PROTECT the PUBLIC'S TRUST

# BIDEN ACTIVISTS GET AN ETHICS PASS

## AN UPDATE FROM THE ETHICS WAIVER TRACKER

# President Biden on Pace to Exceed Trump Administration Waivers

At one of her first press conferences, former White House Press Secretary Jen Psaki declared, "the President is committed to ensuring we have the most ethically vigorous administration in history." She later added that President Biden "issued the farthest-reaching executive order with respect to the ethical commitments required of his appointees ever and is very proud of it."

The executive order, also known as the Biden Ethics Pledge, spells out the restrictions on political appointees regarding involvement in matters associated with their former employers and others with whom they have a "covered relationship," such as family members and spouse's employers. Among the criteria for determining if an official should recuse from a particular matter involving a party with whom the employee has a covered relationship is, "Would a reasonable person with knowledge of the relevant facts question the employee's impartiality?" The Biden Ethics Pledge adds restrictions on former lobbyists, including a ban on working for an agency the employee had lobbied during the prior two years.

**"Many officials receive waivers to allow them to push the Administration and former employer's agenda."**

But the administration has issued dozens of waivers granting appointees exemptions to the restrictions of the Pledge and federal ethics laws. Protect the Public's Trust has counted 65 different officials receiving waivers in the opening 18 months of the Biden Administration. This number compares to 73 issued during the first 33 months of the Trump Administration. (Trump-era information was obtained via the Office of Government Ethics and a waiver tracking project operating through October 2019.)

At this rate, the pace of ethics waivers exposed so far indicates that the Biden Administration will likely exceed the waivers granted during the Trump Administration once they are all uncovered. Many officials receive waivers to allow them to push the Administration and former employer's agenda.

# Significant Pressure on Career Officials

Most, though not all, ethics waivers are granted by career agency ethics officials. But the Biden Administration has often forced these career officials into difficult situations by loading up important positions with activists and lobbyists whose potential conflicts and covered relationships make it nearly impossible to function in their roles without a waiver.

**"The Biden Administration has often forced these career officials into difficult situations"**

A recently discovered waiver obtained by Protect the Public's Trust via a Freedom of Information Act lawsuit is one of the most jaw-dropping. The Administrator of the National Highway Traffic Safety Administration (NHTSA) at the Department of Transportation (DOT), Dr. Steven Cliff, received a waiver to federal ethics laws allowing him to work on particular matters in which not just his former employer, the California Air Resources Board (CARB), but he, had enormous involvement. This includes specific litigation that he was involved in as a state employee.

Dr. Cliff's waiver permits him to "participate in NHTSA's SAFE [Safer and Affordable Fuel-Efficient] Rulemakings, and associated litigation matters." As the document reveals, not only did CARB "participate[] extensively in the rulemaking process that led to the issuance of the SAFE 1 and 2 rules," Dr. Cliff personally "participated in public hearings and other meetings during the rulemaking process." In addition, "CARB was one of the petitioners challenging NHTSA's SAFE 1 Litigation and SAFE 2 Litigation" and is involved in pending litigation involving NHTSA on greenhouse gas standards for truck trailers.

In other words, Dr. Cliff's activism placed him neck-deep in matters in which he otherwise would not have been able to participate without a waiver. Further, where those matters are concerned, not only could "a reasonable person with knowledge of the relevant facts" question his impartiality but, considering his past activism on those matters, that observer would be absolutely certain to do so.

Incredibly, the waiver was justified, in part, because Dr. Cliff's inability to participate in matters he would be forced to recuse from could "substantially limit" DOT and NHTSA's ability to pursue the administration's agenda. The same could be said for any person appointed to that position in any administration. This case is just one example where the administration appointed someone to a position which created immense conflicts and ethics officials were forced to provide a waiver to allow that person to perform their job. It just happens to be provided on one of the most high-profile issues and policy priorities of President Biden's top donors and progressive supporters.

But Dr. Cliff's is far from the only waiver awarded to an activist official with a clear bias in order to advance the administration's agenda.

## Waivers for Activists the Rule, not the Exception

The intent of ethics restrictions is largely to reduce potential conflicts of interest from arising and increase the public's confidence that the government is acting in an objective manner. Public officials should represent the taxpayer, not a private actor or an official's former employer's interests. In some cases, ethics waivers are justified to recruit uniquely talented individuals who would otherwise be unavailable to the government – think brilliant scientist, mathematician or engineer with technical expertise unmatched elsewhere.

The waiver for Deputy Director of NASA Pamela Melroy is an example. Ms. Melroy's experience as an astronaut, one that earned her induction into the U.S. Astronaut Hall of Fame, as well as decades of leadership roles related to aviation and space flight in the military, public, and private sectors, is truly uniquely suited for her role. This type of justifiable waiver is far less numerous than those handed out to activists, lobbyists, and attorneys in the list of Biden Administration waivers that Protect the Public's Trust has uncovered.

The Biden Ethics Pledge prohibits lobbyists from working for any agency they lobbied during the previous two years. Yet, Vanita Gupta received a waiver to participate in matters on which she was involved in lobbying with the Leadership Conference on Civil and Human Rights. According to the waiver's justification, enforcing the lobbying provision of the Biden Ethics Pledge "would prevent Ms. Gupta from participating in the very civil rights policies that the Administration has nominated her to oversee" and "would restrain her ability to participate in matters involving civil rights, areas that are critical to the priorities of the Administration and the Department."

