

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch

**ANNUAL REPORT PURSUANT  
TO EXECUTIVE ORDER 13490**

**ETHICS COMMITMENTS BY  
EXECUTIVE BRANCH PERSONNEL**

**JANUARY 1, 2012 – DECEMBER 31, 2012**

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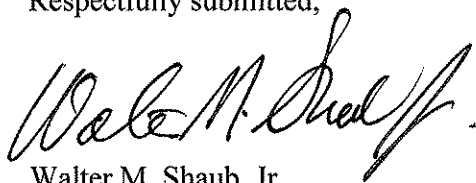
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## Preface

This is the fourth annual report provided pursuant to the President's Executive Order on Ethics (Executive Order 13490 of January 21, 2009, "Ethics Commitments by Executive Branch Personnel").

This report provides information on: the number of full-time, non-career appointees who were appointed during the 2012 calendar year; the appointees who were required to sign the Ethics Pledge; the number and names of those appointees who received waivers of any Ethics Pledge provisions; and, where appropriate, recusals or ethics agreements for those appointees who were registered lobbyists within the two years prior to their appointment. The report covers the time period January 1 through December 31, 2012. This report is publicly available. It has been posted on the United States Office of Government Ethics' (OGE) website at [www.oge.gov](http://www.oge.gov).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Walter M. Shaub, Jr.", written in a cursive style.

Walter M. Shaub, Jr.

Director

United States Office of Government Ethics

Dated: 4/8/13

## **Ethics Pledge Compliance** (Calendar Year 2012 Appointments)

Executive Branch agencies, in addition to the White House and the Office of the Vice President, reported that 673 full-time, non-career appointees<sup>1</sup> were appointed during the period of January 1 through December 31, 2012. Of these appointees, 619 were required to sign the Ethics Pledge, and 618 have done so.<sup>2</sup>

In addition, agencies reported that during calendar year 2012, two of the full-time, non-career appointees were registered lobbyists during the two years prior to their appointment. Neither of these appointees needed a waiver to be appointed to his or her position because neither had lobbied the agency to which he or she was appointed within the two years prior to appointment. In addition, neither of the two appointees was required to have a written ethics agreement addressing paragraph 3 of the Ethics Pledge because their agency ethics officials determined that the appointees did not meet the criteria needed for an ethics agreement.

Finally, one agency granted a so-called “reverse revolving door” waiver during calendar year 2012. This waiver allowed the appointee to participate in matters in which this appointee’s former employers or clients had an interest. This waiver is found in Appendix IV to this report. In general, copies of all waivers issued to Executive Branch agency appointees are posted on OGE’s website, [www.oge.gov](http://www.oge.gov), except for those issued by the White House and the Office of the Vice President. Waivers issued by the White House and the Office of the Vice President are posted on the White House website, [www.whitehouse.gov](http://www.whitehouse.gov). No waivers of the restrictions on former lobbyists were granted during calendar year 2012.

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<sup>1</sup>Definitions of non-career appointees are as follows: PAS—Presidentially appointed, Senate confirmed; PA—Presidentially appointed; non-career SES—political appointees at the senior executive level; Schedule C—noncompetitive appointments to excepted service positions graded GS-15 and below; and other—all other categories of non-career position appointments.

<sup>2</sup>Executive Order 13490 requires each covered appointee to sign the Ethics Pledge “upon becoming an appointee.” Agencies reported that one appointee signed the Ethics Pledge late and one appointee resigned prior to signing the Ethics Pledge but would have been required to sign it if the appointee had remained in the position.

## Employees Subject to the Ethics Pledge

Of the 133 reporting agencies, 52 agencies and the White House and the Office of the Vice President<sup>3</sup> employed full-time, non-career appointees subject to the Ethics Pledge during the period of January 1 through December 31, 2012.<sup>4</sup> Table 1 below provides additional details regarding the categories of full-time, non-career appointees subject to the Ethics Pledge.

**Table 1: Full-Time, Non-Career Appointees**  
(January 1 – December 31, 2012)

| PAS | PA | Non-Career<br>SES | Schedule C | Other | Total |
|-----|----|-------------------|------------|-------|-------|
| 67  | 27 | 91                | 317        | 171   | 673   |

## Compliance with Ethics Pledge Signature Requirement

Section 1 of Executive Order 13490 requires that every appointee in every executive agency appointed on or after January 20, 2009, sign the Ethics Pledge. The Order defines "appointee" as follows:

‘Appointee’ shall include 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.

