

## Trump's Executive Order on Ethics

New mandate revokes Obama's order and borrows similar language, while adding a lengthy revolving-door sentence for his appointees.

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### Takeaways

- Trump's Executive Order on Ethics Commitments by Executive Branch Appointees supersedes and revokes Obama's Executive Order.
- It requires appointees to sign a similar Ethics Pledge relating to receipt of gifts from lobbyists and lobbying organizations as well as revolving-door restrictions.

### WHAT DOES THIS ORDER DO?

- Generally, it requires appointees to commit not to accept gifts or gratuities from lobbyists or lobbying organizations (Registrants). It also broadens the revolving-door rules. The order requires appointees to sign an Ethics Pledge that they will abide by these rules.

### TO WHICH OFFICIALS DOES THIS ORDER APPLY?

- Every executive agency political appointee<sup>1</sup> appointed on or after January 20, 2017.
- Individuals appointed to a career position are not required to sign the Ethics Pledge.

### LOBBYIST GIFT BAN: PLEDGE

**GIFT BAN:** An appointee may not accept gifts from registered lobbyists or lobbying organizations for the duration of his or her service as an appointee.

### DO ANY OF THE OFFICE OF GOVERNMENT ETHICS ("OGE") RULES REGULATING GIFTS REMAIN FOR APPOINTEES?

- The Order adopts the definition of "gift" from the current OGE rules. The term specifically excludes the following (not an exhaustive list):

<sup>1</sup> "Appointee" **includes** 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.

- Modest items of food and non-alcoholic refreshments, such as soft drinks, coffee, and donuts, offered other than as part of a meal;
- Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
- Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations.

In addition, the following relevant OGE exceptions to the “gift ban” still apply:

- Personal friendship;
- Discounts and similar benefits (may accept reduced membership fees in a professional organization if the discount is offered to all government employees with the appropriate professional qualifications);
- Benefits resulting from outside business/employment of spouse;
- Benefits customarily provided by a prospective employer in connection with bona fide employment discussions;
- Gifts accepted under specific statutory authority;
- Gifts authorized by supplemental agency regulations.

Therefore, gifts that fall within these exceptions may still be accepted by Ethics Pledge signatories.

#### **HOW DOES THE ORDER FURTHER RESTRICT THE OGE GIFTS RULES?**

Like Obama’s Order, Trump’s Order **eliminates** some very old exceptions.

- Appointees may not accept:
  - Gifts provided subject to the \$20/\$50 exception (gifts with a value of \$20 or less per source per occasion, not to exceed \$50 per year per source);
  - Free attendance at “widely attended gatherings”;
  - Food and entertainment when on duty or official travel in a foreign area;
  - Gifts provided as part of a bona fide “award or honorary degree”;
  - Social invitations, including food, refreshments and entertainment, even if the invitation is from a person who is not a prohibited source;
  - Gifts in connection with political activities permitted by the Hatch Act Reform Amendments;
  - Benefits resulting from the appointee’s own outside business or employment activities.

### Practical advice relating to the lobbyist gift pledge:

Registrants and lobbyists should confirm with potential recipients of gifts prohibited by the lobbyist gift ban (e.g. \$20/\$50, "widely attended gatherings," etc.) that he or she is not a signatory of the Ethics Pledge. For widely attended gatherings it may be useful for written invitations to state that the invitation is not extended to signatories of the Ethics Pledge.

### REVOLVING DOOR BAN: PLEDGE

#### THOSE ENTERING GOVERNMENT SERVICE

- **All Appointees Entering Government.** For a period of 2 years from the date of appointment, an appointee cannot 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.
- **Lobbyists Entering Government.** (Also subject to paragraph directly above.) If appointee was a registered lobbyist within the **2 years** before the date of appointment, then for a period of 2 years after the date of appointment the appointee may not: (a) participate in any particular matter on which the appointee lobbied within the 2 years before the date of appointment; or (b) participate in the specific issue area in which that particular matter falls. This is less restrictive than the prior rule, which banned lobbyists from seeking or accepting a government appointment with an agency they had previously lobbied.

#### THOSE LEAVING GOVERNMENT SERVICE

- **Appointees Leaving Government.**
  - For a period of 5 years after termination from employment as an appointee, the former appointee will not engage in lobbying activities with respect to the agency the individual was appointed to serve. This is more restrictive than the previous rule, which applied for 2 years after termination of an appointment.
  - If, upon departure from the Government, an appointee is covered by the post-employment restrictions on communicating with employees of his/her former executive agency, he/she agrees to abide by those restrictions for a period of 1 year following the end of his/her appointment. (*This is consistent with 18 U.S.C. Sec. 207(c).*)
- **Appointees Leaving Government to Lobby.** In addition to abiding by the limitations of the paragraphs directly above, the appointee also agrees that upon leaving Government service, he/she will not engage in lobbying activities with respect to *any* covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Trump Administration.
- **Foreign Agents Registration Act (FARA).** An appointee may not, at any time after the termination of employment with the U.S. Government, engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2017, would require the individual to register under FARA. This lifetime ban is more restrictive than the prior rule.
- **"Lobbying Activities" Defined:** Under the Order, "lobbying activities" has the same meaning as that term has in the Lobbying Disclosure Act (LDA), except that the term does not include communicating or appearing with regard to: a judicial proceeding; a criminal or civil law enforcement inquiry, investigation, or proceeding; or any agency process for rulemaking, adjudication, or licensing, as defined in and governed by the Administrative Procedure Act, as Amended, 5 U.S.C. 551 et seq.

- Under the LDA, the term "lobbying activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.
- **WARNING:** Trump's use of the term "lobbying activities" subjects appointees to extremely broad post-employment restrictions. It essentially means that former appointees may not even work as strategic advisors serving behind the scenes of lobbying efforts.

## WAIVERS

The President or his designee may grant to any person a waiver of any restrictions contained in the pledge signed by such person.

## ENFORCEMENT

The OGE is charged with the responsibility of providing further guidance concerning the administration of the President's Executive Order on Ethics. The Attorney General is responsible for its enforcement by means of civil action. A former appointee who is found to have violated the Ethics Pledge may be barred from lobbying his or her former agency for up to five years longer than the time period provided in the Ethics Pledge.

One of the duties of the Director of the OGE is to adopt rules or procedures to (a) apply the lobbyist gift ban set forth in the pledge to all executive branch employees, (b) authorize limited exceptions to the lobbyist gift ban, and (c) clarify that no person will have violated the lobbyist gift ban if the person properly disposes of the gift pursuant to OGE regulations.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the attorneys below.

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