

Office of Government Ethics

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**Memorandum Issued January 22, 1993,
from Stephen D. Potts, Director,
to Designated Agency Ethics Officials
Regarding President Clinton's Executive
Order Entitled "Ethics Commitments by
Executive Branch Appointees"**

On January 20, 1993, President Clinton signed Executive Order 12834, "Ethics Commitments by Executive Branch Appointees." See 58 Fed. Reg. 5911-5916 (Jan. 22, 1993). The Executive order requires certain persons appointed on or after January 20, 1993, to sign a pledge which establishes a contractual commitment regarding their activities after they have been employed as "senior appointees" or after they have participated personally and substantially in trade negotiations.

The activities which will be restricted by the pledges are set forth in section 1 of the Executive order.

Who Must Sign a Pledge

"Senior appointees" and "trade negotiators," who are appointed on or after January 20, 1993, must sign a pledge. Under the terms of the Executive order, "senior appointee" means "every full-time, noncareer Presidential, Vice-Presidential or agency head appointee in an executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule (5 U.S.C. § 5316) but does not include any person appointed as a member of the senior foreign service or solely as a uniformed service commissioned officer." "Trade negotiator" means "a[ny] full-time, non-career Presidential, Vice-Presidential or agency head appointee (whether or not a senior appointee) who personally and substantially participates in a trade negotiation as an employee of an executive agency." The Executive order does not cover career officials at any level, or those officials of President Bush's Administration who are staying on in President Clinton's Administration for a period of time without receiving a new appointment.

Forms of Pledges

Senior appointees will sign a "Senior Appointee Pledge."

Trade negotiators who are not senior appointees (and who therefore will not have signed a "Senior Appointee Pledge") will sign a "Trade Negotiator Pledge." This Office has developed forms for these pledges, based upon language provided in the Executive order. The Executive order is incorporated by reference in both pledges, so senior appointees and trade negotiators must be given a copy of the Executive order to read before signing a pledge.

When a Pledge Must Be Signed

A senior appointee must sign the pledge "upon becoming" a senior appointee, i.e., at the time that person is appointed to a position that meets the terms of the Executive order. A person who is being paid less than the rate for level V of the Executive Schedule, but who otherwise meets the terms of the Executive order, must sign the pledge when his or her rate of basic pay is raised so that it equals or exceeds the rate for level V of the Executive Schedule (for example, a person in the Senior Executive Service whose rate of basic pay changes to ES-5 from ES-4.)

A non-career trade negotiator who is not a senior appointee must sign the pledge prior to personally and substantially participating in a "trade negotiation," which the Executive order defines as "a negotiation that the President determines to undertake to enter into a trade agreement with one or more foreign governments, and does not include any action taken before that determination." This Office will, after consultation with the White House, notify Designated Agency Ethics Officials of any negotiation which the President determines to be a "trade negotiation" for purposes of requiring a pledge under the terms of the Executive order. Until such notification, agencies need not collect any trade negotiator pledges; but agencies should be prepared to collect such pledges promptly.

A person who has signed a senior appointee pledge does not have to sign another pledge if that person changes senior appointee positions, unless there was a period of time between those positions during which that person was not a senior appointee. Similarly, a trade negotiator who is not also a senior appointee and who has signed a trade negotiator pledge once does not have to sign the pledge again for other trade negotiations in which that person will be participating personally and substantially, unless prior to the person's personal and substantial participation in those other trade negotiations there was a period of

time during which the person was not employed in the executive branch.

Collection of the Pledges

A senior appointee is to submit his or her signed pledge to the head of his or her agency upon becoming a senior appointee. A trade negotiator who is not a senior appointee is to submit his or her signed pledge to the head of his or her agency prior to participating personally and substantially in a trade negotiation. At the Executive Office of the President, pledges are to be submitted to the White House Counsel or other official(s) to whom the President delegates that responsibility.

Signed pledges will be placed in the senior appointee's or trade negotiator's Official Personnel Folder or equivalent personnel file.

Waivers

Only the President can grant a waiver of any of the restrictions contained in a pledge. A request for a waiver should be submitted to the head of the affected agency for submission to the President through the Counsel to the President. A waiver requires the President's written certification and publication in the Federal Register, that it is in the public interest for the waiver to be granted.

Enforcement

The Executive order specifies that the contractual commitments established by the pledges will be enforced by any legally available means, including debarment proceedings within the affected agency, or judicial or civil proceedings brought by the Attorney General for declaratory, injunctive, or monetary relief.

Further Guidance

This Office will assist Designated Agency Ethics Officials in providing advice to current or former senior appointees and trade negotiators regarding the application of the pledges. In providing this assistance, this Office will consult with the Attorney General or Counsel to the President when appropriate. In addition, within the next six months, the Attorney General will be publishing in the

Federal Register a "Statement of Covered Activities" regarding the restriction on a former senior appointee's activities on behalf of a foreign government or foreign political party.