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## Preface

This is the first annual report provided pursuant to the President's Executive Order on Ethics (Executive Order 13490 of January 21, 2010, "Ethics Commitments by Executive Branch Personnel").

This report provides information about the efforts of the U.S. Office of Government Ethics to ensure that agency officials implemented the Ethics Pledge appropriately. The report also provides information on the number of appointees who entered government service during the calendar year, those appointees required to sign the Ethics Pledge, the number and names of those who received waivers to any Ethics Pledge provisions, and where appropriate, recusals or ethics agreements for those appointees who were registered lobbyists within the two years prior to their appointment. The report covers the time period January 20 through December 31, 2009

This report is publicly available. It has been posted on OGE's website at [www.usoge.gov](http://www.usoge.gov).

Respectfully submitted

/s/

Robert I. Cusick  
Director  
U.S. Office of Government Ethics  
Dated: 03/31/2010

## Executive Order Guidance

To effectively implement Executive Order 13490, OGE provided extensive, interpretive guidance on the Ethics Pledge. Soon after the Order was signed, OGE met with all Designated Agency Ethics Officials to provide preliminary guidance and began issuing substantive written guidance which helped ethics officials apply the Ethics Pledge and the lobbying gift ban rules appropriately. In total, OGE has issued ten guidance documents on the Ethics Pledge—all of which were made available to ethics officials and the public on OGE's website as they were published. These documents are found at Appendix VII. Table 1, which follows, also identifies and provides a synopsis of the guidance issued.

In addition, OGE has continually provided oral advice and counseling to agency ethics officials on the Ethics Pledge and will dedicate an entire track at its 17<sup>th</sup> National Government Ethics Conference this May to Pledge-related issues. The conference will be attended by over 600 ethics officials and representatives from state, local, and foreign governments. The conference program will address the impact of the Ethics Pledge on ethical culture as well as the technical aspects of implementation.

With most of the substantive guidance necessary to implement the Ethics Pledge now in place, OGE will continue implementing other aspects of Executive Order 13490 in 2010 and beyond. To effectively implement the entire Executive Order, OGE will partner with other agency stakeholders, including the Office of Personnel Management, the Director of the Office of Management and Budget, the Attorney General, and the Counsel to the President. The remaining provisions that OGE will implement include:

- extending the lobbying gift ban to all Executive Branch employees;
- evaluating for the President the need to extend the Ethics Pledge's post-government cooling-off period to all Executive Branch personnel involved in the procurement process;
- reporting to the President the adequacy of current restrictions on procurement lobbying and related disclosure requirements;
- reporting to the President on lobbying for Presidential pardons; and
- ensuring that hiring and employment decisions throughout the Executive Branch are based on the candidate's qualifications, competence, and experience.

Table 1: OGE Guidance on the Ethics Pledge

|  |                          |  |
|--|--------------------------|--|
| <b>DO-09-003</b>   | <b>January 22, 2009</b>  | <b>Executive Order; Ethics Pledge</b>  |
| <p>Provided the Ethics Pledge form to be used for appointees, defined “appointee” and the commitments to be made, and noted the requirements for ethics agreements and waivers</p>   |                          |  |
| <b>DO-09-005</b>   | <b>February 10, 2009</b> | <b>Signing the Ethics Pledge</b>   |
| <p>Provided guidance on when the Ethics Pledge is to be signed</p>   |                          |  |
| <b>DO-09-007</b>   | <b>February 11, 2009</b> | <b>Lobbyist Gift Ban Guidance</b>  |
| <p>Provided initial guidance concerning implementation and interpretation of the gift ban</p>  |                          |  |
| <b>DO-09-008</b>   | <b>February 23, 2009</b> | <b>Authorizations Pursuant to Section 3 of E.O. 13490<br/>“Ethics Commitments by Executive Branch Personnel”</b> |
| <p>Informed agencies that OMB had authorized Designated Agency Ethics Officials of each executive agency to exercise section 3 waiver authority in consultation with the Counsel to the President and that limitations had been placed on exercising that waiver authority</p> |                          |  |
| <b>DO-09-010</b>   | <b>March 16, 2009</b>    | <b>Who Must Sign the Ethics Pledge?</b>  |
| <p>Provided guidance about specific categories of officials to help DAEOs determine which officials are subject to the Ethics Pledge</p>   |                          |  |
| <b>DO-09-011</b>   | <b>March 26, 2009</b>    | <b>Ethics Pledge: Revolving Door Ban—All Appointees<br/>Entering Government</b>                                  |
| <p>Provided guidance on how to implement paragraph 2 of the Ethics Pledge by explaining phrases that comprise paragraph 2 and how paragraph 2 interacts with existing impartiality regulations</p>   |                          |  |
| <b>DO-09-014</b>   | <b>April 28, 2009</b>    | <b>Holdover Appointees and the Ethics Pledge</b>   |
| <p>Required appointees temporarily holding over from the previous Administration to sign the Ethics Pledge and provided for limited extensions in consultation with the Special Counsel to the President</p>   |                          |  |
| <b>DO-09-20</b>  | <b>May 26, 2009</b>      | <b>Ethics Pledge Issues: Speeches and Pledge Paragraph 2;<br/>Intergovernmental Personnel Act Detailees</b>      |
| <p>Addressed issues related to appointees giving official speeches at events sponsored by former employers or clients and established that IPA detailees are not required to sign the Ethics Pledge</p>  |                          |  |
| <b>DO-10-003</b>   | <b>February 18, 2010</b> | <b>Attendance of Staff Accompanying Official Speakers</b>  |
| <p>Provided guidance on applying the gift rules and the lobbyist gift ban to attendance by particular personnel whose presence is truly essential to the performance of the speaker's official duties at a specific event</p>  |                          |  |
| <b>DO-10-004</b>   | <b>February 22, 2010</b> | <b>Post-Employment Under the Ethics Pledge, FAQs</b>   |
| <p>Provides answers to frequently asked questions about the post-employment restrictions found in both paragraphs 4 and 5 of the Ethics Pledge</p>   |                          |  |

## Ethics Pledge Compliance

Executive Branch agencies and the White House reported that of the 2,863 full-time, non-career appointees who were required to sign the Ethics Pledge during the period January 20 through December 31, 2009, and who were serving at the end of 2009, 100 percent had done so. Agencies reported that nine appointees who did not sign the Ethics Pledge left Federal service in 2009. This small group included persons appointed by President Bush and one person appointed by President Obama who left Government after serving briefly.

In addition, agencies and the White House reported that, as of December 31, 2009, there were 24 full-time, non-career appointees who had been registered lobbyists during the two years prior to their appointment. Only 3 of these appointees, Deputy Secretary of Defense William Lynn, Jocelyn Frye, Director of Policy and Projects in the Office of the First Lady, and Cecilia Muñoz, White House Director of Intergovernmental Affairs, required waivers of the Executive Order to be appointed to their positions. All three received waivers from paragraph 2 and paragraph 3 of the Ethics Pledge. The other 21 did not need waivers to be appointed to their positions because they had not lobbied the agency to which they were appointed within the two years prior to appointment.

Executive Branch agencies and the White House also reported that 14 of the 24 appointees who had been registered lobbyists in the two years prior to appointment had entered into written ethics agreements or written recusals. The ethics agreements served to remind these appointees about the restrictions related to their prior lobbying activities and are found in Appendix VI. Six appointees were not required to have written ethics agreements because agency ethics officials determined the appointees' official duties were sufficiently unrelated to their prior lobbying activities, and one appointee left Government service after only a few weeks. Mr. Lynn, Ms. Frye and Ms. Muñoz were not required to have ethics agreements addressing lobbying activities because of the scope of the waivers issued to them.

Finally, ten agencies and the White House had granted a total of 22 so-called "reverse revolving door" waivers as of December 31, 2009. These waivers allow appointees to participate in matters in which their former employers or clients had an interest. In all cases, agencies and the White House deemed these waivers essential to the appointees' ability to carry out their duties. Copies of all waivers issued to Executive Branch agency appointees are posted on OGE's website, [www.usoge.gov](http://www.usoge.gov) when a waiver is issued. Waivers issued by the White House are posted on the White House website, [www.whitehouse.gov](http://www.whitehouse.gov) and are also posted when a waiver is issued. All waivers are found in Appendix IV and Appendix V to this report.

### Employees Subject to the Ethics Pledge

Of the 130 reporting agencies, 90 agencies and the White House had employed full-time, non-career appointees<sup>1</sup> subject to the Ethics Pledge during the period of January

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<sup>1</sup> Definitions of non-career appointees are as follows: PAS—Presidentially appointed, Senate confirmed; PA—Presidentially appointed; non-career SES—political appointees at the senior executive level; Schedule

20 through December 31, 2009. Table 2 below provides additional details regarding the categories of full-time, non-career appointees subject to the Ethics Pledge.

Table 2: Full-Time, Non-Career Appointees Employed  
( as of December 31, 2009)

| PAS   | PA | Non-career<br>SES | Schedule<br>C | Other | Total        |
|---|----|-------------------|---------------|-------|--------------|
| 688   | 34 | 606               | 1,424         | 151   | <b>2,903</b> |
| White House (includes White House Office, Office of Policy Development, Office of the Vice President, National Security Council, National Economic Council) |    |                   |               |       | <b>487</b>   |
|   |    |                   |               |       | <b>3,390</b> |

Full Compliance for Ethics Pledge Signatures

Section 1 of Executive Order 13490 requires that every appointee in every executive agency appointed on or after January 20, 2009 sign the Ethics Pledge.<sup>2</sup> The Order defines "appointee" as follows:

‘Appointee’ shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

Table 3 shows that agencies and the White House reported that 3,390 full-time, non-career appointees were employed during the period of January 20, 2009 through December 31, 2009. Of the 3,390 appointees, 2,863, or approximately 84 percent, were required to sign the Ethics Pledge. The largest number of appointees required to sign the Ethics Pledge is Schedule C appointees.

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C—noncompetitive appointments to excepted service positions graded GS-15 and below; other—all other categories of non-career position appointments.

<sup>2</sup> See OGE DAEOgrams DO-09-003 and DO-09-010 located on the OGE website and Appendix VII for detailed guidance regarding the appointees subject to the Ethics Pledge.

Table 3: Ethics Pledge Signatures  
(by Appointee Type)

| Appointee Type | Required     | Not Required | Total        |
|----------------|--------------|--------------|--------------|
| PAS            | 398          | 290          | 688          |
| PA             | 27           | 7            | 34           |
| Non-career SES | 584          | 22           | 606          |
| Schedule C     | 1,324        | 100          | 1,424        |
| White House    | 439          | 48           | 487          |
| Other          | 91           | 60           | 151          |
| <b>Total</b>   | <b>2,863</b> | <b>527</b>   | <b>3,390</b> |

For every full-time, non-career appointee who did not sign the Ethics Pledge, agencies and the White House were asked to provide the reason(s) why the Ethics Pledge was not signed. The reasons given are provided in Table 4.

Table 4: Appointees Excluded from the Ethics Pledge

| Reason why Ethics Pledges were not Required to be Signed  | Number Applicable Appointees |
|---|------------------------------|
| <b>Appointed prior to January 20, 2009 and not otherwise required to sign the Ethics Pledge</b> | <b>432</b>                   |
| <b>Occupy an exempt non-policymaking position (Schedule C or other comparable authority)</b>    | <b>95</b>                    |
| <b>TOTAL</b>  | <b>527</b>                   |

OGE, in consultation with the White House Counsel’s Office, determined in its implementing guidance that certain categories of individuals were not required to sign the Ethics Pledge. The bulk of appointees, 432 of them, as shown in Table 4, primarily fell into one of the following categories:

- Presidential appointees to positions with a fixed term of office if they are full-time and were appointed before January 20, 2009;
- Presidential Inspector General appointees who were appointed before January 20, 2009;
- term appointees whose terms have expired but who are permitted by statute to hold over for some period of time, provided the appointment preceded January 20, 2009.

The 95 appointees serving in exempt, non-policymaking positions include schedulers, office assistants, drivers, and similar positions. For those serving in Executive Branch

agencies, these exemptions are established based on agency recommendations and OGE approval pursuant to 5 C.F.R. § 2634.203.

In addition, agencies reported that there were a few, limited extensions of the deadline for holdovers, who were appointed in the prior Administration, to sign the Ethics Pledge. In order to request such an extension, the Designated Agency Ethics Official had to submit a written request to the Special Counsel to the President for Ethics and Government Reform explaining why the requesting holdover met the required criteria. The Special Counsel granted extensions in situations where a holdover declined to sign and the head of the agency determined that his or her continued service was mission critical and essential for continuity.

### Former Lobbyists Serving in the Administration

Executive Branch agencies and the White House reported that, as of December 31, 2009, 24 full-time, non-career appointees subject to the Ethics Pledge had been registered lobbyists during the two years prior to their appointment. The 24 appointees are listed in Table 5 below. Of these 24 appointees, Deputy Secretary of Defense William Lynn, Jocelyn Frye, and Cecilia Muñoz are the only former lobbyists who have received a waiver of paragraph 3 of the Pledge.

Pursuant to section 4(a) of the Executive Order, 14 of the 24 appointees have written ethics agreements or recusals that specifically address compliance with Ethics Pledge paragraph 3 because their prior lobbying activities involved subjects that potentially could arise in connection with their Executive Branch positions. Pledge-related ethics agreements or recusals are found in Appendix VI. Ten of these 24 appointees do not have written ethics agreements or recusals addressing Pledge paragraph 3. Six appointees were not required to have written ethics agreements for paragraph 3 because agency ethics officials determined the appointees' official duties were sufficiently unrelated to their prior lobbying activities.<sup>3</sup> Three appointees, Mr. Lynn, Ms. Frye and Ms. Muñoz, were not required to have ethics agreements addressing paragraph 3 because of the scope of their waivers.<sup>4</sup> One appointee, Mark Childress, took a position at the Department of Health and Human Services very early in the Administration and left Government service before an ethics agreement was in place.

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<sup>3</sup> One of these appointees, Secretary of Agriculture Tom Vilsack, has a written ethics agreement addressing non-Pledge issues, as do nearly all Senate-confirmed appointees in the Executive Branch, but the agreement does not cover paragraph 3 of the Ethics Pledge because his lobbying did not involve the Department of Agriculture or issues within his responsibilities as Secretary.

<sup>4</sup>As a Senate-confirmed appointee, Mr. Lynn has a written ethics agreement addressing other, non-Pledge issues.



Table 5: Former Lobbyists and Ethics Agreement Requirements  
(as of December 31, 2009)

| <b>Appointee Name</b>        | <b>Agency</b>  | <b>Ethics Agreement Addressing Pledge Paragraph 3</b> |
|------------------------------|--|---|
| <b>Anne Brewer</b>           | Executive Assistant to Director, Office of Public Liaison (White House)              | Yes   |
| <b>Max Cleland</b>           | American Battle Monuments Commission   | Yes   |
| <b>Mark Childress*</b>       | Department of Health and Human Services  | No  |
| <b>Martha Coven</b>          | Special Assistant to the President for Mobility and Opportunity Policy (White House) | Yes   |
| <b>William Corr</b>          | Department of Health and Human Services  | Yes   |
| <b>Sally Ericcson</b>        | Office of Management and Budget  | Yes   |
| <b>Jocelyn Frye</b>          | Director of Policy and Projects, Office of the First Lady (White House)              | Not required (waiver granted)                         |
| <b>Patrick Gaspard</b>       | Director, Office of Political Affairs (White House)                                  | Yes   |
| <b>Bradley Gillen</b>        | Federal Communications Commission  | Yes   |
| <b>Mark Gitenstein</b>       | Department of State  | Not required  |
| <b>Brandon Hurlbut***</b>    | Deputy Director, Office of Cabinet Affairs (White House)                             | Yes   |
| <b>James Kohlenberger</b>    | Office of Science and Technology Policy  | Yes   |
| <b>William Lynn</b>          | Department of Defense  | Not required (waiver granted)                         |
| <b>David Medina***</b>       | Deputy Chief of Staff, Office of the First Lady (White House)                        | Yes   |
| <b>Amanda Fuchs Miller**</b> | Department of Justice  | Not required  |
| <b>Elisa Montoya</b>         | Office of Personnel Management   | Not required  |
| <b>Cecilia Muñoz</b>         | Director of Intergovernmental Affairs (White House)                                  | Not required (waiver granted)                         |
| <b>Mark Patterson</b>        | Department of the Treasury   | Yes   |
| <b>Desiree Pipkins</b>       | Research Associate, White House Counsel (White House)                                | Yes   |
| <b>Mara Rudman***</b>        | Executive Secretary, National Security Council                                       | Yes   |
| <b>Todd Stern</b>            | Department of State  | Not required  |
| <b>Karl Thompson</b>         | Department of Justice  | Not required  |
| <b>Rich Verma</b>            | Department of State  | Yes   |
| <b>Tom Vilsack</b>           | Department of Agriculture  | Not required  |

\* Mr. Childress left the Department of Health and Human Services in April 2009.

\*\* Ms. Miller left the Department of Justice in December 2009.

\*\*\* Mr. Hurlbut, Mr. Medina, and Ms. Rudman have moved to other positions within the Administration.

## Process for Evaluating Prior Lobbying

The starting point for determining whether someone is a “registered lobbyist” for purposes of Ethics Pledge paragraph 3 is if, at any time during the two-year period before appointment, he or she has been listed as a lobbyist in either an initial LDA registration or a subsequent quarterly report (line 10 of Form LD-1 or line 18 of Form LD-2). Agency ethics officials and the White House Counsel’s Office, however, have found it necessary in some instances to go beyond the House and Senate LDA databases to determine whether a person falls within the scope of Ethics Pledge paragraph 3. The databases may be insufficient on their own for a variety of reasons: individuals may fail to de-register as soon as they no longer meet LDA thresholds; LDA filings can be overly inclusive with employers registering persons who were expected to engage in lobbying activities but who subsequently did not do so; and finally, LDA filings are made quarterly and do not indicate the actual dates of lobbying activity. In the case of at least one appointee, a former employer confirmed that the date of the individual’s last lobbying activity, while within the quarter covered by an LDA filing, occurred more than two years prior to appointment and was therefore outside the coverage of Ethics Pledge paragraph 3.

## Few Lobbying or Reverse Revolving Door Waivers Granted

Waivers to provisions of the Ethics Pledge may be granted by the Director of the Office of Management and Budget (authority subsequently delegated to Designated Agency Ethics Officials), in consultation with the Counsel to the President, when it is determined that “the literal application of the restriction is inconsistent with the purposes of the restriction or that it is in the public interest to grant the waiver.”<sup>5</sup> The Executive Order explains that the public interest may include, but is not limited to, exigent circumstances relating to national security or to the economy.

All waivers are made publicly available on either the OGE website or the White House website when issued. Specifically, the OGE website contains the names of appointees serving Executive Branch agencies who have received waivers to the Ethics Pledge. OGE’s website provides a hyperlink to the White House website, which posts waivers that have been issued by the White House. Both lists are updated as waivers are issued.

### *Waivers Allowing Former Lobbyists to be Appointed*

Deputy Secretary of Defense William Lynn received a waiver allowing his appointment to an agency he lobbied within two years of appointment. Additionally, Ms. Frye, Director of Policy and Projects for the Office of the First Lady and Ms. Muñoz, White House Director of Intergovernmental Affairs, received waivers of paragraph 3 of the Ethics Pledge.

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<sup>5</sup> Section 3 of Executive Order 13490 provides a waiver mechanism for restrictions contained in the Ethics Pledge and the standards that must be met for a waiver to be granted.

*Waivers Allowing Appointees to Participate in Matters of Interest to Former Employers or Clients*

Executive Branch agency and White House respondents reported that 22 appointees had been granted waivers from the requirements of Ethics Pledge paragraph 2 as of December 31, 2009. Generally, paragraph 2 of the Ethics Pledge restricts an appointee’s participation in matters in which the appointee’s former employers or clients have an interest. Agencies and the White House reported that all waivers they issued were essential to the appointee’s ability to carry out his or her duties. Individuals who have received Ethics Pledge waivers and the executive agencies that issued the waivers are identified in Table 6 below. Appendix V contains the text of the waivers to paragraph 2 of the Ethics Pledge issued as of December 31, 2009.

Table 6: Appointees who Received Waivers Allowing Participation in Matters of Interest to Former Employers or Clients and the Issuing Agency  
(as of December 31, 2009)

| <b>Appointee Name</b>    | <b>Agency</b>   |
|--------------------------|---|
| <b>Herbert Allison</b>   | Department of the Treasury  |
| <b>Charles Bolden</b>    | National Aeronautics and Space Administration                                       |
| <b>John Brennan</b>      | Assistant to the President for Homeland Security and Counterterrorism (White House) |
| <b>Lanny Breuer</b>      | Department of Justice   |
| <b>Ash Carter</b>        | Department of Defense   |
| <b>Jocelyn Frye</b>      | Director of Policy and Projects, Office of the First Lady (White House)             |
| <b>Eric Holder</b>       | Department of Justice   |
| <b>Valerie Jarrett</b>   | Senior Advisor to the President (White House)                                       |
| <b>Jonathan Kravis</b>   | Associate Counsel, White House Counsel’s Office (White House)                       |
| <b>Carmen Lomellin</b>   | Department of State   |
| <b>William Lynn</b>      | Department of Defense   |
| <b>Joseph Main</b>       | Department of Labor   |
| <b>Cecilia Muñoz</b>     | Director of Intergovernmental Affairs (White House)                                 |
| <b>David Ogden*</b>      | Department of Justice   |
| <b>Stephen Rapp</b>      | Department of State   |
| <b>Philip Reitingger</b> | Department of Homeland Security   |
| <b>Margot Rogers</b>     | Department of Education   |
| <b>Rajiv Shah</b>        | Department of Agriculture   |
| <b>James Shelton</b>     | Department of Education   |
| <b>Naomi Walker</b>      | Department of Labor   |
| <b>Chris Weideman</b>    | Associate Counsel, White House Counsel’s Office (White House)                       |
| <b>Aaron Williams</b>    | Peace Corps   |

\* Mr. Ogden left the Administration in February, 2010

# **Appendix I**

**Appendix I**  
**Executive Order 13490**

**THE WHITE HOUSE**

Office of the Press Secretary

For Immediate Release

January 21, 2009

**EXECUTIVE ORDER**

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By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2009, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

"As a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

"2. *Revolving Door Ban -- All Appointees Entering Government.* I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

"3. *Revolving Door Ban -- Lobbyists Entering Government.* If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency that I lobbied within the 2 years before the date of my appointment.

"4. *Revolving Door Ban -- Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment.

"5. *Revolving Door Ban -- Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered Executive Branch official or non-career Senior Executive Service appointee for the remainder of the Administration.

"6. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

"7. *Assent to Enforcement.* I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Personnel,' issued by the President on January 21, 2009, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. As used herein and in the pledge set forth in section 1 of this order:

(a) "Executive agency" shall include each "executive agency" as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that for purposes of this order "executive agency" shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) "Appointee" shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) "Gift"

(1) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(2) shall include gifts that are solicited or accepted indirectly as defined at section 2635.203(f) of title 5, Code of Federal Regulations; and

(3) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) & (3) and (j)(1) of title 5, Code of Federal Regulations.

(d) "Covered executive branch official" and "lobbyist" shall have the definitions set forth in section 1602 of title 2, United States Code.

- (e) "Registered lobbyist or lobbying organization" shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, "registered lobbyist" shall include each of the lobbyists identified therein.
- (f) "Lobby" and "lobbied" shall mean to act or have acted as a registered lobbyist.
- (g) "Particular matter" shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.
- (h) "Particular matter involving specific parties" shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.
- (i) "Former employer" is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that "former employer" does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, or any United States territory or possession.
- (j) "Former client" is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to a speech or similar appearance. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services.
- (k) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.
- (l) "Participate" means to participate personally and substantially.
- (m) "Post-employment restrictions" shall include the provisions and exceptions in section 207(c) of title 18, United States Code, and the implementing regulations.
- (n) "Government official" means any employee of the executive branch.
- (o) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.
- (p) "Pledge" means the ethics pledge set forth in section 1 of this order.
- (q) All references to provisions of law and regulations shall refer to such provisions as in effect on January 20, 2009.

Sec. 3. Waiver. (a) The Director of the Office of Management and Budget, or his or her designee, in consultation with the Counsel to the President or his or her designee, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of the Office of Management and Budget, or his or her designee, certifies in writing (i) that the literal application of the restriction is inconsistent with the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver. A waiver shall take effect when the certification is signed by the Director of the Office of Management and Budget or his or her designee.

(b) The public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy. *De minimis* contact with an executive agency shall be cause for a waiver of the restrictions contained in paragraph 3 of the pledge.

Sec. 4. Administration. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee; to ensure that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President or his or her designee prior to the appointee commencing work; to ensure that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and generally to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) shall be the responsibility of the Counsel to the President or his or her designee.

(c) The Director of the Office of Government Ethics shall:

(1) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) above;

(2) in consultation with the Attorney General or the Counsel to the President or their designees, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(3) in consultation with the Attorney General and the Counsel to the President or their designees, adopt such rules or procedures as are necessary or appropriate:

(i) to carry out the foregoing responsibilities;



- (ii) to apply the lobbyist gift ban set forth in paragraph 1 of the pledge to all executive branch employees;
  - (iii) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;
  - (iv) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.205 of title 5, Code of Federal Regulations;
  - (v) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by their official actions do not affect the integrity of the Government's programs and operations;
  - (vi) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;
- (4) in consultation with the Director of the Office of Management and Budget, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure and on steps the executive branch can take to expand to the fullest extent practicable disclosure of such executive branch procurement lobbying and of lobbying for presidential pardons, and to include in the report both immediate action the executive branch can take and, if necessary, recommendations for legislation; and
- (5) provide an annual public report on the administration of the pledge and this order.
- (d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, or their designees, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service; and to include in the report both immediate action the executive branch can take and, if necessary, recommendations for legislation.
- (e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any

legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations of this order and for referrals to the Attorney General for his or her consideration pursuant to subsection (c).

(c) The Attorney General or his or her designee is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General or his or her designee is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) No prior Executive Orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive Order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(1) authority granted by law to a department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(f) The definitions set forth in this order are solely applicable to the terms of this order, and are not otherwise intended to impair or affect existing law.

BARACK OBAMA  
THE WHITE HOUSE,  
January 21, 2009.

# **Appendix II**

## **Appendix II**

### **Assessment Methodology and Administrative Processes**

#### Assessment Methodology

OGE administered an assessment questionnaire twice. In August 2009, OGE administered an initial assessment to better understand the implementation process within the agencies and to gather mid-year compliance data. In January 2010, OGE administered an assessment to capture end-of-year compliance data. The statistical information in this report is based on the year-end data.

The questionnaire was emailed to Designated Agency Ethics Officials in every executive branch agency. In the absence of the DAEO, the questionnaire was provided to an Alternate DAEO or other designated official. OGE received responses from all 130 agencies required to be assessed. Based on responses on each assessment, OGE conducted follow-up discussions with agencies to gather additional information and to correct any discrepancies in submissions. OGE excluded from this report employees it determined were miscategorized as full-time, non-career appointees. In the interest of completeness, the White House voluntarily provided information about White House appointees.

#### Administrative Processes

As part of the initial assessment, OGE requested information about agency processes for administering the Ethics Pledge and documenting Ethics Pledge waiver certifications. Agencies which had appointees who were subject to the Pledge reported that they had at least one system that allows the DAEO to access information sufficient to establish at least one of the following:

- The number of signed Ethics Pledges (85 agencies)
- The number of signed ethics agreements (83 agencies)
- The number of signed Ethics Pledge waiver certifications (79 agencies)
- The content of signed ethics agreements (83 agencies)
- A list of the appointees to whom the Ethics Pledge applies (86 agencies).

The agencies that reported not having a system also did not have pertinent appointees at the time of the initial assessment. However, they indicated that they planned to have a system in place as necessary.

Other information reported in the initial assessment about the ethics pledge administrative process was as follows:

- Eighty-eight agencies reported that the DAEO is responsible for monitoring signed ethics agreements of full-time, non-career appointees. At other agencies, responsible parties include the Human Resources Office or Chief Human Capital Officer and screeners within the appointees' program office.
- Eighty-one agencies have a process to ensure that Ethics Pledges signed by appointees are filed for permanent retention in the appointees' official personnel (OPF) or equivalent folder.
- Seventy-six agencies have a process to ensure that all Ethics Pledge waiver certifications are filed for permanent retention in the appointees' OPF or equivalent folder.

# **Appendix III**

## Appendix III Assessment Questionnaire

### Compliance Assessment: The Ethics Pledge (Executive Order 13490)

**You are required to complete this assessment as the representative of your agency's ethics program. Each agency must provide a prompt and accurate response.**

#### **Purpose**

The purpose of this assessment is to provide the U.S. Office of Government Ethics (OGE) with information about administration of the Ethics Pledge required by Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009). The information will be used by OGE to prepare the annual report on administration of the Ethics Pledge as required by Executive Order 13490, sec. 4(c)(5).

The Executive Order requires every covered appointee to sign the Ethics Pledge upon assuming office. *See* Executive Order 13490, sec. 1. In addition, every covered appointee who was a registered lobbyist during the 2 years prior to appointment must have a written ethics agreement addressing the restrictions on incoming lobbyists under paragraph 3 of the Ethics Pledge. *See* Executive Order 13490, sec. 4(a).

This assessment focuses on compliance with the following **as of December 31, 2009**:

- the requirement for full-time non-career appointees to sign the Ethics Pledge,
- the requirement to have a written ethics agreement covering any commitments under paragraph 3 of the Ethics Pledge (concerning lobbyists entering government), and
- the issuance of any waivers of Ethics Pledge requirements under section 3 of Executive Order 13490.

This assessment does not request the name or title of any appointee.

#### **Deadline**

The deadline for completing the assessment is January 11, 2010.

#### **Taking the Assessment**

This assessment consists of up to nine items for responses. (Based on your responses, the assessment may skip items not applicable to your agency.) For your convenience, a Word version of the entire assessment may be viewed and printed by clicking on the following link: [Word version of entire Ethics Pledge compliance assessment.](#)

Throughout the assessment you will be offered an opportunity to provide comments.

After reviewing your submission OGE may contact you for additional information.

**IMPORTANT:** If you want a copy of your responses, you must print each individual page prior to submitting the assessment to OGE. Once you submit the assessment to OGE, you will not be able to re-enter it.

