

THE WHITE HOUSE

WASHINGTON

October 16, 2009

The Honorable Susan M. Collins
United States Senate
413 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Collins:

I write in response to your September 14 letter to President Obama. In the letter, you and your colleagues caution that so-called Executive Branch “czars” may raise issues of accountability, transparency, and congressional oversight. You also refer to “at least 18 ‘czar’ positions . . . whose reported responsibilities may be undermining the constitutional oversight responsibilities of Congress.” We appreciate your interest in this important issue—which implicates the fundamental Constitutional system of checks and balances—and the thoughtful manner in which you have presented your concerns.

We recognize that it is theoretically possible that a President could create new positions that inhibit transparency or undermine congressional oversight. That is simply not the case, however, in the current Administration. In a recent letter to Senator Feingold, I reviewed each of the eighteen positions you identified and explained why none of them raises any valid concerns about accountability, transparency, or congressional oversight. I have enclosed a copy of my letter to Senator Feingold. Given your specific focus on positions “established within the White House,” I want to address in more detail the four new positions the President has created within the White House. These positions are solely advisory in nature—they exercise no independent legal authority—and were created to assist the President in addressing important matters of great public concern.

First, on April 8, 2009, the President signed an Executive Order that establishes the new White House Office of Health Reform (“OHR”). *See* Executive Order 13507. The EO describes the role and responsibilities of the OHR. It lists ten “principal functions” of the OHR, including to “coordinate the development of the Administration’s policy agenda across executive departments and agencies,” such as the Office of Management and Budget, the Department of Health and Human Services, and the Office of Personnel Management; to “bring to the President’s attention concerns, ideas, and policy options” for improving the health care system; and to “monitor implementation of the President’s agenda on health reform.” *Id.* § 3. The EO further states that the Director of the OHR will work with designated liaisons from relevant federal agencies and departments. *Id.* § 4. And, most importantly, the EO clearly states that “nothing in this order shall be construed to impair or otherwise affect authority granted by law to a department, agency, or the head thereof.” *Id.* § 5.

Second, on December 15, 2008, President-Elect Obama announced his intent to create the new White House Office of Energy and Climate Change Policy (“OECC”). He stressed the coordinating role the head of the OECC would play: The “scope of the effort before us will

demand coordination across the government [O]ur efforts to create jobs, achieve energy security and combat climate change demand integration among different agencies, cooperation between federal, state and local governance, and partnership with the private sector.” Once the Administration took office, the OECC has played the precise role the President outlined. It has coordinated policy development across Executive Branch departments and agencies—*e.g.*, the Department of Energy, the Environmental Protection Agency, the Department of the Interior, and others—concerning energy efficiency and independence, the stimulation of a new energy economy, the increased use of renewable energy sources, and the reduction of greenhouse gas emissions. It also has helped develop recommendations for the President in each of these areas, and it has brought to the President’s attention a wide range of new ideas, concerns, and policy options concerning energy and climate change. The OECC has not, in any way, exercised legal authority granted by Congress to any federal department, agency, or Senate-confirmed official.

Third, on February 19, 2009, the President signed an Executive Order that establishes the new White House Office of Urban Affairs (“OUA”). Executive Order 13503. As described in the EO, the President created the OUA “to coordinate the actions of the many executive departments and agencies whose actions impact urban life.” *Id.* § 1. Section 4 of the EO—entitled “Coordination”—lists ten federal departments and agencies with which the OUA “shall work closely,” including the Departments of Treasury, Justice, Commerce, Labor, and others. *Id.* § 4. The OUA is headed by a Director, who in turn reports to two senior White House advisors—the Assistant to the President for Intergovernmental Affairs and Public Liaison and the Assistant to the President for Domestic Policy. *Id.* § 5(b). Finally, as with healthcare, the urban affairs EO states that “nothing in this order shall be construed to impair or otherwise affect authority granted by law to a department, agency, or the head thereof.” *Id.* § 6(a)(i).

Fourth, on June 26, 2009, the Vice President announced the appointment of a White House Advisor on Violence against Women. The Vice President stated that the new position would serve as a high-level advisor to the President and Vice President and would coordinate the activities of various relevant federal departments and agencies. Specifically, he stated that she would “coordinate with the Department of Justice’s Office of Violence Against Women (OVW) on implementation of Violence Against Women Act programs; coordinate with the Department of Health and Human Services on implementation of Family Violence Prevention Act services (including the National Domestic Violence Hotline); coordinate with the State Department and USAID on global domestic violence initiatives; and drive the development new initiatives and policy aimed at combating domestic violence and sexual assault with advocacy groups and members of Congress.”

Neither the purpose nor the effect of these four new White House positions is to supplant or replace existing federal agencies or departments, but rather to help coordinate their efforts and help devise comprehensive solutions to complex problems. Every President has structured his senior staff in this manner—subject to the limits on the number of White House employees established by Congress—to help him address the most pressing challenges facing his administration. This is, and *always has been*, the traditional role of White House staff.

