the assets of a blind trust meeting the requirements set forth at length in that section. There is no similar provision for "blinding" liabilities. This issue is discussed more fully in Attachment 3.

The fact that Mr. Meese did not pay the $7,500 in interest due July 1, 1982, on the $40,000 note he signed a year earlier raises an additional question concerning Schedule C of the Financial Disclosure Report he filed on May 16, 1983. Under Section 202(a)(2)(B) of the Ethics in Government Act, an incumbent filing an annual report is required to report the identity of the source, a brief description, and the value of all gifts not otherwise excepted aggregating $100 or more in value received from any source during the preceding calendar year. With exceptions not relevant here, Section 209 of the Act defines a gift as follows:

> "(3) 'gift' means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor * * *." (Emphasis added.)

The term "forbearance"--the act by which a creditor waits for payment of a debt after it becomes due--describes Mr. McKean's indulgence in not enforcing the creditors' right to the immediate payment of interest due July 1, 1982, in the amount of $7,500. His forbearance had the effect of giving Mr. Meese the use of $7,500 for the remaining 6 months of 1982. Since Mr. Meese did not give consideration of equal or greater value, the Ethics in Government Act would appear to require him to report that forbearance as

a gift under Schedule C of the Form 278 filed on May 16, 1983. While this matter is discussed more fully in Attachment 4, Mr. Meese probably was unaware of the particular reporting requirement since the instructions accompanying the Form 278 rephrase the statutory definition of "gift" by omitting, without explanation, the word "forbearance."

The issues raised by Mr. Meese's failure to disclose the identity of the lenders and his failure to report their forbearance should be dealt with in the regulations issued by the Office of Government Ethics or, if necessary, by clarifying legislation.

PART III - MCKEAN'S FINANCIAL DISCLOSURE

Under section 201(h) of the Ethics in Government Act, a nominee who is not reasonably expected to perform the duties of his position for more than 60 days in a calendar year is exempt from the requirement to file the public financial disclosure report otherwise required by Section 201(b) of the Act. In a letter dated September 24, 1980, the Director of the Office of Government Ethics advised the General Counsel of the Postal Service that, because they serve for less than 60 days, Governors of the Postal Service Board of Governors are not required to file a Form 278 for public disclosure under the Ethics in Government Act.

Section 201(b) specifically provides that nothing in the Ethics in Government Act shall prevent any congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee. Pursuant to that authority, the Committee on Governmental Affairs asked Mr. McKean to complete the Form 278 and respond to specific questions regarding his financial interests. While neither is publicly available, the Committee has furnished copies of both to this Office.

Mr. McKean reported his income from and his interest in "John R. McKean, Accountants, a Professional Corporation," but he was not obliged to identify individual clients except those from whom he received compensation in excess of $5,000 in any of the two preceding years. Thus, he was not required to disclose his client relationship with either Mr. Deaver or Mr. Meese. He also reported his 25 percent

interest in Idaho Peterbilt, Inc., and specified his interest in "related leasing entities" affiliated with the dealership. Mr. McKean was not a party to the loan between Helmut Moss and Carolyn Deaver, d.b.a. CD Leasing, and thus he was not required to make disclosure with respect to that arrangement.

A fee one receives as trustee is required to be reported as earned income under Schedule A of Form 278. There is, however, nothing in the Ethics in Government Act, the implementing regulations or the instructions accompanying Form 278 addressing a reporting individual's obligation to disclose specific interests he holds as trustee or in a fiduciary capacity. We have been advised that the Office of Government Ethics routinely informs agencies and individuals that a trustee is required to disclose financial interests held in trust only if he has a beneficial interest in the trust. Since Mr. McKean did not receive a specific fee for acting as trustee and since he had no beneficial interest in the notes signed by Mr. and Mrs. Meese, he was not required to disclose the trust relationship or to report either note as a property interest or asset.

As a matter separate and apart from the disclosure required on the Form 278, Mr. McKean was specifically asked by the Senate Committee on Governmental Affairs to describe his fiduciary responsibilities. On November 17, 1981, Mr. McKean signed a statement entitled "Biographical and Financial Information Requested of Nominees Submitted to United States Senate Governmental Affairs Committee." In the second section of that document Mr. McKean was asked for a "description of any fiduciary responsibility or power of attorney held for or on behalf of any other person." In response to that question Mr. McKean stated that in the normal course of his practice as a Certified Public Accountant he holds powers of attorney to represent certain clients on matters involving the Internal Revenue Service. Although the first loan to Mr. and Mrs. Meese had been made at the time he prepared the statement, there is no mention of the fact that he served as trustee on behalf of the individuals who provided the funds loaned to Mr. Meese or that he otherwise acted in a fiduciary capacity in the normal course of his practice. Mr. McKean stated that he did not report this relationship because he had been focusing on his interests as of December 31, 1980, in preparing the statement.

