



THE DEPUTY SECRETARY OF THE INTERIOR  
WASHINGTON

AUG 15 2017

To: Secretary  
Acting Solicitor  
Acting Assistant Secretaries  
Acting Bureau Directors  
Associate Deputy Secretary  
Chief of Staff  
Deputy Chief of Staff  
Designated Agency Ethics Official (DAEO)

From: Deputy Secretary

Subject: Ethics Recusal

The purpose of this letter is to inform you that in accordance with my ethics agreement (attached) of May 1, 2017, as required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, 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.

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

As a Trump Administration political appointee, I have signed the Ethics Pledge (Exec. Order No. 13770) and I understand that I will be bound by the requirements and restrictions therein in addition to the commitments that I have made in this and any other ethics agreement. Accordingly, I will not participate personally and substantially, for two years after appointment, in any particular matter involving specific parties in which a former employer or client of mine is or represents a party, if I served that employer or client during the two years prior to my appointment,

unless first authorized to participate, pursuant to Section 3 of Exec. Order No. 13770. Moreover, this two-year prohibition forbids my participation in any meeting or other communication with these entities unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

I am aware that I am prohibited by 30 U.S.C. § 1211(f) from holding a financial interest in any surface or underground coal mining operation. Additionally, I am aware that my position is subject to the prohibitions against holding any financial interest in federal lands or resources administered or controlled by the Department of the Interior extended to me by supplemental regulation 5 C.F.R. § 3501.103.

In addition to a copy of my ethics agreement, I have attached a list of my current recusals under the Ethics Pledge and 5 C.F.R. § 2635.502. This list will be updated as necessary. Additionally, to facilitate the implementation of best ethics practices, I have included a document entitled "Guidance for Recusal Analysis" to assist in screening matters before the Department to determine whether they are subject to my recusal requirements.

Particular matters involving specific parties, in which an entity included in my list of current recusals is a party or represents a party, are not to be referred to me and are to be resolved without my participation. Such matters include, but are not limited to, litigation, permits, grants, licenses, and agreements. Anyone having a question about my recusal agreement should bring the matter to the attention of Assistant Deputy Secretary Willens for a determination. In order to help ensure that I do not inadvertently participate in matters from which I should be recused, he will seek the assistance of an agency ethics official as appropriate. Matters from which I am recused will be appropriately delegated for handling. If you have any questions, please be reminded that ethics advice must come from the DAEO or designee acting on the DAEO's behalf, as only a designated ethics official can make ethics determinations on which Department employees may authoritatively rely for safe harbor.

In consultation with an agency ethics official, I will revise and update this memorandum whenever that is warranted by changed circumstances. In the event of any changes to this screening arrangement, I will provide you a copy of the revised screening arrangement memorandum.

Attachments

May 1, 2017

Melinda Loftin  
Designated Agency Ethics Official  
and Director, Ethics Office  
U.S. Department of the Interior  
1849 C Street, NW, MS 7346  
Washington, DC 20240

Dear Ms. Loftin:

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 for the position of Deputy Secretary of the Department of the Interior.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, 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 withdraw from the partnership of Brownstein Hyatt Farber and Schreck, LLP, and all related entities. Pursuant to the 2012 Equityholders Agreement of Brownstein Hyatt Farber and Schreck, LLP, and BHFS-E PC, I will receive a *pro rata* partnership distribution based on the value of my partnership interests for services performed in 2017 through the date of my withdrawal. This payment will be based solely on the firm's earnings through the date of my withdrawal from the partnership. I currently have a capital account with the firm. If the firm will not refund the account before I enter into Federal service, I will forfeit the account. For a period of one year after my withdrawal, I also will not participate personally and substantially in any particular matter involving specific parties in which I know the firm is a party or represents a party, 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 I know 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).

My term with the Virginia Board of Game and Inland Fisheries has expired and I have resigned from my position with the Center for Environmental Science Accuracy and Reliability. For a period of one year after termination of my position with each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in

which I know 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).

