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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III  
Director

SUBJECT: Post-Government Employment Guidance on Executive Order 13770 (The Ethics Pledge)

The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to aid agency ethics officials in providing guidance to those appointees<sup>1</sup> who signed the Ethics Pledge pursuant to Executive Order 13770 (“Ethics Pledge”) and are now leaving or considering leaving government employment. This Legal Advisory addresses the post-government employment restrictions established by Paragraphs 1, 3, and 4 of the Ethics Pledge.<sup>2</sup>

**I. Paragraphs 1 and 3: Post-Government Employment Lobbying Restrictions**

The Ethics Pledge establishes two post-government employment lobbying restrictions. The restriction in Paragraph 1 of the Ethics Pledge prohibits a former appointee, for five years after terminating employment with an executive agency, from engaging in lobbying activities “with respect to” that agency.<sup>3</sup> The restriction in Paragraph 3 of the Ethics Pledge establishes the same restriction “with respect to” any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.<sup>4</sup> Both paragraphs rely partly on the definition of “lobbying activities” in the [Lobbying Disclosure Act](#) (LDA).<sup>5</sup> The LDA defines that term to include both “lobbying contacts” with covered executive branch officials and efforts in support of such contacts.<sup>6</sup> A table comparing the post-government employment lobbying restrictions in Paragraphs 1 and 3 can be found in OGE [Legal Advisory LA-17-03](#) (Mar. 20, 2017). When advising on the restrictions in Paragraphs 1 and 3, agency

<sup>1</sup> The term “appointee” is defined in section 2(b) of Executive Order 13770.

<sup>2</sup> Paragraph 2 of the Ethics Pledge also relates to post-government activities, but it does not add any new restrictions. Rather, it reminds former appointees who qualify as “senior” employees that they are subject to the post-government employment restrictions at 18 U.S.C. § 207(c). Agency ethics officials may find it helpful to review OGE [Legal Advisory LA-16-08](#) (Sep. 23, 2016) for additional guidance on how the post-government employment restrictions at 18 U.S.C. § 207(c) apply to “senior” employees.

<sup>3</sup> See Exec. Order No. 13,770, sec. 1, para. 1.

<sup>4</sup> See *id.* sec. 1, para. 3; *id.* sec. 2(c).

<sup>5</sup> See *id.* sec. 2(n).

<sup>6</sup> See 2 U.S.C. § 1602(7).



ethics officials should be sure to make appointees aware of two important differences between these two restrictions.

First, the universe of prohibited lobbying targets is larger for Paragraph 3 than it is for Paragraph 1. Paragraph 1 prohibits a former appointee from lobbying covered executive branch officials<sup>7</sup> at the former appointee's former agency.<sup>8</sup> For Ethics Pledge signers other than Presidentially appointed, Senate-confirmed officials, "agency" means the separate and distinct component agencies designated in accordance with 18 U.S.C. § 207(h).<sup>9</sup> In contrast to Paragraph 1, Paragraph 3 prohibits appointees from lobbying a broader set of officials not specific to the appointee's former agency, including covered executive branch officials and non-career Senior Executive Service appointees throughout the executive branch.<sup>10</sup>

Second, the timing of the restriction in Paragraph 1 differs from that in Paragraph 3. While the length of the restriction in Paragraph 1 will always be a five-year period after terminating employment as an appointee, the length of the broader restriction in Paragraph 3 is dependent on when the Administration ends. For example, for an appointee whose government employment terminated on June 1, 2018, the restriction in Paragraph 1 runs through May 31, 2023. For this same former appointee, when his government service terminated, it was unknown whether the Administration would extend for a second term. As a result, the appointee's restriction in Paragraph 3 has two possible end dates – either January 20, 2021 or January 20, 2025.

