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Ethics Pledges and Other Executive Branch Appointee Restrictions Since 1993: Historical Perspective, Current Practices, and Options for Change

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Summary

On January 28, 2017, President Donald Trump issued Executive Order (E.O.) 13770 on ethics and lobbying. E.O. 13770 created an ethics pledge for executive branch appointees, provided for the administration and enforcement of the pledge, and revoked President Barack Obama's executive order ethics pledge that covered his Administration (E.O. 13490). President Trump's executive order shares some features with President Obama's executive order and a previous executive order issued by President Bill Clinton.

Executive order ethics pledges are one of several tools, along with laws and administrative guidance, available to influence the interactions and relationships between the public and the executive branch. The ability of private citizens to contact government officials is protected by the Constitution. As such, the restrictions placed by executive order ethics pledges, laws, and administrative guidance are designed to provide transparency and address enforcement of existing "revolving door" (when federal employees leave government for employment in the private sector) and lobbying laws.

The report begins with an overview of the relationship between the public and the executive branch, including the use of laws, executive orders, and other guidance and Administration policy to regulate interactions. A brief summary of recent executive orders is then provided, including a side-by-side analysis of ethics pledges from the Clinton, Obama, and Trump Administrations. This analysis is followed by observations about the similarities and differences among the three pledges. These observations focus on

- the revolving door restrictions (18 U.S.C. §207),
- the definition of lobbying used in ethics pledges, and
- the representation of foreign principals by former executive branch officials.

In the context of observations drawn from the ethics pledges, Congress has many options available to potentially address the relationship and contact between the private sector and government employees. These include options to

- amend revolving door restrictions,
- amend the Lobbying Disclosure Act of 1995, and
- codify the ethics pledge to make executive order additions to existing laws permanent.

Additionally, Congress could take no immediate action and maintain current standards.

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Introduction

During the 2016 presidential campaign, then-candidate Donald Trump proposed a series of ethics measures. These included

- extending "cooling off" periods on lobbying the government after government service;
- "instituting a five-year ban on lobbying by former Members of Congress and their staffs";
- expanding the definition of a lobbyist to cover former government officials who engage in strategic consulting; and
- issuing a "lifetime ban against senior executive branch officials lobbying on behalf of a foreign government."[1]

On January 28, 2017, President Trump issued Executive Order (E.O.) 13770 addressing aspects of his campaign proposal on ethics and lobbying.[2] E.O. 13770 created an ethics pledge for executive branch appointees, provided for the administration and enforcement of the pledge, and revoked President Barack Obama's executive order ethics pledge that covered his Administration (E.O. 13490).[3] President Trump's executive order shares some features with President Obama's executive order and a previous executive order issued by President Bill Clinton.[4]

Since the basis of the ethics pledges is to regulate public and executive branch interactions, this report focuses on the main features of the ethics pledges—lobbying, ethics in government, and the "revolving door"—to explore the basis and current practices for these interactions.

The report begins with an overview of the relationship between the public and the executive branch, including the use of laws, executive orders, and other guidance and Administration policy to regulate interactions. A brief summary of executive orders is then provided, including a side-by-side analysis of ethics pledges from the Clinton, Obama, and Trump Administrations. This analysis is followed by observations of the similarities and differences among the three ethics pledges. Finally, options for change are evaluated.

Public and Executive Branch Interactions

The right of citizens to petition the government has long been considered a protected and fundamental aspect of the citizen-government dynamic.[5] Today, interactions between the private

[1] Donald J. Trump for President, Inc., "Donald J. Trump's Five-Point Plan for Ethics Reform," October 17, 2016, at https://web.archive.org/web/20170409210153/https://www.donaldjtrump.com/press-releases/donald-j.-trumps-five-point-plan-for-ethics-reform.

[2] Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," 82 *Federal Register* 9333, January 28, 2017.

[3] Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," 74 *Federal Register* 4673, January 21, 2009.

[4] Executive Order 12834, "Ethics Commitments by Executive Branch Personnel," 58 *Federal Register* 5911, January 22, 1993.

[5] For more information on the right to petition, see Alexander Hamilton, "Federalist 84: Certain General and Miscellaneous Objections to the Constitution Considered and Answered," *The Federalist Papers*, at https://www.congress.gov/resources/display/content/The+Federalist+Papers; Stephen A. Higginson, "A Short History of the Right to Petition Government for the Redress of Grievances," *The Yale Law Journal*, vol. 96, no. 1 (November

citizens and the executive branch take many forms. Some interactions fit the traditional petition model, in which private citizens or lobbyists contact and request information or action from Congress or the executive branch.[6]

Other interactions are more complicated and can involve private citizens becoming government employees or government employees leaving the government to take private sector jobs in the area they covered for the government. Also called the "revolving door,"[7] these movements can take on many forms, including former federal employees lobbying for a domestic or foreign client or engaging in policy work, or individuals entering government to engage in regulatory activity. Some have argued that the revolving door can lead to undue influence by the private sector over governmental activities or vice-versa.[8] Others have argued that government employees need to be restricted with regard to such activities to ensure their "neutral competence" and that they represent the interests of the government above all else.[9]

Proponents of the revolving door, however, observe that the promise of future private-sector employment could potentially improve the quality of candidates applying for government jobs.[10] They argue that direct connections to government officials are important, but a close relationship is not necessarily what drives lobbying. Some believe that government employees contemplating a move to the private sector will be friendly to industry interests at the expense of the public interest. On the other hand, studies have shown that regulators instead may engage in more aggressive actions against industry and do not favor industry, regardless of their job prospects.[11] Another factor observers raise is that the flow of personnel between the public and private sectors may increase the knowledge base of both sectors.

Regulating interactions between the public and the government may be carried out through law, executive order, Administration policy—including regulations issued by the Office of Government Ethics (OGE)[12]—or a combination of all three. Administration policy has generally sought to require disclosure of activities or place restrictions on current or former government employees rather than ban certain activities or contacts. For example, in 2009 the Obama

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1986), pp. 142-166; and Norman B. Smith, "'Shall Make No Law Abridging ... ': An Analysis of the Neglected, But Nearly Absolute, Right of Petition," *University of Cincinnati Law Review*, vol. 54, no. 4 (1986), pp. 1153-1197.

[6] For an overview of lobbying, see CRS Report R44292, *The Lobbying Disclosure Act at 20: Analysis and Issues for Congress*, by Jacob R. Straus; and CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, coordinated by Cynthia Brown.

[7] For more information on the revolving door, see CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, coordinated by Cynthia Brown.

[8] Several recent academic studies have focused on the revolving door and its potential effect on governance. For example, see Todd Maske, "A Very Particular Set of Skills: Former Legislator Traits and Revolving Door Lobbying in Congress," *American Politics Research*, November 7, 2016, 10.1177/1532673X16677274; Jordi Blanes I Vidal, Mirko Draca, and Christian Fons-Rosen, "Revolving Door Lobbyists," *American Economic Review*, vol. 102, no. 7 (2012), pp. 3731-3748; and Timothy M. LaPira and Hershell F. Thomas, III, "Revolving Door Lobbyists and Interest Representation," *Interest Groups & Advocacy*, vol. 3, no. 1 (2014), pp. 4-29.

[9] For example, see Paul Douglas Foote and James Clinger, "The First Amendment and the Off-Duty Conduct of Public Employees: Tradeoffs Among Civil Liberties, Agency Mission, and Public Trust," *Public Integrity* (2017), at http://dx.doi.org/10.1080/10999922.2017.1300976; and Karam Kang, "Policy Influence and Private Returns from Lobbying the Energy Sector," *Review of Economic Studies*, vol. 83, no. 1 (2016), pp. 269-305.

[10] David Zaring, "Against Being Against the Revolving Door," *University of Illinois Law Review*, vol. 2013, no 2 (2013), pp. 507-550.

[11] David Zaring, "Against Being Against the Revolving Door," and Wentong Zheng, "The Revolving Door," *Notre Dame Law Review*, vol. 90, no. 3 (2015), pp. 1265-1308.

[12] For more information on the Office of Government Ethics (OGE), see CRS In Focus IF10634, *Office of Government Ethics: A Primer*, by Jacob R. Straus.