I will divest my interest in the T. Rowe Price Virginia Tax-Free Bond Fund; within 90 days of my confirmation. Until I have completed this divestiture, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of any holding of the T. Rowe Price Virginia Tax-Free Bond Fund that is invested in the Virginia municipal bonds sector, 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).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I understand that I may be eligible to request a Certificate of Divestiture for qualifying 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 ensure that all divestitures discussed in this agreement occur within the agreed upon timeframes and that all proceeds are invested in non-conflicting assets.

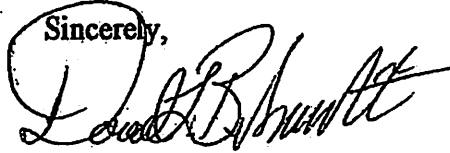
If I am confirmed as Deputy Secretary of the Department of the Interior, I am aware that I am prohibited by 30 U.S.C. § 1211(f) from holding a financial interest in any surface or underground coal mining operation. Additionally, I am aware that my position is subject to the prohibitions against holding any financial interest in federal lands or resources administered or controlled by the Department of the Interior extended to me by supplemental regulation 5 C.F.R. § 3501.103.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Deputy Secretary in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Bernhardt", written in a cursive style.

David L. Bernhardt

David Bernhardt

List of Recusals<sup>1</sup>

1. Ethics Pledge Recusals

Until August 3, 2019, absent a waiver under Section 3 of Executive Order No. 13770, I am recused from particular matters involving specific parties in which any of the following entities either is a party or represents a party to the matter. Such matters include, but are not limited to, litigation, permits, grants, licenses, applications, and agreements. For the purposes of the Ethics Pledge, this also prohibits my participation in any meeting or other communication with these entities unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

Active Network LLC

BHFS-E PC

Brownstein Hyatt Farber and Schreck, LLP

Cadiz, Inc.

Center for Environmental Science Accuracy and Reliability (CESAR)

Cobalt International Energy

Eni Petroleum, North America

Halliburton Energy Services, LLC

Hudbay

Independent Petroleum Association of America (IPAA)

Klees, Don (individual)

National Ocean Industry Association (NOIA)

Noble Energy Company LLC

NRG Energy Inc.

Rosemont Copper Company

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<sup>1</sup> Note that the scopes of the recusal requirements for the Ethics Pledge and 5 C.F.R. § 2635.502 are not the same. Accordingly, the lists of recusals for the Ethics Pledge and 5 C.F.R. § 2635.502 are not identical.

August 15, 2017

Sempra Energy

Statoil Gulf Services LLC

Statoil Wind LLC

Targa Resources Company LLC

Taylor Energy Company LLC

UBE PC

U.S. Oil and Gas Association

## 2. 5 C.F.R. § 2635.502 Recusals

Until the date indicated for the specific entity, unless first authorized to participate by the DAEO under 5 C.F.R. § 2635.502(d), I am recused from particular matters involving specific parties in which any of the following entities either is a party or represents a party to the matter. For the purposes of 5 C.F.R. § 2635.502, such matters include, but are not limited to, litigation, permits, grants, licenses, applications, and agreements.

Active Network LLC	8-1-18
BHFS-E PC	8-1-18
Brownstein Hyatt Farber and Schreck, LLP	8-1-18
Cadiz, Inc.	5-1-18
Center for Environmental Science Accuracy and Reliability (CESAR)	3-24-18
Cobalt International Energy	8-1-18
Eni Petroleum, North America	8-1-18
Forest County Potawatomi Community	3-1-18
Garrison Diversion Irrigation District	8-1-18
Halliburton Energy Services, LLC	7-29-18
Hudbay	8-1-18

Klees, Don (individual)	8-1-18
National Ocean Industry Association (NOIA)	7-29-18
Noble Energy Company LLC	12-1-17
NRG Energy Inc.	8-1-18
Rosemont Copper Company	8-1-18
Santa Ynez River Water Conservation District, Improvement District No. 1	11-1-17
Sempra Energy	4-1-18
Statoil Gulf Services LLC	8-1-18
Statoil Wind LLC	8-1-18
Targa Resources Company LLC	8-1-18
Taylor Energy Company LLC	7-29-18
UBE PC	8-1-18
U.S. Oil and Gas Association	7-29-18
Westlands Water District	8-1-18



