

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, 2011 – DECEMBER 31, 2011

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Preface

This is the third 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 2011 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, 2011. This report is publicly available. It has been posted on the United States Office of Government Ethics' (OGE) website at www.usoge.gov.

Respectfully submitted,



Don W. Fox
General Counsel and
Principal Deputy Director
United States Office of Government Ethics
Dated: 6 April 2012

Ethics Pledge Compliance (Calendar Year 2011 Appointments)

Executive Branch agencies, in addition to the White House and Office of the Vice President, reported that 881 full-time, non-career appointees¹ were appointed during the period of January 1 through December 31, 2011. Of these appointees, 825 were required to sign the Ethics Pledge, and 100% have done so.²

In addition, agencies reported that during calendar year 2011, none of the full-time, non-career appointees were registered lobbyists during the two years prior to their appointment.

Finally, three agencies and the White House and Office of the Vice President granted a total of seven so-called “reverse revolving door” waivers during calendar year 2011. These waivers allow appointees to participate in matters in which their former employers or clients have an interest. Copies of all waivers issued to Executive Branch agency appointees are posted on OGE’s website, www.usoge.gov, when a waiver is issued. Waivers issued by the White House and Office of the Vice President are posted on the White House website, www.whitehouse.gov. All waivers are found in Appendix IV to this report. No waivers of the restrictions on former lobbyists were granted during calendar year 2011.

¹Definitions 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.

²Executive Order 13490 requires each covered appointee to sign the Ethics Pledge “upon becoming an appointee.” Agencies reported that eight appointees signed the Ethics Pledge late.

Employees Subject to the Ethics Pledge

Of the 133 reporting agencies, 62 agencies and the White House and Office of the Vice President³ employed full-time, non-career appointees subject to the Ethics Pledge during the period of January 1 through December 31, 2011.⁴ Table 1 below provides additional details regarding the categories of full-time, non-career appointees.

Table 1: Full-Time, Non-Career Appointees
(January 1 – December 31, 2011)

PAS	PA	Non-Career SES	Schedule C	Other	Total
98	21	134	370	258	<u>881</u>

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.⁵ 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 Office of the Vice President reported that 881 full-time, non-career appointees were appointed during the period of January 1 through December 31, 2011. Table 2 shows that of the 881 appointees, 825, or approximately 94 percent, were required to sign the Ethics Pledge upon their appointment in 2011.⁶ The largest category of appointees required to sign the Ethics Pledge is Schedule C appointees.

³The 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.

⁴See 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.

⁵See 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.

⁶Additionally, as Table 3 demonstrates, 31 other appointees had already signed the Pledge for a prior appointment to a different position, and these appointees remained subject to the Pledge upon their new appointment in 2011.

Table 2: Ethics Pledge Signatures (by Appointee Type)
(January 1 – December 31, 2011)

Appointee Type	Required	Not Required	Total
PAS	90	8	98
PA	18	3	21
Non-career SES	122	12	134
Schedule C	350	20	370
Other	245	13	258
TOTAL	<u>825</u>	<u>56</u>	<u>881</u>

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 Office of the Vice President were asked to provide the reason(s) why the Ethics Pledge was not signed. Fifty-six (56) of the appointees who did not sign the Ethics Pledge fell into one of two categories, as detailed in Table 3. These two categories reflect OGE’s implementing guidance.

Table 3: Appointees Not Required to Sign the Ethics Pledge in 2011
(January 1 – December 31, 2011)

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)*	25
Appointed without break in service after serving in another position subject to the Ethics Pledge	31
*Exempt, non-policymaking positions include schedulers, office assistants, drivers, and similar positions.	

No Former Lobbyists Appointed in Calendar Year 2011

Executive Branch agencies and the White House and Office of the Vice President reported that none of the full-time, non-career appointees appointed January 1 through December 31, 2011, and subject to the Ethics Pledge had been registered lobbyists during the two years prior to their appointment.

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). Agency ethics officials and the White House Counsel's Office, however, 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."⁷ 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. 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 2011.

Reverse Revolving Door Waivers

Executive Branch agency and White House respondents reported that seven appointees appointed January 1 through December 31, 2011, had been granted waivers 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. Individuals who have received Ethics Pledge waivers from paragraph 2 requirements and the executive agencies that issued the waivers are identified in Table 4 below. Appendix IV contains the text of the waivers to paragraph 2 of the Ethics Pledge issued in calendar year 2011.

⁷Section 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.

Table 4: 2011 Appointees who Received Paragraph 2 Waivers

Caroline Atkinson	Special Assistant to the President for International Economic Affairs (White House)
Matthew Colangelo	Department of Justice
William M. Daley	Chief of Staff (White House)
Matthew Gandal	Department of Education
Jonathan Greenblatt	Special Assistant to the President and Director of Social Innovation (White House)
Shailagh Murray	Assistant to the Vice President for Communications (Office of the Vice President)
Daniel Poneman	Department of Energy

Enforcement

Ethics Pledge paragraph 2 requires, among other things, that for a period of two years following appointment appointees 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 three instances in 2011 in which appointees may have had contact with former employers in violation of Pledge paragraph 2. These matters have been referred to the appropriate inspectors general.

