2009 Annual Ethics in City Government Seminar
Panel on Pre-Employment Restrictions

Conflicts of Interest Board
Pre-Employment Provision Proposed by Staff
N.Y.C. Charter § 2604(b)(17)

17. No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for any firm in which the public servant held an ownership interest or a compensated position within the previous twelve months.

Staff Commentary: Chapter 68 currently contains no cooling off period for new public servants joining City service or for moonlighting public servants who leave their moonlighting job or sell off an investment. For example, under current Chapter 68 a public servant who until yesterday worked for a computer company could today award a contract to that company, provided that the public servant has in fact severed all business and financial ties with the company at the time the official makes the award. Such actions may raise significant concerns about the independence of the public servant and should be prohibited. See, e .g., King County (Wash.) Code § 3.04.030(A)(7), (18) (prohibiting a county employee, within one year of entering county employment, from awarding a county contract or participating in a county action "benefiting a person that formerly employed him or her," absent disclosure and approval by the appointing authority); Seattle Mun. Code § 4.16.070(1)(c) (requiring a city officer or employee to "disqualify himself or herself from acting on any transaction which involves the City and any person who is, or at any time within the preceding twelve (12) month period has been a private client of his or hers, or of his or her firm or partnership"); Code of Miami-Dade County § 2-11.1(x) (prohibiting departmental personnel and employees from performing contract-related duties regarding a business entity by which the person had been employed, or in which he or she held a controlling financial interest, during the preceding two years where the entity has or is seeking county business). See also Los Angeles Mun. Code § 49.5.13 (prohibiting officers and employees of the city, within twelve months of entering city service, from using or attempting to use their position to influence any government decision directly relating to any contract where the official had been employed by any party to the contract immediately before entering city service); Calif. Gov't Code §§ 87100, 87103(c) (prohibiting any public official from using or attempting to use his or her position to influence a

government decision that may have a material financial effect on "any source of income" of $500 or more promised to or received by the official in the previous twelve months); 5 C.F.R. § 2635.502(b)(1)(iv) (for purposes of restricting actions by a federal employee benefitting certain persons, includes "[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee"); U.S. Office of Government Ethics Ad. Op. No. 01x5 (2001). Note that this provision would also cover the moonlighting public servant who resigns from his or her moonlighting position, as well as the public servant who sells off an investment worth (currently) $40,000 or more (53 RCNY § 1-11). It would not, however, cover the public servant who resigned from a private sector position thirteen months ago to accept a City position but who then received his or her final paycheck yesterday from the former private sector employer. While the provision applies to former investments meeting the definition of ownership interest, it does not apply to every former business or financial relationship.

Pre-Employment Restrictions

Although many ethics laws contain postemployment (revolving door) restrictions, few address the pre-employment situation. Yet when a municipal official takes an action that benefits his or her immediate past employer, a public outcry is almost certain. For that reason, even in the absence of pre-employment restrictions, municipal officials would be well advised to disclose and recuse themselves in such instances. However, an actual statutory provision provides greater guidance. For example, the King County (Wash.) Employee Code of Ethics prohibits a county employee, within one year of entering county employment, from awarding a county contract or participating in a county action "benefiting a person that formerly employed him or her," absent disclosure and approval by the appointing authority. So, too, the Seattle Code of Ethics requires a city officer or employee to "disqualify himself or herself from acting on any transaction which involves the City and any person who is, or at any time within the preceding twelve (12) month period has been a private client of his or hers, or of his or her firm or partnership."[45]

45. King §3.04.030(A)(7), (18); Miami §2-11.1(x); Seattle §4.16.070(1)(c). *See also* L.A. §49.5.13; TSC Bill §§800(1)(d), 803(3); Davies Model Law §§100(1)(d), 105(2).

King County (WA) Code ch. 3.04
Employee Code of Ethics

3.04.030 Conflict of interest. A. No county employee shall engage in any act which is in conflict with the performance of official duties. A county employee shall be deemed to have a conflict of interest if the employee directly or indirectly:

.....

7. Within one year of entering county employment awards a county contract or participates in a county action benefiting a person that formerly employed him or her, provided, that participation other than contract award may be authorized in a memorandum by the appointing authority following written disclosure by the affected employee and that such authorization shall be filed with the board of ethics and a copy maintained by the appointing authority;

Code of Miami-Dade County

Sec. 2-11.1. Conflict of Interest and Code of Ethics Ordinance.

.....

(x) *Prohibition on county employees and departmental personnel performing contract-related duties.* No person included in subsections (b)(5)(departmental personnel) and (b)(6) (employees), who was previously employed by or held a controlling financial interest in a for-profit firm, partnership or other business entity (hereinafter "business entity") shall, for a period of two years following termination of his or her prior relationship with the business entity, perform any county contract-related duties regarding the business entity, or successor in interest, where the business entity is a county bidder, proposer, service provider, contractor or vendor. As used in this subsection (x), "contract-related duties" include, but are not limited to: service as a member of a county certification, evaluation, selection, technical review or similar committee; approval or recommendation of award of contract; contract enforcement, oversight or administration; amendment, extension or termination of contract; or forbearance regarding any contract. Notwithstanding the foregoing, the provisions of this subsection (x) shall not apply to the County Manager or the Director of Procurement Management.

SMC 4.16.070 Prohibited conduct.

No current City officer or employee shall:

1. Disqualification From Acting On City Business.

. . . . . .

c. Fail to disqualify himself or herself from acting on any transaction which involves the City and any person who is, or at any time within the preceding twelve (12) month period has been a private client of his or hers, or of his or her firm or partnership;

SEC. 49.5.13 Participation of Elective City Officers and Employees in Governmental Decisions

A. In addition to the requirements of Government Code Sections 87100, *et seq.*, no officer or employee of the City shall knowingly make, participate in making, or attempt to use his or her official position to influence any governmental decision directly relating to any contract where the City official knows or has reason to know that any party to the contract is a person by whom the City official was employed immediately prior to entering government service within 12 months prior to the time the official acts on the matter.

B. Any person that meets either of the criteria set forth in Subdivisions 1 and 2 below and that makes one or more payments in the aggregate amounts set forth in Subsection C for independent expenditures or non-behested member communications to support the candidacy of an individual who is thereafter elected or reelected to an elective City office shall file a report with the City Ethics Commission, disclosing the information set forth after each of the criteria:

1. The person is directly involved in a decision before an elected City officer, and within 12 months prior to the decision, the person made one or more independent expenditures or one or more payments for member communications in support of that officer at the time the officer was campaigning for election or reelection to any office.

(a) The person shall disclose the filer's name, address and telephone number; the elected City official in support of whom the payment was made; the date(s) and amount(s) of the payment(s); the identity of the matter on which the decision is made; and the date on which the person became directly involved in the decision.

(b) The provisions of 2 Cal. Code Regs. § 18704.1 (a)(1) and (2) shall govern when a person is "directly involved" in a decision before an elected City official within the meaning of this section.

(c) Disclosure shall be made within 48 hours after the person making the expenditure (i) becomes directly involved in a decision that will or may come before the elected City officer in whose support the payment was made and (ii) makes the expenditure.

2. The person, or any other person acting on behalf of the person, attempts to influence an elected City officer with respect to any matter of municipal legislation as defined by Section 48.02 of this Code, and within 12 months prior to the decision, the person made one or more independent expenditures or one or more payments for member communications in support of that officer at the time the officer was campaigning for election or reelection to any office.

(a) The person shall disclose the filer's name, address and telephone number; the elected City official in support of whom the payment(s) was (were) made; the date(s) and amount(s) of the payment(s); the identity of the municipal legislation; whether the person attempted to influence the officer directly or through another person, and, if the
latter, the name and address of the other person; and the date(s) of the attempt(s) to influence.
(b) Disclosure shall be made within 48 hours after each attempt to influence.
C. The following are the aggregate amounts triggering the disclosure required by Subsection B:
1. $100,000 or more in the case of a Mayoral candidate in a primary or general election;
2. $50,000 or more in the case of a City Attorney or Controller candidate in a primary or general election; and
3. $25,000 or more in the case of a City Council candidate in a primary or general election.
D. For purposes of this section, a payment is deemed to be made for an expenditure supporting an elected City officer if the person making the payment is required to disclose that fact pursuant to Section 49.7.26 of this Code.
E. The disclosures required by this section shall be made on a form provided by the Commission, shall be verified under penalty of perjury and shall be filed by fax, certified mail, or hand delivery to the Commission.

§ 87100. Public officials; state and local; financial interest

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

§ 87103. Financial interest in decision by public official

A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

.....

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars ($500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

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New York State
Proposed Amendments to Gen. Mun. Law Art. 18
S.6157/A.8637 (1991)

§ 800. Code of ethics for municipal officers and employees.
1. General prohibition. A municipal officer or employee shall not use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal financial benefit for any of the following persons:
(a) the municipal officer or employee;
(b) his or her outside employer or business;
(c) a member of his or her household;
(d) a customer or client;
(e) a relative; or
(f) a person from whom the officer or employee has received election campaign contributions of more than $1000 in the aggregate during the past twelve months.
.....