Table 1 shows that agencies and the White House and the Office of the Vice President reported that 673 full-time, non-career appointees were appointed during the period of January 1 through December 31, 2012. Table 2 shows that of the 673 appointees, 619, or approximately 92 percent, were required to sign the Ethics Pledge upon their appointment in 2012.<sup>5</sup> The largest category of appointees required to sign the Ethics Pledge is Schedule C appointees.

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<sup>3</sup>The White House submission included the White House, Office of Policy Development, National Security Staff, and National Economic Council. The Office of the Vice President reported separately.

<sup>4</sup>See OGE DAEOgrams DO-09-003 and DO-09-010, located on the OGE website and Appendix I for detailed guidance regarding the appointees subject to the Ethics Pledge.

<sup>5</sup>Additionally, as Table 3 demonstrates, 26 other appointees had already signed the Ethics Pledge for a prior appointment to a different position, and these appointees remained subject to the Ethics Pledge upon their new appointment in 2012.

**Table 2: Ethics Pledge Signatures (by Appointee Type)**  
(January 1 – December 31, 2012)

| Appointee Type | Required   | Not Required | Total      |
|----------------|------------|--------------|------------|
| PAS            | 62         | 5            | 67         |
| PA             | 24         | 3            | 27         |
| Non-career SES | 76         | 15           | 91         |
| Schedule C     | 304        | 13           | 317        |
| Other          | 153        | 18           | 171        |
| <b>TOTAL</b>   | <b>619</b> | <b>54</b>    | <b>673</b> |

OGE, in consultation with the White House Counsel's Office, determined in its implementing guidance that certain categories of individuals were not required to sign the Ethics Pledge. For every full-time, non-career appointee who did not sign the Ethics Pledge, agencies and the White House and the Office of the Vice President were asked to provide the reason(s) why the Ethics Pledge was not signed. Fifty-four (54) of the appointees who did not sign the Ethics Pledge fell into one of two categories, as detailed in Table 3. The two categories reflect OGE's implementing guidance.

**Table 3: Appointees Not Required to Sign the Ethics Pledge in 2012**  
(January 1 – December 31, 2012)

| Reasons why Appointees were not Required to Sign the Ethics Pledge                                         | Number of Applicable Appointees |
|------------------------------------------------------------------------------------------------------------|---------------------------------|
| Occupy an exempt non-policymaking position (Schedule C or other comparable authority)*                     | 26                              |
| Appointed without break in service after serving in another position subject to the Ethics Pledge          | 28                              |
| *Exempt, non-policymaking positions include schedulers, office assistants, drivers, and similar positions. |                                 |

#### Former Lobbyists Appointed in Calendar Year 2012

Executive Branch agencies reported that two of the full-time, non-career appointees appointed between January 1 through December 31, 2012, and subject to the Ethics Pledge had been registered lobbyists during the two years prior to their appointment. The two appointees are listed in Table 4. Neither of these two appointees had lobbied the agency to which he or she was appointed during the two years prior to appointment, and neither received a waiver of any of the restrictions on former lobbyists in paragraph 3 of the Ethics Pledge.<sup>6</sup>

<sup>6</sup>Under paragraph 3 of the Ethics Pledge, a former lobbyist may not be appointed to any agency which he or she lobbied during the previous two-year period and may not participate in any particular matter or specific issue area on which he or she lobbied during the previous two-year period.

The two appointees did not have written ethics agreements or recusals addressing Ethics Pledge paragraph 3. They were not required to have written ethics agreements for paragraph 3 because their agency ethics officials determined that the appointees' official duties did not meet the criteria needed for an ethics agreement.

Table 4: Former Lobbyists and Ethics Agreement Requirements  
(January 1 – December 31, 2012)

| Appointee Name   | Agency                               | Ethics Agreement Addressing Pledge Paragraph 3 |
|------------------|--------------------------------------|------------------------------------------------|
| Patrick J. Lally | National Transportation Safety Board | Not required                                   |
| Emily Burlij     | Nuclear Regulatory Commission        | Not required                                   |

#### Process for Evaluating Prior Lobbying

The starting point for determining whether someone is a “registered lobbyist” for purposes of Ethics Pledge paragraph 3 is whether, at any time during the two-year period before appointment, he or she has been listed as a lobbyist in either an initial Lobbying Disclosure Act (LDA) registration or a subsequent quarterly report (line 10 of Form LD-1 or line 18 of Form LD-2). However, agency ethics officials and the White House Counsel’s Office have found it necessary in some instances to go beyond the House and Senate LDA databases to determine whether a person falls within the scope of Ethics Pledge paragraph 3. The databases may be insufficient on their own for a variety of reasons: individuals may fail to de-register as soon as they no longer meet LDA thresholds; LDA filings can be overly inclusive, with employers registering persons who were expected to engage in lobbying activities but subsequently did not do so; and finally, LDA filings are made quarterly and do not indicate the actual dates of lobbying activity.

