



Political Law Alert

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President Trump Issues Executive Order Requiring Ethics Pledge by Political Appointees

On January 28, 2017, President Donald Trump signed an executive order titled “Ethics Commitments by Executive Branch Appointees” (the Order). This Order requires every full-time political appointee to sign an Ethics Pledge (the Trump Pledge), replacing the similar ethics pledge — with some key differences — that President Barack Obama required appointees to sign during his administration (the Obama Pledge).

As under the Obama Pledge, “appointee” includes all full-time, non-career political appointees regardless of whether they are appointed by the president, the vice president, an agency head or other government official. Individuals appointed to a career position are not required to sign the Trump Pledge. Although the Order requires those appointed on or after January 20, 2017, to sign the Trump Pledge, it is unclear whether the Trump administration intends to extend this requirement to those appointed during the Obama administration. Please note that President Obama’s appointees are still subject to the terms of the Obama Pledge they signed, unless that pledge is annulled or if they sign the Trump Pledge.

Below is a summary of the most significant provisions of the Order, highlighting the differences between the Trump Pledge and the Obama Pledge provided in italicized text.

Lobbyist Gift Ban

The Trump Pledge prohibits covered appointees from accepting gifts from registered lobbyists, lobbying firms or lobbyist employers for the duration of their appointment. This ban and its exemptions are the same as under the Obama Pledge. Accordingly, many of the exemptions that exist under the Office of Government Ethics (OGE) gift rules are eliminated for covered appointees, while other minor exemptions are retained. There also were additional exemptions issued through guidance under the Obama Pledge, such as free attendance at press events or widely attended charitable events. It is unclear whether such guidance will continue to apply under the Trump Pledge.

Eliminated exemptions. The following commonly used exemptions under OGE rules do not apply to covered appointees under the Trump Pledge:

- gifts from a single source of 20 dollars or less per occasion and 50 dollars or less per calendar year;
- gifts provided by a former employer to attend a reception or similar event when other

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- former employees have been invited to attend;
- free attendance at widely attended gatherings; and
- meals, refreshments and entertainment in a foreign area.

Retained exemptions. These exemptions are available to covered appointees under the Trump Pledge:

- gifts based on a personal relationship;
- discounts and similar benefits;
- gifts resulting from a spouse's business or employment;
- gifts customarily provided by a prospective employer;
- gifts to the president or vice president;
- gifts authorized by supplemental agency regulation;
- gifts accepted under specific statutory authority.
- modest items of food and refreshments (soft drinks, coffee and doughnuts) that are offered other than as part of a meal;
- greeting cards and items with little intrinsic value (plaques, certificates and trophies) which are intended solely for presentation;
- loans from banks and other financial institutions on terms generally available to the public;
- opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all government employees or all uniformed military personnel;
- rewards and prizes given to competitors in contests or events open to the public, unless the employee's entry into the contest or event is required as part of his or her official duties;
- pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;
- anything that is paid for by the government or secured by the government under government contract;
- free attendance to certain events at which the official is assigned to present information on behalf of his or her agency; and
- anything for which market value is paid by the employee.

Revolving Door Bans

Appointees Entering Government

Working on Matters Involving a Former Client or Employer

For two years after their initial appointment, covered appointees are prohibited from working on certain matters involving a former client or employer if the appointee worked for that

client or employer in the past two years. As under the Obama Pledge, the Trump Pledge prohibits the appointee from participating in matters involving specific parties that are directly and substantially related to the former client or employer. Under this restriction, a covered appointee may not participate in a matter where such a former client or employer is, or represents, a party in the matter.

However, in both the Obama and Trump pledges, the phrase "matters involving specific parties" is broadened from its regulatory definition to also include any communication or meeting with a former client or employer relating to the performance of one's official duties other than those concerning matters of general applicability where all interested parties may attend. This language suggests that appointees would be barred from communicating with former clients and employers on any issue within the scope of their responsibilities, including broad policy matters. However, the phrase "directly and substantially related" covers only matters where a former client or employer is, or represents, one of the parties. Accordingly, while the provision is not entirely clear, the better reading is that in order to be subject to the prohibition, communications and meetings between an appointee and a former client or employer must be regarding a matter in which such client or employer either is a party or represents a party in such matter.

Working on Matters and Issues Lobbied in the Past

If the appointee was a registered lobbyist during the two years prior to his or her appointment, the appointee is prohibited for a period of two years after appointment from: (1) participating in any particular matter on which he or she lobbied in the two years prior to his or her appointment and (2) participating in any matter that falls within the same specific issue area. A particular matter includes only matters that involve those that are focused upon the interests of specific persons, or a discrete and identifiable class of persons, even if it does not involve formal parties and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term "lobbied" is defined to mean having acted as a registered lobbyist under the Lobbying Disclosure Act (LDA).

Unlike the Obama pledge, there is no restriction on a covered appointee under the Trump Pledge seeking or accepting employment with an agency he or she lobbied in the past.

Appointees Leaving Government

Five-Year Ban on Lobbying Former Agency

After leaving government service, a covered appointee may not engage in lobbying activity with respect to his or her former

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agency for five years after leaving his or her position. In defining “lobbying activity,” the Trump Pledge uses the LDA definition, which includes both lobbying contacts and preparing and strategizing for such contacts. Accordingly, this restriction would apply to both making a lobbying communication with a covered official from his former agency, as well as “behind the scenes” lobbying activity, regardless of whether or not the individual triggers registration as a lobbyist under the LDA.

Both the duration of the ban (increased to five years from two years) and the express coverage of preparing and strategizing for lobbying contacts represent significant departures from the Obama Pledge.

Ban on Lobbying the Executive Branch for Remainder of Trump Administration

The Trump Pledge also prohibits former covered appointees from engaging in lobbying activities with respect to the entire executive branch for the remainder of the administration.

Lifetime Ban on FARA Registration for Foreign Governments and Political Parties

Unlike the Obama Pledge, the Trump Pledge subjects covered appointees to a lifetime ban on engaging in any activity on behalf of a foreign government or political party that would, as of January 20, 2017, require registration under the Foreign Agents Registration Act of 1938.

The Trump Pledge does not extend the one-year “cooling off” period prohibiting senior employees from communicating with employees of their former executive agency, as the Obama Pledge did. However, please note that “very senior” executive branch employees are still subject to a statutory two-year cooling-off period.

By signing the Trump Pledge, every covered appointee agrees that all hiring and employment decisions the appointee makes will be based on the candidate’s qualifications, competence and experience.

Waiver

The president or his designee may grant waivers of any restriction contained in the Trump Pledge.

Administration and Enforcement

The Order instructs the head of every executive agency to establish rules or procedures to ensure every appointee signs the Trump Pledge upon becoming an appointee. It also provides the OGE with instructions to provide further guidance concerning the administration of the Trump Pledge. Enforcement will be provided through civil action by the attorney general. Any former appointee who is determined to have violated the Trump Pledge may be barred from lobbying any officer or employee of that agency for up to five years, in addition to the time period covered by the Trump Pledge.

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