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Testimony of Joan Claybrook President, Public Citizen

**Before the Government Reform Committee on the Subject of
Restoring the Public Trust: A Review of the Federal Pension Forfeiture Act
And Other Lobbying and Ethics Reform Issues**

Feb. 1, 2006

Chairman Davis and Ranking Member Waxman, I thank you for the opportunity to testify today on behalf of Public Citizen and our 150,000 members.

The lobbying reform debate has largely focused on the lobbying and ethics laws as they relate to Congress. It is my understanding that the committee's discussion today on the "Federal Pension Forfeiture Act" really grew out of the House scandal involving Rep. Randy "Duke" Cunningham who accepted \$2.4 million in bribes from defense contractors that he aided through the appropriations process. We strongly welcome your initiative to deny full pension benefits to members of Congress, congressional employees and executive branch political appointees guilty of crimes related to public corruption when employed by the federal government.

But the debate on lobbying and ethics reform must go beyond your legislative proposal and beyond Congress. It must also include the ethical behavior of executive branch officials who become lobbyists and officers for the companies that they previously oversaw or regulated, and it should also address strengthening the monitoring and enforcement of executive branch regulations under the Ethics Reform Act.

A few months ago, a major report by 15 civic organizations, including Public Citizen, known as the Revolving Door Working Group, documented the current problems with lobbying and ethics laws in the executive branch and proposed a series of constructive reforms. I ask that you put this report, entitled *A Matter of Trust*, into the record as part of my testimony.

This report shows there are at least two significant lobbying and ethics problems in the executive branch. One is the pervasive problem of the "revolving door" – by which executive branch officials rotate between public service and the private sector, typically working for the same companies that they had previously regulated, granted contracts to, or considered the effects of legislation on.

Second is the loose patchwork of enforcement responsibilities spread across many executive branch agencies. Instead of vesting one agency – the Office of Government Ethics (OGE) – as

the primary police watchdog of ethics in the executive branch, OGE has been created more as an advisory partner in implementing ethics standards.

A. The Revolving Door

Many special interests—such as corporations, labor unions or ideological and issue groups—spend large sums on campaign contributions and/or lobbying. Yet money is not the only way these groups exercise their influence; they also rely on the movement of people into and out of key policymaking posts in the executive and legislative branches. This revolving door increases the likelihood that those making policies are sympathetic to the needs of interest groups—either because they come from that world or they plan to move to the private sector after finishing a stint with government.

In order to establish a sense of trust that government officials are not trading government contracts or regulations for lucrative private sector jobs, federal law requires a one-year “cooling-off” period in which retiring public officials are not supposed to lobby their former colleagues in government. Additional conflict-of-interest laws and regulations have extended similar cooling-off periods to retiring procurement officers in order to prevent them from immediately taking jobs with companies that have received government contracts that a procurement official had authority over.

Specifically, “very senior” staff of the executive branch, those previously classified within Executive Schedules I and II salary ranges, are prohibited from appearing as a paid lobbyist before any political employee in the executive branch for one year. “Senior” executive branch staff, those previously paid at Executive Schedule V and up, are prohibited for one year from appearing as lobbyists before their former agency or representing or advising a foreign government or foreign political party in lobbying matters.

Unfortunately, the revolving door policy has two very significant weaknesses. First, while it prohibits former government officials from making direct “lobbying contacts” with their former colleagues, it permits them to engage in other lobbying activity. Former officials are not prohibited from developing lobbying strategy, organizing the lobbying team and supervising the lobbying effort during the cooling-off period. In fact, retiring former officials frequently become registered lobbyists immediately upon leaving government service. They simply cannot pick up the telephone and call their former colleagues.

Second, the scope of the cooling-off period that applies to government contracting is so narrow that former procurement officers may now immediately accept employment with the same companies to whom they had issued contracts while in public service. Today, only employment within a specific division of a company is prohibited if that division was under the official’s contracting authority, but not employment for the company itself. That loophole allowed Darleen Druyun to land a well-paid position at Boeing after overseeing the company’s bids on weapons programs for many years in her capacity as a Pentagon procurement official.

As a result, scores of former executive branch officials – like those in Congress – spin through the revolving door and become K Street lobbyists or corporate officers of companies they had

influence over immediately after leaving public service. The Center for Public Integrity surveyed how often the revolving door has turned for the top 100 officers of the executive branch at the end of the Clinton Administration. Tracking the movement of administration secretaries and under-secretaries for each major executive agency, the Center concluded that about a quarter of senior level administrators left public service for lobbying careers. Another quarter of the administrators accepted positions as directors of private businesses they had once regulated.

This is a revolving door that is spinning out of control. In order to strengthen the protections against revolving door abuses, several steps need to be taken:

- Expand the scope of the revolving door restrictions so that former officials are prohibited from conducting paid lobbying *activity* during the cooling-off period, including the development and supervision of lobbying efforts. Today they are just restricted from making a direct lobbying *contact*.
- Expand the time period of the cooling-off period to two years. This change, along with expanding the type of lobbying activities covered, will greatly assist efforts to limit undue influence by former government employees.
- Extend the cooling-off period to senior executive branch staff of Level V or higher policymakers that now apply primarily to procurement officers, to prevent them from seeking employment from contractors that received significant contracts as a result of the officials' government actions.
- Close the loophole allowing former government procurement employees to work for a different department or division of a contractor from the division that they oversaw as a government employee. The cooling-off period should apply company-wide.
- When a public official discusses future private employment that may pose a conflict of interest, the fact that the discussion is underway should be public information. If there is any potential conflict of interest, recusal from public decisions affecting the potential employer should be mandatory unless a waiver from the conflict of interest is absolutely necessary for governmental operations. This recommendation concerns the "Thomas Scully scandal," which is discussed at greater length below.

