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## You're Hired: President Trump Introduces Ethics Pledge for His Appointees with Serious Departures From Obama's Ethics Pledge

*By Michael G. H. Pfeifer, Tim L. Peckinpaugh, Michael J. O'Neil*

On January 28, 2017, President Trump signed an executive order that requires all full-time political appointees to sign an ethics pledge (the "Trump ethics pledge") that "contractually" binds them to certain ethical standards. The Trump ethics pledge supersedes and is different from the ethics pledge that President Obama required appointees to sign during his administration (the "Obama ethics pledge"), and includes a five-year lobbying ban that severely restricts the ability of covered appointees to engage in the policy advocacy business upon leaving government.

The Trump ethics pledge applies to all full-time, non-career political appointees regardless of whether they are appointed by the president, the vice president, an agency head, or other government official. It is unclear, without further guidance from the Office of Government Ethics, whether the Trump ethics pledge invalidates the Obama ethics pledge, or if that pledge remains intact for those who signed it. In any event, a summary of the Trump ethics pledge highlighting the key restrictions and key differences from the Obama ethics pledge is below. Please contact one of K&L Gates' political ethics lawyers with any questions.

### **Appointees Leaving Government**

#### *Lobbying Ban*

The Trump ethics pledge includes a "lobbying ban" that is far more restrictive than the Obama ethics pledge. Not only is the lobbying ban extended from two years to five years, the scope of the ban is substantially expanded. Under the terms of the Trump ethics pledge, covered appointees may not engage in "lobbying activities" with his or her former agency for five years upon leaving the government. "Lobbying activities" is the defined term that appears in the Lobbying Disclosure Act ("LDA") that includes *both* lobbying contacts *and* background preparation and strategy work. This restriction also applies to engaging in lobbying activities with *any* covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Trump Administration.

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Therefore, as opposed to the Obama ethics pledge, which prohibited covered appointees from “lobbying” as defined as “acting as a registered lobbyist,” any covered appointee under the Trump ethics pledge is prohibited not just from acting as a registered lobbyist, but from engaging in the “behind the scenes” activity, regardless of whether the covered appointee’s lobbying contacts trigger lobbying registration. Given the incredibly restrictive nature of this provision, the Office of Government Ethics may produce additional guidance, in which case we will supplement this alert with further analysis.

## *Cooling-off Period*

The Trump ethics pledge restores the one-year “cooling-off” restriction for certain senior administration officials on contacting employees in their former agency that is codified in Section 207(c) of Title 18 of the United States Code. Note that this is a broader restriction on making contacts than that of the lobbying ban since it applies to contacts with any employee of the former agency (as opposed to contacting covered officials and non-career Senior Executive Service appointees for purposes of the lobbying ban). This is a departure from the Obama ethics pledge, which extended the statutory prohibition on contacting and appearing before former agency officials for two years. As noted above, it is unclear whether this portion of the Obama ethics pledge still applies to signees of the Obama ethics pledge or if it has been invalidated.

## *Lifetime Ban on FARA Representation of Foreign Governments and Political Parties*

The Trump ethics pledge also prohibits any covered appointee from engaging in any activity on behalf of a foreign government or political party that would require registration under the Foreign Agents Registration Act of 1938 (“FARA”) for the remainder of the appointee’s life. This is another massive departure from the Obama ethics pledge. FARA, which implements strict disclosure requirements for any person who represents a foreign entity in seeking to influence U.S. public opinion, policy, and laws, is enforced by the Department of Justice.

## **Appointees Entering Government**

### *Ban on Participating in Matters Involving Former Client or Employer*

The Trump ethics pledge imposes a two-year ban on covered appointees from participating in matters that are directly and substantially related to their former client or employer, including regulations and contracts, when the former client or employer is, or represents, a party to that matter. This includes any clients or employers for whom the

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covered appointee worked for during the two years prior to his or her appointment. This language is identical to the Obama ethics pledge.

## *Ban on Participating in Matters Lobbied in the Past*

The Trump ethics pledge prohibits covered appointees from working on particular matters on which the covered appointee lobbied (as a registered lobbyist) in the two years prior to their appointment. This prohibition applies for two years after the covered appointee enters the government. It also applies to participating in any matter that falls within the same specific issue area. The terms of this prohibition are similar to those of the Obama ethics pledge. However, in another departure from the more restrictive Obama ethics pledge language, the Trump ethics pledge does not prevent a covered appointee from working in an agency that he or she lobbied in the past.

## **Gift Ban**

Like the Obama ethics pledge, covered appointees under the Trump ethics pledge are prohibited from accepting gifts from registered lobbyists or lobbyist organizations during their time in the Trump Administration. The term "gift" has the same definition as under Office of Government Ethics rules, although covered appointees are not subject to all of the same exceptions. Of note, covered appointees may not accept gifts that fall under the *de minimis* exception (\$20 per gift/\$50 per year), and may not attend widely attended gatherings free of charge.

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