Implementation of the Lobbyist Gift Ban

Section 4(c)(3)(ii)-(iii) of the Executive Order directed OGE “to adopt such rules or procedures as are necessary or appropriate” to extend the lobbyist gift ban in paragraph 1 of the Ethics Pledge to all executive branch employees and permitted OGE “to authorize limited exceptions to the ban for circumstances that do not implicate the purposes of the 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 Pledge. Comments on the proposed rule were originally due by November 14, 2011, but OGE extended the original 60-day comment period to December 14, 2011, to allow the public more opportunity to comment. See 76 FR 70667 (November 15, 2011). Timely comments were received from 220 sources through December 14. 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;

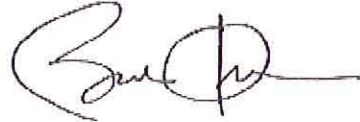
or

(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.

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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 2012. The assessment focused on compliance with Executive Order 13490 for the period of January 1 through December 31, 2011.

The questionnaire was emailed to Designated Agency Ethics officials (DAEO) 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 Office of the Vice President appointees.

APPENDIX III

Appendix III
Assessment Questionnaire

Ethics Pledge Compliance Assessment
(Executive Order 13490)
Calendar Year 2011

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, 2011 and December 31, 2011:**

- 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 **January 31, 2012.**

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 Karen Rigby, Lead Management Analyst, by phone at (202) 482-9212 or at ksrigby@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, 2011?
- 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.

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, 2011, 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, 2011. (NOTE: Where none enter "0")

Number of Full-Time Non-Career Appointees	Type of Full-Time Non-Career Appointees by Category					
	PAS	PA	Non-career SES	Schedule C	Other	Total
Appointed 01/01– 12/31/2011						
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, 2011 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-policymaking 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, 2011 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.

(If you did not have any appointees in 2011 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")

Please type comments in the box below.

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).

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 2011 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 2 & 3	Other (explain below)

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

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

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

Name: _____

Title/Position: _____

Email Address: _____

Phone Number: _____

APPENDIX IV

Waiver Pursuant to Section 3 of Executive Order 13490

Pursuant to Section 3 of Executive Order 13490, I hereby waive the requirements of paragraph 2 of the Ethics Pledge of Ms. Caroline Atkinson solely with respect to her former employer, the International Monetary Fund (IMF). This waiver is necessary so that Ms. Atkinson, when representing the interests of the President and the United States as Special Assistant to the President for International Economic Affairs, may participate appropriately in official matters that involve the IMF.

Background

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (EO), Section 1, requires all covered political appointees to abide by certain commitments. One of those commitments provides that a covered appointee may not for a period of two years from the date of her appointment participate in any particular matter involving specific parties that is directly and substantially related to her former employers or former clients. (Ethics Pledge, Paragraph 2.) For purposes of applying this restriction, the term "particular matter" has been interpreted to include "meetings or other communications relating to the performance of one's official duties with a former employer or client." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

A waiver of the restrictions contained in paragraph 2 of the Ethics Pledge may be granted upon a certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. EO, Sec. 3(b). By memorandum dated February 23, 2009, the Office of Government Ethics announced that the Designated Agency Ethics Official of each executive agency was the most appropriate designee to grant such waivers, after consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

Analysis

Before her service as Special Assistant to the President for International Economic Affairs, Ms. Atkinson served as the Director of the External Relations Department for the IMF, and prior to that she served as the IMF's Deputy Director of the Western Hemisphere Department. If paragraph 2 of the ethics pledge were applied literally to Ms. Atkinson, she would not be able to participate in matters relating to the IMF and any of its bodies, offices or agencies and therefore could not advise the President appropriately on such matters in her role as Special Assistant to the President for International Economic Affairs.

After reviewing all of the relevant facts and circumstances, I have concluded that a waiver of paragraph 2 of the Ethics Pledge is appropriate for Ms. Atkinson with respect to her former employer, the IMF, because the literal application of the restriction is inconsistent with its purpose and because waiver is in the public interest.

When a former employer is an international organization that includes the United States as a member, like the IMF, the concerns underlying the restrictions in the Ethics Pledge are not implicated, because the interests of the international organization and the interests of the United States are aligned. As such, there is little likelihood that a government employee could take action to favor the commercial interests of his or her former employer at the expense of the United States. Accordingly, literal application of paragraph 2 in this situation is inconsistent with the purposes of the restriction and a waiver is appropriate.

In addition, it is also in the public interest for Ms. Atkinson to participate in matters relating to the IMF. It is essential that the United States have an effective, credible voice in discussions with the IMF on the many important issues that arise in that forum. Ms. Atkinson has spent the past seven years working as a senior official within the IMF and as a result has developed an intimate knowledge of the organization and its operations, including its management, programs and policies. The knowledge, skills and relationships that Ms. Atkinson developed during her time at the IMF give her credibility, enhance her effectiveness, and will allow her to significantly advance U.S. interests within the organization. Accordingly, a waiver is appropriate for the separate and independent reason that it is in the public interest for Ms. Atkinson to participate in matters relating to her former employer.

