United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

June 5, 2007

The Honorable Daniel K. Inouye
Chairman
Committee on Commerce, Science, and
Transportation
United States Senate
508 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Ted Stevens
Vice Chairman
Committee on Commerce, Science, and
Transportation
United States Senate
560 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Inouye and Stevens:

The Office of Government Ethics (OGE) has serious concerns about a provision added as a floor amendment to S. 761, the "America COMPETES Act," which was passed by the Senate on April 25, 2007. This provision creates a new conflict of interest requirement for grantees and federal contractors receiving funds from the National Oceanic and Atmospheric Administration (NOAA), which we believe would be better addressed through an executive branch-wide effort to develop appropriate ethical standards for contractors.

OGE is charged with overseeing and setting policy for the executive branch ethics program, including providing guidance and interpretation of the financial disclosure requirements under the Ethics in Government Act, 5 U.S.C. app. §101 et seq., and the criminal conflict of interest laws in chapter 11 of title 18, United States Code. As a general matter, OGE's role in this process is intended to ensure the consistent application of a uniform set of rules and requirements for the executive branch ethics program.

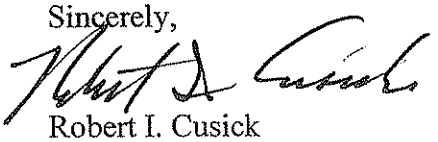
The provision of concern to OGE was added on the floor as section 1504 of the bill. Section 1504(c) would require every person who receives funds from the NOAA Administrator through a grant or contract to certify that none of the funds will be made available through a subcontract "or in any other manner" to another person who has a financial interest or other conflict of interest with the person who originally received the funds.

This language raises concerns regarding the absence of standards for what should be considered a financial interest or conflict of interest. Moreover, it is not clear to us what this provision is intended to do. NOAA employees are already subject to the provisions of 18 U.S.C. 208, one of the criminal conflict of interest laws, which prohibits them from participating in government matters in which they or those whose interests are imputed to them have a financial interest that would be affected by the matter. This prohibition extends to an employee's participation in contract and grant awards, among other things. However, if this provision is intended to apply to NOAA contractors and grant recipients, it is not clear to us why limits are needed on those to whom the awardees may disburse funds. We urge that the application of conflict of interest and other ethics requirements to federal contractors and subcontractors be addressed on a more systematic, executive branch-wide basis, rather than on a program by program basis. OGE would be happy to participate in and contribute its expertise to any efforts to address the issue of how ethics laws and principles should apply to federal contractors and subcontractors.

Please note that, in addition to the issues discussed in this letter, the Administration has other, additional concerns with the amendment that was added as section 1504. These other concerns will be discussed in a separate letter to be sent to the conferees shortly by the Department of Commerce.

We appreciate your consideration of our concerns. If you or your staff has any questions regarding the issues we have raised, please feel free to contact Susan Propper, Deputy General Counsel, at (202) 482-9292. The Office of Management and Budget has advised us that, from the perspective of the Administration's program, there is no objection to the submission of this letter.

Sincerely,



Robert I. Cusick
Director

cc: The Honorable Tom Coburn
The Honorable Nick J. Rahall II, Chairman,
House Committee on Natural Resources
The Honorable Don Young, Ranking Member
House Committee on Natural Resources