

DRAFT 10-5-16

Ethics Reform 2.0 – Expanding Ethics Coverage in the Next Administration

The next president should build on President Obama's groundbreaking Executive Order on Ethics Commitments by Executive Branch Personnel (EO) by going even further in curbing undue influence. That means going beyond the current limitations on registered lobbyists to cover *anyone* with a financial conflict of interest, closing loopholes and adopting a single standard that will apply to lobbyists for moneyed interests, those who secretly advise them and the people they work for – all those who might affect public policy for private gain.

By expanding beyond lobbyists to all persons with conflicts of interest, the next president can address the problem of “shadow” Washington influencers while ending incentives to deregister under the Lobbying Disclosure Act (LDA) and increasing public accountability for all insiders. Those with no conflicts of interest should not, of course, be barred from government service.

For senior government appointees – including taking into account the interests of their former employers, partners and clients from the prior 2 years – an Ethics Order 2.0 would:

- Cover all persons entering government who have a conflict of interest in the outcome of federal policy decisions – The new EO should cover not just lobbyists but all those who affect public policy for private gain, including public relations consultants and those who hire them. The EO should also cover all issues on which an incoming appointee's financial interests, and those of his or her former employers, partners, clients and household conflict with the appointee's official duties. This builds on the successful approach adopted by President Obama concerning applications for Recovery Act funds.
- Further expand the ongoing “reverse revolving door” guidelines – Senior-level appointees who would frequently face financial conflicts of interest in performing their official duties and thus would be required to recuse themselves so frequently as to significantly impair the performance of their duties should not be given such jobs.
- Add a “golden parachute” restriction on those entering and leaving government – The new EO should prohibit employment of those who receive bonuses, compensation packages, or other gifts because of seeking or accepting government employment. And it should prevent officials at the end of their government tenure from accepting positions when they have used their public office to directly and substantially benefit their new employers, partners or clients. This restriction would apply during the two years after officials leave government.
- Expand disclosure of financial conflicts of interest involving presidential appointees – The next president should require broader disclosure related to conflicts of interest and of measures adopted under the EO to manage such conflicts.
- Protect public service – Those without financial conflicts and with skills and experience in serving the public good will be encouraged to serve our government through the application of these rules and the increased use of waivers in the public interest.

Finally, the next president should issue Ethics Order 2.0 as a first order of business and assign a person to oversee its implementation.

**Ethics Commitments by Executive Branch Personnel
(Executive Order XXXXX dated January XX, 2017)**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and Sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Ethics Pledge.*

Every appointee in every executive agency appointed on or after January XX, 2017, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

“As a condition, and in consideration, of my employment in the United States Government in a 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. *Gift Ban*—I will not accept gifts from any person or entity who has business before or is regulated by my federal executive agency for the duration of my service as an appointee. I have not accepted, and will not accept, any compensation packages, bonus, or other gift from a former employer or client at any time because of my seeking or accepting this employment with any executive agency.

“2. *Revolving Door Ban—All Appointees Entering Government.*

(a) 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, former client, or a member of my household, including regulations and the award of federal funds.

(b) In addition, I will not for a period of 2 years from the date of my appointment:

- 1) participate in any particular matter involving specific parties in which I, my former employer, my former client, or a member of my household, had any substantial communications with the government with respect to a financial interest, or had such an interest, within the 2 years before the date of my appointment;
- 2) participate in the specific issue area in which that matter falls; or
- 3) seek or accept employment with any executive agency in which performance of my official duties could reasonably be expected to require such frequent recusals as to directly and predictably impair my ability to perform the duties of my position due to a financial interest held by me, a former employer, former client or member of my household or to applicable law.

1 “3. *Revolving Door Ban—All Appointees Leaving Government.*

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3 (a) If, upon my departure from the Government, I am covered by 207(c) of title 18, United States
4 Code, I will abide by post-government restrictions on communications to or appearances before
5 my former executive agency as set forth in section 207(c) of title 18, United States Code for a
6 period of 2 years. Additionally, I will do the same with respect to such communications to or
7 appearances before the Executive Office of the President.

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9 (b) I will not for a period of 2 years from the end of my appointment accept employment from, or
10 representation of, any party that materially benefitted from a particular matter involving specific
11 parties, or from a particular matter benefitting a single source, in which I personally and
12 substantially participated. I agree that my Stop Trading On Congressional Knowledge (STOCK)
13 Act notifications and recusals will be made publicly available upon leaving government service.