If you want to save the assessment and complete it later, click the "Save and Continue Assessment Later" link on the top right of the screen. You will be asked to provide an email address. A link will be sent to your email, which you may use to return to and complete the assessment.

Please keep in mind that you are required to submit your response electronically.

#### **Submitting the Assessment**



When you have completed the assessment, click the "Submit your Assessment" button to send your assessment to OGE.

**Help**

If you need help with the assessment, please contact Karen Rigby, Lead Management Analyst, by phone at (202) 482-9212 or at [ethicsofficialsurvey@oge.gov](mailto:ethicsofficialsurvey@oge.gov).

**NOTES:** Complete this assessment only if you are an employee of the Federal Government. This assessment is being administered through a proprietary online survey tool. Similar online survey tools are available. Use of this tool does not constitute an endorsement by OGE.

1. Agency \_\_\_\_\_ (Drop-down box)
2. Did your agency employ any full-time non-career appointees (e.g., Presidentially Appointed, Senate Confirmed (PAS), Presidentially Appointed (PA), non-career Senior Executive Service (SES), etc.) from January 20 through December 31, 2009?
  - Yes
  - No

Note: For guidance on what constitutes a full-time non-career appointee for purposes of the Ethics Pledge see OGE DAEOgram DO-09-010 available at [www.usoge.gov](http://www.usoge.gov) under the "Ethics Guidance" section.

Please type comments in the box below.

*(Those responding "yes" move on to question 3.)  
 (Those responding "no" are thanked, and no additional questions are asked.)*

3. For each category of appointee provide the number of full-time non-career appointees employed from January 20 through December 31, 2009, and indicate the number who did and did not sign the Ethics Pledge. (Note: Please include all appointees who did not sign, regardless of whether or not they were required to sign. Additional explanatory information is requested in the next question.) The total number of appointees that signed the Ethics Pledge plus the total number that did not sign the Ethics Pledge should equal the total number employed January 20 through December 31, 2009.

| Number of Full-Time Non-Career Appointees | Type of Full-Time Non-Career Appointees by Category |    |                |            |       | Total |
|---|---|----|----------------|------------|-------|-------|
|   | PAS   | PA | Non-career SES | Schedule C | Other |       |
| Employed 01/20 – 12/31/2009               |   |    |                |            |       |       |
| Signed the Ethics Pledge                  |   |    |                |            |       |       |
| Did not sign the Ethics Pledge            |   |    |                |            |       |       |

If for any field above you are unable to provide a complete response, please explain in the box below. You may also add additional comments.

4. For full-time non-career appointees who did not sign the Ethics Pledge find the appropriate category(ies) of reasons and indicate the number of appointees who fit into that category.

| Rationale for Not Signing the Ethics Pledge  | Number and Type of Full-Time Non-Career Appointees Who Did Not Sign the Ethics Pledge |    |                |            |       |       |
|--|---|----|----------------|------------|-------|-------|
|  | PAS   | PA | Non-career SES | Schedule C | Other | Total |
| a. Appointed prior to 01/20/09 and not otherwise required to sign the Ethics Pledge      |   |    |                |            |       |       |
| b. Occupy an exempt non-policymaking position (Schedule C or other comparable authority) |   |    |                |            |       |       |
| c. Other (explain below)   |   |    |                |            |       |       |

If other, explain here. You may also use the box below to provide a complete response or to add additional comments.

5. How many appointees subject to the Ethics Pledge were registered lobbyists during the 2 years prior to their appointment? \_\_\_\_\_

Please type comments in the box below.

*(Those responding "0" will skip to question 8.)*

6. How many of the appointees identified in the previous question as registered lobbyists during the 2 years prior to their appointment have an ethics agreement addressing their obligations under paragraph 3 of the Ethics Pledge? \_\_\_\_\_

Please type comments in the box below.

7. For any appointee identified in question 5 who does not have an ethics agreement, please provide an explanation.

Please type comments in the box below.

8. Section 3 of Executive Order 13490 provides a waiver mechanism for the restrictions contained in the Ethics Pledge. Indicate below how many waivers have been granted by your agency.

| Number of Ethics Pledge Waivers Granted By Pledge Paragraph |                  |                  |                       |
|---|------------------|------------------|-----------------------|
| Paragraph 2 Only  | Paragraph 3 Only | Paragraphs 2 & 3 | Other (explain below) |
|   |                  |                  |                       |

If other, please explain here. Other comments may also be provided in the box below.

9. Would you like OGE to provide additional training to your agency concerning administration of the Ethics Pledge?

- Yes
- No
- Other (don't know, not sure, etc. OGE will follow up by telephone.)

Please type comments in the box below.

---

**Please provide a point of contact to answer OGE questions regarding this assessment.**

First Name: \_\_\_\_\_

Last Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

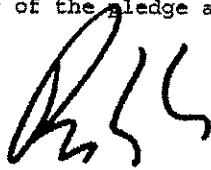
Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

# Appendix IV

Waiver

After consultation with Counsel to the President, I hereby waive the requirements of Paragraphs 2 and 3 of the Ethics Pledge of Mr. William Lynn. I have determined that it is in the public interest to grant the waiver given Mr. Lynn's qualifications for his position and the current national security situation. I understand that Mr. Lynn will otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.

A handwritten signature in black ink, appearing to be 'RLL'.

1/22/09

Waiver Pursuant to Section 3 of Executive Order 13490

After consultation with the Counsel to the President, I hereby waive the requirements of paragraph 2 and 3 of the Ethics Pledge of Ms. Jocelyn Frye. I have determined that it is in the public interest to grant the waiver because Ms. Frye's expertise in the areas in which she acted as a registered lobbyist is essential to her service to the Office of the First Lady. I understand that Ms. Frye will otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.

/s/Norman L. Eisen

Dated: February 20, 2009

Special Counsel to the President and  
Designated Agency Ethics Official

Waiver Pursuant to Section 3 of Executive Order 13490

After consultation with the Counsel to the President, I hereby waive the requirements of paragraph 2 and 3 of the Ethics Pledge of Ms. Cecilia Munoz. I have determined that it is in the public interest to grant the waiver because Ms. Munoz's knowledge and expertise are vital to the functioning of the Office of Intergovernmental Affairs. I understand that Ms. Munoz will otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.

/s/Norman L. Eisen

Dated: February 20, 2009

Special Counsel to the President and  
Designated Agency Ethics Official

# **Appendix V**





DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220  
SEP 16 2009

**MEMORANDUM FOR HERBERT M. ALLISON**

**FROM:** Bernard J. Knight, Jr.  
Assistant General Counsel (General Law, Ethics & Regulation)  
and Designated Agency Ethics Official

**SUBJECT:** Your Participation in Matters Involving Government-Sponsored Enterprises

After consultation with the Counsel to the President, I hereby waive certain requirements of paragraph 2 of the Ethics Pledge of Mr. Herbert M. Allison with respect to his former relationship with Federal National Mortgage Association (Fannie Mae).

Mr. Allison is not in a position to personally benefit from his Fannie Mae relationship. I note that Mr. Allison has no pecuniary interest in Fannie Mae other than a life insurance policy under which Fannie Mae will pay premiums for four more years pursuant to a standard Fannie Mae agreement. Mr. Allison was not otherwise compensated by Fannie Mae, and declined to accept a salary. In addition, Mr. Allison accepted the position at Fannie Mae at the request of the United States Government.

I have determined that it is in the public interest to grant this limited waiver because on February 18, 2009, President Obama announced the Homeowner Affordability and Stability Plan (HASP), which was designed to address problems in the housing market as part of the implementation of the Emergency Economic Stabilization Act (EESA) of 2008. The Homeownership Preservation Office (HPO) was created as part of the Office of Financial Stability (OFS) to implement HASP, which includes a program to refinance loans that are currently held by Fannie Mae. As Assistant Secretary, Mr. Allison is responsible for overseeing the work of OFS in general, including the HPO. He is one of the primary officials responsible for the development of the Department's policies with respect to financial stability, including the homeownership programs. Mr. Allison's knowledge and expertise regarding the issues surrounding the HASP and the HPO make him an ideal person to lead Administration efforts in support of this endeavor.

This waiver does not permit Mr. Allison to be involved in any particular matters involving Fannie Mae that affect Fannie Mae's ability or willingness to pay its contractual life insurance to him. This waiver also does not permit Mr. Allison to make the final decision regarding the award of any contract to Fannie Mae as a financial agent or other contractor. Any final decision to award any contract to Fannie Mae as a financial agent or other contractor will be made by the Under Secretary of Domestic Finance. For all of these reasons, I have determined that it is in the public interest to grant the waiver.

I understand that Mr. Allison will otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.

National Aeronautics and Space Administration  
Headquarters  
Washington, DC 20546-0001



Reply to Attn of:

Waiver of Paragraph 2 of the Ethics Pledge


I have determined that it is in the public interest to grant a limited waiver of paragraph 2 of the Ethics Pledge set forth in Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009) to Charles Bolden as Administrator of the National Aeronautics and Space Administration (NASA). Mr. Bolden had previously served as a consultant to SAIC and on the board of directors of GenCorp. Absent a waiver, Mr. Bolden would be prohibited by paragraph 2 of the Ethics Pledge from participating in any particular matter involving specific parties in which either SAIC or GenCorp is or represents a party. Mr. Bolden's knowledge of and expertise in current NASA programs are essential to making informed and timely decision-making about the future of NASA and its programs. His ability to engage in such decision-making as the head of NASA is in the public interest and fundamental to NASA's ability to remain in the forefront of space exploration. This waiver is granted with the understanding that Mr. Bolden will comply with the limitations set forth below, the remaining provisions of the Executive Order and with all pre-existing government ethics rules.

I authorize Mr. Bolden to participate only at the policy or program level in particular matters involving SAIC and/or GenCorp. This waiver is deemed applicable only in those limited circumstances when such a policy or program matter involves SAIC and/or GenCorp as a party and rises to the level of Administrator review. The authorization does not remove the bar on engaging in one-on-one meetings or communications with either entity as set forth in Executive Order 13490. This waiver does not authorize Mr. Bolden to participate in contracting matters, including contract determinations, involving SAIC or GenCorp as a party or to participate in those particular matters involving specific parties in which he participated as a consultant for SAIC or as a director for GenCorp.

Dated:

July 23, 2009

NASA

  
Designated Agency Ethics Official

THE WHITE HOUSE

Washington

December 30, 2009

MEMORANDUM FOR JOHN BRENNAN

FROM: NORMAN EISEN  
Special Counsel to the President and Designated Agency Ethics Official

SUBJECT: Waiver under E.O. 13490 and Authorization under 5 C.F.R. § 2635.502

The purpose of this memorandum is to authorize your participation, pursuant to 5 C.F.R. § 2635.502, in the aviation screening technology review and watchlisting system review ordered by the President in the aftermath of the December 25, 2009, attempt to detonate an explosive device aboard Northwest flight 253. This memorandum also provides a partial waiver of the restrictions in Executive Order 13490, with respect to your participation in these reviews, to the extent that the reviews specifically address services provided by your former employer, The Analysis Corporation (TAC), or any of its employees.

This authorization and waiver are limited, however, in that you will recuse yourself from any communications with TAC and, should these reviews at any point include specific attention to services provided by TAC or any of its employees, you will recuse yourself from any participation in that aspect of the review.

**I. 5 C.F.R. § 2635.502 – Impartiality in Performing Official Duties**

The standard of conduct at 5 C.F.R. § 2635.502 requires an employee to take appropriate steps to avoid an appearance of any lack of impartiality in the performance of his official duties. Under Section 502, when an employee knows that a person with whom he has a “covered relationship” is a party or represents a party to the matter, he should not participate in the matter without informing an agency official and receiving authorization to participate.

The aviation screening technology review and watchlisting system review may be “specific party” matters to the extent they eventually include specific attention to government contracts with, or services provided by TAC, with whom you have a covered relationship having been employed by TAC within the past year. *See* 5 C.F.R. § 2635.502(b)(1)(iv).

Section 2635.502(d) directs that an agency designee may authorize an employee to participate in a particular matter involving specific parties, which would otherwise be subject to the recusal requirements of that section, if the designee makes a determination, in light of all relevant circumstances, that the interest of the Government in the employee’s participation outweighs any concern that a reasonable person may question the integrity of the Government’s programs and operations.

As the Designated Agency Ethics Official, I serve as the agency designee pursuant to guidance from the U.S. Office of Government Ethics.

You have asked for guidance on how best to proceed in light of your former employment by TAC. After weighing the factors articulated in Section 502(d), I have determined that it is appropriate to authorize your participation in these reviews. Of central importance to this conclusion is that you no longer have financial interests in TAC, and therefore the resolution of these reviews will not impact your financial interests. Moreover, to the extent that the reviews address, among other issues, the services provided by TAC or its employees, you will recuse yourself to the extent necessary to avoid participation in any such aspect of the reviews.

Equally significant is the highly sensitive nature of this matter involving national security. As the Assistant to the President for Homeland Security and Counterterrorism, you are the White House official with direct responsibility for advising the President on Administration-wide counterterrorism and homeland security programs. The reviews in question were ordered by the President in the wake of a potentially catastrophic attempted terrorist attack. The importance of these reviews to national security interests weighs against reassignment to others of this senior supervisory role. In light of these factors and the requirement that you abide by the aforementioned recusal, I hereby determine that the governmental interest in your participation outweighs any countervailing appearance concerns and authorize your participation in these reviews.

## **II. E.O. 13490 – Ethics Commitments by Employees in the Executive Branch**

Executive Order 13490 provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients, including regulations and contracts. *See* E.O. 13490, Sec. 1, para. 2. Section 3 of the E.O. provides for waiver of the recusal provisions and as the DAEO here, I exercise that waiver authority. *See* Office of Government Ethics Memorandum Re: Authorizations Pursuant to Section 3 of Executive Order 13490, DO-09-008 (Feb. 23, 2009). The standard for waiving the restriction in the Executive Order is that it be in the public interest. *See* E.O. 13490, Sec. 3(a). The Executive Order states that "the public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy." *Id.*, Sec. 3(b).

I hereby determine that it directly serves the public interest that the President have the benefit of your participation in these reviews, given the magnitude of the national security interests at stake, your central role in advising him on homeland security and counterterrorism programs, and the importance of your participation in coordinating these reviews with executive level officials at other federal agencies. Given your extensive background in intelligence and counterterrorism matters, you are the most qualified Administration official to lead these reviews, which go directly to the security of the American people and present the types of exigent circumstances relating to national security that the waiver provision was designed to permit.

Accordingly, I hereby certify that it is in the public interest for you as Assistant to the President for Homeland Security and Counterterrorism to participate in these reviews, and, pursuant to E.O. 13490 Sec. 3(a), I waive the restriction in Section 1 of E.O. 13490, on participation in any specific party matter that is directly and substantially related to your former employer, TAC, except that you will recuse yourself from any communications with TAC or from direct evaluation of, or decisions regarding, TAC's or its employees' performance of services under its contract with the government. I have consulted with the Counsel to the President concerning this waiver.

DEPARTMENT OF JUSTICE

Washington

May 6, 2009

**CERTIFICATION OF PUBLIC INTEREST WAIVER FOR LANNY BREUER**

**FROM:** Lee J. Lofthus  
Designated Agency Ethics Official, Department of Justice

**SUBJECT:** Waiver from Restrictions Related to Covington & Burling, LLP in Investigation of Government Attorney Conduct in United States v. Theodore F. Stevens, Crim. No. 08-231 (D.D.C.).

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a limited waiver of the restrictions of paragraph 2 of the Ethics Pledge is in the public interest for appointee Lanny A. Breuer in the position of Assistant Attorney General in the Department of Justice. Mr. Breuer shall not be restricted from participating in the investigation into the conduct of government attorneys in United States v. Theodore F. Stevens, Crim. No. 08-231 (D.D.C.), subject to the limitations set forth in the attached memorandum and without waiving the limitation on Mr. Breuer's participation in regulations and contracts as provided in paragraph 2 of the Ethics Pledge. This waiver does not otherwise affect Mr. Breuer's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed \_\_\_\_\_

Lee J. Lofthus  
Designated Agency Ethics Official  
Department of Justice

Date 5-6-09



U.S. Department of Justice  
Justice Management Division

MAY - 6 2009

Washington, D.C. 20530

MEMORANDUM FOR THE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

FROM: Lee J. Lofthus  
Assistant Attorney General for Administration and  
Designated Agency Ethics Official

SUBJECT: Waiver under E.O. 13490 and Determination under 5 C.F.R. § 2635.502

The purpose of this memorandum is to waive the restriction in Executive Order 13490 of January 21, 2009, Ethics Commitments by Employees in the Executive Branch, and further to make a determination under the standards of conduct on impartiality, 5 C.F.R. § 2635.502, that you may participate in a particular matter in which your former firm represents a party, relating to *In Re: Special Proceedings*, Misc. No. 09-mc-00198 (EGS), which arises from the prosecution of former United States Senator Ted Stevens. The prosecution was conducted by the Public Integrity Section of the Criminal Division.

On April 1, 2009, the Department asked the U.S. District Court for the District of Columbia, Judge Emmet Sullivan, to grant the defendant's motion to dismiss the charges in *U.S. v. Stevens*, the prosecution of former Alaska Senator Ted Stevens. On April 7, 2009, the Court announced that it was appointing a special counsel, Henry Schuelke III, to "investigate and prosecute such criminal contempt proceedings as may be appropriate" against six Department of Justice attorneys who handled the case. The Department's Office of Professional Responsibility (OPR) initiated an investigation into the conduct of the prosecutors when they self-reported the Court's findings of a Brady violation on October 2, 2008. Publicly available documents were gathered but a full investigation was held in abeyance based on OPR's general policy of not proceeding with an investigation during the pendency of active litigation.

You are generally recused from participation in particular matters with parties in which your former firm is or represents a party, under the standards of conduct for employees in the executive branch, 5 CFR 2635.502, and under E.O. 132490. [REDACTED], one of the DOJ attorneys under investigation by OPR, is represented by your former firm, Covington & Burling. Therefore, absent a waiver from the restrictions in the Executive Order and the standards of

conduct, you are recused from participating in the investigation of [REDACTED].<sup>1</sup>

In most OPR investigations, counsel for a DOJ attorney would communicate with OPR, but generally not with other DOJ officials. It also usually would not be necessary for the leadership of the Department to be involved in the early stages of an investigation. However, the particular circumstances surrounding these investigations are unusual, and present important issues even at this early stage of the process. As noted, the Court appointed a special counsel to conduct an investigation at the same time the Department's investigation, by OPR, is underway. This is highly unusual and raises jurisdictional issues, and questions concerning the authority of the special counsel and the proper relationship between OPR's investigation and that of the special counsel. These are important questions that affect the Department's institutional interests, are sensitive determinations, and may include questions of first impression. As such, these issues will require resolution by the leadership of the Department, including the Attorney General and the Deputy Attorney General. They will seek and rely on your advice as the Assistant Attorney General for the Criminal Division.

In order for you to advise and assist the leadership, it will be necessary for you to understand and be familiar with the individual investigations of all six Department attorneys, four of whom are employees in the Criminal Division, and all of whom were working under the supervision of the Public Integrity Section during the trial. Given that the six investigations all concern conduct that occurred in prosecuting the same case, it is not feasible or practical for you to remain recused from the investigation of [REDACTED]. This would interfere with your ability to advise and participate in necessary decisions for the Department in connection with the Department's investigations and the special counsel's investigation. In order for you to be fully advised on the issues and facts as they arise, to enable you to advise the AG and the DAG, you must be able to participate and freely receive information and advice on any and all of the individual investigations. Based on advice from the Principal Associate Deputy Attorney General, I conclude that it is not necessary at this time that you meet or communicate with your former firm, should they make such a request. If direct contact by Department officials in the Criminal division is determined to be in the Department's interest, other officials in the division would be available to meet with your former firm.

Executive Order 13490, Ethics Commitments by Employees in the Executive Branch

The Executive Order provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is

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<sup>1</sup> Decisions with respect to the approval of outside representation for [REDACTED] and the other Department employees are being made by the Civil Division through the standard procedure for these decisions.



Subject: Waiver under E.O. 13490 and Determination under 5 C.F.R. § 2635.502

directly and substantially related to the appointee's former employer or former clients, including regulations and contracts. Sec. 1, paragraph 2. The Executive Order further provides that "particular matter involving specific parties" shall have the same meaning as set forth in the ethics regulations at 5 C.F.R. § 2641.201(h), except that it shall also include "any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties." E.O. 13490, Sec. 2(h).

E.O. 13490 references the following definition provided in the standards of conduct (however, the E.O. specifically includes regulations and contracts):

5 C.F.R. § 2641.201(h)(1): *Particular matter involving a specific party or parties - (1) Basic concept.* The prohibition applies only to communications or appearances made in connection with a "particular matter involving a specific party or parties." Although the statute defines "particular matter" broadly to include "any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding," 18 U.S.C. 207(i)(3), only those particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product application, enforcement action, administrative adjudication, or court case.

The E.O. provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or his designee, in consultation with the Counsel to the President or his designee. E.O. 13490, Sec. 3(a). The Director, OMB, has designated the Designated Agency Ethics Official (DAEO) of each executive branch agency to exercise the Sec. 3 waiver authority, in writing, and in consultation with the Counsel to the President.

#### Specific Waiver Request

The *Stevens* prosecution has raised important issues concerning how the Department conducts its operations, including questions of the Department's ability to investigate allegations of misconduct by its own attorneys. These issues have been raised and are being debated in a very public way, and they go to the heart of the Department's ability to achieve its mission of evenhanded enforcement of the law. Given the significant public interest involved in these proceedings, it is important that you be able to exercise your leadership role as the head of Criminal Division and to advise the leadership in these matters.

The standard for waiving the restriction in the E.O. is that it be in the public interest. E.O. 13490, Sec. 3. I believe that it directly serves the public interest that the Department have the

Subject: Waiver under E.O. 13490 and Determination under 5 C.F.R. § 2635.502

benefit of your participation in this case, given the institutional interest of the Department, the important legal, policy and strategic considerations, and your responsibilities as chief of the Criminal Division. I certify that it is in the public interest that you be able to participate in the investigation of [REDACTED] relating to the matter *In Re: Special Proceedings*.

5 C.F.R. § 2635.502

The standard of conduct at 5 C.F.R. § 2635.502 requires an employee to take appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under Section 502, where an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to the matter, he should not participate in the matter without informing an agency official and receiving authorization to participate. Included in the definition of a "covered relationship" is any person for whom the employee served, within the preceding year, as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. 5 C.F.R. § 2635.502(b)(1)(iv).

You have a covered relationship with your former firm, Covington & Burling. The firm undertook this representation while you were a partner; however, you had no involvement and were screened from the matter during the time you were a partner with the firm. Under the standard, I conclude that a reasonable person would not question the integrity of the Department's programs and operations based on your participation in the investigation of a Department attorney represented in by your former firm, and that should such questions arise, the Department's interest in your participation outweighs any possible concern.

WAIVER: I hereby certify that it is in the public interest for you as Assistant Attorney General for the Criminal division to participate in the investigation of a Department attorney who is represented by your former firm, in connection with *In Re: Special Proceedings*, as discussed above, and pursuant to E.O. 13490 Sec. 3(a), I waive the restriction in Section 1 of E.O. 13490, on participation in a specific party matter that is directly and substantially related to your former employer, Covington & Burling, except that you will not have any direct contact with Covington & Burling. We have consulted with the Office of the Counsel to the President concerning this waiver. Further, I hereby determine, under 5 C.F.R. § 2635.502, that the interest of the Department in your participation in this case outweighs any possible concern that a reasonable person may question the Department's programs and operations.



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
1600 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-1600

MAY 11 2009

GENERAL COUNSEL

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
TECHNOLOGY, AND LOGISTICS

SUBJECT: Determination to Grant Waiver of Ethics Pledge Restriction on  
Participating in Particular Matters Involving Textron, Inc.

You were appointed to the position of Under Secretary of Defense for Acquisition, Technology, and Logistics, on April 27, 2009. Pursuant to paragraph 2 of the Ethics Pledge you signed, you are currently recused for two years from the date of your appointment from participating in any particular matter involving specific parties that is directly and substantially related to your former client, Textron, Inc. ("Textron"), unless you receive a waiver.

My understanding is that the consulting advice you provided to Textron was strategic in nature. Your advice focused on merger and acquisition matters for Textron's corporate headquarters, trends in military technology and strategy, and how and where military platforms and weapon systems could be deployed effectively in Department of Defense ("DoD") theaters of operation. You provided specific business advice to Textron on only one individual weapon system, the Sensor Fuzed Weapon. The last year of DoD production funding for this weapon system was in Fiscal Year 2007.

The Director of the Office of Management and Budget has delegated to me the authority to grant any current DoD appointee a written waiver of any restrictions contained in the Ethics Pledge. Before granting such a waiver, I must consult with the Counsel to the President or his designee and determine that either the literal interpretation of the Pledge restriction is inconsistent with the purposes of the restriction or that it is in the public interest to grant the waiver.

After consultation with the White House Special Counsel for Ethics and Government Reform, the designee of the Counsel to the President, I have determined that it is in the public interest for you to participate in matters relating to Textron and any of its divisions and subsidiaries. Substantial national security challenges require your expertise and judgment in making sound acquisition decisions on major defense programs, several of which involve Textron or one of its subsidiaries. In my judgment, the nature of your previous consulting arrangement should not restrict your ability to address these national security challenges. Accordingly, I hereby waive the requirements



of paragraph 2 of the Ethics Pledge as it pertains to your future involvement with particular matters relating to Textron or any of its divisions or subsidiaries.

Furthermore, while a reasonable person with knowledge of the relevant facts may question your impartiality in matters relating to Textron, I have made a separate determination, pursuant to 5 C.F.R. § 2635.502, that the Government's interest in your ability to participate in these matters, given the critical responsibilities associated with your position as DoD's chief acquisition official, outweighs the concern that a reasonable person may question the integrity of DoD's programs and operations.

Jeh Charles Johnson  
Designated Agency Ethics Official

DEPARTMENT OF JUSTICE

Washington

May 6, 2009

**CERTIFICATION OF PUBLIC INTEREST WAIVER FOR ERIC HOLDER**

**FROM:** Lee J. Lofthus  
Designated Agency Ethics Official, Department of Justice

**SUBJECT:** Waiver from Restrictions Related to Covington & Burling, LLP in Investigation of Government Attorney Conduct in United States v. Theodore F. Stevens, Crim. No. 08-231 (D.D.C.).

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a limited waiver of the restrictions of paragraph 2 of the Ethics Pledge is in the public interest for appointee Eric H. Holder, Jr. in the position of Attorney General in the Department of Justice. Mr. Holder shall not be restricted from participating in the investigation into the conduct of government attorneys in United States v. Theodore F. Stevens, Crim. No. 08-231 (D.D.C.), subject to the limitations set forth in the attached memorandum and without waiving the limitation on Mr. Holder's participation in regulations and contracts as provided in paragraph 2 of the Ethics Pledge. This waiver does not otherwise affect Mr. Holder's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed Lee J. Lofthus  
Lee J. Lofthus  
Designated Agency Ethics Official  
Department of Justice

Date 5-6-09



U.S. Department of Justice  
Justice Management Division

MAY - 6 2009

Washington, D.C. 20530


MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: Lee J. Lofthus   
Assistant Attorney General for Administration and  
Designated Agency Ethics Official

SUBJECT: Waiver under E.O. 13490 and Determination under 5 C.F.R. § 2635.502

The purpose of this memorandum is to waive the restriction in Executive Order 13490 of January 21, 2009, Ethics Commitments by Employees in the Executive Branch, and further to make a determination under the standards of conduct on impartiality, 5 C.F.R. § 2635.502, that you may participate in a particular matter in which your former firm represents a party, relating to *In Re: Special Proceedings*, Misc. No. 09-mc-00198 (EGS) which arises from the prosecution of former United States Senator Ted Stevens.

On April 1, 2009, the Department asked the U.S. District Court for the District of Columbia, Judge Emmet Sullivan, to grant the defendant's motion to dismiss the charges in *U.S. v. Stevens*, the prosecution of former Alaska Senator Ted Stevens. On April 7, 2009, the Court announced that it was appointing a special counsel, Henry Schuelke III, to "investigate and prosecute such criminal contempt proceedings as may be appropriate" against six Department of Justice attorneys who handled the case. The Department's Office of Professional Responsibility (OPR) initiated an investigation into the conduct of the prosecutors when they self-reported the Court's findings of a Brady violation on October 2, 2008. Publicly available documents were gathered but a full investigation was held in abeyance based on OPR's general policy of not proceeding with an investigation during the pendency of active litigation.

You are generally recused from participation in particular matters with parties in which your former firm is or represents a party, under the standards of conduct for employees in the executive branch, 5 C.F.R. § 2635.502, and under E.O. 13490. , one of the DOJ attorneys under investigation by OPR, is represented by your former firm, Covington & Burling. Therefore, absent a waiver from the restrictions in the Executive Order and the standards of conduct, you are

Subject: Waiver under E.O. 13490 and Determination under 5 C.F.R. § 2635.502

recused from participating in the investigation of [REDACTED].<sup>1</sup>

In most OPR investigations, counsel for a DOJ attorney would communicate with OPR, but generally not with other DOJ officials. It also usually would not be necessary for the leadership of the Department to be involved in the early stages of an investigation. However, the particular circumstances surrounding these investigations are unusual, and present important issues even at this early stage of the process. As noted, the Court appointed a special counsel to conduct an investigation at the same time the Department's investigation, by OPR, is underway. This is highly unusual, and raises jurisdictional issues, and questions concerning the authority of the special counsel and the proper relationship between OPR's investigation and that of the special counsel. These are important questions that affect the Department's institutional interests, are sensitive determinations, and may include questions of first impression. Such issues will require resolution by the leadership of the Department, including yourself, the Deputy Attorney General, and the Assistant Attorney General for the Criminal Division.