§ 803. Definitions.
Unless otherwise stated or unless the context otherwise requires, when used in this article:
.....
3. "Customer or client" means (a) any person 1to whom a municipal officer or employee has supplied goods or services during the previous twenty-four months having, in the aggregate, a value greater than $1,000 or (b) any person to whom a municipal officer's or employee's outside employer or business has supplied goods or services during the previous twenty-four months having, in the aggregate, a value greater than $1,000 but only if the officer or employee knows or has reason to know the outside employer or business supplied the goods or services.

New York State Ethics Commission

Advisory Opinion No. 98-09: Application of Public Officers Law §74 to State employees who may be called upon to act on matters involving prior employers or past business relationships.

INTRODUCTION

The State Ethics Commission ("Commission") has recently been asked for advice as to the implications of the Public Officers Law when a State employee is called upon to act on a matter which involves a prior employer or an entity with which the employee has had a past business relationship. This situation most commonly arises when an individual has moved from the private sector into the public sector.

Pursuant to the authority vested in it by Executive Law §94(15), the Commission renders its opinion that, under Public Officers Law §74, a State employee who enters State service from the private sector must consider recusal from any matter concerning a former employer or business entity with which he or she had a relationship within the prior two years, with the decision to be based upon the standards set forth in this opinion.

APPLICABLE LAW

Public Officers Law §74, the Code of Ethics, provides the minimum standards against which State officers and employees are expected to gauge their behavior. The Code addresses the conflict between the obligation of public service and private, often personal, financial interest. The rule with respect to conflicts of interest is as follows:

> No officer or employee of a state agency . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

Following the rule with respect to conflicts of interest, Public Officers Law §74(3) provides standards of conduct which address actual as well as apparent conflicts of interest:

. . . .

d. No officer or employee of a state agency . . . should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

. . . .

f. An officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

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. . . .

h. An officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts in violation of his trust.

. . . .

DISCUSSION

The State of New York, like other governmental and private sector employers, is continuously recruiting those who are experienced in the areas in which it acts. It seeks individuals who have shown through their efforts that they have significant talent and abilities. These recruitment efforts seek out not only those who already work for the State or for other governments, but also those who are engaged in the private sector. Hiring an outstanding individual from the private sector and bringing that person into State service is considered a success in the State's never-ending efforts to obtain top quality employees. When such an individual decides to join State service, there is the opportunity to use his or her talents to benefit the State and its citizens. This should be encouraged.

When someone enters State service directly from the private sector, that individual has customarily been engaged in the field of work in which he or she will work for the State. Whether it is, for example, transportation or criminal justice or banking or insurance, the individual will have experience, possibly as an attorney, engineer or other professional, and will have had private employers, private clients or other business relationships. In carrying out public sector work, the employee may have to deal with those with whom he or she had a prior relationship, thereby raising the potential for ethical concerns. Where ethical concerns arise, recusal on the part of the State employee may be required. However, with each recusal, the State loses the benefit of the person's expertise, often to its detriment and the detriment of its citizens.

There is a tension between the need to prevent conflicts of interest or their appearance, as required by Public Officers Law §74, and the State's need for the services of skilled and talented employees recruited from the private sector. This opinion is intended to serve as a guide in resolving those tensions. (1)

In Advisory Opinion No. 94-11, the Commission had occasion to consider the issue of the prior employment and past business relationships of part-time, unpaid members of a State Board responsible for acting on funding applications submitted pursuant to two different programs. The Commission noted that "[g]enerally, prior employment or past business relationships may affect a board member's judgment in his or her State position." It cited paragraphs (d),(f) and (h) of Public Officers Law §74(3), noting that a board member's vote on a funding application submitted by an entity with which the member had a prior relationship might be perceived as the member's using his or her official position to "secure unwarranted privileges or exemptions" for another or giving "reasonable basis for the impression" that he or she can be improperly influenced, or raising suspicion among the public that the member is engaged in acts in violation of his or her trust.

The Commission held that whether a conflict of interest results from a Board member's acts must be determined on a case-by-case basis. It set forth the factors that it would consider in making determinations. First, it would examine how recently the Board member had a prior relationship. In considering the time elapsed, the Commission looked to Public Officers Law §73(8)(a)(i) for guidance. This statute applies a two year rule to the restrictions placed on State employees who leave State

Service. The Commission noted that the underlying assumption is that the opportunity to improperly profit from a former employee's State service is greatest during that time period, and the two year period was chosen by the Legislature based upon what it believed to be reasonable.

The Commission concluded in Advisory Opinion No. 94-11 that a similar, though not identical, rule should be applied to a Board member's past employment and business relationships. Without a statutory basis, the Commission believed that it could not impose an absolute rule forbidding Board members from acting on applications from former employers or those with whom they had business relationships within two years of the severing of the prior relationship. However, given the Legislature's decision that two years is a period in which judgments may be problematical, the Commission was prepared to presume that actions taken within two years created the potential for a conflict.

Thus, the Commission adopted a presumption that the vote by a member of a board on a funding application submitted by a former employer or a business with which he or she had a relationship within the last two years creates the potential for a conflict. The Commission noted that such a presumption could be rebutted by looking at other factors, such as the nature and duration of the relationship. For example, the Commission would weigh whether the board member was in an employment relationship with the applicant, which implies daily oversight and control, or was in a consulting relationship, which suggests a more temporary connection; whether the board member was an officer or senior official of the applicant; whether the board member or the applicant had a fiduciary relationship with the other; whether the applicant was the actual former employer or business entity with which the board member had the relationship or whether it is a related, subsidiary, or umbrella organization; and for how long the relationship existed.

Advisory Opinion No. 94-11, while useful, should not be considered as controlling in the case of full time State employees. It dealt with unpaid, part-time board members, many of whom are actively engaged in private activities while serving the State. The applications they considered were for State funding, a subject that is always extremely sensitive. In addition, since a multi-member board was involved, the recusal of one member was not a serious problem, as there were other members of equal status who could make decisions. These considerations are all quite different in the context of the customary work of a full time State employee.

In looking to other jurisdictions, the Commission found no states with statutes or opinions directly addressing the issue. However, the City of Seattle's Code of Ethics requires that a city officer or employee disqualify himself or herself from acting in any transaction which involves any person who at any time within the preceding 12 month period has been a personal private client of the employee or a client of his or her firm or partnership. This has the advantage of clarity, but it seems to go farther than is necessary and may deprive the City of the services of a valued employee. In contrast, the federal government offers a flexible approach.

At the federal level, the Office of Government Ethics has issued regulations concerning a "covered relationship." This includes "any person for whom the employee has, within the last year, served as . . . attorney, consultant, contractor or employee." Under 5 CFR Part 2635.502, where an employee knows that a person with whom he or she has a covered relationship is a party to a matter or represents a party and the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his or her impartiality, the employee should not participate without informing the agency designee and receiving authorization from the designee in accordance with a process set forth in the regulations. Under the federal regulations, the agency designee has broad discretion to authorize the employee's participation if, in light of all relevant circumstances, the interests of the Government in the employee's participation outweigh the concern that a reasonable person may question the integrity of the agency's programs (see, OGE Opinion 95x5). Factors which the agency

designee may take into consideration include:

1. The nature of the prior relationship;

2. The effect that resolution of the matter would have upon the financial interest of the person involved in the relationship;

3. The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;

4. The sensitivity of the matter;

5. The difficulty of reassigning the matter to another employee; and

6. Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

The Office of Government Ethics gives examples of how this process works, and includes the following:

> A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.

When the federal government attempted, in one instance, to adopt a fixed rule, eliminating the flexibility offered by the regulations, it found itself with a problem. The Lobbying Disclosure Act of 1995 disqualified from eligibility to serve as United States Trade Representative or Deputy Trade Representative anyone who at any time in the past had represented or advised a foreign government in a trade negotiation or trade dispute with the United States. (19 U.S.C. §2171[b][3]). Two years later, when Charlene Barshefsky was nominated to serve as Trade Representative, the Senate and House passed measures waiving the prohibition with regard to her. During the Senate debate, a resolution and report of the American Bar Association was placed on the record in which the ABA urged repeal of the restriction. The report, authored by the ABA Section of International Law and Practice, set forth the problem that arises when flexibility is denied.

> The provision sets a dangerous precedent for limiting the availability of qualified candidates to serve in the U.S. Government. It automatically disqualifies potential nominees solely based on a prior relationship with a particular type of client. Such a rule, which effectively equates an advocate's personal views with those of his or her client, reflects an unwarranted and incorrect view of the lawyer/client relationship, especially in view of the ethical obligations of lawyers and the constitutionally - recognized right to counsel. In addition, such a rule takes no account of the nature, length, significance or contemporaneity of the relationship with the former client.

The report noted that:

> [w]hen an individual leaves the private sector and becomes a government official, he or she takes on totally new responsibilities and must move beyond all prior client interests-those of domestic and foreign clients alike. Other than preserving their confidences, an appointee has no continuing obligation to prior clients.