#### Lobbying and Reverse Revolving Door Waivers

Waivers of provisions of the Ethics Pledge may be granted by the Director of the Office of Management and Budget (authority subsequently delegated to Designated Agency Ethics Officials), in consultation with the Counsel to the President, when it is determined that “the literal application of the restriction is inconsistent with the purposes of the restriction or that it is in the public interest to grant the waiver.”<sup>7</sup> The Executive Order explains that the public interest may include, but is not limited to, exigent circumstances relating to national security or to the economy.

All waivers are made publicly available on either the OGE website or the White House website when issued. Specifically, the OGE website contains the names of appointees serving Executive Branch agencies who have received waivers to the Ethics Pledge.

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<sup>7</sup>Section 3 of Executive Order 13490 provides a waiver mechanism for restrictions contained in the Ethics Pledge and the standards that must be met for a waiver to be granted.

OGE's website provides a hyperlink to the White House website, which posts waivers that have been issued by the White House and the Office of the Vice President. Both lists are updated as waivers are issued.

### Lobbying Waivers

No waivers of any of the restrictions on former lobbyists in Ethics Pledge paragraph 3 were granted in 2012.

### Reverse Revolving Door Waivers

Executive Branch agency respondents reported that one appointee appointed between January 1 and December 31, 2012, was granted a waiver from the requirements of Ethics Pledge paragraph 2. Generally, paragraph 2 of the Ethics Pledge restricts an appointee's participation in matters in which the appointee's former employers or clients have an interest. The individual who received an Ethics Pledge waiver from paragraph 2 requirements and the executive agency that issued the waiver is identified in Table 5 below. Appendix IV contains the text of the waiver to paragraph 2 of the Ethics Pledge issued in calendar year 2012. Neither the White House nor the Office of the Vice President granted any paragraph 2 waivers in calendar year 2012.

Table 5: Appointee who Received a Paragraph 2 Waiver in 2012

|                 |                                 |
|-----------------|---------------------------------|
|                 |                                 |
| Ernest Mitchell | Department of Homeland Security |

### Enforcement

Ethics Pledge paragraph 1 prohibits appointees from accepting gifts from registered lobbyists or lobbying organizations for the duration of their appointment. Agencies reported no instances in 2012 in which appointees were in violation of Ethics Pledge paragraph 1.<sup>8</sup>

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<sup>8</sup> In one instance, an appointee properly relied on incorrect guidance from an ethics official. The Administrative Conference of the United States reported that Chairman Paul Verkuil accepted two complimentary tickets to attend the 125th anniversary ceremonies of the Statue of Liberty. Chairman Verkuil proactively obtained an ethics opinion from his agency's ethics office before accepting these tickets. That ethics office advised him that, under the applicable rules, he could accept these tickets. After the event, that ethics office realized this guidance was incorrect. Chairman Verkuil then reimbursed the donor for the full value of the tickets. OGE concludes that, because the appointee properly relied on guidance from his agency's ethics office and repaid the full value of the tickets, no violation occurred.

Ethics Pledge paragraph 2 requires, among other things, that for a period of two years following appointment, an appointee will not participate in any particular matters involving specific parties, including meetings or other communications, that are directly and substantially related to the appointee's former employer or former clients, unless the meeting or communication is about a particular matter of general applicability and participation in the meeting or other event is open to interested stakeholders. Agencies reported no instances in 2012 in which appointees may have had contact with former employers in violation of Ethics Pledge paragraph 2.

#### Implementation of the Lobbyist Gift Ban

On September 13, 2011, OGE published for comment proposed amendments to the existing Executive Branch-wide gift regulations that would apply the Lobbyist Gift Ban to career employees. *See* 76 FR 56330. That rule also proposed the regulatory implementation of the Lobbyist Gift Ban for those political appointees required to sign the Ethics Pledge. Timely comments were received from 220 sources through December 14, 2011. OGE is reviewing these comments and considering their suggestions before issuing a final rule.