In order for you to participate in these decisions, it almost certainly will be necessary for you to understand and be familiar with the individual investigations of all six Department attorneys, and there likely will come a point where you will need to participate in the investigation of [REDACTED] as well as the other investigations. It is not feasible or practical for you to remain recused from one investigation. This would interfere with your ability to make necessary decisions for the Department in connection with the Department's investigations and the special counsel's investigation. In order for you to be fully advised on the issues and facts as they arise, to enable you to make the legal, policy and strategic decisions necessary for the Department, you must be able to participate and freely receive information and advice on any and all of the individual investigations. Based on the advice from the Principal Associate Deputy Attorney General, I conclude that it is not necessary at this time that you meet or communicate with your former firm, should they make such a request. If direct contact with Department officials other than OPR is determined to be in the Department's interest, other officials in the leadership offices would be available to meet with your former firm.

#### Executive Order 13490, Ethics Commitments by Employees in the Executive Branch

The Executive Order provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients, including regulations and contracts. Sec. 1, paragraph 2. The Executive Order further provides that "particular matter involving specific parties" shall have the same meaning as set forth in the ethics regulations at 5 C.F.R. § 2641.201(h), except that it shall also include "any meeting or

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<sup>1</sup> Decisions with respect to the approval of outside representation for [REDACTED] and the other Department employees are being made by the Civil Division through the standard procedure for these decisions.

Subject: Waiver under E.O. 13490 and Determination under 5 C.F.R. § 2635.502

other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties." E.O. 13490, Sec. 2(h).

E.O. 13490 references the following definition provided in the standards of conduct (however, the E.O. specifically includes regulations and contracts):

5 C.F.R. § 2641.201(h)(1): *Particular matter involving a specific party or parties* - (1) *Basic concept.* The prohibition applies only to communications or appearances made in connection with a "particular matter involving a specific party or parties." Although the statute defines "particular matter" broadly to include "any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding," 18 U.S.C. 207(i)(3), only those particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product application, enforcement action, administrative adjudication, or court case.

The E.O. provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or his designee, in consultation with the Counsel to the President or his designee. E.O. 13490, Sec. 3(a). The Director, OMB, has designated the Designated Agency Ethics Official (DAEO) of each executive branch agency to exercise the Sec. 3 waiver authority, in writing, and in consultation with the Counsel to the President.

#### Specific Waiver Request

The *Stevens* prosecution has raised important issues concerning how the Department conducts its operations, including questions of the Department's ability to investigate allegations of misconduct by its own attorneys. These issues have been raised and are being debated in a very public way, and they go to the heart of the Department's ability achieve its mission of evenhanded enforcement of the law. Given the significant public interest involved in these proceedings, it is vital that you be able to exercise your leadership role in this matter.

The standard for waiving the restriction in the E.O. is that it be in the public interest. E.O. 13490, Sec. 3. I believe that it directly serves the public interest that the Department have the benefit of your participation in this case, given the institutional interest of the Department, the important legal, policy and strategic considerations, and your knowledge of the case. I certify that it is in the public interest that you be able to participate in the investigation of [REDACTED] relating to the matter of *In Re: Special Proceedings*.



Subject: Waiver under E.O. 13490 and Determination under 5 C.F.R. § 2635.502

5 C.F.R. § 2635.502

The standard of conduct at 5 C.F.R. § 2635.502 requires an employee to take appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under Section 502, where an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to the matter, he should not participate in the matter without informing an agency official and receiving authorization to participate. Included in the definition of a "covered relationship" is any person for whom the employee served, within the preceding year, as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. 5 C.F.R. § 2635.502(b)(1)(iv).

You have a covered relationship with your former firm, Covington & Burling. However, the firm undertook this representation after you left, so you had no involvement during the time you were a partner with the firm. Under the standard, I conclude that a reasonable person would not question the integrity of the Department's programs and operations based on your participation in the investigation of a Department attorney represented by your former firm, and that should such questions arise, the Department's interest in your participation outweighs any possible concern.

WAIVER: I hereby certify that it is in the public interest for you as Attorney General to participate in the investigation of a Department attorney who is represented by your former firm, in connection with *In Re: Special Proceedings*, as discussed above, and pursuant to E.O. 13490 Sec. 3(a), I waive the restriction in Section 1 of E.O. 13490, on participation in a specific party matter that is directly and substantially related to your former employer, Covington & Burling, except that you will not have any direct contact with Covington & Burling. We have consulted with the Office of the Counsel to the President concerning this waiver. Further, I hereby determine, under 5 C.F.R. § 2635.502, that the interest of the Department in your participation in this case outweighs any possible concern that a reasonable person may question the Department's programs and operations.

Waiver Pursuant to Section 3 of Executive Order 13490

After consultation with the Counsel to the President, I hereby waive the requirements of paragraph 2 of the Ethics Pledge of Ms. Valerie Jarrett with respect to her former relationship with Chicago 2016. I have determined that it is in the public interest to grant the waiver because Ms. Jarrett's knowledge and expertise on the United States' sole Olympic bid for 2016 make her an ideal person to lead Administration efforts in support of this bid. I understand that Ms. Jarrett will otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.



Dated: April 2, 2009

Special Counsel to the President and  
Designated Agency Ethics Official

Waiver Pursuant to Section 3 of Executive Order 13490

After consultation with the Principal Deputy Counsel to the President, I hereby waive the requirements of paragraph 2 of the Ethics Pledge of Mr. Jonathan Kravis with respect to his former relationship with Williams & Connolly LLP.

Executive Order 13490 (Ethics Commitments by Executive Branch Personnel) requires all presidential appointees to sign an ethics pledge that, among other things, prohibits them from working on particular matters involving specific parties who were their employers or clients within the two years prior to their appointment or communicating with such parties on official business. Section 3 of the Executive Order provides that a waiver of the restrictions may be granted when it is determined "(i) that the literal application of the restriction is inconsistent with the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver." Sec. 3(a).

I have determined that this waiver is in the public interest in order to allow Mr. Kravis to continue working on particular matters involving specific parties in which he has developed substantial knowledge and expertise. By law, former Presidents have certain interests that attach to their office as former Presidents. Historically, in order to respect those interests, the White House maintains contact with representatives of the offices of former Presidents. Mr. Kravis has been one of the White House attorneys tasked with maintaining this contact with a representative of the office of former President George W. Bush.

On June 18, 2009, former President Bush's representative, Mr. Emmet Flood, joined the partnership of Williams & Connolly LLP, Mr. Kravis's former firm. Because Mr. Kravis has developed institutional knowledge on the matters involving the office of former President Bush and because transferring his responsibilities to other staff members would substantially disrupt the White House's ongoing work, I have determined that the continuity of his office's coordination with the former President's office was in the public interest. Based on the foregoing, I hereby grant this waiver pursuant to Section 3 of the Executive Order to Mr. Kravis in order to permit his continued and uninterrupted participation in particular matters involving the office of the former President. This waiver is limited only to particular matters involving specific parties relating to Williams & Connolly's representation of the office of former President George W. Bush. I understand that Mr. Kravis will otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.



Dated: August 13, 2009

Special Counsel to the President and  
Designated Agency Ethics Official

TO: Carmen Lomellin

Determination to Grant Waiver and Waiver of Ethics Pledge Restriction on Participating in Particular Matters Involving the Organization of American States.

Background Regarding Ethics Pledge

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," (EO) Section 1, requires all covered political appointees to abide by several commitments. One of those commitments provides that a covered appointee may not for a period of two years from the date of his or her appointment participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients. (Obama Ethics Pledge, Paragraph 2) For purposes of applying this restriction, the term "particular matter" has been interpreted to include "meetings or other communication relating to the performance of one's official duties with a former employer or client." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

However, a waiver of the restrictions contained in Paragraph 2 may be granted upon a certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. EO, Sec. 3(b). By memorandum dated February 23, 2009, the Office of Government Ethics announced that the Designated Agency Ethics Official of each executive agency had been delegated the authority to grant such waivers, after consultation with the Counsel to the President. See DO-09-008, OGE Memorandum to Designated Agency Ethics officials, February 23, 2009.

Background Regarding Your Appointment

You are the Permanent Representative of the United States to the Organization of American States, with rank of Ambassador. In that capacity, you serve as the principal representative to the Permanent Council of the Organization of American States (OAS). Your interaction with OAS is constant, both in terms of the OAS Secretariat as well as representatives

and observers from other countries. Your duties additionally require you to have direct U.S. engagement with OAS commissions, such as the Inter-American Commission of Women.

Prior to assuming your position with the Department of State as Permanent Representative of the United States to the OAS, you were an employee of the OAS, serving as the Director of Outreach, a position you held since March, 2009. Prior to assuming that position, you served as the Executive Director of the Inter-American Commission of Women at OAS, a position you held for approximately ten years. You requested a waiver of Paragraph 2 of the Ethics Pledge so that you may participate in particular matters involving the OAS (including its the Inter-American Commission of Women) that directly and predictably relate to your duties as the U.S. Permanent Representative to the OAS. Your request is not limited to any specific participation, but is intended to allow you the flexibility to interact fully with the OAS and any of its bodies, offices or agencies.

After consultation with the Office of White House Counsel, I determine that first, the literal application of the restriction here is inconsistent with the purpose of the restriction, and second, it is in the public interest for you to participate in matters relating to the OAS and any of its bodies, offices or agencies.

When the former employer is an international organization, which consists of representatives of many countries, including in this case the United States, the concerns underlying the restrictions are not implicated. Further, there is little likelihood of commercial gain that can be obtained by government employees engaged in activities affecting the interests of his or her former employer when the former employer is an international organization. Accordingly, literal application of the restriction in this situation is inconsistent with the purposes of the restriction.


In addition, it is essential that the United States have an effective, credible voice in the OAS on the many important issues that arise in that forum, ranging from drug trafficking to democracy building. You have spent more than a decade working as a senior official within the OAS and as a result have developed an intimate knowledge of the organization, its management, its programs and policies and the way that it functions. The knowledge, skills and relationships you developed during your years at the OAS give you effectiveness and credibility, and will allow you to

significantly advance U.S. interests within the organization and the hemisphere. The fact that you are a known and trusted voice within the organization will particularly lend weight to your interventions and enhance your access to the Secretariat. Accordingly, as a separate and independent basis of the waiver, I determine that it is in the public interest for you to participate in matters relating to your former employer, the OAS.

Based on the above analysis, I waive the requirements of paragraph 2 of the Pledge as it pertains to your future involvement with particular matters relating to the OAS and any of its bodies, offices or agencies.

Furthermore, while a reasonable person with knowledge of the relevant facts may question your impartiality in matters relating to the OAS, I make a separate determination, pursuant to 5 C.F.R. § 2635.502, that the Government's interest in your ability to participate in these matters, given the critical responsibilities associated with your position as U.S. Permanent Representative to the OAS, with rank of Ambassador, outweighs the concern that a reasonable person may question the integrity of the Department of State's programs and operations.

12-3-09  
Date

  
James H. Thessin  
Designated Agency Ethics Official



**LIMITED WAIVER OF EXECUTIVE ORDER 13490  
FOR JOSEPH MAIN**

In accordance with Section 3 of Executive Order 13490 (January 21, 2009) and after consultation with the Office of the Counsel to the President, I have determined that it is in the public interest to grant to Joseph Main a limited waiver of the Ethics Pledge restriction in Section 1, paragraph 2. of the Executive Order to enable him to effectively carry out his duties as Assistant Secretary of Labor for Mine Safety and Health. Absent this waiver, Mr. Main would be restricted for two years following his appointment from participating in any particular matter involving specific parties in which his former employer, the United Mine Workers of America (UMWA), is a party or represents a party.

Pursuant to this waiver, Mr. Main may meet or communicate with any authorized miner representative, as identified in Section 103(f) of the Federal Mine Safety and Health Act, or any local official of the UMWA, either individually or in a group setting, concerning any matter relating to mine safety and health. Authorized miner representatives or local UMWA officials may typically be present when Mr. Main interacts with miners. Subject to the limitations set forth below, this waiver will therefore serve to facilitate Mr. Main's meetings or communications with miners since he will not be first required to determine whether any miner participating in the meeting or communication is an authorized miner representative or local UMWA official who may be deemed to qualify as his "former employer"<sup>1</sup>

Background.

The Mine Safety and Health Administration (MSHA) is an agency established within the United States Department of Labor with the responsibility for safety and health in the Nation's mines. It administers the provisions of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006. MSHA's mission is to: 1) enforce compliance with mandatory safety and health standards as a means to eliminate fatal accidents; 2) reduce the frequency and severity of nonfatal accidents; 3) minimize health hazards; and 4) promote improved safety and health conditions in the Nation's mines.

The Assistant Secretary for Mine Safety and Health oversees the administration and enforcement of the Mine Safety and Health Act, as amended, and is charged with promoting the safety and health of America's miners by developing and enforcing standards; providing training, outreach and education; establishing alliances; and

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<sup>1</sup> I have determined that a miner's membership in the UMWA, standing alone, does not cause a miner to qualify as Mr. Main's "former employer" within the meaning of Section 1, paragraph 2, of Executive Order 13490

encouraging improvement in mining safety and health. The Assistant Secretary also decides appeals of Petitions for Modification of mandatory safety standards when an appeal is filed.

As part of his responsibilities, the Assistant Secretary for MSHA frequently meets with miners, representatives of the labor unions representing miners, mine owners and operators, and other individuals or organizations involved in mine safety and health. These contacts take place at formal meetings at MSHA's headquarters in Arlington, Virginia, at MSHA offices throughout the country, and many non-governmental sites. The MSHA Assistant Secretary also frequently visits mine sites and other venues where he can obtain information and directly learn the concerns of individual miners and their representatives. These exchanges provide valuable information to the Assistant Secretary that he might not otherwise receive. Similarly, this may be the most effective means for individual miners to convey this information or raise concerns without the potential inhibition of having their employer present.

Since retiring from the UMWA in 2004, Mr. Main has been self employed as an international mining health and safety advisor/consultant in which he has provided his expertise to a number of organizations, including as a training consultant to the United Mine Workers of America Career Centers, Inc. ("UMWA Career Centers") during 2007-2009. The UMWA Career Centers has the stated mission of offering training programs for new miners, as well as individuals who have been dislocated from employment in the mines.

Due to the scope of Section 2 of the Order and the definition of "particular matter involving specific parties" in Section 2(h), a broad application of this prohibition would be detrimental to both the Mine Safety and Health Administration and individual miners who are members of the UMWA, as it would preclude Mr. Main from speaking with those individual miners in any situation, such as a tour or other site visit, where authorized miner representatives<sup>2</sup> or local UMWA officials would also be present. Without a limited waiver, Mr. Main would be significantly limited in the performance of critical duties. This would deprive the Department of Labor of the service of an individual who brings unique and extensive relevant experience to the position, and it would also deprive members and representatives of the largest union representing coal miners the opportunity to provide input and raise concerns with the nation's top mine safety and health official.

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<sup>2</sup> It should be noted that authorized miner representatives may or may not be members of the UMWA. In situations where they are UMWA members, there may be circumstances where they are effectively speaking on behalf of the union. Accordingly, the waiver is necessary to cover conversations or meetings between the authorized miner representatives and Mr. Main.



Conclusion/Limited Scope of Waiver

Accordingly, I have determined that – because of the nature and importance of the position of Assistant Secretary for Mine Safety and Health and Mr. Main’s uniquely suited qualifications – it is in the public interest to grant a limited waiver of the Executive Order, in accordance with Section 3 of that Order. This waiver is limited to enable Mr. Main to meet or communicate with any authorized miner representative or local official of the UMWA, either individually or in a group setting, concerning any matter relating to mine safety and health. In all other situations and respects, the restrictions of Section 1, paragraph 2 of the Order will apply. Specifically, Mr. Main will abide by these restrictions when the meetings or communications involve any: 1) pending litigation in judicial or administrative tribunals to which the UMWA or UMWA Career Centers is a party or represents a party; 2) grant determinations in which either the UMWA or UMWA Career Centers is an applicant; or 3) any particular matters involving specific parties in which Mr. Main previously participated as a consultant to the UMWA and UMWA Career Centers, including regulations and mandatory safety and health standards.

Mr. Main has been, and will continue to be advised on the applicability of all other aspects of the Order, as well as the restrictions imposed by all other ethics laws and regulations, and has agreed to take the necessary steps to be in full compliance with these authorities.

November 10, 2009

*R. A. Shapiro*  
\_\_\_\_\_  
Robert A. Shapiro  
Associate Solicitor for Legal Counsel  
Alternate Designated Ethics Official

DEPARTMENT OF JUSTICE

Washington

May 6, 2009

**CERTIFICATION OF PUBLIC INTEREST WAIVER FOR DAVID OGDEN**

**FROM:** Lee J. Lofthus  
Designated Agency Ethics Official, Department of Justice

**SUBJECT:** Waiver from Restrictions Related to Wilmer Cutler Pickering Hale and Dorr, LLP in Investigation of Government Attorney Conduct in United States v. Theodore F. Stevens, Crim. No. 08-231 (D.D.C.).

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a limited waiver of the restrictions of paragraph 2 of the Ethics Pledge is in the public interest for appointee David W. Ogden in the position of Deputy Attorney General in the Department of Justice. Mr. Ogden shall not be restricted from participating in the investigation into the conduct of government attorneys in United States v. Theodore F. Stevens, Crim. No. 08-231 (D.D.C.), subject to the limitations set forth in the attached memorandum and without waiving the limitation on Mr. Ogden's participation in regulations and contracts as provided in paragraph 2 of the Ethics Pledge. This waiver does not otherwise affect Mr. Ogden's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed \_\_\_\_\_  
Lee J. Lofthus  
Designated Agency Ethics Official  
Department of Justice

Date 5-6-09



United States Department of State

Washington, D.C. 20520

[www.state.gov](http://www.state.gov)

TO: Stephen J. Rapp

**Determination to Grant Waiver of Ethics Pledge Restriction on Participating  
in Particular Matters Involving Former Employers**

**Background Regarding Ethics Pledge**

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," (EO) Section 1 requires all covered political appointees to abide by several commitments. One of those commitments provides that a covered appointee may not for a period of two years from the date of his appointment participate in any particular matter involving specific parties that is directly and substantially related to his former employers. (Obama Ethics Pledge, Paragraph 2). A major purpose behind this restriction is to ensure that political appointees not leave the public with the appearance that any official actions they take are influenced by their former employers rather than by the interests of the United States. For purposes of applying this restriction, the term "particular matter" has been interpreted to include "meetings or other communication relating to the performance of one's official duties with a former employer or client." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

However, a waiver of the restrictions contained in Paragraph 2 may be granted upon a certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. EO, Sec. 3(b). By memorandum dated February 23, 2009, the Office of Government Ethics announced that the Director of OMB had determined that the Designated Agency Ethics Official of each executive agency was the most appropriate designee to grant such waivers, after consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

**Background Regarding Your Appointment**

You are the Ambassador at Large for War Crimes Issues at the U.S. Department of State. In that capacity, your duties will include advising the Secretary of State directly and formulating U.S. Policy responses to atrocities committed in areas of conflict and elsewhere throughout the world.

Your duties will also include coordinating U.S. Government support for war crimes accountability in the former Yugoslavia, Rwanda, Sierra Leone, Cambodia, Iraq, and other regions where crimes have been committed against civilian populations on a massive scale. Your duties will require coordination with the United Nations and the various international tribunals, including the Special Court for Sierra Leone.

Most recently, you were an employee of the United Nations, serving as Independent Prosecutor of the Special Court for Sierra Leone (the "Sierra Leone Court").<sup>1</sup> For the purposes of the Obama Ethics Pledge, we consider you an "employee" of the Sierra Leone Court, as well as the United Nations. You are seeking a waiver of Paragraph 2 of the Ethics pledge with respect to your former employers on the basis that the literal application of the restriction is inconsistent with the purpose of the restriction and/or that the waiver would be in the public interest.

#### Waiver of Paragraph 2 of the Ethics Pledge

You were appointed to your position with the United Nations directly by the Secretary General. Your official title was Chief of the Office of the Legal Affairs in the Executive Office of the Sierra Leone Court, holding the rank of Under Secretary. In this capacity, you served as Independent Prosecutor of the Sierra Leone Court. The United Nations underwrote your salary and benefits and the Sierra Court underwrote your expense reimbursement.

In your role as Ambassador at Large for War Crimes Issues, you will be called upon to work with the United Nations and the Sierra Leone Court in many areas. This interaction will include constant contact with United Nations and Sierra Leone Court officials at all levels with respect to particular matters involving specific parties, most noticeably, communications with respect to operations of the Sierra Leone Court and other United Nations-affiliated courts; oversight of those institutions on behalf of the United States Government on such matters as appointment of judges, prosecutors, and other senior officials and on personnel and

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<sup>1</sup> The Special Court for Sierra Leone was established jointly by the Sierra Leone Government and the United Nations to hear and decide criminal cases involving violations of International and Sierrean humanitarian law. It is funded entirely from donations from governments, including the U.S., which has traditionally donated \$80 million per year for the Court's maintenance.

budgetary matters; information sharing; cooperation of member-states; arrests of fugitives; ongoing cases for violations of International Humanitarian Law; disposition of prisoners; U.S. diplomatic efforts on behalf of the tribunals; and other issues related to U.S. support for the courts. You may also be called upon to consult with the United Nations with respect to creating a new Court or dismantling an existing one. If you are not able to participate in these communications, you will be unable to adequately perform your duties as Ambassador at Large for War Crimes Issues. For this reason, I believe that a waiver of Paragraph 2 of the Ethics Pledge is prudent in order to avoid even the appearance of a conflict of interest.

It is my determination that the literal application of the restriction in this situation would be inconsistent with the purposes of the restriction. Because the United Nations is an international organization consisting of many countries, including the United States, and the Sierra Leone Court is a tribunal tasked with creating a forum for the trial of violations of international humanitarian law, the interests of these organizations are generally consistent with the interests of the United States. The United States provides significant funding to both the United Nations and the Sierra Leone Court and is the largest single contributor to both. Also, because neither organization is organized for the purpose of generating a monetary profit, there is no concern that you would take official action motivated to increase the revenues of either of these organizations. I therefore believe that as Ambassador at Large for War Crimes Issues, you will not leave the public with the appearance that your actions are influenced by the interests of your former employers, rather than by the interests of the United States.

I also believe that a waiver of Paragraph 2 of the Ethics Pledge is in the public interest because your work as Ambassador at Large for War Crimes Issues will also require you to formulate U.S. policies in responding to atrocities committed throughout the world as well as develop policies and practices intended to prevent future atrocities. Such functions will for the most part require working on a broad strategic and policy level and will not entail making decisions on particular matters involving specific parties.

You have extensive experience with respect to war crimes issues, and it is precisely your understanding of these issues that helps bring value to this position. You have spent the past two years working as Independent Prosecutor of the Sierra Leone Court, and the six years before that in the Office of the Prosecutor of the International Criminal Tribunal for Rwanda, first as a Senior Trial Attorney and then as the Chief of Prosecutions. As a

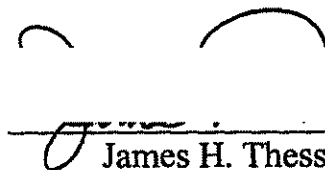
result of these experiences, you have developed an intimate knowledge of the United Nations and the United-Nations affiliated Courts, including their managements programs and policies, and the way they function and interact. You have also developed extensive knowledge of the interpretation and application of international humanitarian law. It is essential that the United States have an effective, credible voice in the Department of War Crimes Issues on many important issues that arise in that area of the law and in those forums.

Finally, although you were paid by the United Nations and work at the Sierra Leone Court, your position as Independent Prosecutor of the Sierra Leone Court did not require you to advocate on behalf of either the United Nations or the Court. Instead, your office functioned independently from both organizations, receiving instructions on its programs from no outside organization.

Based on these factors, I hereby determine that a public interest waiver in your case is appropriate. I certify that the nature of your previous employment arrangements should not restrict your ability to provide services to the Department of State with regard matters involving the United Nations or the Sierra Leone Court, and I therefore waive Paragraph 2 of the Ethics Pledge. The Counsel to the President concurs in this waiver.

Furthermore, to the extent a reasonable person with knowledge of the relevant facts may question your impartiality in matters relating to the described organizations, I have made a separate determination, pursuant to 5 C.F.R. § 2635.502, that the U.S. Government's interests in your ability to participate in these matters, given the critical responsibilities associated with your position as U.S. Ambassador at Large for War Crimes Issues, outweighs the concern that a reasonable person may question the integrity of the Department of State's programs and operations.

9/8/09  
Date

  
James H. Thessin  
Designated Agency Ethics Official



# Homeland Security

May 19, 2009

TO: Janet A. Napolitano  
Secretary

FROM: Philip R. Reitinge  
Robert E. Coyle  
Designated Agency Ethics Official

SUBJECT: Amended Certification of Public Interest Waiver for Philip R.  
Reitinge

Pursuant to the authority in Section 3 of Executive Order 13490 delegated to me by the Director, Office of Management and Budget, and for the reasons stated in the attached two memoranda dated March 24, 2009 and May 18, 2009, and after consultation with the Counsel to the President, I hereby certify that a waiver of the restrictions of paragraph 2 of the ethics pledge is in the public interest for appointee Philip R. Reitinge in the positions of Deputy Under Secretary for National Protection and Programs Directorate and Director of the National Cybersecurity Center, in the Department of Homeland Security. This certification amends and supersedes the certification dated March 24, 2009. Philip R. Reitinge shall not be restricted from participating in any particular matter involving specific parties that is directly and substantially related to his former employer Microsoft Corporation, or the Software Assurance Forum for Excellence in Code and the Information Technology Information Sharing and Analysis Center. This waiver does not otherwise affect Mr. Reitinge's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Secretary

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

May 18, 2009

MEMORANDUM FOR: Robert E. Coyle  
Designated Agency Ethics Official

FROM: Janet Napolitano

SUBJECT: Appointment of Philip R. Reitinger as Director, National  
Cybersecurity Center

I intend to designate Philip R. Reitinger as the Director of the National Cybersecurity Center (NCSC) as provided in National Security Presidential Directive-54/Homeland Security Presidential Directive-23. Mr. Reitinger is currently the Deputy Under Secretary for the Department of Homeland Security's (DHS) National Protection and Programs Directorate (NPPD), a position for which he has previously been granted a waiver from paragraph 2 of Executive Order 13490, the revolving door ban for entering appointees. His waiver addresses the fact that his DHS responsibilities would require him to participate in particular matters involving Microsoft, SAFECODE, or the Information Technology Information Sharing and Analysis Center (ITISAC). As discussed below, while the duties of this position have a significantly lower likelihood that "particular matters involving specific parties" that would be likely to involve any of those three entities as a party or the representative of a party, such matters could be encountered. Therefore, please advise whether the waiver given for his duties as Deputy Under Secretary will permit Mr. Reitinger to serve as NCSC Director without facing an unresolved conflict. If the existing waiver does not cover Mr. Reitinger as the Director of the Center, I request that the bar imposed by paragraph 2 of Executive Order 13490 in connection with his duties as Director of the Center be waived.

Mr. Reitinger holds a Bachelor of Engineering degree in Electrical Engineering and Computer Science from Vanderbilt University (1984, first in graduating engineering class with a 4.0 grade point on a 4.0 scale). He also holds a Juris Doctor degree from Yale (1987). Mr. Reitinger's former employer was Microsoft, where he was employed as the Chief Trustworthy Infrastructure Strategist from 2003 to his appointment in March 2009 to his current position. Mr. Reitinger was not a lobbyist, but an executive in Microsoft. Prior to his service with Microsoft, Mr. Reitinger was employed principally in various roles in the Executive Branch of the Federal Government, with duties largely related to criminal law enforcement, most recently computer and intellectual crimes.

Since the NCSC was established in March 2008, it has been responsible for promoting collaboration and consultation among numerous Federal cybersecurity centers to improve situational awareness of cyber threats to federal networks. As described in the NCSC Concept of



Operations, the NCSC also encourages sharing and collaboration of information gained through engagement with private sector and foreign partners. The Director reports directly to me and provides support to the Secretary of Defense, Attorney General, Director of National Intelligence, and assistants to the President in performance of their respective cybersecurity responsibilities. The Director is expected to remain apprised of state-of-the-art information technology and analytics tools and methodologies, but his interaction with the private sector and foreign entities is not to conflict with or be independent of the work and processes of existing U.S. Government relationships and frameworks. The Director also shares responsibility with the Office of the Director of National Intelligence (ODNI) to oversee the network that connects member cybersecurity centers. The ODNI maintains technical and budget responsibilities, oversees implementation of network connectivity, and coordinates budgetary and programmatic reporting to the Office of Management and Budget. Once the network is operational, the Director will maintain the architecture for day-to-day collaboration. Mr. Reitingger's responsibilities will not include matters related to award of contracts to his former employer or others; nevertheless, NCSC functions may involve Microsoft, SAFECODE, or the ITISAC as parties to particular matters involving specific parties or as a representative of members of the broader communications sector to such matters.

Mr. Reitingger's service as NCSC Director is essential to the efficient and effective conduct of the Department's cybersecurity responsibilities because of his unique expertise, industry perspective, and responsibilities for cyber programs with NPPD. It is the public interest that he serve as the NCSC Director. The Secretary of Defense, Attorney General, and Director of National Intelligence support this appointment.

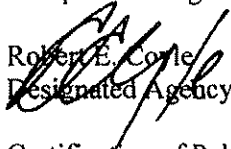


# Homeland Security

March 24, 2009

TO: Janet A. Napolitano  
Secretary

Philip R. Reitinger

FROM: Robert E. Coyle  
  
Designated Agency Ethics Official

SUBJECT: Certification of Public Interest Waiver For Philip R. Reitinger


Pursuant to the authority in Section 3 of Executive Order 13490 delegated to me by the Director, Office of Management and Budget, and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a waiver of the restrictions of paragraph 2 of the ethics pledge is in the public interest for appointee Philip R. Reitinger in the position of Deputy Under Secretary for National Protection and Programs Directorate in the Department of Homeland Security. Philip R. Reitinger shall not be restricted from participating in any particular matter involving specific parties that is directly and substantially related to Microsoft Corporation, the Software Assurance Forum for Excellence in Code, or the Information Technology Information Sharing and Analysis Center. This waiver does not otherwise affect Mr. Reitinger's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.