The report further noted that the best qualified candidate for the trade representative position may be someone who has some experience advising foreign clients, citing the adage that it is useful for a prosecutor to have had experience serving as defense counsel. Finally, the report noted that a significant danger of the USTR Amendment is that the same principle could be applied to other government positions involving disciplines other than international trade negotiation. It warned that adoption of a rule that anyone who has given advice to entities in a regulated industry is disqualified from putting his or her expertise to use as a regulator in that industry would dramatically restrict the pool of qualified regulators.

While the Commission shares the concerns expressed by the ABA, it cannot ignore its mandate to interpret the Public Officers Law to prevent conflicts of interest and the appearance of conflicts. As the Commission said in applying §74:

> A public servant's actions and affiliations must be above reproach, even if no actual conflict of interest is present. Any associations that give rise to the suspicion of favoritism, self-dealing or personal private gain by State officers and employees shake the public's confidence. (Advisory Opinion No. 96-29)

Thus, while the standards to be used in applying §74 should not effectively preclude individuals from the private sector from joining the State workforce, they must be maintained so as to give the public confidence that such individuals will be acting in the public interest and not in the interest of their previous employer or business associates.

In setting appropriate standards, the Commission begins by considering the time that has passed since the State employee left his or her private sector position. For the reasons discussed in Advisory Opinion No. 94-11 -- primarily, the Legislature's selection of a two year period of preclusion for those who have left State service -- the Commission holds that the period of examination for a potential conflict of interest is two years. Once an employee has been in State service for this period of time, any potential conflict that may have existed is diminished by the passage of time. This gives assurance to State employees that they will not have to examine every previous relationship throughout their period of State service, especially where the period of such service is lengthy.

Within the two year period, the potential for conflict must be examined when an employee has occasion to deal with a person with whom or an entity with which he or she has had a prior relationship. The immediate question facing the employee is whether recusal is required.

Unlike the result reached in Advisory Opinion No. 94-11, with respect to unpaid, part-time board members passing on funding applications, the Commission will not create any presumption of required recusal with respect to full time employees. The work of these employees is too varied to make it likely that there either is or is not a conflict. Thus, the significance of the two year period is that within this period further inquiry must be made, while it need not be made after two years have elapsed.

The next question, of course, is what inquiry is to be made where a matter is within the two year period. Here, the federal regulations serve as a useful guide. As noted above, 5 CFR Part 2635.502 sets forth six factors which serve to help reach a decision. In examining these factors, the Commission finds that the

most critical are: the nature of the prior relationship; the nature and importance of the public employee's role in the matter, including the discretion to be exercised; and the sensitivity of the matter. Each of these should be judged in any situation that may arise.

In considering the nature of the prior relationship, certain questions will be presented. Does the matter concern a former employer of the State employee or a client? If a client, was it a client of the employee or of the firm of which the employee was a member? Was it a longstanding client? Was it a significant client in terms of the firm's overall business? Was it personally serviced by the employee? Whatever the nature of the prior relationship, how long did it last?

With regard to the matter before the agency, the federal regulations allow for the consideration of adjustments that can be made in the employee's duties that would reduce or eliminate a potential conflict. For example, where there is some potential for conflict, the close supervision by a supervisor of the affected employee's work would reduce the appearance that the employee might act inappropriately to favor his or her past employer or business associates. Permitting a potentially conflicted employee to play a diminished role might permit the employee to offer the benefit of his or her expertise while reducing the potential for conflict by minimizing the employee's discretion.

The Commission is aware of the difficulty that these standards place on employees of the State who have left the private sector, as they must weigh the above factors to determine whether recusal is required. The alternative, however, is a standard with far less flexibility, which the Commission, for reasons it has set forth, declines to adopt. It believes that the employee's difficulty is significantly diminished by its setting a two year period as the time within a potential conflict based solely on a previous relationship must be considered.

Employees who find themselves faced with the question of whether they are required to recuse themselves based on prior relationships are urged to consult with agency counsel and/or the Commission. Such inquiry should be made before an employee becomes involved in the matter. In responding to any such inquiry, agency counsel should apply the factors set forth in this opinion. The Commission remains available to address questions posed by agency counsel or individual employees, and, upon request, to make a determination as to whether an employee may participate in a particular matter.

State employees should be aware that each employee ultimately bears the responsibility of ensuring that his or her actions are not in violation of Public Officers Law §74.

CONCLUSION

When a State employee is called upon to act in his or her State position on a matter which involves a prior employer or an entity with which the employee has had a past business relationship and the prior employment or business relationship was within the prior two years, the employee is required to consider recusal from the matter, with the decision to be based upon the standards set forth in this opinion.

Pursuant to Executive Law §94(15), an opinion rendered by the Commission, until and unless amended or revoked, shall be binding on the Commission.

All concur:

Paul L. Shechtman,

Chair

Evans V. Brewster
Henry G. Gossel
O. Peter Sherwood,
Members

Dated: July 15, 1998

Endnotes

1. This opinion addresses only those situations where a State employee has severed all ties with a previous employer or other entity where there is a past business relationship. It is not intended to address, for example, a situation where a State employee has retained a financial interest in a previous employer or left with an understanding that he or she may return in the future.

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of divestiture under subpart J of part 2634 of this chapter.

[57 FR 35042, Aug. 7, 1992, as amended at 59 FR 4780, Feb. 2, 1994; 60 FR 6391, Feb. 2, 1995; 60 FR 66858, Dec. 27, 1995; 61 FR 40951, Aug. 7, 1996; 62 FR 48748, Sept. 17, 1996]

Subpart E—Impartiality in Performing Official Duties

§ 2635.501 Overview.

(a) This subpart contains two provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under § 2635.502, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in § 2635.502 to determine whether he should or should not participate in a particular matter.

(b) Under § 2635.503, an employee who has received an extraordinary severance or other payment from a former employer prior to entering Government service is subject, in the absence of a waiver, to a two-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

NOTE: Questions regarding impartiality necessarily arise when an employee's official duties impact upon the employee's own financial interests or those of certain other persons, such as the employee's spouse or minor child. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth in subparts D or F of this part apply and only a statutory waiver or exemption, as described in §§ 2635.402(d) and 2635.605(a), will enable the employee to participate in that matter. The authorization procedures in § 2635.502(d) may not be used to authorize an employee's participation in any such matter. Where the employee complies with all terms of the waiver, the granting of a statutory waiver will be deemed to constitute a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations. Similarly, where the employee meets all prerequisites for the application of one of the exemptions set forth in subpart B of part 2640 of this chapter, that also constitutes a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

[57 FR 35042, Aug. 7, 1992, as amended at 62 FR 48748, Sept. 17, 1997]

§ 2635.502 Personal and business relationships.

(a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) *Definitions.* For purposes of this section:

(1) An employee has a *covered relationship* with:

(i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

NOTE: An employee who is seeking employment within the meaning of § 2635.603 shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

NOTE: Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.

(2) *Direct and predictable effect* has the meaning set forth in § 2635.402(b)(1).

(3) *Particular matter involving specific parties* has the meaning set forth in § 2637.102(a)(7) of this chapter.

Example 1: An employee of the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. Under the circumstances, she would be correct in concluding that a reasonable person would be likely to question her impartiality if she were to participate in evaluating that developer's or its competitor's lease proposal.

Example 2: An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of five or more persons. His wife is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that his wife's employment with an affected corporation would raise a question concerning his impartiality.

Example 3: An employee of the Defense Logistics Agency who has responsibilities for testing avionics being produced by an Air Force contractor has just learned that his sister-in-law has accepted employment as an engineer with the contractor's parent corporation. Where the parent corporation is a conglomerate, the employee could reasonably conclude that, under the circumstances, a reasonable person would not be likely to question his impartiality if he were to continue to perform his test and evaluation responsibilities.

Example 4: An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in concluding that her former service as an officer of the company would be likely to cause a reasonable person to question her impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.

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Example 5: An employee of the Internal Revenue Service is a member of a private organization whose purpose is to restore a Victorian-era railroad station and she chairs its annual fundraising drive. Under the circumstances, the employee would be correct in concluding that her active membership in the organization would be likely to cause a reasonable person to question her impartiality if she were to participate in an IRS determination regarding the tax-exempt status of the organization.

(c) *Determination by agency designee.* Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.

(d) *Authorization by agency designee.* Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

(1) The nature of the relationship involved;

(2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;

(4) The sensitivity of the matter;

(5) The difficulty of reassigning the matter to another employee; and

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Authorization by the agency designee shall be documented in writing at the agency designee's discretion or when requested by the employee. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

Example 1: The Deputy Director of Personnel for the Department of the Treasury and an attorney with the Department's Office of General Counsel are general partners in a real estate partnership. The Deputy Director advises his supervisor, the Director of Personnel, of the relationship upon being assigned to a selection panel for a position for which his partner has applied. If selected, the partner would receive a substantial increase in salary. The agency designee cannot authorize the Deputy Director to participate

on the panel under the authority of this section since the Deputy Director is prohibited by criminal statute, 18 U.S.C. 208(a), from participating in a particular matter affecting the financial interest of a person who is his general partner. See § 2635.402.