# **APPENDIX I**

# Appendix I

## Executive Order 13490

### Presidential Documents

Executive Order 13490 of January 21, 2009

#### Ethics Commitments by Executive Branch Personnel

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

**Section 1. *Ethics Pledge.*** Every appointee in every executive agency appointed on or after January 20, 2009, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

"As a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

"2. *Revolving Door Ban—All Appointees Entering Government.* I 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.

"3. *Revolving Door Ban—Lobbyists Entering Government.* 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 2, I will not for a period of 2 years after the date of my 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.

"4. *Revolving Door Ban—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 of 2 years following the end of my appointment.

"5. *Revolving Door Ban—Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also 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.

"6. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

"7. *Assent to Enforcement.* I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Personnel,' issued by the President on January 21, 2009, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth

the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

**Sec. 2. Definitions.** As used herein and in the pledge set forth in section 1 of this order:

(a) "Executive agency" shall include each "executive agency" as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that for purposes of this order "executive agency" shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) "Appointee" shall include 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.

(c) "Gift"

(1) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(2) shall include gifts that are solicited or accepted indirectly as defined at section 2635.203(f) of title 5, Code of Federal Regulations; and

(3) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) & (3) and (j)-(l) of title 5, Code of Federal Regulations.

(d) "Covered executive branch official" and "lobbyist" shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) "Registered lobbyist or lobbying organization" shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, "registered lobbyist" shall include each of the lobbyists identified therein.

(f) "Lobby" and "lobbied" shall mean to act or have acted as a registered lobbyist.

(g) "Particular matter" shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(h) "Particular matter involving specific parties" shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(i) "Former employer" is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that "former employer" does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, or any United States territory or possession.

(j) "Former client" is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to a speech or similar appearance. It does not include clients

of the appointee's former employer to whom the appointee did not personally provide services.

(k) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(l) "Participate" means to participate personally and substantially.

(m) "Post-employment restrictions" shall include the provisions and exceptions in section 207(c) of title 18, United States Code, and the implementing regulations.

(n) "Government official" means any employee of the executive branch.

(o) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(p) "Pledge" means the ethics pledge set forth in section 1 of this order.

(q) All references to provisions of law and regulations shall refer to such provisions as in effect on January 20, 2009.

**Sec. 3. Waiver.** (a) The Director of the Office of Management and Budget, 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 the Office of Management and Budget, 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 Office of Management and Budget or his or her designee.

(b) The public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy. *De minimis* contact with an executive agency shall be cause for a waiver of the restrictions contained in paragraph 3 of the pledge.

**Sec. 4. Administration.** (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) 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; to ensure that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President or his or her designee prior to the appointee commencing work; to ensure that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and generally to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) shall be the responsibility of the Counsel to the President or his or her designee.

(c) The Director of the Office of Government Ethics shall:

(1) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) above;

(2) in consultation with the Attorney General or the Counsel to the President or their designees, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(3) 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:

- (i) to carry out the foregoing responsibilities;
- (ii) to apply the lobbyist gift ban set forth in paragraph 1 of the pledge to all executive branch employees;
- (iii) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;
- (iv) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.205 of title 5, Code of Federal Regulations;
- (v) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by their official actions do not affect the integrity of the Government's programs and operations;
- (vi) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(4) in consultation with the Director of the Office of Management and Budget, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure and on steps the executive branch can take to expand to the fullest extent practicable disclosure of such executive branch procurement lobbying and of lobbying for presidential pardons, and to include in the report both immediate action the executive branch can take and, if necessary, recommendations for legislation; and

(5) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, or their designees, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service; and to include in the report both immediate action the executive branch can take and, if necessary, recommendations for legislation.

(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.

**Sec. 5. Enforcement.** (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any 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. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for factfinding and investigation of possible violations of this order and for referrals to the Attorney General for his or her consideration pursuant to subsection (c).

(c) The Attorney General or his or her designee is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General or his or her designee is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

**Sec. 6. General Provisions.** (a) No prior Executive Orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive Order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(1) authority granted by law to a department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(f) The definitions set forth in this order are solely applicable to the terms of this order, and are not otherwise intended to impair or affect existing law.



THE WHITE HOUSE,  
*January 21, 2009.*

[PR Doc. E9-1719  
Filed 1-23-09; 8:45 am]  
Billing code 3195-W9-P

# **APPENDIX II**

## **Appendix II**

### **Assessment Methodology**

OGE administered an assessment questionnaire in January 2013. The assessment focused on compliance with Executive Order 13490 for the period of January 1 through December 31, 2012.

