



# U.S. Department of Defense Standards of Conduct Office

## PRESIDENT BIDEN'S ETHICS PLEDGE

**Purpose:** This document summarizes your obligations under the President Biden's Ethics Pledge ("Pledge"), Executive Order (EO) 13989.

**Application:** This guidance applies to all employees appointed by the President during the Biden Administration.

### **Ethics Guidance:**

Appointees are encouraged to seek advice from ethics counsel concerning their individual restrictions. In particular, employees who were registered under the Lobbying Disclosure Act (LDA)<sup>1</sup> or the Foreign Agents Registration Act (FARA)<sup>2</sup> within two years before being appointed should contact ethics counsel immediately. The Pledge requires incoming appointees who were registered under these laws to sign an additional written ethics agreement, which must be filed separately with the White House.<sup>3</sup>

### **I. Who must sign the Pledge?**<sup>4</sup>

- a. All full-time political appointees must sign the Ethics Pledge, as a condition of employment.
- b. "Appointee" *includes* the following personnel:
  1. All full-time, non-career Presidential appointees confirmed by the Senate;
  2. Non-career Senior Executive Service (SES) appointees; and
  3. Non-career appointees, excepted from the competitive service by reason of being of a confidential or policymaking character (e.g., Schedule C, politically appointed term SES or equivalent).
- c. This *excludes* the following personnel:
  1. Career officials temporarily acting in the absence of an appointee to a non-career position;
  2. Special Government Employees;
  3. Uniformed service commissioned officers; and
  4. Certain Schedule C appointees who have no policymaking role.<sup>5</sup>

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<sup>1</sup> 2 U.S.C. 1601 et seq.

<sup>2</sup> 22 U.S.C. 611 et seq.

<sup>3</sup> EO 13989, Section 4.

<sup>4</sup> EO 13989, Section 1.

<sup>5</sup> See DO-09-010, if exempted from filing a financial disclosure, then exempted from signing the Pledge.

II. **Employment Qualification Commitment.**<sup>6</sup> By signing the Pledge, you agree that all employment decisions, including hiring, will be based on a candidate’s qualifications, competence, and experience.

III. **What are the restrictions of the Pledge?**

a. **Lobbyist Gift Ban**<sup>7</sup>: You may not accept *gifts* from *registered lobbyists* or *lobbying organizations* for the duration of your Government appointment unless an exception applies.

1. “Registered lobbyist” is any individual or organization posted on the web sites of the Clerk of the House of Representatives<sup>8</sup> and the Secretary of the Senate.<sup>9</sup> Generally, this will not include media organizations or not-for-profit entities exempt from taxation under 26 U.S.C. § 501(c)(3).
2. “Lobbying organization” is any entity that employs at least one in-house lobbyist on its own behalf. It can include companies. For example, a number of defense contractors are registered as lobbying organizations under the Lobbying Disclosure Act.
3. “Gifts” are most items of value. Examples include, but are not limited to, free attendance at dinners and other meals, receptions, sporting events, and similar widely-attended gatherings. This includes a gift which is solicited or accepted indirectly, with your knowledge (e.g. by your parents, siblings, spouse, children, dependent relative, member of your household, or a person or an organization that you specifically designate).
4. The lobbyist gift ban does not apply to:
  - i. Items excluded by regulation from this definition of gifts such as:
    - a. Modest refreshments (e.g., coffee & donuts).
    - b. Items of little intrinsic value (e.g., greeting card, plaque, challenge coin) intended solely for presentation.
    - c. Benefits available to all Government employees or all uniformed military personnel.
    - d. Meals offered to Federal employees on the day they are assigned to provide an official speech.
  - ii. Gifts from registered lobbyists/organizations who are:
    - a. A 501(c)(3) non-profit that are not delivered by a lobbyist;
    - b. A media organization that are not delivered by a lobbyist.
5. The **only** regulatory exceptions that the Pledge allows a political appointee to use to accept a gift from a lobbyist are:
  - i. Gifts based on a personal relationship;

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<sup>6</sup> EO 13989, Section 1, Paragraph 8.

<sup>7</sup> EO 13989, Section 1, Paragraph 1.

<sup>8</sup> <https://lobbyingdisclosure.house.gov/lookup.asp>

<sup>9</sup> <https://lda.senate.gov/system/public/>

- ii. Certain discounts and opportunities offered to all Government or military employees, or unrelated to Government employment;
- iii. Gifts resulting from a spouse's business or employment;
- iv. Customary gifts/gratuities provided by a prospective employer;
- v. Gifts to the President or Vice President;
- vi. Gifts authorized by an agency supplemental regulation approved by the Office of Government Ethics (OGE); and
- vii. Gifts accepted under specific statutory authority or agency regulation.