Administration issued a memorandum outlining rules for executive branch employees' contact with lobbyists about American Recovery and Reinvestment Act of 2009 (ARRA) funds.[13] This guidance did not restrict a lobbyist's ability to contact the government, but it did require agency employees to log conversations with lobbyists and the agencies to post those logs on an agency website.[14] In most cases, laws, executive orders, and other Administration guidance generally aim to regulate the relationship between governmental and nongovernmental actors.

Laws

Several laws address the relationship between governmental and nongovernmental actors. These include lobbying laws, ethics laws, and revolving door laws. This section provides a brief overview of these three sets of laws and how they generally apply to executive branch officials.

Lobbying

The first lobbying law was the Legislative Reorganization Act of 1946 (Title III, the Federal Regulation of Lobbying Act [RLA]). The RLA applied to "any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States."[15] The RLA was silent on lobbying efforts aimed toward the executive branch.[16]

Over time, the RLA was repealed and replaced by the Lobbying Disclosure Act of 1995 (LDA), as amended by the Honest Leadership and Open Government Act of 2007 (HLOGA).[17] Under the LDA as amended, individuals register with the Clerk of the House of Representatives and the Secretary of the Senate and disclose their activities,[18] if they are

> (1) employed or retained by a client for financial or other compensation, (2) for services that include more than one lobbying contact[;][19] and his or her lobbying activities for that

[13] U.S. President (Obama), "Memorandum of March 20, 2009: Ensuring Responsible Spending of Recovery Act Funds," 74 *Federal Register* 12531, March 25, 2009. The American Recovery and Reinvestment Act of 2009 was enacted as P.L. 111-5, 123 Stat. 115, February 17, 2009.

[14] Office of Management and Budget, Peter R. Orszag, Director, "Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds," M-09-24, Washington, DC, July 34, 2009, p. 1, at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_fy2009/m09-24.pdf. Each agency was required to have a Recovery Act website. For example, the Department of Energy website can be found at http://www.energy.gov/recovery-act/. The website contains reports on various Recovery Act activities.

[15] P.L. 79-601, §308(a), 60 Stat. 841, August 2, 1946.

[16] Robert C. Byrd, "Lobbyists," *The Senate, 1789-1989: Addresses on the History of the United States Senate*, edited by Wendy Wolff, 100th Cong., 1st sess., S.Doc. 100-20 (Washington: GPO, 1991), p. 505 (fn 35). See also, *United States v. Harriss*, 347 U.S. 612 (1954).

[17] P.L. 104-65, 109 Stat. 691, December 19, 1995; and P.L. 110-81, 121 Stat. 735, September 14, 2007. Additionally, the LDA was amended in 1998 to make technical corrections, including altering the definition of executive branch officials covered by the act (P.L. 105-166, 112 Stat. 38, April 8, 1998). For more information on the Regulation of Lobbying Act of 1946, see CRS Report R44292, *The Lobbying Disclosure Act at 20: Analysis and Issues for Congress*, by Jacob R. Straus.

[18] For more information on the implementation of the LDA and the role of the Clerk of the House and Secretary of the Senate, see CRS Report RL34377, *Lobbying Registration and Disclosure: The Role of the Clerk of the House and the Secretary of the Senate*, by Jacob R. Straus.

[19] Pursuant to 2 U.S.C. §1602(8), a *lobbying contact* means "any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to the formulation, modification, or adoption of Federal legislation, ... federal rule, regulation, executive order, the administration or execution of a Federal program or policy ...; or the nomination or

client must amount to 20 percent or more of the time that the individual expends on services to that client over a six-month period.[20]

Additionally, the LDA refined thresholds and definitions of lobbying activities, changed the frequency of reporting for registered lobbyists and lobbying firms, required additional disclosures, created new semiannual reports on campaign contributions, and added disclosure requirements for coalitions and associations.[21]

Ethics in Government

Starting in at least 1961, standards of ethical conduct for executive branch employees were set by a series of executive orders.[22] Following the Watergate scandal and President Nixon's resignation, interest in a government-wide ethics law increased.[23] These efforts culminated with the enactment of the Ethics in Government Act in 1978.[24] Drafted to "preserve and promote the accountability and integrity of public officials and of the institutions of the Federal Government,"[25] the act codified many of the provisions included in past executive orders. The Ethics in Government Act

- required financial disclosure by high-ranking government officials, including Members of Congress and senior judicial branch officials;
- amended Title 18 *United States Code* to set restrictions on postemployment activities of certain executive branch officers and employees; and
- created the Office of Government Ethics to provide standardized regulations, review and monitor financial disclosure statements, and educate and inform executive branch employees of ethics laws and regulations.[26]

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confirmation of a person for a position subject to confirmation by the Senate."

[20] William V. Luneburg and A.L. (Lorry) Spitzer, "The Lobbying Disclosure Act of 1995: Scope of Coverage," in *The Lobbying Manual: A Complete Guide to Federal Law Governing Lawyers and Lobbyists*, ed. William V. Luneburg and Thomas M. Susman, 3rd ed. (Chicago: ABA Publishing, 2005), p. 37. Pursuant to 2 U.S.C. §1602(7), "the term 'lobbying activities' means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others."

[21] For further analysis of HLOGA's lobbying provision changes see CRS Report R44292, *The Lobbying Disclosure Act at 20: Analysis and Issues for Congress*, by Jacob R. Straus.

[22] Executive Order 10939, "To Provide a Guide on Ethical Standards to Government Officials," 26 *Federal Register* 3951, May 6, 1961. See also, Executive Order 11590, "Applicability of Executive Order No. 11222 and Executive Order No. 11478 to the United States Postal Service and of Executive Order No. 11478 to the Postal Rate Commission," 36 *Federal Register* 7831, April 23, 1971; and U.S. Government Accountability Office, *Action Needed to Make the Executive Branch Financial Disclosure System Effective*, FPCD-77-23, February 28, 1977, p. 1, at http://www.gao.gov/assets/120/117726.pdf#page=10.

[23] U.S. Congress, Senate Committee on the Judiciary, To Establish Certain Federal Agencies, Effect Certain Reorganizations of the Federal Government, To Implement Certain Reforms in the Operation of the Federal Government and to Preserve and Promote the Integrity of Public Officials and Institutions, and for Other Purposes, report to accompany S. 555, 95th Cong., 1st sess., June 15, 1977, S.Rept. 95-273 (Washington: GPO, 1977), p. 2.

[24] P.L. 95-521, 92 Stat. 1824, October 26, 1978; 5 U.S.C. Appendix, §§101-505.

[25] U.S. Congress, Senate, Committee on Governmental Affairs, *Public Officials Integrity Act of 1977*, report to accompany S. 555, 95th Cong., 1st sess., May 16, 1977, S.Rept. 95-170 (Washington: GPO, 1977), p. 1.

[26] U.S. President (Carter), "Ethics in Government Act of 1978," *Weekly Compilation of Presidential Documents*, vol. 14, no. 43 (October 26, 1978), pp. 1854-1856; and U.S. Congress, Senate, Committee on Governmental Affairs, *Public Officials Integrity Act of 1977*, report to accompany S. 555, 95th Cong., 1st sess., May 16, 1977, S.Rept. 95-170 (Washington: GPO, 1977), pp. 1, 30-31.

