106TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 106–7

PRESIDENTIAL AND EXECUTIVE OFFICE FINANCIAL ACCOUNTABILITY ACT OF 1999

FEBRUARY 5, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURTON, from the Committee on Government Reform, submitted the following

REPORT

[To accompany H.R. 437]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 437) to provide for a Chief Financial Officer in the Executive Office of the President, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. BACKGROUND AND NEED FOR LEGISLATION

A. BACKGROUND

All Federal institutions must be accountable to the citizens and taxpayers of this Nation for their financial management. This is no less true of the White House than it is of any other department or

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agency. The Chief Financial Officers Act of 1990 put in place a system of financial accountability. H.R. 437 will help improve financial management and accountability at the White House by bringing it within the scope of this system of accountability. Specifically, the bill will ensure that the Executive Office of the President must comply, unless exemptions are made, with section 902 of the Chief Financial Officers Act of 1990 (31 U.S.C. 901).

The Executive Office of the President is a collection of disparate agencies and offices. Executive Order 8248, of September 8, 1939, established the divisions of the Executive Office and defined their functions. Various agencies had been transferred to the Executive Office of the President by the President's Reorganization Plans I and II of 1939 (5 U.S.C. App.), effective July 1, 1939, under authority of the Reorganization Act of 1939 (5 U.S.C. 133–133r, 133t note).

The Presidential and Executive Office Accountability Act, P.L. 104–331, ensures that those offices constituting the Executive Office of the President are subject to the same laws as Congress and the rest of the country. In that spirit, H.R. 437 applies the Chief Financial Officers Act (CFO Act) to the Executive Office of the President. It directs the President to appoint or designate a Chief Financial Officer (CFO) and, to the fullest extent practicable, stipulates compliance by the Executive Office of the President with the requirements of section 902 of the CFO Act. The CFO Act allows departments and agencies flexibility in setting up the Office of the Chief Financial Officer. The Executive Office of the President would have similar flexibility, so long as accountability is retained and reports are produced by a CFO. The CFO should hold a position in the organization sufficiently elevated to ensure that the President—as the individual with ultimate responsibility for the Executive Office of the President—is aware of the activities, findings, and recommendations of the CFO.

B. NEED FOR THE LEGISLATION

The bill is intended to improve financial management practices and accountability in the Executive Office of the President (EOP). Over the years, since the creation of the EOP in 1939, various Presidents have used Executive orders, reorganization plans, and sometimes legislative initiatives to reconfigure the EOP to better suit their respective priorities. The EOP currently includes the White House Office, the Executive Residence of the White House, the Office of the Vice President, the Council of Economic Advisers, the Council on Environmental Quality, the National Security Council, the Office of Administration, the Office of Management and Budget (OMB), the Office of National Drug Control Policy, the Office of Policy Development, the Office of Science and Technology Policy, and the Office of the United States Trade Representative. The bill provides for designation of a CFO to oversee financial management of the entities of the EOP, thereby bringing these entities into conformity with other major Executive departments and agencies subject to the Chief Financial Officers Act of 1990. In so extending coverage of an existing law to the Executive Office of the President, H.R. 437 echoes the objectives and spirit of the Presidential and Executive Office Accountability Act which was enacted in 1996.[1]

The Chief Financial Officers Act of 1990 has been widely viewed as the most important legislation addressing financial management improvement in the Federal Government since the Budget and Accounting Procedures Act of 1950.[2] The CFO Act, as amended, directs the major Executive Branch agencies (24 are now covered) to undertake important financial management reforms. For example, its provisions call for improvements in agency accounting and financial management systems and for production of more complete and reliable financial information, including preparation of audited financial statements. While implementation of the CFO Act is well underway, challenges remain in fully achieving its purposes, as most recently detailed in the 1998 Federal Financial Management Status Report and Five Year Plan.[3] Extending the coverage of the CFO Act to the Executive Office of the President would bring greater accountability to financial operations there, allowing its entities to benefit from the unique functions performed by a CFO.

Congressional hearings in the 104th and 105th Congresses have focused on activities in the White House that evidence undesirable practices relating to fiscal management and financial accountability. For example, if there had been a CFO on the scene, the unorthodox accounting practices that prevailed in the White House Travel Office would not have been allowed to continue. A CFO would have provided the Travel Office managers with the guidance and expert advice they sorely needed, but never received. The Committee believes that establishing a CFO in the EOP will improve dramatically the organizational structure for financial operations in its component units, including the White House Office.