Example 2: A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.

Example 3: An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.

(e) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.

(1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.

(2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

(f) *Relevant considerations.* An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

§ 2635.503 Extraordinary payments from former employers.

(a) *Disqualification requirement.* Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

Example 1: Following his confirmation hearings and one month before his scheduled swearing in, a nominee to the position of Assistant Secretary of a department received an extraordinary payment from his employer. For one year and 11 months after his swearing in, the Assistant Secretary may not participate in any particular matter to which his former employer is a party.

Example 2: An employee received an extraordinary payment from her former employer, a coal mine operator, prior to entering on duty with the Department of the Interior. For two years thereafter, she may not participate in a determination regarding her former employer's obligation to reclaim a particular mining site, because her former

employer is a party to the matter. However, she may help to draft reclamation legislation affecting all coal mining operations because this legislation does not involve any parties.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Extraordinary payment* means any item, including cash or an investment interest, with a value in excess of $10,000, which is paid:

(i) On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position; and

(ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service.

Example 1: The vice president of a small corporation is nominated to be an ambassador. In recognition of his service to the corporation, the board of directors votes to pay him $50,000 upon his confirmation in addition to the regular severance payment provided for by the corporate bylaws. The regular severance payment is not an extraordinary payment. The gratuitous payment of $50,000 is an extraordinary payment, since the corporation had not made similar payments to other departing officers.

(2) *Former employer* includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(c) *Waiver of disqualification.* The disqualification requirement of this section may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party. The waiver shall be in writing and may be given only by the head of the agency or, where the recipient of the payment is the head of the agency, by the President or his designee. Waiver authority may be delegated by agency heads to any person who has been delegated authority to issue individual waivers under 18 U.S.C. 208(b) for the employee who is the recipient of the extraordinary payment.

Subpart F—Seeking Other Employment

§ 2635.601 Overview.

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons whose financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person "with whom he is negotiating or has any arrangement concerning prospective employment." See § 2635.402 and § 2640.103 of this chapter. Beyond this statutory requirement, it also addresses the issues of lack of impartiality that require disqualification from particular matters affecting the financial interests of a prospective employer when an employee's actions in seeking employment fall short of actual employment negotiations.

[57 FR 35042, Aug. 7, 1992, as amended at 64 FR 13064, Mar. 17, 1999]

§ 2635.602 Applicability and related considerations.

To ensure that he does not violate 18 U.S.C. 208(a) or the principles of ethical conduct contained in § 2635.101(b), an employee who is seeking employment or who has an arrangement concerning prospective employment shall comply with the applicable disqualification requirements of §§ 2635.604 and 2635.606 if particular matters in which the employee will be participating personally and substantially would directly and predictably affect the financial interests of a prospective employer or of a person with whom he has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part.

NOTE: An employee who is seeking employment with a person whose financial interests

December 30, 2008

MEMORANDUM

TO: Linda M. Cruciani, Deputy General Counsel for Operations

FROM: Shaun L.S. Donovan, Designate for Secretary
U.S. Department of Housing and Urban Development

SUBJECT: Ethics Agreement

The purpose of this memorandum is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Secretary of the United States Department of Housing and Urban Development.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or any minor children of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position as Commissioner with the New York City Department of Housing Preservation and Development and will have a "covered relationship" for a period of one year under 5 C.F.R. § 2635.502 with New York City. You have advised me that my participation in particular matters involving specific parties in which New York City is a party or represents a party will be authorized pursuant to 5 C.F.R. § 2635.502(d). This authorization will not extend to any particular matter involving specific parties in which I previously participated in my position as Commissioner. This authorization also will not extend to any litigation before a court in which New York City is a party or represents a party.

Upon confirmation, I will resign from my positions as Trustee with the National Housing Conference, as Director with the National Housing Trust, and as Trustee with the Dalton School. For a period of one year after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in which that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation, I will also resign from my position as Trustee of the Shaun Donovan 2006 Trust. Despite this resignation, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the Shaun Donovan 2006 Trust or those of the issuers of securities held in the trust, unless I first obtain a

written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I will divest my interest in the Prudential Employee Savings Plan Fixed Rate Fund ("Fixed Rate Fund") within 90 days of my confirmation. If I retain these funds within the Prudential Employee Savings Plan, I will reinvest in a fund offered by the Plan that qualifies as a registered "mutual fund" under 5 C.F.R. § 2640.102(a), (k). Until I have divested the Fixed Rate Fund, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of Prudential to pay the guaranteed annuity associated with the Fixed Rate Fund, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

My spouse is a salaried employee of Michael Van Valkenburgh Associates. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my spouse's compensation or employment with Michael Van Valkenburgh Associates. I also will not participate personally and substantially in any particular matter involving specific parties in which Michael Van Valkenburgh Associates is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

[Deletion Per FOIA Exemption 6; 5 U.S.C. § 552(b)(6), Personal Privacy]

JEH CHARLES JOHNSON

[redacted]

January 12, 2009

Mr. Daniel J. Dell'Orto
Principal Deputy General Counsel (and
Alternate Designated Agency Ethics Official)
Department of Defense
1600 Defense Pentagon
Washington DC 20301

Dear Mr. Dell'Orto:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed by the United States Senate for the position of General Counsel of the Department of Defense.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position as a partner at Paul, Weiss, Rifkind, Wharton & Garrison, LLP ("Paul, Weiss"). I currently have a $200,000.00 capital investment with the firm, and I will receive a refund of that capital upon my resignation. If I begin my service as General Counsel prior to receiving this refund, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of Paul, Weiss to pay this refund, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

Consistent with the customary practice for departing partners of Paul, Weiss, after confirmation, but before I assume the duties of the position of General Counsel, I will receive a lump sum payment for my partnership income for calendar year 2008 and a *pro rata* payment for my partnership income for 2009 through the date of my resignation. This payment will be based solely on Paul, Weiss' standard practice and the objective formula for the forecast of firm 2009 income up to the date of my resignation from the partnership. Consistent with the customary practice for departing partners of Paul, Weiss, but before I assume the duties of the position of General Counsel, I also will receive a severance payment in a lump sum in the amount of $[redacted]

[Deletion Per FOIA Exemptions 4 & 6; 5 U.S.C. § 552(b)(4), (b)(6), Sensitive Financial Info. & Personal Privacy]

For a period of one year after my resignation, I also will not participate personally and substantially in any particular matter involving specific parties in which Paul, Weiss is a party or represents a party in that matter, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Within 90 days of my appointment, my spouse and I will divest all interests in the investments listed on Schedule A of my Presidential Nominee Public Financial Disclosure Report (SF 278), pages 4 through 24, except for the items listed on page 19, lines 3-9, and page 20, lines 1 and 7 (*see* complete list at Enclosure A). With regard to each of the assets to be divested, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the entity until divested, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that I may be eligible to request a Certificate of Divestiture for these assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether I receive a Certificate of Divestiture, I will divest these assets within 90 days of my confirmation and will invest the proceeds in non-conflicting assets.

During my term of office, neither I nor any member of my immediate family will invest in any organization identified as a Department of Defense contractor or any other entity that would create a conflict of interest with my Government duties.

Upon confirmation, I will resign from my positions as Trustee of the Federal Bar Council, Executive Committee member of the New York City Bar Association, Board of Directors member of the Delta Research and Education Fund, Board of Governors member of the Franklin & Eleanor Roosevelt Institute, Fellow of the New York Bar Foundation, and Director of the Fund for Modern Courts. For one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which any of these entities is a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Sincerely,

Jeh Charles Johnson

ENCLOSURE A – Jeh C. Johnson (Ethics Agreement)