Based on the above analysis, I waive the requirements of paragraph 2 of the Pledge as it pertains to Ms. Atkinson's future involvement in particular matters relating to the IMF and any of its bodies, offices or agencies. Furthermore, while a reasonable person with knowledge of the relevant facts may question Ms. Atkinson's impartiality in matters relating to the IMF, I make a separate determination, pursuant to 5 C.F.R. § 2635.502, that the Government's interest in Ms. Atkinson's ability to participate in these matters, given the critical responsibilities associated with her position as Special Assistant to the President for International Economic Affairs, outweighs the concern that a reasonable person may question the integrity of the White House Office's programs and operations.

This waiver of the requirements of paragraph 2 of the Ethics Pledge for Ms. Atkinson does not constitute a waiver of 18 U.S.C. § 208. Ms. Atkinson has a continuing financial interest in IMF as a result of the payment of her pension. Until Ms. Atkinson has received all of her pension payments, pursuant to 18 U.S.C. § 208, she may not participate personally and substantially in any particular matter that would have a direct and predictable effect on the ability or willingness of the IMF to provide these payments to her.

Ms. Atkinson will, of course, otherwise comply with the remainder of the pledge and with all other preexisting government ethics rules.

/s/

Dated: August 8, 2011

Counsel to the President

DEPARTMENT OF JUSTICE

Washington

October 14, 2011

CERTIFICATION OF PUBLIC INTEREST WAIVER FOR MATTHEW COLANGELO

FROM: Lee J. Lofthus
Designated Agency Ethics Official, Department of Justice

SUBJECT: Waiver from Restrictions Related to the NAACP Legal Defense Fund (LDF), in *Florida v. Holder*, 1:11-cv-01428 (D.D.C.2011), a Voting Rights Act challenge.

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a limited waiver of the restrictions of paragraph 2 of the Ethics Pledge is in the public interest for appointee Matthew Colangelo in the position of Acting Deputy Assistant Attorney General, Civil Rights Division, in the Department of Justice. Mr. Colangelo shall not be restricted from participating in matters relating to *Florida v. Holder*, 1:11-cv-01428 (D.D.C.), a challenge by the State of Florida under the Voting Rights Act, subject to the limitations set forth in the attached memorandum and without waiving the limitation on Mr. Colangelo's participation in regulations and contracts as provided in paragraph 2 of the Ethics Pledge. This waiver does not otherwise affect Mr. Colangelo's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed _____
Lee J. Lofthus
Designated Agency Ethics Official
Department of Justice

Date 10-14-2011

Memorandum



Subject: Waiver Request Under E.O. 13490 for Acting Deputy Assistant Attorney General Matthew Colangelo to participate in <i>Florida v. Holder</i>	Date: September 29, 2011
To: Lee J. Lofthus Assistant Attorney General	From: Thomas E. Perez Assistant Attorney General Civil Rights Division
Through: Janice Rodgers Departmental Ethics Officer	

The purpose of this memorandum is to request waiver of the restriction in Executive Order 13490 of January 21, 2009, Ethics Commitments by Employees in the Executive Branch, in order that Matthew Colangelo, Acting Deputy Assistant Attorney General, may participate in matters relating to *Florida v. Holder*, 1:11-cv-01428 (D.D.C. 2011), a Voting Rights Act challenge in which Mr. Colangelo's former employer, the NAACP Legal Defense and Educational Fund, has intervened.

E.O. 13490, Ethics Commitments by Employees in the Executive Branch

As you are aware, the Executive Order provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients, including regulations and contracts. Sec. 1, paragraph 2. The Executive Order further provides that "particular matter involving specific parties" shall have the same meaning as set forth in the ethics regulations at 5 C.F.R. § 2641.201(h), 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." E.O. 13490, Sec. 2(h).

E.O. 13490 references the following definition provided in the standards of conduct; however, the E.O. specifically includes regulations and contracts:

5 C.F.R. § 2641.201(h)(1): *Particular matter involving a specific party or parties* - (1) *Basic concept*. The prohibition applies only to communications or appearances made in connection with a "particular matter involving a specific party or parties." Although the statute defines "particular matter" broadly to include "any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding," 18 U.S.C. 207(i)(3), only those

particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product application, enforcement action, administrative adjudication, or court case.

(2) *Matters of general applicability not covered.* Legislation or rulemaking of general applicability and the formulation of general policies, standards or objectives, or other matters of general applicability are not particular matters involving specific parties. International agreements, such as treaties and trade agreements, must be evaluated in light of all relevant circumstances to determine whether they should be considered particular matters involving specific parties; relevant considerations include such factors as whether the agreement focuses on a specific property or territory, a specific claim, or addresses a large number of diverse issues or economic interests.

The E.O. provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or his designee, in consultation with the Counsel to the President or his designee. E.O. 13490, Sec. 3(a). The Director, OMB, has designated the Designated Agency Ethics Official (DAEO) of each executive branch agency to exercise the Sec. 3 waiver authority, in writing, and in consultation with the Counsel to the President.

