



February 23, 2021
LA-21-05

LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III
Director

SUBJECT: Comparison of Ethics Pledge Commitments in Executive Order 13989 to Past Ethics Pledges

[Executive Order 13989](#) requires “appointees” to sign an ethics pledge comprising several commitments as a condition of employment.¹ The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to provide a tool to assist ethics officials in using OGE’s past guidance on two prior executive orders containing ethics pledges – [Executive Order 13770](#) and [Executive Order 13490](#) – to interpret the ethics pledge commitments contained in section 1 of Executive Order 13989 (the “Pledge”).²

This Legal Advisory is issued in consultation with the White House Counsel’s Office and provides an overview of provisions containing language (1) that was unchanged from E.O. 13490 and/or E.O. 13770, (2) that was modified or amended as compared to an earlier executive order, and (3) that did not appear in one of the prior executive orders.³ Although this Advisory does not provide an interpretation of the modified or new provisions, the attached table highlights specific provisions in the E.O. 13989 Pledge containing language that is common to language in an earlier Executive Order, and identifies past OGE guidance upon which ethics officials may continue to rely. OGE intends to issue additional guidance on the changed or new language in subsequent advisories.

I. Pledge Provisions Adopted Without Change

There are four provisions in the Pledge that were adopted without substantive change from the pledges in E.O. 13770 or E.O. 13490:

¹ See Exec. Order No. 13,989, [sec. 1](#) (Jan. 20, 2021). The term “appointee” is defined in [section 2\(b\)](#) of the Executive Order. Moreover, the requirement to sign the new Pledge applies only to appointees appointed on or after January 20, 2021.

² There are four additional sections after the Pledge, covering [\[2\]](#) definitions, [\[3\]](#) waivers, [\[4\]](#) administration, and [\[5\]](#) enforcement. This Advisory addresses the first two sections – the Pledge and the definitions.

³ As stated in Legal Advisory [LA-21-03](#) (Jan. 22, 2021), “ethics officials and employees may continue to rely on OGE’s prior guidance regarding Executive Orders 13490 and 13770 to the extent that such guidance addresses language common to either of these executive orders and the new Executive Order.”



- the lobbyist gift ban – [paragraph 1](#);
- a two-year prohibition for incoming appointees relating to certain particular matters – [paragraph 2](#);
- a commitment to make hiring decisions based on “qualifications, competence, and experience” – [paragraph 8](#); and
- an assent to enforcement of Pledge provisions – [paragraph 9](#).

II. Amended Pledge Provisions

Executive Order 13989 contains modified versions of provisions from E.O. 13770 and E.O. 13490. The first modified provision, contained in paragraph 3 of the Pledge, applies a set of restrictions to incoming appointees who previously worked as lobbyists or foreign agents.⁴ There had been a similar provision in E.O. 13490,⁵ but it only applied to former lobbyists (i.e., incoming appointees who had registered as lobbyists under the Lobbying Disclosure Act (LDA)).⁶ Paragraph 3 incorporates the entire provision from E.O. 13490 and adds new language extending similar restrictions to incoming appointees who had registered as agents under the Foreign Agents Registration Act (FARA).⁷

Paragraph 4 of the Pledge applies to appointees who are “senior employees” as defined at 18 U.S.C. § 207(c).⁸ Similar to E.O. 13490, E.O. 13989 imposes a two-year cooling-off period on those appointees with respect to certain communications before their former agency. However, E.O. 13989 extends the prohibition to communications with “senior White House staff,” which is defined at [section 2\(r\)](#).

Paragraphs 5 and 6 of the Pledge will subject former appointees to post-government lobbying restrictions.⁹ These paragraphs combine elements of post-government lobbying restrictions from prior pledges and expand these restrictions to cover behind-the-scenes support that “materially assist[s]” lobbying contacts.¹⁰ [Section 2\(h\)](#) provides a definition of “materially assist.” OGE plans to issue guidance to clarify how these provisions of the Pledge will operate.¹¹

III. New Pledge Provisions

Executive Order 13989 introduces new language that did not appear in prior ethics pledges, including an additional commitment for appointees entering Government service. Under

⁴ See Exec. Order No. 13,989, sec. 1, [para. 3](#).

⁵ See Exec. Order No. 13,490, sec. 1, [para. 3](#).

⁶ [2 U.S.C. §§ 1601-1614](#).

⁷ [22 U.S.C. §§ 611-621](#). Although OGE does not interpret the FARA, OGE did provide a summary of selected provisions of this statute in OGE Legal Advisory [LA-20-09](#) (Oct. 29, 2020).

⁸ See Exec. Order No. 13,989, sec. 1, [para 4](#).