**NOTE: Other gift exceptions that would be allowed under OGE regulations are not available under the Pledge for gifts from lobbyists, e.g., you may not accept a gift from a registered lobbyist, such as a lunch, even if the value of the lunch was equal to or less than \$20.**

- b. Revolving Door Ban for Incoming Appointees:**<sup>10</sup> For two years from date of appointment, you may not *participate* in any *particular matter involving a specific party* that is directly and substantially related to your *former employer* or *former clients*, including regulations and contracts.
1. This does not include performing perfunctory or administrative duties, or social interactions with your former employers or clients.
  2. "Particular matter involving a specific party" is defined as a specific proceeding affecting a party's rights, or a discrete transaction between identified parties. For example, a specific contract, license, enforcement action, court case, administrative adjudication, or decision would qualify as a particular matter involving a specific party. It also includes **any meeting or communication with the former employer or client that relates to the performance of the official's duties**, *unless* the matter to be discussed is a broad matter of general applicability and the meeting is open to all interested parties. **This can get complicated, so it is important to consult with your ethics counselor.**<sup>11</sup>
  3. "Former employer" is defined as any person for whom the appointee served as an employee, officer, director, trustee, or general partner within the two years prior to date of appointment. It excludes any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.
  4. "Former client" is defined as any person or organization you served personally as an agent, attorney, or consultant within the two years prior to date of appointment. This excludes limited services like speeches or similar appearances. It includes services you personally provided as an employee or

<sup>10</sup> EO 13989, Section 1, Paragraph 2.

<sup>11</sup> See also OGE DO-09-011 Advisory Opinion.

representative of a firm, even if the funds were paid to the firm and not to you directly.

5. “Participate” means personally and substantially (e.g., decide, approve, or recommend).

**c. Revolving Door Ban for Incoming Lobbyists and Registered Agents:**<sup>12</sup> If within the two years prior to appointment, you served as a *registered lobbyist* (under the LDA) or a *registered agent* (under the FARA), then for two years after appointment, you may not:

1. Participate in any particular matter on which you lobbied or engaged in registrable activity under FARA, within the two years before your date of appointment.
  - i. “Lobby” means to act as a registered lobbyist.
  - ii. “Particular matter” encompasses matters that involve deliberation, decision, or action, that focus on the interests of specific people or a discrete and identifiable class of people.
2. Participate in the *specific issue area* in which that particular matter falls;
  - i. A “specific issue area” means a particular matter of general applicability. An example would be lobbying a government agency, prior to entering government service, on a proposed regulation focused on a specific industry. Even if the lobbying was limited to a specific section of the regulation, the recusal is for the entire regulation and not just the one section lobbied for the client.
3. Seek or accept employment with any executive agency with respect to which you lobbied, or engaged in registrable activity under FARA, within the two years before the date of your appointment.
  - i. “Registered lobbyist or lobbying organization” means a lobbyist or an organization filing a registration pursuant to 2 U.S.C. § 1603(a), and in the case of an organization filing such a registration, “registered lobbyist” shall include each of the lobbyists identified therein.<sup>13</sup>

**d. Golden Parachute Ban.**<sup>14</sup> You are prohibited from accepting any salary, non-cash payment, or other benefit from a former employer given or awarded for accepting government service. For example, if you were with your former company for 3 years and hold unvested stock options, and if the company policy is that those departing employment after less than 5 years of service must forfeit unvested stock options unless the departure is to accept employment with a governmental entity, then you must still forfeit your unvested options under the Pledge.

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<sup>12</sup> EO 13989, Section 1, Paragraph 3.

<sup>13</sup> See footnotes 4 and 5.

<sup>14</sup> EO 13989, Section 1, Paragraph 7.

