

ALERT

Code of Ethical Conduct Issued for Trump Transition Team; Five-Year Lobbying Ban Announced for Trump Administration

November 18, 2016

President-elect Donald J. Trump's Transition Team (PETT – President-Elect's Transition Team) has issued a Code of Ethical Conduct* (the Code) for Transition personnel. Principally, the Code covers conflicts of interest, gifts, and confidentiality/use of non-public information. Regarding financial conflicts and the appearance of such conflicts, the Code focuses on the individual transition team member's involvement in "any particular transition matter" – a term not specifically defined in the Code – and imposes a disqualification requirement where involvement in such a particular matter may "directly conflict" with a financial interest of the PETT member or the team member's "spouse, minor child, partner, client, or other individual or organization with which [he or she has] a business or close personal relationship."

With respect to lobbyist or former lobbyist participation in the Transition, the Code of Ethical Conduct promulgated by the Transition requires disqualification from any "particular transition matter" with respect to which the team member has engaged in "regulated lobbying activities . . . as defined by the Lobbying Disclosure Act (LDA) within the previous 12 months." Under the Code, Transition Team members must commit that during the transition they will not engage in such "regulated lobbying activities" on behalf of any person or entity "with or before any federal department or agency with respect to a particular matter for which" the team member has "direct and substantial responsibility as part of the" transition. PETT members must also commit that, for six months after leaving the transition, they will not engage in such "regulated lobbying activities

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. . . with respect to a particular matter for which [they] had direct and substantial responsibility during” the transition. The use in the phrase “regulated lobbying activities as defined by the LDA” suggests that the restrictions under these provisions of the Code are confined to particular matters in connection with which a Transition Team member acted as a lobbyist *actually* registered under (or required to be registered under) the LDA. These provisions would not, therefore, on their face appear to capture so-called “shadow lobbying.”

Separate from the PETT's issuance of a Code of Ethical Conduct, press accounts of a conference call yesterday with representatives of the Transition report that incoming officials of the Transition and the new Administration must certify that they are not “currently registered and reporting as a federal lobbyist as defined by the LDA as amended or as a compensated lobbyist in any state.” If an individual joining the Transition or the Administration was disclosed as a compensated lobbyist in “the most recent lobbying disclosure forms or report[] to be filed by federal or state law,” he or she must provide “written evidence” of termination of lobbyist registration. Under the provisions announced yesterday, officials leaving the Trump Administration would be subject to a five-year ban on lobbying the federal government and a lifetime ban on representing foreign governments. Further details of a Trump Administration lobbying ban and on the mechanism(s) through which it would be imposed – e.g., Executive Order, legislation, or both – remain to be clarified. Wiley Rein’s Election Law & Government Ethics team has recently written in more detail on Transition-related conflict issues (see **The Presidential Transition, the Inauguration, and the New Congress: Contribution, Ethics, and Other Laws and Rules to Note**) and will provide updates as more details of the Trump Administration are announced.

In summary, some of the most significant provisions of the Transition’s Code of Ethical Conduct, imposed as conditions on an individual’s service with the Transition Team, require:

- Disqualification from involvement in any particular transition matter which the individual knows may directly conflict with a personal financial interest or a financial interest of a spouse, child, partner, client, or other individual or organization with a business or close personal relationship.
 - Where there is no such direct conflict, but there may be an appearance of a conflict, the individual must obtain resolution from the General Counsel of the Transition.
- Disqualification from involvement in any particular transition matter if the individual engaged in regulated lobbying activities with respect to such matter, as defined by the LDA, within the previous 12 months.
- Commitment to not accept or solicit any money or thing of value in exchange for a promise to support or use influence on behalf of any person who is a potential candidate for any appointive office or place in the U.S. government or advocate for or advance any policy or action.
- Commitment to keep confidential any non-public information provided in the course of the individual’s duties with the transition and to use such information exclusively for purposes of the transition.
- Commitment to not use or permit to be used any non-public information provided in the course of duties with the transition, in any manner, for any private gain for the individual or any other party, at any time during or after the transition.

- Commitment to not, on behalf of any person or entity, engage in regulated lobbying activities, as defined by the LDA, with or before any federal department or agency with respect to a particular matter for which the individual has direct and substantial responsibility as part of the Transition team.
- Commitment that, for six months after leaving the Transition, the individual will not on behalf of any other person or entity, engage in regulated lobbying activities, as defined by the LDA, with respect to a particular matter for which he or she had direct and substantial responsibility during service with the Transition.
- Commitment to not represent, aid, or advise a foreign government or foreign political party for the duration of service to the Transition.
- Commitment to not accept a gift from:
 - Anyone seeking a job with the federal government;
 - Anyone who seeks action by the Transition Team or the Trump Administration;
 - A federal employee in any department or agency within the scope of the individual's Transition responsibilities;
 - Any person or organization that conducts activities regulated by, or has a matter pending before, a department or agency within the scope of the individual's Transition responsibilities;
 - Any person or organization under circumstances where it may reasonably appear that the gift is being given in order to influence the performance or nonperformance of the individual's duties with Transition.

*The Code of Ethical Conduct was originally obtained and made public by POLITICO. Trump For America, Inc. has not released an official document, as of this alert's publication.