



United States
Office of Government Ethics
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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/, 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

- 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](#)