In 1989, amendments to the Ethics in Government Act were enacted.[27] The Ethics Reform Act of 1989 included "the extension of post-employment 'revolving door' restrictions to the legislative branch; ... limitations on outside earned income for higher-salaried, noncareer employees in all branches; increased financial disclosure; ... and limitation on gifts and travel."[28]

The Revolving Door

Several laws govern the movement of federal employees from the government to the private sector and vice versa. Most prominently, 18 U.S.C. §207 provides a series of postemployment restrictions on "representational" activities for executive branch personnel when they leave government service, including

- a lifetime ban on "switching sides" on a matter involving specific parties on which any executive branch employee had worked personally and substantially while with the government;
- a two-year ban on "switching sides" on a somewhat broader range of matters which were under the employee's official responsibility;
- a one-year restriction on assisting others on certain trade or treaty negotiations;
- a one-year "cooling off" period for certain "senior" officials, barring representational communications before their former departments or agencies;
- a two-year "cooling off" period for "very senior" officials, barring representational communications to and attempts to influence certain other high-ranking officials in the entire executive branch of government; and
- a one-year ban on certain officials in performing some representational or advisory activities for foreign governments or foreign political parties.[29]

Executive Orders

Historically, Presidents have used a variety of written mechanisms to direct executive branch agencies and implement policy. The most widely known written statements are executive orders.[30] While no formal definition of executive order exists, a widely accepted description was offered in a 1957 House Government Operations Committee report. It stated,

> Executive orders ... are directives or ac tions by the President. When they are founded on the authority of the President derived from the Constitution or statute, they may have the force and effect of law. There is no law or even Executive order which attempts to define the term "Executive order".... Executive orders are generally directed to, and govern actions by, Government officials and agencies.[31]

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[27] P.L. 101-194, 103 Stat. 1716, November 30, 1989.

[28] U.S. President (George H. W. Bush), "Statement on Signing the Ethics Reform Act of 1989," *Weekly Compilation of Presidential Documents*, vol. 25, no. 48 (November 30, 1989), p. 1855. The Ethics in Government Act of 1978, as amended, is codified in the appendix of Title 5 United States Code. Conflict of interest and revolving door provisions are codified at 18 U.S.C. §207 and financial disclosure requirements for the Executive Branch are codified at 18 U.S.C. §208.

[29] For more information on postemployment laws for federal personnel, see CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, coordinated by Cynthia Brown.

[30] For more information on executive orders see CRS Report RS20846, *Executive Orders: Issuance, Modification, and Revocation*, by Todd Garvey.

[31] U.S. Congress, House Committee on Government Operations, *Executive Orders and Proclamations: A Study of a*

Historically, executive orders have been used for both major matters (e.g., the Louisiana Purchase, emancipation of the slaves during the Civil War, the annexation of Texas)[32] and minor changes to administrative policy (e.g., mold policies, instructions on agency decisionmaking).[33]

Since the 1960s, several Presidents have issued executive orders to outline ethical requirements and provide implementation guidance to executive branch employees. The initial issuance of an ethics executive order by President John F. Kennedy in 1961[34] roughly mirrors increased congressional interest in ethics, including the adoption of a general Code of Ethics for Government Service in the 85th Congress (1957-1958);[35] investigations of alleged misconduct by Bobby Baker, secretary to the Senate majority, and by Representative Adam Clayton Powell Jr. in the 1960s;[36] and the creation of the Senate Select Committee on Standards and Conduct (now the Select Committee on Ethics) in 1964, and the House Committee on Standards of Official Conduct (now the House Ethics Committee) in 1967.[37]

As the first ethics executive order, President Kennedy's 1961 executive order (E.O. 10939) included provisions for behavior by government employees that would be included in other ethics executive orders and ultimately be reflected in the Ethics in Government Act of 1978.[38] In the years after President Kennedy's Administration, other Presidents also issued executive ethics orders. These executive orders were issued by President Lyndon Johnson,[39] President Richard

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Use of Presidential Powers, committee print, 85th Cong., 1st sess., December 1957 (Washington: GPO, 1957), p. 1.

[32] Andrew Rudalevige, "The Presidency and Unilateral Power: A Taxonomy," in *The Presidency and the Political System*, ed. Michael Nelson, 10th ed. (Washington, DC: CQ Press, 2014), pp. 483-484; and Megan Covington, "Executive Legislation and the Expansion of Presidential Power," *Vanderbilt University Board of Trust: Humanities and Social Sciences*, vol. 8 (Spring 2012), p. 1, at http://ejournals.library.vanderbilt.edu/index.php/vurj/article/download/3556/1738.

[33] Louis Fisher, *Constitutional Conflict Between Congress and the President, 4th edition* (Lawrence, KS: University of Kansas Press, 1997), pp. 110-114. Fisher's book discusses both major and minor uses of executive orders.

[34] U.S. President (Kennedy), Executive Order 10939, "To Provide A Guide on Ethical Standards to Government Officials," 61 *Federal Register* 3951, May 5, 1961; and U.S. Congress, House, Committee on the Judiciary, *Ethical Conduct in Government*, Message from the President of the United States, 87th Cong., 1st sess., April 27, 1961, H.Doc. 87-145 (Washington: GPO, 1961).

[35] 72 Stat. B12, H.Con.Res. 175. The standards included in the Code of Ethics for Government Service are still recognized as continuing ethical guidance in the House and Senate. They are, however, not legally binding because the code was adopted by congressional resolution, not by public law. The Code of Ethics for Government Service is cited by many House and Senate investigations. For example, see U.S. Congress, House Committee on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, report, 108th Cong., 2nd sess., H.Rept. 108-722 (Washington: GPO, 2004), p. 38.

[36] "Ethics and Criminal Prosecutions," in *Guide to Congress*, 5th ed., vol. II (Washington: CQ Press, 2000), pp. 943-988. For more information on the enforcement of congressional rules of conduct, see CRS Report RL30764, *Enforcement of Congressional Rules of Conduct: A Historical Overview*, by Jacob R. Straus.

[37] "Proposed Amendment of Rule XXV of the Standing Rules of the Senate Relative to the Jurisdiction of the Committee on Rules and Administration," *Congressional Record*, vol. 110, part 13 (July 24, 1964), pp. 16929-16940; and "Committee on Standards of Official Conduct," *Congressional Record*, vol. 113, part 7 (April 13, 1967), pp. 9426-9448. For more information on the Senate Select Committee on Ethics, see CRS Report RL30650, *Senate Select Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, by Jacob R. Straus. For more information on the House Committee on Standards of Official Conduct, see CRS Report 98-15, *House Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, by Jacob R. Straus.

[38] 5 U.S.C. Appendix. President Kennedy's executive order included prohibitions on outside employment, use of public office for private gain, receiving compensation from the private sector for government work, and receiving compensation for consulting, lectures, or written material. U.S. President (Kennedy), "Executive Order 10939: To Provide A Guide on Ethical Standards to Government Officials," 26 *Federal Register* 3951, May 5, 1961.

[39] U.S. President (Lyndon B. Johnson), Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," 30 *Federal Register* 6469, May 11, 1965.

Nixon,[40] President Ronald Reagan,[41] and President George H. W. Bush.[42] None, however, contained a pledge that executive branch appointees were required to sign.

Since the enactment of the Ethics in Government Act of 1989, three Presidents have issued ethics executive orders, each containing an "ethics pledge" that appointees were required to sign upon taking office. Those orders, discussed in detail below under "Executive Branch Ethics Pledges," were issued by Presidents Clinton, Obama, and Trump.[43]

Other Guidance and Policy

In addition to executive orders, the President can direct executive branch action by issuing a memorandum or guidance. Often issued through the Office of Management and Budget (OMB), this guidance can provide additional direction to executive branch employees on a wide range of subjects. In the context of ethics and lobbying, guidance has been utilized to regulate contact between lobbyists and executive branch employees for certain programs.[44]

For example, President George W. Bush issued a memorandum on January 20, 2001, his first day in office, instructing the heads of executive agencies and departments to "ensure that all personnel within your departments and agencies are familiar with, and faithfully observe, applicable ethics law and regulations.... "[45] The memorandum also included a restatement of provisions from the Standards of Ethical Conduct for Employees of the Executive Branch, a publication issued by the Office of Government Ethics and codified at 5 C.F.R. Part 2635.[46]

Similarly, during the Obama Administration, Treasury Department and OMB guidance provided instructions to federal employees about their interactions with lobbyists on two acts: the

[40] U.S. President (Nixon), Executive Order 11590, "Applicability of Executive Order No. 11222 and Executive Order No. 11478 to the United States Postal Service and of Executive Order No. 11478 to the Post Rate Commission," 36 *Federal Register* 7831, April 23, 1971.

[41] U.S. President (Reagan), Executive Order 12565, "Prescribing a Comprehensive System of Financial Reporting for Officers and Employees in the Executive Branch," 51 *Federal Register* 34437, September 25, 1986.