The White House Domestic Policy Council's Leidy Perez-Davis, who lobbied on immigration issues for the American Immigration Lawyers Association (AILA), received a waiver allowing her to work on "any particular matter on which she lobbied for AILA" in order for her to "support the Administration in helping to drive immigration policy." Among the reasons used to justify the waiver was the belief that "managing an ongoing recusal for Ms. Perez-Davis would negatively impact the Administration's important mission of addressing significant immigration policy issues."

**"'Managing an ongoing recusal for Ms. Perez-Davis would negatively impact the Administration's important mission of addressing significant immigration policy issues.'"**

The Council on Environmental Quality (CEQ) provided a waiver to Jessica Ennis permitting her to engage on issues she lobbied on while at Earthjustice. "Without a waiver," the document stated, "Ms. Ennis would be precluded from working on issue areas of importance to CEQ given her lobbying of Congress on climate, clean energy and transportation, and environmental justice issues."

It is highly unlikely the administration was unaware of their potential conflicts prior to appointing these individuals to their posts. More likely they were appointed because of their past activism, knowing that waivers would be required for them to perform their roles. However, the exemptions activists have received may not even be the most astounding.

The waivers granted to Mina Hsiang, U.S. Digital Service Administrator in the Office of Management and Budget (OMB), were so controversial that the Project on Government Oversight urged the Biden Administration to rescind them. Ms. Hsiang was allowed to keep six- and, possibly, seven-figure investments in technology companies that arguably present financial conflicts of interest in her current post. She recognized a huge windfall from one of the investments from which she did divest. The value of Rebellion Defense, which received a government contract in July 2021, was at least 10 times, and possibly 50 times, greater when she sold it in September 2021 than what she reported when she joined the administration in January 2021.

**"More likely they were appointed because of their past activism, knowing that waivers would be required for them to perform their roles."**

Lee Satterfield returned to the State Department as Assistant Secretary of State for Educational and Cultural Affairs (ECA) after serving at that agency during the Obama Administration. In the interim she was Executive Vice President and Chief Operating Officer of the Meridian International Center, a "key partner of ECA in support of its professional and cultural exchange programs between the U.S. and other nations" and "one of ECA's core grantees" with "a cooperative agreement to help administer the International Visitor Leadership Program," according to Satterfield's waiver.

**"Ms. Hsiang was allowed to keep 6- and, possibly 7-figure investments in technology companies that arguably present financial conflicts of interest."**

The waiver allows her to "participate in particular matters in which the Meridian International Center is a party, with the exception of funding decisions." Ironically, Satterfield's travels through the revolving door were used to bolster the case for the waiver, with her experience at ECA determined to be the "most important[]" aspect of her background qualifications justifying the waiver.

The Biden Ethics Pledge's ban on working for an agency an appointee had lobbied in the two years prior to joining the administration didn't stop Elizabeth A. Eurgubian. She transitioned smoothly to her new role at the National Credit Union Association, despite lobbying the agency for the Credit Union National Association (CUNA), "the only national association that advocates for all of America's credit unions." Ms. Eurgubian's waiver allows her to "participate in any particular matter on which she lobbied for CUNA." Considering the relatively niche credit union industry and her former employer's prominence as its main voice, one would think the lobbying ban existed for precisely these types of relationships. This particular waiver is sure to put a smile on the face of lobbyists across Washington, D.C.

**"This particular waiver is sure to put a smile on the face of lobbyists across Washington, D.C."**

While attorneys are generally prohibited from involvement in cases in which they participated prior to entering the executive branch, that was not so when EPA's Principal Deputy General Counsel, Melissa Hoffer, joined the agency from the Massachusetts Attorney General's office.

Ms. Hoffer was granted the ability to participate in more than three dozen cases involving her former employer, some of which she may have participated in personally and substantially.

The “impartiality determination” Ms. Hoffer received allows her to participate in meetings and discussions regarding the “policy decisions” related to these cases, though she was still barred from participation related to the underlying merits of the cases.

Waivers allowed Adena Leibman of the National Oceanic and Atmospheric Administration in the Department of Commerce and Homeland Security’s Charanya Krishnaswami to participate in matters they lobbied on for the Environmental Defense Fund and Amnesty International, respectively. Andrea Delgado of the Department of Agriculture and Alethea Predeoux at the Office of Personnel Management received permission to be involved in matters they lobbied on while at the unions they previously worked for – the United Farm Workers Federation for Delgado and the American Federal of Government Employees in the case of Predeoux. OMB’s Aviva Aron-Dine received a waiver to engage with the Center for Budget and Policy Priorities (CBPP) not only because of CBPP’s policy expertise but also because the left-leaning organization “plays a unique role in shaping congressional, press, and public understanding of these issues.”

So many officials in one office at EPA had potential conflicts of interest due to their work for environmental activist organizations that the resulting “overlap of recusals” impinged on the ability of the office to interact with agency leadership. Ethics officials were forced to grant Marianne Engelman-Lado multiple waivers to participate in certain matters she had been recused from involving the Natural Resources Defense Council (NRDC) in order that her office could properly function. Given NRDC's immense sway over the administration's agenda, this type of waiver, and many others highlighted above, are hardly what the American public would consider consistent with the most ethical administration in history.

## Conclusion

There may still be many waivers that we have yet to learn about. Protect the Public’s Trust has more than two dozen open FOIA requests and active FOIA lawsuits attempting to obtain these waivers. The agencies appear reluctant to reveal many of them, and the presence of activists in powerful roles who need waivers to promote the administration’s agenda may be one explanation.