

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, 2013 – DECEMBER 31, 2013**



## Table of Contents

Preface .....	1
Ethics Pledge Compliance .....	2
Table 1: Full-Time, Non-Career Appointees.....	3
Table 2: Ethics Pledge Signatures (by Appointee Type) .....	4
Table 3: Appointees Not Required to Sign the Ethics Pledge in 2013 .....	4
Table 4: Appointees who Received a Paragraph 2 Waiver in 2013 .....	6
Enforcement .....	6
Implementation of the Lobbyist Gift Ban .....	7
Appendix I	Executive Order 13490
Appendix II	Assessment Methodology
Appendix III	Assessment Questionnaire
Appendix IV	Ethics Pledge Paragraph 2 Waivers

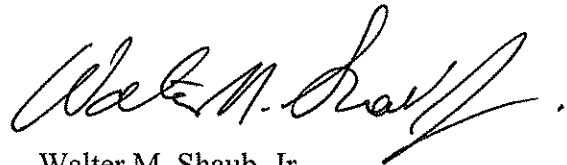


## Preface

This is the fifth 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 2013 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, 2013. This report is publicly available and has been posted on the United States Office of Government Ethics' (OGE) website at [www.oge.gov](http://www.oge.gov).

Respectfully submitted,



Walter M. Shaub, Jr.

Director

United States Office of Government Ethics

## **Ethics Pledge Compliance** (Calendar Year 2013 Appointments)

Executive branch agencies, in addition to the White House and the Office of the Vice President, reported that 873 full-time, non-career appointees<sup>1</sup> were appointed during the period of January 1 through December 31, 2013. Of these appointees, 791 were required to sign the Ethics Pledge, and 100% have done so.<sup>2</sup>

In addition, agencies reported that during calendar year 2013, none of the full-time, non-career appointees were registered lobbyists during the two years prior to their appointment.

Finally, eight agencies and the White House granted a total of 14 so-called “reverse revolving door” waivers during calendar year 2013. 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.oge.gov](http://www.oge.gov), when a waiver is issued. Waivers issued by the White House are posted on the White House website, [www.whitehouse.gov](http://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 2013.

<sup>1</sup>Definitions 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.

<sup>2</sup>Executive Order 13490 requires each covered appointee to sign the Ethics Pledge “upon becoming an appointee.” Agencies reported that two appointees signed the Ethics Pledge late.

## Employees Subject to the Ethics Pledge

Of the 135 reporting agencies, 63 agencies and the White House and the Office of the Vice President<sup>3</sup> employed full-time, non-career appointees subject to the Ethics Pledge during the period of January 1 through December 31, 2013.<sup>4</sup> Table 1 below provides additional details regarding the categories of full-time, non-career appointees subject to the Ethics Pledge.

Table 1: Full-Time, Non-Career Appointees  
(January 1 – December 31, 2013)

<b>PAS</b>	<b>PA</b>	<b>Non-Career SES</b>	<b>Schedule C</b>	<b>Other</b>	<b>Total</b>
<b>120</b>	<b>29</b>	<b>170</b>	<b>370</b>	<b>184</b>	<b>873</b>

## 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, sign the Ethics Pledge. 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 shows that agencies and the White House and the Office of the Vice President reported that 873 full-time, non-career appointees were appointed during the period of January 1 through December 31, 2013. Table 2 shows that of the 873 appointees, 791, or approximately 91 percent, were required to sign the Ethics Pledge upon their appointment in 2013.<sup>5</sup> The largest category of appointees required to sign the Ethics Pledge is Schedule C appointees.

<sup>3</sup>The White House submission included the White House, Office of Policy Development, National Security Staff, and National Economic Council. The Office of the Vice President reported separately.

<sup>4</sup>See OGE Legal Advisories DO-09-003 and DO-09-010, located on the OGE website and Appendix I for detailed guidance regarding the appointees subject to the Ethics Pledge.

<sup>5</sup>Additionally, as Table 3 demonstrates, 59 other appointees had already signed the Ethics Pledge for prior appointments to different positions, and these appointees remained subject to the Ethics Pledge upon their new appointments in 2013.

**Table 2: Ethics Pledge Signatures (by Appointee Type)**  
(January 1 – December 31, 2013)

<b>Appointee Type</b>	<b>Required</b>	<b>Not Required</b>	<b>Total</b>
<b>PAS</b>	<b>90</b>	<b>30</b>	<b>120</b>
<b>PA</b>	<b>25</b>	<b>4</b>	<b>29</b>
<b>Non-career SES</b>	<b>154</b>	<b>16</b>	<b>170</b>
<b>Schedule C</b>	<b>342</b>	<b>28</b>	<b>370</b>
<b>Other</b>	<b>180</b>	<b>4</b>	<b>184</b>
<b>TOTAL</b>	<b>791</b>	<b>82</b>	<b>873</b>

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 and the Office of the Vice President were asked to provide the reason(s) why the Ethics Pledge was not signed. Eighty-two (82) of the appointees who did not sign the Ethics Pledge fell into one of three categories, as detailed in Table 3. The three categories reflect OGE’s implementing guidance.