### **Guidance for Recusal Analysis**

In his ethics agreement, the Deputy Secretary agreed that, for one year after his withdrawal from his firm, he would not participate personally and substantially in any particular matter involving specific parties in which he knows his former firm is or represents a party, unless authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). He also agreed not to participate personally and substantially in any particular matter involving specific parties in which he knows a former client of his is or represents a party for a period of one year after he last provided service to that client, unless he is first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).” In addition, per the Ethics Pledge, the Deputy Secretary agreed that he will not for a period of two years from the date of his appointment participate in any particular matter involving specific parties in which a former employer or client of his is or represents a party, if he served that former employer or client during the two years prior to his appointment, absent a waiver under Section 3 of Executive Order No. 13770. This includes recusal from any meeting or other communication with such a former employer or client unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed

To assist the Deputy Secretary in complying with his ethics agreement and the Ethics Pledge, sufficient information needs to be secured before the Deputy Secretary participates in a matter to determine whether the matter meets the criteria described above.

To determine whether the Deputy Secretary may participate in a given matter, we must first determine whether that “matter” is a broad policy directed to the interests of a large and diverse group of persons or one of the two types of “particular matters” -- a “particular matter of general applicability” or a “particular matter involving specific parties.”

In the context of the ethics rules, the unmodified term “matter” refers to virtually all Government work. It includes the consideration of broad policy options that are directed to the interests of a large and diverse group of persons. For instance, health and safety regulations applicable to all employers or a legislative proposal for tax reform. It also includes more narrowly defined “particular matters.”

The term “particular matter” means any matter that involves deliberation, decision, or action that is focused on the interests of (1) specific persons or (2) a discrete and identifiable class of persons. These two types of particular matters are defined separately as “particular matters involving specific parties” and “particular matters of general applicability.” (See attached diagram.)

A “particular matter involving specific parties” typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties.” Examples include contracts, grants, licenses, investigations, litigation, and partnership agreements. This is the narrowest type of matter.

A “particular matter of general applicability” does not involve specific parties but at least focuses on the interests of a discrete and identifiable class, such as a particular industry or profession. Examples include rulemaking, legislation, or policy-making of general applicability that affect a particular industry or profession. For instance, a regulation prescribing safety standards for operators of oil rigs in the Gulf of Mexico or a regulation applicable to all those who have grazing permits on DOI public lands. On the other hand, a land use plan covering a large geographic area and affecting a number of industries (*e.g.*, agriculture; grazing; mining; timber; recreation; wind, solar, and/or geothermal power generation; etc.) would not constitute a “particular matter of general applicability” but, rather, would still fall within the broader definition of “matter,” as it constitutes a broad policy directed to the interests of a large and diverse group of persons.

To assist the Deputy Secretary in complying with his ethics recusal requirements, one must gather sufficient information regarding a matter before the Department to determine whether the matter constitutes a particular matter involving specific parties, a particular matter of general applicability, or falls into the category of broad policy options that are directed to the interests of a large and diverse group of persons. In the event that a determination is made that the matter before the Department constitutes the narrowest type of matter, a particular matter involving specific parties, one must then reference the Deputy Secretary’s List of Recusals to determine whether he is recused from participating in that matter.