The questionnaire was emailed to Designated Agency Ethics Officials (DAEOs) and Alternate DAEOs or other designated officials. OGE received responses from all agencies required to be assessed. Based on responses to the assessment, OGE conducted follow-up with agencies to gather additional information and correct any discrepancies in submissions. In the interest of completeness, the White House and the Office of the Vice President voluntarily provided information about White House and the Office of the Vice President appointees.

# **APPENDIX III**

## **Appendix III Assessment Questionnaire**

### **Ethics Pledge Compliance Assessment**

#### **(Executive Order 13490)**

**Calendar Year 2012**

**You are required to complete this assessment as the representative of your agency's ethics program. Each agency must provide a prompt and accurate response.**

#### **Purpose**

The purpose of this assessment is to provide the U.S. Office of Government Ethics (OGE) with information about administration of the Ethics Pledge required by Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009). The information will be used by OGE to prepare the annual report on administration of the Ethics Pledge as required by Executive Order 13490, sec. 4(c)(5).

The Executive Order requires every covered appointee to sign the Ethics Pledge upon assuming office. *See* Executive Order 13490, sec. 1. In addition, every covered appointee who was a registered lobbyist during the two years prior to appointment must have a written ethics agreement addressing the restrictions on incoming lobbyists under paragraph 3 of the Ethics Pledge. *See* Executive Order 13490, sec. 4(a).

This assessment focuses on compliance with the following **for the period between January 1, 2012 and December 31, 2012**:

- the requirement for full-time non-career appointees to sign the Ethics Pledge,
- the requirement to have a written ethics agreement covering any commitments under paragraph 3 of the Ethics Pledge (concerning lobbyists entering government), and
- the issuance of any waivers of Ethics Pledge requirements under section 3 of Executive Order 13490.

OGE also requests information on any violation of the Ethics Pledge and subsequent enforcement actions.

This assessment does not request the name or title of any appointee.

#### **Deadline**

The deadline for completing the assessment is **February 4, 2013**.

## **Completing the Assessment**

This assessment consists of up to nine items for responses. (Based on your responses, the assessment may skip items not applicable to your agency.) This Word version of the assessment is provided for your convenience. **Please keep in mind that you are required to submit your response electronically through the link provided to you via email.**

Throughout the assessment you will be offered an opportunity to provide comments.

After reviewing your submission, OGE may contact you for additional information.

## **Help**

If you need help with the assessment, please contact Trish Zemple, Associate Director, by phone at (202) 482-9286 or at [pczemple@oge.gov](mailto:pczemple@oge.gov).

**NOTE:** *Complete this assessment only if you are an employee of the Federal Government.*

1. Agency \_\_\_\_\_
2. Were any full-time non-career appointees (e.g., Presidentially Appointed Senate Confirmed (PAS), Presidentially Appointed (PA), non-career Senior Executive Service (SES), Schedule C, etc.) appointed to or by your agency from January 1 through December 31, 2012?
  - ☐ Yes
  - ☐ No

Note: For guidance on what constitutes a full-time non-career appointee for purposes of the Ethics Pledge see [OGE DAEOgram DO-09-010](#) available at [www.oge.gov](http://www.oge.gov).

Please type comments in the box below.

*Note: Those responding “no” to question 2 are not required to answer questions 3-7. However, you are required to complete questions 8 and 9 as well as the contact information section at the end of the assessment.*

3. For each category of appointee provide the number of full-time non-career appointees appointed between January 1 and December 31, 2012, and indicate the number who did and did not sign the Ethics Pledge. (Note: Please include all appointees who did not sign, regardless of whether or not they were required to sign. Additional explanatory information is requested in the next question.) The total number of appointees who signed the Ethics Pledge plus the total number who did not sign the Ethics Pledge should equal the total number appointed between January 1 and December 31, 2012. (NOTE: Where none enter “0”)

| Number of Full-Time Non-Career Appointees | Type of Full-Time Non-Career Appointees<br>by Category |    |                   |               |       |       |
|-------------------------------------------|--------------------------------------------------------|----|-------------------|---------------|-------|-------|
|                                           | PAS                                                    | PA | Non-career<br>SES | Schedule<br>C | Other | Total |
| Appointed 01/01– 12/31/2012               |                                                        |    |                   |               |       |       |
| Signed the Ethics Pledge                  |                                                        |    |                   |               |       |       |
| Did not sign the Ethics Pledge            |                                                        |    |                   |               |       |       |

If for any field above you are unable to provide a complete response, please explain in the box below. You may also add additional comments.