⁹ See Exec. Order No. 13,989, sec. 1, paras. [5-6](#).

¹⁰ See Exec. Order No. 13,770, sec. 1, paras. [3-4](#); see also Exec. Order No. 13,490, sec. 1, [para. 5](#).

¹¹ To the extent that the language in the new provisions is common to language from past provisions, appointees and ethics officials may rely on OGE interpretations of this language as used in prior pledges. The most extensive analysis of language found in these provisions appears in OGE DAEOgram [DO-10-004](#) (Feb. 22, 2010). Additional guidance is available in other advisories. See OGE Legal Advisory [LA-17-03](#) (Mar. 20, 2017); see also OGE Legal Advisory [LA-20-09](#); OGE Legal Advisory [LA-21-03](#) (Jan. 22, 2021) (discussing the application of prior advisories to E.O. 13989).

paragraph 7 of the Pledge, appointees are prohibited from accepting certain payments or other benefits that qualify as a “golden parachute” from their former employers. OGE intends to issue interpretive guidance regarding this new provision.

Additionally, the Pledge contains expanded language in the [preamble](#) that is intended to remind appointees of their existing obligations as public employees. This preamble contains an appointee’s acknowledgement that “this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government” and a commitment to engage in “conduct consistent with that plan.”¹² The preamble language does not impose any new substantive requirements.

IV. Table: Applicability of Prior Guidance to the Executive Order 13989 Ethics Pledge

The attached table identifies specific provisions in the E.O. 13989 Pledge containing language that is either new or common to language in earlier executive orders, and it identifies past OGE guidance upon which ethics officials may continue to rely.

Attachment

¹² Exec. Order No. 13,989, sec. 1.

**Applicability of Prior Guidance to the Executive Order 13989 Ethics Pledge
Attachment to LA-21-05**

E.O. 13989 Ethics Pledge Provision	OGE Advisories Applicable to E.O. 13989
<p>Sec. 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:</p> <p>I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.</p> <p>Accordingly, 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:</p>	<p>The following guidance may be relied upon with respect to signing requirements and the definition of appointee in E.O. 13989:</p> <ul style="list-style-type: none"> • Acting officials and detailees: DO-09-010 • Appointees, generally: DO-09-003, DO-09-010 • Career officials appointed to confidential positions: DO-09-010 • Career Senior Executive Service (SES) members given Presidential appointments: DO-09-010 • Excepted service, generally: DO-09-010 • Foreign Service, similar positions: DO-09-010 • Holdover appointees: DO-09-010, DO-09-014 • Individuals appointed to career positions: DO-09-003 • IPA detailees: DO-09-020 • Nominees to PAS positions: DO-09-005 • Non-PAS who have already been appointed: DO-09-005 • Non-PAS who may be appointed in the future: DO-09-005 • Schedule C employees with no policymaking role: DO-09-010 • Special Government Employees (SGEs): DO-09-005, DO-09-010 • Temporary advisors/counselors pending confirmation to Presidentially appointed, Senate-confirmed (PAS) positions: DO-09-005 • Term appointees: DO-09-010 <p><u>NEW</u>: The paragraph that begins “I recognize” did not appear in E.O. 13490 or E.O. 13770. This preamble language does not impose any new substantive requirements. Rather, it is intended to remind appointees of their existing obligations as public employees.</p>
<p>Sec. 1, para. 1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.</p>	<p>The following guidance may be relied upon with respect to the general prohibition on accepting gifts from registered lobbyists and lobbying organizations in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on the lobbyist gift ban: DO-09-007, DO-10-003, LA-12-10 • Relationship to 5 C.F.R. 2635, subpart B (Gifts from Outside Sources): DO-09-007, DO-10-003 <p>The following guidance may be relied upon with respect to the definition of “gift” in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on the term “gift”: DO-09-007 • Guidance on the term “solicited or accepted indirectly:” DO-09-007 • Treatment of official speeches, accompanying staff: DO-10-003