Such an officer will operate for the most part within the framework of the Chief Financial Officers Act, to improve coordination, enhance accountability, ensure fiscal responsibility, and institute needed technological advances throughout the EOP. Although financial management functions are currently performed in the EOP primarily by the Financial Management Division in the Office of Administration, existing practices do not reach the level of attention and accountability envisioned by H.R. 437. This bill contemplates a well-crafted design and implementation of new and improved accounting procedures and calls for increased vigilance on the part of the CFO and staff to related fiscal matters. The underlying objective is to provide leadership, coordination, accountability, so as to ensure the appropriate use of taxpayers' dollars.

The Committee notes that H.R. 437 provides the President with discretion to implement this law in a manner that recognizes the unique nature of the Executive Office of the President. The Committee recommends that the Treasury, Postal Service and General Government Appropriations Subcommittee appropriates the funds necessary to fulfill the duties of the CFO.

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[1] 3 U.S.C. § 401, et seq.

[2] Pub. L. 81–784, 64 Stat. 832 (1950).

[3] The CFO Act requires the Office of Management and Budget to submit such a document to Congress each year. See: Federal Financial Management Status Report & Five-Year Plan, June 1998. Washington, GPO, 1998. Also available electronically at http://www.whitehouse.gov/WH/EXECUTIVE OFFICE OF THE PRESIDENT/OMB/Finance/98plan.pdt.

II. Legislative Hearings and Committee Actions

H.R. 437 is identical to legislation passed in the 105th Congress, H.R. 1962.[4] H.R. 437 was introduced on February 2, 1999, by Representative Stephen Horn (R–CA), Chairman of the Subcommittee on Government Management, Information, and Technology. The bill was considered by the Committee on Government Reform on February 3, 1999 and passed unanimously by voice vote.

III. Committee Hearings and Written Testimony

On May 1, 1997, the Subcommittee on Government Management, Information and Technology held a hearing to solicit comments from interested parties on the Presidential and Executive Office Accountability Act proposal. Witnesses testified concerning the intent of the bill; the bill's objectives; the reason for various provisions, and the need for certain changes.

The first panel featured Representative John L. Mica of Florida, who in the 104th Congress introduced H.R. 3452, the Presidential and Executive Office Accountability Act of 1996.

The second panel consisted of two witnesses testifying in support of the Presidential and Executive Office Financial Accountability Act. Edward J. Mazur was the Vice President of Administration and Finance at Virginia State University, and former Controller, Office of Federal Financial Management, Office of Management and Budget. Mr. Mazur was the first controller to be appointed after the passage of the Chief Financial Officers Act, and oversaw its implementation in Executive Branch agencies. The second witness was Cornelius E. Tierney, Director, Center for Public Financial Management, George Washington University School of Business and Public Management. He has authored authoritative texts on Federal Government accounting and auditing, and was formerly Chairman and National Director of the governmental practice section of Ernst & Young. He was instrumental in the drafting of the Chief Financial Officers Act and in guiding its subsequent implementation.

Subcommittee Chairman Horn opened the hearing with a discussion of the Presidential and Executive Office Accountability Act of 1996, which passed the House by an overwhelming margin of 410 to 5 on September 24, 1996. Unfortunately, time was short at that point and several provisions of the House-passed bill, including the provision to apply the CFO Act to the White House, were removed prior to passage by the Senate.

[4] On May 1, 1997, the Government Reform and Oversight Committee's Subcommittee on Government Management, Information and Technology held a hearing on H.R. 1962, which was introduced on June 19, 1997, by Representative Stephen Horn. The Subcommittee marked up the bill on September 4, 1997. The bill was marked up by the Committee on Government Reform and Oversight on September 30, 1997, with an amendment in the nature of a substitute. On October 21, 1997 the Committee on Government Reform and Oversight reported H.R. 1962 to the House of Representatives as Report 105–331. The House of Representatives passed the measure, as amended, by a vote of 413–3 on October 21, 1997.

