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Before the House Committee on Oversight and Government Reform
On the Subject of the Executive Branch Reform Act of 2007

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Chairman Waxman and Ranking Member Davis, I thank you for the opportunity to testify today on behalf of Public Citizen and our 100,000 members.

The lobbying reform debate has thus far largely focused on the lobbying and ethics laws as they relate to Congress. But the debate should go beyond the reporting requirements of the Lobbying Disclosure Act (LDA). It should also include an assessment of the ethical behavior of executive branch officials who become lobbyists, as well as the monitoring and enforcement of executive branch regulations under the Ethics Reform Act.

As documented in *A Matter of Trust*, a report by a coalition of 15 civic organizations, including Public Citizen, known as the Revolving Door Working Group, several issues need to be addressed when it comes to lobbying and ethics reform and the executive branch. I ask that this report be entered into the record as part of my testimony.

Public trust in the integrity of the federal government is alarmingly low. According to polls by CBS News/New York Times,[1] The Gallup Poll[2] and others, the level of trust in the executive branch has reached new lows for the past decade. Both the award of government contracts and formulation of public policy by the executive branch appear to most Americans to be driven by corporate special interests and their paid lobbyists.

This public cynicism is fueled largely by two major lobbying and ethics problems in the executive branch.

The first is the increasingly pernicious problem of a rapidly rotating "revolving door" – defined as the spinning of executive branch officials between public service and the industries they are charged with regulating.

The second issue is inconsistent, and often ineffectual, oversight to ensure compliance with high ethical standards by those running the federal government. Enforcement responsibility for ethics rules

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1 Sebastian Mallaby, "The Decline of Trust," *Washington Post* (Oct. 30, 2006).

2 Jeffrey Jones, "Trust in Government Declining, Near Lows for the Past Decade," The Gallup Poll (Sept. 26, 2006).

are spread across many agencies within the executive branch, meaning that no single office or agency – such as the Office of Government Ethics (OGE) – is in charge. There is no place in the federal government, nor is there even a Web site, where the public can examine employment and financial records of public officials, investigate which companies were awarded government contracts, or find out who is spinning through the revolving door.

The Executive Branch Reform Act of 2007 offers very constructive lobbying and ethics reforms for the executive branch to slow the revolving door and shine sunlight on the lobbying and ethics of public officials and former public officials.

KEEP THE REVOLVING DOOR FROM SPINNING OUT-OF-CONTROL

Generally, the term "revolving door" is used to describe a system in which corporations and other special interests develop a close relationship with government officials through the movement of key individuals back and forth between the private sector and the public sector. There are three distinct forms of the revolving door:

Industry-to-Government Revolving Door: Appointment of private-sector executives and lobbyists,to posts within government that oversee their former industry or employer creates the potential for bias in policy formulation and regulatory enforcement.

Government-to-Industry Revolving Door: Movement of public officials to lucrative private sector positions in which they may use their public trust (while still in office) and government experience (after leaving public office) to unfairly benefit a new employer in matters of federal procurement, enforcement or regulatory policy.

Government-to-Lobbyist Revolving Door: Movement of former lawmakers and executive-branch officials to jobs as well-paid advocates, often on behalf of the same special interests that previously had business pending before them, who use inside connections to advance the interests of clients.

These revolving doors threaten the integrity of government in at least three ways:

- Business and special interest groups may "capture" a federal regulatory agency by getting their own personnel appointed to key government posts.
- Public officials may be influenced in official actions by the implicit or explicit promise of a lucrative job in the private sector with an entity seeking a government contract or to shape public policy.
- Public officials-turned-lobbyists will have access to lawmakers that is not available to others, access that can be sold to the highest bidder among industries seeking to lobby.

Even if public officials are not in fact influenced by these revolving doors, the appearance of undue influence that these arrangements create casts aspersions on the integrity of government.

Federal law currently requires a one-year "cooling-off" period, in which public officials who leave government are not permitted to lobby former colleagues in government. Additional conflict-of-interest laws and regulations extend similar cooling-off periods to procurement officers to prevent

them from immediately accepting a job with companies that applied for government contracts in their purview.

Specifically, the "very senior" staff of the executive branch – *i.e.*,, 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 – cannot, for one year, appear as lobbyists before their former agency or represent or advise a foreign government or foreign political party as to lobbying.

