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LEGAL ADVISORY

TO: Agency Heads and Designated Agency Ethics Officials

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SUBJECT: Waiver Authority and Making Waivers Public under Section 3 of Executive Order 13989, “Ethics Commitments by Executive Branch Personnel”

The U.S. Office of Government Ethics (OGE), after consultation with the White House Counsel’s Office, is issuing this legal advisory to provide guidance to agency heads and Designated Agency Ethics Officials (DAEOs) on the application of [section 3 of Executive Order 13989](#). Specifically, this advisory provides guidance on the authority under section 3 to issue waivers and the requirement to make the waivers public.

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. With the approval of the White House, the Acting Director of the Office of Management and Budget (OMB) has designated the DAEO as the position of each executive agency to exercise section 3 waiver authority after consultation with the Counsel to the President. This authority is accompanied by the duty to make waivers granted under section 3 public. Information concerning the designation and guidance on the requirement to make waivers public are outlined below.

Waiver Authority Designated to DAEOs

Section 3(a) of the Executive Order provides, in part:

The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, 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 OMB 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 Acting Director of OMB has designated the DAEO of each executive agency the authority to grant, issue and certify waivers under Section 3 of Executive Order 13989. Waivers may be granted only in consultation with the Counsel to the President and under certification and



other requirements contained in Executive Order 13989. This designation reflects both the White House Counsel's and the Acting Director of OMB's high degree of confidence in the professional judgment of the DAEOs. When initiating consultation with the White House Counsel's Office, DAEOs should email ethics@who.eop.gov and include "Pledge Waiver" in the subject line of the email.

Making Waivers Public

Section 3(b) of the Executive Order provides that "[a] waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter."

Any waiver granted under section 3 of the Executive Order must be made public within 10 business days of that waiver being signed by the DAEO. To satisfy the requirement that waivers be made public, all such waivers must be posted on that agency's website. Also, to ensure consistency throughout the executive branch, agencies must meet the following requirements when posting waivers granted under section 3:

- The waiver must be signed by the DAEO and include the date signed.
- The agency must post the signed waiver to its website.
- Within seven calendar days after the signed waiver is posted to the agency website, the DAEO must email the hyperlink for the posted waiver to the agency's OGE desk officer and include in the message the date the agency posted the signed waiver to its website.

On its website, OGE will include links to all section 3 waivers posted by agencies, along with links to waivers issued within the last six years by the past two administrations. These links can be found by visiting the [Officials' Individual Disclosures Search Collection](#) on OGE's website.

Conclusion

OGE will continue to publish additional guidance on the Ethics Pledge in Executive Order 13989 as needed. If you have a question about the guidance in this legal advisory or any other part of the Ethics Pledge, please contact your OGE desk officer.