

UNITED STATES OFFICE OF GOVERNMENT ETHICS



Preventing Conflicts of Interest
in the Executive Branch

ANNUAL REPORT PURSUANT
TO EXECUTIVE ORDER 13490

ETHICS COMMITMENTS BY
EXECUTIVE BRANCH PERSONNEL

JANUARY 1, 2010 – DECEMBER 31, 2010

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Preface

This is the second annual report provided pursuant to the President's Executive Order on Ethics (Executive Order 13490 of January 21, 2009, "Ethics Commitments by Executive Branch Personnel").

This report provides information on: the number of full-time, non-career appointees who were appointed during the 2010 calendar year; the appointees who were required to sign the Ethics Pledge; the number and names of those appointees who received waivers of any Ethics Pledge provisions; and, where appropriate, recusals or ethics agreements for those appointees who were registered lobbyists within the two years prior to their appointment. The report covers the time period January 1 through December 31, 2010. This report is publicly available. It has been posted on the United States Office of Government Ethics' (OGE) website at www.usoge.gov.

Respectfully submitted,

/S/

Don W. Fox
Acting Director
United States Office of Government Ethics
Dated: 08/05/2011

Ethics Pledge Compliance (Calendar Year 2010 Appointments)

Executive Branch agencies and the White House reported that 1,133 full-time, non-career appointees¹ were appointed during the period of January 1 through December 31, 2010. Of these appointees, 1,096 were required to sign the Ethics Pledge, and 100 percent have done so.²

In addition, agencies reported that during calendar year 2010, three of the full-time, non-career appointees were registered lobbyists during the two years prior to their appointment. These three appointees did not need waivers to be appointed to their positions because they had not lobbied the agency to which they were appointed within the two years prior to appointment.

Executive Branch agencies also reported that one of the three appointees who had been a registered lobbyist in the two years prior to appointment had entered into a written ethics agreement or written recusal addressing paragraph 3 of the Ethics Pledge. The ethics agreement served to remind the appointee about the restrictions related to his prior lobbying activities. The other two appointees were not required to have a written ethics agreement addressing paragraph 3 of the Ethics Pledge because their agency ethics officials determined that the appointees' official duties were sufficiently unrelated to their prior lobbying activities.

Finally, nine agencies and the White House granted a total of 12 so-called "reverse revolving door" waivers during calendar year 2010. These waivers allow appointees to participate in matters in which their former employers or clients have an interest. Copies of all waivers issued to Executive Branch agency appointees are posted on OGE's website, www.usoge.gov, when a waiver is issued. Waivers issued by the White House are posted on the White House website, www.whitehouse.gov. All waivers are found in Appendix IV to this report. No waivers of the restrictions on former lobbyists were granted during calendar year 2010.

¹Definitions of non-career appointees are as follows: PAS—Presidentially appointed, Senate confirmed; PA—Presidentially appointed; non-career SES—political appointees at the senior executive level; Schedule C—noncompetitive appointments to excepted service positions graded GS-15 and below; and other—all other categories of non-career position appointments.

²Executive Order 13490 requires each covered appointee to sign the Ethics Pledge "upon becoming an appointee." Agencies reported that 12 appointees signed the Ethics Pledge late due to administrative oversight.

Employees Subject to the Ethics Pledge

Of the 132 reporting agencies, 71 agencies and the White House³ had employed full-time, non-career appointees subject to the Ethics Pledge during the period of January 1 through December 31, 2010.⁴ Table 1 below provides additional details regarding the categories of full-time, non-career appointees.

Table 1: Full-Time, Non-Career Appointees
(January 1 – December 31, 2010)

PAS	PA	Non-Career SES	Schedule C	Other	Total
235	148	168	456	126	<u>1,133</u>

Compliance with Ethics Pledge Signature Requirement

Section 1 of Executive Order 13490 requires that every appointee in every executive agency appointed on or after January 20, 2009, to sign the Ethics Pledge.⁵ The Order defines "appointee" as follows:

‘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.

Table 1 show's that agencies and the White House reported that 1,133 full-time, non-career appointees were appointed during the period of January 1 through December 31, 2010. Table 2 shows that of the 1,133 appointees, 1,096, or approximately 97 percent, were required to sign the Ethics Pledge upon their appointment in 2010.⁶ The largest catagory of appointees required to sign the Ethics Pledge is Schedule C appointees.

³The White House submission included the White House, Office of Policy Development, Office of the Vice President, National Security Council, and National Economic Council.

⁴The Administrative Conference of the United States was established as an independent federal agency in 2010 and therefore submitted assessment data for the first time this year. The Farm Credit Administration and Farm Credit System Insurance Corporation submitted separate Ethics Pledge assessment data this year but filed a combined report last year.

⁵See OGE DAEOgrams DO-09-003 and DO-09-010, located on the OGE website and Appendix VI for detailed guidance regarding the appointees subject to the Ethics Pledge.

⁶Additionally, as Table 3 demonstrates, 17 other appointees had already signed the Pledge for a prior appointment to a different position, and these appointees remained subject to the Pledge upon their new appointment in 2010.

Table 2: Ethics Pledge Signatures (by Appointee Type)
(January 1 – December 31, 2010)

Appointee Type	Required	Not Required	Total
PAS	232	3	235
PA	141	7	148
Non-career SES	164	4	168
Schedule C	433	23	456
Other	126	0	126
TOTAL	1,096	37	1,133

OGE, in consultation with the White House Counsel's Office, determined in its implementing guidance that certain categories of individuals were not required to sign the Ethics Pledge. For every full-time, non-career appointee who did not sign the Ethics Pledge, agencies and the White House were asked to provide the reason(s) why the Ethics Pledge was not signed. All 37 of the appointees who did not sign the Ethics Pledge fell into one of two categories, as detailed in Table 3. These two categories reflect OGE's implementing guidance.

Table 3: Appointees Not Required to Sign the Ethics Pledge in 2010
(January 1 – December 31, 2010)

Reasons why Appointees were not Required to Sign the Ethics Pledge	Number of Applicable Appointees
Occupy an exempt non-policymaking position (Schedule C or other comparable authority)*	20
Appointed without break in service after serving in another position subject to the Ethics Pledge	17
*Exempt, non-policymaking positions include schedulers, office assistants, drivers, and similar positions.	

Former Lobbyists Appointed in Calendar Year 2010

Executive Branch agencies and the White House reported that three of the full-time, non-career appointees appointed January 1 through December 31, 2010, and subject to the Ethics Pledge had been registered lobbyists during the two years prior to their appointment. The three appointees are listed in Table 4. None of these three appointees had lobbied the agency to which he was appointed during the two years prior to appointment, and none received a waiver of any of the restrictions on former lobbyists in paragraph 3 of the Ethics Pledge.⁷

⁷Under paragraph 3 of the Ethics Pledge, a former lobbyist may not be appointed to any agency which he or she lobbied during the previous two-year period and may not participate in any particular matter or specific issue area on which he or she lobbied during the previous two-year period.

Pursuant to section 4(a) of the Executive Order, one of the three appointees has a written ethics agreement or recusal that specifically addresses compliance with Ethics Pledge paragraph 3 because his prior lobbying activities involved subjects that potentially could arise in connection with his Executive Branch position. This Pledge-related ethics agreement or recusal is found in Appendix V. The other two appointees do not have written ethics agreements or recusals addressing Ethics Pledge paragraph 3. These two appointees were not required to have written ethics agreements for paragraph 3 because their agency ethics officials determined that the appointees' official duties were sufficiently unrelated to their prior lobbying activities.

Table 4: Former Lobbyists and Ethics Agreement Requirements
(January 1 – December 31, 2010)

Appointee Name	Agency	Ethics Agreement Addressing Pledge Paragraph 3
Mark Childress	Department of Health and Human Services	Yes
John Moran	Federal Maritime Commission	Not required
Michael Punke	Office of the United States Trade Representative	Not required

Process for Evaluating Prior Lobbying

The starting point for determining whether someone is a “registered lobbyist” for purposes of Ethics Pledge paragraph 3 is whether, at any time during the two-year period before appointment, he or she has been listed as a lobbyist in either an initial Lobbying Disclosure Act (LDA) registration or a subsequent quarterly report (line 10 of Form LD-1 or line 18 of Form LD-2). Agency ethics officials and the White House Counsel’s Office, however, have found it necessary in some instances to go beyond the House and Senate LDA databases to determine whether a person falls within the scope of Ethics Pledge paragraph 3. The databases may be insufficient on their own for a variety of reasons: individuals may fail to de-register as soon as they no longer meet LDA thresholds; LDA filings can be overly inclusive, with employers registering persons who were expected to engage in lobbying activities but subsequently did not do so; and finally, LDA filings are made quarterly and do not indicate the actual dates of lobbying activity.

Lobbying and Reverse Revolving Door Waivers

Waivers of provisions of the Ethics Pledge may be granted by the Director of the Office of Management and Budget (authority subsequently delegated to Designated Agency Ethics Officials), in consultation with the Counsel to the President, when it is determined that “the literal application of the restriction is inconsistent with the purposes of the restriction or that it is in the public interest to grant the waiver.”* The Executive Order explains that the public interest

*Section 3 of Executive Order 13490 provides a waiver mechanism for restrictions contained in the Ethics Pledge and the standards that must be met for a waiver to be granted.

may include, but is not limited to, exigent circumstances relating to national security or to the economy.

All waivers are made publicly available on either the OGE website or the White House website when issued. Specifically, the OGE website contains the names of appointees serving Executive Branch agencies who have received waivers to the Ethics Pledge. OGE's website provides a hyperlink to the White House website, which posts waivers that have been issued by the White House. Both lists are updated as waivers are issued.

Lobbying Waivers

No waivers of any of the restrictions on former lobbyists in Ethics Pledge paragraph 3 were granted in 2010.

Reverse Revolving Door Waivers

Executive Branch agency and White House respondents reported that 12 appointees appointed January 1 through December 31, 2010, had been granted waivers from the requirements of Ethics Pledge paragraph 2. Generally, paragraph 2 of the Ethics Pledge restricts an appointee's participation in matters in which the appointee's former employers or clients have an interest. Individuals who have received Ethics Pledge waivers from paragraph 2 requirements and the executive agencies that issued the waivers are identified in Table 5 below. Appendix IV contains the text of the waivers to paragraph 2 of the Ethics Pledge issued in calendar year 2010.

