

**Testimony of the Honorable Robert I. Cusick, Director,  
United States Office of Government Ethics,  
before the Senate Committee on Homeland Security and Governmental Affairs,  
Subcommittee on Oversight of Government Management,  
the Federal Workforce, and the District of Columbia**

**September 10, 2008**

Chairman Akaka, Senator Voinovich, and distinguished members of the Subcommittee, thank you for the opportunity to describe the Office of Government Ethics' (OGE) role in and preparation for the upcoming Presidential transition.

As you know, OGE was established in 1978 by the Ethics in Government Act to prevent and resolve conflicts of interest on the part of executive branch employees and to provide leadership for executive branch agencies to foster for employees high ethical standards that strengthen the public's confidence in the impartiality and integrity of their Government. As a key part of its mission, OGE has the privilege of playing a role during what -- to so many countries around the world -- is an amazing feat: the peaceful transfer of power in our country.

There are over 1100 Presidentially-appointed, Senate-confirmed (PAS) positions in the executive branch. The Ethics in Government Act requires that the vast majority of appointees to PAS positions complete public financial disclosure reports, which are reviewed by OGE for financial conflicts of interest. As the Director of OGE, it is my responsibility under the law to certify that a nominee's financial interests do not conflict with his or her prospective Government duties or to certify that, upon taking certain steps after confirmation (for example, the sale of conflicting assets), the individual will have no financial conflicts of interest. These determinations are made in consultation with the Office of White House Counsel and the executive branch agencies in which the individuals will serve. While the filling of PAS positions continues throughout an Administration, the highest volume of these filings occurs in the first year. Although the outcome of the 2000 election was not finally resolved until mid-December of that year, OGE worked with the President-elect's transition team and had certified the financial disclosure reports of the Cabinet members by Inauguration Day. Following the initial Cabinet certifications during the 2001 transition, OGE's records indicate that OGE had completed review and conflicts of interest analysis for just over 400 potential appointees by the August recess.

During the upcoming transition, it will be essential for the new Administration's national security and other key positions to be filled as expeditiously as possible without compromising conflicts of interest analysis. Along with the other measures described below, OGE is mobilizing nearly its entire professional staff in this effort, and I am confident that OGE has processes in place to meet the demands of this transition.

Agency ethics programs are the vital link between the nominees and OGE. The ethics offices in the receiving agencies assist the nominees with filling out the financial disclosure reports and analyze the disclosures for potential conflicts of interest. The agency ethics officials play a key role in the conflicts analyses because they are in the best position to know the

potential nominees' duties and, therefore, where potential conflicts of interest may arise. OGE provides the expert legal, technical, and financial evaluation of potential nominees' reports and works closely with the agencies to make any necessary revisions and to draft ethics agreements for the prospective nominees to remedy any potential conflicts. Neither OGE's nor the agencies' work is possible without vetting and decision-making at the White House. The White House determines whom to nominate and when potential nominees will be sent forward for review by OGE and coordinates with OGE staff to establish the priority of those reviews.

Not to be overlooked during the process is the departure of many current appointees. OGE has responsibility for the laws and regulations governing job seeking and post-Government employment of these individuals. Among the steps OGE has taken to help this aspect of the transition is the publication in June 2008 of a comprehensive new post-Government employment regulation. OGE has also conducted training for the outgoing Administration's senior leadership.

Assisting in a smooth transition of power is an immense responsibility and requires a great deal of effort. In recognition and in anticipation of this, OGE has been preparing since I became Director two and a half years ago and continues its active preparation to fulfill the role of ethical leader and active participant in the Presidential transition. I would like to highlight some of what OGE has done up to this point to prepare for the transition; activities that will take place in September and October; and, finally, what I anticipate will occur following the election.

In preparation for the next Presidential transition, OGE has:

- Prepared a detailed presentation and briefing books for transition teams and President-elect representatives on such topics as OGE's role (generally and during transition); the executive branch ethics program; the PAS nominee financial disclosure process; transition team codes of conduct; ethical obligations of transition team members; and potential traps for the unwary as incoming officials go through the confirmation process and begin their positions in the new Administration.
- Contacted representatives of Senator McCain's and Senator Obama's campaigns to offer briefings at their earliest convenience concerning OGE's role and responsibilities, the PAS nominee financial disclosure process, and other ethics issues which will arise during transition. OGE hopes to meet with incoming transition teams before the election.
- Fully staffed and trained OGE's pool of public financial disclosure report reviewers and increased the size and capacity of this pool to handle the increased volume of PAS reports during the transition.
- Stressed to other executive branch agency ethics officials the importance of filling positions and making sure their staffs are trained as well.
- Presented a regional training event in Washington, DC, for over 250 experienced ethics officials from more than 70 departments and agencies on financial disclosure issues related to

PAS nominees, in order to prepare them for the increased volume and complexity of financial disclosure reports that are expected during the transition.