Specific Waiver Request

On August 1, 2011, the State of Florida filed *Florida v. Holder*, in which it seeks a declaratory judgment that recently-enacted changes to the Florida Election Code fully comply with Section 5 of the Voting Rights Act. On September 6, 2011, the NAACP Legal Defense and Educational Fund (LDF), on behalf of the Florida Conference of the NAACP, moved to intervene as defendant-intervenors, presumably to argue that Florida's voting changes violate Section 5 and should not be approved.

Mr. Colangelo served as Director of the Economic Justice Group for LDF until March 5, 2010. Mr. Colangelo became Counsel to the Assistant Attorney General on March 8, 2010. He is the principal reviewer of the Civil Rights Division's Voting Rights Section, which is litigating *Florida* on behalf of the Department. Unique among the staff of the Office of the Assistant Attorney General, Mr. Colangelo has substantial experience in voting rights litigation. (Former Principal Deputy Assistant Attorney General Samuel Bagenstos and former Deputy Assistant Attorney General Julie Fernandes also had substantial voting rights litigation experience but have recently left the Division.) Moreover, Florida previously submitted the proposed Florida Election Code changes to the Division for administrative review under Section 5. Our Voting Section, under Mr. Colangelo's responsibility, reviewed the law for almost 60 days before the subsections at issue in *Florida* were withdrawn and this case was filed. The Florida Election Code changes were enacted on May 19, 2011, more than a year after Mr. Colangelo left LDF. As such, of course, Mr. Colangelo did not have any involvement in this case or access to client confidences on this matter while with LDF. Because he is subject to the E.O. limitation on contact with his former employer, Mr. Colangelo has never discussed the *Florida* matter with LDF or its clients.

The Division seeks a waiver of the E.O. so that Mr. Colangelo may review the Voting Section's work on this matter and assist the Assistant Attorney General on issues relating to this case. We do not seek a waiver of the restriction on meeting or communicating with his former employer, and he will not appear in court or participate in any matters that would require direct interaction with LDF or its clients.

The standard for waiving the restriction in the E.O. is that it be in the public interest. E.O. 13490, Sec. 3. It directly serves the public interest that the Department have the benefit of Mr. Colangelo's participation in this case by providing oversight of the Voting Section's defense, given the significance of this challenge to our enforcement of Section 5 and his unique experience. The Department will face a severe hardship if Mr. Colangelo cannot be assigned to review this case, for several reasons. First, he has significant experience with both the general subject matter and with the particular Florida law at issue; a new reviewer would be required to come up to speed on both the subject matter and the state statute at issue in very short order. Second, as the front-office reviewer assigned to oversee the Voting Section, Mr. Colangelo has a daily working relationship with that Section; assigning a new reviewer for this matter imposes additional reporting burdens and significant inefficiencies on the Section and the front office. Third, this matter is extremely time-sensitive, in that the state would like to implement its law as quickly as possible; requiring a new reviewer to become familiar with the issues presented in a matter of weeks or months will impose additional burdens on an already-stretched staff. Finally, the recent departure of both PDAAG Samuel Bagenstos and DAAG Julie Fernandes heightens all of these burdens because a replacement reviewer could well need to be someone not currently working in the front office, and who has not previously worked with the Voting Section.

Although Mr. Colangelo does not have a "covered relationship" with LDF under the standards of conduct because more than a year has passed since he was employed there, *see* 5 C.F.R. § 2635.502(b)(1)(iv), we also believe that a reasonable person with knowledge of the relevant facts would not question the integrity of the Department's programs and operations based on his participation in overseeing *Florida v. Holder*, and that, should such questions arise, the Department's interest in your participation outweighs any possible concern. Mr. Colangelo had no involvement in this case while with LDF (because the case did not exist), has not discussed this case with anyone from LDF, has had no access to client confidences through his prior employment, and has not been employed by LDF for more than 18 months.

THE WHITE HOUSE

Washington

November 18, 2011

MEMORANDUM FOR CHIEF OF STAFF WILLIAM M. DALEY

FROM: KATHRYN H. RUEMMLER
Counsel to the President and Designated Agency Ethics Official

SUBJECT: Limited Public Interest Waiver and Authorization Pursuant to Section 3,
Executive Order 13490 and 5 C.F.R. § 2635.502

This limited waiver and authorization allows you to participate personally and substantially on a single occasion in a particular matter involving specific parties that is directly and substantially related to a nonprofit organization for which you previously served as an uncompensated member of the board of directors, subject to certain limitations described below. Specifically, you may accept the invitation to speak in an official capacity on behalf of the Government and present the views of the Administration of President Obama on December 7, 2011, at an event hosted by the United States-China Business Council (“Council”).

The Council is a “private, nonpartisan, nonprofit organization of roughly 220 American companies that do business with China.” Its declared mission is to expand the United States-China commercial relationship to the benefit of large and small businesses that comprise its membership and, more broadly, the United States economy. On its website, the Council indicates that it “favors constructive engagement with China to eliminate trade and investment barriers and develop a rules-based commercial environment that is predictable and transparent to all parties.” On December 7, 2011, the Council will hold its annual gala, which will be attended by Members of Congress, U.S. Government Officials, H.E. Zhang Yesui, Ambassador of the People’s Republic of China, and various other diplomats, as well as representatives of numerous U.S. businesses and nongovernmental organizations, and others in the Washington, D.C. community with interests in United States-China policy. You have been asked to give the keynote address at the event that will also feature remarks from Ambassador Zhang Yesui. The event will include approximately 400 guests and be open to the media.