APPLE INC.
AFFILIATED COMPUTER SERVICES INC. CL A
ALLIANCE DATA SYSTEMS CORP.
AMEREN CORP.
ALEXION PHARMACEUTICALS INC.
AMERICAN TOWER CORP.
ANSYS INC.
AON CORP.
ANADARKO PETROLEUM CORP.
APOLLO GROUP INC. CL A
ALLIANT TECHSYSTEMS INC.
AMERICAN EXPRESS CO.
BALL CORP.
BRISTOL-MYERS SQUIBB CO.
BROADCOM CORP. CL A
BOSTON SCIENTIFIC CORP.
CA INC.
CEPHALON INC.
CATALYST HEALTH SOLUTIONS INC.
MILLICOM INTERNATIONAL CELLULAR SA
CLOROX CO. DE
COMCAST CORP. CL A
COMPASS MINERALS INTERNATIONAL INC
ROCKWELL COLLINS INC.
CONOCOPHILLIPS INC.
COVIDIEN, LTD.
CISCO SYSTEMS INC.
CABLEVISION SYSTEMS CORP.
CVS CORP.
CHEVRON CORP.
CYBERSOURCE CORP.
DELL INC.
DEAN FOODS CO. NEW
DST SYSTEMS INC. DEL
DIRECTV GROUP INC.
DREAMWORKS ANIMATION INC.
EMC CORP.-MASS
ENDURANCE SPECIALTY HOLDINGS LIMITED
EQUINIX INC.
ITT EDUCATIONAL SERVICES INC.
F5 NETWORKS INC.
FISERV INC.
FLEXTRONICS INT'L LTD. USD
FIRST SOLAR INC.
GENERAL ELECTRIC CO.
GENZYME CORP.
GILEAD SCIENCES INC.
GOOGLE INC.
GLOBAL PAYMENTS INC.
GAP INC. DELAWARE
HASBRO INC.
HCC INSURANCE HOLDINGS INC.
HEALTH CARE REIT INC.
HOME DEPOT INC.
HEWITT ASSOCIATES INC.
HOLOGIC INC.
HONEYWELL INTERNATIONAL INC.
HEWLETT PACKARD CO.
HARRIS CORP.-DELAWARE
HURON CONSULTING GROUP INC.
INTEGRA LIFESCIENCES HOLDINGS CORP
IBM
IDEXX LABORATORIES INC.
INTEL CORP.
J.P. MORGAN CHASE & CO.
KRAFT FOODS INC. CLASS A
KIMBERLY-CLARK CORP.
KNIGHT TRANSPORTATION INC.
KOHLS CORP.
LENNAR CORP.
LKQ CORP.
L3 COMMUNICATIONS HOLDINGS INC.
LOCKHEED MARTIN CORP.
LINCARE HOLDINGS INC.
LSI LOGIC CORP.
MATTEL INC. DE
MCDONALDS CORP.
METLIFE INC.
MOTOROLA INC. DE
MWI VETERINARY SUPPLY INC.
MEADWESTVACO CORP.
NII HOLDINGS INC. CLASS B NEW
ANNALY CAPITAL MGMT INC.
NATIONAL OILWELL VARCO INC.
ORACLE CORP.
OLD REPUBLIC INT'L CORP
OCCIDENTAL PETROLEUM CORP. - DEL
PITNEY BOWES INC.
PETROLEO BRASILEIRO S.A.
PETROBRAS
PFIZER INC.
PROCTER & GAMBLE CO.
PROGRESS ENERGY INC.
PLEXUS CORP.
PNC FINANCIAL SVS GROUP INC
PENTAIR INC.
PRAXAIR INC.
QWEST COMMUNICATIONS INTERNATIONAL INC
QUALCOMM INC.
TRANSOCEAN LTD. SWITZERLAND
RAYMOND JAMES FINANCIAL INC.
SHERWIN-WILLIAMS CO.
SARA LEE CORP.
SOLERA HOLDINGS INC.
SONY CORP. SPON ADR-NEW
STERICYCLE INC.
SIMPSON MANUFACTURING CO. INC.
STATE STREET CORP.
AT&T INC.
TELEDYNE TECHNOLOGIES INC.
INTEGRYS ENERGY GROUP
TYCO ELECTRONICS LTD.
TEVA PHARMACEUTICAL INDUSTRIES INC
TELEFLEX INC.
TENET HEALTHCARE CORP.
THERMO FISHER SCIENTIFIC INC.
TRAVELERS COMPANIES INC.
TRACTOR SUPPLY CO.
TAIWAN SEMICONDUCTOR MANUFACTURING COMPANY LTD.
TETRA TECH INC. NEW
TIME WARNER CABLE INC. CL A
TOWER GROUP, INC.
TIME WARNER INC.
TYCO INTERNATIONAL LTD.
UNITED NATURAL FOODS INC.
MERIDIEN BIOSCIENCE INC.
VALERO ENERGY CORP. NEW
WARNER CHILCOTT LTD. CL A
WEATHERFORD INT'L INC
WASTE MANAGEMENT INC. DEL
WAL-MART STORES INC.
WATSON PHARMACEUTICALS INC.
WEST PHARMACEUTICAL SERVICES INC
UNITED STATES STEEL CORP.
XCEL ENERGY INC.
SPDR GOLD TR GOLD SHARES
ABB LTD. SPONS ADR
ALLSCRIPTS-MISYS HEALTHCARE SOLUTIONS INC
AMERICAN ELECTRIC POWER CO. INC
HCP INC.

JAN 12 2009

Mr. James H. Thessin
Deputy Legal Adviser and
Designated Agency Ethics Official
U.S. Department of State
Washington, D.C. 20520-6310

RE: Ethics Undertaking

Dear Mr. Thessin:

I am committed to the highest standards of ethical conduct for government officials. If confirmed as Deputy Secretary of State for Management and Resources (Deputy Secretary), as required by 18 U.S.C. 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position as Managing Director and Chief Operating Officer Citi Alternative Investments Division, Citigroup.

As a senior officer of Citigroup, I am eligible for a discretionary compensation payment for services performed during calendar year 2008. Citigroup will disburse that discretionary payment to me before I assume the duties of the position of Deputy Secretary of State. I also have unvested restricted Citigroup stock. Before I assume the duties of the position of Deputy Secretary, Citigroup will vest my restricted stock. As reflected in my financial disclosure report, I do not hold stock options in Citigroup. For a period of two years from the later date of the receipt of the discretionary compensation payment or the acceleration of vesting of the restricted stock, I will not participate personally and substantially in any particular matter involving specific parties in which Citigroup is a party or represents a party, unless I first receive a written waiver pursuant to 5 C.F.R. § 2635.503(c).

Upon confirmation, I will divest my interests in the following entities within 90 days of my confirmation: iShares MSCI Austria, iShares MSCI South Africa, iShares MSCI Belgium, iShares MSCI Brazil, and iShares MSCI South Korea. I will also divest, within 90 days of my confirmation, all the shares of Citigroup that I currently hold and that I receive through the vesting of restricted Citigroup stock. With regard to each of these entities, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of that entity until I have divested the applicable shares of stock in that entity,

unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that I may be eligible to request a Certificate of Divestiture for these assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether I receive a Certificate of Divestiture, I will invest the proceeds in non-conflicting assets.

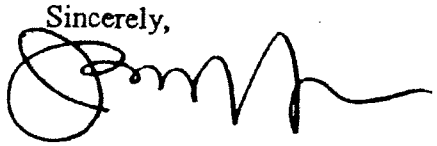
I will retain my holdings in CVCI Growth Partnership (Employee) II, L.C. Employee Investment Fund. As required by 18 U.S.C. § 208(b)(1), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of CVCI Growth Partnership (Employee) II L.C. Employee Investment Fund, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I will divest my interest in DFA International Securities within 90 days of my confirmation. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on DFA International Securities until I divest my holdings, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Upon confirmation, I will resign from my position as Board Member of the Kaiser Family Foundation; Chair Advisory Board of City Year New York; Board Member of the Tobin Project; Board Member of the Center on Budget and Policy Priorities Board; member of the Advisory Board of the Institute for Policy Integrity, New York University Law; and member of the Advisory Board of the Hamilton Project Brookings Institution. For a period of one year after my resignation from each of these entities, I will not participate in any particular matter involving specific parties in which that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Finally, I will recuse myself from participation on a case by case basis in any particular matter in which, in my judgment, I determine that a reasonable person with knowledge of the relevant facts would question my impartiality, unless I have been authorized to participate under 5 C.F.R. Part 2635, Subpart E.

Sincerely,



Jacob J. Lew

JAN 14 2009

Mr. James H. Thessin
Deputy Legal Adviser and
Designated Agency Ethics Official
U.S. Department of State
Washington, D.C. 20520-6310

Re: Ethics Undertakings

Dear Mr. Thessin:

I am committed to the highest standards of ethical conduct for government officials. If confirmed as Deputy Secretary, as required by 18 U.S.C. §208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver pursuant to 18 U.S.C. §208(b)(1) or qualify for a regulatory exemption pursuant to 18 U.S.C. §208(b)(2). I understand that interests of the following persons are imputed to me: my spouse, minor children, or any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will take an unpaid leave of absence from my position as tenured professor with the Lyndon B. Johnson School of Public Affairs at the University of Texas. My salary is paid by both the university and the LBJ Foundation. Before I assume the duties of the position of Deputy Secretary, the university and the LBJ Foundation have agreed that the LBJ Foundation will pay me a bonus for my performance in 2008. During my leave of absence, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the University of Texas, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1) or qualify for either the exemptions at 5 C.F.R. § 2640.203(b) or (c), or another regulatory exemption pursuant to 18 U.S.C. § 208(b)(2). If I terminate this employment relationship with the university, I will not participate personally and substantially in any particular matter involving specific parties in which the university is a party or represents a party for two years from the date that I receive my bonus, pursuant to 5 C.F.R. § 2635.503(c). Whether or not I terminate my employment relationship with the university, I will not participate personally and substantially in any particular matter involving specific parties in which the LBJ Foundation is a party or represents a party for two years from the date that I receive my bonus, pursuant to 5 C.F.R. § 2635.503(c).

I resigned from my position as a Senior Advisor to The Glover Park Group in August, 2008. Upon confirmation, I will resign from my positions with the following organizations: Member, Board of Directors to the Pacific Council on International

Policy; Member, Editorial Board, The Washington Quarterly; Member, Board of Advisors, Center for a New American Security; Member, Senior Advisory Council, The American Assembly's Next Generation Project; Member, Advisory Board, American Abroad Media; Member, The Bulletin of Atomic Scientists' Science and Security Board; and Member, President's Council on International Activities, Yale University. For a period of one year after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in which that entity is a party or represents a party, unless I am first authorized to participate pursuant to 5 C.F.R. §2635.502(d).