Attachment

Matters

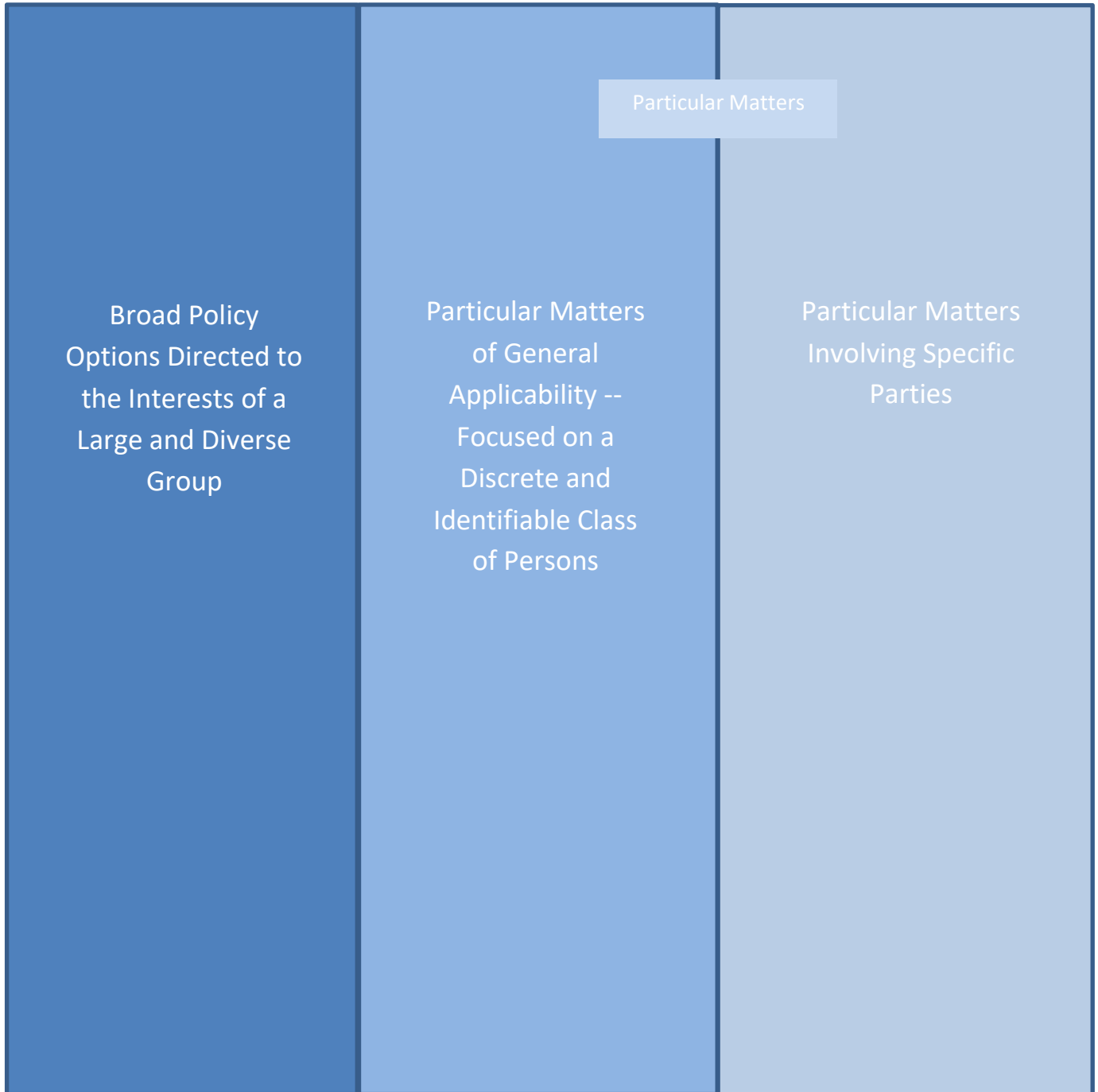
Particular

Matters

Particular Matters  
of General  
Applicability

Particular Matters  
Involving Specific  
Parties

# Matters – Three Types



## Examples of the Three Types of Matters

### Broad Policy Options Directed to the Interests of a Large and Diverse Group

Changes to health and safety regulation for all employers in the U.S. (2640.103(a)(1) Ex. 4)
Decision to allocate additional resources to the investigation or prosecution of white collar crime (2640.103(a)(1) Ex. 5); general policy discussions on an issue such as the Crime Bill (18 O.P. OLC 212)
Deliberation on the general merits of an omnibus bill such as the Tax Reform Act of 1986 (2640.103(a)(1) Ex. 5); deliberations of advisory panel on federal tax reform (OGE 05x01); regulations changing the method of calculating depreciation (2635.402(b)(3) Ex. 1)
Recommendations of the Council of Economic Advisors to the President about appropriate policies to maintain economic growth and stability (2640.103(a)(1) Ex. 6)
Formulation and implementation of a response of the U.S. to a military invasion of U.S. ally (2640.103(a)(1) Ex. 7); deliberations regarding a response to Iraq's invasion of Kuwait (OLC Unpubl. Op. Aug. 8, 1990)
Legislative proposal for broad health care reform (2640.103(a)(1) Ex. 8)

### Particular Matters Involving Specific Parties ("Party Matters")

Lawsuits, legal actions, etc. – e.g., fraud prosecution of failed savings and loan institution (2635.807 Ex. 9); Department of Justice civil complaint filed in federal court alleging violations of certain environmental laws by a company (2641.201(h)(1) Ex. 2); lawsuit against Mine Safety and Health Administration brought by trade association challenging regulation for mine workers (2641.201(h)(2) Ex. 2)
Applications submitted to federal agency – e.g., license application to agency (2641.201(e)(2) Ex. 1); application for Food and Drug Administration drug approval (2641.201(e)(2) Ex. 4); state's application for additional funding for administrative support services (2640.201(c)(2) Ex. 2); city's application to Housing and Urban Development for federal assistance for a renewal project (2641.201(h)(1) Ex. 1); grant application to the Administration on Children and Families (2641.201(e)(1) Ex. 1); advisory committee evaluation of a university's performance of a grant to study the efficacy of a newly developed breast cancer drug (2640.203(g) Ex. 2); Yucca mountain license application and formal Nuclear Regulatory Commission
