

[~116H1523]



(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R.

To amend the Ethics in Government Act of 1978 to require Federal political appointees to sign a binding ethics pledge, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GALLAGHER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Ethics in Government Act of 1978 to require Federal political appointees to sign a binding ethics pledge, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ETHICS PLEDGE REQUIREMENT FOR SENIOR**
4 **EXECUTIVE BRANCH EMPLOYEES.**

5 The Ethics in Government Act of 1978 (5 U.S.C.
6 App. 101 et seq.) is amended by inserting after title I the
7 following new title:

1 **“TITLE II—ETHICS PLEDGE**

2 **“SEC. 201. DEFINITIONS.**

3 “For the purposes of this title, the following defini-
4 tions apply:

5 “(1) The term ‘executive agency’ has the mean-
6 ing given that term in section 105 of title 5, United
7 States Code, and includes the Executive Office of
8 the President, the United States Postal Service, and
9 Postal Regulatory Commission, but does not include
10 the Government Accountability Office.

11 “(2) The term ‘appointee’ means any full-time,
12 non-career Presidential or Vice-Presidential ap-
13 pointee, noncareer appointee in the Senior Executive
14 Service (or other SES-type system), or appointee to
15 a position that has been excepted from the competi-
16 tive service by reason of being of a confidential or
17 policymaking character (Schedule C and other posi-
18 tions excepted under comparable criteria) in an exec-
19 utive agency, but does not include any individual ap-
20 pointed as a member of the Senior Foreign Service
21 or solely as a uniformed service commissioned offi-
22 cer.

23 “(3) The term ‘gift’—

1 “(A) has the meaning given that term in
2 section 2635.203(b) of title 5, Code of Federal
3 Regulations;

4 “(B) includes gifts that are solicited or ac-
5 cepted indirectly as defined at section
6 2635.203(f) of such title; and

7 “(C) does not include those items excluded
8 by sections 2635.204(b), (c), (e)(1)–(3) and
9 (j)–(l) of such title.

10 “(4) The term ‘covered executive branch offi-
11 cial’ and ‘lobbyist’ have the meanings given those
12 terms in section 3 of the Lobbying Disclosure Act of
13 1995 (2 U.S.C. 1602).

14 “(5) The term ‘registered lobbyist or lobbying
15 organization’ means a lobbyist or an organization fil-
16 ing a registration pursuant to section 4(a) of the
17 Lobbying Disclosure Act of 1995 (2 U.S.C.
18 1603(a)), and in the case of an organization filing
19 such a registration, ‘registered lobbyist’ includes
20 each of the lobbyists identified therein.

21 “(6) The term ‘lobby’ and ‘lobbied’ mean to act
22 or have acted as a registered lobbyist.

23 “(7) The term ‘particular matter’ has the
24 meaning given that term in section 207 of title 18,

1 United States Code, and section 2635.402(b)(3) of
2 title 5, Code of Federal Regulations.

3 “(8) The term ‘particular matter involving spe-
4 cific parties’ has the meaning set forth in section
5 2641.201(h) of title 5, Code of Federal Regulations,
6 except that it shall include any meeting or other
7 communication relating to the performance of one’s
8 official duties with a former employer or former cli-
9 ent, unless the communication applies to a particular
10 matter of general applicability and participation in
11 the meeting or other event is open to all interested
12 parties.

13 “(9) The term ‘former employer’ is any person
14 for whom the appointee has within the 2 years prior
15 to the date of his or her appointment served as an
16 employee, officer, director, trustee, or general part-
17 ner, except that ‘former employer’ does not include
18 any executive agency or other entity of the Federal
19 Government, State or local government, the District
20 of Columbia, Native American tribe, or any United
21 States territory or possession.

22 “(10) The term ‘former client’ is any person for
23 whom the appointee served personally as agent, at-
24 torney, or consultant within the 2 years prior to the
25 date of his or her appointment, but excluding in-

1 stances where the service provided was limited to a
2 speech or similar appearance. It does not include cli-
3 ents of the appointee’s former employer to whom the
4 appointee did not personally provide services.

5 “(11) The term ‘directly and substantially re-
6 lated to my former employer or former clients’
7 means matters in which the appointee’s former em-
8 ployer or a former client is a party or represents a
9 party.

10 “(12) The term ‘participate’ means to partici-
11 pate personally and substantially.

12 “(13) The term ‘post-employment restrictions’
13 includes the provisions and exceptions in section
14 207(c) of title 18, United States Code, and the im-
15 plementing regulations.

16 “(14) The term ‘Government official’ means
17 any employee of the executive branch.

18 “(15) The term ‘Administration’ means all
19 terms of office of the incumbent President serving at
20 the time of the appointment of an appointee covered
21 by this title.

22 “(16) The term ‘pledge’ means the ethics
23 pledge set forth in section 202 of this title.

1 “(17) All references to provisions of law and
2 regulations shall refer to such provisions as in effect
3 on the date of enactment of this title.

