

President Trump Rescinds Executive Order on Ethics as President Biden Issues Sweeping Ethics Requirements for Administration Appointees

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For those individuals leaving the Trump administration or interested in serving under the Biden administration, two important developments will impact those decisions.

In one of his final acts as President, Donald Trump revoked Executive Order (EO) 13770 issued by his administration in 2017. In addition to the post-employment restrictions found in Title 18, the EO mandated post-employment restrictions for political appointees in the Trump administration after they left government service. As a result of the rescission, the following restrictions no longer apply to political appointees:

1. A five-year ban on lobbying their former agency.
2. A permanent ban on Foreign Agent Registration Act (FARA) related activities.

Although the restrictions implemented under the EO are no longer in effect, other restrictions remain applicable to former government employees. These restrictions affect permissible activities and communications for varying lengths of time, depending on the position of the former government employees.

Additionally, as part of an initial flurry of executive orders on his first day in office, President Biden laid out new ethics requirements for his administration's appointees. As a result, every executive branch appointee is required to sign an ethics pledge, which lays out strict new rules, including a prohibition on those entering government service from receiving compensation from a former employer that is conditioned upon an individual accepting a position in the U.S. government. The EO adopts provisions found in similar EO's issued by previous presidents including a ban on the acceptance of gifts from registered lobbyists. However, many of the provisions are significantly more stringent.

For example, if an individual entering government service was registered under the Lobbying Disclosure Act or Foreign Agents Registration Act two years prior to their appointment, for two years after they enter government service they are prohibited from participating in a particular matter on which they lobbied or conducted FARA activities; participating in the specific issue area in which the particular matter falls; and

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seeking or accepting employment from an agency with which they lobbied or engaged in FARA activities.

In addition, the EO prohibits certain activities after leaving government service:

- For two years after terminating employment, former appointees may not lobby their former agencies and senior White House staff.
- For one year after terminating employment, former employees may not assist the lobbying activities of others, including behind the scenes advice or “shadow lobbying.”
- For the remainder of the Biden administration or two years after terminating employment, whichever is later, appointees may not engage in activities requiring FARA registration.

As individuals leaving the Trump administration begin working with new employers, they need to be careful that their activities do not violate restrictions on post-employment. Although the Trump EO was rescinded, there may still be a period of time in which certain activities are prohibited. For those individuals entering the Biden administration, there are not only restrictions on where they may serve but also for when they terminate government employment.

Employers interested in hiring former government employees should consult counsel regarding restrictions that may apply to any newly hired employee. The Akin Gump political law and government ethics team is available to advise on these questions and will continue to monitor any changes made by the Biden administration that impact our clients.

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