- Distributed a bound volume containing over 250 pages of instructional material and contact information designed to prepare executive branch ethics officials for the anticipated surge in the volume of nominee and termination financial disclosure reports associated with the Presidential transition. Nearly all of the material in this volume was new material that OGE developed specifically for this purpose.
- Issued a written manual that provides extensive guidance on drafting ethics agreements for PAS nominees. OGE distributed this manual both at its February 2008 regional conference on public financial disclosure and through the electronic notification mailing system (List Serve), to which over 2,000 executive branch ethics officials subscribe. OGE also has made this manual available to both agency ethics officials and the general public by posting it on OGE's website.
- Issued written guidance on key transition-related ethics issues, including complex financial instruments, hedge funds, seeking employment, regulations governing book deals, ethics agreements, and post-employment restrictions.
- Supplied financial disclosure reviewers at executive branch agencies with an electronic compilation of new guidance on public financial disclosure requirements for complex financial instruments. This compilation supplements OGE's "Financial Disclosure: A Reviewer's Reference" manual and will be posted on OGE's website.
- Submitted the draft legislation to the 110<sup>th</sup> Congress to streamline the Public Financial Disclosure Report (SF 278) in response to concerns about the complexity of the public financial disclosure requirements.
- Published comprehensive post-Federal employment ethics regulations and conducted training on these regulations.
- Published several new pamphlets on substantive ethics requirements.
- Met with the OMB Deputy Director for Management to identify ways to expedite and improve the transition process. In addition, OGE has met with or has scheduled meetings with key personnel who will be involved in transition activities at the Department of State, the Department of Defense, and the Department of Homeland Security.
- Conducted training for several hundred senior White House staff on post-Government employment.
- Expedited the Certificate of Divestiture request process by issuing a new sample format for requests. Certificates of Divestiture are commonly requested when appointees must sell assets to avoid potential conflicts of interest.

- Issued guidance on the heightened scrutiny of PAS nominee reports and the need for agency ethics officials to seek additional information, rather than relying on standard review assumptions, when reviewing these reports.
- Launched the initiative of conducting focused reviews at select agencies to evaluate the agencies' processes and procedures for collecting, reviewing, and certifying financial disclosure reports, including those reports filed by PAS officials. Information gathered through the reviews is used to identify model practices and to develop recommendations to enhance the executive branch ethics program. Identifying model practices and recommending program enhancements is essential at a time when there will be a significant surge in the number of new entrant and termination financial disclosure reports received from incoming and departing Government officials.
- Continued outreach efforts to meet regularly with agency leadership. The leadership meetings are intended to promote the importance of the ethics program and to help ensure personal commitment to the program by agency leadership, as well as to define and allocate sufficient agency resources for the program.

During September and October, OGE will:

- Conduct the Sixteenth National Government Ethics Conference. The week-long conference will provide training to over 600 agency ethics officials. Many of the dozens of sessions focus on transition-related matters such as agency preparation for transition, post-employment restrictions, seeking private sector employment, writing and publication of books, and nominee financial disclosure. In addition to the 600 members of the ethics community expected to attend, OGE has invited key members of the campaign staffs of the two major-party Presidential candidates to attend. OGE hopes to sensitize the transition teams to ethics and disclosure requirements and to establish working relationships with transition staff as early in the transition process as possible.
- Complete a short video presentation introducing the financial disclosure process and conflicts of interest analysis to potential PAS appointees.

After the election and before Inauguration Day, OGE will begin an intense review of financial disclosure reports of potential nominees for the new Administration's top priority positions and to resolve any potential conflicts. This early review will enable potential nominees to advance as expeditiously as possible through the financial disclosure portion of the clearance process and -- from an ethics perspective -- to be ready for Senate confirmation hearings before Inauguration Day. In addition, OGE will:

- Coordinate with the President-elect's transition team to establish clear channels of communication between members of the transition team, OGE, agency ethics officials, and potential PAS nominees.
- Discuss with the President-elect's transition team how the PAS nominee financial disclosure process can be expedited, as well as offer information about past transition teams' codes of

conduct, financial disclosure requirements for transition team members, and transition Memoranda of Understanding.

- Provide specialized financial disclosure training to executive branch agency ethics officials who will be directly involved in their agencies' transitions.
- Communicate with the President-elect's transition team and Senate oversight committees to establish pre-Inauguration logistics and deadlines for transmitting certified financial disclosure reports of potential Cabinet members to the Senate.
- Offer briefings to high-level members of the new Administration's transition team on applicable ethics requirements.
- Ensure the expeditious clearance and certification of financial disclosure reports for key executive branch officials and identify potential conflicts of interest between their official duties and their personal financial interests and remedies to resolve those issues.
- Continue to provide training to high-level officials from the outgoing Administration with information on the rules regarding seeking post-Government employment and any applicable restrictions on their post-Government activities.

Once the Inauguration has taken place, the intense pace for OGE continues as the Office strives to provide guidance, clear financial disclosure forms of PAS nominees, and work with agencies to provide leadership and training. OGE will operate at peak capacity to accomplish its role in the successful transition of the new Administration. It will continue to coordinate with agencies and the White House Counsel's Office to review, resolve conflicts, and otherwise process hundreds of PAS nominee financial disclosure reports (and related ethics agreements) in a thorough, expeditious, and non-partisan manner. It will also review and certify financial disclosure reports of very senior White House staff after the White House Counsel's certification. As unique issues arise during the transition, OGE will issue legal guidance for their resolution, continue to refine its internal processes, and make OGE staff available to brief senior Administration officials and staff and agency ethics officials about Government ethics and related topics.

## CONCLUSION

Public service is a public trust. The ethics laws and rules are the very corner posts of values that are part of the air we breathe in Government. The Presidential transition is not just a challenge, but a rare opportunity. It is an opportunity to assist those who will enter Government in understanding the ethical principles and standards that are required of Government officials. It is an opportunity to prevent and resolve conflicts of interest on the part of Government employees and to ensure that the public's interests prevail over private interests. It is an opportunity to strengthen the public's confidence in the impartiality and integrity of Government. OGE is ready to seize these opportunities.

Thank you, Mr. Chairman and members of the Subcommittee, for this opportunity to testify. I would be pleased to answer any questions you may have.