

President Biden Signs Comprehensive New Executive Order on Executive Branch Personnel Ethics

January 22, 2021

On his first day in office, President Biden signed an [executive order](#) requiring all appointed executive branch personnel to sign an ethics pledge committing, among other things, to “decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit.” The order comes after former President Trump [rescinded](#) the previous executive order on ethics before leaving office, releasing former members of his administration from ethics obligations.

The new order applies to “appointees,” which includes “every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency.” It does not include “any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.”

The new Executive Order does the following:

- **Prohibits Accepting Gifts from Lobbyists.** In a continuation of ethics orders from the Trump and Obama administrations, Biden appointees may not accept gifts from registered lobbyists or lobbying organizations for the duration of their government service. The definition of “gift” is taken from federal regulations, which exempt from the definition modest items of food and non-alcoholic refreshments, such as soft drinks, coffee and donuts and attendance at events where they will present on behalf of their agency. Certain exceptions to the gift ban found in federal regulations, however, are unavailable to Biden appointees, including exemptions for “widely attended gatherings” and items of \$20 or less that are available to other executive branch personnel.
- **Imposes “Revolving Door Bans” on Incoming and Outgoing Appointees.** Like the Obama and Trump pledges, the Biden order prohibits all appointees entering the administration from participating, for a period of two years, in any matter involving specific parties that is directly and substantially related to the appointee’s former employer or client.

For appointees leaving the government who are covered by post-employment restrictions on communicating with employees of their former executive agency, the Biden pledge requires them to abide by these restrictions for two years following the end of their appointment. This extends the one-year restriction period found in federal ethics law and in the Trump order.

- **Bans Lobbyists and Foreign Agents from Participating in Certain Matters for Two Years.** For former lobbyists and registered agents under the Foreign Agents Registration Act (“FARA”), the executive order prohibits them from participating, for two years, in a particular matter on which they lobbied or

engaged in FARA-registrable activity, participate in the specific issue area in which the matter falls, or seek or accept employment with an executive agency with respect to which the individual has lobbied or engaged in registrable FARA activity. This provision is broader than the Trump ethics pledge in applying to those who were FARA-registered foreign agents, as well as to lobbyists.

In an effort to curtail so-called “[shadow lobbying](#),” the Biden order requires senior and very senior appointees leaving government service who are covered by post-employment restrictions to refrain, for one year following the end of their appointment, from materially assisting others in making communications or appearances that the individual is prohibited from making themselves by (a) holding themselves out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

The order also reinstates an Obama-era ethics restriction barring appointees leaving government service to lobby from lobbying any covered executive branch official or non-career Senior Executive Service appointee, or engaging in any activity on behalf of any foreign government or foreign political party which would require FARA registration, for the remainder of the administration or two years following the end of the appointment, whichever is later.

- **Institutes Golden Parachute Ban.** The Biden order prohibits employees from accepting a “golden parachute,” which is defined as any payment or benefit from a former employer because of the individual’s acceptance of a position in the U.S. government. This requirement is the first of its kind in a presidential ethics executive order.

The Biden order authorizes the Attorney General to, upon receiving information regarding a possible breach of the pledge, request an investigation and, if necessary, commence a civil action against the former employee in U.S. District Court.

The Office of Management and Budget (OMB) may grant current and former appointees waivers of any of the requirements in the order only upon approval in consultation with the White House counsel. The waivers must be made public within 10 days after they are signed by the OMB director.

Many of these provisions would be codified in H.R. 1/S.1, the [For the People Act](#), which is set to be reintroduced as [one of the first bills](#) in the new Congress.

Caplin & Drysdale will continue to monitor any legislation and executive orders that affect current and former government employees. Please contact a member of [Caplin & Drysdale's Political Law Group](#) if you have questions concerning this alert or for more information.

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