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Joan Claybrook, President

January 13, 2004

Marilyn L. Glynn
Acting Director
U.S. Office of Governmental Ethics
1201 New York Avenue, NW
Suite 500
Washington, D.C. 20005

Dear Ms. Glynn:

Public Citizen is writing to express concern about the procedures for the application of, and exemptions to, conflict of interest regulations among agencies and departments of the executive branch.

On December 22, 2003, Public Citizen submitted a letter of complaint (enclosed) to the Office of Inspector General, Department of Health and Human Services (HHS), regarding the wanton issuance of a waiver from conflict of interest regulations for Thomas Scully, Administrator of the Centers for Medicare and Medicaid Services. The waiver was recommended by Associate General Counsel of Ethics at the Department and signed by HHS Secretary Tommy Thompson.

Without rekindling the debate on the substantive merits of such a waiver, the procedures used in granting an exemption for Mr. Scully from conflict of interest regulations demonstrated an acute lack of understanding of governmental ethics by the officers of HHS.

Such waivers should be treated as exceptions to the rule, and granted only after following procedural safeguards documenting the potential beneficiaries of the conflict of interest, the extent of financial interests at stake, and the reason or reasons why a violation of conflict of interest regulations should be tolerated. HHS officials made little effort to identify the potential beneficiaries in the Scully affair and avoided altogether making an assessment of the extent of financial interests at stake.

Worst yet, the conflict of interest swirling around Thomas Scully, and the subsequent waiver from the ethics regulations, were kept confidential during the critical period of his negotiations over Medicare policy.

We cannot help but worry that this lack of awareness of the principles and procedures of conflict of interest regulations extends beyond the Department of Health and Human Services.

The Office of Governmental Ethics (OGE) is charged with oversight of ethics regulations governing executive branch employees. OGE has made an effort to clarify and educate executive branch employees regarding their ethical responsibilities and the procedures for compliance through such publications as “An Ethics Handbook for Executive Branch Employees” and “Conflicts of Interest and Government Employment.” Title 5, Part 2640, of the Code of Federal Regulations describes the purposes and prohibitions of conflicts of interest and lists potential grounds for exemptions and the procedures for granting waivers.

Nevertheless, the incident involving Mr. Scully strongly suggests that the conflict of interest regulations and the proper procedures for compliance are not widely understood among agencies and departments of the executive branch.

On January 6, 2003, President George Bush issued a memorandum to all heads of executive departments and agencies establishing a new Administration policy for granting waivers for personnel who intend to negotiate outside employment. The new policy, which is apparently in direct response to the Scully incident, requires that the Office of the Counsel to the President first be consulted before any waiver is granted.

Public Citizen commends the Administration for intervening in the matter and attempting to ensure appropriate procedures are followed for the issuance of waivers. In this spirit of making such uniform procedures for the granting of waivers a reality, Public Citizen requests that the Office of Governmental Ethics conduct an independent review of the Scully affair for potential violations of executive branch ethics regulations. We also recommend that OGE work with the President’s Office of Counsel to incorporate the lessons from this incident into drafting clearer and more precise procedures for granting exemptions for both the Code of Federal Regulations as well as in educational materials distributed to executive branch employees and department ethics officials.

Please feel free to contact us if we can be of any assistance.

Sincerely,

Joan Claybrook
President
Public Citizen

Frank Clemente
Director
Public Citizen’s Congress Watch