# Homeland Security

March 24, 2009

MEMORANDUM FOR: Robert E. Coyle  
Designated Agency Ethics Official

FROM: Janet Napelitano 

SUBJECT: Waiver of Ethics Commitment

I intend to appoint Philip R. Reitingger to the position of Deputy Under Secretary for National Protection and Programs Directorate (NPPD). Microsoft is Mr. Reitingger's current employer. In addition, he is a member of the board of directors of the Software Assurance Forum for Excellence in Code (SAFECode) and he is an officer in the Information Technology Information Sharing and Analysis Center (ITSAC). A significant portion of the duties of this position relate to cybersecurity and necessarily involve Microsoft, SAFECode, and ITSAC in a number of ways. Consequently, Mr. Reitingger will be barred by the Ethics Commitment from being involved with certain matters in which any of these entities has an interest or is represented. Pursuant to Section 3 of Executive Order 13,490, I request the prohibition of Section 1, paragraph 2 of Executive Order 13,490, the revolving door ban for all entering appointees, be waived in Mr. Reitingger's case because it is in the public interest to do so. Mr. Reitingger would bring essential private sector experience in critical infrastructure, focused on cybersecurity and infrastructure protection to Department of Homeland Security (DHS). Despite a diligent search, no candidate has been identified who would not bring similar conflicts with him or her. No identified candidate would bring with him or her the native ability, training, and experience that Mr. Reitingger offers.

Mr. Reitingger holds a Bachelor of Engineering degree in Electrical Engineering and Computer Science from Vanderbilt University (1984, first in graduating engineering class with a 4.0 grade point on a 4.0 scale). He also holds a Juris Doctor degree from Yale (1987). He has been employed with Microsoft since 2003 as the Chief Trustworthy Infrastructure Strategist. Mr. Reitingger is not a lobbyist; he is an executive in Microsoft. Prior to his service with Microsoft, Mr. Reitingger was employed principally in various roles in the Executive Branch of the Federal Government with duties largely related to criminal law enforcement, most recently computer and intellectual crimes.

DHS is responsible for working a new cybersecurity public/private sector partnership, which is a high priority for the Department, the Administration, and the Nation. Mr. Reitingger has broad and deep experience working within the important and complex government and private industry partnership organizations and will be key to rapidly affecting change. This experience is critical to our ability to defend public and private critical infrastructure. Specifically, his work on the

CSIS Commission on Cybersecurity for the 44th Presidency, on the President's National Security Telecommunications Advisory Committee (NSTAC) and the ITU High Level Experts Group on Cybersecurity demonstrate his unique background. He brings a combination of government and private sector views drastically needed in DHS for the cybersecurity mission. His past experience with the Information Technology Sector Coordinating Council, including its creation, and as the sector's Information Sharing and Analysis Center President, is critical to moving DHS's capabilities and capacity to meet its requirements.

[REDACTED]

The need for this waiver is driven by the fact that Microsoft, SAFECode, and ITSAC are entities governed by the critical infrastructure role of DHS. Mr. Reitinger's work at DHS would require that he participate in particular matters involving a specific party that is directly and substantially related to these three entities in connection with the Department's regulatory function. In addition, it is likely that Microsoft and ITSAC will be represented in meetings that are not open to the public that the Deputy, NPPD, would attend, for example, the FACA-exempt Critical Infrastructure Partnership Advisory Council (CIPAC). Due to the level of the position and the structure of the work, Mr. Reitinger is not expected to be involved in matters related to award of contracts to his former employer or otherwise, however his regulatory and coordination roles may have impact in Microsoft, SAFECode, ITSAC, and the associated industry sector. Cybersecurity and Federal governance is an emerging field. It is critical to the public and the country that the regulatory work in this area produces effective regulations that can be implemented by the industry sector and work in concert with the Administration's efforts to stabilize the economy. Mr. Reitinger's unique perspective coming from the industry will ensure the effectiveness of the Federal Government's regulatory work.

Processes and controls are in place that will review Mr. Reitinge's role in this position. Mr. Reitinge will report to the Under Secretary for NPPD, a position requiring Senate confirmation. All regulatory work is thoroughly reviewed by Office of General Counsel, an independent authority within DHS that does not report to NPPD. Additionally, Mr. Reitinge's work would affect the entire sector, not just these entities. Therefore the industry itself is in a position to play the watch dog role to DHS's work in the cyber sector.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL


March 23, 2009

**CERTIFICATION OF PUBLIC INTEREST WAIVER FOR MARGOT ROGERS**

**FROM:** Susan Winchell  
Designated Agency Ethics Official, Department of Education

**SUBJECT:** Waiver from Restrictions Related to the Bill and Melinda Gates  
Foundation

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a waiver of the restrictions of paragraph 2 of the ethics pledge is in the public interest for appointee Margot Rogers in the position of Senior Counselor to the Secretary of Education in the Department of Education. Margot Rogers shall not be restricted from participating in any particular matter involving specific parties that is directly and substantially related to her former employer, the Bill and Melinda Gates Foundation. This waiver does not otherwise affect Ms. Rogers's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed   
Susan Winchell  
Designated Agency Ethics Official  
Department of Education

Date 3/23/09



United States  
Department of  
Agriculture

Office of the  
Assistant Secretary  
for Administration

Office of Ethics  
Office of the Director

1400 Independence  
Avenue SW  
Washington, DC  
20250-2110

MEMORANDUM FOR UNDER SECRETARY FOR RESEARCH, EDUCATION AND  
ECONOMICS RAJIV J. SHAH

FROM: Raymond J. Sheehan  
Designated Agency Ethics Official

SUBJECT: Waiver of Paragraph 2 of the Ethics Pledge

I have determined that it is in the public interest to grant a waiver of paragraph 2 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009) to Rajiv J. Shah as Under Secretary for Research, Education and Economics (REE), U.S. Department of Agriculture (USDA).

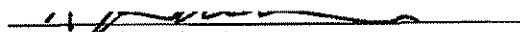
USDA's mission is to provide leadership on food, agriculture, natural resources, and related issues based on sound public policy, the best available science, and efficient management. In order to accomplish this mission, USDA partners with a large number of non-Federal entities, including charitable, non-profit foundations that participate substantially in activities that align with USDA's mission. This waiver addresses Dr. Shah's relationship with The Bill & Melinda Gates Foundation (Gates Foundation), his former employer and a potential partner in USDA's Global Food Security Initiative. The Gates Foundation is a potential funding source for the Initiative but not a recipient of USDA grants and funding.

Dr. Shah came to USDA after having served in a variety of roles at the Gates Foundation, including as Director of Strategic Opportunities and as Director of the Agricultural Development Program. The Foundation is significantly involved in national and international efforts to alleviate hunger and poverty and to improve health around the world. Support for agricultural initiatives is a major component of the Foundation's Global Development Program (Program). Dr. Shah, while at the Gates Foundation, led the agricultural development aspects of that Program.

Currently, based specifically upon his extensive experience in the Program at the Gates Foundation, Dr. Shah has been assigned by Secretary Vilsack to serve as the chief USDA representative in the Global Food Security Initiative (Initiative) which is driven by a "Whole of Government" approach and is led collectively by the Department of State, the National Security Council, USAID, the Treasury Department and USDA. The Initiative involves a collaboration with multiple partners, including public-private partnerships that implicate the Federal Government and various non-governmental entities, including, but not limited to, foundations, including the Gates Foundation. Ultimately, these non-governmental entities will work to provide both technical expertise and financial assistance in which the non-governmental entities

provide the funding. In connection with the Initiative, Dr. Shah needs to engage in meetings- both one-on-one and in group settings, involving Federal agencies, foreign countries, grantees, and non-Federal entities to assess the most efficient and effective means for distributing the technical and financial assistance committed by these various parties. The non-federal entities he needs to engage with include the Gates Foundation. In these efforts, the Gates Foundation is expected to be a major participant through its Global Development and Global Health programs. Other collaborations with the Gates Foundation on national agricultural policy goals are anticipated.

In light of the importance of the aforementioned efforts to the U.S. Department of Agriculture, I have determined that it is in the public interest to grant Dr. Shah a waiver of the provisions of paragraph 2 of Executive Order 13490. Accordingly, I authorize Dr. Rajiv J. Shah to participate personally and substantially in all matters affecting the Gates Foundation including particular matters involving specific parties, in connection with the development and implementation of the Food Security Initiative and other national and international food, agricultural and health initiatives and other programs to which he is assigned as Under Secretary for REE. However, he is not authorized to participate in any grants or procurement contracts given by USDA to the Gates Foundation, or in any similar transactions that would result in a transfer of Federal funds to the Gates Foundation.

*R. J. Sheehan*  
  
Raymond J. Sheehan  
Designated Agency Ethics Official

Dated: 11/9/2009





UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL

April 28, 2009


JAMES (Jim) H. SHELTON III

**CERTIFICATION OF PUBLIC INTEREST WAIVER FOR MARGOT ROGERS**

**FROM:** Susan Winchell  
Designated Agency Ethics Official, Department of Education

**SUBJECT:** Waiver from Restrictions Related to the Bill and Melinda Gates  
Foundation

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a waiver of the restrictions of paragraph 2 of the ethics pledge is in the public interest for appointee James (Jim) H. Shelton III in the position of Assistant Deputy Secretary for Innovation and Improvement in the Department of Education. Jim Shelton shall not be restricted from participating in any particular matter involving specific parties that is directly and substantially related to his former employer, the Bill and Melinda Gates Foundation. This waiver does not otherwise affect Mr. Shelton's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed   
Susan Winchell  
Designated Agency Ethics Official  
Department of Education

Date 4/28/09



May 18, 2009

**CERTIFICATION OF PUBLIC INTEREST WAIVER FOR NAOMI WALKER**

**FROM:** ROBERT A. SHAPIRO  
Associate Solicitor for Legal Counsel  
Alternate Designated Agency Ethics Official, Department of Labor

**SUBJECT:** Waiver from Restrictions Related to the AFL-CIO

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a limited waiver of the restrictions of paragraph 2 of the ethics pledge is in the public interest for appointee Naomi Walker in the position of Associate Deputy Secretary in the Department of Labor. Ms. Walker shall not be restricted from participating in any particular matter involving specific parties that is directly and substantially related to her former employer, the AFL-CIO, subject to the limitations set forth in the attached memorandum. This waiver does not otherwise affect Ms. Walker's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed \_\_\_\_\_  
Robert A. Shapiro  
Associate Solicitor for Legal Counsel  
Alternate Designated Agency Ethics Official  
Department of Labor

Date May 18, 2009

Attachment

May 18, 2009

**MEMORANDUM IN SUPPORT OF PUBLIC INTEREST WAIVER FOR NAOMI WALKER, ASSOCIATE DEPUTY SECRETARY, UNITED STATES DEPARTMENT OF LABOR**

In accordance with Section 3 of Executive Order 13490 (January 21, 2009), I have determined that it is in the public interest to grant a limited waiver to Naomi Walker in order for her to effectively carry out her duties as Associate Deputy Secretary, United States Department of Labor. This waiver is limited to enable Ms. Walker to have certain individual communications with her former employer on particular matters of general applicability notwithstanding the definition of "particular matter involving specific parties" in Section 2(h) of the Order.

Background. The United States Department of Labor was established in 1913. Its stated purpose is "to foster, promote, and develop the welfare of wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." 29 U.S.C. §551. The Department's broad responsibilities are not limited to those persons currently in the workforce. It serves persons who seek the skills to enter the workforce through its employment and training program. It also serves those who are temporarily out of work through the unemployment insurance system. Finally, through the pension laws it administers, the Department protects the retirement savings of those who have left the workforce. The Department administers a variety of Federal labor laws, including those that guarantee workers' rights to safe and healthful working conditions; a minimum hourly wage and overtime pay; freedom from employment discrimination; unemployment insurance; and other income support. In carrying out its responsibilities, the Department necessarily interfaces and maintains dialogues with a large number of external groups, including labor unions, businesses, trade associations, public interest groups, and other stakeholders.

Justification for the Waiver. To carry out these public liaison and outreach activities, the Department has historically assigned one or more persons at very senior levels in the Department whose principal responsibilities include communication with individuals and groups about the Department's responsibilities and programs. One of these senior positions is the Associate Deputy Secretary. Based on an expert understanding of the views and philosophy of the Secretary, the Associate Deputy Secretary is charged with spearheading several initiatives and programs for the Secretary. This responsibility is carried out in several ways. First, the Associate Deputy Secretary fully participates in the overall management of the agency and exercises primary responsibility for matters pertaining to policy and program coordination, especially for those dealing with the labor movement, worker advocacy organizations, and other related organizations. The Associate Deputy Secretary also analyzes and advises on the implications of proposed, new or revised policies, regulations, and legislative proposals and assesses their impact on outside groups, organizations and businesses. In this regard, the incumbent

coordinates and consults with senior management officials of the Department, other agencies, and external stakeholders, as appropriate, regarding major initiatives, actions accomplished, milestones to be achieved, and any issues or problems as related. The Associate Deputy Secretary also has the very important role of representing the Department of Labor in discussions and negotiations with representatives of public and private organizations and officials of other Government agencies. In this capacity, the incumbent presents and explains the views and proposals of the Secretary and in turn conveys to the Secretary the views and proposals of other parties, accompanied by in-depth analyses of the impact of such proposals. It should be noted, however, that this position has no regulatory or enforcement responsibilities, nor does it have authority to award contracts or grants on behalf of the Department.

In order to effectively carry out all of these responsibilities and duties, the Associate Deputy Secretary must bring to the job a wide range of job skills and experiences. While some of these qualifications can be obtained through education and training, most require job experiences with the very kinds of groups and organizations that the Associate Deputy Secretary will interface as part of her responsibilities at the Department of Labor. In addition to the practical experience and knowledge of their workings, prior work with these public and private sector organizations inherently enhances the incumbent's credibility and effectiveness.

Naomi Walker, the Associate Deputy Secretary, brings a wide range of relevant experiences to this position. Since 1997, she has held several responsible positions with the AFL-CIO. Most recently, she has been Director of State Government Affairs. In that role she has developed and led the federation's state legislative agenda in coordination with affiliated unions, departments within the AFL-CIO, and policy organizations. In doing so, she worked with key state and national policy organizations to develop strategy, coordinate message, and provide research and technical assistance to state federations and state legislators. She established and directed the National Labor Caucus of State Legislators, now consisting of over 1000 members. She convened regular conference calls and meetings to discuss key legislative issues and represented labor at meetings of intergovernmental organizations like the National Conference of State Legislators. Earlier in her tenure at the AFL-CIO, she served as Media Outreach Coordinator. In this capacity she designed and developed communications strategies to highlight family and policy issues, from Social Security and affordable health care to paycheck deception and campaign finance reform. In this role, she wrote sample press materials and talking points to assist state federations with state and national legislative campaigns. She also worked with allied organizations to coordinate message and grassroots events.

Prior to joining the AFL-CIO, Ms. Walker held a number of other positions utilizing skills needed in her current position. Specifically she served as: Field Director for the Center for Public Policy in Washington, D.C.; Midwestern Regional Field Organizer for the Children's Defense Fund in Columbus, Ohio; and Training Coordinator for the Ohio Youth Services Network in Columbus, Ohio.

Conclusion. Section 1 of Executive Order 13490 provides that every appointee in every executive branch agency appointed on or after January 20, shall sign, and upon signing shall be contractually committed to, a pledge that contains a number of provisions. Of relevance here is the “Revolving Door Ban – All Employees Entering Government.” Appointees signing this pledge commit to the following:

*I will not for a period of 2 years from that date of my appointment, participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.*

The term “particular matter involving specific parties” is defined as follows:


*“Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(b) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.”*

Executive Order 13490, Section 2(h).

As explained above, the core responsibilities of the Associate Deputy Secretary position involve communication and outreach to labor unions, public interest groups, and others. Any incumbent in this position has a real advantage, and one that benefits the Department and the public, if he or she has background working in one of these organizations. This is especially true when the organization is a major labor union, such as the AFL-CIO, which represents 56 national and international unions representing 11 million workers. Regardless of the Presidential Administration, the Department of Labor has maintained regular lines of communication with the AFL-CIO on a wide range of Departmental programs or activities. Limiting the Associate Deputy Secretary’s communications would be detrimental to the Department and to the millions of persons represented by the AFL-CIO. There is no other position in the Department whose incumbent has similar responsibilities.

Accordingly, I have determined that – because of the nature and importance of the Associate Deputy Secretary position and Ms. Walker’s uniquely suited qualifications – it is in the public interest to grant a limited waiver of Executive Order 13490, in accordance with Section 3 of that Order. As stated earlier, this waiver is limited to enable Ms. Walker to have individual communications with the AFL-CIO on particular matters of general applicability as defined in Section 3(h) of the Order. Ms. Walker has been, and will continue to be advised, on the applicability of all other aspects of the Order, as well as the restrictions imposed by all other ethics laws and regulations, and has agreed to take the necessary steps to be in full compliance with these authorities. In particular, she will

abide by the restriction in Section 1.2 of the Order prohibiting, for a 2 year period from the date of her appointment, her participation in any particular matter involving specific parties that is directly and substantially related to the AFL-CIO, including regulations and contracts.

  
Robert A. Shapiro  
Associate Solicitor for Legal Counsel  
Alternate Designated Agency Ethics Official  
United States Department of Labor

Waiver Pursuant to Section 3 of Executive Order 13490

After consultation with the Principal Deputy Counsel to the President, I hereby waive the requirements of paragraph 2 of the Ethics Pledge of Mr. Chris Weideman with respect to his former relationship with Williams & Connolly LLP.

Executive Order 13490 (Ethics Commitments by Executive Branch Personnel) requires all presidential appointees to sign an ethics pledge that, among other things, prohibits them from working on particular matters involving specific parties who were their employers or clients within the two years prior to their appointment or communicating with such parties on official business. Section 3 of the Executive Order provides that a waiver of the restrictions may be granted when it is determined "(i) that the literal application of the restriction is inconsistent with the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver." Sec. 3(a).

I have determined that this waiver is in the public interest in order to allow Mr. Weideman to continue working on particular matters involving specific parties in which he has developed substantial knowledge and expertise. By law, former Presidents have certain interests that attach to their office as former Presidents. Historically, in order to respect those interests, the White House maintains contact with representatives of the offices of former Presidents. Mr. Weideman has been one of the White House attorneys tasked with maintaining this contact with a representative of the office of former President George W. Bush.

On June 18, 2009, former President Bush's representative, Mr. Emmet Flood, joined the partnership of Williams & Connolly LLP, Mr. Weideman's former firm. Because Mr. Weideman has developed institutional knowledge on the matters involving the office of former President Bush and because transferring his responsibilities to other staff members would substantially disrupt the White House's ongoing work, I have determined that the continuity of his office's coordination with the former President's office was in the public interest. Based on the foregoing, I hereby grant this waiver pursuant to Section 3 of the Executive Order to Mr. Weideman in order to permit his continued and uninterrupted participation in particular matters involving the office of the former President. This waiver is limited only to particular matters involving specific parties relating to Williams & Connolly's representation of the office of former President George W. Bush. I understand that Mr. Weideman will otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.



Dated: August 13, 2009

Special Counsel to the President and  
Designated Agency Ethics Official

U.S. GOVERNMENT  
PRINTING OFFICE



Peace  
Corps

**MEMORANDUM**

**OFFICE OF THE GENERAL COUNSEL**

To: Aaron S. Williams, Director

From: Carl R. Sosebee, Designated Agency Ethics Official *CRS*

Date: August 24, 2009

Subject: President Obama's Ethics Pledge – Limited Waiver on Particular Matters Pertaining to National Peace Corps Association

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**EXECUTIVE SUMMARY**

Pursuant to Section 3 of Executive Order 13490 (January 21, 2009), and delegated authority from the Director of the Office of Management and Budget, this is a limited waiver permitting you to participate in or speak at meetings and conferences or other events involving or hosted by the National Peace Corps Association (NPCA) or its leadership, including fundraising events, provided that your participation would otherwise be permissible under the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635.808), and where such activities would continue to promote and maintain a positive relationship between Peace Corps and the Returned Peace Corps Volunteer (RPCV) community or would otherwise advance or promote the programs and activities of Peace Corps.

This waiver does not extend to your participation during the applicable two-year period in any present or future Peace Corps cooperative agreement, contract, or other funding mechanism between Peace Corps and NPCA, nor to any other particular matters that would directly and predictably affect NPCA's financial interests.

**DISCUSSION AND ANALYSIS**

Under President Obama's Executive Order 13490 (January 21, 2009), you are required to sign and abide by terms set forth in an Ethics Pledge.

Under the Pledge, Section 1, Paragraph 2, because of your service on the board of directors of NPCA during the two-year period prior to the date of your appointment as Director, you may not participate in any particular matter involving specific parties that is directly and substantially related to NPCA. This restriction extends for a period of two years from the date of your appointment.

However, in accordance with Section 3 of the Executive Order and pursuant to my authority, as delegated by the Director of the Office of Management and Budget (DO-09-008), I have determined that it is in the public interest to grant you a limited waiver from the restriction in the Pledge in order to enable you more effectively to carry out your duties as Peace Corps Director.

**Paul D. Coverdell Peace Corps Headquarters**  
1111 20th Street NW · Washington, DC 20526  
1 800 424 8580 · [www.peacecorps.gov](http://www.peacecorps.gov)



This waiver will enable you to attend, participate in, or speak at meetings, conferences, or other events involving or hosted by the NPCA or its leadership, including fundraising events, provided that your participation would otherwise be permissible under the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635.808), and where such activities would continue to promote and maintain a positive relationship between the Peace Corps and the Returned Peace Corps Volunteer community or would otherwise advance or promote the programs and activities of the Peace Corps, as determined in consultations between you and agency ethics officials.

Under terms negotiated with and agreed to by the Office of White House Counsel, this waiver does not extend to your participation, during the applicable two-year period, in any present or future Peace Corps cooperative agreement, contract, or other funding mechanism between Peace Corps and NPCA, nor to any other particular matters that would directly and predictably affect NPCA's financial interests.

Peace Corps promotes world peace and friendship by making trained Volunteers available to interested countries overseas to help meet their needs, particularly in meeting the basic needs of those living in the poorest areas of such countries. *See* 22 U.S.C. 2501(a)

It is also Peace Corps' statutory goal to promote a better understanding of other peoples on the part of the American people (Third Goal). As a key part of its effort to meet this goal, Peace Corps has historically encouraged and relied on Returned Peace Corps Volunteers to work actively in a variety of areas and activities, including sharing their experiences with other Americans when they return through Peace Corps programs such as World Wise Schools and through group and individual activities in their communities. In addition, recognizing the value Returned Volunteers can have in efforts to recruit new Volunteers, Peace Corps has actively sought (and received) assistance from them in connection with its recruitment and outreach activities.

Promoting and maintaining a positive relationship with the community of Returned Volunteers is therefore critical to Peace Corps' mission. The Director of the Peace Corps, as the head of the agency and its most public face, plays a vital and necessary role in this effort. The inability or failure of a Director to participate in activities involving RPCVs would raise questions within the Returned Peace Corps Volunteer community. The Director's interaction with Returned Volunteers and their organizations is likely to be of particular importance as Peace Corps approaches its fiftieth anniversary in 2011.

In this regard, NPCA is the only nation-wide umbrella organization representing Returned Peace Corps Volunteers and/or their respective membership organizations. NPCA is a 501(c)(3) organization, a part of whose stated mission is to "connect, inform, and engage people impacted or inspired by Peace Corps." In addition to its individual members, NPCA has about 70 member groups of RPCVs, grouped by geographical area or by country of service. The NPCA has historically provided direct assistance to Peace Corps by providing support for recruiting activities and promoting Peace Corps' Third Goal.

That NPCA is presently the only nationwide group representing RPCVs significantly reduces the likelihood of perceived partiality at the expense of similarly situated groups. Moreover, most particular matters involving parties relating to NPCA are not likely to involve highly controversial issues.

Aaron S. Williams, Paragraph 2 Waiver

Due to the scope of Section 2 of the Order, a broad application of its prohibition would be detrimental to the Peace Corps because it would preclude you from participating in a wide variety of matters involving the largest (and only nationwide) organization of Returned Peace Corps Volunteers, thereby diminishing your ability to take a visible leadership role in working with Returned Peace Corps Volunteers and advancing Peace Corps interests with this vital universe of stakeholders. This in turn could adversely affect Peace Corps' important efforts to promote and encourage RPCV assistance in recruiting, outreach, and Third Goal activities.

### **CONCLUSION**

I have determined that, because of the nature and importance of the Peace Corps Director as a spokesman and link to Returned Peace Corps Volunteers, it is in the public interest to grant you a limited waiver, as set forth herein, in accordance with Section 3 of Executive Order 13490. This waiver has been approved by the Office of White House Counsel.

# **Appendix VI**

THE WHITE HOUSE

Washington

April 29, 2009

**MEMORANDUM AND RECUSAL AGREEMENT FOR ANNE BREWER**

**FROM:** Norman L. Eisen  
Special Counsel to the President and Designated Agency Ethics Official

**SUBJECT:** Limitation on Participation in Particular Matters

This memorandum outlines the limitations on your participation in particular matters while in the position of Executive Assistant to the Director of Public Liaison. These limitations stem from your registration as a lobbyist while a member of Heather Podesta + Partners, LLC through May 2008.

On January 21, 2009, President Obama signed Executive Order 13490, "Ethics Commitments by Executive Branch Personnel." Among other things, the Executive Order requires you to sign an Ethics Pledge ("Pledge"), in which you agree to limit participation in certain matters and specific issue areas if you were a registered lobbyist within the two years preceding the date of your appointment.

Based on a review of lobbying reports identifying you as a lobbyist in 2007 and 2008, and the discussions you had with attorneys in the Office of the Counsel to the President, I have determined that you do not need a waiver of Pledge ¶ 3(c) because you did not lobby any component of the Executive Office of the President within the last two years of your appointment. Accordingly, you have not accepted appointment within an executive agency that you lobbied during the two years prior to the date of your appointment.

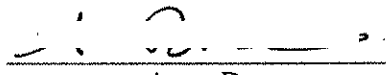
Pursuant to Pledge ¶¶ 3(a) and 3(b), however, you are prohibited for two years from the date of your appointment from participating in the following particular matters or issue areas:

- Public charter school programs;
- Patent law reform.

The prohibitions on participation stem from the particular matters identified on approximately 68 lobbying reports from 2007 to 2008 that identify you as a lobbyist or as a person no longer expected to lobby on specific issues, for which you actually engaged in lobbying activities or contacts. As you represented and as your former employer confirmed, you did not have any lobbying contacts or participate in lobbying activities for the significant majority of the clients identified in the reports.

By signing the memorandum below, you acknowledge that you will abide by the limitations on participation set forth above, in furtherance of the terms of the Ethics Pledge you

signed. This memorandum does not in any way modify, amend, abrogate or supersede your commitments in the Ethics Pledge.

Signed  \_\_\_\_\_

Date 4/30/09

Anne Brewer

Executive Assistant to the Director of Public Liaison



MAX CLELAND

June 9, 2009

Mr. Theodore Gloukhoff  
Designated Agency Ethics Official  
American Battle Monuments Commission  
Courthouse Plaza II, Suite 500  
2300 Clarendon Boulevard  
Arlington, VA 22201

Dear Mr. Gloukhoff:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am appointed to the position of Secretary of the American Battle Monuments Commission.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon appointment, I will resign from my position as Senior Policy Advisor with Tissue Regeneration Technologies. Because I have served as a registered lobbyist for this organization, for a period of two years after the date of my appointment: I will not participate in any particular matter on which I lobbied within the 2 years before my date of appointment; I will not participate in the specific issue area in which that particular matter falls; nor will I seek or accept employment with any executive agency that I lobbied within two years before the date of my appointment. In addition, for a period of two years from the date of my appointment, I will not participate personally and substantially in any particular matter involving specific parties in which Tissue Regeneration Technologies is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d) and section 3 of Executive Order 13490.

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SENATOR MAX CLELAND

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Upon appointment, I will resign from my positions with the following entities:

Stetson University Board of Trustees  
Jimmy & Rosalyn Carter Foundation Board  
Harry Walker Agency

For a period of one year after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in which that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d) and section 3 of Executive Order 13490.

I am currently the President and CEO of Max Cleland, LLC. Max Cleland, LLC is a limited liability entity I formed in July of 2007 for the purpose of receiving the proceeds from various sources of outside income. Max Cleland, LLC consists of a cash deposit account. While I serve as Secretary of the American Battle Monuments Commission, I will keep Max Cleland, LLC in an inactive status—I will not manage or provide services other than complying with requirements involving legal filings, taxes and fees that are necessary to maintain the business. While I remain President and CEO of Max Cleland, LLC, I will not participate personally and substantially in any particular matter that would directly and predictably affect the LLC's financial interest unless I first obtain an individual waiver under 18 U.S.C. §208(b)(1).

I will receive the remainder of my book advance in 2009. In addition, I may receive royalties from Simon and Schuster for book sales. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of Simon and Schuster to honor its contractual obligations regarding my book advance and these royalties, unless I first obtain an individual waiver pursuant to 18 U.S.C. §208(b)(1).

Finally, I understand that as an appointee I am required to sign the Ethics Pledge (Executive Order 13490) and that I will be bound by the requirements and restrictions therein, in addition to the commitments I have made in this and any other ethics agreement.

Most respectfully,

  
Max Cleland

THE WHITE HOUSE

Washington

March 13, 2009

**MEMORANDUM AND RECUSAL AGREEMENT FOR MARTHA COVEN**

**FROM:** Norman L. Eisen  
Special Counsel to the President and Designated Agency Ethics Official

**SUBJECT:** Limitation on Participation in Particular Matters

This memorandum outlines the limitations on your participation in particular matters while in the position on the Domestic Policy Council. These limitations stem from your registration as a lobbyist while a member of Center on Budget and Policy Priorities through 2008.

On January 21, 2009, President Obama signed Executive Order 13490, "Ethics Commitments by Executive Branch Personnel." Among other things, the Executive Order requires you to sign an Ethics Pledge ("Pledge"), in which you agree to limit participation in certain matters and specific issue areas if you were a registered lobbyist within the two years preceding the date of your appointment.

Based on a review of lobbying reports identifying you as a lobbyist in 2007, and the discussions you had with attorneys in the Office of the Counsel to the President, I have determined that you do not need a waiver of Pledge ¶ 3(c) because you did not lobby any component of the Executive Office of the President within the last two years of your appointment. Although some 2007 reports identify you as a lobbyist of the EOP on budget and housing matters, you explained that you never participated in any lobbying activities in preparation for lobbying contacts with the EOP and confirmed that you did not have lobbying contacts with any covered executive official within any component of the EOP.