Today's revolving door policy has three very significant weaknesses. First, the recusal requirements are weak, loosely interpreted and poorly enforced, often allowing a public official to take official actions affecting a former employer. Executive branch regulations advise federal employees to avoid "an appearance of a loss of impartiality in the performance of . . . official duties."

One situation in which there is an apparent loss of impartiality is if the employee handles a matter involving a person for whom the federal employee was, within the last year, an "officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee."[3] Yet even in such a case, while the regulations advise recusal, they do not require it. Furthermore, it is the responsibility of every public official to determine when and if there is a potential problem. Even if the official determines a problem does exist, the ethics officer for the agency may overlook the conflict if reassigning official duties is problematic.

Second, the cooling-off period that applies to government contracting is so narrow that former procurement officers can immediately accept a job with the same companies that they issued contracts to while in public service. There is a ban on employment in the specific division of a company if that division was part of the official's contracting authority, but this ban does not extend to employment in the company as a whole. 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.[4]

Third, while federal law prohibits former covered officials from making direct "lobbying contacts" with former colleagues, it permits them to engage in other lobbying activity. Former officials are not prohibited from developing lobbying strategy, organizing the lobbying team or supervising the lobbying effort during the cooling-off period. They merely are prohibited from picking up the telephone to call a former colleague.

In fact, departing officials frequently join lobbying firms or register as lobbyists immediately upon leaving government service. The Center for Public Integrity surveyed how quickly, and how often, the revolving door 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. More recently, the Center identified 42 former agency heads that registered as lobbyists between 1998 and 2004.[5]

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3 5 C.F.R. 2635.502

4 Project on Government Oversight, The Politics of Contracting (June 29, 2004).

5 Elizabeth Brown, More than 2,000 Spin Through the Revolving Door (Center for Public Integrity, 2005).

A recent case in point is as follows. The firm of McKenna, Long and Aldridge began registering former Sen. Zell Miller (R.-GA) as a lobbyist on behalf of clients as early as September 2005, less than a year after Miller left Congress. The lobbyist disclosure reports are too vague to determine whether Miller made lobbying contacts with his former colleagues, or conducted lobbying activities to facilitate those contacts, by the case highlights the failure of the current revolving door restrictions. Public Citizen sent a letter to Speaker Nancy Pelosi (D-Cal.) and Senate Majority Leader Harry Reid (D-Nev.) detailing the incident.[6]

Clearly, the revolving door is spinning out-of-control. The Executive Branch Reform Act of 2007 would dramatically reduce revolving door abuse by:

- Require that former executives and lobbyists who enter government recuse themselves from official actions that specifically affect former employers for two years after leaving their employ.
- Prohibit government officials from negotiating future employment with private businesses that are affected by their official actions, unless waived under exceptional circumstances.
- Prohibit former procurement officers from serving as a "consultant, lawyer or lobbyist" for a contractor under their purview for two years after leaving public service.
- Prohibit former government officials-turned-lobbyists from making lobbying contacts with their former colleagues for two years, rather than the current one year cooling off period.
- Clear all waivers of conflict-of-interest regulations through a single agency – the Office of Government Ethics – and make the request and approval or denial a matter of public record.

Public Citizen encourages the committee to consider some additional protections against revolving door abuse. These include:

- Expand the scope of revolving door restrictions to prohibit former public officials from conducting paid lobbying activity – narrowly defined as activity intended to facilitate a lobbying contact at the time it is being done – during the cooling-off period.
- Apply the cooling-off period company-wide by closing the loophole that allows former government procurement staff to work in the same company that they oversaw as a government employee in a different department or division.
- Keep public records for a reasonable period of time in the Office of Government Ethics, including the employment histories of covered public officials and private-sector career histories of former covered officials.

STRENGTHEN OVERSIGHT BY THE OFFICE OF GOVERNMENT ETHICS

The Office of Government Ethics is executive branch agency charged with ethics oversight. Although the agency is staffed by well-trained, professional ethics officers, the agency's efforts are hampered by three basic structural flaws that are imposed by statute:

[6] Joan Claybrook and Laura MacCleery, Letter to Speaker Pelosi and Majority Leader Reid regarding lobbying by former Sen. Zell Miller (Feb. 7, 2007).

- OGE acts more as an advisory partner within the executive branch rather than 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 been an effective clearinghouse for public records on ethics matters, which are not now readily available to Congress or the public.