For the convenience of ethics officials, the illustrations in [Attachment 1](#) to this Legal Advisory show how the restrictions in Paragraphs 1 and 3 apply depending on when the Administration ends. For these illustrations, Appointee A was a Schedule C employee at the Food and Drug Administration (FDA), a designated component of the U.S. Department of Health and Human Services (HHS), and terminated her employment with the FDA on June 1, 2018, to take a position with a private company. As a result, under Paragraph 1 of the Ethics Pledge, Appointee A would be prohibited from engaging in lobbying activities with respect to covered executive branch officials at the FDA only for a period of five years, from June 1, 2018, through May 31, 2023. Under Paragraph 3, Appointee A would also be prohibited from engaging in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee throughout the executive branch for the remainder of the Administration. The Paragraph 3 restriction would start on June 1, 2018, and end on January 20,

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<sup>7</sup> With respect to the lobbying restrictions, Executive Order 13770 relies on the definition of "covered executive branch official" in the Lobbying Disclosure Act, which means (A) the President; (B) the Vice President; (C) 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; (D) 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; (E) any member of the uniformed services whose pay grade is at or above O-7 under section 201 of title 37, United States Code; and (F) 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, United States Code. 2 U.S.C. § 1602.

<sup>8</sup> Exec. Order No. 13,770, sec. 1, para. 1 ("with respect to that agency").

<sup>9</sup> *Id.* sec. 2(e). Under 18 U.S.C. § 207(h)(2), the component designation distinction is not available to certain employees who are defined in 18 U.S.C. § 207(c)(2)(A)(i) and (iii). As for Ethics Pledge signers below the "senior personnel" level (as defined in 18 U.S.C. § 207(c)(2)), they are eligible to rely on the separate component designations, because they are not specifically excluded by § 207(h)(2).

<sup>10</sup> Exec. Order No. 13,770, sec. 1, para. 3.

2021, or on January 20, 2025, whichever is the end of the Administration. If the Administration ends on January 20, 2025, Appointee A's adherence to the broader restrictions in Paragraph 3 will ensure compliance with the more limited restrictions in Paragraph 1.

## **II. Paragraph 4: Post-Government Employment Restriction Concerning Foreign Governments and Foreign Political Parties**

Paragraph 4 of the Ethics Pledge prohibits an appointee from engaging in certain activities on behalf of foreign parties. Specifically, Paragraph 4 prohibits former appointees, following the termination of their government employment, from engaging in any activity:

- on behalf of any foreign government or foreign political party that,
- if it had been undertaken on January 20, 2017,
- would have required the appointee to register under the [Foreign Agents Registration Act of 1938](#) (FARA), as amended.<sup>11</sup>

OGE and agency ethics officials do not interpret the FARA. However, for convenience, a summary of selected provisions and relevant exemptions of the FARA is provided below and in [Attachment 2](#) to this Legal Advisory.<sup>12</sup>

Generally, the FARA requires an individual to register before acting as an “agent” of a “foreign principal.” The term “foreign principal” includes, among others, foreign governments and foreign political parties.<sup>13</sup> Under the FARA, acting as an agent of a foreign principal means undertaking any of the following actions within the United States, either directly or through another person:

- (a) engaging in “political activities” on behalf of a foreign principal;
- (b) acting as a foreign principal’s public relations counsel, publicity agent, information-service employee, or political consultant;
- (c) soliciting, collecting, disbursing, or dispensing contributions, loans, money, or other things of value for or in the interest of a foreign principal; or
- (d) representing the interests of the foreign principal before any agency or official of the U.S. Government.<sup>14</sup>

In sum, unless a FARA exemption applies, Paragraph 4 restricts appointees from, at any time after the termination of government employment, engaging in any of the activities listed above on behalf of any foreign government or foreign political party, if the activity occurs within the United States. Paragraph 4 does not prohibit any activities that the FARA exempts from its registration requirement.<sup>15</sup>

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<sup>11</sup> See Exec. Order No. 13,770, sec. 1, para. 4.

<sup>12</sup> Former appointees should contact the U.S. Department of Justice with any questions concerning how any FARA provision is interpreted. See <https://www.justice.gov/nsd-fara>.

<sup>13</sup> See 22 U.S.C. § 611(b)(1). See [Attachment 2](#) to this Legal Advisory for the FARA definitions of “foreign government” and “foreign political party.”

<sup>14</sup> See 22 U.S.C. § 611(c); 28 C.F.R. § 5.100.