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15 (c) Upon my departure from the Government I will not have any communications with or
16 appearances before any executive branch agency, including the Executive Office of the
17 President, regarding a particular matter involving specific parties on which I worked and I, my
18 current employer, my current client or a member of my household have a financial interest.

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20 “4. *Employment Qualification Commitment.* I agree that any hiring or other employment
21 decisions I make will be based on the candidate's qualifications, competence, and experience.

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23 “5. *Assent to Enforcement.* I acknowledge that the Executive Order entitled ‘Ethics
24 Commitments by Executive Branch Personnel,’ issued by the President on January XX, 2017,
25 which I have read before signing this document, defines certain of the terms applicable to the
26 foregoing obligations and sets forth the methods for enforcing them. I expressly accept the
27 provisions of that Executive Order as a part of this agreement and as binding on me. I understand
28 that the terms of this pledge are in addition to any statutory or other legal restrictions applicable
29 to me by virtue of Federal Government service. I will also report any possible violations of this
30 pledge by me or other appointees to the Director of the Office of Government Ethics.”

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32 **Section 2. *Definitions.***

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34 As used herein and in the pledge set forth in section 1 of this order:

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36 (a) “Administration” means all terms of office of the incumbent President serving at the time of
37 the appointment of an appointee covered by this order.

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39 (b) “Award of federal funds” shall include contract, grant, cooperative agreement, loan, loan
40 guarantee, loan insurance, lease, tax expenditure, and other cash and non-cash transfers.

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42 (c) “Appointee” shall include every full-time, non-career Presidential or Vice-Presidential
43 appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and
44 appointee to a position that has been excepted from the competitive service by reason of being of
45 a confidential or policymaking character (Schedule C and other positions excepted under

1 comparable criteria) in an executive agency. It does not include any person appointed as a
2 member of the Senior Foreign Service or solely as a uniformed service commissioned officer.
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4 (d) "Communication" means any substantial correspondence or transmittal, regardless of form or
5 format, intended to influence an executive agency action or in connection with any matter on
6 which the person seeks official action.
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8 (e) "Directly and substantially related to my former employer or former clients" shall mean
9 matters in which the appointee's former employer or a former client is a party or represents a
10 party and where the circumstances would cause a reasonable person with knowledge of the
11 relevant facts to question the appointee's impartiality in the matter.
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13 (f) "Executive agency" shall include each "executive agency" as defined by section 105 of title 5,
14 United States Code, and shall include the Executive Office of the President; provided, however,
15 that for purposes of this order "executive agency" shall include the United States Postal Service
16 and Postal Regulatory Commission, but shall exclude the Government Accountability Office.
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18 (g) "Financial interest" shall mean a material interest related to money, including but not limited
19 to positions in business entities, real estate, sources of income, gifts and personal finances of the
20 appointee and his or her immediate family.
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22 (h) "Former client" is any person for whom the appointee served personally as agent, attorney, or
23 consultant within the 2 years prior to the date of his or her appointment, but excluding instances
24 where the service provided was limited to a speech or similar appearance. It does not include
25 clients of the appointee's former employer to whom the appointee did not personally provide
26 services.
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28 (i) "Former employer" is any person for whom the appointee has within the 2 years prior to the
29 date of his or her appointment served as an employee, officer, director, trustee, or general
30 partner, except that "former employer" does not include any executive agency or other entity of
31 the Federal Government, State or local government, the District of Columbia, Native American
32 tribe, or any United States territory or possession.
33

34 (j) "Gift"

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36 (1) shall have the definition set forth in Section 2635.203(b) of title 5, Code of Federal
37 Regulations; and
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39 (2) shall include gifts that are solicited or accepted indirectly as defined at Section
40 2635.203(f) of title 5, Code of Federal Regulations.
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42 (3) shall exclude items, other than cash, with an aggregate market value of \$10 or less per
43 occasion; any bona fide termination pension, financial award, profit-sharing, stock bonus, or
44 other employee welfare or benefit plan maintained by a former employer not afforded to
45 other employees of equal stature not entering government; and those items excluded by
46 sections 2635.204(b), (c), (e)(1) & (3) and (j)-(1) of title 5, Code of Federal Regulations.
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1 (k) “Government official” means any employee of the executive branch.

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3 (l) “Materially benefitted” includes obtaining a direct and predictable economic, financial,
4 business, or competitive advantage or right.