Finally, I will recuse myself from participation on a case-by-case basis in any particular matter in which, in my judgment, it is desirable for me to do so in order to avoid the possible appearance of impropriety, despite the lack of any actual conflicts.

Sincerely,

James B. Steinberg

THE BRIEFING ROOM

Wednesday, January 21st, 2009 at 8:50 pm

Ethics Commitments By Executive Branch Personnel

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 21, 2009

EXECUTIVE ORDER

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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.

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"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

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(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.

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(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:

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(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.

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(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:

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(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.

BARACK OBAMA

THE WHITE HOUSE,
January 21, 2009.

# # #

The Washington Post

White House Ethics? 'Mr. No' Knows

When Administration Has Queries About Rules, Adviser Norm Eisen Answers the Call

By Eli Saslow
Washington Post Staff Writer
Friday, March 13, 2009; A01

Norm Eisen had just returned from his fourth urgent trip to the White House in the past three hours when his BlackBerry beckoned again. He groaned and opened his e-mail inbox. There, flashing at the top of the list, he found exactly what he had expected: another note from one of President Obama's senior advisers, typed in red font and littered with exclamation marks. "*Need your help! Can you come . . . fast?*"

"This is what my job is like," Eisen said, grabbing his jacket. "It's one emergency after the next."

Eisen is the White House ethics adviser, the guardian of Obama's integrity, and he is called for consultation every time the new administration has a question regarding more than 1,000 pages of government ethics rules and regulations.

Want to hire a former lobbyist? Better call Norm.

Want to brief a Cabinet member on Obama's ethics policies? Call Norm.

Want to accept a birthday present from a former client? Call Norm.

In an administration filled with nervous new employees who are still learning the rules, Eisen is yanked away from his desk in the Eisenhower Executive Office Building for 15 or 20 emergencies each day. He usually arrives to deliver bad news to some of the most important people in the White House. While his official title is special counsel for ethics and government reform, Eisen is also known among colleagues by his nicknames: "Mr. No" and "The Fun Sponge."

In one of his first assignments on the job, Eisen, who was a classmate of Obama's at Harvard Law School, helped craft an executive order that imposed the most far-reaching government ethics reform in decades, experts and historians said. But, for Eisen, the hard part is just beginning: He must ensure that the administration lives up to its own standards and adheres to its own rules. Since late January, when a few senior officials were hired despite having tax problems or lobbyist connections, Eisen has become more central to the vetting process for administration positions. He recommends who should and shouldn't be hired, reminding the Obama White House that its reputation is at stake.

"Sometimes my job is to scare the bejesus out of everybody," Eisen said. "That's part of my function. That's what I do."

Obama has granted Eisen more latitude than any government ethics officer in decades, experts said -- a testament to their relationship and the administration's focus on government reform. Eisen considers every White House employee his client, and seemingly everything falls within his purview. He tracks down interns to make sure they have signed their ethics pledge; he helps craft rules on economic regulatory reform, shapes policy and screens potential employees.

Eisen usually roams the White House halls toting a briefcase overflowing with paperwork and a few books under his arm. He's tall and lanky, with thick-rimmed glasses and curly black hair. He looks as though he has been typecast, colleagues said, for his role as a walking encyclopedia of ethical fine print.

"He's the original propeller-head ethics geek, like something right out of 'The West Wing' TV show," said Gregory Craig, White House chief counsel. "Everybody loves Norm. I don't go anywhere without him. I don't leave home without Norm on these issues."

Eisen almost never leaves his office without a binder of ethics statutes and a badly mangled copy of "5 CFR," the code of federal regulations. It's a dense collection of complicated rules. One chapter on gift bans is followed by a long addendum of exceptions, which are then followed by their own exceptions. Gifts from lobbyists are not allowed, unless they're worth less than $20, and only then if they result from a spouse's business or employment.

After he accepted the ethics job, Eisen "got comfortable" with his copy of the 5 CFR -- meaning he tore off the cover, ripped out pages that did not apply to the White House and annotated sections he liked. He crossed out rules in pencil that he planned to change. No longer, he decided, could White House employees receive small gifts, honorary degrees or awards from lobbyists.

"No way," he said. "Some of these things are just scams."

Most of the rules are easy for Eisen to understand -- "You live them every day, and they start to seep into your DNA," he said -- but nearly everyone else in the White House finds the details overwhelming. Obama's executive order added eight pages of legislation to an already complex library of ethics policy that is enforced across the government by more than 6,000 ethics officials.

Shortly after Election Day, Eisen gave a series of PowerPoint lectures to explain the new rules: a 90-minute conversation with the president; a meeting with the first lady; a visit to every Cabinet secretary; regular group sessions for about 200 people, including everyone from interns to senior aides. Each new hire must receive ethics training within the first 90 days of employment and then at least once each year after that.

"You're not going to understand all the rules. It's too complicated," Eisen said. "So you use your common sense. How's this going to look on the front page of The Washington Post? There are a

lot of people who don't set out to say, 'I'm going to break the rules.' They kind of take a baby step. Then they get in a little deeper, they realize they might have messed up, and they don't tell anybody. Suddenly, you're in serious trouble.

"I'm not saying that one dinner a lobbyist buys for you at the Ritz-Carlton is going to result in an outright bribe. But does it make you a little more inclined to take his call? To hold a meeting? Do years of those dinners and golf retreats weaken you a little bit?"

Eisen's presentations are an equal mixture of caution and comedy. White House staff members consider him a frustrated stand-up comic, and he once spent five minutes during a group presentation discussing the difference between being treated to a bag of large prawns vs. a bag of small shrimp. But Eisen ends every presentation with the same stone-faced plea for employees to call him with any questions -- even if they may not always like his answer.

"Norm is not afraid to tell people what they can't do, and it doesn't matter if it's a Cabinet secretary who wants a waiver to hire somebody or a junior staffer who got a Starbucks card for taking someone on a tour," said Chris Lu, an assistant to the president and also a member of Obama's and Eisen's 1991 Harvard law class. "Norm applies the rules fairly, and he is willing to be the bearer of bad news. That's not a job a lot of us would want, but it's absolutely essential and he's great at it."

To become the Obama enforcer, Eisen traded life as a partner at the Washington law firm Zuckerman Spaeder and took a huge pay cut to work 16-hour days that leave him with head colds and little time for his wife and young daughter. Some days, his decision to join the government seems "crazy," Eisen said. But he's a first-generation American, the son of a Holocaust survivor and a poultry butcher who had an arranged marriage and immigrated to South Central Los Angeles to run a hamburger stand. "I'm up from the bootstraps," Eisen said, "and I feel a very strong sense of obligation and loyalty to the country that might be old-fashioned."

A moderate Democrat, Eisen called Obama early in the campaign and offered his support. He raised money, helped shape education policy and ran an election protection team before shifting his focus primarily to ethics and government reform late in the general election campaign. Eisen had founded Citizens for Responsibility and Ethics in Washington in 2003 and built a successful litigation career on dealing with ethics problems after they materialized. The chance to deal with ethics issues before the fact -- not after -- appealed to him, he said.

A few weeks before election night, Eisen met with senior advisers to begin compiling some of Obama's campaign ethics promises into an executive order. Only then did the magnitude of his role in the new administration crystallize. Obama wanted to diminish lobbyists' influence in Washington with two radical mandates: Nobody who had lobbied in the past two years would be allowed to work for Obama on those issues, and anyone who left would be permanently banned from lobbying Obama's administration.

"They sent a very clear signal that ethics was a priority, and they were willing to make some hard choices," said Rick Cusick, who was appointed director of the Office of Government Ethics by

President George W. Bush. "It requires some self-sacrifice, because their rules have really limited whom they can hire."

It often falls to Eisen and his nine-person ethics team to apply those rules, explaining to senior advisers and Cabinet secretaries why they cannot hire certain people. He also must explain to rejected applicants why they are barred from working in the administration. "Everybody has a reason why a particular lobbyist is meritorious, and a lot of them actually are meritorious," Eisen said. "Those are very hard conversations. But we have to stick by the rules."

When the administration flirted with leniency during a week in January, granting a waiver to former Raytheon lobbyist and deputy defense secretary nominee Bill Lynn and explaining away tax problems for nominees Thomas A. Daschle and Timothy F. Geithner, senators and government watch groups said Obama had fallen short of his own standards. Daschle eventually withdrew from consideration; Lynn and Geithner were confirmed by the Senate after public apologies. It was, Eisen said, "an awareness moment."

The administration still grants occasional waivers to former lobbyists when their qualifications are unparalleled, Eisen said -- including ones he signed for Cecilia Munoz, the White House director of intergovernmental affairs, and for the first lady's policy director, Jocelyn Frye. But since that rough week in January, Eisen said, "we avoid a waiver whenever we can."