We trust that the above discussion clarifies the nature and timing of the financial transactions involved, the circumstances leading to Mr. McKean's nomination, as well as any questions regarding disclosure of the relevant interests by the individuals concerned.

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States

Attachments - 4

ATTACHMENT 1

CHRONOLOGY

1979	McKean begins serving as the Deavers' tax advisor.
Late 1980 or early 1981	McKean begins serving as the Meeses' tax advisor.
January 20, 1981	Deaver and Meese assume their duties in the Reagan administration.
May 1981	McKean's partner establishes investment pool.
June 13 and 17, 1981	Meese and McKean meet in McKean's office to discuss Meese's financial situation and determine that Meese will need $60,000.
June 25, 1981	McKean writes Meese a check for $40,000 out of investment pool funds and a promissory note is executed to record Mr. and Mrs. Meese's obligation.
July 13, 1981	List of candidates for Board of Governors position prepared by James' office, not including McKean's name (McKean's name handwritten on document).
July 27, 1981	McKean first learns that Deaver intends to recommend him to position on Board of Governors when Deaver calls to ask if he is willing to serve.

July 31, 1981	At a senior personnel panel meeting, Deaver suggests that McKean be recommended for nomination to the Board of Governors position and the other panel members concur.
During August 1981	The Deavers contact McKean for advice on reducing their 1981 income tax liability.
August 17, 1981	President approves McKean's nomination and McKean is interviewed in anticipation of nomination.
October 7, 1981	Mrs. Deaver signs note for $58,889 and the truck lease is executed.
October 29, 1981	Fielding sends memo to James indicating that all clearances are complete and McKean is ready to be nominated.
November 4, 1981	President nominates McKean to Board of Governors term ending in 1986.
December 28, 1981	McKean writes Meese a check for $20,000 out of investment pool funds and a promissory note is executed recording Mr. and Mrs. Meese's obligation.
March 8, 1982	McKean is confirmed by the Senate to the Board of Governors position.
March 9, 1982	McKean is appointed to position.

May 17, 1982	Meese and Deaver file Financial Disclosure Report, Form 278, covering calendar year 1981.
June 4, 1982	McKean's firm sends Meese a statement showing interest of $3,900 accrued on $40,000 note through December 31, 1981.
September 1982	Meese sells La Mesa, California, residence.
November 3, 1982	McKean's firm sends Meese statements showing interest of $12,000 accrued on $40,000 and $20,000 notes through September 30, 1982.
November 9, 1982	Mr. and Mrs. Meese execute two new promissory notes for $40,000 and $20,000 to succeed original notes.
November or December 1982	McKean discusses the possibility of a longer term on the Board of Governors with other Governors and with Deaver and Meese in Washington.
	Helene von Damm, Director of Presidential Personnel, sends undated memo to Deaver detailing the steps necessary to lengthen McKean's term.
	At a senior personnel panel meeting Deaver suggests that McKean be nominated for a full 9-year term on the Board of Governors and the other panel members concur.
January 26, 1983	President nominates McKean for a full term on the Board of Governors.

February 24, 1983	McKean is confirmed by the Senate for a full term on the Board of Governors and resigns previous position.
February 25, 1983	McKean is appointed to position.
May 16, 1983	Meese and Deaver file Financial Disclosure Reports, Form 278, covering calendar year 1982.
June 10, 1983	McKean's firm sends Meese a statement showing interest of $20,100 accrued under original and successor notes through June 30, 1983. Steps taken toward consolidating and securing total indebtedness.
August 20, 1983	Mr. and Mrs. Meese meet with McKean in his office and sign application for $80,000 loan to be secured by second deed of trust on McLean, Virginia, residence. Meese pays $100 of interest, reducing outstanding indebtedness from $80,100 to $80,000.

ATTACHMENT 2

Copies of Documents We Obtained

From White House Counsel

Financial Disclosure Reports, Form 278, filed by Deaver and Meese covering calendar years 1981 and 1982.

From Senate Governmental Affairs Committee

Financial Disclosure Report, Form 278, and Biographical and Financial Information submitted by McKean to Senate Governmental Affairs Committee in connection with nomination.