**Table 3: Appointees Not Required to Sign the Ethics Pledge in 2013**  
(January 1 – December 31, 2013)

<b>Reasons why Appointees were not Required to Sign the Ethics Pledge</b>	<b>Number of Applicable Appointees</b>
Occupy an exempt non-policymaking position (Schedule C or other comparable authority)*	<b>22</b>
Appointed without break in service after serving in another position subject to the Ethics Pledge	<b>59</b>
Other <sup>6</sup>	<b>1</b>

\*Exempt, non-policymaking positions include schedulers, office assistants, drivers, and similar positions.

**Former Lobbyists Appointed in Calendar Year 2013**

Executive branch agencies and the White House and Office of the Vice President reported that none of the full-time, non-career appointees appointed January 1 through December 31, 2013, and subject to the Ethics Pledge had been a registered lobbyist during the two years prior to their appointment.

<sup>6</sup>One agency reported that a career employee was appointed to serve as a confidential assistant to a PAS official. Pursuant to the agency’s written policy, the employee has a right to return to her career staff position at the end of the PAS official’s term or earlier. Therefore, per guidance provided in OGE Legal Advisory DO-09-010, the employee is not required to sign the Ethics Pledge.



## 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). However, agency ethics officials and the White House Counsel’s Office 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.”<sup>7</sup> The Executive Order explains that the public interest 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 and the Office of the Vice President. 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 2013.

## Reverse Revolving Door Waivers

Executive branch agency and White House respondents reported that 12 appointees were granted waivers from the requirements of Ethics Pledge paragraph 2 during the period from January 1, 2013 through December 21, 2013. Generally, paragraph 2 of the Ethics Pledge

<sup>7</sup>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.

restricts an appointee’s participation in particular matters involving specific parties 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 4 below. Appendix IV contains the text of the waivers to paragraph 2 of the Ethics Pledge issued in calendar year 2013.

Table 4: Appointees who Received Paragraph 2 Waivers in 2013

<b>Appointee Name</b>	<b>Agency</b>
William J. Baer	Department of Justice <sup>8</sup>
Paul D. Frantz	Department of State
Christopher Jennings	Deputy Assistant to the President for Health Policy and Coordinator of Health Reform (White House)
Glenn D. Johnson	Department of State
Alexia Latortue	Department of Treasury
Patricia M. Loui	Export-Import Bank
Ernest J. Moniz	Department of Energy
Dorie Nolt	Department of Education
David Simas	Assistant to the President and Deputy Senior Advisor for Communications and Strategy (White House)
Clifford Sloan	Department of State
Gregory B. Starr	Department of State
Joshua D. Wright	Federal Trade Commission

### Enforcement

Ethics Pledge paragraph 1 prohibits appointees from accepting gifts from registered lobbyists or lobbying organizations for the duration of their appointment. Agencies reported no instances in 2013 in which appointees were in violation of Ethics Pledge paragraph 1.

Ethics Pledge paragraph 2 requires, among other things, that for a period of two years following appointment, an appointee will not participate (absent a waiver) in any particular matters involving specific parties, including meetings or other communications, that are directly and substantially related to the appointee’s former employer or former clients, unless the meeting or communication is about a particular matter of general applicability and participation in the meeting or other event is open to interested stakeholders. Agencies reported no instances in 2013 in which appointees may have had contact with former employers in violation of Ethics Pledge paragraph 2.

<sup>8</sup>This appointee received three separate Ethics Pledge waivers from paragraph 2 in 2013.

## Implementation of the Lobbyist Gift Ban

OGE implemented the lobbyist gift ban applicable to appointees through a legal memorandum to Designated Agency Ethics Officials dated February 11, 2009. This memorandum, DO-09-007, is available on OGE's website, [www.oge.gov](http://www.oge.gov). In 2011, OGE also proposed to extend the ban's coverage to career-level employees by incorporating its language in subpart 2635 of title 5, Code of Federal Regulations, which regulates gifts from outside sources. Timely comments were received by 220 sources. OGE will consider these comments in connection with its overall review and modernization of the Standards of Conduct for Employees of the Executive Branch during fiscal years 2014 and 2015.