4. For full-time non-career appointees appointed between January 1 and December 31, 2012, who did not sign the Ethics Pledge, find the appropriate category(ies) of reasons and indicate the number of appointees who fit into that category. (NOTE: Leave blank if not applicable)

| Rationale for Not Signing the Ethics Pledge                                                                             | Number and Type of Full-Time Non-Career Appointees |    |                |            |       |       |
|-------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|----|----------------|------------|-------|-------|
|                                                                                                                         | Who Did Not Sign the Ethics Pledge                 |    |                |            |       |       |
|                                                                                                                         | PAS                                                | PA | Non-career SES | Schedule C | Other | Total |
| a. Occupy an exempt non-policy-making position (Schedule C or other comparable authority)                               |                                                    |    |                |            |       |       |
| b. Appointed without break in service after serving in another position for which the Ethics Pledge was already signed. |                                                    |    |                |            |       |       |
| c. Other (explain below)                                                                                                |                                                    |    |                |            |       |       |

If other, explain here. You may also use the box below to provide a complete response or to add additional comments.

5. How many appointees appointed between January 1 and December 31, 2012 and subject to the Ethics Pledge were registered lobbyists during the two years prior to their appointment? (NOTE: If none, enter "0")

\_\_\_\_\_

Please type comments in the box below.

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*(If you did not have any appointees in 2012 subject to the Ethics Pledge who were registered lobbyists during the two years prior to their appointment, please skip to question 8.)*

6. How many of the appointees identified in the previous question as registered lobbyists during the two years prior to their appointment have an ethics agreement addressing their obligations under paragraph 3 of the Ethics Pledge? (NOTE: If none, enter "0")

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Please type comments in the box below.

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7. For any appointee identified in question 5 who does not have an ethics agreement, please provide an explanation (e.g., appointee's duties sufficiently unrelated to prior lobbying activities that Pledge paragraph 3 not reasonably expected to limit participation in any agency matters).

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8. Section 3 of Executive Order 13490 provides a waiver mechanism for the restrictions contained in the Ethics Pledge. Indicate below how many waivers were granted by your agency in 2012 and which of the Pledge paragraphs were implicated. (NOTE: Where none, enter "0".)

| Number of Ethics Pledge Waivers Granted |                  |                     |                          |
|-----------------------------------------|------------------|---------------------|--------------------------|
| By Pledge Paragraph                     |                  |                     |                          |
| Paragraph 2 Only                        | Paragraph 3 Only | Paragraphs<br>2 & 3 | Other<br>(explain below) |
|                                         |                  |                     |                          |

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If other, please explain here. Other comments may also be provided in the box below.

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9. If applicable, please provide information on any violation of the Ethics Pledge and enforcement actions taken as a result.

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**Please provide a point of contact to answer OGE questions regarding this assessment.**

Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

# **APPENDIX IV**



**Homeland  
Security**

**LIMITED WAIVER OF EXECUTIVE ORDER 13490 FOR  
ERNEST MITCHELL**

In accordance with Section 3 of Executive Order 13490 (January 21, 2009) ("Executive Order") and after consultation with the Office of the Counsel to the President, and for the reasons stated below, I hereby certify that it is in the public interest to grant to Ernest Mitchell a limited waiver of the Ethics Pledge restriction in Section 1, paragraph 2, of the Executive Order to enable him to effectively carry out his duties as Fire Administrator, United States Fire Administration, Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS). Absent this waiver, Mr. Mitchell would be restricted for two years following his appointment from participating in any particular matter involving specific parties in which either of his two former clients, the International Association of Fire Chiefs (IAFC) and the International Association of Firefighters (IAFF), is a party or represents a party.

Pursuant to this waiver, Mr. Mitchell may (i) meet or communicate with any individual associated with or representing the IAFC and IAFF, either individually or in group settings, concerning matters under the purview of the USFA including matters relating to fire safety and prevention and emergency preparedness and response; (ii) participate in IAFF and IAFC events as a speaker and interact with attendees; and (iii) interact with IAFC and IAFF officials, representatives and members on ongoing USFA initiatives, education programs, studies, publications, and to obtain consensus on USFA programs and similar activities. Representatives and officials from IAFC or IAFF may be present when Mr. Mitchell meets with large groups, attends or speaks at conferences, ceremonies, and similar events or otherwise interacts with the public regarding fire safety and prevention and emergency preparedness and response. Subject to the limitations set forth below, this waiver will facilitate Mr. Mitchell's communications with the public as the Fire Administrator, United States Fire Administration, without first being required to determine whether he will be making impermissible contacts or communications with the IAFC or IAFF.