Pursuant to Pledge ¶¶ 3(a) and 3(b), however, you are prohibited for two years from the date of your appointment from participating in the following particular matters or issue areas:

- Climate change relating to low income consumers;
- Affordable housing assistance;
- Census Bureau Survey of Income and Program Participation;
- Unemployment insurance and benefits;
- Access to welfare services for people with disabilities;
- Federal preemption of states' authority to tax Internet services; and
- Immigrants' eligibility for public benefits.



The prohibitions on participation stem from the particular matters identified on approximately 7 lobbying reports from 2007 to 2008 that identify you as a lobbyist or as a person no longer expected to lobby on specific issues.

By signing the memorandum below, you acknowledge that you will abide by the limitations on participation set forth above, in furtherance of the terms of the Ethics Pledge you signed. This memorandum does not in any way modify, amend, abrogate or supersede your commitments in the Ethics Pledge.

Signed   
Martha Coven  
Domestic Policy Council

Date 3-16-09

**Martha Coven Lobbying Activity Chart**

| <b>Lobbying Report</b>  | <b>Reported Legislation</b>  | <b>Particular Matter (5 CFR 2635.402(b)(3))</b>  | <b>Specific Issue Area</b>  |
|-------------------------|--|--|---|
| Mid Year, Year End 2007 | H.R. 1591 (Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007)<br>H.R. 3074/S.1789 (FY 2008 Transportation, Housing and Urban Development Appropriations Act) | Title IV provisions relating to Tenant-Based Rental Assistance<br><br>Title II, HUD provisions relating to Tenant-Based Rental Assistance, the housing Certificate Fund, Project-Based Rental Assistance, the Public Housing Capital Fund, and the Public Housing Operating Fund | Affordable housing assistance<br><br>Affordable housing assistance                            |
|                         | H.R. 3093/S. 1745 (FY 2008 Commerce, Justice, Science and Related Agencies Appropriations Act)   | Provisions relating to the Census Bureau's Survey of Income and Program Participation  | The Census Bureau's Survey of Income and Program Participation                                |
|                         | H. Con. Res. 99/S. Con. Res. 21 (Concurrent Resolution on the Budget for FY 2008)  | Work related to the overall level of non-defense discretionary funding.  | Affordable housing assistance   |
|                         | H.J. Res. 20 (Revised Continuing Appropriations Resolution of 2007)  | Provisions relating to the Tenant-Based Rental Assistance, Project-Based Rental Assistance, Public Housing Operating Fund, and the Bureau of the Census  | Affordable housing assistance; the Census Bureau's Survey of Income and Program Participation |
|                         | H.R. 1851 (Section 8 Voucher Reform Act of 2007)   | Provisions related to low income housing   | Affordable housing assistance   |
|                         | S. 1348 (Comprehensive Immigration Reform Act of 2007)   | Provisions relating to immigrant tax treatment and eligibility for public benefits   | Immigrants' eligibility for public benefits   |
|                         | S. 156/H.R. 743 (Permanent Internet Tax Freedom Act of 2007)   | Provisions relating to internet taxation by states   | Federal preemption of states' authority to tax Internet services                              |
|                         | S. 1453 (ITFA Extension Act of 2007)   | Provisions relating to internet taxation by states   | Federal preemption of states' authority to tax Internet services                              |
|                         | S. 1730 (Pathways to Independence)   | Provisions relating to access to welfare   | Access to welfare services for people   |

Martha Coven Lobbying Activity Chart

|            | Act of 2007)   | benefits for people with disabilities  | with disabilities                               |
|------------|--|--|---|
|            | S. 821/H.R. 2608 (SSI Extension for Elderly and Disabled Refugees Act)             | Provisions relating to extending Supplemental Security Income benefits for refugees  | Immigrants' eligibility for public benefits     |
|            | S. 2191 (America's Climate Security Act of 2007)                                   | Provisions relating to low-income consumers.   | Climate change relating to low income consumers |
| Q1-Q3 2008 | S. Con. Res. 70/H. Con. Res. 312 (Concurrent Resolution on the Budget for FY 2009) | Overall level of non-defense discretionary funding   | Affordable housing assistance                   |
|            | S. 2191 (Americas Climate Security Act)  | Provisions relating to low-income consumers  | Climate change relating to low income consumers |
|            | S. 2684 (Section 8 Voucher Reform Act)   | Provisions related to low income housing   | Affordable housing assistance                   |
|            | S.2636 (Foreclosure Prevention Act of 2008)  | Provisions relating to rental and affordable housing   | Affordable housing assistance                   |
|            | H.R. 2233/S. 1871 (Unemployment Insurance Modernization Act)                       | All  | Unemployment insurance and benefits             |
|            | S. 821/H.R. 2608 (SSI extension for elderly and disabled refugees act)             | Provisions relating to extending Supplemental Security Income benefits for refugees  | Immigrants' eligibility for public benefits     |
|            | Fiscal 2009 Transportation-Housing Appropriations                                  | Provisions relating to Tenant-based rental assistance, the Housing Certificate Fund, Project-Based rental Assistance, the public Housing Capital Fund, and the public housing operating fund | Affordable housing assistance                   |
|            | S. 2191 (Americas Climate Security Act)  | Provisions relating to low-income consumers  | Climate change relating to low income consumers |
|            | S. 3036 (Lieberman-Warner Climate Security Act of 2008)                            | Provisions relating to low-income consumers  | Climate change relating to low income consumers |
|            | H.R. 6316 (Climate Market, Auction, Trust & Trade Emissions Reduction              | Provisions relating to low-income consumers  | Climate change relating to low income consumers |

Martha Coven Lobbying Activity Chart

|  |  |   |   |
|--|--|---|---|
|  | System Act of 2008)  |   |   |
|  | H.R. 6186 (Investing in Climate Action and Protection Act)   | Provisions relating to low-income consumers                   | Climate change relating to low income consumers |
|  | S.2684/H.R. 1851 (Section 8 Voucher Reform Act)  | Provisions related to low income housing                      | Affordable housing assistance                   |
|  | H.R. 3221 (American Housing Rescue and Foreclosure Prevention Act of 2008)                                     | Provisions relating to neighborhood stabilization funds       | Affordable housing assistance                   |
|  | H.R. 5818 (Neighborhood Stabilization Act of 2008)   | Provisions relating to neighborhood stabilization funds       | Affordable housing assistance                   |
|  | H.R. 3221 (American Housing Rescue and Foreclosure Prevention Act of 2008)                                     | Provisions relating to the low-income housing tax credit      | Affordable housing assistance                   |
|  | H.R. 2642 (Emergency Supplemental Appropriations Act 2008)   | Provisions relating to extended unemployment benefits         | Unemployment insurance and benefits             |
|  | H.R. 2638 (Consolidated Security, Disaster Assistance, and Continuing Appropriations Act 2009)                 | Provisions relating to Project-Based Rental Assistance        | Affordable housing assistance                   |
|  | S. 3261 (Fiscal 2009 Transportation-Housing Appropriations)  | Provisions relating to public housing and Section 8 subsidies | Affordable housing assistance                   |
|  | H.R. 7110 (Job Creation and Unemployment Relief Act of 2008); H.R. 1424 (Emergency Economic Stabilization Act) | Provisions relating to unemployment insurance                 | Unemployment insurance and benefits             |
|  | H.R. 7194 (Climate Change Rebate Act of 2008)  | Provisions relating to low-income consumers                   | Climate change relating to low income consumers |
|  | S.3507/H.R.6867 (Unemployment Compensation Extension Act of 2008)  | Provisions relating to unemployment insurance                 | Unemployment insurance and benefits             |

January 23, 2009

Mr. Edgar M. Swindell  
Associate General Counsel/Ethics  
Designated Agency Ethics Official  
U.S. Department of Health and Human Services  
Room 710-E, Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Mr. Swindell:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Deputy Secretary, U.S. Department of Health and Human Services.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position as Executive Director and Secretary for the Campaign for Tobacco-Free Kids. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which the Campaign for Tobacco-Free Kids is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation, I will resign from my position as the Executive Director and Secretary for the Tobacco-Free Kids Action Fund. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which the Tobacco-Free Kids Action Fund is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation, I will resign from my non-paid position as a member of the Board of Directors of the Center for Science in the Public Interest. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which the Center for Science in the Public Interest is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Mr. Edgar M. Swindell

Page 2

Following my appointment, my wife and I will divest our interests in the following entities within 90 days of my confirmation:

Vanguard Health Care Fund  
Fidelity Real Estate Investment Fund

With regard to each of these entities, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the entity until I have divested it, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

In order to avoid potential conflicts of interest during my appointment as Deputy Secretary, neither I, my spouse, or any minor children of mine will acquire any interests in entities listed on the FDA prohibited holdings list or in entities involved, directly or through subsidiaries, in the following industries: (1) research, development, manufacture, distribution, or sale of pharmaceutical, biotechnology, or medical devices, equipment, preparations, treatment, or products; (2) veterinary products; (3) healthcare management or delivery; (4) health, disability, or workers compensation insurance or related services; (5) food and/or beverage production, processing or distribution; (6) communications media; (7) computer hardware, computer software, and related internet technologies; (8) wireless communications; (9) social sciences and economic research organizations; (10) energy or utilities; (11) commercial airlines, railroads, shiplines, and cargo carriers; or (12) sector mutual funds that concentrate their portfolios on one country other than the United States. In addition, we will not acquire any interests in sector mutual funds that concentrate in any of these sectors.


As noted on my disclosure form, my non-minor dependent daughter also owns a 32% share of holdings in 18 stocks (see attachment to SF-278 Report). These holdings must be reported on my disclosure report pursuant to 5 C.F.R. § 2634.309. However, since my daughter is not a minor, I understand that her holdings are not imputed to me as a financial interest under 18 U.S.C. § 208. While my daughter is a member of my household, pursuant to 5 C.F.R. § 2635.502(a), I will not participate personally and substantially in any particular matter involving specific parties that will have a direct and predictable effect on her financial interests.

My spouse is employed as a salaried employee for the Center on Budget and Policy Priorities. As Deputy Secretary, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on my spouse's compensation or employment with the Center on Budget and Policy Priorities. I also will not participate personally and substantially in any particular matter involving specific parties in which the Center on Budget and Policy Priorities is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, my spouse has agreed not to communicate directly with the U.S. Department of Health and Human Services on behalf of the

Mr. Edgar M. Swindell  
Page 3

Center on Budget and Policy Priorities during my appointment to the position of Deputy Secretary.

Sincerely,



William V. Corr

Ericsson, Sally

Recusal Agreement

Pursuant to paragraph 3 of the ethics pledge contained in the President's Executive Order on Ethics Commitments by Executive Branch Personnel (Executive Order 13490), I, Sally Ericsson shall be recused for a period of two years from my initial date of employment, 1/22/2005, from participating personally and substantially in the specific issue area of domestic forestry offsets. I will abide by all other provisions of the ethics pledge. If I have any questions about the scope or applicability of this recusal to my official duties as Assoc. Director, I will first consult with my agency's Designated Agency Ethics Official Stuart Bender (202-395-7533) and follow the guidance provided.

[Signature]  
Signature

SALLY C. ERICSSON  
Printed Name

ASSOCIATE DIRECTOR  
FOR NATURAL RESOURCES,  
ENERGY & SCIENCE  
FEBRUARY 9, 2005  
Date



THE WHITE HOUSE

Washington

June 1, 2009

**MEMORANDUM AND RECUSAL AGREEMENT FOR PATRICK GASPARD**

**FROM:** Norman L. Eisen *NLE*  
Special Counsel to the President and Designated Agency Ethics Official

**SUBJECT:** Limitation on Participation in Particular Matters

This memorandum outlines the limitations on your participation in particular matters while in the position of Assistant to the President for the Office of Political Affairs. These limitations stem from your registration as a lobbyist on behalf of 1199SEIU United Healthcare Workers East through year-end 2007.

On January 21, 2009, President Obama signed Executive Order 13490, "Ethics Commitments by Executive Branch Personnel." Among other things, the Executive Order requires you to sign an Ethics Pledge ("Pledge"), in which you agree to limit participation in certain matters and specific issue areas if you were a registered lobbyist within the two years preceding the date of your appointment.


Based on a review of lobbying reports identifying you as a lobbyist through year-end 2007, and the discussions you had with attorneys in the Office of the Counsel to the President, I have determined that you do not need a waiver of Pledge Paragraph 3(c) because you did not lobby any component of the Executive Office of the President within the last two years of your appointment.

Pursuant to Pledge ¶¶ 3(a) and 3(b), however, you are prohibited for two years from the date of your appointment from participating in issues relating to the State Children's Health Insurance Program (SCHIP)

The prohibitions on participation stem from the particular matters identified on the year-end 2007 report that identifies you as a lobbyist. That date is controlling; although reports from Q1 through Q3 2008 erroneously identified you as a lobbyist of the House of Representatives on SCHIP issues, we have located amended reports from the Q1, Q2 and Q3 2008 reporting periods that strike you as a lobbyist.

By signing the memorandum below, you acknowledge that you will abide by the limitations on participation set forth above, in furtherance of the terms of the Ethics Pledge you signed. This memorandum does not in any way modify, amend, abrogate or supersede your commitments in the Ethics Pledge.

Signed



---

Patrick Gaspard  
Assistant to the President

Date

June 1, 2009

November 18, 2009

Mr. Austin Schlick  
General Counsel and  
Designated Agency Ethics Official  
Federal Communications Commission  
Room 8-C723  
445 12th Street, S.W.  
Washington, D.C. 20554

Dear Mr. Schlick:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in my position as Legal Advisor in the Office of Commissioner Meredith Baker. As required by Executive Order 13490, 74, Fed. Reg. 4673 (Jan. 21, 2009), I signed the "Ethics Pledge" on November 9, 2009. Pursuant to paragraph 3 of the Ethics Pledge, I agreed as follows:

If I was a registered lobbyist within the 2 years before the date of my appointment . . . I will not for a period of 2 years after the date of my appointment:

- (a) participate in any particular matter on which I lobbied within the 2 years before the date of my appointment;
- (b) participate in the specific issue area in which that particular matter falls; or
- (c) seek or accept employment with any executive agency that I lobbied within 2 years before the date of my appointment.

Prior to my joining the FCC, I was registered as a lobbyist for DISH Network Corporation in accord with the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601, *et seq.* My registration as a lobbyist was terminated by the company on October 20, 2008. While I did not act as a lobbyist before the FCC, I did lobby on Dish Network's behalf before Congress and the National Telecommunications and Information Administration (NTIA). Accordingly, until November 9, 2011, which represents two years from the date of my appointment as a Legal Advisor to Commissioner Baker, I will not, in the scope of my FCC employment, participate personally and substantially in the following specific issue areas in which I lobbied:

Matters creating or enforcing rules pursuant to, or otherwise interpreting, the Satellite Home Viewer Extension and Reauthorization Act of 2004, 47 U.S.C. § 339(c) (SHVERA);

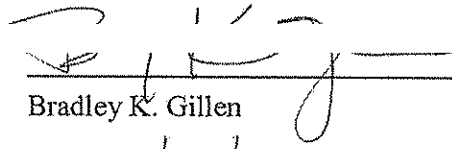
Matters regarding required carriage of digital broadcast signals by Direct Broadcast Satellite providers (HD must-carry);

Matters related to the availability and distribution of analog-to-digital converter boxes prior to the June 12, 2009, national transition to digital television; and

Matters related to the imposition of state taxes on Direct Broadcast Satellite providers.

I affirm that, to the best of my recollection, these are the only specific issue areas in which I acted as a registered lobbyist for DISH Network. If it is brought to my attention that other issue areas should also be included, I will immediately inform the Office of General Counsel.

Sincerely,

  
\_\_\_\_\_  
Bradley K. Gillen

11/18/09  
\_\_\_\_\_  
Date

THE WHITE HOUSE

Washington

March 16, 2009

**MEMORANDUM AND RECUSAL AGREEMENT FOR BRANDON HURLBUT**

**FROM:** Norman L. Eisen  
Special Counsel to the President and Designated Agency Ethics Official

**SUBJECT:** Limitation on Participation in Particular Matters

This memorandum outlines the limitations on your participation in particular matters while in the position of Deputy Director in the Office of Cabinet Affairs. These limitations stem from your registration as a lobbyist while a member of B&D Consulting through 2007.

On January 21, 2009, President Obama signed Executive Order 13490, "Ethics Commitments by Executive Branch Personnel." Among other things, the Executive Order requires you to sign an Ethics Pledge ("Pledge"), in which you agree to limit participation in certain matters and specific issue areas if you were a registered lobbyist within the two years preceding the date of your appointment.

Based on a review of lobbying reports identifying you as a lobbyist in 2007, and the discussions you had with attorneys in the Office of the Counsel to the President, I have determined that you do not need a waiver of Pledge ¶ 3(c) because you did not lobby any component of the Executive Office of the President within the last two years of your appointment.

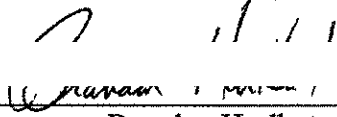
Pursuant to Pledge ¶¶ 3(a) and 3(b), however, you are prohibited for two years from the date of your appointment from participating in the following particular matters or issue areas:

- Terrorism insurance;
- Surplus lines insurance;
- Insurance insolvency;
- Medicare secondary payor matters;
- Conflicts between medicare and workers' compensation;
- Federal preemption of state insurance law;
- Antitrust insurance industry issues;

The prohibitions on participation stem from the particular matters identified on approximately 14 lobbying reports from 2007 that identify you as a lobbyist or as a person no longer expected to lobby on specific issues.

By signing the memorandum below, you acknowledge that you will abide by the limitations on participation set forth above, in furtherance of the terms of the Ethics Pledge you

signed. This memorandum does not in any way modify, amend, abrogate or supersede your commitments in the Ethics Pledge.

Signed 

Brandon Hurlbut

Deputy Director in the Office of Cabinet Affairs

Date 3/16/09

**Brandon Hurlbut Lobbying Activity Chart**

| <b>Lobbying Report</b>  | <b>Reported Legislation</b>                    | <b>Particular Matter (5 CFR 2635.402(b)(3))</b>   | <b>Specific Issue Area</b>                           |
|---|--|---|--|
| Mid Year 2007   | Terrorism Risk Insurance Act                   | Renewal of Terrorism Risk Insurance Act and whether Terrorism Risk Insurance Act should be renewed                      | Terrorism insurance                                  |
| Clients:<br>Environmental Defense Action Fund; FCCI; National Association of Surplus Lines; National Association of Mutual Insurance Companies; | Nonadmitted and Reinsurance Reform Act of 2007 | Streamlining regulatory framework for the surplus lines insurance industry to change 50-state laws into one federal law | Surplus lines insurance                              |
|   | Optional Federal Charter Bill                  | Guaranty association treatment under federal regulatory framework   | Insurance insolvency                                 |
|   | Medicare Secondary Payor Matters               | Clarifying payment when conflict between medicare and workers' compensation laws arise                                  | Conflicts between medicare and workers' compensation |
|   | McCarran-Ferguson Act and Insurance Reform     | Federal authority to regulate insurance and state law authority   | Federal preemption of state insurance law            |
|   | Antitrust Exemption for Insurance Industry     | Antitrust Exemption for Insurance Industry  | Antitrust insurance industry issues                  |

THE WHITE HOUSE

Washington

March 12, 2009

**MEMORANDUM AND RECUSAL AGREEMENT FOR JAMES KOHLENBERGER**

**FROM:** Rachael Leonard  
Alternate Designated Ethics Official  
Office of Science and Technology Policy

**SUBJECT:** Limitation on Participation in Particular Matters

This memorandum outlines the limitations on your participation in particular matters while in the position of Chief of Staff for the Office of Science and Technology Policy. These limitations stem from your registration as a lobbyist while a member of Kohlenberger Strategic Consulting through 2008.

On January 21, 2009, President Obama signed Executive Order 13490, "Ethics Commitments by Executive Branch Personnel." Among other things, the Executive Order requires you to sign an Ethics Pledge ("Pledge"), in which you agree to limit participation in certain matters and specific issue areas if you were a registered lobbyist within the two years preceding the date of your appointment.

Based on a review of lobbying reports identifying you as a lobbyist in 2007-2008, and the discussions you had with attorneys in the Office of the Counsel to the President, I have determined that you do not need a waiver of Pledge ¶ 3(c) because you did not lobby any component of the Executive Office of the President within the last two years of your appointment.

Pursuant to Pledge ¶¶ 3(a) and 3(b), however, you are prohibited for two years from the date of your appointment from participating in the following particular matters or issue areas:

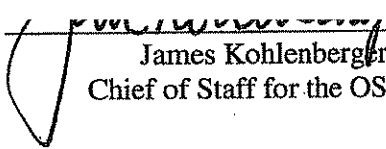
- Internet based voice communications ("VoIP"), including VoIP 911 matters;
- Caller id matters.

The prohibitions on participation stem from the particular matters identified on approximately 5 lobbying reports from 2007 and 2008 that identify you as a lobbyist or as a person no longer expected to lobby on specific issues.



By signing the memorandum below, you acknowledge that you will abide by the limitations on participation set forth above, in furtherance of the terms of the Ethics Pledge you signed. This memorandum does not in any way modify, amend, abrogate or supersede your commitments in the Ethics Pledge.

Signed

  
James Kohlenberger  
Chief of Staff for the OSTP

Date 3/13/09

James Kohlenberger Lobbying Activity Chart

| Lobbying Report  | Reported Legislation   | Particular Matter (5 CFR 2635.402(b)(3))              | Specific Issue Area                          |
|--|--|---|--|
| Midyear 2007<br>(Client: Voice on the Net (VON) Coalition) | S 428 IP-Enabled Voice Communications and Public Safety Act of 2007      | Matters regarding internet based voice communications | Internet based voice communications ("VoIP") |
|  | H.R. 2725 Alarm Customer VoIP Notification Act of 2007                   | Matters regarding internet based voice communications | Internet based voice communications ("VoIP") |
|  | H. Res. 537 designating National 9-1-1 Education Month                   | Provisions relating to 911 calls under VOIP           | VoIP 911 matters                             |
|  | S. 101 Universal Service for Americans Act                               | Matters regarding internet based voice communications | Internet based voice communications ("VoIP") |
|  | H.R. 251 Truth in Caller ID Act  | Sale or provision of caller id spoofing services      | Caller id matters                            |
|  | S 1654 Bill to prohibit sale or provision of caller ID spoofing services | Sale or provision of caller id spoofing services      | Caller id matters                            |
| End year 2007, Q1 2008                                     | S 428 IP-Enabled Voice Communications and Public Safety Act of 2007      | Matters regarding internet based voice communications | Internet based voice communications ("VoIP") |
|  | H.R. 3403 The 911 Modernization and Public Safety Act of 2007            | Provisions relating to 911 calls under VOIP           | VoIP 911 matters                             |

**WILLIAM J. LYNN III  
400 SOUTH LEE STREET  
ALEXANDRIA, VIRGINIA 22134-3816**

January 14, 2009

Mr. Daniel J. Dell'Orto  
Acting General Counsel and  
Alternate Designated Agency Ethics Official  
Office of the General Counsel  
Department of Defense  
1600 Defense Pentagon  
Washington DC 20301

Dear Mr. Dell'Orto:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Deputy Secretary of Defense.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon my appointment, I will resign from my position as Senior Vice President of Government Operations and Strategy at Raytheon Company (Raytheon). I currently hold Raytheon stock, including shares in the Raytheon Savings and Investment Plan, and I will divest this stock within 90 days of my appointment. I do not hold stock options in Raytheon. I hold Raytheon restricted stock units under the following incentive plans: (a) the 2006-2008 Long-Term Performance Plan (LTPP); (b) the 2007-2009 LTPP; and (c) the 2008-2010 LTPP. Upon resignation, I will forfeit all of my restricted stock units that I hold under the 2007-2009 LTPP and the 2008-2010 LTPP. I will retain the 6,000 shares of restricted stock units that I hold under the 2006-2008 LTPP, which will vest in February 2009. I will divest these 6,000 shares within 90 days of the date on which they vest. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Raytheon until I have divested it,

unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Consistent with the customary practice for departing executives of Raytheon, I will continue to participate in the Raytheon Defined Benefit Plan, which would pay me about \$4,300 monthly beginning on January 1, 2019. Therefore, as set out in the letter signed by the Chairman and Ranking Member of the Senate Committee on Armed Services dated September 23, 2005, I agree that prior to acting in any particular matter that is likely to have a direct, predictable, and substantial effect on the financial interest of Raytheon, I will consult with my Designated Agency Ethics Official, and will not act in the matter unless that official determines that the interest of the Government in my participation outweighs any appearance of impropriety, and issues a written determination authorizing my participation. I understand that such an authorization does not constitute a waiver of 18 U.S.C. 208 and does not affect the applicability of that section.

Additionally, I will receive a cash bonus from Raytheon in March 2009 for work performed during calendar year 2008, in accordance with the previously established bonus target formula. I also participate in the Raytheon Excess Savings and Deferred Compensation Plans. Pursuant to company policy, Raytheon will pay out my interests in these two plans to me in a lump sum, which will be based on the value of the holdings in my accounts under these plans. Until I receive the bonus, lump sum payments, and defined benefit plan pension payments, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of Raytheon to make each payment to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. 208(b)(1).

For a period of one year after my resignation from Raytheon, I also will not participate personally and substantially in any particular matter involving specific parties in which Raytheon is a party or represents a party in that matter, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon my appointment, I will resign from my position as a board member of the Center for New American Security. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which the Center for New American Security is a party or represents a party, unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

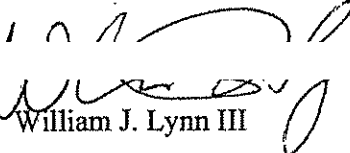
My spouse is employed as a regulatory attorney for FPL Group, the parent of Florida Power and Light Company. She receives a fixed salary and an annual bonus. She receives performance stock awards through the Leveraged Employee Stock Ownership Plan (LESOP). In addition, she owns shares of FPL Group common stock. In order to comply with the requirements of the Senate Armed Services Committee with regard to Department of Defense contractors, my spouse will divest all of her common stock in FPL Group within 90 days of my appointment. She will retain her unvested performance stock awards. However, she will divest any of these performance stock

awards that vest during my appointment as Deputy Secretary within 90 days of the date on which they vest, in order to comply with the requirements of the Senate Armed Services Committee. During my appointment as Deputy Secretary, if my spouse receives any additional performance stock awards, she will divest any such vested awards within 90 days of receipt, and she will divest any such unvested awards within 90 days of vesting. For as long as my spouse continues to hold any equity in FPL Group, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of FPL Group, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Within 90 days of my appointment, I will divest my stock in IBM. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of IBM until I have divested it, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I understand that I may request a Certificate of Divestiture for some of these assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. However, I also understand that my spouse and I must divest the identified assets whether or not I receive a Certificate of Divestiture.

Sincerely,



William J. Lynn III

THE WHITE HOUSE

Washington

February \_\_, 2009

**MEMORANDUM AND RECUSAL AGREEMENT FOR DAVID MEDINA**

**FROM:** Norman L. Eisen  
Special Counsel to the President and Designated Agency Ethics Official

**SUBJECT:** Limitation on Participation in Particular Matters

This memorandum outlines the limitations on your participation in particular matters while in the position of Deputy Chief of Staff to the First Lady. These limitations stem from your registration as a lobbyist on behalf of the United States Global Leadership Campaign from April 1, 2008 through December 31, 2008.

On January 21, 2009, President Obama signed Executive Order 13490, "Ethics Commitments by Executive Branch Personnel." Among other things, the Executive Order requires you to sign an Ethics Pledge ("Pledge"), in which you agree to limit participation in certain matters and specific issue areas if you were a registered lobbyist within the two years preceding the date of your appointment.

Based on a review of your lobbying reports—the Q2 2008, Q3 2008, and Q4 2008 reports for the United States Global Leadership Campaign—and the discussions you had with attorneys in the Office of the Counsel to the President, I have determined that you do not need a waiver of Pledge ¶ 3(c) because you did not lobby any component of the Executive Office of the President within the last two years of your appointment. You clarified that the Q4 2008 report identifying you as a lobbyist before the Office of Management and Budget and the National Security Council was filed in error, and provided a letter dated February 27, 2009 from the United States Global Leadership Campaign confirming the same. Accordingly, you have not accepted appointment within an executive agency that you lobbied during the two years prior to the date of your appointment.

Pursuant to Pledge ¶¶ 3(a) and 3(b), however, you are prohibited for two years from the date of your appointment from participating in the following particular matters or issue areas:

- international affairs budget appropriations.

The prohibitions on participation stem from the particular matters identified on the Q2, Q3 and Q4 2008 lobbying reports: provisions for FY2009 in the International Affairs Budget; H.Con. Res. 312, FY09 House Budget Resolution; S. Con. Res. 70, FY09 Senate Budget Resolution, S. 3288, FY09 Senate State, Foreign Operations, and Related Programs Appropriations; S. 3289, FY09 Senate Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations.

By signing the memorandum below, you acknowledge that you will abide by the limitations on participation set forth above, in furtherance of the terms of the Ethics Pledge you signed. This memorandum does not in any way modify, amend, abrogate or supersede your commitments in the Ethics Pledge.

Signed   
\_\_\_\_\_  
David Medina  
Deputy Chief of Staff to the First Lady

Date March 2, 09



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

February 4, 2009

MEMORANDUM FOR MARK PATTERSON

FROM:

Bernard J. Knight, Jr. *BJK*  
Assistant General Counsel for General Law, Ethics &  
& Regulation and Designated Agency Ethics Official

SUBJECT:

Limitation on Participation in Particular Matters

This memorandum outlines the limitations on your participation in particular matters. The limitations stem from your previous employment relationship and representation of Goldman Sachs in particular matters before the United States Congress from January 1, 2007 to April 11, 2008.

In your position as Chief of Staff of the United States Department of the Treasury, you are responsible for serving the American people. Your position will assist the Secretary of the Treasury in strengthening national security, managing the U.S. Government's finances effectively, promoting economic growth and stability, and ensuring the safety, soundness, and security of the United States and international financial systems. Abiding by the limitations on participation below will ensure confidence in the Department's actions which are of utmost importance to the American public.