[42] U.S. President (George H. W. Bush), Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," 54 *Federal Register* 15159, April 12, 1989; and U.S. President (George H. W. Bush), Executive Order 12731, "Principles of Ethical Conduct for Government Officers and Employees," 55 *Federal Register* 42547, October 17, 1990.

[43] Executive Order 12834, "Ethics Commitments by Executive Branch Appointees," 58 *Federal Register* 5911, January 22, 1993; Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," 74 *Federal Register* 4673, January 21, 2009; and Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," 82 *Federal Register* 9333, January 28, 2017.

[44] Since a ban on communication between lobbyists and government employees might be a violation of First Amendment rights to speech and petition the government. Daniel T. Ostas, "The Law and Ethics of K Street: Lobbying, the First Amendment, and the Duty to Create Just Laws," *Business Ethics Quarterly*, vol. 17, no. 1 (January 2007), pp. 35-37; and Vincent R. Johnson, "Regulating Lobbying: Law, Ethics, and Public Policy," *Cornell Journal of Law and Public Policy*, vol. 16, no. 1 (Fall 2006), pp. 5-10, at http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1103&context=cjlpp. For example, see Office of Management and Budget, Peter R. Orszag, Director, Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds, M-09-24, Washington, DC, July 24, 2009, p. 1, at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_fy2009/m09-24.pdf. [Hereinafter, *Orszag Guidance*].

[45] U.S. President (George W. Bush), "Memorandum on Standards of Official Conduct," *Public Papers of the Presidents of the United States: George W. Bush, Book 1* (Washington: GPO, 2003), pp. 211-212.

[46] For the most recent version of the Standards of Ethical Conduct for Employees of the Executive Branch, see Office of Government Ethics, "Standards of Ethical Conduct for Employees of the Executive Branch," January 1, 2017, at https://www.oge.gov/Web/oge.nsf/Resources/Standards+of+Ethical+Conduct+for+Employees+of+the+Executive+Branch.

Emergency Economic Stabilization Act of 2008 (EESA)[47] and the American Recovery and Reinvestment Act of 2009 (ARRA).[48] For EESA, guidance was designed to combat potential lobbyist influence on the disbursement of EESA funds, to remove politics from funding decisions, to offer certification to Congress that each investment decision was based "only on investment criteria and the facts of the case," and to provide transparency to the investment process.[49] For the ARRA, all communications between nongovernmental entities and government officials about ARRA funds were required to be documented and posted to an agency-specific ARRA website.[50]

Memoranda and guidance such as these are not discussed further in this report, which focuses on executive order ethics pledges.

Executive Branch Ethics Pledges

Since the Ethics in Government Act of 1978 was enacted,[51] three Presidents have issued an executive order creating an ethics pledge for Administration appointees.[52] They are President Clinton (1993), President Obama (2009), and President Trump (2017). This section provides a brief summary of each ethics pledge.

Clinton Administration Ethics Pledge

On January 22, 1993, President Clinton issued Executive Order 12834, "Ethics Commitments by Executive Branch Appointees."[53] Contemporary news reports of the ethics pledge cited campaign promises "to curb influence peddling by former government officials."[54] The ethics pledge included a five-year ban for former federal officials on lobbying any officer or employee of the agency in which they served, a five-year ban on lobbying the Executive Office of the President (EOP) by former EOP employees, a lifetime ban on representing a foreign agent under the

[47] P.L. 110-343, 122 Stat. 3765, October 3, 2008.

[48] P.L. 111-5, 123 Stat. 115, February 17, 2009.

[49] U.S. Department of the Treasury, Communications with Registered Lobbyists and Other Persons About Emergency Economic Stabilization Act Funds, Washington, DC, 2009; U.S. Department of the Treasury, "Treasury Secretary Opens Term Opens [sic] With New Rules To Bolster Transparency, Limit Lobbyist Influence in Federal Investment Decisions," press release, January 27, 2009.

[50] *Orszag Guidance*, p. 1.

[51] P.L. 95-521, 92 Stat. 1824, October 26, 1978; U.S.C. Appendix §§101-505.

[52] President Jimmy Carter likely required certain presidential appointments to sign "a statement of personal affiliations and a letter of commitment to the President." This included commitments to "avoid employment for 2 years following government service that would result in financial gain because of that service." U.S. President (Carter), "Personal Statements of Cabinet and Cabinet-Level Officers," *Weekly Compilation of Presidential Documents*, vol. 13, no. 9 (February 25, 1977), pp. 262-263. Additionally, President Carter reported to Congress that he "obtained a commitment from these officials to adhere to tighter restrictions after leaving government, in order to curb the 'revolving door' practice that has too often permitted former officials to exploit their government contacts for private gain." U.S. President (Carter), "Ethics in Government: The President's Message to the Congress Urging Enactment of the Proposed Ethics in Government Act of 1977 and Special Prosecutor Legislation," *Weekly Compilation of Presidential Documents*, vol. 13, no. 19 (May 3, 1977), pp. 647-650. Research into the ethics code in coordination with the Carter Library could not locate any signed ethics agreements.

[53] Executive Order 12834, "Ethics Commitments by Executive Branch Appointees," 58 *Federal Register* 5911, January 22, 1993.

[54] "Clinton Announces New Ethics Standards," *CQ Almanac 1992*, at https://library.cqpress.com/cqalmanac/document.php?id=cqal92-1106991. See also, Mitchell Locin, "Clinton Lays Down the Law on Ethics Rules," *Chicago Tribune*, December 10, 1992, at http://articles.chicagotribune.com/1992-12-10/news/9204220361_1_lobbying-special-interests-appointees.

Foreign Agents Registration Act (FARA), and a five-year ban for former government officials who participated in a trade negotiation to advise or represent a foreign government.[55] On December 28, 2000, President Clinton revoked this executive order.[56]

Obama Administration Ethics Pledge

On January 21, 2009, President Obama issued Executive Order 13490, "Ethics Commitments by Executive Branch Personnel."[57] The executive order created an ethics pledge for all executive branch appointments made on or after January 20, 2009, including a ban on accepting gifts from registered lobbyists, a two-year ban on working on particular issues involving a former employer, and a ban on lobbying the Administration after leaving government service. Additionally, the E.O. defined terms included in the pledge; allowed the Director of OMB, in consultation with the counsel to the President, to issue ethics pledge waivers; instructed the heads of executive agencies to consult with the Director of the Office of Government Ethics to establish rules of procedure for the administration of the ethics pledge; and authorized the Attorney General to enforce the executive order. In a press release summarizing the executive order, the Obama White House explained the ethics pledge and the importance of following ethics and lobbying rules:

> The American people ... deserve more than simply an assurance that those coming to Washington will serve their interests. They deserve to know that there are rules on the books to keep it that way. In the Executive Order on Ethics Commitments by Executive Branch Personnel, the President, first, prohibits executive branch employees from accepting gifts from lobbyists. Second, he closes the revolving door that allows government officials to move to and from private sector jobs in ways that give that sector undue influence over government. Third, he requires that government hiring be based upon qualifications, competence and experience, not political connections. He has ordered every one of his appointees to sign a pledge abiding by these tough new rules as a downpayment on the change he has promised to bring to Washington.[58]

Trump Administration Ethics Pledge

On January 28, 2017, President Donald J. Trump issued Executive Order 13770, "Ethics Commitments by Executive Branch Appointees."[59] The executive order revoked President Obama's executive order (E.O. 13490) and created a new ethics pledge that shared many features

[55] Executive Order 12834, §1(a)(1)-(4).

[56] Executive Order 13184, "Revocation of Executive Order 12834," 66 *Federal Register* 697, December 28, 2000. See also, Cheryl K. Chumley, "Clinton Revokes Ethics Order He Authored in 1993," *CNSNews.com*, July 7, 2008, at http://www.cnsnews.com/news/article/clinton-revokes-ethics-order-he-authored-1993. The revocation of the executive order could have allowed Clinton Administration officials covered by the five-year ban in the ethics pledge to lobby the incoming Administration following the statutory ban imposed by the Ethics in Government Act of 1978, as amended (18 U.S.C. §207). See also, John Mintz, "Clinton Reverses 5-Year Ban on Lobbying by Appointees," *The Washington Post*, December 29, 2000, at https://www.washingtonpost.com/archive/politics/2000/12/29/clinton-reverses-5-year-ban-on-lobbying-by-appointees/e5a0571f-5c54-4988-adc6-5571a7557e83/?utm_term=.e8416ec1204c.