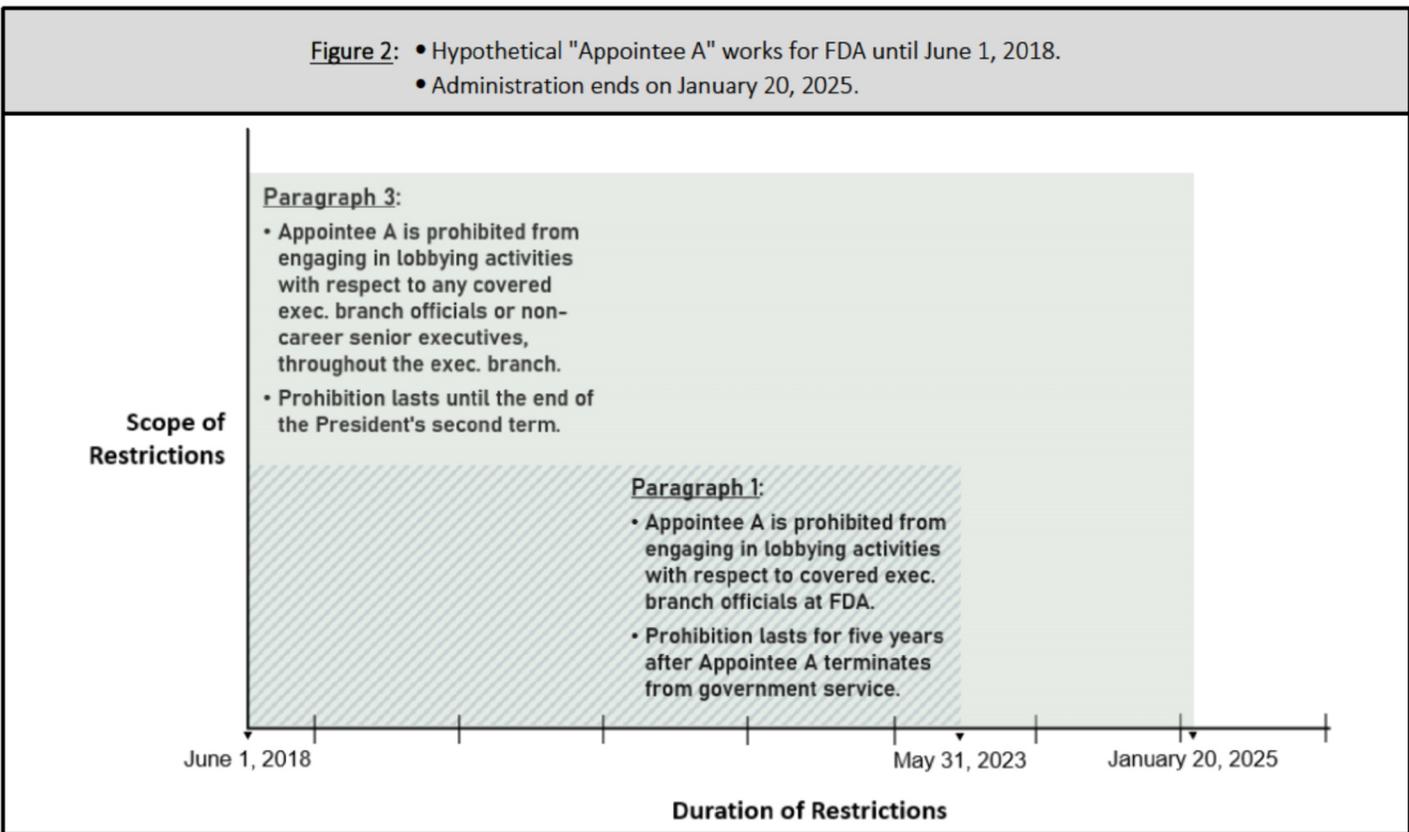
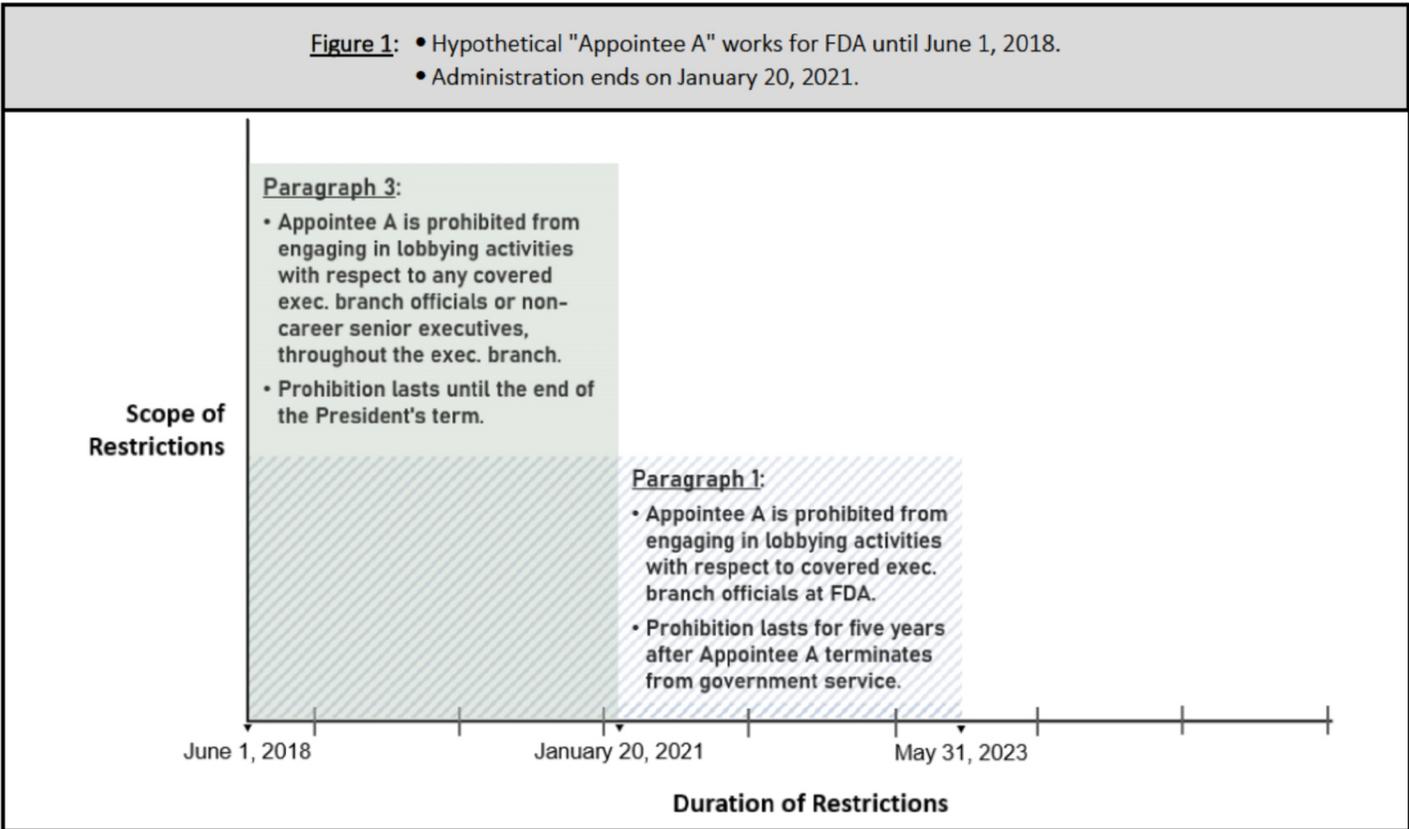
<sup>15</sup> The FARA contains a number of exemptions, which are listed in 22 U.S.C. § 613.