President Obama signed an Executive Order, "Ethics Commitments by Executive Branch Personnel," on January 21, 2009. Among other things, this Executive Order requires every full-time, political appointee appointed on or after January 20, 2009 to sign an Ethics Pledge (Pledge). In addition to the general recusal for two years from your appointment for any particular matter involving Goldman Sachs, Section 3 of the Pledge states that those appointees that were registered lobbyists during the prior two years of their appointment must

- recuse, for two years after appointment, from participating in any particular matter on which he or she lobbied during the two years prior to the appointment in the specific issue area in which that particular matter falls, Pledge, para. 3(a) and (b);
- not seek or accept employment with an agency or department that he or she lobbied during the prior two years, Pledge, para. 3(c).

The term "particular matter" includes only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters that do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons.



Upon carefully reviewing the material that you have submitted, and pursuant to further discussions with you concerning these matters, I have determined that while at Treasury, you are prohibited for two years from your appointment from participating in the following particular matters or issue areas:

- ethanol tax credits
- Internal Revenue Code 355
- infrastructure financing via public-private partnerships
- energy derivatives
- legislation to reduce carbon emissions
- mortgage foreclosure legislation
- creation of covered bonds
- shareholder votes on executive compensation
- wind energy production
- terrorism risk insurance

I also have determined after careful consideration that the informational briefing that you provided at the request of a Treasury official in July 2007 did not constitute lobbying and therefore, the prohibition on employment at Treasury, as outlined in 3(c) of the Pledge, is not applicable to your situation. Similarly, I have determined that your facilitation of informational briefings from your Goldman Sachs colleagues to Congressional staff on auction rate securities did not constitute lobbying so recusal on that issue area is unnecessary. Based on the nature of the briefings, I find that a reasonable person would not reach a different conclusion.

I have not addressed issues that are unlikely to arise during your Treasury service, such as industrial loan companies, tribal gaming, H1-B visas, or patent reform. In the unlikely event that any of these issues arise during your Treasury service, I ask that you seek guidance from me prior to participating in them.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

March 19, 2009

**MEMORANDUM FOR MARK PATTERSON**

**FROM:**

Bernard J. Knight, Jr. *BJK*  
Assistant General Counsel for General Law, Ethics &  
Regulation and Designated Agency Ethics Official

**SUBJECT:**

Additional Limitation on Participation in Particular Matters or Issue  
Areas

Based on new information that has come to my attention and pursuant to further discussions with you concerning these matters, I have determined that while at Treasury, you are prohibited for two years from your appointment from participating in any matter relating to alternative energy investment tax credits. I note that you have not worked on any of these issues since joining Treasury. Nevertheless, since you have recently recalled working during your previous employment on energy investment tax credits relating to thermal storage, I am further limiting your participation to the broader issue area of alternative energy investment tax credits. This further restriction complements the February 4, 2009 memorandum that outlined the limitation of your participation in particular matters or issue areas.

THE WHITE HOUSE

Washington

March 17, 2009

**MEMORANDUM AND RECUSAL AGREEMENT FOR DESIREE PIPKINS**

**FROM:** Norman L. Eisen  
Special Counsel to the President and Designated Agency Ethics Official

**SUBJECT:** Limitation on Participation in Particular Matters

This memorandum outlines the limitations on your participation in particular matters while in the position of Research Associate in the Office of the White House Counsel. These limitations stem from your registration as a lobbyist while a member of the NAACP Legal Defense and Educational Fund, Inc. through mid-year 2007.

On January 21, 2009, President Obama signed Executive Order 13490, "Ethics Commitments by Executive Branch Personnel." Among other things, the Executive Order requires you to sign an Ethics Pledge ("Pledge"), in which you agree to limit participation in certain matters and specific issue areas if you were a registered lobbyist within the two years preceding the date of your appointment.

Based on a review of lobbying reports identifying you as a lobbyist in 2007, and the discussions you had with attorneys in the Office of the Counsel to the President, I have determined that you do not need a waiver of Pledge ¶ 3(c) because you did not lobby any component of the Executive Office of the President within the last two years of your appointment.

Pursuant to Pledge ¶¶ 3(a) and 3(b), however, you are prohibited for two years from the date of your appointment from participating in the following particular matters or issue areas:

- Voting issues regarding the District of Columbia;
- Absentee voting;
- Voting rights for displaced voters;
- Sentencing disparities between crack cocaine and powder cocaine offenses;
- Voter identification issues;
- Leslie Southwick judicial confirmation;
- Deceptive voting practices.

The prohibitions on participation stem from the particular matters identified on approximately 13 lobbying reports from 2007 and 2008 that identify you as a lobbyist or as a person no longer expected to lobby on specific issues. As you confirmed, the NAACP Legal Defense and Educational Fund, Inc. filed amended reports for year-end 2007, and various

quarters in 2008, in July 2008, omitting you as a lobbyist because you did not meet the registration requirements under the Lobbying Disclosure Act of 1995.

By signing the memorandum below, you acknowledge that you will abide by the limitations on participation set forth above, in furtherance of the terms of the Ethics Pledge you signed. This memorandum does not in any way modify, amend, abrogate or supersede your commitments in the Ethics Pledge.

Signed   
\_\_\_\_\_

Date 03/17/09

Desiree Pipkins

Research Associate in the Office of the White House Counsel

**Desiree Pipkins Lobbying Activity Chart**

| <b>Lobbying Report</b> | <b>Reported Legislation</b>   | <b>Particular Matter (5 CFR 2635.402(b)(3))</b>   | <b>Specific Issue Area</b>   |
|------------------------|---|---|--|
| Mid Year 2007          | H.R. 328, H.R. 1433, H.R. 5388, S. 1267   | Voting rights for District of Columbia residents  | Voting issues regarding the District of Columbia                         |
|                        | Federal Judicial Nominations  | Oppose judicial confirmation of Leslie Southwick to 5 <sup>th</sup> Circuit   | Leslie Southwick judicial confirmation                                   |
|                        | H.R. 281 No Excuse Absentee Voting  | Provisions relating to strict absentee laws that disproportionately affect marginalized communities (poor, African American, elderly) | Absentee voting  |
|                        | H.R. 3734 Displaced Citizen Voters Protection Act                               | Establishing voting rights for displaced voters from Hurricane Katrina  | Voting rights for displaced voters                                       |
|                        | S. 1685 Crack/Cocaine Disparity   | Legislation to narrow or eliminate disparity in penalties connected with crack cocaine and powder cocaine offenses                    | Sentencing disparities between crack cocaine and powder cocaine offenses |
|                        | Ehler Amendment to H.R. 811 regarding federal voter identification requirements | Federal voter identification requirements   | Voter identification issues  |
|                        | S. 543 Deceptive Practices Act  | Provisions relating to DOJ prosecution of deceptive voting practices in federal elections   | Deceptive voting practices   |

THE WHITE HOUSE

Washington

March 16, 2009

**MEMORANDUM AND RECUSAL AGREEMENT FOR MARA RUDMAN**

**FROM:** Norman L. Eisen  
Special Counsel to the President and Designated Agency Ethics Official

**SUBJECT:** Limitation on Participation in Particular Matters

This memorandum outlines the limitations on your participation in particular matters while in the position of Executive Secretary at the National Security Council. These limitations stem from your registration as a lobbyist while a member of Quorum Strategies, LLC through 2008.

On January 21, 2009, President Obama signed Executive Order 13490, "Ethics Commitments by Executive Branch Personnel." Among other things, the Executive Order requires you to sign an Ethics Pledge ("Pledge"), in which you agree to limit participation in certain matters and specific issue areas if you were a registered lobbyist within the two years preceding the date of your appointment.

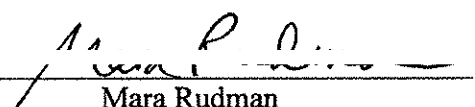
Based on a review of lobbying reports identifying you as a lobbyist in 2007-2008, and the discussions you had with attorneys in the Office of the Counsel to the President, I have determined that you do not need a waiver of Pledge ¶ 3(c) because you did not lobby any component of the Executive Office of the President within the last two years of your appointment.

Pursuant to Pledge ¶¶ 3(a) and 3(b), however, you are prohibited for two years from the date of your appointment from participating in the following particular matters or issue areas:

- Issues relating to stays in the United States after the expiration of a visa;
- World War II Holocaust restitution programs.

The prohibitions on participation stem from the particular matters identified on approximately 8 lobbying reports from 2007 and 2008 that identify you as a lobbyist or as a person no longer expected to lobby on specific issues.

By signing the memorandum below, you acknowledge that you will abide by the limitations on participation set forth above, in furtherance of the terms of the Ethics Pledge you signed. This memorandum does not in any way modify, amend, abrogate or supersede your commitments in the Ethics Pledge.

Signed   
Mara Rudman  
Executive Secretary at the National Security Council

Date 3/16/09

**Mara Rudman Lobbying Activity Chart**

| <b>Lobbying Report</b>   | <b>Reported Legislation</b>  | <b>Particular Matter (5 CFR 2635.402(b)(3))</b>  | <b>Specific Issue Area</b>  |
|--|--|--|---|
| <p>Mid year, End Year 2007 (Client: Council on International Education Exchange)</p> | <p>Issues related to international student travel</p>  | <p>Matters related to addressing interpretation of regulations on student visa programs which involved discussion with House and Senate Foreign Relations/Affairs Committee staffers; also discussed a particular matter involving summer work training program with Ukrainian embassy official.</p>   | <p>Issues relating to stays in the United States after the expiration of a visa</p> |
| <p>End year 2007, Q1-Q3 2008 (Client: American Insurance Association)</p>            | <p>Supporting work done by the International Commission on Holocaust Era Insurance Claims, including defending against litigation aimed at undermining its efforts and its mission</p> | <p>Engaged in numerous conversations with Hill and Senate staffers, and on occasion, with Members, to provide details about the work of ICHEIC, its history, implementation, output, etc. The push for the education effort came because legislation was being moved that was heavily critical of the work of ICHEIC and would have effectively negated its efforts had it been enacted. Rudman was hired to play this education role by AIA, on behalf of several of the companies that had been members of ICHEIC (along with state insurance commissioners and representatives of Jewish organizations) because ICHEIC itself had ceased to exist about a month before the legislation was introduced; and Rudman had formerly served as chief operating officer of ICHEIC.</p> | <p>World War II Holocaust restitution programs.</p>                                 |



March 20, 2009

MEMORANDUM FOR: Richard M. Verma

FROM: L - James H. Thessin

SUBJECT: Limitation on Participation in Particular Matters

This memorandum outlines possible limitations on your participation in certain particular matters. The limitations stem from your representation of Interaction and the U.S.-India Business Council before the United States Congress from April 2008 through October 2008 while you were employed at Steptoe and Johnson.

In your position as Assistant Secretary for Congressional Affairs, you are responsible for serving the American people. Your position will assist the Secretary of State in advancing our nation's interest in foreign affairs and the Department's relations with the U.S. Congress. Abiding by the limitations on participation below will ensure confidence in the Department's actions which are of utmost importance to the American public.

President Obama signed an Executive Order, "Ethics Commitments by Executive Branch Personnel," on January 21, 2009. Among other things, this Executive Order requires every full-time, political appointee appointed on after January 20, 2009 to sign an Ethics Pledge (Pledge). In addition to the general recusal for two years from appointment for any particular matter involving specific parties that is directly and substantially related to Steptoe and Johnson, section 3 of the pledge states that those appointees that were registered lobbyists during the prior two years of their appointment must:

- Recuse, for two years after appointment, from participating in any particular matter on which he or she lobbied during the two years prior to the appointment and in the specific issue area in which that particular matter falls, Pledge, para. 3(a) and (b); and
- Not seek or accept employment with an agency or department that he or she lobbied during the prior two years, Pledge, para. 3(c).

With respect to paragraph 3(a) and 3(b) of the Pledge, the term "particular matter" includes only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters that do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. The term "particular matter involving specific parties" applies only to

communications or appearances made in connection with a "particular matter involving a specific party or parties."

Although "particular matter" in paragraphs 3(a) and 3(b) is defined more broadly to include deliberations, decisions, or actions that are focused on the interests of specific persons, or a discrete and identifiable class of persons, paragraph 3(c) of the Pledge is narrower; only those particular matters that involve a specific party or parties fall within the scope of this paragraph 3(c) of the Pledge. A "particular matter involving a specific party or parties" typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case.

Upon carefully reviewing the material that you have submitted, and pursuant to further discussions with you concerning these matters, I have determined that while representing Interaction and U.S.-India Business Council, you should recuse yourself for two years from your appointment from participating in the following particular matters or in the specific issues areas in which those particular matters fall:

- Screening grant recipients of the Agency for International Development
- U.S. – India Free Trade Agreement

I believe that the other particular matters listed on Steptoe and Johnson's lobbying disclosure form and the specific issue areas in which those particular matters fall are unlikely to arise during your service as Assistant Secretary. In the unlikely event that any of these particular matters or specific issue areas arise during your service as Assistant Secretary, you should you seek guidance from me prior to participating in them.

Please feel free to call me if you need further assistance.

# **Appendix VII**

**DO-09-003     January 22, 2009            Executive Order; Ethics Pledge**

Provided the Ethics Pledge form to be used for appointees, defined “appointee” and the commitments to be made, and noted the requirements for ethics agreements and waivers

**DO-09-005     February 10, 2009            Signing the Ethics Pledge**

Provided guidance on when the Pledge is to be signed

**DO-09-007     February 11, 2009            Lobbyist Gift Ban Guidance**

Provided initial guidance concerning implementation and interpretation of the gift ban

**DO-09-008     February 23, 2009            Authorizations Pursuant to Section 3 of E.O. 13490  
“Ethics Commitments by Executive Branch Personnel”**

Informed agencies that OMB had authorized DAEOs of each executive agency to exercise section 3 waiver authority in consultation with the Counsel to the President and that limitations had been placed on exercising that waiver authority

**DO-09-010     March 16, 2009                Who Must Sign the Ethics Pledge?**

Provided guidance about specific categories of officials to help DAEOs determine which officials are subject to the Ethics Pledge

**DO-09-011     March 26, 2009                Ethics Pledge: Revolving Door Ban—All Appointees  
Entering Government**

Provided guidance on how on how to implement paragraph 2 of the Pledge by explaining phrases that comprise paragraph 2 and how paragraph 2 interacts with existing impartiality regulations

**DO-09-014     April 28, 2009                Holdover Appointees and the Ethics Pledge**

Required appointees temporarily holding over from the previous Administration to sign the Ethics Pledge and provided for limited extensions in consultation with the Special Counsel to the President

**DO-09-20     May 26, 2009                 Ethics Pledge Issues: Speeches and Pledge Paragraph  
2; Intergovernmental Personnel Act Detailees**

Addressed issues related to appointees giving official speeches at events sponsored by former employers or clients and established that IPA detailees are not required to sign the Ethics Pledge

**DO-10-003     February 18, 2010            Attendance of Staff Accompanying Official Speakers**

Provided guidance on applying the gift rules and the lobbyist gift ban to attendance by particular personnel whose presence is truly essential to the performance of the speaker's official duties at a specific event

**DO-10-004     February 22, 2010            Post-Employment Under the Ethics Pledge, FAQs**

Provides answers to frequently asked questions about both the post-employment restrictions found in paragraphs 4 and 5 of the Pledge



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

January 22, 2009  
DO-09-003

MEMORANDUM

TO: Agency Heads and Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Executive Order; Ethics Pledge

President Obama signed an Executive Order, "Ethics Commitments by Executive Branch Personnel," on January 21, 2009. Among other things, this Executive Order requires every full-time, political appointee appointed on or after January 20, 2009 to sign an Ethics Pledge. Pursuant to section 4(c)(1) of the Executive Order, the Office of Government Ethics (OGE) is providing you with a link to obtain a copy of the Order, [http://www.whitehouse.gov/the\\_press\\_office/ExecutiveOrder-EthicsCommitments/](http://www.whitehouse.gov/the_press_office/ExecutiveOrder-EthicsCommitments/), as well as an Ethics Pledge form (attached) to be used for appointees at your agency.

The definition of "appointee" in the Executive Order covers all full-time, political appointees regardless of whether they are appointed by the President, the Vice President, an agency head, or otherwise. Executive Order, sec. 2(a). Unlike certain other ethical requirements (e.g., the restrictions on covered noncareer employees described in 5 C.F.R. part 2636), the Pledge applies without regard to the salary level of the political appointee. Individuals appointed to a career position are not required to sign the Pledge. Similarly, political appointees appointed to a full-time position prior to January 20, 2009 are not presently required to sign the Pledge. This means individuals appointed during the previous administration are not now covered by the Pledge even if they are continuing in their current position or are serving in an acting capacity under the Vacancies Reform Act, 5 U.S.C. § 3345 *et seq.*

Generally, appointees must commit to:

- not accept gifts or gratuities from registered lobbyists or lobbying organizations (subject only to a limited number of the exceptions provided in the OGE Standards of Ethical Conduct, as well as other exceptions that OGE may authorize in the future for situations that do not implicate the purpose of the gift ban)—Pledge, par. 1

## Agency Heads and Designated Agency Ethics Officials

### Page 2

- recuse for two years from any particular matter involving specific parties in which a former employer or client is or represents a party, if the appointee served that employer or client during the two years prior to the appointment—Pledge, par. 2
- if the appointee was a registered lobbyist during the prior two years,
  - recuse, for two years after appointment, from any particular matter on which he or she lobbied during the two years prior to appointment (or any particular matter that falls within the same specific issue area)—Pledge, par. 3(a) & (b)
  - not to seek or accept employment with an agency or department that he or she lobbied during the prior two years—Pledge, par. 3(c)

[Note the requirement for a written ethics agreement for incoming lobbyists, described below, and the waiver mechanism as to lobbyists, also described below]

- if the appointee is subject to the senior employee post-employment restriction in 18 U.S.C. § 207(c), to abide by such restriction for two years after termination of the appointment—Pledge, par. 4
- not to lobby any covered executive branch official (as described in the Lobbying Disclosure Act) or any noncareer SES appointee for as long as President Obama is in office—Pledge, par. 5
- agree that any hiring or other employment decisions will be based on the candidate's qualifications, competence and experience—Pledge, par. 6

Section 3 of the Executive Order provides a waiver mechanism for any of the restrictions contained in the Pledge. The waiver must come from the Director of the Office of Management and Budget (or designee), in consultation with the White House Counsel (or designee). The Executive Order also provides for enforcement of the Pledge through civil action by the Attorney General. Executive Order, sec. 5(c). Moreover, the Order provides for agency debarment proceedings against former appointees found to have violated the Pledge, pursuant to debarment procedures established by each agency in consultation with OGE. Id., sec. 5(b).

The Executive Order requires each covered appointee to sign the Pledge "upon becoming an appointee." Sec. 1; see also sec. 4(a). Therefore, Agency Heads and Designated Agency Ethics Officials must work with relevant personnel officials to ensure that all political appointees are identified and provided with Pledge forms to sign. Section 4(a) of the Executive Order provides more detail on the responsibilities of agencies for administering the Pledge requirement. Section 4(a) also requires agencies to address compliance with the restrictions on incoming lobbyists (paragraph 3 of the Pledge) through a written ethics agreement, subject to approval by the White House Counsel (or designee) prior to the appointee commencing work.

OGE, in cooperation with the Office of the White House Counsel, will be providing you with more detailed guidance concerning the Ethics Pledge and other aspects of the Executive Order in the near future. That will also include scheduling a conference in the coming days to discuss these matters. In the meantime, please do not hesitate to contact OGE about any questions you may have concerning this matter.

Attachment:

Ethics Pledge Form



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

February 10, 2009  
DO-09-005

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Signing the Ethics Pledge

The Office of Government Ethics (OGE) has received several questions about when appointees must sign the Ethics Pledge required under Executive Order 13490. In consultation with the White House Counsel's office, OGE has determined that Pledge forms must be signed:

- in the case of individuals nominated by the President to a position requiring Senate confirmation (PAS), after Senate confirmation but before appointment;
- in the case of non-PAS appointees who have already been appointed, no later than 30 days after the date of their appointment (in recognition of the logistics of bringing new appointees on board during the initial implementation of the Executive Order); and
- in the case of non-PAS appointees who may be appointed in the future, at the time such person is appointed to a position covered by the Executive Order.

In light of the serious nature of the commitments embodied in the Pledge, OGE wants to emphasize that special Government employees (SGEs) are not considered to be full-time, non-career appointees subject to the Pledge requirement. This follows the interpretation of similar language in section 2(a) of Executive Order 12834 and section 102 of Executive Order 12731. See OGE Advisory Memorandum 00 x 1. Note that individuals serving in an agency as temporary advisors or counselors, pending Senate confirmation to a PAS position, are considered SGEs unless and until they are confirmed. See OGE Advisory Memorandum 01 x 2. Such individuals, therefore, must sign the Pledge after their confirmation, but before their appointment to a PAS position.





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

February 11, 2009  
DO-09-007

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Lobbyist Gift Ban Guidance

Section 1 of Executive Order 13490 requires all full-time, non-career appointees, appointed on or after January 20, 2009, to sign an Ethics Pledge. 74 Federal Register 4673 (January 21, 2009). Paragraph 1 of the Pledge, titled "Lobbyist Gift Ban," sets out an appointee's agreement not to "accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee." The purpose of this Memorandum is to provide ethics officials with initial guidance concerning the implementation and interpretation of this gift ban.

Currently the ban applies only to those who meet the definition of "appointee" in the Executive Order.<sup>1</sup> The Order directs the Office of Government Ethics (OGE) to adopt rules or procedures to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban. Executive Order 13490, sec. 4(c)(3)(iii). The guidance provided in this Memorandum is intended solely to help ethics officials understand the scope of the ban as it applies immediately to full-time, non-career appointees. While the Executive Order directs OGE to adopt rules and procedures to apply the lobbyist gift ban to all executive branch employees, any such rules or procedures will be developed in due course, with ample consideration of the situation of career employees. *See id.*, sec. 4(c)(3)(ii).

What is a "Registered Lobbyist" and a "Registered Lobbying Organization"

The Pledge prohibits gifts from lobbyists and lobbying organizations that are "registered" under the Lobbying Disclosure Act (LDA), 2 U.S.C. § 1601, *et seq.* However, neither ethics officials nor appointees must determine independently whether a particular donor meets the registration requirements of the LDA. Rather, in order to provide notice to appointees, the Executive Order purposely covers only those gifts received from a lobbyist or organization that actually has filed a registration with the Secretary of the Senate and the Clerk of the House of

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<sup>1</sup> See DAEOgram 09-003 (explaining the scope of covered "appointee"), [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2009/do09003.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09003.pdf).

Representatives pursuant to 2 U.S.C. § 1603(a). Executive Order 13490, sec. 2(e). The Secretary and the Clerk maintain searchable registrant databases.<sup>2</sup> These are the only databases upon which appointees and ethics officials may rely to determine whether a given donor is registered, for purposes of compliance with the gift ban. Search results must be reviewed carefully. The databases contain the names of clients as well as lobbyists and lobbying organizations. Also, the databases contain historical information. This may indicate that an individual was a registered lobbyist at some time in the past but is not a lobbyist currently. OGE can assist ethics officials who have questions about the use of the databases.

The ban is not limited to donors that provide lobbying services to others. The phrase “registered lobbyist or lobbying organization” includes any “organization filing a registration,” not just lobbying firms. Executive Order 13490, sec. 2(e). In particular, the ban includes any organization that registers because it employs at least one in-house lobbyist on its own behalf. See 2 U.S.C. § 1603(a)(2), (3)(A)(ii). For example, an appointee may not accept a bottle of wine from a telecommunications company that is registered under the LDA, even though the company is not a lobbying firm and registers only because it employs a single Governmental affairs officer to represent that company’s own interests. Of course, the ban also covers registered lobbying firms, such as a law firm or Governmental relations firm that files registrations for activities on behalf of its clients.

The ban also applies without regard to whether the particular lobbyist or organization has any dealings with the appointee’s own agency. As long as the donor is registered under the LDA, it does not matter that the donor’s lobbying contacts and activities may be directed solely to another agency--or even solely to the Legislative Branch. As indicated below, the lobbyist gift ban is in addition to the OGE prohibitions on gifts from “prohibited sources” and gifts “given because of the employee’s official position.”

Furthermore, the ban is intended to prohibit gifts from any employee of a registered lobbyist or lobbying organization. In this regard, the ban applies in the same way as the OGE gift prohibitions, which treat a gift from an employee of an organization as a gift from the organization. See 5 C.F.R. § 2635.204(a)(Example 3). Otherwise, a lobbyist or lobbying organization could evade the ban simply by relying on non-lobbyist employees to make gifts. Thus, for example, an appointee could not accept a free dinner at a restaurant from an employee of an oil company that is registered under the LDA, even though that employee is not included among the lobbyists listed in the company’s registration. Of course, if the appointee had a personal relationship with the company employee, the gift might be permitted under 5 C.F.R. § 2635.204(b). *Id.*

The lobbyist gift ban does not prohibit gifts from an organization that retains "outside" lobbyists or lobbying firms, as long as the organization itself is not registered under the LDA.

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<sup>2</sup> See <http://lobbyingdisclosure.house.gov/>;  
[http://www.senate.gov/pagelayout/legislative/g\\_three\\_sections\\_with\\_teasers/lobbyingdisc.htm](http://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm).

Organizations that are merely "clients" but not actually employers of lobbyists do not have to file registrations under the LDA, even though they may be listed as clients in the registrations filed by the lobbyists and lobbying firms they retain. 2 U.S.C. §§ 1602(2); 1603(a)(2). The LDA definition of employee excludes both "independent contractors" and "volunteers who receive no financial or other compensation from the person or entity for their services," so a person who uses only such non-employees for all lobbying services would not be required to register. 2 U.S.C. §§ 1602(5); 1603(a)(2). These exclusions are important to keep in mind because the House and Senate databases (set out in footnote 2 of this DAEOgram) contain the names of many persons and entities that, for example, are clients of lobbying firms but are not themselves registered lobbyists or lobbying organizations.

#### The Lobbyist Gift Ban is in Addition to Existing OGE Gift Rules

The Appointee Pledge refers to certain provisions in the existing OGE gift regulations found in the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) at 5 C.F.R. part 2635, subpart B, including the OGE definition of "gift." Executive Order 13490, sec. 2(c)(1); 5 C.F.R. § 2635.203(b). That definition excludes several items, such as certain modest refreshments, presentation items of little intrinsic value, benefits available to all Government employees, etc. 5 C.F.R. § 2635.203(b)(1)-(9). However, the prohibitions in the Pledge are more comprehensive and provide far fewer exceptions than the existing OGE rules. For example, an appointee may not accept a gift from a lobbyist or lobbying organization even if the donor is not a "prohibited source" and the gift is not given "because of the employee's official position." 5 C.F.R. § 2635.202(a).

The only exceptions to the lobbyist gift ban are ones that do not undermine the purpose of the lobbyist gift ban and are set out below:

- gifts based on a personal relationship, 5 C.F.R. § 2635.204(b);
- discounts and similar benefits, 5 C.F.R. § 2635.204(c);
- gifts resulting from a spouse's business or employment, 5 C.F.R. § 2635.204(e)(1);
- customary gifts/gratuities provided by a prospective employer, 5 CFR § 2635.204(e)(3);
- gifts to the President or Vice President, 5 C.F.R. § 2635.204(j);
- gifts authorized by an OGE-approved agency supplemental regulation, 5 C.F.R. § 2635.204(k); and
- gifts accepted under specific statutory authority, 5 C.F.R. § 2635.204(l).

Because the lobbyist gift ban is very broad, these common sense exceptions are necessary to avoid potentially absurd results. Thus, an appointee may accept a birthday present from his or her spouse who is a registered lobbyist or sign up for a training course sponsored by a registered lobbying organization that provides a discount for Federal Government employees. However, the following exceptions in the OGE gift regulations are not exceptions to the lobbyist gift ban:

- \$20 de minimis value, 5 C.F.R. § 2635.204(a);
- awards and honorary degrees, 5 CFR § 2635.204(d);

- gifts resulting from the employee's own outside business or employment, 5 C.F.R. § 2635.204(e)(2);
- gifts from political organizations in connection with political participation, 5 C.F.R. § 2635.204(f);
- widely attended gatherings (WAG), 5 C.F.R. § 2635.204(g)(2),<sup>3</sup>
- social invitations from non-prohibited sources, 5 C.F.R. § 2635.204(h); and
- food, refreshments and entertainment from persons other than a foreign government in a foreign area.<sup>4</sup>

This means, for example, an appointee may not accept a \$15 lunch from a registered lobbyist or go to a widely attended reception sponsored by a registered lobbying organization.

The Executive Order also expressly provides that the lobbyist gift ban covers gifts that are solicited or accepted "indirectly" within the meaning of section 2635.203(f). Executive Order 13490, sec. 2(c)(2). The OGE gift regulations define an indirect gift as including any gift to an employee's parent, sibling, spouse, child or dependent relative because of that person's relationship to the employee, provided that the employee knows of and acquiesces in the gift. § 2635.203(f)(1). In other words, the lobbyist gift ban cannot be circumvented by extending an invitation or benefit to an appointee's family. An indirect gift also includes any gift given to any other person, including a charitable organization, based on the employee's designation, recommendation or other specification. 5 C.F.R. § 2635.203(f)(2). Thus, for example, if a lobbying organization offered an appointee free tickets to a Broadway show, the appointee could not simply suggest that the tickets be given instead to his favorite charity or even to one of several charities whose names are provided by the appointee. *See* § 2635.203(f)(Example 1).

Finally, appointees will not be deemed to have accepted a gift in violation of the Pledge if the gift is disposed of as provided in 5 C.F.R. § 2635.205. Executive Order 13490, sec. 4(c)(3)(iv). As provided in the OGE gift regulation, proper disposition includes paying the donor the market value or returning a tangible item. In the case of perishable items that cannot

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<sup>3</sup> Appointees still may accept offers of free attendance on the day of an event when they are speaking or presenting information in an official capacity, as described in 5 C.F.R. § 2635.204(g)(1), notwithstanding the lobbyist gift ban. This is not a gift exception, but simply an application of the definition of "gift" in section 2635.203(b): "The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency." 5 C F R § 2635.204(g)(1).