[57] Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," 74 *Federal Register* 4673, January 21, 2009.

[58] The White House, "Statement from the Press Secretary on the President's signing of two Executive Orders and three Memoranda," press release, January 21, 2009. "Revolving door" regulations refer to restrictions placed on the types of jobs current federal employees may take when they leave federal service. For more information on the revolving door, see CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, coordinated by Cynthia Brown.

[59] Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," 82 *Federal Register* 9333, January 28, 2017.

to those previously issued by President Clinton and President Obama. The E.O. required all appointees to observe a two-year ban on "particular matters" related to former employers, a two-year ban for former lobbyists on involvement on matters on which he or she had lobbied, and a five-year ban on lobbying the government for appointees who leave government service. Additionally, the ethics pledge defined relevant terms, provided for a waiver process,[60] and outlined the pledge's administration and enforcement.

Observations

In many ways, President Trump's ethics pledge shares features with those issued by President Clinton and President Obama. For example, all three provided for restrictions, in addition to those imposed by law, on the activities of certain appointees as they enter and exit government service. The three ethics pledges, however, also have many differences. President Clinton's ethics pledge contained provisions prohibiting pledge signers from becoming foreign agents or engaging in trade negotiations following government employment. President Obama's ethics pledge contained a lobbyist gift ban, and President Clinton's and President Trump's contain a five-year lobbying ban. A full side-by-side comparison of President Clinton's, President Obama's, and President Trump's executive order ethics pledges can be found in the **Appendix**.

Even though some provisions of the ethics pledges are similar, each pledge also provides the Administration's interpretation of the relationship between government employees and lobbyists, and how employees entering and exiting government service should behave vis-a-vis the Administration. The following section provides observations about the major similarities and differences between President Clinton's, President Obama's, and President Trump's ethics pledges in three areas: the "revolving door" (i.e., employees entering and exiting government service), definition of lobbying, and representation of foreign principals.

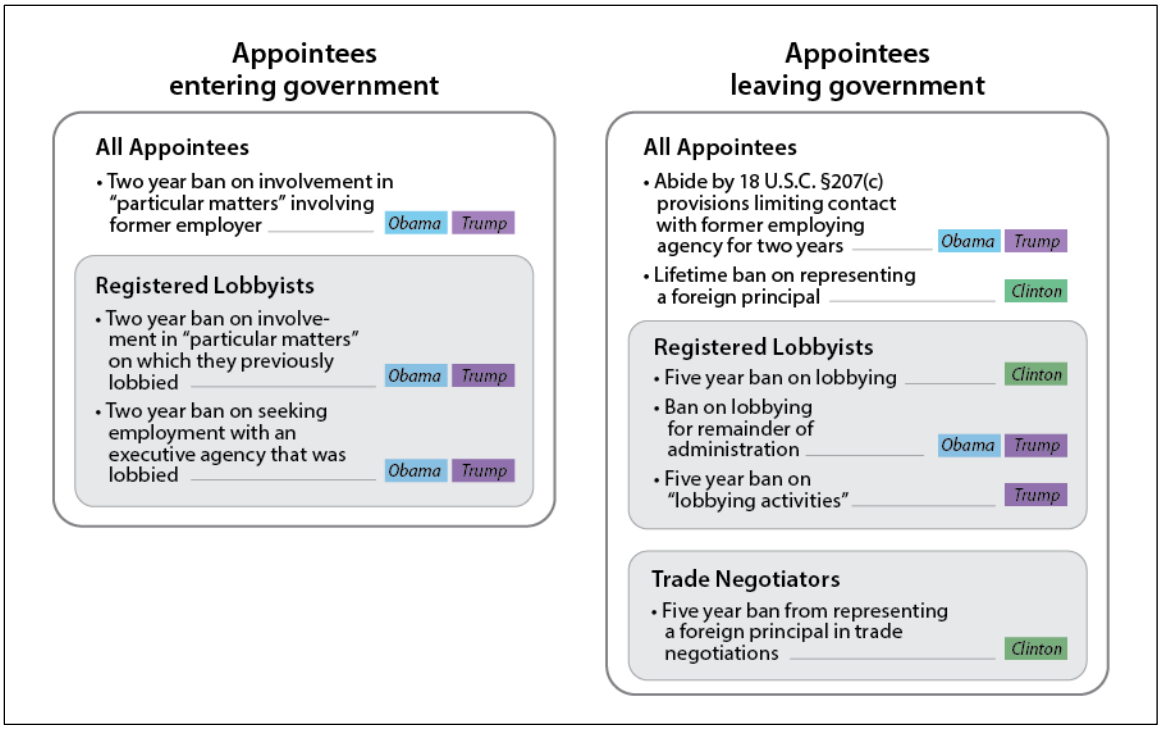
The "Revolving Door"

Each ethics pledge puts additional restrictions on appointees entering and exiting government service.[61] These include general restrictions for all appointees and specific restrictions for lobbyists. **Figure 1** summarizes the executive order restrictions for appointees entering and exiting government service.

[60] For a discussion of ethics waivers, see CRS Insight IN10721, *Office of Government Ethics: Role in Collecting and Making Ethics Waivers Public*, by Jacob R. Straus.

[61] Each ethics pledge defines "appointee" in a slightly different manner, but generally refers to full-time, non-career Presidential or Vice-Presidential appointees, non-career appointees in the Senior Executive Service, and appointees to positions that have been excepted from the competitive service by reason of being confidential or policymaking in character. See E.O. 12834 §2(a), E.O. 13490 §2(b), and E.O. 13770 §2(b) for each pledge's specific definition.

Figure 1. Ethics Pledge Restrictions on Appointees Entering and Exiting Government Since 1993



Source: CRS analysis of E.O. 12834, E.O. 13490, and E.O. 13770.

As **Figure 1** shows, two of the three ethics pledges include provisions for appointees entering government service and all three address employees exiting the government. For appointees entering government service, the Obama and Trump Administrations' ethics pledges include a two-year ban for appointees entering government from being involved with their previous employer on "any particular matter involving specific parties that is directly and substantially related to" former employers or clients.[62] Additionally, President Obama and President Trump both included additional restrictions on lobbyists entering government service. Both ethics pledges provided that registered lobbyists be prohibited from being involved in "any particular matter on which ..." he or she lobbied in the two years prior to appointment.[63] President Clinton's ethics pledge did not contain a provision on appointees entering government service.

For appointees exiting government service, all three ethics pledges contained provisions restricting future activities. President Clinton's ethics pledge included a lifetime ban on representing a foreign principal, as defined by the Foreign Agents Registration Act (FARA);[64] and

[62] E.O. 13490 §1(2); E.O. 13770 §1(6).

[63] E.O. 13490 §1(3); E.O. 13770 §1(7). President Obama's ethics pledge also contained a provision that prohibited a registered lobbyist from seeking or accepting "employment with any executive agency" that he or she "lobbied within the 2 years before the date ... " of appointment. E.O. 13490, §3(c).