From John R. McKean

Initial promissory notes dated June 30 and December 28, 1981, recording Mr. and Mrs. Meese's obligation for the $40,000 and $20,000 loans.

Successor promissory notes dated November 9, 1982, recording Mr. and Mrs. Meese's obligation for the $60,000 in loans.

Statements, one dated June 4, 1982, and two dated November 3, 1982, showing accrued interest due on the $40,000 promissory note.

Statement dated November 3, 1982, showing accrued interest due on the $20,000 promissory note.

Checks, dated June 25 and December 28, 1981, in the amounts of $40,000 and $20,000 to Meese from McKean.

Letter, dated June 10, 1983, from McKean's partner to Meese requesting legal description of Meese's McLean, Virginia, residence for purpose of securing a second deed of trust.

Attachments to June 10, 1983 letter consisting of a draft of a new $80,000 note and a worksheet showing total interest accrued on the Meese loans as of June 30, 1983.

Letter, dated August 10, 1983, to McKean from financial institution specifying the terms offered for an $80,000 loan secured by a second deed of trust.

Schedule showing additions to and disbursements from investment pool from which Meese loans were made.

Chronology of events after Meese loans were granted.

Equipment lease between Ipelco, Inc., and Motor West.

Copies of Documents We Reviewed but did not Obtain

At White House Counsel's Office

Equipment lease, dated October 7, 1981, between CD Leasing and Ipelco, Inc.

Demand note, dated October 7, 1981, recording obligation for $58,889 loan to Carolyn Deaver from Helmut Moss.

Inspection contract, dated October 7, 1981, between CD Leasing and Helmut Moss providing for monthly and annual inspections of truck.

Contract of sale between Carolyn Deaver and Helmut Moss.

At John R. McKean's Office

Escrow on Mr. and Mrs. Meese's La Mesa, California, house.

Check in the amount of $40,000 paid back to investment pool by John R. McKean, Accountants.

Disclosure of Liabilities Under the Ethics in Government Act

Mr. Meese was required to report his liabilities on Schedule D of the Financial Disclosure Reports, Form 278, he filed in May of 1982 and 1983. In the space provided for "Name and Address of Creditor" Mr. Meese listed "J. R. McKean," notwithstanding that the demand notes in question are payable to "John R. McKean, Trustee." Even if the report is corrected to indicate Mr. McKean's capacity as trustee, there remains a question whether listing a trustee as creditor complies with the disclosure requirements of the Ethics in Government Act, Pub. L. 95-521, as amended. Section 202 of that Act provides:

> "(a) Each report filed pursuant to section 201(d) shall include a full and complete statement with respect to the following:
>
> * * * * *
>
> "(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed $10,000 at any time during the preceding calendar year, excluding * * *."

Neither the implementing regulations at 5 C.F.R. Part 734 nor the instructions accompanying the Form 278 address this "trustee" question. Furthermore, while there is legislative history from the Senate suggesting that an employee may not, by interposing a fiduciary, avoid disclosing the identity of his creditor, there is history from the House to the contrary, suggesting that the indentity of the lender need be disclosed only "if known."

The language of Section 202(a)(4) emerged from conference as an amalgam of differing language contained in Senate and House bills. The liabiities disclosure provisions of the two bills differed most significantly in that the Senate version contained fewer exclusions. The following explanation is excerpted from the Conference Report accompanying S. 555, which became Pub. L. 95-521:

> "The Senate bill required reporting of liabilities owed over $2,500 to any source other than a relative at any time during the calendar year. The House required disclosure

of liabilities of over $5,000 as of the close of the calendar year to any source other than a relative, except for certain mortgages on a personal residence, and a loan secured by a personal motor vehicle or household furniture or appliances. The Senate receded to the House with an amendment changing the threshold to $10,000 but covering loans held at any time during the calendar year." H.R. Rep. No. 1756, 95th Cong., 2d Sess. 67 (1978).

Senate Bill S. 555 sent to conference required the reporting individual to disclose:

"(f) The identity and category of value of each personal liability owed, directly or indirectly, other than to a relative, which exceeds $2,500 at any time during such calendar year." 123 Cong. Rec. 21,014 (1977).