## Background

The mission of the United States Fire Administration (USFA) is to provide national leadership for fire prevention and for fire and emergency preparedness and response through collaboration with fire and emergency services professionals, fire departments, stakeholder organizations, and the public. The USFA is responsible for overseeing, coordinating, directing and setting policy for this mission as well as: (1) serving as the national expert for fire protection and emergency response to the Department; (2) acting as the Federal advocate for public and private fire service managers; (3) developing and delivering fire safety and prevention education programs in partnership with the Federal and private sector communities; (4) promoting professional and organization development for government and private sector organizations and professionals; (5) supporting and facilitating the development of new technology; and (6) assisting government entities in collecting and analyzing data.

The Fire Administrator oversees the overall management of the USFA's programs and resources and has primary responsibility to ensure the USFA's mission objectives are carried out through educating the public and overcoming public indifference to fire and fire prevention; conducting an ongoing program for development, testing, evaluating, and deploying new technology and equipment to improve fire rescue and civil defense services; conducting studies to evaluate public and private programs for effective fire prevention; and developing working relationships with public and private sectors to support development of consensus standards, ensure awareness of trends and evolving issues, and to communicate Federal fire programs and policies.

In order to effectively carry out the USFA mission, Mr. Mitchell is required to engage in extensive communications with the public and private sectors. The national fire community includes both fire departments at the state and local level, and public and private code organizations, manufacturers, fire protection engineers and institutions, private industry, and the insurance industry. The Fire Administrator's responsibilities include regular and frequent meetings with individuals, officials, fire and emergency response professionals, and organizations involved in fire and emergency response. Contacts with the national community include informal individual communications as well as formal meetings at FEMA headquarters, and at regional FEMA and DHS offices, and at non-Federal venues. The continuous contact with the national community ensures that the USFA, FEMA, and DHS keep abreast of national trends, concerns, developments, needs, and fosters the ability for the USFA and FEMA to quickly engage with the non-Federal national community in times of emergencies and disasters.

Throughout his professional career, Mr. Mitchell has been actively involved with the national firefighting community. His experience and training give him unique qualifications for the position of Fire Administrator. He holds degrees in Fire Science, as well as a Bachelors and a Masters Degree in Public Administration. From 1971-91, he worked for Compton, CA as a firefighter, fire inspector, arson investigator, fire captain, and Battalion Chief. From 1991 to 1998, he served the City of Monrovia, CA as Fire Chief and Deputy City Manager. From 1998-2003, Mr. Mitchell served the City of Pasadena, CA as the Fire Chief and Assistant Director of Disaster Management.

Following his retirement in 2003, Mr. Mitchell remained active as a volunteer and consultant in the field of fire administration. Mr. Mitchell previously served as President of the IAFC. Mr. Mitchell, along with other past IAFC Presidents, authored a "Rules of Conduct" document for the IAFC membership. Prior to his Federal appointment, Mr. Mitchell was a volunteer member of a group of professionals developing and implementing an IAFC training initiative directed at improving labor/management relations in local fire departments. Mr. Mitchell, like other facilitators of the labor/management initiative, received an honorarium for conducting the program. Therefore, the IAFC qualifies as Mr. Mitchell's "former client" under section 2(j) of the Pledge.

Although Mr. Mitchell is not a member of the IAFF, he has been a member of the Advisory Board to the IAFF HazMat/WMD Training Management Initiative since 2008, primarily reviewing and commenting on the training accomplishments and plans. As he received an honorarium for his work on the initiative, the IAFF qualifies as Mr. Mitchell's "former client" under section 2(j) of the Pledge.