Under the ethics pledge, an appointee must recuse from particular matters involving specific parties directly and substantially related to any “former employer.” (Executive Order 13490 [“EO”] Sec.1, para. 2) The pledge defines “former employer” to include any organization for which the appointee served as a director, whether or not such service was compensated. (EO Sec. 2) The Executive Order authorizes the issuance of a waiver of restrictions contained in the pledge upon certification that (i) 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.

The Director of the Office of Management and Budget has delegated to each executive branch Designated Agency Ethics Official (DAEO) the authority to issue waivers under section 3 of the Executive Order. As the DAEO for the White House Office, I am issuing a limited waiver for the purpose of communicating the Administration's views regarding matters of vital national interest, including the U.S. jobs environment and trade and relations between the United States and China. I certify that it is in the public interest to grant this public interest waiver to you for the reasons discussed below.

In addition to the ethics pledge, you are bound by the Standards of Ethical Conduct for Employees of the Executive Branch ("Standards"). The Standards, at 5 C.F.R. § 2635.502, require that an employee take appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under Section 502, where an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to the matter, he should not participate in the matter without informing an agency official and receiving authorization to participate. Included in the definition of a "covered relationship" is any person for whom the employee served, within the preceding year, as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. 5 C.F.R. § 2635.502(b)(1)(iv).

You have a covered relationship with the Council. Under Section 502's standard, I conclude that a reasonable person would not question the integrity of the Government's programs and operations based on your participation as a speaker at the Council's December 7, 2011 event, subject to the limitations set forth in this memorandum; and that should such questions arise, the Government's interest in your participation outweighs any possible concern. Thus, for the reasons discussed below, I am granting both a waiver under the Executive Order and an authorization under the Standards.

As the President's Chief of Staff, you have a key role in developing and implementing the Administration's economic policies. You have intimate knowledge of the Administration's views on a wide range of topics and are uniquely situated to coordinate with the President and top Administration officials to develop a presentation that will advance the Administration's goals. You also serve as the President's liaison to the business community and have substantial knowledge of and experience with the subject of the United States-China commercial relationship, U.S. trade policy and the forum in which you will be delivering the presentation.

The opportunity that this event offers for effective communication of the Administration's message substantially outweighs any potential concern that a reasonable person would question your impartiality based upon your prior service as an uncompensated member of this nonprofit's 29-member board of directors, even though the event itself raises funds for the Council. The event will afford the Administration an opportunity to reach a range of significant stakeholders in trade between the United States and China, as well as a potentially broader audience who may follow any media coverage of the event. The official presence of the Ambassador of the Republic of China and United States Government officials further enhances the value of this event as a forum for a meaningful exchange of views that will serve the Government's interest. In addition, involvement of members of the nonprofit and business sectors is likely to allow the Administration to address some of those most directly affected by United States-China trade policies.

Although I have decided to authorize your participation in this matter, I am limiting your participation, as follows: You may not engage in any fundraising or solicit any donation, advocate membership in the Council, or encourage participation in events that the Council hosts. These limitations are intended to mitigate the effect of your participation on the Council and focus your participation on the message that you are communicating for the Administration. You also will be required to continue to comply with the remainder of the pledge and with all government ethics rules except as expressly waived herein.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

May 31, 2011

MEMORANDUM

TO: Matthew Gandal
Deputy Director for Technical Assistance and Outreach
Implementation and Support Unit
Office of the Deputy Secretary

FROM: Susan Winchell
Assistant General Counsel for Ethics and
Designated Agency Ethics Official

RE: Limited Waiver of Paragraph 2 of the Ethics Pledge and Authorization
under 5 C.F.R. § 2635.502

The purpose of this memorandum is to provide a limited waiver of the restrictions in Section 1, Paragraph 2 of Executive Order 13490 (the Ethics Pledge or E.O.), and a limited authorization pursuant to 5 C.F.R. § 2635.502(d), to permit your participation in certain, limited, particular matters involving specific parties that involve your former employer, Achieve, Inc.. The purpose of this limited waiver is solely to permit you to coordinate technical assistance efforts being provided to Department of Education grantees under the Race to the Top (RTT) and Race to the Top Assessment (RTTA) programs.

Background

You previously served as Executive Vice President for Achieve, which is an independent, bipartisan, non-profit organization created in 1996 by governors and corporate leaders to work on education reform issues. Prior to beginning your position here you were employed by Achieve beginning in 1997, and served as Executive Vice President beginning in 2001. Through your work with Achieve you gained extensive experience building and nurturing multi-state networks and communities of practice (CoPs) and providing high-quality technical assistance on state policies and practices in the K-12 education arena. You lead the American Diploma Project of the American Diploma Project Network, a highly successful strategy for helping governors and other state executives raise education standards and strengthen accountability systems to prepare all students for success in college. You also oversaw Achieve's technical assistance work to states. Through these experiences you gained the practical skills required to oversee an effective technical assistance strategy and build and nurture successful CoPs in the

education arena. As a result of your well-regarded work, you also gained a national reputation and the necessary stature to ensure that you can work effectively with state officials at the highest levels.