- e. **Revolving Door Representational Ban for Departing Senior Officials:**<sup>15</sup> If you are a *senior official* covered by the post-employment restrictions set forth in 18 U.S.C. § 207(c), you may not represent anyone before employees of your former DoD agency for two years following the end of your appointment. In addition to employees of your former agency, this restriction prohibits communications with *Senior White House staff*.
1. “Senior official” is any Presidentially Appointed, Senate-confirmed official and any other appointee whose base pay is at or above 86.5% of the rate of Executive Schedule Level II (\$172,395 in 2021).
  2. For Presidentially Appointed, Senate-confirmed officials, this restriction applies to the entire DoD.
  3. For all other senior officials, this ban in the Pledge applies only to your former DoD component; it does not restrict communications to other designated DoD components or other Executive Branch agencies. However, other post-Government employment ethics laws may nonetheless limit your ability to communicate with DoD components. Contact your ethics counselor for information about how “former agency” is defined for your specific position, and the other post-Government employment ethics rules that will apply to you.
  4. This restriction does not apply to behind-the-scenes assistance. (But, see next section for behind-the-scenes restrictions.)
- f. **Behind the Scenes Restrictions for Departing Senior Officials and Very Senior Officials:**<sup>16</sup> If you are covered by the post-Government employment restrictions in 18 U.S.C. §§ 207(c) or 207(d) and the regulations implementing these laws, then, in addition to the representation ban discuss above, for a period of one year following the end of your appointment, you may not *materially assist* others in making communications or appearances that you are prohibited from undertaking personally by: (1) holding yourself 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*.<sup>17</sup>
1. **“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 18 U.S.C. § 207(j).**
  2. “Lobbying activities” shall mean any communication that you would be prohibited from making pursuant to 18 U.S.C. §§ 207(c) and 207(d), and efforts in support of such prohibited communications, including preparation and planning activities, research, and other background work that is intended,

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<sup>15</sup> EO 13989, Section 1, Paragraph 4.

<sup>16</sup> EO 13989, Section 1, Paragraph 5.

<sup>17</sup> Pending clarifying guidance from OGE.

at the time it is performed, for use by others in such prohibited communications.

3. This includes certain behind-the-scenes activities intended to materially assist lobby contacts in communicating with or appearing before the government.<sup>18</sup>
4. **Certain former senior officials may also be restricted by another post-Government employment ethics law from providing behind the scenes assistance to their employer. Consult with your ethics counselor to determine the full scope of ethics restrictions that will apply to you after you leave Government service.**

**g. Representational and Behind the Scenes Restrictions for All Former Political Appointees<sup>19</sup>:** For two years after the end of your appointment, you may not *lobby* any covered executive branch official or non-career SES 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 you register under FARA for the remainder of the Administration or two years following the end of your appointment, whichever is later. This restriction applies to all appointees, even if you are not subject to the 207(c) restriction described in paragraph II.d. above.

1. Lobby shall mean to act as a registered lobbyist. “Registered lobbyist or lobbying organization” shall mean a lobbyist or an organization filing a registration pursuant to 2 U.S.C. § 1603(a), and in the case of an organization filing such a registration, “registered lobbyist” shall include each of the lobbyists identified therein. It does not include communication made by a former appointee on behalf of a “lobbying organization.”<sup>20</sup>

#### **IV. Is a waiver available for any of the Pledge restrictions?<sup>21</sup>**

- a. The DoD designated Agency Ethics Official, in consultation with the Counsel to the President, has been delegated the authority to grant to any current or former appointee a written waiver of any restrictions contained in the pledge.
- b. Any waiver should be in the public interest.
- c. Any such waiver should reflect the basis for the waiver and in the case of a waiver of certain restrictions for lobbyists and registered agents entering government.
- d. All waivers will be posted on a public website.

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<sup>18</sup> See OGE LA-21-05.

<sup>19</sup> EO 13989, Section 1, Paragraph 6. Note there are other post-Government employment restrictions that apply. Consult with your ethics official to determine applicability.

<sup>20</sup> See OGE DO-10-004 Advisory Opinion.

<sup>21</sup> EO 13989, Section 3.

- e. Please contact your agency ethics official or the DoD Standards of Conduct Office at (703) 695-3422 or [osd.soco@mail.mil](mailto:osd.soco@mail.mil) with any questions or concerns.
- V. **Enforcement**: The Pledge may be enforced through any legally available means. This can include debarment and an additional five year ban on lobbying (as defined above) the former employee's former agency.<sup>22</sup>
- VI. **Legal Notice**: This information merely identifies statutes and regulations that restrict or otherwise affect activities of DoD personnel. Because restrictions are dependent on specific facts, and because this information is a summary of the rules, personnel should contact their local ethics office to discuss their particular situation. Advice from ethics officials with respect to these matters is *advisory only*, and is provided in accordance with 5 C.F.R. § 2635.107 and 41 U.S.C. § 2104 (Procurement Integrity Act). Ethics officials are acting on behalf of the United States Government, and not as your personal representative. *No attorney-client* relationship exists between an individual employee and ethics counsel.
- VII. **Questions**: For OSD personnel, contact SOCO at (703) 695-3422 or by e-mail at [OSD.SOCO@MAIL.MIL](mailto:OSD.SOCO@MAIL.MIL). For other DoD personnel, ethics contact information can be found here: <https://dodsoco.ogc.osd.mil/Contact/> You may also consult with your personal attorney.

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<sup>22</sup> EO 13989, Section 5.