Table 5: 2010 Appointees who Received Paragraph 2 Waivers

Robert Bauer	Counsel to the President (White House)
Paul Cartarr	Corporation for National and Community Service
Charles Collins	Department of the Treasury
Donald L. Cook	Department of Energy
Lisa C. Gomer	Agency for International Development
General James Jones	National Security Advisor (White House)
Zachary J. Lemnios	Department of Defense
Phillip D. Murphy	Department of State
Malcolm R. O'Neill	Department of the Army
Rajiv J. Shah	Agency for International Development
Harold E. Varmus, M.D.	Department of Health and Human Services
Aaron S. Williams	Peace Corps

Enforcement

Ethics Pledge paragraph 2 requires, among other things, that appointees have no contacts with former employers or clients pertaining to their official duties for two years after appointment. OGE is aware of two instances in 2010 in which appointees made contact with former employers, contravening Ethics Pledge paragraph 2.

One instance involved Charles F. Bolden, the Administrator of the National Aeronautics and Space Administration (NASA), who consulted briefly with a former employer concerning a NASA research project in which the former employer had no financial interest. The NASA Office of the Inspector General determined that this contact violated the Administrator's Ethics Pledge commitment. On the recommendation of the White House Counsel's Office, the Administrator was given a reprimand and supplemental ethics training, and he recused himself from further participation in the research project. *See* Report of the NASA Office of the Inspector General, September 20, 2010, www.oig.nasa.gov/investigations/OMEGA-Report.pdf.

The second instance involved Andrew McLaughlin, Deputy Chief Technology Officer in the Office of Science and Technology Policy, who exchanged several e-mail messages with his former employer about certain matters within the scope of his official duties. This official received a reprimand for his actions and supplemental ethics training.

Implementation of the Lobbyist Gift Ban

Pursuant to section 4(c)(3)(ii)-(iv) of the Executive Order, OGE is required "to adopt such rules or procedures as are necessary or appropriate" to extend the lobbyist gift ban in paragraph 1 of the Ethics Pledge to all executive branch employees, to authorize limited exceptions to the ban for circumstances that do not implicate the purposes of the ban, and to provide that employees who dispose of lobbyist gifts as provided in 5 C.F.R. § 2635.205 will not have violated the ban." Accordingly, OGE has submitted to the Office of Management and Budget a draft proposed rule governing lobbyist gifts and expects to publish a proposed rule in 2011.

APPENDIX I

Appendix I

Executive Order 13490

Federal Register/Vol. 74, No. 15/Monday, January 26, 2009/Presidential Documents

4673

Presidential Documents

Executive Order 13490 of January 21, 2009

Ethics Commitments by Executive Branch Personnel

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.

"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) "GFR"

(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

(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.

(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:

(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.

(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:

(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:

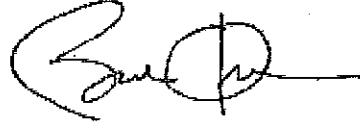
(1) authority granted by law to a department, agency, or the head thereof; or

(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.



THE WHITE HOUSE,
January 21, 2009.

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APPENDIX II

Appendix II

Assessment Methodology

OGE administered an assessment questionnaire in January and February 2010. The assessment focused on compliance with Executive Order 13490 for the period of January 1 through December 31, 2010.

The questionnaire was emailed to Designated Agency Ethics officials (DAEO) and Alternate DAEOs or other designated officials. OGE received responses from all agencies required to be assessed. Based on responses to the assessment, OGE conducted follow-up with agencies to gather additional information and correct any discrepancies in submissions. OGE excluded from this report employees it determined were miscategorized as full-time non-career appointees. In the interest of completeness, the White House voluntarily provided information about White House appointees.

APPENDIX III

Appendix III

Assessment Questionnaire

Ethics Pledge Compliance Assessment (Executive Order 13490) Calendar Year 2010

You are required to complete this assessment as the representative of your agency's ethics program. Each agency must provide a prompt and accurate response.

Purpose

The purpose of this assessment is to provide the U.S. Office of Government Ethics (OGE) with information about administration of the Ethics Pledge required by Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009). The information will be used by OGE to prepare the annual report on administration of the Ethics Pledge as required by Executive Order 13490, sec. 4(c)(5).

The Executive Order requires every covered appointee to sign the Ethics Pledge upon assuming office. *See* Executive Order 13490, sec. 1. In addition, every covered appointee who was a registered lobbyist during the 2 years prior to appointment must have a written ethics agreement addressing the restrictions on incoming lobbyists under paragraph 3 of the Ethics Pledge. *See* Executive Order 13490, sec. 4(a).

This assessment focuses on compliance with the following for the period between January 1, 2010 and December 31, 2010:

- the requirement for full-time non-career appointees to sign the Ethics Pledge,
- the requirement to have a written ethics agreement covering any commitments under paragraph 3 of the Ethics Pledge (concerning lobbyists entering government), and
- the issuance of any waivers of Ethics Pledge requirements under section 3 of Executive Order 13490.

This assessment does not request the name or title of any appointee.

Deadline

The deadline for completing the assessment is February 28, 2011.

Completing the Assessment

This assessment consists of up to eight items for responses. (Based on your responses, you may be asked to skip items not applicable to your agency.)

Throughout the assessment you will be offered an opportunity to provide comments.

After reviewing your submission OGE may contact you for additional information.

Saving the Assessment

To save your assessment at any time during the completion process for your records or for completion at a later time, click the *"Save Via Email" button at the end of the form. Please follow the instructions in the dialogue box. Your saved assessment will be emailed to you as an attachment. Please keep in mind that saving your assessment does not transmit your information to OGE.

*NOTE: If you are using Adobe Acrobat Professional, you do not need to use the "Save Via Email" button to save your assessment since this version of Acrobat has the capability of saving documents. To save your assessment, select "Save As" from the File menu.

Submitting the Assessment

You must click the "Submit" button at the bottom of the form to submit your responses to OGE. If you receive a message requesting you to allow access to the internet after clicking on the "Submit" button, please select "Yes." You will receive a success page stating that your assessment has been submitted. If you do not receive this page or experience technical difficulties, please contact OGE via the contact information below.

Help

If you need help with the assessment, please contact Karen Rigby, Lead Management Analyst, by phone at (202) 482-9212 or at krigby@oge.gov.

NOTE: Complete this assessment only if you are an employee of the Federal Government.

1. Agency
2. Did your agency appoint any full-time non-career appointees (e.g., Presidentially Appointed, Senate Confirmed (PAS), Presidentially Appointed (PA), non-career Senior Executive Service (SES), Schedule C, etc.) from January 1 through December 31, 2010?
 - ☐ Yes
 - ☐ No

Note: For guidance on what constitutes a full-time non-career appointee for purposes of the Ethics Pledge see OGE DAEOgram DO-09-010 available at www.usoge.gov under the "Ethics Guidance" section.

Please type comments in the box below.

Note: Those responding "no" to question 2 are not required to answer the remaining questions in the assessment. However, please be sure to complete the contact information section at the end of the form.

3. For each category of appointee provide the number of full-time non-career appointees appointed between January 1 and December 31, 2010, and indicate the number who did and did not sign the Ethics Pledge. (Note: Please include all appointees who did not sign, regardless of whether or not they were required to sign. Additional explanatory information is requested in the next question.) The total number of appointees who signed the Ethics Pledge plus the total number who did not sign the Ethics Pledge should equal the total number appointed between January 1 and December 31, 2010.

Number of Full-Time Non-Career Appointees	Type of Full-Time Non-Career Appointees by Category					
	PAS	PA	Non-career SES	Schedule C	Other	Total
Appointed 01/01–12/31/2010						
Signed the Ethics Pledge						
Did not sign the Ethics Pledge						

If for any field above you are unable to provide a complete response, please explain in the box below. You may also add additional comments.

4. For full-time non-career appointees appointed between January 1 and December 31, 2010 who did not sign the Ethics Pledge find the appropriate category(ies) of reasons and indicate the number of appointees who fit into that category.

Rationale for Not Signing the Ethics Pledge	Number and Type of Full-Time Non-Career Appointees Who Did Not Sign the Ethics Pledge					
	PAS	PA	Non-career SES	Schedule C	Other	Total
a. Occupy an exempt non-policy-making position (Schedule C or other comparable authority)						
b. Appointed without break in service after serving in another position for which already signed Ethics Pledge						
c. Other (explain below)						

If other, explain here. You may also use the box below to provide a complete response or to add additional comments.

5. How many appointees appointed between January 1 and December 31, 2010 and subject to the Ethics Pledge were registered lobbyists during the 2 years prior to their appointment?

☐ None

Please type comments in the box below.

(If you did not have any appointees in 2010 subject to the Ethics Pledge who were registered lobbyists during the 2 years prior to their appointment, please skip to question 8.)

6. How many of the appointees identified in the previous question as registered lobbyists during the 2 years prior to their appointment have an ethics agreement addressing their obligations under paragraph 3 of the Ethics Pledge?

Please type comments in the box below.

7. For any appointee identified in question 5 who does not have an ethics agreement, please provide an explanation (e.g., appointee's duties sufficiently unrelated to prior lobbying activities that Pledge paragraph 3 not reasonably expected to limit participation in any agency matters).

Please type comments in the box below.

8. Section 3 of Executive Order 13490 provides a waiver mechanism for the restrictions contained in the Ethics Pledge. Indicate below how many waivers have been granted by your agency and which Pledge paragraphs were affected.

Number of Ethics Pledge Waivers Granted By Pledge Paragraph			
Paragraph 2 Only	Paragraph 3 Only	Paragraphs 2 & 3	Other (explain below)

If other, please explain here. Other comments may also be provided in the box below.

Please provide a point of contact to answer OGE questions regarding this assessment.

Name: _____

Title/Position: _____

Email Address: _____

Phone Number: _____

APPENDIX IV

Limited Waiver Pursuant to Section 3 of Executive Order 13490

After consultation with the Principal Deputy Counsel to the President, I hereby waive the requirements of paragraph 2 of the Ethics Pledge of Mr. Robert F. Bauer solely with respect to his former client the Democratic National Committee (DNC), and with respect to his former employer Perkins Coie LLP (Perkins Coie) in its capacity as counsel to the DNC and to President Barack Obama in his personal capacity. This waiver is necessary so that Mr. Bauer, when representing the interests of the President and the United States as Counsel to the President, may participate appropriately in such matters as the President's SF-278 Personal Financial Disclosure Form, due May 15, 2010, in which Perkins Coie represents the President, and in evaluating the campaign finance decision in *RNC v. FEC*, in which Mr. Bauer previously appeared on behalf of the DNC to support the government's position.