IV. Explanation of the Bill

A. OVERVIEW

This measure brings the agencies of the Executive Office of the President, to the fullest extent practicable, within the framework and under the requirements of the Chief Financial Officers Act. H.R. 437 authorizes the President to appoint a Chief Financial Officer in a unit or office within the Executive Office of the President and, to the fullest extent practicable, mandates adherence to most provisions of the CFO Act. In recognition of the decentralized structure of the EOP and the unique functions its agencies perform in support of the President, H.R. 437 anticipates that some exemptions may be necessary. In fact, the bill provides considerable discretion for the President to exempt the new CFO from any of a number of responsibilities otherwise stipulated by the CFO Act as authority and functions to be performed by an agency's Chief Financial Officer.

However, notwithstanding such possible exemptions, the bill establishes that the CFO for the EOP shall perform, to the extent practicable, the general functions and duties established under the CFO Act in order to implement needed financial management improvements. The intent of this legislation is to foster improved systems of accounting, financial management and internal controls throughout the component entities of the Executive Office of the President. This should facilitate prevention, or at least early detection, of waste, fraud and abuse within the Executive Office of the President, as well as in the other Executive Branch agencies already covered by the CFO Act. Implementation of these provisions will promote not only accountability and proper fiscal management but also efficiency and cost reductions.

B. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the Act shall be cited as the "Presidential and Executive Office Financial Accountability Act of 1999."

Section 2. Chief Financial Officer in the Executive Office of the President

Section 2(a) provides that section 901 of Title 31, U.S. Code, is amended by adding at the end a new subsection 901(c) of Title 31, U.S. Code. The new subsection 901(c) requires the appointment or designation of a CFO in the EOP. This officer shall be appointed or designated by the President from among individuals meeting the standards described in section 901(a)(3) of Title 31, U.S. Code, i.e., an individual who possesses demonstrated ability in general management of, and knowledge of and extensive practical experience in financial management practices in large governmental or business entities. The position of CFO may be established in any office of the EOP, including the Office of Administration.

Section 2(a) provides further that the CFO, to the extent that the President determines appropriate and in the interest of the United States, shall have the same authority and perform the same functions as other CFOs under the CFO Act. The President must submit to Congress notification with respect to any provision of section 902 of Title 31, U.S. Code that the President determines shall not apply to the CFO of the EOP. This section provides that the President may designate an employee of the EOP, other than the appointed or designated CFO, as the "head of the agency" for purposes of carrying out section 902 of Title 31, U.S. Code, relating to the authority, functions and duties of the CFO.

Section 2(b) provides that not later than 90 days after the date of enactment, the President is required to communicate in writing with the Chairman of the House Committee on Government Reform and the Chairman of the Senate Committee on Governmental Affairs, a plan for the implementation of the provisions of H.R. 437, as enacted.

Section 2(c) provides that the CFO shall be appointed or designated under the provisions of this bill, as enacted, not later than 180 days after the date of enactment.

Section 2(d) provides that the CFO of the EOP shall receive basic pay at the rate payable for Level IV of the Executive Schedule under 5 U.S.C. § 5315.

Section 2(e) provides that the President may transfer such offices, functions, powers, or duties thereof, as the President determines are properly related to the functions of the CFO under 31 U.S.C. 901(c). The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of any office, the functions, powers, or duties of which are transferred to the CFO of the EOP, as established under H.R. 437, shall also be transferred thereto.

Section 2(f) provides that a separate budget request shall apply to the CFO of the EOP. Section 1105(a) of Title 31, U.S. Code, is amended by adding paragraph (32) and providing that a separate statement of the amount of appropriations requested to carry out the provisions of H.R. 437, as enacted, shall be included in the EOP's annual budget request.

Section 2(g) provides for technical and conforming amendments.

V. Committee Oversight Findings

Pursuant to rule XIII, clause 3(c)(1), of the Rules of the House of Representatives, the results and findings for those oversight activities are incorporated in the recommendations found in the bill and in this report.

VI. Budget Analysis and Projections

Clause 3(c)(2) of rule XIII, of the Rules of the House of Representatives, is inapplicable because the bill does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures.

VII. Cost Estimate of the Congressional Budget Office

U.S. Congress,
Congressional Budget Office,
Washington, DC, February 4, 1999.

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

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 437, the Presidential and Executive Office Financial Accountability Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

(For Dan L. Crippen, Director).

Enclosure.