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6 (m) “Participate” means to participate personally and substantially.

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8 (n) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United
9 States Code, and Section 2635.402(b)(3) of title 5, Code of Federal Regulations, and shall
10 exclude political campaign activities.

11
12 (o) “Particular matter involving specific parties” shall have the same meaning as set forth in
13 Section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any
14 meeting or other communication relating to the performance of one's official duties with a former
15 employer or former client, unless the communication applies to a particular matter of general
16 applicability and participation in the meeting or other event is open to all interested parties.

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18 (p) “Pledge” means the ethics pledge set forth in section 1 of this order.

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20 (q) “Post-employment restrictions” shall include the provisions and exceptions in Section 207(c)
21 of title 18, United States Code, and the implementing regulations.

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23 (r) “Single source” means that only one party or entity was affected by the decision related to
24 those particular matters.

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26 (s) “Specific issue area” means one that has a special or distinct effect on that party other than as
27 part of a class.

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29 (t) All references to provisions of law and regulations shall refer to such provisions as in effect
30 on January XX 2017.

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32 **Section 3. Waiver.**

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34 (a) The Director of the Office of Management and Budget, or his or her designee, in consultation
35 with the Counsel to the President or his or her designee, may grant to any current or former
36 appointee a written waiver of any restrictions contained in the pledge signed by such appointee
37 if, and to the extent that, the Director of the Office of Management and Budget, or his or her
38 designee, certifies in writing (i) that the literal application of the restriction is inconsistent with
39 the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver. A waiver
40 shall take effect when the certification is signed by the Director of the Office of Management and
41 Budget or his or her designee. Upon taking effect, the waiver shall be made available to the
42 public through an online format that is searchable, sortable, downloadable and machine readable.

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44 b) The public interest shall include, but not be limited to, exigent circumstances relating to
45 national security or to the economy.

1 **Section 4. Administration.**
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3 (a) The head of every executive agency shall, in consultation with the Director of the Office of
4 Government Ethics, establish such rules or procedures (conforming as nearly as practicable to
5 the agency's general ethics rules and procedures, including those relating to designated agency
6 ethics officers) as are necessary or appropriate to ensure that every appointee in the agency signs
7 the pledge upon assuming the appointed office or otherwise becoming an appointee; to ensure
8 that compliance with the pledge are addressed in written ethics opinions with each appointee to
9 whom they apply, which opinion shall also be approved by the Counsel to the President or his or
10 her designee prior to the appointee commencing work; to ensure that spousal employment issues
11 and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with
12 appointees or, where no such agreements are required, through ethics counseling; and generally
13 to ensure compliance with this order within the agency.
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15 (b) With respect to the Executive Office of the President, the duties set forth in Section 4(a) shall
16 be the responsibility of the Counsel to the President or his or her designee.
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18 (c) The Director of the Office of Government Ethics shall:
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20 (1) ensure that the pledge and a copy of this order are made available for use by agencies in
21 fulfilling their duties under Section 4(a) above;
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23 (2) in consultation with the Attorney General or the Counsel to the President or their
24 designees, when appropriate, assist designated agency ethics officers in providing advice to
25 current or former appointees regarding the application of the pledge, including guidance to
26 assist with compliance of paragraph 2(b)(3) of the pledge;
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28 (3) in consultation with the Attorney General and the Counsel to the President or their
29 designees, adopt such rules or procedures as are necessary or appropriate:
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31 (i) to carry out the foregoing responsibilities;
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33 (ii) to apply the gift ban set forth in paragraph 1 of the pledge to all executive branch
34 employees;
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36 (iii) to make clear that no person shall have violated the gift ban if the person properly
37 disposes of a gift as provided by section 2635.205 of title 5, Code of Federal
38 Regulations;
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40 (iv) to ensure that existing rules and procedures for Government employees engaged in
41 negotiations for future employment with private businesses that are affected by their
42 official actions do not affect the integrity of the Government's programs and
43 operations; and
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1 (v) to ensure, in consultation with the Director of the Office of Personnel Management,
2 that the requirement set forth in paragraph 4 of the pledge is honored by every
3 employee of the executive branch;
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5 (4) in consultation with the Director of the Office of Management and Budget, report to the
6 President on steps the executive branch can take to expand to the fullest extent practicable
7 disclosure of non-governmental influences on the award of federal funds, and to include in
8 the report both immediate action the executive branch can take and, if necessary,
9 recommendations for legislation;
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11 (5) provide an annual public report on the administration of the pledge and this order; and
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13 (6) ensure that completed ethics agreements and waivers of any provision of the Ethics
14 Pledge are made available to the public in an online format that is searchable, sortable,
15 downloadable and machine readable within 30 days of completion or issuance.
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17 (d) The Director of the Office of Government Ethics shall, in consultation with the Attorney
18 General, the Counsel to the President, and the Director of the Office of Personnel Management,
19 or their designees, report to the President on steps the executive branch can take to expand to the
20 fullest extent practicable the revolving door ban set forth in paragraph 3 of the pledge to all
21 executive branch employees who are involved in the procurement process such that they may not
22 for 2 years after leaving Government service communicate to or appear before any Government
23 official regarding a Government contract that was under their official responsibility in the last 2
24 years of their Government service; and to include in the report both immediate action the
25 executive branch can take and, if necessary, recommendations for legislation.
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27 (e) Agency heads will make STOCK Act disclosures in paragraph 3(b) of the pledge publicly
28 available 90 days after the employee has left public service, subject to 552(b) of title 5, United
29 States Code. Access to these records with information about ethics restrictions and names of
30 current or prospective employers and clients do not qualify for an exemption under 552(b) of
31 Title 5, United States Code, and shall not be redacted.
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33 (f) The Attorney General will report to the President on steps the executive branch can take to
34 expand to the fullest extent practicable disclosure of non-governmental influences on the award
35 of presidential pardons, and to include in the report both immediate action the executive branch
36 can take and, if necessary, recommendations for legislation;
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38 (g) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be
39 filed with the head of the appointee's agency for permanent retention in the appointee's official
40 personnel folder or equivalent folder.
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42 **Section 5. Enforcement.**
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44 (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are
45 solely enforceable by the United States pursuant to this section by any legally available means,

