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January 21, 2021

Biden Executive Order Significantly Broadens Ethics Requirements for Appointees



In one of his first official acts, President Biden signed an executive order that sets stringent ethics rules for incoming executive branch appointees. The [Executive Order on Ethics Commitments by Executive Branch Personnel](#) reinstates and further expands ethics standards from previous administrations.

Who Is Covered?

The executive order applies to every appointee in every executive agency of the U.S. government appointed on or after January 20, 2021. The executive order defines covered "appointees" as all full-time, non-career presidential and vice-presidential appointees, non-career appointees in the Senior Executive Service or other SES-type systems, and all appointees to Schedule C or similar positions.

All covered appointees must sign an ethics pledge as a condition of appointment. The commitments in the pledge are summarized below. Current and former appointees can obtain waivers of any of the requirements contained in the pledge, but only upon Office of Management and Budget (OMB) approval in consultation with the White House counsel. The waivers must be publicly disclosed within 10 days after they are signed by the OMB director.

What Restrictions Apply to Incoming Appointees?

1. Two-Year Revolving Door Ban

The executive order prohibits all appointees, for a period of two years from their appointment, from participating in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients. The ban includes participating in matters relating to regulations and contracts. This requirement applies to any incoming appointee, whether or not the appointee was a lobbyist before entering government service. These restrictions are unchanged from the Obama and Trump ethics pledges.

2. Two-Year Ban on Lobbyists and Foreign Agents Participating in Certain Matters

Additional restrictions beyond the generic revolving door ban apply to appointees who were registered lobbyists under the Lobbyist Disclosure Act (LDA) or registered agents of a foreign principal under the Foreign Agents Registration Act (FARA) within the two years before the date of their appointment. These appointees must agree, for a period of two years after appointment, not to:

- Participate in any matter on which the appointee lobbied or engaged in registrable activity under FARA during the two years prior to appointment
- Participate in the specific issue area in which that particular matter falls
- Seek or accept employment with any executive agency with respect to which the appointee lobbied or engaged in registrable activity under FARA within the two years prior to appointment

These requirements are broader than the Trump ethics pledge. They limit not simply participation in particular matters, but also in specific issue areas. They also prevent individuals from taking jobs with agencies they lobbied during the previous two years. Finally, the requirements apply to those who were FARA-registered foreign agents, as well as to federally registered lobbyists.

3. Golden Parachute Ban

Incoming appointees must pledge that they have not accepted and will not accept any salary or other cash payment or any non-cash benefit from their former employers that were paid or given in consideration for the appointee accepting a position in the U.S. government. The ban covers payments and non-cash benefits received both before and during government service.

This is a new requirement, unique to the Biden ethics pledge. It expands on an existing regulation that requires those who receive certain "extraordinary payments" from their former employers to recuse from certain matters involving those employers within two years of receiving the payments.

4. Lobbyist Gift Ban

The Executive Order prohibits appointees from accepting gifts from registered lobbyists or lobbying organizations during the term of their appointment. The term "gift" has the same definition as under the existing executive branch ethics laws, but it incorporates fewer exceptions. For example, appointees may accept modest items of food and refreshments that are not part of a meal, items of little intrinsic value, gifts made under the personal relationship exception, and certain other specified items. Appointees may not, however, take advantage of the general exception for gifts worth less than \$20 or accept free attendance at most widely attended gatherings. This prohibition is unchanged from the Obama and Trump ethics pledges.

5. Employment Qualification Commitment

Finally, in a new provision unique to the Biden executive order, incoming appointees must pledge to base hiring and other employment decisions on a candidate's qualifications, competence, and experience.

What Restrictions Apply to Appointees Leaving the Administration?

1. Two-Year Revolving Door Ban for All Appointees

President Biden's Executive Order extends the one-year post-employment restriction that applies to certain senior administration appointees who are subject to Section 207(c) of title 18 of the U.S. Code. These appointees must agree that they will not contact or appear before employees of their former executive agencies for a period of two years after leaving the administration. Departing appointees must also abide by this restriction with respect to communicating with senior White House staff for two years after departing. This is unchanged from the Obama and Trump executive orders.

2. One-Year Revolving Door Ban for Senior and Very Senior Appointees

Certain senior and very senior appointees who are subject to the post-employment restrictions of sections 207(c) or 207(d) of title 18 of the U.S. Code may not materially assist others in making communications that the departing appointee could not make directly. These appointees are prohibited from, for a period of one year after leaving the administration, materially assisting others in making communications or appearances that the departing appointee is prohibited from undertaking by either (1) holding himself or herself out as being available to engage in lobbying activities in support of any such communications or appearances or (2) engaging in any such lobbying activities. This is a new provision unique to the Biden executive order.

3. Restrictions on Lobbying and Acting as an Agent for Foreign Governments and Foreign Political Parties

Finally, Biden's Executive Order imposes a sweeping post-employment restriction on lobbying and certain activity that would require registration under FARA. Departing appointees may not, for the remainder of the Biden administration or two years following departure (whichever is longer):

- Lobby any covered executive branch official or non-career Senior Executive Service appointee
- Engage in any activity on behalf of a foreign government or foreign political party that would require registration under FARA (as of January 20, 2021)

This requirement expands on those imposed by the Obama executive order and, ultimately, by the Trump executive order. While the latter imposed a lifetime ban on FARA-registrable activity on behalf of foreign governments and foreign political parties, President Trump lifted those restrictions by executive order on January 19, 2021, along with the other, continuing conditions of his ethics pledge.

Please contact experienced counsel with any questions about the new ethics executive order. We will keep you updated as interpretations are released.

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