

President Trump Issues Executive Order on Ethics

February 1, 2017

This past weekend, President Donald Trump signed an [Executive Order](#) requiring all new appointees in his Administration to sign an ethics pledge that contains special “revolving door” and gift restrictions. Although Mr. Trump also formally rescinded an ethics order issued in the early days of the Obama presidency, this new Executive Order carries over some concepts and restrictions from the prior legal regime. In particular, this new Executive Order does the following:

- **Prohibits Certain “Lobbying Activities” by Former Appointees for the Remainder of the Trump Administration.** Trump appointees are prohibited after leaving government service from engaging in “lobbying activities” with respect to the executive branch for the remainder of the Trump Administration. This prohibition applies to a former official’s activities across the entire executive branch and not just with respect to colleagues at their former agency. “Lobbying activities,” as defined in the Order, includes a former official’s purely behind-the-scenes or background work that is related to a lobbying contact made by *anyone* with the Trump Administration. However, the Executive Order exempts communications and appearances, and presumably background work, “with regard to ... agency rulemaking, adjudication, or licensing” from the ban, which is a broad exemption. ([President Obama’s previous restriction](#) along these lines allowed for some interactions with the Administration that constituted lobbying work provided that the former appointee avoided triggering a lobbying registration obligation.)
- **Institutes a Five-Year Ban on Certain “Lobbying Activities” by Former Appointees Related to a Former Agency.** Trump appointees are barred for five years after leaving government service—not merely the remainder of the Administration—from engaging in any “lobbying activities” with respect to any agency in which they served. “Lobbying activities” are defined with reference to the Lobbying Disclosure Act, which suggests that a former official’s purely behind-the-scenes or background work that is related to a lobbying contact made by *anyone* with a former official’s employing agency is now banned. The ban, however, exempts communications and appearances “with regard to ... agency rulemaking, adjudication, or licensing,” which are often the focus of executive branch lobbying efforts.
- **Rescinds Obama-Era Restriction on Contacts with Government by Former Appointees.** Federal law prohibits an Administration appointee from contacting their former agency on behalf of another in order to influence agency action for one year after departing government service. President Trump’s Order references this statutory restriction, but unlike President Obama’s Order, does not extend the restriction to two years.
- **Imposes a Lifetime Ban on Acting as a “Foreign Agent” for a Foreign Government or Foreign Political Party.** As part of the Trump ethics pledge, appointees commit that they will not engage in activities

that will cause them to register as a “foreign agent” under the Foreign Agents Registration Act (FARA) for any foreign government or political party for the duration of their lives.

- **Partially Rescinds Obama-Era Restrictions on Lobbyists Entering the Administration.** Incoming Trump appointees are subject to restrictions on their work for the government that relates back to matters in which they were involved prior to joining the Administration. These restrictions are broadly similar to those that were in place under President Obama. The Trump Executive Order does, though, rescind the Obama-era prohibition, subject to waiver, on lobbyists seeking or accepting appointment to any executive agency they lobbied in the two years prior to their appointment.
- **Retains Obama-Era Restrictions on Gifts to Appointees.** As it pertains to gifts from lobbyists, the Executive Order is a continuation of the approach used during the Obama Administration. Trump appointees may not receive gifts from “registered lobbyists or lobbying organizations” during their government service. “Gift” is defined under the Executive Order in a manner that prevents appointees from utilizing common gift-rule exemptions for “widely attended gatherings” and items of \$20 or less that are available to other executive branch personnel. Trump appointees continue to be able to accept modest food and non-alcoholic beverages, as well as attend events where they will present on behalf of their agency.

We expect that the Office of Government Ethics will issue implementing guidance that clarifies some aspects of this Executive Order in the coming months. For more information, please contact the following attorneys in [Caplin & Drysdale's Political Law Group](#).

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