B. The Office of Government Ethics

The Office of Government Ethics is the agency in the executive branch charged with ethics oversight. Though the agency is better structured than the congressional ethics committees in fulfilling its mandate, it has three basic flaws:

- OGE operates more as an advisory partner in the executive branch rather than as an enforcement watchdog.
- Responsibility for implementation of the executive branch ethics laws and regulations is widely dispersed among the various executive agencies.
- OGE has not served as an effective central clearinghouse for making public records on ethics matters readily available to Congress and the public.

OGE was created as an independent agency to monitor and implement the ethics laws for the executive branch. The Ethics Reform Act directs OGE to review financial disclosure forms of

presidential appointees, provide ethics training to executive branch officials and oversee the implementation of ethics rules by each agency. The Ethics Act also requires OGE to provide an advisory service and to publish its opinions.

OGE relies heavily on career professionals to manage the agency and thus is better suited to carry out a mandate for ethics enforcement than the congressional ethics committees. The Director is appointed by the president for a five-year term. The Office currently has a staff of more than 80 employees. The agency thus enjoys a certain level of professionalism and independence from political operatives in the executive branch and from party leaders.

Nevertheless, OGE is far from an ideal agency. OGE's primary weakness is that it lacks enforcement authority. Instead, it has been established primarily as an advisory or "partner" agency that offers guidelines and ethics training to the executive branch, rather than serving as a police watchdog that determines and implements ethics codes for the executive branch. Its responsibilities are essentially shared throughout the federal government. Its rules are not binding within the executive branch, but are subject to interpretation by the ethics officers of each separate executive branch agency, many of whom, according to a recent Public Citizen discussion with OGE staff, lack adequate ethics training. Moreover, any cases requiring prosecution are referred to the Justice Department's Office of Public Integrity.

Consider this example. While OGE has developed guidelines for granting waivers for employees from the conflict-of-interest laws governing future employment, these are only guidelines. Each executive branch agency promulgates its own waiver procedures, which are then interpreted and enforced by the specific ethics officer appointed within that executive office. As a result, there is no one set of procedures for seeking and receiving waivers from conflict-of-interest laws, and each set of waiver procedures is interpreted differently by different offices.

As a result, waivers appear to be routinely granted and rarely, if ever, denied. A freedom of information request by Public Citizen to the Department of Health and Human Services (HHS) found that from January 1, 2000, through November 17, 2004, 37 formal requests for waivers from the conflict-of-interest statutes were made. All 37 requests were granted.

One of the granted waivers sheds light on the Thomas Scully scandal. On May 12, 2003, Scully, then the chief administrator for the Centers for Medicare and Medicaid Services, secretly obtained an ethics waiver from HHS Secretary Tommy Thompson, allowing Scully to ignore ethics laws that would otherwise have barred him from negotiating employment with anyone financially affected by his official duties or authority. The waiver allowed Scully to represent the Bush Administration in negotiations with Congress over the Medicare prescription drug legislation then under consideration, while Scully simultaneously negotiated possible employment with three lobbying firms and two investment firms that had major stakes in the legislation.

The resulting inconsistencies prompted the White House in 2004 to step in and issue an executive order requiring that all waivers be reviewed by the White House counsel. That should be the responsibility of a more robust OGE, where such decisions would be more immune to political considerations.

OGE has neglected to establish itself as an effective public information source. Though the agency compiles and scrutinizes previous employment records for scores of executive branch appointees and employees, it makes little effort to make these records available to the public. There is no OGE Web site that posts public records of prior employment, personal financial statements, conflict of interest waivers or even enforcement actions. When it comes to ethics records in the federal government, this type of information is not centralized and exceedingly hard to secure. Such information usually only becomes available as part of public congressional hearings in high-profile cases or through Freedom of Information Act requests.

For the most part, the OGE appears to be serving the interests of the executive branch, not the public and not the Ethics in Government Act. Ironically, OGE has recently sought to weaken public disclosure of the personal financial records of political appointees. At the prodding of the White House and congressional leaders, the OGE has been considering capping the reporting of personal wealth of senior executive branch officials at \$2.5 million (rather than the established \$50 million cap) and allowing officials to omit the dates of major stock transactions from financial reports, which would make it difficult to tie government actions to an employee's investment choices. Reducing disclosure of personal financial records runs contrary to what the mission of OGE should be.

To address the problems of ethics enforcement in the executive branch – and Congress, for that matter – the solution is fairly simple: create an independent, professional ethics agency with the legal authority and tools to carry out its mandate. This means that OGE should be:

- Given strong enforcement authority with the ability to promulgate rules and regulations that are binding on all executive branch agencies, conduct investigations, subpoena witnesses, and issue civil penalties for violations.
- Empowered as the central agency for implementing and monitoring its responsibilities, such as being responsible for granting waivers from conflict of interests upon recommendations of the affected agency.
- Required to serve as the central clearinghouse of all public records relevant to ethics in the executive branch and place this information on its Web site, including records of waivers from conflicts of interest requested and granted, personal financial statements of appointees, and the career histories of senior executive branch staff of Level V or higher who enter and leave public service.

The executive branch has more than its share of blame for the collapse of public confidence in our government. The steps outlined above can go a long way toward restoring public confidence in government. The revolving door must be slowed, and OGE must assume the role of a genuine watchdog over governmental ethics rather than a partner and colleague with the executive branch.