

## PARAGRAPH 4

**If**, at the time of departure from Government, an appointee is:

Senior Employee	As defined in 18 U.S.C. 207(c)(2) and 5 C.F.R. 2641.104.
-----------------	--

**THEN**, for two years following the end of the appointee position, the former appointee may not:

Make Communications/ Appearances	(1) Communications - imparting or transmitting information of any kind, whether orally, in written correspondence, by electronic media, or by any other means. (2) Appearance - physical presence, in either formal or informal setting
With the Intent to Influence	(1) To take action for purpose of seeking a Government ruling, benefit, approval, or other discretionary Government action; or (2) Affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy.
To or Before Employee of Former Agency	(1) Directed to and received by former agency or by employee of former agency in employee's official capacity
On Behalf of Any Other Person	(1) Acting as another person's agent or attorney; or (2) Acting with the consent of another person, whether express or implied, and subject to some degree of control or direction by the other person in relation to the communication or appearance
Matter on which Former Appointee Seeks Official Action	(1) To make a communication or appearance for the purpose of inducing a current employee to make a decision or otherwise act in official capacity with respect to a particular matter involving specific parties, particular matter, or non-particular matter.
Unless...	(1) Pursuant to exception in 18 U.S.C. 207(j) or waiver provision to 18 U.S.C. 207(k); or (2) Waiver under section 3 of Executive Order



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

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.

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch

# THE ETHICS PLEDGE: Post-Employment Restrictions

September 2014

# Paragraphs 4 and 5



- Paragraph 4: applies to any former “senior employee” who signed the Pledge and is covered by the post-employment restrictions set forth in 18 U.S.C. § 207(c), the “cooling-off” period is extended to two years following the end of the employee’s appointment.
- Paragraph 5: For the remainder of the Obama Administration, no appointee who signed the Pledge may lobby any covered executive branch official or non-career Senior Executive Service appointee.

# Paragraph 4



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.

# Sample Post-Employment Counseling Checklist



- Does the employee have any procurement responsibilities?  
Yes – Procurement Integrity Act  
No
- Did the employee have a recusal while seeking employment?  
Yes – 208/SOC/Procurement Integrity Act  
No
- Did the employee have any party matters under her official responsibility?  
Yes – 207(a)(1)  
No
- Is the employee a “senior employee”  
Yes – 207(c)/Pledge para. 4  
No

# 18 U.S.C. § 207(c)



For one year after service in a senior position terminates, no former senior employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he or she served in any capacity during the one-year period prior to termination from senior service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee.



## PARAGRAPH 4: ETHICS PLEDGE

If, at the time of departure from the Government, an appointee is a Senior Employee then, for two years following the end of the “Appointee” position, the former appointee may not:



<b>Make Communications/ Appearances</b>	<b>(1) Communications - imparting or transmitting information of any kind, whether orally, in written correspondence, by electronic media, or by any other means</b>  <b>(2) Appearance - physical presence, in either formal or informal setting</b>
<b>With the Intent to Influence</b>	<b>(1) To take action for purpose of seeking a Government ruling, benefit, approval, or other discretionary Government action; or</b>  <b>(2) Affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy</b>

To or Before Employee of Former Agency	(1) Directed to and received by former agency or by employee of former agency in employee's official capacity
On Behalf of Any Other Person	<p>(1) Acting as another person's agent or attorney; or</p> <p>(2) Acting with the consent of another person, whether express or implied, and subject to some degree of control or direction by the other person in relation to the communication or appearance</p>
Matter on which Former Appointee Seeks Official Action	(1) To make a communication or appearance for the purpose of inducing a current employee to make a decision or otherwise act in official capacity with respect to a particular matter involving specific parties, particular matter, or non-particular matter
Unless...	<p>(1) Pursuant to exception in 18 U.S.C. 207(j) or waiver provision to 18 U.S.C. 207(k); or</p> <p>(2) Waiver under section 3 of Executive Order</p>



# Do any exceptions apply?



Exceptions / Waivers	(a)(1)	(a)(2)	(b)	(c)	(d)	(f)
<b>Official Government Duties (j)(1)</b>	X	X	X	X	X	X
<b>State and Local Governments and Institutions, Hospitals, and Organizations (j)(2)</b>				X	X	
<b>International Organizations (j)(3)</b>	X	X	X	X	X	X
<b>Special Knowledge (j)(4)</b>				X	X	
<b>Scientific or Technological Information (j)(5)</b>	X	X		X	X	
<b>Testimony under Oath or Statements Made under Penalty of Perjury (j)(6)</b>	X	X	X	X	X	X
<b>Political Parties and Campaign Committees (j)(7)</b>				X	X	
<b>Presidential Waiver (k)</b>	X	X	X	X	X	X

# Paragraph 5



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

## PARAGRAPH 5: ETHICS PLEDGE

Upon leaving government service, a former appointee may not for the duration of all terms of the current president:



Lobby	<p>(1) Make a “lobbying contact “ (as defined in 2 U.S.C. § 1602(8) on behalf of a client),</p> <p>(2) at a time the former appointee is listed as a lobbyist for that client in a database at either <a href="http://www.senate.gov">www.senate.gov</a> or <a href="http://www.clerk.house.gov">www.clerk.house.gov</a> (or it is anticipated that a future filing will report appointee as a lobbyist for the client at the time of the lobbying contact).</p>
“Off-limits” Officials	<p>“Covered Executive Branch Officials” means (as defined in 2 U.S.C. § 1602(3)):</p> <p>President; Vice President; any official in the Executive Office of the President; any Executive Schedule Official (EL I-V); any uniformed officer at pay grade O-7 or above; any non-career member of the SES; and any Schedule C employee.</p>

Elaine Newton  
Associate Counsel  
Office of Government Ethics  
202-482-9265  
[enewton@oge.gov](mailto:enewton@oge.gov)

Susan Beard  
Assistant General Counsel for General Law  
Department of Energy  
202-586-3414  
[Susan.Beard@hq.doe.gov](mailto:Susan.Beard@hq.doe.gov)

Heather Gottry  
Deputy General Counsel for General Law  
Commodity Futures Trading Commission  
202-418-5774  
[hgottry@cftc.gov](mailto:hgottry@cftc.gov)

# 18 U.S.C. § 207 Exceptions and Waivers: A Quick Reference Guide\*

## Official Government Duties

A former employee is not restricted by any of the substantive provisions of § 207 from engaging in post-employment activities performed in carrying out official duties on behalf of the U.S. This exception also extends to activities undertaken in carrying out official duties as an elected official of a state or local Government.

## State and Local Government and Institutions, Hospitals, and Organizations

A former senior or very senior employee will not violate § 207(c) or (d) if his communication or appearance is made in carrying out official duties as an employee of and is made on behalf of (1) an agency or instrumentality of a State or local Government, (2) an accredited degree-granting institution of higher education as defined in § 101 of the Higher Education Act of 1965, as amended (20 U.S.C. § 1001), or (3) a hospital or medical research organization exempted and defined under § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)).

## International Organizations

A former employee is not restricted by any of the substantive provisions of § 207 from representing, aiding, or advising an international organization in which the U.S. participates, if the Secretary of State certifies in advance that such activity is in the interest of the U.S.

## Special Knowledge

A former senior or very senior employee will not violate § 207(c) or (d) if he makes a statement that is based on his own special knowledge in the particular area that is the subject of the statement, provided that he receives no compensation for making the statement.

## Scientific or Technological Information

A former employee will not violate §§ 207(a)(1), (a)(2), (c), or (d), if he makes a communication solely for the purpose of furnishing scientific or technological information in accordance with procedures acceptable to the agency involved. Alternatively, a former employee may make a communication if the head of the agency concerned publishes a certification in the *Federal Register* stating that the former employee has outstanding qualifications in a scientific, technological, or other technical discipline, that he is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the former employee's participation.

## Testimony

A former employee is not restricted by any of the substantive restrictions of § 207 from giving testimony under oath or from making statements required to be made under penalty of perjury, subject to a special rule with respect to expert opinion testimony. Unless expert opinion

testimony is given pursuant to court order, a former employee may not provide such testimony on a matter on behalf of any other person except the U.S. (or the Congress) if he is subject to the lifetime prohibition contained in § 207(a)(1) relating to that matter.

## Political Parties and Campaign Committees

A former senior or very senior employee will not violate § 207(c) or (d) if his communication or appearance is on behalf of a candidate for Federal or State office or an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.

## Presidential Waiver

A former employee is not restricted by any of the substantive restrictions of § 207 if granted 1 of 25 Presidential waivers in connection with his reemployment at a Government-owned, contractor operated entity.

## OGE Director Waiver

A former employee is not restricted by 207(c) if the Director waived the employee's position before the employee entered the position.

\* This guide is only a summary. When giving advice, always consult the complete set of laws, rules, and opinions that apply to the particular situation.



## 18 U.S.C. § 207 Exception and Waiver Applicability

Exception/Waiver	(a)(1)	(a)(2)	(b)	(c)	(d)	(f)	(l)
Official Government Duties § 207(j)(1)	X	X	X	X	X	X	X
State and Local Government and Institutions, Hospitals, and Organizations § 207(j)(2)				X	X		
International Organizations § 207(j)(3)	X	X	X	X	X	X	X
Special Knowledge § 207(j)(4)				X	X		
Scientific or Technological Information § 207(j)(5)	X	X		X	X		
Testimony § 207(j)(6)	X	X	X	X	X	X	X
Political Parties and Campaign Committees § 207(j)(7)				X	X		
Presidential Waiver § 207(k)	X	X	X	X	X	X	X
OGE Waiver § 207(c)(2)(C)				X		X	

October 2009



## Presidential Documents

### Executive Order 13490 of January 21, 2009

#### Ethics Commitments by Executive Branch Personnel

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)-(l) 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 factfinding 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.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish and a vertical line through it.

THE WHITE HOUSE,  
*January 21, 2009.*

[FR Doc. E9-1719

Filed 1-23-09; 8:45 am]

Billing code 3195-W9-P