In your current position you are responsible for overseeing technical assistance to RTT grantees and to other states to advance their reform plans, coordinating Department policy regarding technical assistance, and conducting significant outreach outside the Department to Chief State School Officers and Governors, among others, on issues relating to technical assistance and education reform. You are responsible for overseeing the administration of a \$43 million contract awarded to ICF International for the RTT Technical Assistance Network. Working with the contractor, you oversee the development of strategic technical assistance activities designed to increase the capacity of states to effectively implement education reforms. These activities include planning meetings and conferences, developing technical assistance tools and materials, and providing technical assistance for RTT states and, in many cases, for all states on the four education reform areas. A key element of the technical assistance is the development of RTT grantee CoPs to support regular interactions across state teams to learn about and solve common challenges. The RTT Technical Assistance Network is using CoPs to provide RTT states the opportunity for cross-state learning and collaboration as well as support from leading experts utilizing both in-person and online mediums

Achieve is not currently a party to any grant awarded under RTT, and it is not reasonably foreseeable that Achieve will be hired by any RTT grantee to provide services in connection with these grants. However, individuals who are currently affiliated with Achieve may be identified as speakers and panel members for RTT technical assistance activities. Additionally, Achieve is the program management partner on one of the two RTTA grants – PARCC/Achieve – and received a supplemental grant from the Department (a similar supplemental grant was awarded to the other RTTA grantee). Although you are not responsible for implementing the RTTA grants or the RTTA supplemental grants, this limited waiver is necessary in order for you to be able to effectively perform the duties of your current position. This is because one of the four education reform areas for which you are responsible in terms of providing technical assistance to states, standards and assessments, overlaps with work PARCC/Achieve will be doing under the RTTA and the RTTA supplemental grants.

The RTTA and RTTA supplemental grants focus on developing high-quality common assessments aligned to college and career ready standards held in common across the participating states and one of the specific purposes of the RTTA supplemental grant awards is to assist states transition to common standards and assessments. Among the activities funded under the RTTA supplemental grant are meetings to help states plan for implementing new standards and assessments, developing analyses and tools to support that implementation, professional development for policy leaders and teachers in participating states, and funding travel to technical assistance activities related to standards and assessments being provided by the RTT Technical Assistance Network. Indeed, I understand some RTT grantee states have made inquiries about allocating resources that suggest they are focusing on this overlap and thinking about ways to

effectively and efficiently use funds across these two programs. Therefore, it is not possible for you to effectively perform the duties of your position if you cannot communicate and coordinate with the RTTA grantees, including PARCC/Achieve, about their efforts to assist states in their transition to common core standards and assessments.

Waiver

The Ethics Pledge provides that a political appointee will not, for a period of two years from the date of his appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients. *See* E.O. 13490, § 1, ¶ 2. Absent a waiver, you may not participate personally and substantially in any particular matter in which Achieve is, or represents, a party for two years from the date of your appointment.

Pursuant to the authority delegated under Section 3 of the Ethics Pledge, and after consultation with the Counsel to the President, I hereby certify, for reasons stated in this memorandum, that it is in the public interest for you to be granted this limited waiver of the restrictions of paragraph 2 of the Ethics Pledge as Deputy Director for Technical Assistance and Outreach in the Implementation and Support Unit (ISU), Office of the Deputy Secretary. I find that there is a strong public interest in having you serve in this position because you are extremely well qualified and have unique professional experiences that are critical to success in this job, including building and nurturing communities of practice (CoPs) among states in the education arena and a high level of stature in the field.

This waiver permits you to participate in the following activities, notwithstanding the fact that Achieve may be a party to matters under which such activities are conducted:

- 1) Planning and implementation of conferences and other activities for which individuals employed by Achieve are identified as potential conference speakers, participants, or resources; and
- 2) Coordinating technical assistance regarding standards and assessments with the RTTA and RTTA supplemental grantees, including PARCC/Achieve.

Limited waiver. This waiver permits you to participate in non-monetary specific party matters relating to providing technical assistance to RTT and RTTA grantees only for the purpose of facilitating and coordinating technical assistance activities. The waiver does not permit you to participate in any deliberation or decision affecting Achieve's financial interests, including the following:

- Any funding decision to award funds to Achieve, either directly or indirectly;
- Evaluation of work performed under a grant to which Achieve is a party, including compliance with the terms of the grant;

- Any decisions regarding extending an existing grant to which Achieve is a party;
- Any negotiations affecting financial arrangements regarding a grant to which Achieve is a party;
- Any disputes between the Department and Achieve;
- Any budget matters pertaining to a grant to which Achieve is a party;
- Eligibility determinations regarding Achieve; and
- Any new grant competitions to which Achieve is eligible and where it is reasonably foreseeable that Achieve will be a party, either because they have a history of applying for funding under a program or they have stated an intention to apply.

Additionally, the Deputy Secretary has agreed that any final funding decisions within the ISU will be made by a Department official at an organizational level above your current position.