E.O. 13989 Ethics Pledge Provision	OGE Advisories Applicable to E.O. 13989
<p>Sec. 1, para. 1. Lobbyist Gift Ban. <i>[continued]</i></p>	<p>The following guidance may be relied upon with respect to the definition of “registered lobbyist or lobbying organization” in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on the term “registered lobbyist or lobbying organization”: DO-09-007 • Treatment of the following: <ul style="list-style-type: none"> ○ 501(c)(3) organizations: DO-09-007, LA-12-10 ○ Clients of lobbyists/lobbying firms: DO-09-007 ○ Institutions of higher education: LA-12-10 ○ Media organizations: DO-09-007, LA-12-10
<p>Sec. 1, para. 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.</p>	<p>The following guidance may be relied upon with respect to the revolving door ban in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on the revolving door ban (incoming appointees): DO-09-011, DO-09-020 • Relationship to impartiality regulations: DO-09-011
	<p>The following guidance may be relied upon with respect to the definition of “directly and substantially related to my former employer or former clients” in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on the term “directly and substantially related to”: DO-09-011
	<p>The following guidance may be relied upon with respect to the definition of “former client” in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on the term “former client”: DO-09-011 • Treatment of the following: <ul style="list-style-type: none"> ○ Speeches or similar appearances; discrete, short-term engagements/<i>de minimis</i>: DO-09-011 ○ Federally funded research and development centers: DO-09-011 ○ Government entities: DO-09-011 ○ Nonprofit organizations: DO-09-011 ○ Service as a consultant: DO-09-011 ○ State or local colleges and universities: DO-09-011
	<p>The following guidance may be relied upon with respect to the definition of “former employer” in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on the term “former employer”: DO-09-011 • Treatment of the following: <ul style="list-style-type: none"> ○ Federally funded research and development centers: DO-09-011 ○ Government entities: DO-09-011 ○ State or local colleges and universities: DO-09-011 ○ Nonprofit organizations: DO-09-011

E.O. 13989 Ethics Pledge Provision	OGE Advisories Applicable to E.O. 13989
<p>Sec. 1, para. 2. Revolving Door Ban—All Appointees Entering Government. [continued]</p>	<p>The following guidance may be relied upon with respect to the definition of “particular matter involving specific parties” in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on the term “particular matter involving specific parties”: DO-09-011, DO-09-020 • Treatment of the following: <ul style="list-style-type: none"> ○ Consultation with experts: DO-09-011 ○ Meetings, other communications: DO-09-011 ○ Official speeches: DO-09-020 ○ Open to all interested parties/multiplicity of parties: DO-09-011 ○ Rulemakings/regulations: DO-09-011
<p>Sec. 1, para. 3. Revolving Door Ban—Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., 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:</p> <p>(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;</p> <p>(b) participate in the specific issue area in which that particular matter falls; or</p> <p>(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.</p>	<p>The following guidance may be relied upon with respect to the revolving door ban for lobbyists and registered agents in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on “specific issue area”: LA-17-03 <p><u>NEW</u>: The restriction’s application to appointees who were registered under the Foreign Agents Registration Act (FARA) within the 2 years before the date of appointment did not appear in E.O. 13490 or E.O. 13770. OGE and agency ethics officials do <u>not</u> interpret the FARA. However, OGE provided a summary of selected provisions from the FARA in LA-20-09.</p>
<p>Sec. 1, para. 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, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.</p>	<p>The following guidance may be relied upon with respect to the restriction on communicating with employees of the appointee’s former agency in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on the restriction: DO-10-004, LA-16-08 <p><u>NEW</u>: The restriction on communicating with the senior White House staff did not appear in E.O. 13490 or E.O. 13770. Section 2(r) defines this term as follows: “‘Senior White House staff’ means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.”</p>

E.O. 13989 Ethics Pledge Provision	OGE Advisories Applicable to E.O. 13989
<p>Sec. 1, para. 5. Revolving Door Ban—Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections’ implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.</p>	<p><u>NEW</u>: The restriction that applies to senior and very senior appointees leaving Government did not appear in E.O. 13490 or E.O. 13770.</p> <p><u>NEW</u>: This paragraph introduces new language, “materially assist,” which did not appear in E.O. 13490 or E.O. 13770. Section 2(h) defines this term as follows: “‘Materially assist’ means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual’s subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.”</p>
<p>Sec. 1, para. 6. 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, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.</p>	<p>The following guidance may be relied upon with respect to the restriction on lobbying any covered executive branch official or non-career Senior Executive Service appointee in E.O. 13989:</p> <ul style="list-style-type: none"> • Guidance on the post-employment lobbying ban: DO-10-004 <p>The following guidance may be relied upon with respect to the restriction on engaging in any activity on behalf of any foreign government or foreign political party in E.O. 13989:</p> <ul style="list-style-type: none"> • Summary of the post-employment restrictions concerning foreign parties: LA-20-09 <p><u>NEW</u>: The extension of the restriction to “2 years following the end of my appointment” if later than the end of the Administration did not appear in E.O. 13490 or E.O. 13770.</p>
<p>Sec. 1, para. 7. Golden Parachute Ban. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.</p>	<p><u>NEW</u>: The restriction that prohibits certain payments from former employers (“golden parachutes”) did not appear in E.O. 13490 or E.O. 13770.</p>