The following explanation of that language is excerpted from the Senate Report accompanying S. 555:

"Subsection (f) of section 302 requires the listing of the identity and category of value of each liability owed directly or indirectly, which exceeds $2,500 at any time during the calendar year covered by the financial disclosure report. Excluded from this requirement, however, are loans which are advanced to a reporting individual from a relative (as defined in section 308(14)). This requires the listing of all loans over $2,500, whether secured or not, and regardless of the repayment terms or interest rates. The identity of a personal liability owed should include the name of the person or corporation to which the liability is owed. If the liability is nominally placed in the name of a fiduciary or agent of the reporting individual, that liability and the identity of the person to whom it is owed to must be reported * * *." S. Rep. No. 170, 95th Cong., 1st Sess. 119 (1977).

S. 555 as passed by the House consisted of its own bill, H.R. 1, for which it had substituted the language of H.R. 13850. 124 Cong. Rec. 30,406, 30,414 32,028 (1978). Section 202(a)(4), the liabilities reporting requirement of

the bill passed by the House, would have required disclosing:

> "(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $5,000 as of the close of the preceding calendar year, excluding--
>
> "(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and
>
> "(B) any loan secured by a personal motor vehicle or household furniture or appliances." 124 Cong. Rec. 32,023 (1978).

Congressman Danielson explained that H.R. 13850 represented a compromise of language contained in three other House bills: H.R. 7401 reported by the Select Committee on Ethics; H.R. 1 reported by the Committee on the Judiciary; and H.R. 6954 reported by the Post Office and Civil Service Committee and the Armed Services Committee. 124 Cong. Rec. 30,414 (1978). As to that compromise bill, Congresswoman Schroeder offered a "summary of the intentions of this part" that she characterized as being "for the benefit of my colleagues, and those who will be faced with interpretations of the language of title II, Part A." 124 Cong. Rec. 30,419 (1978). Her summary contains the following explanation of the liabilities disclosure provision passed by the House:

> "Paragraph (4) of section 202(a)(4) requires the reporting of a description of liabilities owed during the calendar year and the identity of the persons to whom such liabilities are owed (if known). The exact amount of the liabilities is not required to be reported, only the category of value." 124 Cong. Rec. 30,421 (1978).

Congresswoman Schroeder's statement that the creditor need be disclosed only "if known" is derived from explicit language to that effect contained in a prior bill she had offered on April 10, 1978, as a joint substitute to H.R. 1. That substitute would have required:

> "A description of any liability owed during the reporting period and the identity

of the person to whom such liability is owed (if known). Reporting is not required under this paragraph with respect to * * *." 124 Cong. Rec. 9,359 (1978).

Congresswoman Schroeder offered the following explanation of the liabilities reporting requirement of that joint substitute:

> "Moreover, one has to know, under H.R. 1, the person whom the money is owed to actually is. A person who, for example, borrows on a stock brokerage account cannot easily trace to whom he is actually in debt. All he knows is that he pays back the broker. The same goes with many automobile loans, personal loans, mortgage loans, or small business loans, which may be discounted to other firms although collected by the original holder. Consequently, under H.R. 1 a person could have 100 outstanding $3,499 'loans' from a person he regulates and never report any while a person who reported a General Motors Acceptance Corporation auto loan which actually had been discounted to the Bank of America would be misfiling. The joint substitute would not permit such an absurdity to occur." 124 Cong. Rec. 11,278 (1978).

The joint substitute sponsored by Congresswoman Schroeder was not adopted and the "if known" language she had urged did not survive the compromise that became H.R. 13850. Against this background, her remarks concerning the liabilities reporting requirement passed by the House probably should be given the cautionary treatment suggested in Harold v. United States, 634 F.2d 547 (1980).

It may, as a practical matter, be possible to reconcile Congresswoman Schroeder's concern with the ordinary commercial practice of discounting loans and the Senate's concern that the disclosure requirements not be circumvented by the "nominal" placement of a liability in the name of a fiduciary. "Nominal" in this context must be given the meaning "existing in name only," suggesting that the Senate's concern was with the situation in which a fiduciary is interjected in the debtor-creditor relationship to avoid disclosure of the actual creditor or to shield the real parties in interest from conflict of interest problems such as those of self-dealing proscribed by 18 U.S.C. 208 (1976). This

is consistent with the fact that the Ethics in Government Act, which makes express provision at Section 202(f) for blinding assets, has no corollary provision for blinding liabilities. It seems clear that the Senate was not concerned with routine commercial loans discounted to a firm unknown to the borrower. This is a matter that should be dealt with in the regulations or instructions issued by the Office of Government Ethics or, if necessary, by clarifying legislation.