Authorization

The Standards of Ethical Conduct for Employees of the Executive Branch require an employee to take appropriate steps to avoid an appearance of any lack of impartiality in the performance of the employee's official duties. 5 C.F.R. § 2635.502(a). Under section 502, when an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to a specific party matter, the employee should not participate in the matter without informing an agency official and receiving authorization to participate. An employee has a "covered relationship" under this section with any entity for which he has, within the last year, served, *inter alia*, as an employee. 5 C.F.R. § 2635.502(b)(1)(iv).

Planning and implementation of meetings, conferences, and other activities for which individuals employed by Achieve are identified as potential conference speakers, participants, or resources; and coordinating technical assistance regarding standards and assessments with the RTTA and RTTA supplemental grantees, including PARCC/Achieve, are both particular matters involving specific parties in which Achieve is a party. Therefore, I hereby also provide a corresponding authorization pursuant to 5 C.F.R. § 2635.502(d) for the same reasons and with the same limitations as described above regarding the waiver of Section 1, Paragraph 2, of the Ethics Pledge.

Conclusion

Matters from which you must recuse will be referred to the ISU Director for disposition. Your disqualification from duties in connection with particular matters that are not covered by this waiver and authorization is not expected to impair materially your ability to perform the duties of your position. This limited waiver and authorization does not affect your obligation otherwise to comply with other provisions of the Ethics Pledge and

with all other Standards of Ethical Conduct for Employees of the Executive Branch and agency supplemental rules.

Please do not hesitate to contact me at 202/401-6003 if you have questions regarding this waiver.

cc: Tony Miller
Joanne Weiss
Charlie Rose
Phil Rosenfelt
Ann Whalen
Joe Conaty
Wendy Tada

Limited Waiver Pursuant to Section 3 of Executive Order 13490

Pursuant to Section 3 of Executive Order 13490, I hereby waive the requirements of Paragraph 2 of the Ethics Pledge of Mr. Jonathan Greenblatt solely with respect to his former employer, the Aspen Institute. I have determined that this limited waiver is necessary because it is in the public interest for Mr. Greenblatt, when representing the interests of the President and the United States as Special Assistant to the President and Director of Social Innovation (“Director of Social Innovation”), to be able to participate in certain official matters that involve the Aspen Institute.

Executive Order 13490, “Ethics Commitments by Executive Branch Personnel” (EO), Section 1, requires all covered political appointees to abide by certain commitments. One of those commitments provides that a covered appointee may not for a period of two years from the date of his appointment participate in any particular matter involving specific parties that is directly and substantially related to his former employers or former clients. (Ethics Pledge, Paragraph 2.) “Particular matter involving specific parties” is defined in the EO to “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.” (EO, Section 2(h)) The purpose of this expansion of the traditional definition of particular matter is to address concerns that former employers and clients may appear to have privileged access, which they may exploit to influence an appointee out of the public view. *See* DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

A waiver of the restrictions contained in Paragraph 2 of the Ethics Pledge may be granted upon a certification either that the literal interpretations of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. EO, Sec. 3(b). By memorandum dated February 23, 2009, OGE announced that the Designated Agency Ethics Official of each executive agency was the most appropriate designee to grant such waivers, after consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

As the Director of Social Innovation, Mr. Greenblatt will be responsible for advising the President and White House staff on social innovation initiatives, including social impact economy investing, social entrepreneurship, philanthropy and social engagement. Prior to his appointment as the Director of Social Innovation, Mr. Greenblatt was employed by the Aspen Institute as the Director of the Impact Economy Initiative. At the Aspen Institute, Mr. Greenblatt worked closely with the Office of Social Innovation and Civic Participation of the Domestic Policy Council to establish dialogue between policymakers and industry leaders on how public policy can support impact investing and social entrepreneurship. If subject to the restrictions in Paragraph 2 of the Ethics Pledge, Mr. Greenblatt would be restricted from participating in particular matters involving the Aspen Institute and from communicating with the Aspen Institute on White House projects.

I have concluded, for the reasons stated below, that it is in the public interest to grant Mr. Greenblatt a waiver of Paragraph 2 of the Ethics Pledge with respect to his former employer, the Aspen Institute.

Mr. Greenblatt has a unique background that encompasses social entrepreneurship, philanthropy and social innovation. He is a leading authority on impact investing and social entrepreneurship and related matters. Mr. Greenblatt has the skills and stature necessary to advance the President's priorities by engaging private, public and nonprofit actors to work together to achieve common objectives and promote the national interest. The government will benefit greatly from his expertise.

The Office of Social Innovation has worked regularly with the Aspen Institute throughout its tenure and it is in the public interest that this collaboration continue. The Aspen Institute is a nonprofit, nonpartisan organization that provides a forum for analysis, consensus building, and problem-solving on a wide variety of issues, including social innovation. It is a leader in the dissemination of learning and innovation in the fields of social entrepreneurship and philanthropy. Likewise, the Institute's roundtables on philanthropy are venues for consultation among stakeholders in the field. It is in the public interest that the Director of Social Innovation participate fully in such activities to obtain the best information and to take advantages of opportunities to engage private, public and nonprofit actors to problem-solve and build consensus on achieving shared objectives.