4 **“SEC. 202. ETHICS PLEDGE.**

5 “Each appointee in every executive agency appointed
6 on or after the date of enactment of this section shall sign,
7 and upon signing shall be contractually committed to, the
8 following pledge upon becoming an appointee:

9 “‘As a condition, and in consideration, of my employ-
10 ment in the United States Government in an appointee
11 position invested with the public trust, I commit myself
12 to the following obligations, which I understand are bind-
13 ing on me and are enforceable under law:

14 “(1) I will not, within 5 years after the termi-
15 nation of my employment as an appointee in any ex-
16 ecutive agency in which I am appointed to serve, en-
17 gage in lobbying activities with respect to that agen-
18 cy.

19 “(2) If, upon my departure from the Govern-
20 ment, I am covered by the post-employment restric-
21 tions on communicating with employees of my
22 former executive agency set forth in section 207(c)
23 of title 18, United States Code, I agree that I will
24 abide by those restrictions.

1 “(3) In addition to abiding by the limitations
2 of paragraphs 1 and 2, I also agree, upon leaving
3 Government service, not to engage in lobbying activi-
4 ties with respect to any covered executive branch of-
5 ficial or noncareer Senior Executive Service ap-
6 pointee for the remainder of the Administration.

7 “(4) I will not, at any time after the termi-
8 nation of my employment in the United States Gov-
9 ernment, engage in any activity on behalf of any for-
10 eign government or foreign political party which,
11 were it undertaken on January 20, 2017, would re-
12 quire me to register under the Foreign Agents Reg-
13 istration Act of 1938, as amended.

14 “(5) I will not accept gifts from registered lob-
15 byists or lobbying organizations for the duration of
16 my service as an appointee.

17 “(6) I will not for a period of 2 years from the
18 date of my appointment participate in any particular
19 matter involving specific parties that is directly and
20 substantially related to my former employer or
21 former clients, including regulations and contracts.

22 “(7) If I was a registered lobbyist within the
23 2 years before the date of my appointment, in addi-
24 tion to abiding by the limitations of paragraph 6, I
25 will not for a period of 2 years after the date of my

1 appointment participate in any particular matter on
2 which I lobbied within the 2 years before the date
3 of my appointment or participate in any particular
4 matter on which I lobbied within the 2 years before
5 the date of my appointment or participate in the
6 specific issue area in which that particular matter
7 falls.

8 ““(8) I agree that any hiring or other employ-
9 ment decisions I make will be based on the can-
10 didate’s qualifications, competence, and experience.

11 ““(9) I understand that the obligations of this
12 pledge are in addition to any statutory or other legal
13 restrictions applicable to me by virtue of Govern-
14 ment service.’.

15 **“SEC. 203. WAIVER.**

16 ““(a) The Director of the Office of Management and
17 Budget, in consultation with the Counsel to the President,
18 may grant to any current or former appointee a written
19 waiver of any restrictions contained in the pledge signed
20 by such appointee if, and to the extent that, the Director
21 certifies (in writing) that—

22 ““(1) the literal application of the restriction is
23 inconsistent with the purposes of the restriction; or

24 ““(2) it is in the public interest to grant the
25 waiver.

1 “(b) Any waiver under this section shall take effect
2 when the certification is signed by the Director.

3 “(c) For purposes of subsection (a)(2), the public in-
4 terest shall include exigent circumstances relating to na-
5 tional security or to the economy. De minimis contact with
6 an executive agency shall be cause for a waiver of the re-
7 strictions contained in paragraph 3 of the pledge.

8 **“SEC. 204. ADMINISTRATION.**

9 “(a) The head of each executive agency shall, in con-
10 sultation with the Director of the Office of Government
11 Ethics, establish such rules or procedures (conforming as
12 nearly as practicable to the agency’s general ethics rules
13 and procedures, including those relating to designated
14 agency ethics officers) as are necessary or appropriate to
15 ensure—

16 “(1) that every appointee in the agency signs
17 the pledge upon assuming the appointed office or
18 otherwise becoming an appointee;

19 “(2) that compliance with paragraph 3 of the
20 pledge is addressed in a written ethics agreement
21 with each appointee to whom it applies, which agree-
22 ment shall also be approved by the Counsel to the
23 President prior to the appointee commencing work;

24 “(3) that spousal employment issues and other
25 conflicts not expressly addressed by the pledge are

1 addressed in ethics agreements with appointees or,
2 where no such agreements are required, through eth-
3 ics counseling; and

4 “(4) compliance with this title within the agen-
5 cy.

6 “(b) With respect to the Executive Office of the
7 President, the duties set forth in subsection (a) shall be
8 the responsibility of the Counsel to the President.