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (EO), Section 1, requires all covered political appointees to abide by several commitments. One of those commitments provides that a covered appointee may not for a period of two years from the date of his appointment participate in any particular matter involving specific parties that is directly and substantially related to his former employers or former clients. (Ethics Pledge, Paragraph 2.) For purposes of applying this restriction, the term "particular matter" has been interpreted to include "meetings or other communications relating to the performance of one's official duties with a former employer or client." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

A waiver of the restrictions contained in paragraph 2 of the Ethics Pledge may be granted upon a certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. EO, Sec. 3(b). By memorandum dated February 23, 2009, the Office of Government Ethics announced that the Designated Agency Ethics Official of each executive agency was the most appropriate designee to grant such waivers, after consultation with the Counsel to the President. See DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

Before his service as Counsel to the President, Mr. Bauer and Perkins Coie represented the President in his personal capacity, and Mr. Bauer's former firm continues to represent the President on such matters. If the ethics pledge were literally applied, when representing the interests of the President and the United States as Counsel to the President, Mr. Bauer would not be able to advise the President appropriately on particular matters that are directly and substantially related to Perkins Coie's representation of the President in his personal capacity. For example, Mr. Bauer could not discuss with Perkins Coie the President's SF-278 Personal Financial Disclosure Form. Such a result would be inconsistent with the purposes of the Ethics Pledge, which did not contemplate the situation in which the personal lawyer to the President enters government service as an advisor to the President. A waiver is also appropriate as a policy matter, to ensure that the Counsel to the President is not precluded, in advising the President, from discussing with personal counsel to the President matters that relate to the President's

official responsibilities. Accordingly, Mr. Bauer is provided a limited waiver of paragraph 2 of the Ethics Pledge permitting him, when representing the interests of the President and the United States as Counsel to the President, to be involved in particular matters in which he previously represented the President or in which Perkins Coie is or was counsel to the President in his personal capacity, to communicate with Perkins Coie.

Before joining the White House, Mr. Bauer also represented the DNC on such matters as *RNC v. FEC*, and Mr. Bauer's former firm continues to represent the DNC. Among the responsibilities of the Counsel to the President are advising the President and White House officials on such matters as the campaign finance and related legal issues that arise in the *RNC* case, which may involve his former client the DNC, and his former employer Perkins Coie, in its capacity as counsel to the DNC. Mr. Bauer is, moreover, a leading national authority on campaign finance and related matters and the government will benefit greatly from his expertise. Accordingly, I have determined that a waiver of the requirements of paragraph 2 of the Ethics Pledge is in the public interest in order to allow Mr. Bauer, when representing the interests of the President and the United States as Counsel to the President, to be involved in particular matters involving specific parties in which his former client the DNC is a party or in which his former employer Perkins Coie represents or has represented the DNC or the President in his personal capacity.

This waiver is limited: it does not cover any former clients of Mr. Bauer's other than the DNC, or any interactions with Perkins Coie that do not involve its work as counsel to the DNC or to the President in his personal capacity. Nor will Mr. Bauer serve as the final decision-maker on any of the matters covered by the waiver. Mr. Bauer does not have any continuing financial interest in his former client the DNC. His only continuing financial interest in Perkins Coie is the repayment of his capital account pursuant to his partnership agreement. Until Mr. Bauer has received all of contractual repayments from Perkins Coie, pursuant to 18 U.S.C. § 208, he may not participate personally and substantially in any particular matter that would have a direct and predictable effect on the ability or willingness of Perkins Coie to provide these payments to him. This waiver of the requirements of paragraph 2 of the Ethics Pledge for Mr. Bauer does not constitute a waiver of 18 U.S.C. § 208. Mr. Bauer will, of course, otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.

/s/ Norman L. Eisen

Dated: May 7, 2010

Special Counsel to the President and
Designated Agency Ethics Official

MEMORANDUM

April 5, 2010

TO: PAUL CARTTAR

FROM: WILSIE Y. MINOR
Designated Agency Ethics Official

SUBJECT: Authorization under 5 C.F.R. § 2635.502 and Limited Waiver under E. O. 13490

Summary

After consultation with the Counsel to the President and for the reasons stated and subject to the qualifications set forth in this memorandum, I hereby authorize your participation, pursuant to 5 C.F.R. § 2635.502 and Section 3 of Executive Order 13490, in the grant application review process as the Director of the Social Innovation Fund for the Corporation for National and Community Service. This includes a partial waiver of the restrictions in Executive Order 13490 with respect to your participation in the preliminary stages of the grant application review process in the event that any former employer or client of yours (as defined in the Executive Order) submits an application for funding under the Social Innovation Fund Notice of Funds Availability (NOFA), or is included as a subgrantee in any such application.

The Corporation has in place safeguards for this grant application review process. The grant application review process will be competitive and include panel reviews by staff and external experts, and will be managed by the Office of Grants Policy and Operations in accordance with regular agency procedures. The evaluations at each stage will be based on criteria that were established in the Notice of Fund Availability developed by the Corporation prior to your appointment.

This authorization and waiver is limited, however, in that you will recuse yourself from party-specific compliance or eligibility determinations, consensus meetings, discussions, and recommendations, or portions thereof, regarding any former employer or client, as those terms are defined under Paragraph 2 of the Pledge.

Background

You are the Director of the Social Innovation Fund (SIF) for the Corporation for National and Community Service. Through the SIF, the Corporation will make grants in the range of \$ 1 million to \$10 million to a network of eligible intermediary grantmaking institutions. These intermediary grantees will make and evaluate subgrants designed to produce measurable and transformational outcomes within specific issue areas or geographic regions.

Prior to selection for this position, you had relationships with one or more organizations who may interact with the SIF. You were a salaried employee of Monitor Group, a consulting firm. You were also an Executive Partner of New Profit Inc., an organization that reimbursed your expenses and paid Monitor Group for one half of your time. Finally, you served on the boards or have performed work for New Leaders for New Schools, Teach for All, and KaBoom!. New Profit, which provides services and funding to social entrepreneurs and their organizations, is a likely applicant for SIF funding, and the others may be involved as well. The grant application review process will consist of several stages.

First, applications will be reviewed for compliance with the NOFA submission requirements, including a determination of whether the applicant is an entity eligible for award. The initial review of eligible applications will be conducted by a four member panel to determine an applicant's ability to select, support and monitor the performance of a portfolio of innovative and effective nonprofit organizations. At this stage of the review (the "blended review"), panelists will apply the rubric in the NOFA, which puts 45% weight on the review of Program Design, 35% on Organizational Capacity, and 20% on Budget. Next, at a first consensus meeting, senior staff at CNCS will review the top applications and evaluate them in light of the goals of the SIF. The results of this meeting will be to confirm the group of approximately 30 applicants that will be sent forward to the "expert review" stage, where panels of two expert reviewers will assess applications based on the same rubric utilized in the blended review process, but will focus more specifically on evaluation plans and potential for replication. The expert review will be followed by a second consensus meeting, at which information from both the blended and expert reviews will be assessed. This meeting will reduce the number of applicants to a final competitive group of approximately 10-15 intermediaries. These top applications will be packaged for a pre-decision meeting with the senior Corporation official designated by the CEO¹ (hereinafter "designated official" or "designated selection official") to make the selections, which will include executive summaries of proposals, as well as summary information and statistics. After the pre-decision meeting, staff will have clarifying discussions with the applicants, informed by those questions and issues. They will present final proposals for the designated official's consideration at the final decision meeting.

Authorization and Limited Waiver

You are authorized to participate in matters of general applicability including general policy discussions and decisions concerning the operation of the SIF. This authorization and waiver is limited, however, in that you will recuse yourself from party-specific compliance or eligibility determinations, consensus meetings, discussions, and recommendations, or portions thereof, regarding any former employer or client, as those terms are defined under Paragraph 2 of the Pledge. This prohibition shall include Monitor Group, New Profit, Inc., New Leaders for New Schools and Teach for All, and Kaboom!. You are authorized to attend the two consensus meetings except to the extent described above. If, after these meetings, either your former employer or clients remain under consideration for the final competitive group; you will recuse yourself from the pre-decision meeting with the designated official and the final decision meeting with the designated official.

After the designated official's selection of the SIF intermediaries, this authorization and waiver permits you to perform the full range of your duties as the SIF Director related to grant implementation, monitoring, and evaluation. The waiver and recusal will remain in effect, if applicable for the 2011 new grant application and review process if your former employer or clients apply. The designated official will make the decision on funding for SIF intermediaries for the second year of the grant period.

I. 5 C.F.R. § 2635.502- Impartiality in Performing Official Duties

The Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) at 5 C.F.R. § 2635.502 require an employee to take appropriate steps to avoid an appearance of any lack of impartiality in the performance of his official duties. Under Section 502, when an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to the matter,

¹ The CEO will designate a selection official because his former employer has submitted notice of intent to apply.

he should not participate in the matter without informing an agency official and receiving authorization to participate in the matter.

The grant application review process for SIF funding may be a "specific party" matter if any organization for whom you served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee within the past year applies for funding as an intermediary or subgrantee. See 5 C.F.R. 2635.502(b)(1)(iv).

Section 2635.502(d) directs that an agency designee may authorize an employee to participate in a particular matter involving specific parties, which would otherwise be subject to the recusal requirements of that section, if the designee makes a determination, in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs any concern that a reasonable person may question the integrity of the Government's programs and operations.

As the Designated Agency Ethics Official, I serve as the agency designee pursuant to guidance from the U.S. Office of Government Ethics.

You and the Chief Executive Officer have asked for guidance on how best to proceed in light of your former employment with Monitor Group and your relationships with New Profit, Inc., New Leaders for New Schools and Teach for All, and your board membership with KaBoom! After weighing the factors articulated in Section 502(d), I have determined that it is appropriate to authorize your participation in the SIF grant application review process.

Implementation of the Social Innovation Fund provisions of the Edward M. Kennedy Serve America Act is a Corporation priority. The Corporation is committed to the long-term success of the SIF as a means to spur innovation and address our nation's most pressing social challenges. Your involvement in the awards process, and your leadership and expertise in philanthropy, nonprofit management consulting, nonprofit capital markets, and social innovation, will help to strengthen the implementation of this initiative.