Said Cassandra Q. Butts, a senior adviser to Obama: "It wasn't enough for us to operate within the rules. We had to ensure that we were living up to the spirit of the rules. The public has embraced that message, and we've taken it to heart in governing. We've redoubled our efforts."

Which means Eisen says "no" even more often.

Join Eli Saslow today between 10 and 10:15 a.m. to discuss this article. He will be chatting about the Obama administration's ethics chief in the article's comments thread at washingtonpost.com.

The New York Times

April 23, 2009

EDITORIAL

The Good Lobbyist

It's a cliché for a candidate to denounce the power of Washington insiders and the corruption of lobbyists' wealth. So it was refreshing to see President Obama deliver on his campaign stand and refuse to hire registered lobbyists for jobs in their areas of special advocacy.

There also can be too much of a good thing. We think the White House is being overly rigid with its decision not to nominate Tom Malinowski, the Washington advocacy director for Human Rights Watch, to be the administration's global human rights chief.

By any fair judgment, Mr. Malinowski is ideally qualified, having worked ardently across the world — both outside government and in — on the gamut of rights issues, from torture to genocide. He is the antithesis of the deep-pocketed, back-slapping K Street insiders who gave the lobbying profession a black eye across the Capitol reign of Tom DeLay.

White House officials agree on Mr. Malinowski's virtues but nevertheless are making a show of insisting there must be no double standard for him as a registered lobbyist. What makes it especially puzzling is the Obama policy does allow for an occasional waiver. The president issued one for William Lynn, a lobbyist for the powerful defense contractor Raytheon who was his indispensable choice to be deputy secretary of defense.

The White House said then that while Mr. Obama favored strict ethical rules, he also believed "any standard is not perfect," and "a waiver process that allows people to serve their country is necessary."

The administration won its case for Mr. Lynn in Senate hearings. Mr. Malinowski should be nominated and given the same chance to argue that he is committed to promoting American values and serving the interests of all of the American people.

Nominee Ethics Promises May Prove Unrealistic

by Olga Pierce, ProPublica - April 30, 2009 3:26 pm EDT

The ethics agreements that nominees for the Obama administration are required to file offer an unprecedented peek into the new president's high standards. But how high is too high?

Last month, we posted a batch of these first-person letters, written and signed during the nomination process, outlining steps each nominee will take to avoid potential conflicts of interest and other ethical dilemmas.

Now we've received more, and this new batch further highlights a pitfall we noticed before: many of the letters contain promises by nominees to stay away from decisions seemingly at the core of their job descriptions. Check out the letters. [1] The new ones we have added are in red.

Other ethics agreements require divestitures and resignations that seem completely unnecessary. And – making the logic of the agreements even more difficult to parse – some people are allowed to hang on to investments.

Kim N. Wallace [2], President Obama's nominee for assistant secretary of legislative affairs at the Treasury Department, promises not to participate in "any particular matter" to which Barclays bank, which now owns his former employer, Lehman Brothers, is a party.

This reminds us of Gary Gensler [3], Obama's choice to head the Commodity Futures Trading Commission, who vows in his letter not to make any decisions that might impact Goldman Sachs' ability to pay him a $6,700-per-year annuity, even though Goldman Sachs has an active commodity futures business.

Secretary of Education Arne Duncan [4], who was head of Chicago's public schools, promises not to participate in any matter "in which Chicago Public Schools is a party or represents a party," and Tammy Duckworth, assistant secretary of Veterans Affairs, is barred from making decisions about the Illinois Department of Veterans Affairs, of which she was formerly director.

Health and Human Services Secretary Kathleen Sebelius [5], whose ethics agreement we just obtained, joins a list of officials subject to broad geographic limitations based on their former jobs.

During her first year in office, Sebelius, the former Kansas governor, is barred from making decisions in which the State of Kansas is a party, a pledge similar to that made by the chairwoman of the White House Council on Environmental Quality, Nancy Sutley [6], who "will not participate personally or substantially in any particular matter involving specific parties in which the City of Los Angeles is a party or represents a party."

Meanwhile, other ethics pledges involve severing very benign-seeming ties.

Lanny Breuer [7], who has been confirmed as head of the Criminal Division at the Department of Justice, was forced to resign from the boards of the Columbia College Alumni Association.

Sebelius had to hand her share of a Michigan lake house – which was held in a family partnership – over to her husband, her letter says.

Duncan was not allowed to retain his position on the board of the South Side YMCA in Chicago.

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And William Scott Gould [8], deputy secretary of the Department of Veterans Affairs, agreed in his ethics letter to resign from his position as class agent for the Roxbury Latin School Annual Fund. He was also required to divest shares he held in IBM, where he was a vice president. But he was allowed to keep his Coca-Cola and United Parcel Service stock, with his letter offering only the explanation that the likelihood of his being involved in "matters affecting the interests" of the two companies is "remote."

Again, here's a full list of the letters. [1] Make sure to let us know [9] if you find anything, too.

And if rummaging through documents is your thing, send a note to Amanda Michel [10], our editor of distributed reporting, and she'll e-mail you next time we update this feature.

This story can be found on the web at the following address:
http://www.propublica.org/article/nominee-ethics-promises-may-prove-unrealistic-0430/

Links

- 1. http://www.propublica.org/special/the-obama-teams-disclosure-documents-407
- 2. http://documents.propublica.org/obama-administration-ethics-agreements/page/82
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THE BLOG
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Friday, May 1st, 2009 at 6:10 pm

Ethics Update

As he has done before in the spirit of transparency, ***Norm Eisen, special counsel to the president for ethics and government reform***, asked us to pass along this update on the President's Executive Order on Ethics:

Just a quick post to advise that we granted an authorization under Section 3 of the President's Ethics Executive Order to Senior Advisor Valerie Jarrett to lead the White House's effort to support Chicago's bid to secure the 2016 Olympics.

The President promised during the campaign that staff would not work on contracts or regulations directly related to their former employers. We have captured that promise in Paragraph 2 of our revolving door rules, which applies to non-lobbyists. Valerie previously served as Vice Chair of Chicago 2016, the non-profit entity responsible for the Chicago bid. Although Chicago 2016 was not her "former employer" in traditional terms, the term "former employer" in the President's Order encompasses entities that appointees served as directors or officers, as Valerie did here. (To be clear, Valerie was not a lobbyist for Chicago 2016, and this waiver has nothing to do with lobbying.)

We decided that a waiver of Paragraph 2 was in the public interest in order to help bring the Olympics back to the United States. Valerie's past experience with Chicago 2016 makes her ideal to work with the city and its bid committee to help win the Olympics for the U.S., with the many benefits that would bestow. In her time working with the City of Chicago on its bid, she developed knowledge about the process that will make her a powerful advocate and liaison. Although Valerie previously volunteered with Chicago 2016, she has no continuing financial relationship with them. Since the Administration already plans on vigorously supporting the United States' sole 2016 Olympic bid, we felt that letting Valerie lead our efforts was strongly in the public interest. The authorization can be found here (pdf).

As I have previously noted on this blog, the availability of waivers in appropriate cases has been praised by ethics experts and commentators alike:

*Norman Ornstein, a Resident Scholar at the American Enterprise Institute stated that "This tough and commendable new set of ethics provisions goes a long way toward breaking the worst effects of the revolving door. There are many qualified people for the vast majority of government posts. But a tough ethics provision cannot be so tough and rigid that it hurts the country unintentionally. Kudos to President Obama for adding a waiver provision, to be used sparingly for special cases in the national interest. This is all about appropriate balance, and this new executive order strikes just the right balance."

*Thomas Mann, Senior Fellow of Governance Studies and the Brookings Institution said that "The new Obama ethics code is strict and should advance the objective of reducing the purely financial incentives in public service. I applaud another provision of the EO, namely the waiver provision that allows the government to secure the essential services of individuals who might formally be constrained from doing so by the letter of the code. The safeguards built into the waiver provision strike the right balance."

*The Washington Post editorialized that the President had "adopted a tough ethics policy . . . sweeping in time and scope." The editorial board wrote that "The president's rule ensures that any conflicts will be carefully watched, and his flexibility despite certain criticism signals an ability to make hard but reasonable calls."

The Examiner

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Opinion

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How to improve Obama's ethics and lobbying executive order

By: Gary Bass, OpEd Contributor
- | 5/6/09 3:14 PM

President Barack Obama's effort to eliminate the corrupting influence of special interests should be applauded, but it needs some refinement.

On his first full day in office, Obama issued an executive order on ethics that places restrictions on lobbyists who transition to government service.

On March 20, the president issued a memo on the dispensation of Recovery Act money. Under this memo, lobbyist communications about specific Recovery Act spending must be made in writing; no in-person meetings are permitted.

Oral communications with lobbyists about general Recovery Act policies are permitted, but federal employees must document and post records of the communications to the Web within three business days.

At one level, this sounds good: clean up government and get special interests under control. The problem is that not all lobbying is corrupt, and not all corrupt activities are lobbying. The objective should be to eliminate the corrupting influence money plays in politics, but the well intentioned Obama policies don't quite hit the nail on the head.