Congress should address each of these shortcomings. 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 the financial disclosure forms of presidential appointees, provide ethics training to executive branch officials and oversee the implementation of ethics rules by the agencies. The Ethics Act also requires OGE to provide an advisory service for employees 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 are the congressional ethics committees. The Director of OGE is appointed by the president for a five-year term and has a staff of about 80 employees. The agency thus enjoys an appropriate level of professionalism and independence from political operatives in the executive branch and from party leaders.

Nevertheless, OGE is weak and falls far short on its assignment to assure the independence of federal decision-makers. OGE's primary flaw is that it lacks enforcement authority. It acts primarily as an advisory "partner," offering guidelines and ethics training to the executive branch, rather than as a watchdog that determines and implements ethics codes for the executive branch. Its core responsibilities are essentially diffused throughout the federal government, undermining its mission. Its rules are subject to interpretation – and dilution – by the ethics officers of each separate executive branch agency.

Some ethics officers for the various executive branch agencies, according to a study by the Department of Interior Inspector General, lack adequate ethics training.[7] OGE has no statutory authority to impose specific standards for ethics training, as it should have. Moreover, cases that require prosecution are referred to the Justice Department's Office of Public Integrity, rather than being handled by OGE.

This lack of authoritative oversight creates inconsistencies in the implementation of rules from agency to agency. While the OGE does develop guidelines for waivers of conflict-of-interest laws, these are merely guidelines. Each executive agency promulgates its own waiver procedures, which are subsequently interpreted and enforced by the ethics officer from that agency. As a result, there is no single set of procedures to secure a waiver from conflict-of-interest laws, and each set of waiver procedures is interpreted differently by different offices.

As a result of this fuzziness in the core mission of the agency, waivers appear to be routinely granted and rarely, if ever, denied. A Freedom of Information Act (FOIA) request by Public Citizen to the Department of Health and Human Services (HHS) found that from January 1, 2000, through November

[7] U.S. Department of Interior, Office of Inspector General, Report of Investigations, PI-SI-02-0053-1 (2004).

17, 2004, at least 37 formal requests for waivers from the conflict-of-interest statutes were made. One hundred percent –all 37 – of the requests were granted.[8]

One of the granted waivers sheds light on the serious defects of oversight by the OGE. On May 12, 2003, Thomas Scully, who was then the chief administrator for the Centers for Medicare and Medicaid Services, obtained an ethics waiver from HHS Secretary Tommy Thompson. The waiver allowed Scully to ignore ethics laws that would otherwise bar 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 with major stakes in the legislation. The employment negotiations and the waiver were not revealed to the public or to Congress while the highly controversial legislation was being debated.

Another troubling aspect of the lack of ethics oversight in the executive branch is the absence of a central clearinghouse for information. Although OGE compiles and scrutinizes previous employment records for scores of executive branch appointees and employees, it does not compile these records, nor does it make them available to the public. A FOIA request must be filed with each individual agency to obtain these public records.

The same lack of transparency also hinders disclosure of ethics waivers. There is no OGE Web site with the public records pertaining to prior employment, personal financial statements, conflict-of-interest waivers or, most troublingly, enforcement actions. There is not even a reading room at OGE that would allow the public to peruse these records.

The Executive Branch Reform Act of 2007 helps to strengthen the role of OGE as an oversight agency by:

- Requiring OGE to promulgate rules and procedures to record lobbying contacts with covered officials.
- Establishing OGE as a central clearinghouse for information on lobbying contacts, and requiring that these be made available to the public in a searchable computerized database.
- Requiring that all conflict-of-interest waivers relating to employment be approved by OGE.

Public Citizen further recommends additional improvements regarding ethics enforcement in both the executive branch and in Congress, where the same solution is apt. Congress should 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 bind all executive branch agencies, conduct investigations, subpoena witnesses, and issue civil penalties for violations.

[8] Craig Holman, FOIA request regarding waivers from conflict of interest employment restrictions, to the Department of Health and Human Services, Jan. 1, 2000 through Nov. 17, 2004. The letter is on file with the author.

- Required to serve as the central clearinghouse of all public records relevant to ethics in the executive branch and to place this information on its Web site, including records of waivers from conflicts-of-interest that are requested and granted, personal financial statements of appointees, and the career histories of senior executive branch staff who enter and leave public service.

When it comes to ethics problems, the executive branch shares much of the blame for the collapse of public confidence in our government. Two simple but significant steps would go a long way towards 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 merely as an advisory partner-in-colleague with the executive branch.

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