Accordingly, Mr. Greenblatt is provided a limited waiver of Paragraph 2 of the Ethics Pledge permitting him, when representing the interests of the President and the United States as the Director of Social Innovation, to be involved in non-monetary specific party matters involving the Aspen Institute.

This waiver is limited. This waiver does not permit Mr. Greenblatt to participate in any particular matters or deliberative decisions by the White House directly affecting the financial interests of the Aspen Institute, including but not limited to contracts, grants, or events or conferences where the Aspen Institute will charge fees. Mr. Greenblatt does not have any continuing financial interest in his former employer the Aspen Institute. Mr. Greenblatt will, of course, otherwise comply with the remainder of the Pledge and with all other applicable government ethics rules.

/s/ Kathryn H. Ruemmler

Dated: September 14, 2011

Counsel to the President and
Designated Agency Ethics Official

Limited Waiver Pursuant to Section 3 of Executive Order 13490

After consulting with the Counsel to the President, I hereby grant a limited waiver of the requirements of paragraph 2 of the Ethics Pledge to Shailagh Murray with respect to her former employer The Washington Post Company and the subsidiaries it controls.

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," Section 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 2 of the Ethics Pledge provides that a covered appointee may not for a period of two years from the date of her appointment participate in any particular matter involving specific parties that is directly and substantially related to her former employer. For purposes of applying this restriction, the term "particular matter" has been interpreted to include "any meeting or other communication relating to the performance of one's official duties with a former employer." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

A waiver of the restriction contained in paragraph 2 of the Ethics Pledge may be granted upon a certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. E.O. 13490, Sec. 3(a). By memorandum dated February 23, 2009, the Office of Government Ethics announced that the Designated Agency Ethics Official of each executive agency was the most appropriate designee to grant such waivers, after consultation with the Counsel to the President. See DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

Before her service as Assistant to the Vice President for Communications, Ms. Murray was a correspondent with *The Washington Post* newspaper, which is published by WP Company LLC, a subsidiary of The Washington Post Company. The Washington Post Company or its subsidiaries also own other newspapers, local television stations, and The Slate Group LLC, which publishes print and online magazines. Ms. Murray does not have any continuing financial interest in The Washington Post Company or the subsidiaries it controls.

I have determined that this waiver is appropriate as a policy matter because it is in the public interest for Americans to have access to information about the Vice President's work, and numbers of Americans receive news through media outlets owned or controlled by The Washington Post Company. The Assistant to the Vice President for Communications is the primary point of contact between media outlets and the Office of the Vice President. Without this waiver, Ms. Murray would be unable to communicate with the media outlets owned or controlled by The Washington Post Company, and Americans' access to news about the activities of the Vice President would potentially be impaired. This waiver is limited: it does not cover Ms. Murray's participation in any particular matter involving specific parties that is directly and substantially related to the education services or cable television systems operations of The Washington Post Company or its subsidiaries because those operations do not concern the news. I grant this waiver with the understanding that Ms. Murray will comply with the remaining provisions of the Ethics Pledge and with all preexisting government ethics rules.

/s/ Cynthia C. Hogan

Dated: May 5, 2011

Counsel to the Vice President and
Designated Agency Ethics Official



Department of Energy

Washington, DC 20585

MAR 14 2011

MEMORANDUM FOR: DANIEL B. PONEMAN
DEPUTY SECRETARY

FROM: SUSAN F. BEARD *Susan F. Beard*
ASSISTANT GENERAL COUNSEL FOR GENERAL
LAW AND DESIGNATED AGENCY ETHICS
OFFICIAL
OFFICE OF THE GENERAL COUNSEL

SUBJECT: Limited Waiver of Paragraph 2 of the Ethics Pledge

Pursuant to the authority delegated under Section 3 of Executive Order 13490 "Ethics Commitments by Executive Branch Personnel" (January 21, 2009) and after consultation with counsel to the President I hereby certify for the reasons stated below that it is in the public interest for you to receive a limited waiver of the restrictions of paragraph 2 of the Ethic Pledge as Deputy Secretary.

You previously provided strategic advice services to General Electric as an employee of the Scowcroft Group. You terminated your employment with the Scowcroft Group in May 2009, prior to your appointment as Deputy Secretary on May 21, 2009. You have complied with the requirements of paragraph 2 of the Ethics Pledge regarding former clients and employers for the duration of your appointment and your restriction under the Ethics Pledge will expire in less than three months. You have advised that you have no current or ongoing relationship with General Electric or the Scowcroft Group. Absent a waiver, you would be prohibited by paragraph 2 of the Ethics Pledge from participating in any particular matter involving specific parties in which General Electric is or represents a party. You are an expert on the nuclear power industry. Your knowledge of the nuclear power industry and expertise in nuclear matters is essential to the United States at this time given recent world events. Therefore, I am granting you a limited waiver to review, discuss, and provide factual information about the Japanese nuclear reactors that were built by General Electric, including information that you can provide to the public. This limited waiver does not affect your obligations to comply with other provisions of the Ethics Pledge or with all other preexisting government ethics rules.