### Analysis

The International Association of Fire Chiefs (IAFC) is a professional association that provides leadership to career and volunteer chiefs, company officers and managers of emergency organizations. The IAFC represents leaders of fire and related emergency services organizations to governmental and non-governmental organizations and acts as a point of international contact for local, state, provincial and national organizations that share the organization's goals. The International Association of Firefighters (IAFF) is a labor organization that represents fire fighters and paramedics. The IAFF and IAFC represent large segments of the nation's career and volunteer firefighters and emergency management service (EMS) personnel. The IAFF and IAFC are active in promoting firefighter safety, fire prevention and related activities that align with the USFA mission. It is essential for the senior official of the USFA to be intimately involved in the activities of the USFA on these issues to provide the government's leadership and guidance in meetings and in the planning process, to maximize the effectiveness of the USFA in the national firefighting community. As the IAFF, the IAFC and the USFA frequently partner on safety studies and often run parallel but coordinated campaigns, it is necessary for the Fire Administrator to exercise leadership in the planning for these efforts. Further, the IAFF and USFA have jointly produced a number of publications, which enable the Fire Administrator to exercise leadership and disseminate firefighter safety information to a broad national audience. Both organizations hold annual conferences, regional meetings and other events that allow the Fire Administrator to reach large audiences of firefighters in furtherance of the USFA mission. Without a waiver the Fire Administrator would not have the ability to interact with these organizations and their members at these and other events. One such event is the jointly sponsored IAFF and IAFC annual Fire/EMS Safety, Health and Survival Week (held in 2011 on June 19-25). The USFA actively participated in this event. Without the waiver, the Fire Administrator would be unable to participate in this joint effort, including sending messages encouraging individual fire departments to step up for safety as part of the IAFF/IAFC led campaign.

The USFA routinely seeks out the collective experience and representation from national and international organizations to gain consensus and input on USFA programs. The USFA is required by statute to seek input from and interact with the fire service community and these organizations

comprise an important voice in representing the views of their members. Without a waiver, the Fire Administrator would be unable to personally gather and consider input from the IAFF and IAFC, and the Fire Administrator would lose valuable information and collaboration sources from two important stakeholders in the national fire community. Direct collaboration between the Fire Administrator and the IAFF and IAFC also serves to further their complimentary goals of firefighter safety, and assists the USFA to determine the impact and success of the USFA programs in improving firefighter safety. Without a waiver, the Fire Administrator would be unable to personally engage with the IAFF and IAFC to continue to improve, expand, and increase the effectiveness of the joint ventures and partnerships between the USFA and the IAFF and IAFC.

Due to the scope of Section 2 of the Executive Order and the definition of “particular matter involving specific parties” in section 2(h), a broad application of this prohibition would be detrimental to both government operations of the USFA and FEMA and the IAFC and IAFF, as it would preclude Mr. Mitchell from speaking with officials, representatives, and members of these organizations in the various individual, small group, or large public settings where these individuals would be expected to be present and from exchanging information with these organizations. Barring such communication would likely have a negative impact on the organization’s ability to implement USFA policies and initiatives. Mr. Mitchell’s recusal from these communications would also deprive members and representatives of these organizations the opportunity to provide input and bring concerns to the attention of the nation’s leading official for fire safety and prevention and emergency preparedness and response.

#### Conclusion/Limited Scope of Waiver

After consultation with the U.S. Office of Government Ethics and the White House, I have determined that, based on the importance of the position of Fire Administrator, the need for the USFA to freely communicate with all members of the national community engaged in fire safety and prevention and emergency preparedness and response, and Mr. Mitchell’s extraordinary professional expertise and experience in these matters, it is in the public interest to grant a limited waiver of the Executive Order, in accordance with Section 3 of the Executive Order. This waiver is limited to enable Mr. Mitchell to: (i) meet or communicate with any individual associated with or representing the IAFC and IAFF, either individually or in group settings, concerning matters under the purview of the USFA including matters relating to fire safety and prevention and emergency preparedness and response; (ii) participate in IAFF and IAFC events as a speaker and interact with attendees; and (iii) interact with IAFC, and IAFF officials, representatives and members on ongoing USFA initiatives, education programs, studies, publications, and to obtain consensus on USFA programs and similar activities. In all other situations and respects, the restrictions of Section 1, paragraph 2 of the Executive Order will apply. Specifically, Mr. Mitchell will abide by these restrictions when decisions, meetings or communications involve any of the following: (1) pending litigation in judicial or administrative tribunals in which IAFC or IAFF is a party or represents a party; (2) contract, grant, or other funding determinations in which IAFC or IAFF is an offeror, a bidder, or an applicant; or (3) any particular matters involving specific parties in which Mr. Mitchell previously participated as a consultant to or as an active member in the IAFC or IAFF. This

waiver does not otherwise affect Mr. Mitchell's obligation to comply with all other pre-existing government ethics rules.

January 13, 2012

Date

Joseph B. Maher

Joseph B. Maher, Designated Agency Ethics Official  
U. S. Department of Homeland Security