In addition, there are safeguards that alleviate any concern about impartiality or the appearance of impartiality in the awards process. The grant application review process will include internal and external reviewers applying established eligibility criteria. These criteria were established in the Notice of Fund Availability developed by the Corporation prior to your appointment. The grant application review process will be competitive and include panel reviews by staff and external experts, and will be managed by the Office of Grants Policy and Operations in accordance with regular agency procedures. You have agreed to resign from Monitor and from your affiliations with New Profit, Inc., New Leaders for New Schools and Teach for All, and your board membership with KaBoom! Of central importance to this authorization and limited waiver are your representations that you will no longer have financial interests in any of these organizations, and therefore the outcome of the grant selection process will not impact your financial interests. Moreover, if any organization with whom you have a covered relationship applies for funding, you will recuse yourself from preparation for and participation in the pre-decision meeting with the designated selection official and the decision meeting with the designated selection official, except to the extent set forth in this Authorization and Limited Waiver.

In light of these factors and the requirement that you abide by the aforementioned recusals, I hereby determine that the governmental interest in your participation outweighs any countervailing appearance concerns and authorize your participation in the SIF grant application review process and matters of

general applicability related to SIF policies and operations and, after the designated selection official's grant award decision, I authorize your full participation in implementation, monitoring, and evaluation of the SIF cooperative agreement portfolio.

II. E. O. 13490 – Ethics Commitments by Employees in the Executive Branch

Executive Order 13490 provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients, including regulations and contracts. *See* E. O. 13490, Sec. 1, para. 2. Section 3 of the E.O. provides for waiver of the recusal provisions and as the DAEO at the Corporation, I exercise that waiver authority. *See* Office of Government Ethics Memorandum Re: Authorizations Pursuant to Section 3 of the Executive Order 13490, DO-09-008 (Feb. 23, 2009). The standard for waiving the restriction in the Executive Order is that it be in the public interest. *See* E.O. 13490, Sec. 3(a). The Executive Order states that "the public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy." *Id.*, Sec. 3(b).

I hereby determine that it directly serves the public interest that the Corporation and the CEO have the benefit of your participation in the SIF grant application review process and development of the policies and procedures of the SIF. The SIF is a vehicle to: 1) promote public and private investment in effective and potentially transformative portfolios of nonprofit community organizations; 2) identify more effective approaches to addressing critical social challenges and broadly share this knowledge; and 3) develop the grantmaking infrastructure necessary to support the work of social innovation in communities across the country. Given your unique qualifications and experience, your involvement, in the award process, subject to the limitations set forth herein, would contribute significantly to the accomplishment of these goals. Excluding you from the process entirely would make it impracticable for you to function effectively as Director of the SIF, yet any other individual who possesses the necessary expertise in venture philanthropy and social innovation would have similar relationships with potential SIF intermediaries or subgrantees.

Accordingly, I hereby certify that it is in the public interest for you as the SIF Director to participate in the SIF grant application review processes and discussions of policies, procedures, and implementation, monitoring, and evaluation of the entire SIF portfolio, subject to the limitations set forth above. Therefore, pursuant to E.O. 13490 Sec. 3(a), I waive the restriction in Section 1 of E.O. 13490, on participation in any specific party matter that is directly and substantially related to your former employers and clients, including Monitor Group, New Profit, Inc., New Leaders for New Schools and Teach for All, and Kaboom!. I have consulted with the Counsel to the President concerning this waiver.

The terms of this authorization and waiver along with guidelines for screening, implementation, and monitoring will be disseminated to the CEO, Chief of Staff, General Counsel, Chief of Program Operations, the Director of Grants Policy and Operations, and other employees as appropriate.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

FEB 12 2010

MEMORANDUM FOR CHARLES COLLYNS

FROM:

Bernard J. Knight, Jr., *BJK*
Assistant General Counsel (General Law, Ethics and Regulation)
and Designated Agency Ethics Official

SUBJECT:

Waiver of Ethics Pledge Paragraph 2 for International Monetary
Fund Matters

This memorandum constitutes a written waiver of paragraph 2 of the Ethics Pledge, as mandated by Executive Order 13490, for International Monetary Fund (IMF) matters. Under paragraph 2 of the Ethics Pledge, appointees are prohibited from participating for a period of two years in any particular matter involving specific parties in which a former employer or client is or represents a party if the appointee served that employer or client during the two years prior to the appointment. The IMF is considered your "former employer" under the Ethics Pledge, and you would be restricted from participating in particular matters in which the IMF is or represents a party. This would include any meeting or other communication with the IMF as part of your Departmental duties.

For the following reasons, among others, I believe a waiver from paragraph 2 of the Ethics Pledge for IMF matters is appropriate. First, the IMF is not a private company but rather an international organization of which the United States is a member. Second, in your capacity as Assistant Secretary for International Economics and Development, you will need to exercise discretion on particular matters where the IMF is or represents a party. Third, it will be difficult to assign these matters to another employee, nor can other adjustments reasonably be made, because the Department will rely on your expertise in international macroeconomic policy. Fourth, you will not be in a position to personally benefit from your IMF relationship while with the Department.

You will continue to participate in the IMF's defined benefit pension plan. This waiver does not permit you to be involved in any particular matters involving the IMF that affect the IMF's ability or willingness to continue your defined benefit pension plan benefits (or the pension plan benefits of your spouse). For all of these reasons, I have determined that it is in the public interest to grant the waiver.

The White House has been consulted and has concurred in the granting of a waiver of paragraph 2 of the Ethics Pledge for IMF matters. The remainder of the Ethics Pledge is in full force, and paragraph 2 of the Ethics Pledge remains in effect for all applicable entities other than the IMF.



Department of Energy

Washington, DC 20585

JUN 30 2010

MEMORANDUM FOR: DONALD L. COOK
DEPUTY ADMINISTRATOR FOR DEFENSE
PROGRAMS
NATIONAL NUCLEAR SECURITY
ADMINISTRATION (NNSA)

FROM: SUSAN F. BEARD
ASSISTANT GENERAL COUNSEL FOR GENERAL
LAW AND DESIGNATED AGENCY ETHICS
OFFICIAL
OFFICE OF THE GENERAL COUNSEL

SUBJECT: Limited Waiver of Paragraph 2 of the Ethics Pledge for
non-monetary specific party matters involving Sandia
Corporation and general budgetary matters involving
Defense Programs

Pursuant to the authority delegated under Section 3 of Executive Order 13490 "Ethics Commitments by Executive Branch Personnel" (January 21, 2009) and after consultation with the Counsel to the President, I hereby certify, for the reasons stated below, that it is in the public interest for you to receive a limited waiver of the restrictions of paragraph 2 of the Ethics Pledge as Deputy Administrator for Defense Programs of the National Nuclear Security Administrator (NNSA).

You were previously employed by Lockheed Martin as the Managing Director, Chief Executive Officer, and Special Advisor of the Atomic Weapons Establishment (AWE) and as a President of a Lockheed Martin Company since March of 2006. AWE is a UK government-owned establishment that is managed and operated by a private company in which Lockheed Martin is a member. You advise that you did not have any job responsibilities related to Sandia Corporation since beginning your job responsibilities at the AWE.

The position of Deputy Administrator for Defense Programs (Deputy Administrator) was established pursuant section 3214 of Public Law 106-65, codified at 50 U.S.C. § 2404, to manage the Stockpile Stewardship Program. As Deputy Administrator, your responsibility is to maintain and enhance the safety, reliability, and performance of the United States nuclear weapons stockpile through design, production, and testing. You are further responsible for directing, managing, and overseeing the nuclear weapons production facilities and the national security laboratories. Sandia National Laboratories, along with Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Kansas City Plant, Pantex Plant, Y-12, and Savannah River Site are managed by the Deputy Administrator. Sandia Corporation is a wholly owned subsidiary of Lockheed Martin and the management and operations contractor of Sandia National Laboratories.



Therefore, as the nuclear stockpile manager for these laboratories, it would be untenable to recuse you from all matters related to Sandia Corporation.

Absent a waiver, you would be prohibited by paragraph 2 of the Ethics Pledge from participating in any particular matter involving specific parties in which either Lockheed Martin or Sandia Corporation, a wholly owned subsidiary of Lockheed Martin, is or represents a party. Your knowledge of the nuclear weapons landscape and expertise in nuclear security and safety are essential to the United States nuclear weapons program. Your ability to engage in such decision-making about the future of NNSA's weapons program is in the public interest and fundamental to NNSA's ability to remain in the forefront of nuclear security. This limited waiver is granted with the understanding that you will comply with the restrictions set forth below. Through this limited waiver, I authorize you to participate in non-monetary specific party matters involving Sandia Corporation and general budgetary matters involving Defense Programs. This includes your participation in the day-to-day operations of Sandia Laboratories, including the management and performance of program activities and facilities operations carried out in support of the Stockpile Stewardship Program. Further, I authorize you to engage in one-on-one conversations with Sandia management on these matters, which could involve discussions on personnel involved in Sandia's stewardship program activities. Furthermore, I authorize you to serve as a member of the NNSA Management Council and the activities associated with Program and Project Management for the administration of the NNSA complex when the Administrator is unavailable. And finally, I authorize you to participate in the activities associated with Program and Project Management for the Acquisition of Capital Assets.

However, this limited waiver does not authorize you to participate in the following aspects of particular matters involving specific parties in which Sandia Corporation is a party or represents a party: (1) any evaluation of the work performed; (2) any award fee process; (3) any extension of the contract; (4) any recompetition of the contract; (5) negotiations affecting Sandia Corporation's financial arrangements between Sandia and the Department of Energy (e.g. work authorizations, new work awards outside of the M & O contract, cooperative agreements, grants, work for others, personnel matters requiring additional financial commitments, etc.); (6) contract disputes; and (7) site split budgetary matters or budgetary matters unique to Sandia Corporation. The authorization does not extend to particular matters affecting Lockheed Martin Corporation uniquely and specifically.

This limited waiver does not affect your obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.



USAID
FROM THE AMERICAN PEOPLE

TO: Lisa C. Gomer

Determination to Grant Waiver and Waiver of Ethics Pledge Restriction on
Participating in Particular Matters Involving
the United Nations Development Program

Background Regarding Ethics Pledge

Executive Order (EO) 13490, "Ethics Commitments by Executive Branch Personnel," §1, requires all covered political appointees to abide by several commitments. One of those commitments provides that a covered appointee may not for a period of two years for the date of his or her appointment participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients. (President's Ethics Pledge, Paragraph 2.) For purposes of applying this restriction, the term "particular matter" has been interpreted to include "meetings or other communication relating to the performance of one's official duties with a former employer or client." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

However, a waiver of the restrictions contained in Paragraph 2 may be granted upon a certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. EO, §3(b). By memorandum dated February 23, 2009, the Office of Government Ethics announced that the Designated Agency Ethics Official of each executive agency had been delegated the authority to grant such waivers, after consultation with the Counsel to the President. See DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

Background Regarding Your Appointment

You are the General Counsel of the U.S. Agency for International Development (USAID), as a Non-Career Member of the Senior Executive Service. In that capacity, you serve as the principal legal advisor to the Administrator of USAID, including all matters related to procurement law.