Government contracts – e.g., Department of Defense contract to produce an operator's manual for a radar device (2641.201(e)(2) Ex. 3); audit of government contractor (2641.201(e)(1) Ex. 2); government contract to produce a study on the efficacy of certain agency operations (2641.201(e)(2) Ex. 5); contract negotiations with consulting firm to perform geological research (2 O.P. OLC 313 (1978))
Investigations, enforcement actions or related actions – e.g., OSHA investigation of a company (2641.201(e)(4) Ex. 1); internal deliberations concerning the merits of taking enforcement action against a company for certain trade practices (2641.201(h)(4) Ex. 1); development of initial set of criteria pursuant to which six states were to develop plans to desegregate their higher education systems (OGE 80x10); presentation of investigative findings about alleged criminal violation perpetrated in a particular state (3 O.P. OLC 426 (1979))
Issuance of approval or grant of rights – e.g., Bureau of Land Management decision to grant a private company the right to explore for minerals on certain federal lands (2641.201(g) Ex. 1); Federal Trade Commission's review of proposed merger between two companies (2641.201(f) Ex. 1); initial review of proposed merger that has been announced in the media (even before a merger application was formally pending) (OGE 99x23)
Targeted legislation – e.g., private relief legislation granting citizenship to a specific individual (2641.201(h)(2) Ex. 4); bill establishing a grant program for which only one known organization is eligible (OGE 87x3)
Certain trade and treaty matters – e.g., bilateral treaty regarding transfer of ownership with respect to a parcel of real property and certain operations (2641.201(h)(2) Ex. 7)
Certain preliminary matters relating to government procurements – e.g., procurement where a number of steps towards the procurement have been taken and parties had affirmatively expressed interest (OGE 90x12); draft RFP, once potential contractors are identified to the project (OGE 84x15)

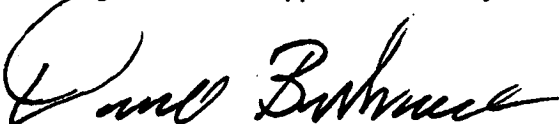
**Particular Matters of General Applicability – Focused on a Discrete and Identifiable Class of Persons**