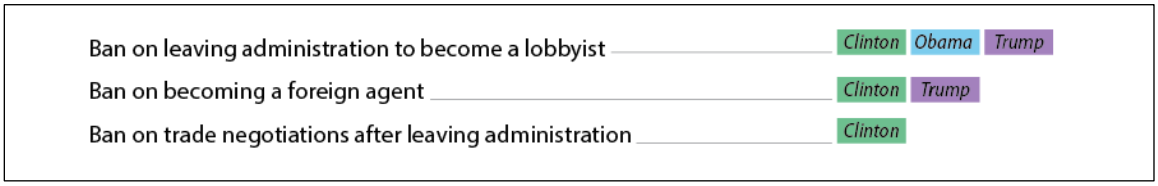
[64] E.O. 12834 §1(a)(3). For more information on the Foreign Agents Registration Act, see CRS In Focus IF10499, *Foreign Agents Registration Act: An Overview*, by Jacob R. Straus, and CRS Report R44292, *The Lobbying Disclosure Act at 20: Analysis and Issues for Congress*, by Jacob R. Straus. Foreign principals include (1) a government of a foreign country and a foreign political party; (2) a person outside of the United States, unless "it is established that such person is an individual and a citizen of and domiciled within the United States," or "is not an individual and is organized under or created by the law of the United States ... and has its principal place of business within the United

a five-year ban on lobbying executive agencies that the appointee had a "personal and substantial responsibility" over.[65] Additionally, President Clinton's ethics pledge also restricted former executive branch trade negotiators from representing a foreign principal for five years after the end of his or her government service.[66]

President Obama's and President Trump's ethics pledges both included language to extend statutory "cooling off" periods from one year to two years for those exiting the executive branch.[67] Additionally, both the Obama and Trump ethics pledges included Administration-long bans on leaving the government to lobby certain executive branch officials.[68] President Trump's ethics pledge also included a five-year ban for senior appointees from lobbying any executive agency in which the appointee served,[69] and an agreement not to "engage in any activity on behalf of any foreign government or foreign political party that would require registration under FARA."[70]

As **Figure 2** shows, several components are shared across the three ethics pledges. For example, all three ethics pledges included a ban on leaving the Administration to become a lobbyist. President Clinton and President Trump included a ban on former appointees becoming a foreign agent, and President Clinton included a ban on participating in trade negotiations after leaving government service.

Figure 2. Ethics Pledge Components that Apply to Appointees



Source: CRS Analysis of E.O. 12834, E.O. 13490, and E.O. 13770.

Definition of Lobbying: Lobbying Contact v. Lobbying Activities

All three executive order ethics pledges include additional restrictions on lobbyists. While the concept behind the additional restrictions appears to be similar—prohibiting individuals from lobbying on particular matters they worked on in the public or private sector—the language used to define the types of behavior is different. The Lobbying Disclosure Act (LDA) defines a lobbyist as

> any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose

States"; or (3) "a partnership, association, corporation, organization, or other combination of persons organized under the law or having its principal place of business in a foreign country."

[65] E.O. 12834 §1(a).

[66] E.O. 12834 §1(a)(4) and E.O. 12834 §1(b)(1).

[67] E.O. 13490 §1(4) and E.O. 13770 §1(2). Statutory "cooling off" periods are codified at 18 U.S.C. §207. For more information on the revolving door and cooling-off provisions, see CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, coordinated by Cynthia Brown, and CRS Insight IN10625, *Restrictions on Lobbying the Government: Current Policy and Proposed Changes*, by Jacob R. Straus.

[68] E.O. 13490 §1(5) and E.O. 13770 §1(3).

[69] E.O. 13770 §1(1).

[70] E.O. 13770 §1(4).

> lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period.[71]

Additionally, the LDA further defines lobbying contacts and lobbying activities. A lobbying contact is

> any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to-
>
> (i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);
>
> (ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;
>
> (iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or
>
> (iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.[72]

Lobbying activity

> means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.[73]

For the purpose of their ethics pledges, President Clinton and President Obama both defined lobbying as "knowingly communicat[ing] to or appear[ing] before any officer or employee of any executive agency on behalf of another with the intent to influence official action.... "[74] This definition of lobbying approximates the overall LDA definition of lobbying and lobbying contact.[75] Thus, former appointees were restricted from making contacts with covered officials after their governmental service.

President Trump's ethics pledge arguably uses a broader definition of lobbying. President Trump's lobbying ban prohibits former appointees from engaging "in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration."[76] President Trump's executive order defines lobbying activities using LDA's definition, but provides exemptions for communication or appearances in regard to "a judicial proceeding; a criminal or civil law enforcement inquiry, investigation, or proceeding; or any agency process for rulemaking, adjudication, or licensing.... "[77]

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[71] 2 U.S.C. §1602(10).

[72] 2 U.S.C. §1602(8).

[73] 2 U.S.C. §1602(7).

[74] E.O. 12834 §2(c).

[75] President Clinton's ethics pledge predates the Lobbying Disclosure Act (LDA), which was enacted in 1995. The definition that President Clinton used in the ethics pledge is similar to the definition ultimately included in the LDA. For more information on the LDA, see CRS Report R44292, *The Lobbying Disclosure Act at 20: Analysis and Issues for Congress*, by Jacob R. Straus.

[76] E.O. 13770 §1(3).

[77] E.O. 13770 §2(n).

The difference between lobbying contacts and lobbying activities is nuanced. Generally, lobbying contacts require an individual to engage in oral or written communication with a covered official.[78] While there are exemptions to these communications (e.g., communications made by a media organization representative in gathering and disseminating news), in order to be considered a registered lobbyist, contact must occur between an individual being paid to represent others and a covered official.

Lobbying activities, on the other hand, include both lobbying contacts *and* the support of those contacts by people who do not communicate directly with a covered official. Therefore, using lobbying activities to define lobbying is arguably more expansive than using lobbying contacts because individuals who never call or meet with covered officials (but assist federally registered lobbyists in preparing for those communications) would likely fall under President Trump's ethics pledge lobbying ban. Individuals supporting registered lobbyists, but not making contact with covered officials, were not included in President Clinton's or President Obama's ethics pledge.

The shift between lobbying contact and lobbying activities to define lobbying now potentially includes the activities of a group of individuals often referred to as "shadow lobbyists." A "shadow lobbyist" is an individual who engages in some lobbying activities but does not necessarily strictly meet all of the requirements for registration as a lobbyist: makes more than one lobbying contact per quarter, is compensated for making contacts with covered officials, and spends more than 20% of his or her time on lobbying activities. As described by political scientist Timothy LaPira, a shadow lobbyist is

> ... any professional who is paid to challenge or defend the policy status quo, to subsidize [sic] policymakers with information, or to closely monitor intricate policy and political developments that are not readily available to the public—or those who offer expertise, knowledge, and access in support of these activities—yet who do not register as lobbyists.[79]

Restricting former appointees from engaging in certain types of lobbying activities potentially would extend to individuals who provide "strategic consulting" to lobbying firms or take postgovernment employment in a position that might support registered lobbyists. Traditionally, individuals who support registered lobbyists have not been included in registration and disclosure requirements because they do not make lobbying contacts. Using lobbying activities as the threshold for postemployment restrictions under the ethics pledge could include those individuals who are not directly attempting to influence government decisionmaking.

Representing Foreign Principals

President Clinton's and President Trump's ethics pledges both contained restrictions on former appointees leaving government to represent a foreign principal. For both ethics pledges, the restriction was a prohibition on engaging in activity that would require registration under the Foreign Agents Registration Act (FARA).[80] President Clinton's ethics pledge contained a lifetime

[78] Covered executive branch officials includes "the President; the Vice President; any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President; any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order; any member of the uniformed services whose pay grade is at or above O–7 under section 201 of title 37; and any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character described in section 7511(b)(2)(B) of title 5." 2 U.S.C. §1602(3).

[79] Timothy M. LaPira, "Lobbying in the Shadows: How Private Interests Hide from Public Scrutiny and Why That Matters," in *Interest Group Politics*, ed. Allan J. Cigler, Burdett A Loomis, and Anthony J. Nownes, 9th ed. (Washington, DC: CQ Press, 2015), p. 225.

[80] For more information on the Foreign Agents Registration Act, see 22 U.S.C. §§611-621); and CRS In Focus

ban on "activity on behalf of any foreign government or foreign political party" that would require registration under FARA.[81] President Trump's ethics pledge contains an agreement not to "engage in any activity on behalf of any foreign government or foreign political party which ... would require registration under FARA."[82] President Obama's ethics pledge did not address foreign agents.

Options for Change

Should Congress wish to consider writing into law elements included in the pledges, several options are potentially available. These include codifying ethics pledge provisions; amending revolving door restrictions; amending the Lobbying Disclosure Act (LDA), the Foreign Agents Registration Act (FARA), or both; or taking no immediate action. These options each have advantages and disadvantages for the future relationships between lobbyists and governmental decisionmakers. CRS takes no position on any of the options identified in this report.