You were previously an employee of the United Nations (UN). That employment ended in 2006, and does not implicate Paragraph 2 of the President's Ethics Pledge. However, during the time period relevant to Paragraph 2 of the President's Ethics Pledge you engaged in several limited-term consultancies with the UN on discrete programs. There were a total of five such consultancies.

You requested a waiver of Paragraph 2 of the President's Ethics Pledge so that you may participate in certain particular matters involving the United Nations. Specifically, this request for a waiver is primarily focused on a U.S. Government need for you to participate in discussions among the United States Mission to the UN (USUN), USAID and the United Nations Development Program (UNDP). USUN (specifically Ambassador Rick Barton, the U.S. Representative to the UN Economic and Social Council (UN-ECOSOC)) is leading a forum for discussion on how best to influence UNDP's strategic direction and align U.S. national development policy with a key multilateral partner. You will be involved in working out how the USAID can work more closely together on special initiatives and in revising our public international organization agreement so that USAID can work more easily with UNDP when the decision is made to do so. The U.S. Government needs to negotiate a model that will meet both USAID and UNDP's needs. The forums/meetings are designed to provide for information gathering, brainstorming, analysis, and discussion of funding mechanisms broadly, rather than entering into details of any contractual partnerships.

After consultation with the Office of White House Counsel, I determine that first, the literal application of the restriction here is inconsistent with the purpose of the restriction, and second, it is in the public interest for you to participate in these discussions with UNDP.

When the former employer or client is an international organization, which consists of representatives of many countries, including the United States, the concerns underlying the restrictions are not implicated. Further, there is little likelihood of commercial gain that can be obtained by government employees engaged in activities affecting the interests of his or her former employer when the former employer is an international organization. Accordingly, literal application of the restriction in this situation is inconsistent with the purposes of the restriction.

In addition, it is essential that USAID, and the U.S. Government as a whole, have an effective voice in the previously-described discussions. You have a unique organization-wide view and will be involved in leadership meetings with the USAID Administrator, and because of your knowledge of and experience with the UN, including UNDP, your participation in these discussions would be vitally useful to U.S. Government interests. There is no other appointee at your senior level within the Agency who would have the ability to advance the Agency's interests at the same level. Accordingly, as a separate and independent basis of the waiver, I determine that it is in the public interest for you to participate in the defined matter relating to your former employer and client, the UN.

Based on the above analysis, I waive the requirements of Paragraph 2 of the President's Ethics Pledge as it pertains to your future involvement in discussions among the USUN, USAID and UNDP to revise, develop and review the public international organization agreement.

Furthermore, while a reasonable person with knowledge of the relevant facts may question your impartiality in matters pertaining to the UN, I make a separate determination, pursuant to 5 C.F.R. §2635.502, that the Government's interest in your ability to participate in these matters, given the critical responsibilities associated with your position as USAID General Counsel, outweighs the concern that a reasonable person may question the integrity of USAID's programs and operations.

7/27
Date

Arnold J. Haiman
Designated Agency Ethics Official

Waiver Pursuant to Section 3 of Executive Order 13490

After consultation with the Counsel to the President, I hereby authorize General James L. Jones pursuant to Section 3 of Executive Order 13490 to provide a brief public introduction for former President Clinton on April 28, 2010 at an event hosted by the Atlantic Council of the United States (Atlantic Council).

The Atlantic Council is a not-for-profit 501(c)(3) entity that promotes U.S. leadership and engagement in international affairs. General Jones served on a volunteer, uncompensated basis as the Chairman of the Board of Directors of the Atlantic Council until January 2009. On April 28, 2010, the Atlantic Council plans to honor William J. Clinton, 42nd President of the United States, for his distinguished international leadership and other accomplishments during his presidency at their annual Awards Dinner. General Jones was personally asked by former President Clinton to introduce him before the award presentation.

General Jones's introduction will be brief. He does not intend to speak about the work of the Atlantic Council and will not solicit any donation or other support for the Atlantic Council during his introduction. General Jones will not otherwise participate in the promotion, production, or presentation of the Awards Dinner. His remarks will be open to the press.

Under the Ethics Pledge, the Atlantic Council is considered to be a former employer of General Jones despite the fact that he was an uncompensated volunteer, and so he requires authorization under Section 3 of the Executive Order to speak at the Awards Dinner. I have determined that the criteria of Section 3 are met here. Allowing General Jones to speak under these circumstances is in the public interest, and the contrary outcome would be inconsistent with the purposes of the Pledge.

I understand that General Jones will otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.

/s/ Norman L. Eisen

Dated: April 28, 2010

Special Counsel to the President and
Designated Agency Ethics Official



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1600

September 24, 2010

GENERAL COUNSEL

MEMORANDUM FOR ZACHARY J. LEMNIOS, DIRECTOR, DEFENSE RESEARCH AND
ENGINEERING

SUBJECT: LIMITED WAIVER OF PARAGRAPH 2 OF THE ETHICS PLEDGE

Pursuant to the authority delegated under Section 3 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009), and after consulting with and receiving coordination from the White House Special Counsel for Ethics and Government Reform, I hereby waive the restrictions of Paragraph 2 of the Ethics Pledge ("Pledge") as it applies to you and your former employer, the Massachusetts Institute of Technology ("MIT") to include the MIT Lincoln Laboratory ("Laboratory").

As the Director, Defense Research and Engineering ("DDR&E"), you serve as the senior science and technology executive for the Department of Defense ("DoD") and are responsible for overseeing the activities of the Office of the DDR&E and its eight subordinate organizations. DDR&E is responsible for ensuring that warfighters have superior and affordable technology to support their missions and advanced capabilities to fight and win wars. DDR&E is charged with providing thought leadership for DoD's near-, mid-, and far-term research and engineering efforts, and for developing world class science, technology, engineering, and mathematics capabilities for DoD and the Nation.

Prior to assuming your duties as DDR&E on July 2, 2009, you served as the Chief Technology Officer of the Laboratory. The Laboratory is a federally-funded research and development center ("FFRDC") chartered to apply advanced technology to national security challenges. Its research and development activities focus on long-term technology development as well as rapid system prototyping and demonstrations for DoD. In meeting this objective, the Laboratory works with industry to transition new concepts and technology for system development and deployment. The Laboratory is widely-recognized as possessing unique qualifications in the area of advanced microelectronics and focuses specifically on advanced wartime technology development and system prototyping for national security needs.

Executive Order ("E.O.") 13490 provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the employee's former employer or former clients. See E.O. 13490, Sec. 1, para. 2. Section 3 of the E.O. provides for a waiver of the recusal provisions upon certification either that the literal application of the restrictions is inconsistent with the purpose of the restriction, or because the waiver is in the public interest. See E.O. 13490, Sec. 3(a). The E.O. states that "the public interest shall include, but not be limited to, exigent



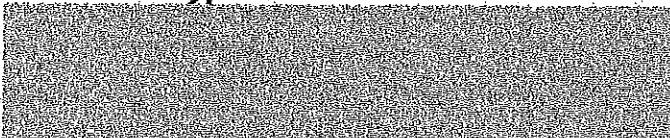
circumstances relating to national security or to the economy." *Id.*, Sec. 3(b). Since your appointment, you have strictly complied with Pledge obligations, turning down a variety of opportunities to brainstorm, develop, or evaluate national security related technological or scientific concepts with renowned experts at both MIT and the Laboratory. Absent a waiver of the Pledge restrictions, you will continue to be barred from engaging in such communications for another eleven months.

I have determined, based upon the reasons set forth below, that a limited waiver of the restrictions on you under Paragraph 2 of the Pledge is justified as being in the public interest.

First, your ability to engage in communications with the Laboratory and with other elements of MIT correlates directly to exigent circumstances relating to national security. This is based upon the nature of your position and the fact that the Laboratory is an FFRDC created to support DoD's research efforts. Second, you are singularly qualified to perform the duties because of your level of technical expertise, which uniquely enables you to leverage communications with experts, such as those from MIT and, in particular the Laboratory, for the benefit of DoD. Although other members of your staff can and have engaged in these kinds of communications and meetings, they do not possess your ability to speak for DoD on these matters. As a result, the effect of the Pledge recusal has been to eliminate a key sector of the scientific and technological world from your purview, which is particularly disadvantageous considering DoD's wartime needs. Finally, the primary purpose of the restrictions in paragraph 2 is to address concerns that the former employer may appear to have privileged access, which it may exploit to influence the appointee to its advantage. The danger of special access is negated here because of factors like the Congressional funding cap for FFRDCs, the fact that DDR&E is not responsible for the funding allocation of DoD's FFRDCs, and because you will recuse yourself from decision-making processes tied to specific grants or contracts in which MIT may be an interested party. Accordingly, I have determined that the need for you to communicate with the Laboratory and other components of MIT clearly outweighs any dangers that the restrictions under Paragraph 2 were meant to address.

Pursuant to this limited waiver, you are authorized to participate in non-monetary specific party matters involving the Laboratory and other elements of MIT, including one-on-one and group conversations with MIT, including Laboratory, employees on such matters. This waiver does not permit your involvement in any decisions related to the award or funding of specific procurements, grants or contracts in which MIT, including the Laboratory, is or seeks to be a party.

This waiver is granted with the understanding that you will comply with the remaining provisions of the Executive Order and with all other Government ethics rules.



Jeh Charles Johnson
Designated Agency Ethics Official

TO: Ambassador Phillip D. Murphy

Limited Waiver of Section Two of the Obama Ethics Pledge

Background Regarding Ethics Pledge

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," (EO) Section 1, requires all covered political appointees to abide by several commitments. One of those commitments provides that a covered appointee may not, for a period of two years from the date of his or her appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients. (Obama Ethics Pledge, Paragraph 2).

However, a waiver of the restrictions contained in Paragraph 2 of the pledge may be granted upon certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. EO, Sec 3(b). By memorandum dated February 23, 2009, the Office of Government Ethics (OGE) announced that the Designated Agency Ethics Official of each executive agency had been delegated the authority to grant such waivers, after consultation with the Counsel to the President. See DO-09-008, OGE Memorandum to Designated Agency Ethics officials, February 23, 2009.