<sup>4</sup> Note that the Pledge does not prohibit an appointee from accepting "[g]ifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. § 7342." 5 C.F.R. § 2635.204(l)(2); *see* Executive Order 13490, sec. 2(c)(3). Whether, or under what circumstances, any of these entities referenced in the Foreign Gifts and Decorations Act could be a registered lobbyist or lobbying organization is beyond the scope of this Memorandum.

be returned, the appointee's supervisor or agency ethics official can determine that the gift will be given to an appropriate charity, shared within the appointee's office, or destroyed. Under section 2635.205(c), an appointee who promptly consults an agency ethics official to determine whether an unsolicited gift may be accepted, and promptly complies with that official's instructions, will not be deemed to have accepted a prohibited gift.<sup>5</sup> For example, if an appointee receives an unsolicited item, but is unsure whether the donor is registered under the Lobbying Disclosure Act (see discussion below), the appointee will not be in violation of the ban if he or she promptly contacts an agency ethics official to determine whether the gift may be accepted and follows the instructions of that official.

### Other Permissible Gifts

Although the lobbyist gift ban is broad, it was not intended to prohibit certain gifts that do not implicate the purposes of the ban. Pending the issuance of final rules or procedures, appointees may rely on the following interim guidance, which OGE developed in consultation with the White House Counsel's Office, to accept certain gifts from 501(c)(3) organizations and media organizations.

Charitable and other not-for-profit organizations that are exempt from taxation under 26 U.S.C. § 501(c)(3) are already restricted as to the amount of lobbying in which they may engage. *See* 26 U.S.C. § 501(c)(3), (h). Consequently, the practices that the Executive Order and Pledge were intended to curb are already less implicated by 501(c)(3) organizations than by other entities that may employ lobbyists. Furthermore, any 501(c)(3) organizations that receive Federal funds are subject to limitations on the use of those funds to lobby for Federal contracts, grants, loans or cooperative agreements. *See* 31 U.S.C. § 1352. Given the kinds of purposes for which 501(c)(3) organizations are granted tax-exempt status (e.g., educational, charitable, scientific), there is little reason to prohibit employees from relying on the usual gift exceptions in the Standards of Conduct, many of which have particular relevance to the activities of such organizations. *See, e.g.,* 5 C.F.R. § 2635.204(g)(2)(permitting attendance at conferences and other widely attended events in the interest of the agency); § 2635.204(d)(permitting certain honorary degrees and awards). This judgment is analogous to policies reflected in the Federal Employees Training Act. *See* 5 U.S.C. § 4111 (permitting employees to accept certain items from 501(c)(3) organizations). Therefore, the gift ban will not apply to a gift from a 501(c)(3) organization, as long as the gift otherwise may be accepted under the Standards of Conduct. However, in keeping with the purposes of the ban, appointees still may not accept a gift if the organization employee who extends the offer is a registered lobbyist him- or herself.

Similar considerations are relevant to gifts from media organizations. The LDA itself reflects solicitude for the unique constitutional role of the press in gathering and disseminating

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<sup>5</sup> *See* OGE Informal Advisory Letter 06 x 4 (employee must take initiative to consult with ethics official and cannot wait until contacted, if ever, by an ethics official before disposing of gift properly).

information. *See* 2 U.S.C. § 1602(8)(B)(ii). Likewise, the lobbyist gift ban is not intended to erect unnecessary barriers to interaction between appointees and journalists. This is consistent with concerns about the application of the OGE gift prohibitions to certain press dinners shortly after the Standards of Conduct became effective. *See* Memorandum from the Counsel to the President to All Agency Heads, December 21, 1993 (suspending enforcement of gift rule with respect to press dinners, pending revision of rule). Therefore, an appointee may accept a gift from an employee of a media organization, as long as the gift is permissible under the OGE gift rules, including any applicable exceptions. The only proviso, as discussed above, is that appointees may not accept a gift if the organization employee who extends the offer is actually a registered lobbyist.

### Conclusion

OGE will continue to provide guidance on the lobbyist gift ban and other aspects of the Executive Order in the future. Ethics officials should consult with OGE if they have any questions concerning these matters.



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

February 23, 2009  
DO-09-008

MEMORANDUM

TO: Agency Heads and Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Authorizations Pursuant to Section 3 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel"

The purpose of this DAEOgram is to provide guidance to agency heads and Designated Agency Ethics Officials (DAEOs) on the application of section 3 of Executive Order 13490. As you know, section 1 of the Executive Order requires all covered appointees to abide by several commitments in an Ethics Pledge, unless they are granted a waiver under section 3. The Director of the Office of Management and Budget (OMB) has now designated the DAEO of each executive agency to exercise section 3 waiver authority in consultation with the Counsel to the President. This designation and the limitations on waiver authority are addressed below.

DAEOs are Now Designated to Exercise Waiver Authority in Consultation with White House Counsel

Section 3(a) of the Executive Order provides:

The Director of the Office of Management and Budget, or his or her designee, in consultation with the Counsel to the President or his or her designee, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of the Office of Management and Budget, or his or her designee, certifies in writing (i) that the literal application of the restriction is inconsistent with the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver.

The Director of OMB has, after consultation with Counsel to the President, determined that the most appropriate designee of his authority is the Designated Agency Ethics Official (DAEO) of each executive agency. This designation reflects the high degree of trust and confidence with which the experience and professional judgment of the DAEOs are viewed. The deep agency knowledge of the DAEOs was also an important factor in the Director's decision.

Limitations on Exercise of Waiver Authority

**It is the President's intention that waivers will be granted sparingly and that their scope will be as limited as possible. All waivers must be in writing.** As specified in the Executive Order, a waiver may be granted only after consultation with the Counsel to the President and only upon the DAEO's certification either that the literal application of the restriction is inconsistent with the purposes of the restriction or that it is in the public interest to grant the waiver. Executive Order 13490, sec. 3(b). For the latter purpose, the public interest includes, but is not limited to, exigent circumstances relating to national security or the economy. Additionally, provisions in paragraph 3 of the Pledge, which pertains to appointees who have been registered lobbyists within two years of appointment, may be waived where the appointee's lobbying activities in connection with an agency, or on a particular matter, or in a specific issue area have been *de minimis*.

Finally, we wish to emphasize that the legal requirement under the Executive Order of advance consultation with the Counsel to the President remains and is to be strictly enforced. Norman Eisen, the Special Counsel to the President, is the point of contact in the Office of the Counsel to the President and can be reached at (202) 456-1214 or [neisen@who.eop.gov](mailto:neisen@who.eop.gov). To ensure that the consultation requirement is met, no waiver should ever be granted until the Special Counsel has provided a written acknowledgement affirmatively stating that the required consultation has occurred and is complete. Your OGE desk officers should also be consulted in advance with respect to all waiver issues.

Conclusion

OGE will continue to publish additional guidance on the Pledge required by Executive Order 13490 as needed. Questions about the application of the Pledge should be referred to the OGE desk officer responsible for your agency.





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

March 16, 2009  
DO-09-010

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Who Must Sign the Ethics Pledge?

The Office of Government Ethics (OGE) has received numerous questions concerning which officials must sign the Ethics Pledge required under Executive Order 13490. Therefore, OGE is issuing this guidance to help agency ethics officials determine which officials are subject to the Pledge requirement.

**Definition of Appointee**

Section 1 of the Executive Order states that "[e]very appointee in every executive agency appointed on or after January 20, 2009" shall sign the Ethics Pledge. Executive Order 13490, sec. 1, 74 Federal Register 4673 (January 26, 2009). The Order defines "appointee" as follows:

'Appointee' shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

*Id.*, sec. 2(b).

In broad terms, the Pledge was intended to apply to full-time "political" appointees of all types. *Cf.* OGE Informal Advisory Letter 04 x 10 ("when we identify a position as 'noncareer,' we are typically referring to a political appointment"). The term appointee generally includes, but is not limited to, all appointees to positions described as "covered noncareer" in 5 C.F.R. § 2636.303(a) and all full-time Presidential appointees subject to section 102 of Executive

Order 12371. However, the term is not limited by any salary thresholds, and it covers political employees appointed other than by the President. *See* DAEOgram DO-09-003.

In response to questions from several agencies, OGE wants to emphasize that the term appointee does not include every excepted service employee. Non-career is not synonymous with excepted service. *See* Detailed Explanation, Ethics Reform Act of 1989: Technical Amendments, 136 Cong. Rec. H 1646 (1990) (ethical limitations on "noncareer" appointees do not cover "for example, attorneys hired under Schedule A" of the excepted service). Rather, as the definition of appointee makes clear, the Pledge applies to appointees excepted from the competitive service "by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria)." Executive Order 13490, sec. 2(b); *see* 5 C.F.R. part 213, subpart C (excepted schedules). Again, the essentially political nature of a given appointment is the touchstone. *See* 04 x 10 (discussing the criteria for Schedule C and comparable appointments).

### **Categories of Officials**

OGE has received questions about the coverage of several categories of officials under the Pledge. These categories are discussed briefly below.

#### **1. Special Government Employees**

As explained in DAEOgram DO-09-005, special Government employees (SGEs) are not required to sign the Pledge. SGEs are described at 18 U.S.C. § 202(a), and for most purposes the term refers to employees who are expected to perform temporary duties on no more than 130 days during a period of 365 days. The definition of SGE and the process for determining who is an SGE are discussed in detail in various OGE documents. *E.g.*, OGE Advisory Memoranda 00 x 1; 01 x 2.

#### **2. Foreign Service and Similar Positions**

The definition of appointee excludes persons appointed as members of the Senior Foreign Service, but at the same time it includes "non-career" appointees in any "SES-type system." OGE elsewhere has determined that non-career Senior Foreign Service appointees are an example of what is meant by non-career members of an SES-type system. 5 C.F.R. § 2636.303(a)(2). The Executive Order carries forward this distinction and is intended to cover those Senior Foreign Service members who are considered non-career or political appointees, but not those who are deemed career officers. The same distinction applies with regard to any agency-specific or other categories of foreign service officials: those positions that are filled by political appointees are subject to the Pledge, whereas those positions that are not viewed as political are not subject to the Pledge. Likewise, this distinction will apply to Ambassadors: career Ambassadors (many of whom rotate through multiple Ambassadorial assignments and

other posts throughout their Government careers during successive administrations) will not be subject to the Pledge, but non-career or political Ambassador appointees must sign the Pledge.

### 3. Career Officials Appointed to Confidential Positions

OGE has received questions from several agencies about whether the Pledge applies to career staff who are appointed to serve as confidential assistants to Commissioners and other agency leaders. Some of these questions have come from independent agencies headed by a collegial body comprised of members with staggered, fixed terms. Apparently, it has been a regular practice at certain agencies to appoint regular career staff to serve in confidential positions with a given Commissioner, with the expectation that the confidential assistant will return to a career staff position at the end of the Commissioner's term or earlier. In consultation with the White House Counsel's Office, OGE has determined that the Pledge is not intended to apply to such employees, *provided* that the right of return to a career position is established by statute, regulation, or written agency personnel policy. Under such circumstances, a confidential "rotation" would be viewed as part of an established career pattern, and imposing the exacting requirements of the Pledge could create unintended disincentives for career employees to accept such rotations.

### 4. Career SES Members Given Presidential Appointments

The Pledge requirement does apply, however, to career SES members (or other career SES-equivalent employees) who are appointed to positions requiring Senate confirmation (PAS) or to other Presidentially-appointed positions (PA) that ordinarily are viewed as non-career. Career SES members may elect to retain certain benefits of career SES status, *see* 5 U.S.C. § 3392(c), and they also have certain reinstatement rights upon the completion of a separate Presidential appointment, *see* 5 C.F.R. § 317.703. However, PAS or PA appointments are of a different character and magnitude, and career SES members who accept such appointments become an important part of the political leadership in the administration. Therefore, they must sign the Pledge.

### 5. Schedule C Employees with No Policymaking Role

Certain Schedule C employees who have no policymaking role, such as chauffeurs and private secretaries, have been exempted from public financial disclosure requirements. *See* 5 U.S.C. app. § 101(f)(5); 5 C.F.R. § 2634.203(b). These positions have been excluded from public filing based on OGE's determination "that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government." 5 C.F.R. § 2634.203(a). For the same reasons, the Pledge is not intended to cover these individuals, *provided* that the agency has followed the procedures prescribed in section 2634.203(c). Apart from appointees under Schedule C and comparable authorities, the same result obtains with respect to employees, appointed under 3 U.S.C. §§ 105-108, who have similar non-policymaking duties, as determined by the White House Counsel's Office.

#### 6. Acting Officials and Detailees

The Pledge requirement does not apply to career officials who are acting temporarily in the absence of an appointee to a non-career position. This includes career officials acting in the absence of a Senate-confirmed Presidential appointee under the Vacancies Reform Act, 5 U.S.C. § 3345 *et seq.* Similarly, a career appointee who is temporarily detailed to a position normally occupied by a non-career appointee is not subject to the Pledge. *Cf.* 68 Federal Register 7844, 7848 (February 18, 2003)(employees detailed to a senior employee position do not become senior employees under 18 U.S.C. § 207(c)).

#### 7. Holdover Appointees

On its face, the Pledge requirement does not apply to individuals appointed prior to January 20, 2009, and the administration will not for 100 days ask anyone held over to complete the Pledge. The administration has not yet determined whether it will extend that 100 day grace period or at what point it will ask holdovers to complete the Pledge. Please bear in mind that in some cases the new administration may ask a holdover to remain in the position, not merely as a caretaker until some other choice for the position can be appointed, but as the President's choice for that position. In the latter situations, the appointees will be asked to sign the Pledge when they agree to remain even though there is not a new appointment.

#### 8. Term Appointees

Presidential appointees to positions with a fixed term of office typically are non-career appointees, even if they are removable only for cause as specified by statute. *See* OGE Informal Advisory Letter 89 x 16. Therefore, non-career term appointees are subject to the Pledge if they are full-time and were appointed on or after January 20, 2009.

Term appointees appointed prior to January 20, 2009 are not required to sign the Pledge. As a practical matter, however, agency ethics officials should counsel such individuals to follow the Pledge to the extent feasible, particularly paragraphs 1, 2, 3 and 6 of the Pledge. Doing so will help to prevent the confusion and questions that could result if these appointees, especially those in visible positions, do not abide by the same gift, recusal, and hiring rules that apply to fellow appointees at the same agency.

A term appointee whose term has expired, but who is permitted by statute to holdover for some period of time, is not subject to the Pledge, provided the appointment preceded January 20, 2009. Where the President has nominated such a term appointee for reappointment for an additional term, the individual must sign the Pledge after Senate Confirmation but prior to reappointment. *See* DAEOgram DO-09-005. Again, as described in the previous paragraph, such term appointees should be counseled to follow the Pledge where practicable.

**Conclusion**

Given the great variety of appointment authorities in the executive branch, it is not possible for OGE to address every possible category of appointee in this Memorandum. OGE, in consultation with the White House Counsel's Office, can assist agency ethics officials as necessary in addressing any questions on a case-by-case basis.



United States  
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March 26, 2009  
DO-09-011

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Ethics Pledge: Revolving Door Ban--All Appointees Entering Government

Executive Order 13490 requires any covered "appointee" to sign an Ethics Pledge that includes several commitments. 74 Fed. Reg. 4673 (January 26, 2009). OGE Memorandum DO-09-003 explains the definition of appointee, describes the commitments included in the Pledge, and provides a Pledge Form to be used for appointees.<sup>1</sup> The purpose of the present memorandum is to advise ethics officials on how to implement paragraph 2 of the Pledge, "Revolving Door Ban--All Appointees Entering Government."

Paragraph 2 of the Pledge requires an appointee to commit that he or she will not, for a period of two years following appointment, participate in any particular matter involving specific parties that is directly and substantially related to his or her former employer or former clients, including regulations and contracts. Exec. Order No. 13490 sec. 1(2). To help agencies implement this requirement, OGE is providing the following explanation of the phrases that comprise paragraph 2 of the Pledge and of how paragraph 2 interacts with existing impartiality regulations.

**Understanding the Meaning of the Terms that Comprise Paragraph 2 of the Pledge**

*"Particular matter involving specific parties"*

In order to determine whether an appointee's activities concern any particular matters involving specific parties, ethics officials must follow the definition of that phrase found in section 2(h) of the Executive Order. That definition incorporates the longstanding interpretation of particular matter involving specific parties reflected in 5 C.F.R. § 2641.201(h). However, it also expands the scope of the term to include any meeting or other communication with a former employer or former client relating to the performance of the appointee's official duties, unless

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<sup>1</sup> [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2009/do09003.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09003.pdf).

the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. The purpose of this expansion of the traditional definition is to address concerns that former employers and clients may appear to have privileged access, which they may exploit to influence an appointee out of the public view.<sup>2</sup>

The expanded party matter definition has a two-part exception for communications with an appointee's former employer or client, if the communication is: (1) about a particular matter of general applicability and (2) is made at a meeting or other event at which participation is open to all interested parties. Although the exception refers to particular matters of general applicability, it also is intended to cover communications and meetings regarding policies that do not constitute particular matters. An appointee may participate in communications and meetings with a former employer or client about these particular or non-particular matters if the meeting or event is "open to all interested parties." Exec. Order No. 13490 sec. 2(h). Because meeting spaces are typically limited, and time and other practical considerations also may constrain the size of meetings, common sense demands that reasonable limits be placed on what it means to be "open to all interested parties." Such meetings do not have to be open to every comer, but should include a multiplicity of parties. For example, if an agency is holding a meeting with five or more stakeholders regarding a given policy or piece of legislation, an appointee could attend such a meeting even if one of the stakeholders is a former employer or former client; such circumstances do not raise the concerns about special access at which the Executive Order is directed. Additionally, the Pledge is not intended to preclude an appointee from participating in rulemaking under section 553 of the Administrative Procedure Act simply because a former employer or client may have submitted written comments in response to a public notice of proposed rulemaking.<sup>3</sup> In any event, agency ethics officials will have to exercise judgment in determining whether a specific forum qualifies as a meeting or other event that is "open to all interested parties," and OGE is prepared to assist with this analysis.

*"Particular matter involving specific parties...including regulations"*

Because regulations often are cited as examples of particular matters that do not involve specific parties, OGE wants to emphasize that the phrase is not intended to suggest that all rulemakings are covered. Rather, the phrase is intended to serve as a reminder that regulations sometimes may be particular matters involving specific parties, although in rare circumstances. As OGE has observed in connection with 18 U.S.C. § 207, certain rulemakings may be so focused on the rights of specifically identified parties as to be considered a particular matter

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<sup>2</sup> Note, however, that the expanded definition of party matter is not intended to interfere with the ability of appointees to consult with experts at educational institutions and "think tanks" on general policy matters, at least where those entities do not have a financial interest, as opposed to an academic or ideological interest. See Office of Legal Counsel Memorandum, "Financial Interests of Nonprofit Organizations," January 11, 2006 (distinguishing between financial interests and advocacy interests of nonprofits), <http://www.usdoj.gov/olc/11106nonprofitboards.pdf>; cf. 5 C.F.R. § 2635.502(b)(1)(v)(Note)(OGE impartiality rule does not require recusal because of employee's political, religious or moral views).

<sup>3</sup> For other reasons discussed below, however, rulemaking sometimes may constitute a particular matter involving specific parties, albeit rarely.

involving specific parties.<sup>4</sup> Such rulemakings likewise are covered by paragraph 2.

*“Directly and substantially related to”*

The phrase “directly and substantially related to,” as defined in section 2(k) of the Executive Order, means only that the former employer or client is a party or represents a party to the matter. Ethics officials should be familiar with this concept from 5 C.F.R. § 2635.502(a).

*“Former employer or former client”*

In order to determine who qualifies as an appointee’s former employer or former client, ethics officials must follow the definitions of each phrase found in section 2(i) and 2(j), respectively, of the Executive Order. In effect, the Executive Order splits the treatment of former employer found in the impartiality regulations into two discrete categories, “former employer” and “former client,” and removes contractor from the definition of either term. See 5 C.F.R. §§ 2635.502(b)(1)(iv), 2635.503(b)(2).

Former Employer

For purposes of the Pledge, a former employer is any person for whom the appointee has, within the two years prior to the date of his or her appointment, served as an employee, officer, director, trustee, or general partner, unless that person is an agency or entity of the Federal Government, a state or local government, the District of Columbia, a Native American tribe, or any United States territory or possession. Exec. Order No. 13490, sec. 2(i). While the terms employee, officer, director, trustee, or general partner generally follow existing ethics laws and guidance, OGE has received questions about the scope of the exclusion for government entities from the definition of former employer, specifically with regard to public colleges and universities. The exclusion for state or local government entities does extend to a state or local college or university.<sup>5</sup>

OGE also has received several questions about whether the definition of former employer includes nonprofit organizations. Consistent with the interpretation of similar terms in other ethics rules and statutes, the definition of former employer in the Executive Order covers

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<sup>4</sup> See, e.g., 73 Fed. Reg. 36168, 36176 (June 25, 2008); see also OGE Informal Advisory Letter 96 x 7, n.1.

<sup>5</sup> See OGE Informal Advisory Opinion 93 x 29 n.1 where OGE held that for purposes of applying the supplementation of salary restrictions in 18 U.S.C. § 209, the exception for payments from the treasury of any state, county, or municipality included a state university. OGE cautions, however, that the exclusion for state and local entities may not extend to all entities affiliated with a state or local college or university. OGE notes that some colleges and universities may create mixed public/private entities in partnership with commercial enterprises. Such entities should not automatically be considered as falling within the exclusion, but rather should be examined on a case-by-case basis to determine whether they should be viewed as instrumentalities of state or local government for the purposes of the Executive Order.



nonprofit organizations.<sup>6</sup> Moreover, it includes nonprofit organizations in which an appointee served without compensation, provided of course that the appointee actually served as an employee, officer, director, trustee, or general partner of the organization. Thus, for example, the recusal obligations of Pledge paragraph 2 would apply to an appointee who had served without pay on the board of directors or trustees of a charity, provided that the position involved the fiduciary duties normally associated with directors and trustees under state nonprofit organization law. This does not include, however, purely honorific positions, such as "honorary trustee" of a nonprofit organization. It also does not include unpaid positions as a member of an advisory board or committee of a nonprofit organization, unless the position involved fiduciary duties of the kind exercised by officers, directors or trustees, or involved sufficient supervision by the organization to create a common law employee-employer relationship (which is not typical, in OGE's experience).

#### Former Client

For purposes of the Pledge, a former client means any person for whom the appointee served personally as an agent, attorney, or consultant within two years prior to date of appointment. Exec. Order No. 13490 sec. 2(j). A former client does not include a client of the appointee's former employer to whom the appointee did not personally provide services. Therefore, although an appointee's former law firm provided legal services to a corporation, the corporation is not a former client of the appointee for purposes of the Pledge if the appointee did not personally render legal services to the corporation. Moreover, based on discussions with the White House Counsel's office, OGE has determined that the definition of former client is intended to exclude the same governmental entities as those excluded from the definition of former employer. Thus, for example, an appointee who had provided legal services to the Department of Energy would not be prohibited from participating personally in particular matters in which the Department is a party.

In addition, the term former client includes nonprofit organizations. However, a former client relationship is not created by service to a nonprofit organization in which an appointee participated solely as an unpaid advisory committee or advisory board member with no fiduciary duties. Although a former client includes any person whom the appointee served as a "consultant," OGE has not construed the term consultant, as used in analogous provisions of the Ethics in Government Act and the Standards of Ethical Conduct, to include unpaid, non-fiduciary advisory committee members of a nonprofit organization. See 5 U.S.C. app. § 102(a)(6)(A)(disclosure of consultant positions); 5 C.F.R. § 2635.502(b)(1)(iv)(covered relationship as former consultant). Likewise, former client does not include a nonprofit organization in which an appointee served solely in an honorific capacity.

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<sup>6</sup> For similar reasons, Federally-funded research and development centers (FFRDCs), whether nonprofit or for profit, are intended to be included in the definitions of former employer and former client for purposes of paragraph 2 of the Pledge.

The definition of former client specifically excludes “instances where the service provided was limited to a speech or similar appearance.” Exec. Order No. 13490, sec. 2(j). In addition to excluding all activities that consist merely of speaking engagements, this provision is intended to exclude other kinds of discrete, short-term engagements, including certain de minimis consulting activities. Essentially, the Pledge is not intended to require a two-year recusal based on activities so insubstantial that they are not likely to engender the kind of lingering affinity and mixed loyalties at which the Executive Order is directed. The exclusion for speaking and similar engagements was added to emphasize that the provision focuses on services that involved a significant working relationship with a former client. Therefore, the exclusion is not limited to speeches and speech-like activities (such as serving on a seminar panel or discussion forum), but includes other activities that similarly involve a brief, one-time service with little or no ongoing attachment or obligation. In order to determine whether any services were de minimis, ethics officials will need to consider the totality of the circumstances, including the following factors:

- the amount of time devoted;
- the presence or absence of an ongoing contractual relationship or agreement;
- the nature of the services (e.g., whether they involved any representational services or other fiduciary duties); and
- the nature of compensation (e.g., one-time fee versus a retainer fee).

For example, the recusal obligation of Pledge paragraph 2 would not apply to an appointee who had provided consulting services on a technical or scientific issue, for three hours on a single day, pursuant to an informal oral agreement, with no representational or fiduciary relationship.<sup>7</sup> On the other hand, an appointee who had an ongoing contractual relationship to provide similar services as needed over the course of several months would be covered. In closer cases, OGE believes ethics officials should err on the side of coverage, with the understanding that waivers, under section 3 of the Order, remain an option in appropriate cases.

### **The Relationship of Paragraph 2 of the Pledge to the Existing Impartiality Regulations**

Paragraph 2 of the Pledge is not merely an extension of the existing impartiality requirements of subpart E of the Standards of Ethical Conduct, although in some circumstances the restrictions of the Pledge and the existing impartiality restrictions could align. The effect of any overlap is that all of the relevant restrictions apply to the appointee and should be acknowledged in the appointee’s ethics agreement and considered when granting a waiver or authorization under either set of restrictions.

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<sup>7</sup> Note that appointees still will have a covered relationship for one year after they provided any consulting services, under the OGE impartiality rule, 5 C.F.R. § 2635.502(b)(1)(iv). Therefore, the OGE rule may require an appointee to recuse from certain matters (or obtain an authorization, as appropriate), even if the Pledge does not extend the recusal for an additional year. Indeed, the presence of the OGE rule as a “fall-back” was a factor in the decision to exclude certain de minimis consulting services from the Pledge in the first place.

*Paragraph 2 of the Pledge and Impartiality Regulations Differ and Overlap*

An appointee's commitments under paragraph 2 of the Pledge both overlap and diverge from the existing impartiality regulations in important ways depending upon the facts of each appointee's circumstances. The following highlights some of the key areas in which paragraph 2 of the Pledge and the existing impartiality restrictions differ. In addition, OGE has developed a chart as a quick reference tool to identify the key differences among the existing impartiality regulations and paragraph 2 of the Pledge. *See Attachment 1.*

Paragraph 2 of the Pledge is at once more expansive and more limited than the existing impartiality restrictions found at 5 C.F.R. §§ 2635.502, 2635.503. For example, an appointee is subject to impartiality restrictions based on his covered relationships with a much broader array of persons<sup>8</sup> than to the restrictions of paragraph 2, which are limited to the appointee's former employer and former clients. Thus, for instance, if the appointee has served as a contractor, but not in any of the roles described in the definitions of former employer or former client in the Executive Order, then the appointee may have recusal obligations under 5 C.F.R. §§ 2635.502 and 2635.503, but not under Pledge paragraph 2. Conversely, Pledge paragraph 2 is more expansive than the definition of covered relationship in section 2635.502 because the Pledge provision looks back two years to define a former employer or former client and it imposes a two-year recusal obligation after appointment, both of which are considerably broader than the one-year focus of section 2635.502(b)(1)(iv). Pledge paragraph 2 also is more expansive in that the recusal obligation may apply to certain communications and meetings that do not constitute particular matters involving specific parties as that phrase is used in sections 2635.502 and 2635.503.<sup>9</sup>

On the subject of recusal periods alone, ethics officials will need to be especially attentive to the possible variations, as it may be possible for as many as three periods to overlap. For example, an appointee could have: a one-year recusal, under 5 C.F.R. § 2635.502, from the date she last served a former employer; a two-year recusal, under section 2635.503, from the date she received an extraordinary payment from that same former employer; and a two-year recusal with respect to that former employer, under Pledge paragraph 2, from the date of her appointment.

*Specific Recusals under Paragraph 2 of the Pledge are Not Required to be Memorialized in an Appointee's Ethics Agreement.*

Executive Order 13490 does not require recusals under paragraph 2 of the Pledge to be addressed specifically in an appointee's ethics agreement, unlike recusals under paragraph 3 of

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<sup>8</sup> See definition of "covered relationship" at 5 C.F.R. § 2635.502(b)(1).

<sup>9</sup> Compare Exec. Order No. 13490, sec. 2(h)(definition broader than post-employment regulation); with 5 C.F.R. § 2635.502(b)(3)(defining particular matter involving specific parties solely by reference to post-employment regulations).

the Pledge. *See* Exec. Order No. 13490 sec. 4(a).<sup>10</sup> However, if an appointee will have a written ethics agreement addressing other commitments, OGE requires that the following language be inserted in that written ethics agreement in order to ensure that the appointee is aware of her commitments and restrictions under both her ethics agreement and the Pledge.

Finally, I understand that as an appointee I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

Written ethics agreements will continue to address section 2635.502 and 2635.503 issues separately using the model provisions from OGE's "Guide to Drafting Ethics Agreements for PAS Nominees." Thus, regardless of paragraph 2 of the Pledge, the one-year "covered relationship" under the OGE impartiality rule remains in effect and may require an appointee to recuse from certain matters, even if the Pledge does not extend the recusal for an additional year. *See* 5 C.F.R. § 2635.502(b)(1)(iv).

#### *The Pledge and Impartiality Regulations Waiver Provisions*

Designated Agency Ethics Officials have been designated to exercise the waiver authority for the Ethics Pledge, under section 3 of Executive Order 13490, in addition to their existing role in the issuance of impartiality waivers and authorizations. DAEOgram DO-09-008; 5 C.F.R. §§ 2635.502(d), 2635.503(c). Generally, it is expected that waivers of the various requirements of the Pledge will be granted sparingly. *See* OGE DAEOgram DO-09-008. Although paragraph 2 clearly adds new limits on the revolving door, those limits are not intended to bar the use of qualified appointees who have relevant private sector experience in their fields of expertise. Therefore, at least where the lobbyist restrictions of paragraph 3 of the Pledge are not implicated, OGE expects that DAEOs will exercise the waiver authority for paragraph 2 in a manner that reasonably meets the needs of their agencies. In this regard, DAEOs already have significant experience in determining whether authorizations under 5 C.F.R. § 2635.502(d) are justified, and DAEOs should use similar good judgment in decisions about whether to waive paragraph 2 of the Pledge. Of course, any such waiver decisions still must be made in consultation with the Counsel to the President. Exec. Order No. 13490, sec. 3. Additional details on the standards for issuing a waiver of provisions of Pledge paragraph 2, as well as on issues related to the interaction of the waiver provisions of the impartiality regulations and relevant paragraphs of the Pledge, are reserved for future guidance.