9 “(c) The Director of the Office of Government Ethics
10 shall—

11 “(1) ensure that the pledge and a copy of this
12 title are made available for use by agencies in ful-
13 filling their duties under subsection (a);

14 “(2) in consultation with the Attorney General
15 or the Counsel to the President, when appropriate,
16 assist designated agency ethics officers in providing
17 advice to current or former appointees regarding the
18 application of the pledge; and

19 “(3) in consultation with the Attorney General
20 and the Counsel to the President, adopt such rules
21 or procedures as are necessary or appropriate—

22 “(A) to carry out the responsibilities as-
23 signed by this subsection;

1 “(B) to apply the lobbyist gift ban set
2 forth in paragraph 1 of the pledge to all execu-
3 tive branch employees;

4 “(C) to authorize limited exceptions to the
5 lobbyist gift ban for circumstances that do not
6 implicate the purposes of the ban;

7 “(D) to make clear that no person shall
8 have violated the lobbyist gift ban if the person
9 properly disposes of a gift as provided by sec-
10 tion 2635.205 of title 5, Code of Federal Regu-
11 lations;

12 “(E) to ensure that existing rules and pro-
13 cedures for Government employees engaged in
14 negotiations for future employment with private
15 businesses that are affected by their official ac-
16 tions do not affect the integrity of the Govern-
17 ment’s programs and operations; and

18 “(F) to ensure, in consultation with the
19 Director of the Office of Personnel Manage-
20 ment, that the requirement set forth in para-
21 graph 6 of the pledge is honored by every em-
22 ployee of the executive branch;

23 “(4) in consultation with the Director of the
24 Office of Management and Budget, report to the
25 President on whether full compliance is being

1 achieved with existing laws and regulations gov-
2 erning executive branch procurement lobbying disclo-
3 sure and on steps the executive branch can take to
4 expand to the fullest extent practicable disclosure of
5 such executive branch procurement lobbying and of
6 lobbying for presidential pardons, and to include in
7 the report both immediate action the executive
8 branch can take and, if necessary, recommendations
9 for legislation; and

10 “(5) provide an annual public report on the ad-
11 ministration of the pledge and this title.

12 “(d) The Director of the Office of Government Ethics
13 shall, in consultation with the Attorney General, the Coun-
14 sel to the President, and the Director of the Office of Per-
15 sonnel Management, report to the President on steps the
16 executive branch can take to expand to the fullest extent
17 practicable the revolving door ban set forth in paragraph
18 5 of the pledge to all executive branch employees who are
19 involved in the procurement process such that they may
20 not for 2 years after leaving Government service lobby any
21 Government official regarding a Government contract that
22 was under their official responsibility in the last 2 years
23 of their Government service, and to include in the report
24 both immediate action the executive branch can take and,
25 if necessary, recommendations for legislation.

1 “(e) All pledges signed by appointees, and all waiver
2 certifications with respect thereto, shall be filed with the
3 head of the appointee’s agency for permanent retention
4 in the appointee’s official personnel folder or equivalent
5 folder.

6 **“SEC. 205. ENFORCEMENT.**

7 “(a) The contractual, fiduciary, and ethical commit-
8 ments in the pledge are solely enforceable by the United
9 States pursuant to this section by any legally available
10 means, including debarment proceedings within any af-
11 fected executive agency or judicial civil proceedings for de-
12 claratory, injunctive, or monetary relief.

13 “(b) Any former appointee who is determined, after
14 notice and hearing, by the duly designated authority with-
15 in any agency, to have violated his or her pledge may be
16 barred from lobbying any officer or employee of that agen-
17 cy for up to 5 years in addition to the time period covered
18 by the pledge. The head of every executive agency shall,
19 in consultation with the Director of the Office of Govern-
20 ment Ethics, establish procedures to implement this sub-
21 section, which procedures shall include providing for fact-
22 finding and investigation of possible violations of this title
23 and for referrals to the Attorney General for consideration
24 pursuant to subsection (c).

25 “(c) The Attorney General is authorized—

1 “(1) upon receiving information regarding the
2 possible breach of any commitment in a signed
3 pledge, to request any appropriate Federal investiga-
4 tive authority to conduct such investigations as may
5 be appropriate; and

6 “(2) upon determining that there is a reason-
7 able basis to believe that a breach of a commitment
8 has occurred or will occur or continue, if not en-
9 joined, to commence a civil action against the former
10 employee in any United States District Court with
11 jurisdiction to consider the matter.

12 “(d) In any such civil action, the Attorney General
13 is authorized to request any and all relief authorized by
14 law, including—

15 “(1) such temporary restraining orders and pre-
16 liminary and permanent injunctions as may be ap-
17 propriate to restrain future, recurring, or continuing
18 conduct by the former employee in breach of the
19 commitments in the pledge he or she signed under
20 this title; and

21 “(2) establishment of a constructive trust for
22 the benefit of the United States, requiring an ac-
23 counting and payment to the United States Treas-
24 ury of all money and other things of value received

1 by, or payable to, the former employee arising out
2 of any breach or attempted breach of such pledge.”.