Unfortunately, legitimate inquiries—like yours—that seek to understand how certain government functions are being administered have been accompanied by many frivolous attacks and false

allegations by others. In your letter, you state that not “every position identified in various reports as a ‘czar’ [is] problematic.” Specifically, you note that positions established by law or subject to Senate confirmation do not raise serious concerns. I completely agree. However, some have embraced a list of thirty-two supposed “czars,” despite the fact that nine of those positions are subject to Senate confirmation, fifteen existed in previous administrations, and sixteen have testified before Congress this year. For example:

- On May 11, 1976, President Ford signed Public Law 94-282, which created the Office of Science and Technology Policy (“OSTP”). The Director of OSTP is a Senate-confirmed position, 42 U.S.C. § 6612, currently held by Dr. John P. Holdren. His “primary function”—as President Ford stated when creating OSTP—is to provide “advice on the scientific, engineering, and technological aspects of issues that require attention at the highest levels of government.” *Id.* § 6613. Dr. Holdren testified before Congress during his confirmation hearing on February 12, 2009. He testified again on April 1, May 14, July 22, and July 30.
- On December 11, 1980, President Carter signed Public Law 96-511, which established the Office of Information and Regulatory Affairs (“OIRA”) within the Office of Management and Budget.¹ The Administrator of OIRA is a Senate-confirmed position, 44 U.S.C. § 3503, currently held by Cass R. Sunstein. His statutory duties include serving as the “principal adviser to the Director [of OMB] on Federal information resources management policy.” Mr. Sunstein testified before Congress during his confirmation hearing on May 12, 2009.
- On November 18, 1988, President Reagan signed Public Law 100-690, which established the Office of National Drug Control Policy (“ONDCP”). The Director of ONDCP is a Senate-confirmed position, 21 U.S.C. § 1703(a)(1), currently held by Richard Gil Kerlikowske. His statutory duties include assisting “the President in the establishment of policies, goals, objectives, and priorities for the National Drug Control Program.” *Id.* § 1703(b)(1). Mr. Kerlikowske testified before Congress during his confirmation hearing on April 1, 2009. He testified again on May 19 and July 9.
- On December 17, 2004, President Bush signed Public Law 108-458, which established the Office of the Director of National Intelligence (“DNI”). The DNI is a Senate-confirmed position, 50 U.S.C. § 403(a), currently held by Admiral Denis C. Blair. His statutory duties include serving “as the head of the intelligence community,” acting “as the principal advisor to the President, to the National Security Council, and Homeland Security Council for intelligence matters related to the national security,” and directing “the implementation of the National Intelligence Program.” *Id.* § 403(b). Admiral Blair testified before Congress during his confirmation hearing on January 22, 2009. He testified again on February 12, February 25, and March 10.

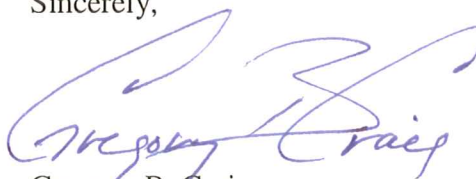
¹ Although President Carter signed the legislation, President Reagan issued an Executive Order two months later that established the first system for centralized regulatory review by OIRA. *See* Executive Order 12291 (Feb. 17, 1981).

- On October 3, 2008, President Bush signed Public Law 110-343, which established the Office of Financial Stability within the Department of the Treasury. The Assistant Secretary of the Treasury for Financial Stability is a Senate-confirmed position, 12 U.S.C. § 5211(a)(3)(A), currently held by Herbert M. Allison, Jr. His statutory duties include implementing any program under “the Troubled Asset Relief Program . . . to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary.” *Id.* § 5211(a). Mr. Allison testified before Congress during his confirmation hearing on June 4, 2009. He testified again on June 24, July 16, July 22, and September 24.

It is simply false to suggest that any of these (or other similar) positions are newly created “czars” that lack accountability to Congress. Under this definition, the Bush Administration reportedly had thirty-six czar positions filled by forty-six different people—more than the highest estimate of the current number. Finally, it is worth noting that many of the same critics who have attacked President Obama on this issue aggressively *supported* the creation of numerous “czars” in previous administrations, including the ones listed above. This type of partisan politics is not useful to any thoughtful public debate, and we hope that you will continue to reject these unfounded attacks.

Thank you again for your letter. The President shares your firm commitment to protecting the Constitution and its fundamental system of checks and balances. We look forward to working with you in the future to ensure that Congress is able to fulfill its important constitutional role of providing “advice and consent” on significant appointments and conducting effective oversight of the Executive Branch. As always, I would be happy to discuss these issues further with you or your staff.

Sincerely,



Gregory B. Craig
Counsel to the President

Enclosure

cc. Hon. Lamar Alexander, U.S. Senator
Hon. Robert F. Bennett, U.S. Senator
Hon. Christopher S. Bond, U.S. Senator
Hon. Mike Crapo, U.S. Senator
Hon. Pat Roberts, U.S. Senator