H.R. 437—Presidential and Executive Office Financial Accountability Act of 1999

CBO estimates that, subject to the availability of appropriated funds, enacting H.R. 437 would increase costs of the Executive Office of the President (EOP) by no more than $250,000 a year. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 437 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

H.R. 437 would require the President to appoint a chief financial officer (CFO) for the 12 agencies and offices that comprise the EOP. The bill would require the CFO to comply with those provisions of the CFO Act that the President determines to be appropriate and in the interest of the United States. Based on information provided by the Office of Management and Budget and the Office of Administration (OA), CBO expects that the President would appoint as CFO someone within the OA, which already provides centralized financial management and accounting services to the EOP. As a result of enacting H.R. 437, the OA might require an additional employee or two to coordinate activities within the EIP. In addition, the OA would need to contract with a private firm to audit the consolidated annual financial statements of the EOP. We estimate that the annual audit would cost around $100,000.

In total, assuming no major problems exist in the financial management and systems of the EOP, CBO estimates that enacting H.R. 437 would increase annual costs of the OA by no more than $250,000. In addition, it is possible that by improving financial systems and communication within the EOP, the legislation could lead to a reduction in losses from waste and abuse, but CBO cannot estimate the amount of such potential savings.

The CBO staff contact is John R. Righter. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

VIII. Statement of Constitutional Authority

Pursuant to rule XIII, clause 3(d)(1), the Committee finds that clauses 14 and 18 of Article I, Section 8 of the U.S. Constitution authorizes Congress to create a Chief Financial Officer in the Executive Office of the President.

IX. Committee Recommendation

On February 3, 1999, a quorum being present, the Committee ordered the bill favorably reported to the House for consideration by voice vote.

X. Congressional Accountability Act; Public Law 104–1

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(B)(3) of the Congressional Accountability Act (P.L. 104–1).

XI. Unfunded Mandates Reform Act; Public Law 104–4, Section 423

The Committee finds that the legislation does not impose any Federal mandates within the meaning of section 423 of the Unfunded Mandates Reform Act (P.L. 104–4).

XII. Federal Advisory Committee Act (5 U.S.C. App.) Section 5(b)

The Committee finds that the legislation does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

XIII. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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SUBTITLE I—GENERAL

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CHAPTER 5—OFFICE OF MANAGEMENT AND BUDGET

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SUBCHAPTER I—ORGANIZATION

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§ 503. Functions of Deputy Director for Management

(a) Subject to the direction and approval of the Director, the Deputy Director for Management shall establish governmentwide financial management policies for executive agencies and shall perform the following financial management functions:

(1) * * *

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(7) Develop and maintain qualification standards for agency Chief Financial Officers and for agency Deputy Chief Financial Officers appointed under sections 901 and 903, respectively *(excluding any officer designated or appointed under section 901(c))*.

(8) Provide advice to agency heads with respect to the selection of agency Chief Financial Officers and Deputy Chief Financial Officers *(excluding any officer designated or appointed under section 901(c))*.

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CHAPTER 9—AGENCY CHIEF FINANCIAL OFFICERS

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§ 901. Establishment of agency Chief Financial Officers

(a) * * *

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(c)(1) There shall be within the Executive Office of the President a Chief Financial Officer, who shall be designated or appointed by the President from among individuals meeting the standards described in subsection (a)(3). The position of Chief Financial Officer established under this paragraph may be so established in any Office (including the Office of Administration) of the Executive Office of the President.

(2) The Chief Financial Officer designated or appointed under this subsection shall, to the extent that the President determines appropriate and in the interest of the United States, have the same authority and perform the same functions as apply in the case of a Chief Financial Officer of an agency described in subsection (b).

(3) The President shall submit to Congress notification with respect to any provision of section 902 that the President determines shall not apply to a Chief Financial Officer designated or appointed under this subsection.

(4) The President may designate an employee of the Executive Office of the President (other than the Chief Financial Officer), who shall be deemed "the head of the agency" for purposes of carrying out section 902, with respect to the Executive Office of the President.

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SUBTITLE II—THE BUDGET PROCESS

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CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

§ 1105. Budget contents and submission to Congress

(a) On or after the first Monday in January but not later than the first Monday in February of each year the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

(1) * * *

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(31) a separate statement of the amount of appropriations requested to carry out the provisions of the Presidential and Executive Office Financial Accountability Act of 1999.

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