### **III. Conclusion**

The Ethics Pledge provisions discussed in this Legal Advisory subject appointees to significant restrictions beyond those already contained in statutes such as 18 U.S.C. § 207. OGE encourages ethics officials to counsel employees on all relevant post-government employment restrictions before employees terminate government service and whenever needed thereafter. Agency ethics officials with questions about post-government employment restrictions are encouraged to contact their OGE Desk Officers for guidance.

Attachments

**Comparative View of Time and Scope Restrictions in Paragraphs 1 and 3 in Executive Order 13770  
Attachment 1 to LA-20-09**



**Paragraph 4 in Executive Order 13770  
Attachment 2 to LA-20-09**

<b>Prohibition</b>	"I 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 me to register under the Foreign Agents Registration Act of 1938, as amended." Exec. Order No. 13,770, sec. 1, para. 4.			
<b>Commencement of Prohibition</b>	Termination of employment in the United States Government. Exec. Order No. 13,770, sec. 1, para. 4.			
<b>Length of Prohibition</b>	Permanent bar. Exec. Order No. 13,770, sec. 1, para. 4.			
<b>Prohibited Conduct</b>	Paragraph 4 prohibits engaging in certain activities on behalf of a foreign government or foreign political party – specifically, any activities that would have required registration under the Foreign Agents Registration Act (FARA) if they had been undertaken on January 20, 2017. Some key aspects of the FARA are set forth below.			
<b>Acting as agent</b>	Includes acting in specified activities as an agent, representative, employee, or servant, or otherwise acting at the order, request, or under the direction or control of a foreign government or a foreign political party. <i>See</i> 22 U.S.C. § 611(c).			
<b>On behalf of a foreign government or a foreign political party</b>	<ul style="list-style-type: none"> <li>• "The term 'government of a foreign country' includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States." 22 U.S.C. § 611(e).</li> <li>• "The term 'foreign political party' includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof." 22 U.S.C. § 611(f).</li> </ul> <p>NOTE: The FARA uses the umbrella term "foreign principals" to encompass foreign governments, foreign political parties, and certain others. The restrictions in Paragraph 4 of Executive Order 13770 only apply to covered activities on behalf of foreign governments and foreign political parties; the Executive Order does not prohibit Ethics Pledge signers from conducting covered activities on behalf of other entities that would be considered "foreign principals" under the FARA. Exec. Order No. 13,770, sec. 1, para. 4.</p>			
<b>In specified activities</b>	Engaging in political activities for or in the interest of a foreign government or foreign political party. 22 U.S.C. § 611(c)(1)(i); <i>see also id.</i> § 611(o) (definition of "political activities").	Acting as a public relations counsel, publicity agent, information service employee, or political consultant. 22 U.S.C. § 611(c)(1)(ii); <i>see also id.</i> § 611(g), (h), (i), (p) (defining relevant terms).	Soliciting, collecting, disbursing, or dispensing contributions, loans, money, or other things of value for or in the interest of a foreign government or foreign political party. 22 U.S.C. § 611(c)(1)(iii).	Representing the interests of a foreign government or foreign political party before U.S. Government officials or agencies. 22 U.S.C. § 611(c)(1)(iv).
<b>In specified circumstances</b>	Directly or through any other person. <i>See</i> 22 U.S.C. § 611(c). Within the United States. <i>See</i> 22 U.S.C. § 611(c)(1).			

<p><b>Subject to exemptions</b></p>	<p>Under 22 U.S.C. § 613, there are multiple exemptions from the FARA’s registration requirements. <i>See also</i> 5 C.F.R. §§ 5.300 to 5.307. Those exemptions include:</p> <ul style="list-style-type: none"> <li>• A “commercial” exemption for activities undertaken on behalf of a foreign principal that are private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal or not serving predominantly a foreign interest. <i>See</i> 22 U.S.C. § 613(d); 28 C.F.R. § 5.304.</li> <li>• An exemption for legal services provided to a disclosed foreign principal in connection with a judicial or administrative proceeding before a court or agency of the United States Government are exempt from FARA. <i>See</i> 22 U.S.C. § 613(g); 28 C.F.R. § 5.306.</li> <li>• An exemption for an agent who is properly registered under the LDA, if (i) the agent has engaged in lobbying activities and (ii) the representation is not on behalf of a foreign government or foreign political party. The exemption does not apply where a foreign government or a foreign political party is the principal beneficiary of the activities. <i>See</i> 22 U.S.C. § 613(h); 28 C.F.R. § 5.307.</li> </ul>
<p><b>Additional FARA Guidance</b></p>	<ul style="list-style-type: none"> <li>• The implementing regulations for the FARA are in 28 C.F.R. Part 5.</li> <li>• Interested persons may request an advisory opinion from the Department of Justice regarding current or contemplated activities. <i>See</i> 28 C.F.R. § 5.2; <i>see also</i> 28 C.F.R. § 5.5(d)(8).</li> <li>• There is additional guidance from the Department of Justice at <a href="https://www.justice.gov/nsd-fara">https://www.justice.gov/nsd-fara</a>.</li> </ul>