Background Regarding Your Appointment

On August 12, 2009, you assumed the position as the United States Ambassador to the Republic of Germany. In that capacity, you are subject to the pledge you signed during your nomination process wherein you agreed that for two years after the date of your appointment you will not "participate in any particular matter involving specific parties that is directly and substantially related to [your] former employer or former clients." For purposes of the pledge, the term "former employer" includes anyone for whom you have "within the 2 years prior to the date of [your]... appointment, served as employee, officer, director, trustee or general partner..." EO, Section 2(i). Consistent with this requirement, you may not participate in a "meeting or other communication" with a former employer "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."

Prior to assuming your position with the Department of State, you served as an uncompensated board member of the United States Soccer Federation World Cup Bid Committee (Bid Committee). You served in this position for a brief

period of approximately six months between February 2009 and August 2009. You request a waiver of Section 2 of the Ethics Pledge so that you may participate in an official capacity in particular matters involving the Bid Committee that directly and substantially relate to your duties as Ambassador.

Where the former employer is a not-for profit organization with interests in matters in which it is involved, the concerns underlying the restrictions are not as great as they would be if the organization were motivated by financial interests. See DO-09-11, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009. Indeed, the United States Soccer Federation is a non-profit 501(c)(3) entity whose goal is to secure the 2018 or 2022 World Cup through the Bid Committee for the United States.

After consultation with the Office of White House Counsel, I determine that it is in the public interest for you to participate in certain matters relating to the United States Soccer Federation World Cup Bid Committee.

Communications with the United States Soccer Federation World Cup Bid Committee

The US Soccer Federation is a non-profit, nonpartisan organization dedicated to promoting and governing soccer in the United States. The Federation's Bid Committee is a committee whose purpose is to bring either the 2018 or 2022 World Cup to the United States. The Secretary of State has urged posts in voting-member nations to engage with Fédération Internationale de Football Association (FIFA) entities and the Bid Committee in support of the American bid for the 2018 or 2022 World Cup. FIFA's Executive Committee (ExCo) will vote on December 2, 2010 for both the 2018 and 2022 World Cup venue hosts. The German Football Association has a voting member on the ExCo and will vote on the World Cup's venue in December. Germany's vote is important to the United States efforts to procure the votes necessary to be selected to host either the 2018 or 2022 World Cup.

Several factors support a waiver. Importantly, neither the Bid Committee nor you will obtain a financial benefit from your efforts. Further, due in part to your relatively short amount of time as a member of the Bid Committee and the fact that your position was uncompensated, there is little likelihood of a conflict of interest or an appearance thereof.

In addition, it is in the United States best interests for you to host events and facilitate meetings between the Bid Committee and other German football officials to include FIFA and the German Football Association. According to the Secretary, hosting the World Cup in the United States would bring multiple public diplomacy and financial benefits to the U.S. and as a result, the United States Government

strongly supports the bid for the World Cup. Pursuant to the June 22, 2010 cable, the Secretary has requested posts in countries with voting members on the ExCo to promote and support the U.S. World Cup bid through appropriate activities. The Secretary has requested that Ambassadors and other key personnel publicly reaffirm the Department's commitment to the bid in appropriate public fora. Posts have been asked to include FIFA ExCo members at embassy functions and ensure the display of the U.S. Bid Committee's logo or other materials in appropriate places. A segment of post's proposed action plan to further the task of securing the German vote includes your hosting a dinner at the embassy that would include ExCo members and U.S. Bid Committee members. We understand that this dinner, and other similar events, will assist the U.S. in obtaining the German ExCo vote.

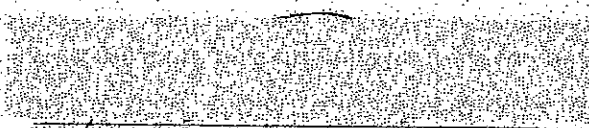
According to the information post provided on your behalf, we understand that your personal engagement with the efforts to secure the World Cup is important because the German Football Association officials as well as German government officials are aware of and have grown accustomed to your engagement with soccer and desire to bring the World Cup to the United States. We understand that soccer has been a pivotal outreach tool for you and has formed a platform upon which you have built many of your diplomatic relations with German officials. In addition, we understand that you have attended soccer matches in Germany and have built relationships with key members of the German Football Association, including the ExCo voting member, Franz Beckenbauer. We understand that you are concerned that your absence from engagements between the German football officials and the Bid Committee would be misperceived and may adversely affect the ability for the United States to win the German vote. In fact, post has indicated that it is more likely that Mr. Beckenbauer would accept an invitation to attend a function at the Embassy from you as opposed to an invitation from other Embassy officials. Thus, your participation is critical in helping to build the relationship between the U.S. Bid Committee members and the appropriate German football officials. Because of your intimate knowledge of the game and previously established credibility with key German Football officials, you are uniquely qualified to assist in convincing the German voting member that the United States is the best choice of venue for the World Cup.

Based on a consideration of the circumstances, I do not believe that your participation under the terms of this waiver would create a conflict of interest or an appearance thereof. Further, I believe that your participation, consistent with the terms of this waiver, is in the public's best interests.

Waiver

Based on the above analysis and after consulting with the White House Counsel's Office, I determine that a limited waiver of the restriction is appropriate and that it is in the public interest to grant you a waiver. Accordingly, I waive the requirements of paragraph 2 of the Pledge as it pertains to your communications to secure for the United States the World Cup in either 2018 or 2022. This waiver is limited to events, meetings, and communications you attend, host, sponsor, or make on behalf of the United States that are focused on bringing the U.S. Bid Committee in contact with the appropriate German football officials. Further, this waiver will expire upon the completion of the ExCo vote on 2 December 2010. This waiver does not extend to any activity or effort to benefit financially the U.S. Bid Committee.

29 Sep 2010
Date


James H. Thessin
Designated Agency Ethics Official



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

GENERAL COUNSEL

MAR 10 2010

MEMORANDUM FOR THE ASSISTANT SECRETARY OF THE ARMY
(ACQUISITION, LOGISTICS & TECHNOLOGY)


SUBJECT: Limited Waiver of Paragraph 2 of Ethics Pledge

After consulting with and receiving coordination from the White House Special Counsel, I hereby waive paragraph 2 of the Ethics Pledge, set forth in Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009), as it applies to you and your former client and previous employer, Lockheed Martin Corporation.

The mission of the Department of the Army's Office of the Assistant Secretary of the Army for Acquisition, Logistics & Technology is to help ensure the Army's readiness and ability to succeed on the battlefield. As the Army's senior acquisition official, you will play a major role in advising, making recommendations and participating in decisions on the largest Army programs. Your extensive knowledge and expertise in the areas of engineering, acquisition, and management are essential to making informed and timely decisions about Army programs. Your ability to advise on such matters is in the public interest and fundamental to the Army's mission. This waiver is granted with the understanding that you will comply with the remaining provisions of the Executive Order and with all pre-existing government ethics rules.

This waiver does not permit your involvement in any particular matter which will have a direct, predictable, and substantial affect on Lockheed Martin's financial ability, including its ability or willingness to continue paying your defined benefit plan benefits.

For these reasons, I have determined that it is in the public interest to grant this waiver.


Jeh Charles Johnson
DoD Designated Agency Ethics Official






USAID
FROM THE AMERICAN PEOPLE

January 12, 2010

MEMORANDUM FOR THE ADMINISTRATOR

FROM: James M. Peters, Alternate Designated Agency Ethics Official 
SUBJECT: Waiver Pursuant to 5 C.F.R. §2635.502(d) and of Paragraph 2 of the President's Ethics Pledge

I have determined that it is in the public interest to grant a waiver pursuant to 5 C.F.R. §2635.502(d) and of Paragraph 2 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009) to Rajiv J. Shah as Administrator of the United States Agency for International Development (USAID).

This waiver addresses Dr. Shah's relationship with the Bill & Melinda Gates Foundation (Gates Foundation), his former employer and a partner in USAID's mission to provide economic, development, and humanitarian assistance around the world. The Gates Foundation is a funding source for projects in which the two organizations share the same objectives, but generally not a recipient of USAID grants or other funding. Dr. Shah has a "covered relationship" with the Gates Foundation based solely upon his former employment, which ended in June 2009. Pursuant to 5 C.F.R. §2635.502(b)(iv) this covered relationship will last until June 2010. In addition, under Paragraph 2 of the President's Ethics Pledge, a similar relationship will last until June 2011.

Dr. Shah previously served in a variety of roles at the Gates Foundation, including as Director of Strategic Opportunities and as Director of the Agricultural Development Program. The Gates Foundation is significantly involved in national and international efforts to alleviate hunger and poverty and to improve health around the world, and as such shares many of the same objectives as USAID. While at the Gates Foundation, Dr. Shah led the agricultural development aspects of its mission. In his most recent position as the Under Secretary for Research, Education and Economics at the U.S. Department of Agriculture (USDA), Dr. Shah was responsible for similar efforts. The Designated Agency Ethics Official at USDA granted a waiver for these purposes.

In his capacity as the Administrator, Dr. Shah needs to engage in communications and meetings – both one-on-one and in group settings – involving Federal agencies, foreign countries, grantees, and non-Federal entities to assess the most efficient and effective means for distributing the technical and financial assistance committed by these various parties. The non-Federal entities he needs to engage with include the Gates

Foundation. In these efforts, the Gates Foundation is expected to be a major participant through its Global Development and Global Health programs. Other collaborations with the Gates Foundation are anticipated.

In light of the importance of the aforementioned efforts by USAID, I have determined that it is in the public interest to grant Dr. Shah a waiver pursuant to 5 C.F.R. §2635.502(d) and of Paragraph 2 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009). This is based upon my consideration of: 1) the nature of the covered relationship (a former employer, with no continuing financial interests); 2) the potential effect any given matter will have on the financial interests of the Gates Foundation (none are foreseen); 3) the nature and importance of Dr. Shah's role in the matter (potentially significant, but with no financial impact on the Gates Foundation); 4) the sensitivity of the matter (potentially sensitive, but with no financial impact on the Gates Foundation); 5) the difficulty of reassigning the matter to another employee (difficult to reassign the role of the Administrator); and 6) adjustments that may be made in Dr. Shah's duties (difficult to make adjustments to the role of the Administrator).

Accordingly, I authorize Dr. Rajiv J. Shah to participate personally and substantially in all matters affecting the Gates Foundation, including particular matters involving specific parties, in connection with the development and implementation of partnerships and in connection with shared USAID and Gates Foundation objectives. This includes all communications with the Gates Foundation that do not have a direct and predictable financial impact upon the Gates Foundation, as well as public meetings and public recognition of the Gates Foundation.