They cast the net too broadly, capturing too many types of lobbying activities that should be encouraged, not discouraged. At the same time, they miss too many things. Why should the lobbyist for a major defense contractor be prohibited from serving in government while the lobbyist's boss, who may not be a "lobbyist," is permitted to serve?

Why should a federally registered lobbyist be limited in forms of communication on the Recovery Act while a state registered lobbyist or a non-lobbyist would have no restrictions?

When it comes to lobbying in the public interest – that is, promoting policy changes that are not guided by profit motives – the Obama policies are having adverse unintended consequences. They are quashing, instead of encouraging, democratic participation.

They are making it more difficult for the Obama administration to attract the best and the brightest. And they are causing less disclosure – instead of more – as more and more people seek to deregister under the Lobbying Disclosure Act (LDA), the statute that defines who is a federal lobbyist.

The problem of casting the net too widely can be fixed with White House guidance on implementation of the executive order and with clearer messages from the president. Here are four steps the president can take to address the problem.

- The president should take aim at the corrupting influence of money. By honing his message and focusing on the influence of money in policymaking, the president can distinguish between public interest lobbying and other types of lobbying.

The president should provide guidance to agencies on what is meant by executive branch lobbying. This definition should focus heavily on communications aimed at winning contracts and other financial awards from the federal government.

Restricting speech must be avoided while disclosure should be emphasized. Regardless of whether a lobbyist or not, an individual should disclose attempts to influence executive branch officials when it comes to how money is spent. This avoids the unfair lobbying policy regarding the Recovery Act and helps the public better understand the influence of special interests.

- * The president should develop clear principles on waivers. Waivers to hire lobbyists are permitted under the executive order, but unfortunately, they are not being used. The LDA and its definition of "lobbyist" are now triggering restrictions on working in the Obama administration. This is especially troubling for those working for nonprofit organizations, many of whom registered under the LDA even if below the required thresholds for registering.

One approach to waiver criteria could be to provide a safe harbor for anyone working for a tax-exempt charity (organized under 501(c)(3) of the tax code), a social welfare group (a 501(c)(4) organization), or a union (a 501(c)(5) group), since they are not working to create profit.

Employees in other types of organizations, such as trade associations and for-profit companies, would need to qualify for a waiver based on other criteria such as specialized knowledge.

- All granted waivers, along with information about the individuals receiving the waivers, should be immediately disclosed. The government should create a comprehensive website that lists any waivers, as well as related lobbying and campaign contribution information pertaining to waived individuals, in easy-to-use, searchable formats.

The Obama executive order and other efforts to eliminate the corrupting influence of special interests are on target. However, the White House needs to be clear: the problem isn't public interest lobbyists.

Gary D. Bass is the executive director of OMB Watch, a Washington-based nonprofit government watchdog organization.

Valerie Jarrett backs special ethics waiver

May 11, 2009 10:03 PM | No Comments

Valerie Jarrett, a senior adviser to President Barack Obama, said Monday the special ethics waiver she recently received from the White House to lead the federal government's effort to bring the 2016 Olympics to Chicago was needed only out of an abundance of caution in trying to be transparent.

"We wanted to have one point of contact in the White House who is responsible to make sure everything runs smoothly," she told the Tribune after a Chicago fundraising event for Rep. Jan Schakowsky (D-Ill.). "Our goal is to try to win the bid."

Jarrett, who previously served as vice chair of Chicago 2016, needed the waiver because the White House ethics pledge prohibits appointees from dealing with matters "substantially related" to previous employers or clients.

The White House has said Jarrett's previous work for Chicago 2016 was voluntary and she has no ongoing financial relationship with the entity. She said her role will include trying to coordinate the involvement of various federal agencies in a successful bid.

During a joint appearance before a heavily female audience of about 2,000 at the Hyatt Regency Chicago, Jarrett and fellow Chicagoan Tina Tchen, director of the White House Office of Public Engagement, told stories about their first months in their new jobs.

After wiping away a few tears following dozens of handshakes and hugs from Chicago friends after her appearance, Jarrett said Obama has not made it back to Chicago as much as he would like.

"Right now the demands are so high," she said. "We talk about Chicago a lot and he has lots of visitors from the city."

In December, Obama told the Tribune he planned to return to Chicago every six or eight weeks. But as president, he has traveled to the city just once, in mid-February, for a family weekend.

Jarrett said her appearance did not signify an endorsement for Schakowsky, who is weighing a decision to run for U.S. Senate and plans to announce her intentions June 8.

Should she run, questions about Schakowsky's husband, Robert Creamer, will almost certainly be raised. He pleaded guilty in August 2005 to bank fraud and a federal tax charge and was sentenced to 5 months in prison and 11 months of home confinement.

Schakowsky said she has "brutally tested" the negatives her husband's record could bring to a statewide campaign, using polls that included the kind of attack words that could be used in a campaign against her.

"He's not so bad," she said of the results. "Everyone comes to a race with positives and negatives."

--John McCormick

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Obama lawyer gives ethics talk

by **Emily Cahn**
Campus News Editor

Issue: 5/11/09 | News

The special counsel to President Barack Obama for ethics and government reform spurred a lively debate about

communication between government officials and lobbyists in the Jack Morton Auditorium last week.

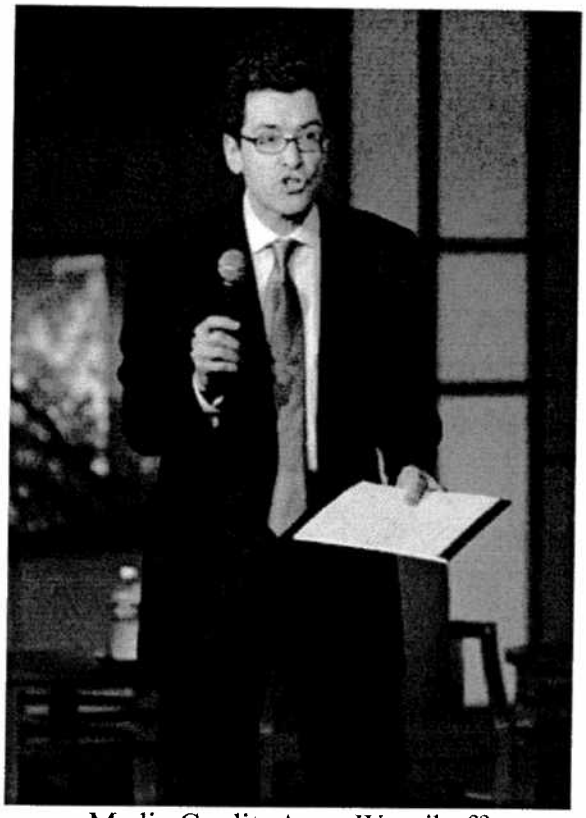
Obama's special counsel, Norman Eisen, spoke about an executive order by the Obama administration that prevents lobbyists from having oral communication with government officials regarding the economic stimulus package. About 100 students, faculty and media members attended the event, which featured a panel of lobbyists and former members of Congress. The event was sponsored by the Graduate School of Political Management.

Obama's executive order works to "reassure the American people that the individuals working in government will work for the public interest and not just the special interest," Eisen said.

Some members of the panel, however, argued that the Obama administration's executive order is overly strict.

"The executive memo goes too far," said Joel Jankowsky, a lobbyist with the Akin Gump lobbying firm. "It borders on unconstitutional. [The executive memo] is not hurting the lobbyists, it's hurting the people the lobbyists represent."

Dave Wenhold, the first vice president of the American League of Lobbyists, said the executive order singles out lobbyists as the only people who try and fight for money from the government.



Media Credit: Anne Wernikoff
Norman Eisen, special counsell to President Barack Obama for ethics, speaks about communication between the private sector and the government at the Jack Morton Auditorium last week.

"Transparency is a good thing, sunlight is a good thing, but it has to be equal for everybody," Wenhold said. "CEOs in the banking and auto industry can have an oral conversation [with members of government] and that's not right."

Bob Edgar, president and CEO of Common Cause, a nonprofit lobbying group, said Obama's executive order is a step in the right direction to change the way the political system has worked in the past.

"The system is broken and needs to be fixed," Edgar said, adding that this executive order, "is trying to change the culture of Washington. The administration has jolted the system … it's a refreshing attempt to move in a direction of change and hope."

During his speech, Eisen called Obama a rare "reformer," trying to change the way the American political system has worked in the past.

"It's a unique moment to have a reformer occupy the Oval Office," Eisen said. "It happens from time to time but it's not a frequent historical occurrence."

Eisen said the event allowed him to hear from both supporters and opponents of the executive order.

which he said helped him gain a broader perspective of the issue at hand.

"The White House was very pleased to be invited to participate in today's forum," Eisen said. "The paramount virtues of the President's commitment to change include transparency and openness and it includes a commitment to speak to everyone, not only those with whom you agree."

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Valerie Jarrett backs special ethics waiver

Waiver lets senior adviser to Barack Obama lead federal push for Chicago Olympics

By John McCormick

Tribune reporter

May 12, 2009

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