Codify Ethics Pledge Provisions

Should Congress want to make all or part of the executive branch ethics pledges permanent, it could choose to codify the additional restrictions placed on executive branch appointees by President Clinton's, President Obama's, or President Trump's ethics pledges. This might include codifying additional revolving door restrictions as discussed above; incorporating individual provisions (e.g., a lobbying gift ban or restrictions on trade negotiations by former appointees); or adding specific definitions, waivers, or disclosure concepts to federal law. Codifying either the entire ethics pledge(s) or individual sections would have the effect of making those changes permanent, and not subject to being revoked by a future executive order. This could allow for permanent changes to existing ethics and conflict-of-interest provisions.[83]

Amend Revolving-Door Statutes

Should action to incorporate ethics-pledge revolving-door restrictions be desired, several options might exist. These could include extending the "cooling-off" period to two years or more, placing a blanket ban on taking certain positions for compensation, and placing a ban on taking certain types of nongovernmental positions.

As mentioned above under "The Revolving Door," current statutory "cooling off" periods for executive branch officials range from a lifetime ban on "switching sides"; to a two-year period for "very senior" officials, and a one-year period for "senior" officials, for certain activities; and a one-year restriction on all "senior" or "very senior" employees representing a foreign government or political party.[84] One option might be to extend the cooling-off period to two years or more. This would match language in all three ethics pledges. Extending the cooling-off period for former appointees to two years, however, could possibly be seen as an unreasonable restriction on

IF10499, *Foreign Agents Registration Act: An Overview*, by Jacob R. Straus.

[81] E.O. 12834 §1(a)(3).

[82] E.O. 13770 §1(4).

[83] At least one measure has been introduced in recent years to codify elements of the ethics pledge. H.R. 2500 (115th Congress) would permanently extend ethics pledge postemployment, revolving-door restrictions; institute a lifetime ban on reorientation of foreign principals for certain former federal employees; and create new restrictions on involvement by federal officials in particular matters relating to previous employment.

[84] 18 U.S.C. §207. For more information on the revolving door, see CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, coordinated by Cynthia Brown.

postemployment. Alternatively, Congress could reduce or eliminate the cooling-off period. Having a shorter cooling-off period, or eliminating it altogether, might arguably increase the talent pool available both inside and outside the government.

Instead of, or in addition to, addressing cooling-off periods, Congress could enact a blanket restriction on the acceptance of certain types of outside employment for the length of an Administration. For example, an individual appointed by the President might be prohibited from accepting certain outside employment until the end of the President's Administration or until the next intervening election (i.e., the President's bid for reelection). Such a policy might encourage executive branch appointees to serve for the length of the President's term before seeking outside employment.

Several disadvantages to creating such postemployment restrictions on appointees potentially exist. First, if the restriction covered only the acceptance of private compensation, fees, or other remuneration, it is possible that an appointee could leave the Administration to take an uncompensated position with any private entity. These positions might be advisory in nature and could carry the promise of future compensation after the end of the former appointee's restricted time.

Amend the Lobbying Disclosure Act

If the goal of Congress is to restrict former appointees from becoming registered lobbyists under the LDA or FARA, Congress could amend the LDA or FARA to institute provisions similar to executive branch lobbying restrictions found in President Obama's and President Trump's ethics pledges. Under the LDA, lobbyists must file quarterly disclosure reports with information on their activities and covered officials contacted. Similar requirements exist under FARA for individuals who are representing a foreign principal.[85] Additionally, the LDA, as amended by the Honest Leadership and Open Government Act of 2007, requires federally registered lobbyists to file semiannual reports on certain campaign and presidential library contributions.[86] The disclosure requirements might be further amended to cover program-specific disbursement information.

Take No Immediate Action

Congress might determine that the current lobbying registration and disclosure provisions, and executive orders, are adequate. Instead of amending the LDA or FARA, or issuing additional or amending existing executive orders, Congress or the President could continue to utilize existing law, or the President could issue executive orders to restrict the activities of current or former Administration officials. Changes within the statutory mission of the implanting officials might be made on an as-needed basis through changes to LDA guidance documents issued by the Clerk of the House and Secretary of the Senate,[87] FARA guidance issued by the Department of Justice,[88] through executive order, or through the issuance of memoranda by the Administration.

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[85] For more information on FARA, see CRS In Focus IF10499, *Foreign Agents Registration Act: An Overview*, by Jacob R. Straus.

[86] 2 U.S.C. §1604.

[87] For more information on the role of the Clerk of the House and the Secretary of the Senate in administering the lobbying registration and disclosure system, see CRS Report RL34377, *Lobbying Registration and Disclosure: The Role of the Clerk of the House and the Secretary of the Senate*, by Jacob R. Straus.

[88] U.S. Department of Justice, National Security Divisions, Foreign Agents Registration Act Unit, "Frequently Asked Questions," Foreign Agents Registration Act, at https://www.fara.gov/faq.html; and U.S. Department of Justice, National Security Divisions, Foreign Agents Registration Act Unit, "Advisory Opinion Summaries," at https://www.fara.gov/advisory.html.

Appendix. Side-by-Side Analysis of Executive Order Ethics Pledges

To provide a comparison of the executive order ethics pledges signed by President Clinton, President Obama, and President Trump, **Table A-1** provides a side-by-side analysis of the three ethics pledges, including who was covered, the restrictions placed on covered employees, and the administration and enforcement provisions. In evaluating the three ethics pledges, similar categories were observed. These serve as the main headers of **Table A-1**. These include who is covered by the ethics pledge; definitions; wavier provisions; administration; enforcement; and other general provisions, if any.

Table A-1. Side-By-Side Analysis of Ethics Pledge Executive Orders (E.O.)

Issue	President Clinton (E.O. 12834)	President Obama (E.O. 13490)	President Trump (E.O. 13770)
Who	"Every senior appointee in every executive agency appointed on or after January 20, 1993" [§1(a)]	"Every appointee in every executive agency appointed on or after January 20, 2009" [§1]	"Every appointee in every executive branch agency appointed on or after January 20, 2017" [§1]
Prohibitions			
Gift Ban	—	"Will not accept gifts from registered lobbyists or lobbying organizations for the duration of ... service as an appointee" [§1(1)]	"Will not accept gifts from registered lobbyists or lobbying organizations for the duration of ... service as an appointee" [§1(5)]
Revolving Door			
All Appointees Entering Government	—	"Will not for a period of 2 years from the date of ... appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts" [§1(2)]	"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 or former clients, including regulations and contracts" [§1(6)]

Issue	President Clinton (E.O. 12834)	President Obama (E.O. 13490)	President Trump (E.O. 13770)
Lobbyists Entering Government	—	"If [appointee] was a registered lobbyist within the 2 years before the date of ... appointment ... will not for a period of 2 years after the date of ... appointment (a) participate in any particular matter on which I lobbied within the 2 years before the date of my appointment; (b) participate in the specific issue area in which that particular matter falls; or (c) seek or accept employment with any executive agency that I lobbied within the 2 years before the date of my appointment" [§1(3)]	"If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6 [restrictions for all appointees], I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls" [§1(7)]
Appointees Leaving Government	—	"If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions for a period 2 years following the end of my appointment" [§1(4)]	"If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions" [§1(2)]
Leaving Government to Lobby	"Will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency" [§1(a)(1)] For senior appointees in the EOP, "will not, within five years after ... cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which ... personal and substantial responsibility as a senior appointee in the EOP" existed [§1(a)(2)]	"Agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration" [§1(5)]	"I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency" [§1(1)] "I also agree, upon leaving Government service, not to engage in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration" [§1(3)]