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<sup>10</sup> An ethics agreement is defined as "any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest," such as recusal from participation in a particular matter, divestiture of a financial interest, resignation from a position, or procurement of a waiver. 5 C.F.R. § 2634.802.

## ATTACHMENT 1

OGE developed the following table as a quick reference tool to highlight the main differences between paragraph 2 of the Pledge and existing impartiality regulations. It is not intended to be a substitute for thorough analysis, but we hope you find it useful.

|                           |   | <b>5 C.F.R. § 2635.502</b>   | <b>5 C.F.R. § 2635.503</b>  | <b>Paragraph 2 of the Pledge</b>  |
|---------------------------|---|--|---|---|
| <b>Relationship:</b>      | Former Employer   | Any person which the employee served, within the last year, as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; no exclusion for governmental entities (other than Federal) | Any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; no exclusion for governmental entities (other than Federal) | Two years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner; contractor and consultant omitted from list (although consultant added below under former client); is not a former employer if governmental entity   |
|                           | Former Client   | Clients of attorney, agent, consultant, or contractor covered same way as former employer, under 5 C.F.R. § 2635.502(b)(1)(iv)   | Clients of attorney, agent, consultant, or contractor covered same way as former employer, under 5 C.F.R. § 2635.503(b)(2)  | Two years prior to date of appointment served as an agent, attorney, or consultant. Is not former client if: <ul style="list-style-type: none"> <li>• Only provided speech/similar appearance (including de minimis consulting)</li> <li>• Only provided contracting services other than as agent, attorney, or consultant</li> <li>• Served governmental entity</li> </ul> |
|                           | Business and Personal/ Covered Relationship                             | In addition to former employers/ clients discussed above, includes various <u>current</u> business and personal relationships, as listed in 5 C.F.R. § 2635.502(b)(1)  | No equivalent concept   | No equivalent concept   |
| <b>Prohibition:</b>       | May not participate in particular matter involving specific parties if: | Reasonable person with knowledge of facts would question impartiality  | Extraordinary payment from former employer  | Includes communication by former employer or former client unless matter of general applicability or non-particular matter and open to all interested parties   |
| <b>Length of recusal:</b> |   | 1 year from the end of service   | 2 years from date of receipt of payment   | 2 years from date of appointment  |



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

April 28, 2009  
DO-09-014

MEMORANDUM

TO: Agency Heads and Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Holdover Appointees and the Ethics Pledge

We have received numerous questions regarding whether appointees temporarily holding over from the previous Administration pending the appointment of a successor need to sign the Ethics Pledge promulgated by Executive Order 13490 of January 21, 2009. We previously advised that holdover appointees would be given a 100-day grace period before being required to sign the pledge. As you know, April 29<sup>th</sup> will be the 100<sup>th</sup> day of the Administration. Accordingly, if you have not done so already, please ask all your holdover appointees to sign the ethics pledge within the coming days. The pledge form may be found at:

[http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2009/do09003a.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09003a.pdf)

Persons who are not prepared to sign the pledge should transition out within 30 days, by May 29<sup>th</sup>.

Please note that limited extensions of the deadline may be granted in situations where a holdover declines to sign and his or her continued service is determined by the head of the agency to be mission critical and essential for continuity. In those instances, DAEOs should submit a written extension request to the Special Counsel to the President for Ethics and Government Reform explaining why the requesting holdover meets those criteria. Limited extensions may be granted to address those concerns in an appropriate manner that both respects the circumstances of the individual appointee's current status as well as the President's commitment to the principles contained in the ethics pledge. No mission critical holdover appointee should be asked to leave until this consultation has taken place.



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

May 26, 2009  
DO-09-020

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Ethics Pledge Issues: Speeches and Pledge Paragraph 2; Intergovernmental  
Personnel Act Detailees

The Office of Government Ethics (OGE) continues to work with the White House Counsel's Office to identify and answer various questions concerning Executive Order 13490 and the Ethics Pledge for non-career appointees. OGE thought it would be useful to advise agency ethics officials of the resolution of two questions that recently arose at several agencies. The first question concerns how to apply paragraph 2 of the Pledge to an appointee who gives an official speech at an event sponsored by a former employer or client. The second question is whether the Pledge applies to non-Federal personnel detailed to an agency under the Intergovernmental Personnel Act. The answers to these questions are set out below.

Speeches and the Effect of Pledge Paragraph 2

OGE and the White House have received numerous questions about whether paragraph 2 of the Ethics Pledge prohibits an appointee from giving an official speech at an event sponsored by a former employer or client. Paragraph 2 prohibits appointees from participating, for two years after their appointment, in any particular matter involving specific parties that is directly and substantially related to a former employer or client. (Paragraph 2 is discussed in more detail in DO-09-011, [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2009/do09011.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09011.pdf).) With regard to speeches and presentations made in an official capacity OGE, in consultation with the White House Counsel's Office, has determined that the Pledge is not intended to prohibit an appointee from participating in an official speech unless the speech would have a demonstrable financial effect on the former employer or client.<sup>1</sup>

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<sup>1</sup> It is important to note that the Pledge does not apply to speeches given in an appointee's personal capacity. Presentations given in one's personal capacity may be subject to other ethics provisions, including 5 C.F.R. § 2635.807, 5 C.F.R. § 2635.808(c), and 5 C.F.R. part 2636.

By way of background, OGE has addressed the application of 18 U.S.C. § 208 and 5 C.F.R. § 2635.502 to official speeches on several occasions. *See, e.g.*, OGE Informal Advisory Letters 98 x 14; 96 x 2; 94 x 14. For purposes of section 208, OGE generally has viewed the decision to give an official speech as a particular matter. 96 x 2 (Ed. Note); *cf.* OGE, *Report to the President and to Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment* 8 (January 2006)(application of 18 U.S.C. § 205 to request for Government speaker). An employee is prohibited from giving an official speech to an organization whose interests are imputed to the employee under section 208, if the speech would have a direct and predictable effect on the organization's financial interest. In OGE's experience, usually the sponsor of an event will have a financial interest in an official speech only if an admission fee is charged, the event is a fundraiser, or the event is some kind of business development activity (such as a seminar for current or prospective clients).

For purposes of 5 C.F.R. § 2635.502, OGE also generally has viewed the decision to give an official speech as a particular matter involving the event sponsor as a specific party. OGE 98 x 14; OGE 94 x 14. If an employee has a covered relationship with the sponsor--for example, the sponsor is a former employer under section 2635.502(b)(1)(iv)--the employee should not participate in an official speech if a reasonable person would question his or her impartiality, absent an authorization under section 2635.502(d). OGE 94 x 14. Nevertheless, OGE certainly is aware of cases in which agencies have determined either that the circumstances surrounding the speech really did not raise any reasonable impartiality concerns or that any such concerns were outweighed by the need for the employee's services. *See* 5 C.F.R. § 2635.502(c), (d). In such cases, agency ethics officials often still will emphasize that the employee should not use the same organization as a preferred forum for repeated speeches when other comparable forums are available.

Pledge paragraph 2, of course, is similar in many respects to section 2635.502, including the focus on particular matters involving specific parties. *See* DO-09-011. Consistent with how speeches have been treated for purposes of 18 U.S.C. § 208 and 5 C.F.R. § 2635.502, the Pledge was not intended to sweep every official speech to a former employer or client under the bar of Pledge paragraph 2. The Executive order elsewhere recognizes that making a speech does not necessarily reflect a close affinity with the event sponsor. *See* Exec. Order 13490, sec. 2(j)(definition of former client excludes services limited to speech or similar appearance). While paragraph 2 does not include the same "reasonable person" clause as section 2635.502, the Pledge provision was not intended to bar speeches that do not implicate the underlying concerns about special access to Government decisionmakers who can bestow regulatory and financial benefits on former associates. *Cf. U.S. v. Sun-Diamond Growers*, 526 U.S. 398, 407 (1999)(dicta)(official speech to farmers about USDA policy should not be viewed as official act implicating illegal gratuities statute). In many cases, the sponsor will have an academic or policy interest in the subject matter of the speech but no direct pecuniary interest in hosting the speech itself.

This does not mean that paragraph 2 is wholly inapplicable to official speeches. Where the decision to give an official speech actually would affect the financial interests of the sponsor,



the concerns under the Pledge about special access are relevant. Thus, if the former employer or client charges an admission fee or organizes the event for the purpose of fundraising or business development, the appointee will be barred from giving an official speech, absent a waiver under section 3 of the Executive Order. Even where Pledge paragraph 2 is inapplicable, ethics officials are reminded to analyze any official speaking engagements under 18 U.S.C. § 208 and 5 C.F.R. § 2635.502, as discussed above.

#### Detailees under the Intergovernmental Personnel Act Are Not Subject to the Pledge

Several agencies have asked whether detailees under the Intergovernmental Personnel Act (IPA) are required to sign the Pledge. The short answer is no.

The IPA provides for the temporary assignment of personnel from certain non-Federal entities to Federal agencies. 5 U.S.C. § 3372; *see generally* DO-06-031, [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2006/do06031.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2006/do06031.pdf). The IPA clearly distinguishes between those who actually are appointed by an agency and those who are merely detailed from a non-Federal entity to an agency. 5 U.S.C. § 3374(a)(1),(2). IPA detailees from academia, State and local government, and non-profit entities may serve in executive branch agencies for two years with the possibility of a two year extension. While working in the executive branch, detailees remain employed by their institution or organization and return to their employer when the detail is over. Simply put, IPA detailees are not appointees at all. Therefore, they are not subject to the Pledge, which applies to "every *appointee* in every executive agency *appointed* on or after January 20, 2009." Exec. Order 13490, sec. 1 (emphasis added); *see also id.*, sec. 2(b).

This analysis would not apply to any personnel who actually receive an appointment under the IPA. However, as a general matter, OGE rarely encounters questions about IPA appointees. Agency ethics officials should contact OGE if they have any question about whether a particular IPA appointee should be considered a non-career appointee subject to the Pledge. *See generally* DO-09-010 (discussing criteria for appointments subject to Pledge).



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

February 18, 2010  
DO-10-003

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Attendance by Staff Accompanying Official Speakers

In OGE DAEOgram DO-09-007 dated February 11, 2009, the United States Office of Government Ethics (OGE) addressed implementation of the lobbyist gift ban imposed by section 1 of Executive Order 13490.<sup>1</sup> The lobbyist gift ban is one part of the President's efforts to curb undue influence by special interests, but as stated in that DAEOgram, the lobbyist gift ban was not intended to prohibit Executive Branch officials from communicating official views to audiences comprised in part of registered lobbyists or at events that may be sponsored by organizations that employ registered lobbyists. Such events may have a registration fee or include a luncheon. Consequently, DAEOgram DO-09-007 concluded in part:

Appointees still may accept offers of free attendance on the day of an event when they are speaking or presenting information in an official capacity, as described in 5 C.F.R. § 2635.204(g)(1), notwithstanding the lobbyist gift ban. This is not a gift exception, but simply an application of the definition of "gift" in section 2635.203(b).

In short, free attendance for official Executive Branch speakers in such circumstances, consistent with long-standing rules, falls outside the meaning of "gift." It has come to OGE's attention that there may be some inconsistencies in how agency ethics officials are applying these rules with regard to employees who must accompany official agency speakers to such events. The purpose of this memorandum is to provide guidance on such personnel, who have no speaking role themselves but may provide essential support to an official speaker.

The OGE gift rules have always been clear on the treatment of free attendance for official speakers at an outside event. Employees may accept offers of free attendance on the day of an event when they are speaking or presenting information in an official capacity, notwithstanding the gift restrictions in 5 C.F.R. § 2635.202(a). The rationale is that "the employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency." 5 C.F.R. § 2635.204(g)(1).

This guidance also applies to agency personnel whose presence at the event is deemed essential under agency procedures to the speaker's participation at the event. Examples could include members of security details, a representative of the agency's public affairs division, or an aide to assist with a presentation. The number and types of personnel necessary, if any, to the speaker's participation will vary depending upon who the speaker is and the nature of the event. There are obviously different considerations for the Secretary of Defense addressing several thousand people at a convention center as compared to a Federal Communications Commissioner speaking to a luncheon attended by several dozen communications lawyers. OGE does not view having essential personnel either remain outside the room where the event is taking place or refraining from food that is offered with the event as necessary to comply with the gift rules. Such an interpretation would not only be impractical to enforce, but it would ignore the reality that some aspects of attendance may be difficult or impossible to avoid. See 5 C.F.R. § 2635.204(g)(4) (definition of free attendance includes more than food).

It must be emphasized, however, that this is not an expansion of the categories of persons who may attend such events free of charge. Rather, it is recognition that attendance by particular personnel whose presence is truly essential to the performance of the speaker's official duties at a specific event does not violate either OGE's long-standing gift rules or the Executive Order 13490 lobbyist gift ban.

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<sup>1</sup> See [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2009/do09007.html](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09007.html).



United States  
**Office of Government Ethics**  
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February 22, 2010  
DO-10-004

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Post-Employment Under the Ethics Pledge: FAQs

As you know, non-career appointees appointed on or after January 20, 2009, must sign an Ethics Pledge that contains a number of commitments. Exec. Order 13490, sec. 1. Several of these commitments pertain to the conduct of appointees while they are still in Government, but two of the commitments concern post-employment activities. Specifically, paragraphs 4 and 5 of the Pledge impose significant new post-employment restrictions on appointees. Paragraph 4 largely tracks the provisions of 18 U.S.C. § 207(c), with which most ethics officials are familiar. Paragraph 5, by contrast, introduces a number of concepts derived from the Lobbying Disclosure Act (LDA), with which ethics officials may be less familiar.

The Office of Government Ethics (OGE) has received questions about both paragraphs 4 and 5 of the Pledge. Therefore, OGE has compiled the following list of frequently asked questions and answers about these new post-employment restrictions. As always, OGE is ready to assist agency ethics officials with any other questions about the post-employment provisions or any other requirements of the Pledge.

**A. Paragraph 4: Post-Employment Cooling-Off Period**

Paragraph 4 of the Pledge provides:

If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment.

**1. What is the relationship between paragraph 4 of the Pledge and 18 U.S.C. § 207(c)?**

For the most part, paragraph 4 of the Pledge extends the cooling-off period from one to two years for appointees who are senior employees under 18 U.S.C. § 207(c). The Pledge does not extend criminal penalties to conduct beyond the one-year period in section 207(c)--which only Congress can do--but the Executive Order does specify other enforcement mechanisms, including civil proceedings and agency debarment, for violations of the two-year restriction of paragraph 4. *See* Exec. Order 13490, sec. 5. (Note, however, that the trigger for the two-year period under paragraph 4 might not always coincide with the one-year cooling-off period of section 207(c), as illustrated in the answer to Question 6 below.)

**2. Which appointees are subject to the two-year restriction of paragraph 4?**

Like the existing restriction in 18 U.S.C. § 207(c), paragraph 4 of the Pledge is intended to cover any appointees who are "senior employees," which reflects the judgment that it is appropriate to impose a two-year cooling-off period on higher level appointees who are likely to have the most influence within their agencies. The categories of senior employees are described in 18 U.S.C. § 207(c)(2) and 5 C.F.R. § 2641.104. The restriction of paragraph 4 applies if the appointee is restricted by section 207(c) at the time of his or her departure from Government.

*Example: A non-career Senior Executive Service appointee, whose rate of basic pay meets the salary threshold for being a senior employee, leaves the Department of Energy to work for a private law firm. Sixteen months later, she is asked to represent a disappointed bidder in a bid protest suit against the Department in the Court of Federal Claims. Paragraph 4 of the Pledge would prohibit her from doing so. However, if she had only been a GS-14, Schedule C appointee, she could engage in this representation without violating paragraph 4 of the Pledge because she would never have been a senior employee under 18 U.S.C. § 207(c). Nevertheless, if she had participated personally and substantially as an employee in the contract award that led to the bid protest, she would be permanently prohibited from representing any other person in the matter, under 18 U.S.C. § 207(a)(1).*

**3. How does paragraph 4 affect "very senior employees?"**

Very senior employees, as described in 18 U.S.C. § 207(d)(1) and 5 C.F.R. § 2641.104, are not covered by 18 U.S.C. § 207(c), and therefore they are not subject to the two-year restriction in paragraph 4 of the Pledge. However, these very senior employees are already subject to a similar two-year cooling-off period under section 207(d) itself (as well as additional restrictions on contacting Executive Schedule officials even in agencies in which they did not serve).

**4. Which officials may not be contacted under paragraph 4 of the Pledge?**

Unlike paragraph 5 of the Pledge (discussed below), which augments the requirements of 18 U.S.C. § 207(c), paragraph 4 in this respect tracks 18 U.S.C. § 207(c), which bars representational contacts with any official of any agency in which a senior employee served in any capacity during the one-year period prior to terminating from a senior position. The scope of 18 U.S.C. § 207(c) is explained at length in OGE's post-employment regulations. *See* 5 C.F.R. § 2641.204.

**5. If post-employment activities are permitted by an exception to 18 U.S.C. § 207(c), are they likewise permitted under paragraph 4 of the Pledge?**

Yes. Paragraph 4 of the Pledge incorporates the exceptions and other provisions applicable to 18 U.S.C. § 207(c), as well as the relevant OGE post-employment regulations in 5 C.F.R. part 2641. *See* Exec. Order 13490, sec. 2(m).

*Example: An appointee leaves his senior position at the Department of Justice to become an employee of the State of New York. He wants to represent New York in a meeting with DOJ officials in a meeting about drug enforcement policy. This activity is permissible under 18 U.S.C. § 207, because it falls within the exception at 18 U.S.C. § 207(j)(2)(A) for carrying out official duties as an employee of a state or local government. Therefore, the activity also is permissible under paragraph 4 of the Pledge. However, if the former appointee does not actually become an employee of the State, but simply provides consulting or legal services as a contractor, he may not rely on this exception. *See* 5 C.F.R. § 2641.301(c)(2) and Example 3.*

**6. How does paragraph 4 of the Pledge apply to non-career appointees who later are appointed or reinstated to career positions?**

The two-year period specified in paragraph 4 runs from the end of the appointee's non-career appointment, not from the end of any separate career appointment the individual may have. In other words, the two-year clock begins to run as soon as a non-career appointee moves to a position that is not subject to the Pledge. (By contrast, the one-year cooling-off period of 18 U.S.C. § 207(c) commences when an individual ceases to be a senior employee, whether career or non-career. 5 C.F.R. § 2641.204(c).) Of course, in most cases, non-career appointees will leave Government when their non-career service is concluded.

*Example: A career member of the SES is given a non-career Presidential appointment, at which time she signs the Ethics Pledge. After the conclusion of her Presidential appointment, she is reinstated as a career SES appointee, pursuant to 5 C.F.R. § 317.703. After serving five more*

*years in a career SES position, she retires from Government. Although she is a senior employee subject to 18 U.S.C. § 207(c) when she retires, she is not restricted by paragraph 4 of the Pledge because more than two years already have elapsed since the end of her non-career appointment.*

**B. Paragraph 5: Post-Employment Lobbying Ban**

Paragraph 5 of the Pledge provides:

In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.

**1. What is the relationship of the lobbying ban in paragraph 5 to the post-employment restrictions in paragraph 4 of the Pledge or 18 U.S.C. § 207?**

The restrictions of paragraph 5 are in addition to the restrictions of paragraph 4, 18 U.S.C. § 207, or any other provision of law (e.g., the Procurement Integrity Act, 41 U.S.C. § 423(d)).

**2. Does the lobbying ban in paragraph 5 apply to appointees who are not "senior employees?"**

Yes. The lobbying ban applies to all appointees who sign the Pledge, unlike the restriction in paragraph 4. Note, however, that certain Schedule C and other appointees are not required to sign the Pledge, i.e., those with no policymaking duties (such as chauffeurs and secretaries) who have been exempted for that reason from public financial disclosure requirements. See DO-09-010, [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2009/do09010.pdf](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09010.pdf).

*Example: A non-career SES appointee is paid below the basic pay threshold to be considered a senior employee, under 18 U.S.C. § 207(c)(2)(A)(ii). Although he is not subject to the two-year restriction in paragraph 4 of the Pledge, he is subject to the lobbying ban in paragraph 5.*

**3. Does the lobbying ban extend beyond the agency where the former appointee served?**

Yes. Paragraph 5, unlike paragraph 4 or 18 U.S.C. § 207(c), restricts a former appointee from lobbying certain officials throughout the entire Executive Branch, not just officials of the agency where the former appointee actually served. (What it means to "lobby," including the concepts of "lobbying contact" and "acting as a registered lobbyist," is discussed in questions 6 through 10 below.)

***Example:** A former appointee at the Department of Transportation may not, as a registered lobbyist, make a lobbying contact with the Secretary of Health and Human Services. This would be prohibited even though she never served at HHS in any capacity and the subject matter of the lobbying is unrelated to her former Government position.*

#### **4. Which officials may not be contacted by former appointees under paragraph 5?**

The ban extends to lobbying contacts with specified Executive Branch personnel. The officials who may not be contacted are: any "covered executive branch official," defined in the LDA as the President, the Vice President, any official in the Executive Office of the President, any Executive Schedule official (EL I-V), any uniformed officer at pay grade 0-7 or above, and any Schedule C employee, 2 U.S.C. § 1602(3); and any non-career SES member, even though the latter are not covered under the LDA definition. For purposes of simplicity, the discussion below will refer to all Executive Branch officials who may not be contacted as "covered officials." Paragraph 5 of the Pledge does not prohibit former appointees from contacting other Executive Branch personnel besides these covered officials. Nor does it prohibit former appointees from contacting "covered legislative branch officials," within the meaning of the LDA, 2 U.S.C. § 1602(4).

***Example:** A former appointee of the Environmental Protection Agency has become a registered lobbyist. She may not, on behalf of one of her lobbying clients, contact a non-career SES official at the Department of Agriculture. However, she may contact a career SES official at the Department, and she also may contact Legislative Branch officials.*

#### **5. How long does the lobbying ban last?**

The ban lasts for the "remainder of the Administration." This means the duration of all terms of the President who was in office at the time the appointee received an appointment covered by the Executive Order. Executive Order 13490, sec. 2(o)(definition of "Administration"). In some cases, holdover officials appointed during a prior Administration have signed the Pledge as a condition of continued employment. Such holdover officials are bound by their commitment under paragraph 5 for the same duration as appointees who actually were appointed during the current Administration.

#### **6. What does it mean to "lobby?"**

For purposes of the Pledge, to lobby is "to act . . . as a registered lobbyist." Exec. Order 13490, sec. 2(f). A registered lobbyist, in turn, is a person listed in required filings as a lobbyist for a particular client by a registrant under the LDA, 2 U.S.C. § 1603(a), because of the person's actual or anticipated lobbying activities and contacts. Executive Order 13490, sec. 2(e); see 2 U.S.C. §§ 1602(10)(definition of lobbyist). **In a nutshell: if a former appointee is a registered**



**lobbyist for a particular client, he or she is prohibited by paragraph 5 of the Pledge from making any lobbying contact with a covered official on behalf of that client.** The LDA definition of lobbying contact is broad, including oral or written communications made on behalf of a client with regard to Federal legislation (such as legislative proposals), executive branch programs and policies (such as rulemaking or contracts), and the nomination/confirmation of persons for PAS positions. 2 U.S.C. § 1602(8)(A). However, the definition also enumerates certain exceptions, which should be consulted to determine if a former appointee would be engaging in prohibited lobbying under the Pledge. 2 U.S.C. § 1602(8)(B).

***Example:** An appointee recently left the Treasury Department to join XYZ Associates, a consulting firm. The firm is helping one of its clients to obtain Federal funding to develop an innovative telecommunications security product. XYZ Associates is registered for this client under the LDA, and it listed the former appointee as one of three lobbyists in its latest quarterly report of lobbying activity filed under the LDA. Under paragraph 5 of the Pledge, the former appointee may not meet with the Secretary of Homeland Security to seek support for funding of the client's research.*

***Example:** An appointee leaves Government to become Chancellor of a large university. In her new job, she has occasion to make contacts with various covered officials about a range of issues of concern to her university, such as education policy, taxation, and Federal grants. The university itself is registered under the LDA, because it employs an in-house lobbyist in its governmental affairs office and it meets the monetary threshold for registration under 2 U.S.C. § 1603(a)(3)(A)(ii). However, the university has never listed its Chancellor as a lobbyist and is not required to do so under the LDA, because the Chancellor's lobbying contacts and other lobbying activities constitute a small fraction (far less than 20%) of the total time she devotes to university services during any 3-month period. See 2 U.S.C. § 1602(10)(definition of lobbyist). Therefore, the former appointee does not act as a registered lobbyist when she contacts the covered officials, and she does not violate paragraph 5 of the Pledge.*

**7. How does a former appointee know if she would be making a lobbying contact "as a registered lobbyist"?**

The most obvious way that a former appointee would know if she is acting as a registered lobbyist is if she is already listed as a lobbyist in a registration statement (LD-1 form) or quarterly report (LD-2 form), based on actual or expected lobbying for a particular client. These forms are filed by the lobbyist's employer with the Secretary of the Senate and the Clerk of the House. Additionally, even if the former appointee is not already listed as a lobbyist in an LDA filing, she will be acting as a registered lobbyist if she is engaging in lobbying that is expected to be reported in a subsequent LDA filing that will list her as a lobbyist. This interpretation recognizes that permitting former appointees a "grace period" during which they may freely

lobby covered officials, when they reasonably anticipate reporting those activities in a subsequent LDA filing, would be inconsistent with the purposes of the Pledge.

*Example: A former appointee has been retained by a client expressly for the purpose of making several lobbying contacts, and the former appointee's employer has determined that the LDA registration requirement has been triggered, under 2 U.S.C. § 1603(a). However, the employer has until 45 days after the former appointee is retained to file the initial registration statement that would list the individual as a lobbyist. 2 U.S.C. § 1603(a)(1). If the former appointee makes any lobbying contact with a covered official during that 45 day period, she will be deemed to have acted as a registered lobbyist during that time period, for purposes of the Pledge. This is because the registration statement that is eventually filed will list this individual "as an employee of the registrant who has acted . . . as a lobbyist on behalf the client." 2 U.S.C. § 1603(b)(6)(emphasis added).*

**8. Does this mean that ethics officials have to opine about what circumstances will trigger registration under the LDA?**

Ethics officials will need some familiarity with the LDA registration system in order to counsel appointees about their post-employment activities under paragraph 5 of the Pledge. However, neither OGE nor DAEOS can give definitive advice about LDA registration requirements. Appointees and former appointees should be advised to consult with their prospective employers and/or private counsel about whether their anticipated activities will trigger registration and reporting requirements under the LDA. Former appointees and their employers also may contact the Secretary of the Senate and the Clerk of the House of Representatives for guidance concerning registration and reporting requirements.

**9. Are there any circumstances under which a former appointee may become a registered lobbyist?**

There are relatively narrow circumstances in which a former appointee may become a registered lobbyist. Paragraph 5 of the Pledge is intended to minimize the potential for unfair advantage or undue influence resulting from an appointee's service in the Executive Branch. Consequently, for the remainder of the Administration, a former appointee cannot become a registered lobbyist if this will involve making any lobbying contact with a covered official in the Executive Branch. However, the Pledge does not restrict former appointees from registering and making contacts with Legislative Branch officials, as this would not implicate the same concerns about exploiting the access and influence obtained as a result of prior Executive Branch service.

*Example: A former Commerce Department appointee is retained by a utility company to lobby on a legislative proposal to create tax incentives for installing new emissions control technology. After being retained, the former appointee is*

*listed as a lobbyist in an LDA registration statement for this activity. As long as he makes no lobbying contacts with covered officials in the Executive Branch on behalf of this client and confines all his lobbying contacts to Legislative Branch officials, he will not violate paragraph 5 of the Pledge.*

***Example:** In the scenario above, the client asks the former appointee to attend a meeting with the Assistant Secretary for Tax Policy at the Treasury Department to discuss how the legislative proposal would be consistent with the Administration's agenda. He may not do so, because this would be a prohibited lobbying contact with a covered official in the Executive Branch.*

**10. If a former appointee is registered as a lobbyist on behalf of one client, is he prohibited from making contacts on behalf of another client for which he is not required to register?**

No. The registration and quarterly reporting requirements of the LDA are client-specific, as is the definition of "lobbyist." See 2 U.S.C. §§ 1603(a)(2)(single registration for each client); 1604(a)(separate quarterly report for each client); 1602(10)(lobbyist is individual employed or retained by client for certain amount of lobbying contacts and activities on behalf of that client). Therefore, a former appointee does not "lobby" a covered official, in violation of paragraph 5 of the Pledge, unless he does so on behalf of a specific client for which he is a registered lobbyist.

***Example:** A former appointee works for a law firm that does some lobbying. His firm has registered him as a lobbyist for Blue Corporation, a client which he represents in lobbying contacts with Legislative Branch officials. He also has another client, Green Corporation, for which he has provided only non-lobbying services. Green Corporation now asks him to make a lobbying contact with the Department of Transportation. His firm decides it will not be necessary to register him for Green Corporation. (The firm might determine, for example, that he does not meet the definition of lobbyist for Green Corporation, under 2 U.S.C. § 1602(10), or that the firm itself does not meet the monetary threshold to register for Green Corporation, under 2 U.S.C. § 1603(a)(3)(A)(i).) He would be prohibited, however, from making even a single lobbying contact with DOT on behalf of Blue Corporation, because he is a registered lobbyist for Blue Corporation, even though his other lobbying contacts for that client have been exclusively with the Legislative Branch.*

**11. Is there any exception to the requirements of paragraph 5 for former appointees who signed the Pledge but served only a brief time in the Administration?**

Neither paragraph 5 nor any other part of the Executive Order makes any exception for appointees who signed the Pledge but served only a short time.