This waiver does not include authorization for participation in any grants or procurement instruments between USAID and the Gates Foundation, or in any similar transactions that would result in a transfer of Federal funds to the Gates Foundation. In the event that a particular matter should arise in which Dr. Shah may be personally and substantially involved, and which would require his authorization for participation in any grants or procurement instruments between USAID and the Gates Foundation, or in any similar transactions that would result in a transfer of Federal funds to the Gates Foundation, Karen Turner or Jerry O'Brien, of USAID's Office of Development Partners, will screen such matters and consult with me as USAID's Assistant General Counsel for Ethics and Administration. At that point, a determination will be made that 1) the legal disqualification does not apply; 2) that a specific waiver is appropriate; or 3) that Dr. Shah must be recused from the specific matter.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Washington, DC 20201

September 17, 2010

MEMORANDUM FOR HAROLD E. VARMUS, M.D.

FROM: EDGAR M. SWINDELL
Associate General Counsel for Ethics
Designated Agency Ethics Official

SUBJECT: Waiver under E.O. 13490 and Authorization under 5 C.F.R. § 2635.502

The purpose of this memorandum is to provide a limited waiver of the restrictions in Section 1, Paragraph 2, of Executive Order 13490 (the Ethics Pledge or E.O.), and a limited authorization, pursuant to 5 C.F.R. § 2635.502(d), to permit your participation in certain, limited, particular matters involving specific parties that involve your former employer, Memorial Sloan-Kettering Cancer Center (MSKCC). The purpose of this limited waiver is solely to permit you to continue to conduct cancer research in your official capacity as Director of the National Cancer Institute in collaboration with your former employer, MSKCC. This waiver is being issued because of the great potential public benefit of your continued collaborative research with your former employer, MSKCC. This limited waiver and limited authorization will allow you to carry out effectively your duties as the Director of the National Cancer Institute (NCI), a component of the National Institutes of Health (NIH) within the Department of Health and Human Services (HHS).

I. Background Regarding Your Appointment

You have been appointed to serve as NCI Director. NCI leads the efforts of the National Cancer Program and the NIH to reduce dramatically the burden of cancer and improve the lives of cancer patients and their families, through research into prevention and cancer biology, the development of new interventions, and the training and mentoring of new researchers.

You were previously the President and Chief Executive Officer of MSKCC, a cancer treatment and research institution founded in New York in 1884. MSKCC is an NCI-designated cancer center that is funded through a competitive grant process based on its ability to demonstrate scientific excellence and the capability to integrate a diversity of research approaches to focus on the problem of cancer.

Throughout your scientific career, including your prior tenure as the Director of the NIH from 1993 until the end of 1999, as well as your years at MSKCC, you have maintained a research laboratory. Through these laboratories you have continued your research into the molecular mechanisms and genetic bases of cancer, building on your earlier work that resulted in your selection as a co-recipient of the 1989 Nobel Prize in Physiology or Medicine, the 2001 National Medal of Science, and other significant honors. You plan to continue this important work in an

NIH intramural laboratory under the scientific, managerial, and administrative authority of the leadership of the National Human Genome Research Institute (NHGRI), another of the institutes and centers that comprise the NIH, as part of your official duties as NCI Director.

As a result of your prior position at MSKCC, MSKCC meets the definition of “former employer” for purposes of Section 1, Paragraph 2, of the Ethics Pledge. In addition, you have a “covered relationship” with MSKCC for purposes of 5 C.F.R § 2635.502. Without a limited waiver of Section 1, Paragraph 2, of the Ethics Pledge and a limited authorization under 5 C.F.R § 2635.502, you will be prohibited from participating in particular matters involving your official research in which MSKCC is a party or represents a party.

For two years following your appointment, the Ethics Pledge prohibits your participation in any particular matter involving specific parties that is directly and substantially related to your former employer MSKCC. See E.O. 13490, § 1, ¶ 2. Absent a waiver, this restriction would effectively preclude your conferring with MSKCC researchers about projects you led during your MSKCC employment that are now being pursued by other MSKCC researchers, and continuing your ongoing projects that will transition into the NIH intramural laboratory. Similarly, without a waiver, you would be prohibited from engaging in any collegial conversation or collaborative research with an MSKCC investigator, even where such communication or research might lead to a demonstrable public health benefit.

Because the transition and operation of your laboratory will require communication and collaboration with MSKCC, you requested a limited waiver of Section 1, Paragraph 2, of the Ethics Pledge with respect to your former employer on the basis that a limited waiver would be in the public interest. You have also requested a 5 C.F.R § 2635.502(d) authorization with respect to your former employer on the basis that the interest of the Government in the employee’s participation outweighs any concern that a reasonable person may question the integrity of the Government’s programs and operations.

II. Ethics Commitments by Employees in the Executive Branch – E.O. 13490

Background Regarding Ethics Pledge

The Ethics Pledge provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee’s former employer or former clients, including regulations and contracts. See E.O. 13490, § 1, ¶ 2. The reference to “regulations,” which normally are considered particular matters of general applicability rather than particular matters involving specific parties, encompasses only those rules that have a special or distinct effect on the identified party other than as part of a class. The E.O. defines “former employer” to include any person for whom the appointee was employed within the two years prior to the date of his appointment.

Section 3 of the E.O. provides for waiver of the recusal provisions; and as the HHS Designated Agency Ethics Official (DAEO), I exercise that waiver authority in consultation with the Office

of the Counsel to the President. See Office of Government Ethics Memorandum Re: Authorizations Pursuant to Section 3 of Executive Order 13490, DO-09-008 (Feb. 23, 2009). The standard for waiving the restriction in the Ethics Pledge is that the literal application of the restriction is inconsistent with the purposes of the restriction, or that it be in the public interest to grant the waiver. See E.O. 13490, § 3(a). The E.O. states that “the public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy.” *Id.*, § 3(b).

Limited Waiver of Section 1, Paragraph 2 of the Ethics Pledge

I hereby determine that it directly serves the public interest that you be able to participate fully and actively in your official capacity as NCI Director in scientific research in the fight against cancer, given your commitment to the advancement of science in the United States, your significant and extensive achievements in the field, and the interest of the American people in ensuring that highly-qualified experts continue to search for clues that will lead to better prevention and treatment of human illness and suffering.

Accordingly, pursuant to E.O. 13490, § 3(a), I waive the restriction in E.O. 13490, § 1, ¶ 2, solely to allow your participation as an intramural investigator in the scientific aspects of particular matters involving specific parties that directly and substantially relate to your former employer MSKCC subject to the limitations set forth below.

In order to ensure that the cancer research and collaboration described above may proceed without impediment, this waiver authorizes you to participate as part of your official duties as NCI Director as an intramural investigator within the intramural research program of the NHGRI in particular matters involving specific parties that directly and substantially relate to MSKCC, including where this entity is a party to the matter, represents a party to the matter, is a participant, or a contributor, either individually or as part of a group. Subject to the limitations described below, you may engage fully in your research-related duties as an intramural researcher, including consultation, collaboration, or other active participation as an investigator or supervisor of others engaged in the actual conduct of research projects, and the presentation or publication of research findings, directly or indirectly involving MSKCC researchers.

Limited Application of this Waiver

You may not participate in any meetings or conversations with MSKCC, other than those you may have in the course of the research and research-related activities of an intramural investigator in your official capacity. However, you may participate in meetings or have communications with MSKCC about particular matters of general applicability or regarding policies that do not constitute particular matters provided the meeting or communication is “open to all interested parties.” See OGE Memorandum DO-09-011 (March 26, 2009).

You may not participate in the management and administration of the programs and operations of the NCI, including the National Cancer Program and other programs of the institute described at Title IV, Part C, Subpart 1 of the Public Health Service Act, 42 U.S.C. §§ 285-285a-9, that

relate to particular matters involving specific parties, such as contracts, grants, audits, investigations, disputes, litigation, administrative appeals, and similar transactions or proceedings involving MSKCC as an identified party. In relation to grants and contracts, in particular, your obligation to recuse extends to both investigator-initiated applications submitted by MSKCC and Requests for Applications (RFAs) in response to which MSKCC submits an application.

You may not participate directly or indirectly, formally or informally, in any aspect of the peer review process, the agency decision to make or deny an award, the administration of an award, extension or renewal requests, or site visits or other reviews undertaken as part of the award oversight process where MSKCC is or represents a party, is a participant, or a contributor, either individually or as part of a group.

You have agreed to divest permanently any intellectual property rights associated with discoveries made during your MSKCC tenure, and you have confirmed that you will retain no continuing financial ties to MSKCC. Additionally, any intellectual property rights developed through your research while you are serving as NCI Director will be subject to the Federal Technology Transfer Act,¹ and owned by the Federal Government.

While you may work on government-funded projects and research, you may not be named or identified as Principal Investigator, co-investigator, or equivalent on any request for grants or funds in which MSKCC is a collaborator from any Federal Government agency.

Your intramural research laboratory will be housed at and supervised by NHGRI. NHGRI is not under your supervision or authority. You may not participate in budgetary determinations made by NHGRI regarding your laboratory.

III. Impartiality in Performing Official Duties – 5 C.F.R. § 2635.502

The Standards of Ethical Conduct for Employees of the Executive Branch require an employee to take appropriate steps to avoid an appearance of any lack of impartiality in the performance of the employee's official duties. 5 C.F.R. § 2635.502(a). Under section 502, when an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to a specific party matter, the employee should not participate in the matter without informing an agency official and receiving authorization to participate. An employee has a "covered relationship" under this section with any entity for which the employee has, within the last year served, *inter alia*, as an employee. 5 C.F.R. § 2635.502(b)(1)(iv).

The development of statutory proposals, regulations, and policies, absent a special or distinct effect on an entity other than as part of a class, are considered particular matters of general applicability to which section 502 is inapplicable. However, governmental decisions to hold and participate in meetings or otherwise afford similar opportunities for communication with

¹ 15 U.S.C. Chapter 63 and Executive Order 10096 implemented through 45 C.F.R. Part 7.

identified external entities may themselves be classified as "specific party" matters even if the subject matter of the discussion involves generally applicable policy issues.

As the HHS DAEO, I hereby also provide a corresponding authorization pursuant to 5 C.F.R. § 2635.502(d) for the same reasons and with the same limitations as described above regarding the waiver of Section 1, Paragraph 2, of Executive Order 13490.