<b>Regulations/Rulemakings Examples</b>
Regulations establishing safety standards for trucks on interstate highways (2635.402(b)(3) Ex. 2)
Regulation applicable only to the meat packing industry (2640.103(a)(1) Ex. 3)
Consideration and implementation through regulation of sections of healthcare bill limiting the amount charged for prescription drugs (2640.103(a)(1) Ex. 8)
Regulation concerning the exportation of portable computers (2640.202(c) Ex. 1)
Regulation that contains new standards for the oversight of agency grants (2640.203(b) Ex. 1)
Department of Veterans Affairs regulation that will provide for expanded hospital health benefits for veterans (2640.203(d) Ex. 5)
Matters of general applicability affecting all states, such as the drafting and promulgation of a rule requiring states to expend additional resources implementing food stamp program (2640.201(c)(2) Ex. 2)
Mine Safety and Health Administration regulation establishing new occupational health and safety standards for mine workers (2641.201(h)(2) Ex. 1)
Proposed Food and Drug Administration rule requiring all manufacturers of a particular type of medical device to obtain pre-market approval for products (even if only 3-4 manufacturers are presently making the device, when there is nothing to preclude others from entering the market in the future) (2641.201(h)(2) Ex. 5); Food and Drug Administration's recommendation regarding the regulation of the ingredients of aspirin (2 OP OLC 151, 152 (1978));
<b>Other Examples</b>
Matter affecting employees who are invested in the Thrift Savings Plan (61 FR 66834); bill to raise the pay level of all federal employees paid under the General Schedule (2640.203(d) Ex. 4); determinations or legislation focused on the compensation and work conditions of the class of Assistant United States Attorneys (18 OP OLC 212)
Recommended changes to how Medicare reimbursements will be made to health care providers (2640.201(b) Ex. 2)
Advisory committee tasked with developing recommendations for new standards for AIDS vaccine trials involving human subjects (2640.203(g) Ex. 1)
National Science Foundation employee's formulation of policies for a grant program for organizations to produce science education programs targeting elementary school age children (2641.201(h)(2) Ex. 3)
Attorney project drafting a standard form contract and certain standard terms and clauses for use in all future agency contracts (2641.201(h)(2) Ex. 6)
Feasibility studies of Department of Defense and other basic conceptual work for a possible innovation to a missile system (2641.201(h)(3) Ex. 1)
Agency oversight group making recommendations on specific ways of limiting commercial use of a particular facility; consideration of whether new rules are needed for specific commercial users of a facility (OGE 00x4)
Informal, preliminary discussions with industry representatives about specific changes to agency standards governing a particular industry (OGE 06x8)
Drafting of technical manual for use by facilities operated by government agency (OGE 81x29)
Development of a set of criteria for use as investigatory guidelines for investigations in states with segregated higher education systems (OGE 80x10)
Implementing legislation for agency programs (OGE 81x1)
National Advisory Food and Drug Committee deliberations concerning use of low levels of antibiotics in animal feeds (2 OP OLC 151, 152 (1978))
The activities of the Federal Open Market Committee regulating interest rate-sensitive securities by determining the amount and cost of reserves available to banks and thrifts are particular matters of general applicability because they focus on a discrete and identifiable class of banks and thrifts. (Unpubl. OP OLC (June 30, 1993))

## ETHICS PLEDGE

As a condition, and in consideration, of my employment in the United States Government in an appointee 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. I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency.
2. 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.
3. In addition to abiding by the limitations of paragraphs 1 and 2, I also agree, upon leaving Government service, not to engage in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.
4. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2017, would require me to register under the Foreign Agents Registration Act of 1938, as amended.
5. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
6. 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.
7. 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 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.
8. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 28, 2017, which I have read before signing this document, defines certain 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 obligations of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Government service.



Signature

8/10, 2017  
Date

David Longy Bernhardt  
Print or type your full name (last, first, middle)