Issue	President Clinton (E.O. 12834)	President Obama (E.O. 13490)	President Trump (E.O. 13770)
Hiring on Qualifications	—	"Any hiring or other employment decision I make will be based on the candidate's qualifications, competence, and experience" [§1(6)]	"Any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience" [§1(8)]
Foreign Representation and Trade			
Foreign Principal	"Will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which ... would require ... [registration] under the Foreign Agents Registration Act of 1938, as amended" [§1(a)(3)]	—	"Will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2017, would require ... [registration] under the Foreign Agents Registration Act of 1938, as amended" [§1(4)]
Trade Negotiation	"Will not, within five years after termination of ... personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency" [§1(a)(4)]	—	—
Non-Senior Appointee Trade Negotiators Pledge	Trade negotiators, who are not senior appointees, appointed on or after January 30, 1993 "As a condition of employment in the United States Government as a trade negotiator ... will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency.... " [§1(b)(1)]	—	—

Issue	President Clinton (E.O. 12834)	President Obama (E.O. 13490)	President Trump (E.O. 13770)
		Definitions	
	Defined terms: • senior appointee, • trade negotiator, • lobby, • on behalf of another, • administrative proceeding, • executive agency, • personal and substantial responsibility, • personal and substantial participation, • trade negotiation, • foreign government, foreign political party, and • foreign business entity [§2]	Defined terms: • executive agency, • appointee, • gift, • registered lobbyist or lobbying organization, • lobby, • particular matter, • former employer, • former client, • participate, • postemployment restrictions, • administration, • government official, and • pledge [§2]	Defined terms: • administration, • appointee, • covered executive branch official, • directly and substantially related, • executive agency, • foreign government, • foreign political party, • former client, • former employer, • gift, • lobbied, • lobbying activities, • Lobbying Disclosure Act, • Foreign Agent Registration Act, • lobbyist, • on behalf of another, • particular matter, • participate, • pledge, • postemployment restrictions, and • registered lobbyist or lobbying organization [§4]

Issue	President Clinton (E.O. 12834)	President Obama (E.O. 13490)	President Trump (E.O. 13770)
		Waivers	
	"President may grant to any person a waiver of any restrictions contained in the pledge signed by such person if, and to the extent that, the president certifies in writing that it is in the public interest to grant the waiver" [§3(a)]; "A waiver shall take effect when the certification is signed by the President" [§3(b)]; and "The waiver certification shall be published in the *Federal Register*, identifying the name and executive agency position of the person covered by the waiver and the reasons for granting it" [§3(c)]	"The Director of the Office of Management and Budget [OMB], or his or her designee, in consultation with the Counsel to the President, or his or her designee, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of [OMB], or his or her designee, certifies in writing (i) that the literal application of the restriction is inconsistent with the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver. A waiver shall take effect when the certification is signed by the Director of the [OMB] or his or her designee [§3(a)]	"President or his designee may grant to any person a waiver of any restrictions contained in the pledge signed by such person" [§3(a)] "A waiver shall take effect when the certification is signed by the President or his designee" [§3(b)] "A copy of the waiver certification shall be furnished to the person covered by the waiver and provided to the head of the agency in which that person is or was appointed to serve" [§3(c)]
		Administration	
General	Attorney General shall publish within six months a "Statement of Covered Activities," in the *Federal Register*" [§4(d)] "All pledges signed by senior appointees and trade negotiators, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder" [§4(g)]	"All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder" [§4(e)]	"All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder" [§4(e)]

Issue	President Clinton (E.O. 12834)	President Obama (E.O. 13490)	President Trump (E.O. 13770)
Agency Rules	"The head of every executive agency shall establish for that agency such rules or procedures ... as are necessary or appropriate" [§4(a)]	"Head of every executive agency shall, in consultation with the Director of the Office of Government Ethics [OGE], establish such rules or procedures ... as are necessary or appropriate to ensure that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee" [§4(a)]	"The head of every executive agency shall establish for that agency such rules or procedures ... as are necessary or appropriate" [§4(a)]
White House Rules	"White House Counsel or such other official or officials with whom the President delegates those duties" sets rules or procedures for the Executive Office of the President [§4(b)]	Counsel to the President or his or her designee issues rules or procedures for the Executive Office of the President [§4(b)]	"Counsel to the President or other such official or officials to whom the President delegates those duties" issues rules or procedures for the Executive Office of the President [§4(b)]
Office of Government Ethics	Director of the Office of Government Ethics shall: "subject to prior approval of the White House Counsel, develop a form of the pledges to be completed by senior appointees and trade negotiators and see that the pledges and a copy of this executive order are made available by agencies" [§4(c)(1)]; "in consultation with the Attorney General or White House Counsel, when appropriate, assist designated agency ethics officers in providing advice to current or former senior appointees and trade negotiators regarding the application of the pledges" [§4(c)(2)]; and "subject to the prior approval of the White House Counsel, adopt such rules or procedures as are necessary or appropriate to carry out the foregoing responsibilities" [§4(c)(3)]	Director of the Office of Government Ethics shall: "ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties" [§4(c)(1)] "in consultation with the Attorney General or Counsel to the President or their designees ... assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge" [§4(c)(2)] "in consultation with the Attorney General and the Counsel to the President or their designees, adopt such rules or procedures as are necessary or appropriate" [§4(c)(3)] "in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving	Director of the Office of Government Ethics shall: "ensure that the pledge and a copy of this Executive Order are made available for use by agencies" [§4(c)(1)] "in consultation with the Attorney General or Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge" [§4(c)(2)] "adopt such rules or procedures ... as are necessary or appropriate" [§4(c)(3)]

Issue	President Clinton (E.O. 12834)	President Obama (E.O. 13490)	President Trump (E.O. 13770)
		door ban ... to all executive branch employees who are involved in the procurement process" [§4(d)]	
Re-signing Requirements	"A senior appointee who has signed the senior appointee pledge is not required to sign the pledge again upon appointment to a different office, except that a person who has ceased to be a senior appointee, due to termination of employment in the executive branch or otherwise, shall sign the senior appointee pledge prior to thereafter assuming office as a senior appointee" [§4(e)]		"An appointee who has signed the pledge is not required to sign the pledge again upon appointment or detail to a different office, except that a person who has ceased to be an appointee, due to termination of employment in the executive branch or otherwise, shall sign the pledge prior to thereafter assuming office as an appointee" [§4(d)]
Trade Negotiators	Non-senior trade negotiators only re-sign if they leave and reenter government [§4(f)]		
Enforcement			
Instructions	Enforceable by "any legally available means, including any or all of the following: debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive or monetary relief" [§5(a)]	Enforceable by "any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief" [§5(a)]	Enforceable by "any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief" [§5(a)]
Rules for Former Appointees	"Any former senior appointee or trade negotiator who is determined, after notice and hearing ... to have violated his or her pledge not to lobby any officer or employee of that agency, or not to represent, aid or advise a foreign entity specified in the pledge with the intent to influence the official decision of that agency, may be barred from lobbying any officer or employee of that agency for up to five years in addition to the five-year time period covered by the pledge" [§5(b)]	Former appointee "who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge" [§5(b] "The Attorney General or his or her designee is authorized:" (1) to request an investigation from "any appropriate Federal investigative authority" and (2) "to commence a civil action against the former employee in any United States District Court with	Former appointee "who is determined, after notice and hearing by the duly designated authority within any agency, to have violated his or her pledge may be barred from engaging in lobbying activities with respect to that agency for up to 5 years in addition to the 5-year time period covered by the pledge" [§5(b)] "Head of every executive agency shall, in consultation with the Director of [OGE], establish procedure to implement" enforcement [§5(b)] "The Attorney General or his or her designee is authorized:"

Issue	President Clinton (E.O. 12834)	President Obama (E.O. 13490)	President Trump (E.O. 13770)
		jurisdiction to consider the matter" [§5(c)] "The Attorney General or his or her designee is authorized to request any and all relief authorized by law" [§5(d)]	(1) to request an investigation from "any appropriate Federal investigative authority" and (2) "to commence a civil action on behalf of the United States against the former officer or employee" if "there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue [to occur]" [§5(c)]
Other	Repealed by E.O. 13184 (December 28, 2000), 66 FR 697	Repealed by E.O. 13770 (January 28, 2017), 82 FR 9333	Repealed E.O. 13490 [§6[a)]

Source: CRS Analysis of E.O. 12834, E.O. 13490, and E.O. 13770.

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