IV. Conclusion

Matters from which you must recuse will be referred to the NIH Deputy Director for Extramural Research for disposition. Your disqualification from duties in connection with particular matters that are not covered by this waiver and authorization is not expected to impair materially your ability to perform the duties of your position. In connection with particular matters involving MSKCC as a party or the representative of a party, you will not engage in official duties other than those normally within the scope and authority of an NHGRI intramural investigator, as described above, and will abide by all NIH budgetary, managerial, and procedural controls on the collaboration of intramural scientists and NIH institute and center directors with non-federal institutions while also considering and undertaking appropriate collaborative research projects with institutions other than MSKCC.

Pursuant to a policy directive implemented at the NIH, any assertions or allegations of scientific misconduct or grants management issues between NCI and MSKCC arising from any of the NIH-funded projects on which you worked during the term of your MSKCC employment shall be referred to and processed by the NIH Office of Extramural Research.

This limited waiver and authorization does not affect your obligation otherwise to comply with other provisions of the Ethics Pledge and with all other Standards of Ethical Conduct for Employees of the Executive Branch and agency supplemental rules.



MEMORANDUM TO AARON S. WILLIAMS, PEACE CORPS DIRECTOR

From: Nancy G. Miller
Associate General Counsel
Designated Agency Ethics Official

Subject: Limited Waiver of Paragraph 2 of the Ethics Pledge

Date: December 7, 2010

Executive Summary

You have been invited to attend the Society for International Development-Washington's Annual Gala Dinner fundraising event on December 8, 2010, accept an honor on behalf of the Peace Corps in celebration of its 50th Anniversary, and make remarks. Because you were on SID-W's board of directors during the two-year period before your appointment as Peace Corps Director on August 24, 2009, a waiver of the Ethics Pledge that you signed pursuant to Section 3 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" is required.

Following consultation with the White House Counsel's Office, I hereby certify that it is in the public interest to grant a limited waiver from the provisions of Paragraph 2 of the Ethics Pledge to permit you to attend, accept an honor on behalf of the Peace Corps, and to make official remarks at the SID-W's December 8 event.

However, this is a limited waiver that relates only to this particular event. Moreover, there are specific limitations on what you may do at the event. For example, you may not actively promote the event. Nor may you solicit donations for the event or to the organization. You may, however, accept free attendance at the event as a speaker. See Discussion.

Discussion

Section 1 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," issued by President Obama on January 21, 2009, requires all political appointees to sign an Ethics Pledge. Paragraph 2 of the Ethics Pledge prohibits participation, for a period of two years from the date of your appointment, in any particular matter involving specific parties that is directly and substantially related to a former employer. "Former employer" is defined in Section 2(i) of the Executive Order to include "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" Section 3 of the Executive Order permits waivers to be granted under certain limited conditions.

The Office of Government Ethics, in its DAEOgram DO-09-020, states that the decision to give an official speech is considered a particular matter involving specific parties. In general, giving an official speech is not precluded if it will have no impact on the financial interests of the sponsoring organization. On the other hand, "where the decision to give an official speech actually would affect the financial interest of the sponsor, the concerns under the Pledge about special access are relevant. Thus, if the former employer charges an admission fee or organizes the event for the purposes of fundraising . . . , the appointee will be barred from giving an official speech, absent a waiver." *Id.* at 2-3.

You have been invited to attend SID-W's Annual Gala Dinner fundraising event, on December 8, 2010, accept an honor on behalf of the Peace Corps in celebration of its 50th Anniversary, and make remarks. Because you served as a volunteer and uncompensated member of SID-W's board of directors during the two-year period before your appointment as Peace Corps Director on August 24, 2009, a waiver of the Ethics Pledge is required in order for you to be able to participate in the event. Waivers may be granted based on a certification by the Designated Agency Ethics Official after consultation with the White House Counsel's Office that it is in the public interest to do so. See E.O 13490 at Section 3; OGE DAEOGram DO-09-008.

SID-W is a 501(c)(3) organization designed to provide an opportunity for the full range of professionals and organizations working in the field of international development to come together for discussions, sharing of best practices, and networking. It is not an advocacy organization, nor is it a registered lobbying organization. It gives out no grants. The Peace Corps has no business or other relationship with SID-W other than being an "honorary member," along with USAID and the Millennium Challenge Corporation.

The Peace Corps is one of the U.S. government's key players in public diplomacy, with more than 200,000 Volunteers having served overseas since 1961 and with more than 8600 Volunteers currently serving in 77 countries. The President has stated his support for the Peace Corps on an ongoing basis, and described his goal of engaging all Americans in volunteer service.

Moreover, the Peace Corps is celebrating its 50th Anniversary from October 2010 through September, 2011. President Kennedy's first speech introducing the idea of the Peace Corps was made on October 14, 1960, at the University of Michigan. He signed the executive order creating the Peace Corps on March 1, 1961, and the Peace Corps Act was signed into law on September 23, 1961.

The agency is using this landmark 50th Anniversary year to educate and engage the public about the Peace Corps' history and effectiveness and inspire the next generation of Volunteers. Because the Peace Corps' statutory missions include providing trained men and women to countries requesting its assistance, and educating Americans about the countries in which Volunteers serve, recruitment and outreach are absolutely vital to ensuring the Peace Corps' continuing success. Your participation as Peace Corps Director in the SID-W event will play a significant part in this ongoing effort.

The SID-W Annual Gala is expected to attract hundreds of attendees with interests in international development. This is an excellent forum for the Peace Corps Director to convey the President's message on volunteerism and on global engagement and to describe the Peace Corps' legacy, role and future. To have the opportunity to spread the message of the Administration and the Peace Corps to this highly receptive audience is in the public interest.

Granting this waiver would not run counter to the purpose of the Ethics Pledge to avoid special access. SID-W serves a unique role in the international development community, so that your participation in this event would risk no reasonable likelihood of perceived partiality or special access at the expense of similarly situated groups.

Please keep in mind that this is a limited waiver only for this particular event. The Ethics Pledge continues to prohibit your participation in any other particular matter involving specific parties that relates to SID-W until after August 24, 2011. Moreover, there are specific limitations on what you may do at the event. Pursuant to 5 C.F.R. Section 2635.808, you may not actively promote the event. Nor may you solicit donations for the event or to the organization. Finally, you must also otherwise comply with the remainder of the Ethics Pledge and with all preexisting government ethics rules.

APPENDIX V



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

The General Counsel
Washington, D.C. 20201

October 19, 2010

Mr. Edgar M. Swindell
Associate General Counsel/Ethics
Designated Agency Ethics Official
U.S. Department of Health and Human Services
Room 710-E, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Swindell:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in my duties as Principal Deputy General Counsel, U.S. Department of Health and Human Services.

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. Moreover, I understand that as an appointee I must sign the Ethics Pledge required by the Executive Order entitled "Ethics Commitments by Executive Branch Personnel" (Executive Order 13490) and that I will be bound by the requirements and restrictions therein even if not specifically mentioned in this or any other ethics agreement.

Unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502(d), I will not participate in any particular matter involving specific parties in which the following entities are a party or represent a party:

Foley Hoag LLP
Capella University
Educate Online
Panflu LLC
Scholastic Corp.
State of the USA
Susan G. Komen For the Cure
Worby Groner Edelman & Napoli Bern LLP

Mr. Edgar M. Swindell

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This recusal, under 5 C.F.R. § 2635.502, pertaining to these entities will remain for one year from the date of my resignation from my position with each entity and thus will end at the expiration of the period of my covered relationship with each of them. I also understand that, pursuant to the Ethics Pledge, I have additional recusal obligations regarding these entities. I will not for a period of two years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to any of these entities, unless an exception applies under the Ethics Pledge.

My spouse and I will divest our interest in the Schwab Health Care Fund within 90 days of this Ethics Agreement. On my SF 278, I have also reported holdings in Starbucks, British Petroleum, Google, and the First Trust Global Wind Energy Index Fund. The likelihood is relatively high that particular matters will arise in the course of my duties which would affect one or more of these entities. To avoid even an appearance of a conflict, I agree to recuse from any particular matter that has a direct and predictable effect on the financial interest of any of the above entities, and I also agree to keep the value of my holdings in each of these entities below the applicable de minimis threshold (\$15,000 for the individual stocks of BP, Starbucks, and Google, and \$50,000 for the sector fund First Trust Global Wind Energy Index Fund).

In accordance with paragraphs 3(a) & (b) of the Ethics Pledge, because I served as a Federally registered lobbyist within the two years before the date of my appointment, I will not for a period of two years after the date of my appointment participate in any particular matter on which I lobbied within the two years before my appointment, or participate in the specific issue area in which that particular matter falls. This includes particular matters in the following issue areas:

- 1) Breast cancer research programs;
- 2) The Key National Indicator System, a data compilation and management project being undertaken by State of the USA, a non-profit organization. The goal of this project is to develop and compile a large set of statistical measurements concerning diverse parts of the country's economy, people, and environment;
- 3) Mobile hospital technology; and
- 4) Compensation for first responders exposed to toxins at the World Trade Center clean-up site.

In order to avoid potential conflicts of interest during my appointment, I, my spouse, or any minor children of mine will not acquire any additional financial interest in entities listed on the FDA prohibited holdings list or in entities involved, directly or through subsidiaries, in the following industries: (1) research, development, manufacture, distribution, or sale of pharmaceutical, biotechnology, or medical devices, equipment, preparations, treatment, or products, including assistive technology for the handicapped; (2) veterinary products; (3) healthcare management or delivery; (4) health, disability, or workers compensation insurance or related services; (5) food and/or beverage production, processing or distribution; (6) communications media; (7) computer hardware, computer software, and related internet technologies; (8) telecommunications, including wireless and information technology; (9) social sciences and economic research organizations; (10) energy and utilities; (11) commercial airlines, railroads,

Mr. Edgar M. Swindell

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shiplines, and cargo carriers; (12) public transportation; or (13) sector mutual funds that concentrate their portfolios in any of these sectors.

In order to help ensure that I do not participate officially in the matters from which I have agreed to recuse, I have taken or will take the following steps: (1) I have instructed David Cade to handle any specific party matter that could come before me that would affect any of these entities; and (2) I have provided Samantha Ferrell with a copy of this memorandum and have asked her to refer any matters which she believes are covered by my commitment to recuse to David Cade.

In order to ensure that this commitment to recuse continues to be effective, I will take the following steps in the future: (1) I will revise and update this memorandum whenever that is warranted by changes in my financial interests or other changed circumstances, and provide you with a copy; and (2) I will advise David Cade of any such changes.

Sincerely,



Mark Childress

cc: Chief of Staff
Deputy General Counsel

