



February 6, 2017
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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: David J. Apol
General Counsel

SUBJECT: Executive Order 13770

On January 28, 2017, the President signed Executive Order 13770 titled, “Ethics Commitments by Executive Branch Appointees.” This Executive Order revokes and supersedes Executive Order 13490, “Ethics Commitments by Executive Branch Personnel,” which was signed on January 21, 2009. Pursuant to section 4(c)(1) of Executive Order 13770, the Office of Government Ethics (OGE) is providing agency ethics officials with the attached copy of the Ethics Pledge and a link to the Executive Order, <https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02450.pdf>.

Among other things, Executive Order 13770 requires every “appointee” in each executive agency appointed on or after January 20, 2017, to sign the Ethics Pledge established therein. The definition of “appointee” in the Executive Order covers “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.” Executive Order, sec. 2(b). However, it does not cover “any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.” *Id.*

Prior to issuance of Executive Order 13770 on January 28, 2017, OGE had transmitted the ethics packages of a number of the President’s nominees to the Senate. Some of these nominees are still under consideration by the Senate, while others have been confirmed. OGE has instructed agency ethics officials to collect supplemental ethics agreements from all of them, whether or not they have been appointed, in order to add language regarding the Executive Order and the duty to sign the new Ethics Pledge. After receiving these supplemental ethics agreements from the relevant agencies, OGE will transmit them to the Senate.

With respect to Executive Order 13770, ethics officials and employees may continue to rely on OGE’s prior guidance regarding Executive Order 13490 to the extent that such guidance addresses language common to both orders. OGE will issue additional interpretive guidance as



needed to address issues implicating new language that appears only in Executive Order 13770. As always, agency ethics officials may contact their OGE Desk Officers for advice concerning the application of Executive Order 13770 in individual cases.

Attachment (Ethics Pledge)

ETHICS PLEDGE

As a condition, and in consideration, of my employment in the United States Government in an appointee 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. I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency.
2. 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.
3. In addition to abiding by the limitations of paragraphs 1 and 2, I also agree, upon leaving Government service, not to engage in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.
4. I will not, at any time after the termination of my employment in the United States 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 me to register under the Foreign Agents Registration Act of 1938, as amended.
5. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
6. 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.
7. 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 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.
8. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 28, 2017, which I have read before signing this document, defines certain 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 obligations of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Government service.

Signature

Date

, 20____

Print or type your full name (last, first, middle)