1 including debarment proceedings within any affected executive agency or judicial civil
2 proceedings for declaratory, injunctive, or monetary relief.

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4 (b) Any former appointee who is determined, after notice and hearing, by the duly designated
5 authority within any agency, to have violated his or her pledge may be barred from
6 communications to or appearances before any officer or employee of that agency for up to 5
7 years in addition to the time period covered by the pledge. The head of every executive agency
8 shall, in consultation with the Director of the Office of Government Ethics, establish procedures
9 to implement this subsection, which procedures shall include (but not be limited to) providing for
10 fact finding and investigation of possible violations of this order and for referrals to the Attorney
11 General for his or her consideration pursuant to subsection (c).

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13 (c) The Attorney General or his or her designee is authorized:

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15 (1) upon receiving information regarding the possible breach of any commitment in a signed
16 pledge, to request any appropriate Federal investigative authority to conduct such
17 investigations as may be appropriate; and

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19 (2) upon determining that there is a reasonable basis to believe that a breach of a
20 commitment has occurred or will occur or continue, if not enjoined, to commence a civil
21 action against the former employee in any United States District Court with jurisdiction to
22 consider the matter.

23
24 (d) In any such civil action, the Attorney General or his or her designee is authorized to request
25 any and all relief authorized by law, including but not limited to:

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27 (1) such temporary restraining orders and preliminary and permanent injunctions as may be
28 appropriate to restrain future, recurring, or continuing conduct by the former employee in
29 breach of the commitments in the pledge he or she signed; and

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31 (2) establishment of a constructive trust for the benefit of the United States, requiring an
32 accounting and payment to the United States Treasury of all money and other things of
33 value received by, or payable to, the former employee arising out of any breach or attempted
34 breach of the pledge signed by the former employee.

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36 **Section 6. General Provisions.**

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38 (a) All the terms of Executive Order 13490 shall remain in force for signatories of the Ethics
39 Pledge contained in its Section One. However, for any such signatories who continue in office
40 for more than six months after the date of this Executive Order, the ethics pledge and the
41 remainder of the terms contained herein shall apply.

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43 (b) If any provision of this order or the application of such provision is held to be invalid, the
44 remainder of this order and other dissimilar applications of such provision shall not be affected.

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46 (c) Nothing in this order shall be construed to impair or otherwise affect:

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(1) authority granted by law to a department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(f) The definitions set forth in this order are solely applicable to the terms of this order, and are not otherwise intended to impair or affect existing law.

NAME
THE WHITE HOUSE,
January XX, 2017