# **APPENDIX I**

# Appendix I

## Executive Order 13490

### 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) "Gift"

(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:

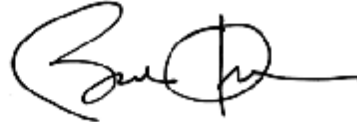
(1) authority granted by law to a department, agency, or the head thereof; or

(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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Billing code 3195-W9-P

# **APPENDIX II**

## **Assessment Methodology**

OGE administered an assessment questionnaire in January 2014. The assessment focused on compliance with Executive Order 13490 for the period of January 1 through December 31, 2013.

The questionnaire was emailed to Designated Agency Ethics Officials (DAEOs) 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. In the interest of completeness, the White House and the Office of the Vice President voluntarily provided information about White House and the Office of the Vice President appointees.

# **APPENDIX III**

# Assessment Questionnaire

## Ethics Pledge Compliance Assessment

(Executive Order 13490)

Calendar Year 2013

**You are required to complete this assessment as the representative of your agency's ethics program.**

### **Deadline**

The deadline for completing the assessment is **February 3, 2014**.

### **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 an annual report 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 two 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, 2013 and December 31, 2013**:

- 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.

OGE also requests information on any violations of the Ethics Pledge and subsequent enforcement actions.

### **Completing the Assessment**

This assessment consists of up to nine items for responses. (Based on your responses, the assessment may skip items not applicable to your agency.) This Word version of the assessment is provided for your convenience. **Please keep in mind that you are required to submit your response electronically through the link provided to you via email.**

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

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

### **Help**

If you need help with the assessment, please contact Nicole Stein, Program Analyst, by phone at (202) 482-9255 or at [nstein@oge.gov](mailto:nstein@oge.gov).

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

1. Agency \_\_\_\_\_
2. Were 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.) appointed to or by your agency from January 1 through December 31, 2013?
  - 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.oge.gov](http://www.oge.gov).*

Please type comments in the box below.

*NOTE: Those responding “no” to question 2 are not required to answer questions 3-7. However, you are required to complete questions 8 and 9 as well as the contact information section at the end of the assessment.*

3. For each category of appointee provide the number of full-time non-career appointees appointed between January 1 and December 31, 2013, 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, 2013. (*NOTE: Where none enter “0”*)

<b>Number of Full-Time Non-Career Appointees</b>	<b>Type of Full-Time Non-Career Appointees</b>					
	<b>by Category</b>					
	<b>PAS</b>	<b>PA</b>	<b>Non-career SES</b>	<b>Schedule C</b>	<b>Other</b>	<b>Total</b>
Appointed 01/01– 12/31/2013						
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 each appointee who did not sign the Ethics Pledge, find the appropriate rationale(s) of reasons and indicate the total number of appointees who fit into that category.  
 (NOTE: If all of your full-time non-career appointees appointed between January 1 and December 31, 2013 signed the pledge, then you can mark "0" for each 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 the Ethics Pledge was already signed.						
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, 2013 and subject to the Ethics Pledge were registered lobbyists during the two years prior to their appointment? (NOTE: If none, enter "0")

\_\_\_\_\_

Please type comments in the box below.

*NOTE: If you did not have any appointees in 2013 subject to the Ethics Pledge who were registered lobbyists during the two 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 two years prior to their appointment have an ethics agreement addressing their obligations under paragraph 3 of the Ethics Pledge? (*NOTE: If none, enter "0"*)

\_\_\_\_\_

Please type comments in the box below.

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

8. Section 3 of Executive Order 13490 provides a waiver mechanism for the restrictions contained in the Ethics Pledge. Indicate below how many waivers were granted; the names of individuals granted waivers by your agency in 2013; and which of the Pledge paragraphs were implicated. (*NOTE: Where none, enter "0"*) \*

	<b>Number of Ethics Pledge Waivers Granted By Pledge Paragraph</b>	<b>Names of Individuals Granted Ethics Pledge Waivers</b>
<b>Paragraph 2 Only</b>		
<b>Paragraph 3 Only</b>		
<b>Paragraphs 2 &amp; 3</b>		
<b>Other</b> (explain below)		

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

9. If applicable, please provide information on any violations of the Ethics Pledge and enforcement actions taken as a result.

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

Name: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

# **APPENDIX IV**

DEPARTMENT OF JUSTICE

Washington

APR 02 2013

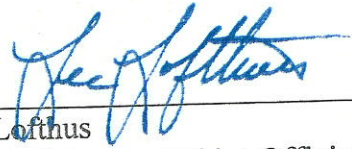
**CERTIFICATION OF PUBLIC INTEREST WAIVER FOR WILLIAM BAER**

**FROM:** Lee J. Lofthus  
Designated Agency Ethics Official, Department of Justice

**SUBJECT:** Waiver from Restrictions Related to Arnold & Porter, LLP in the Antitrust Division's E-books Litigation, United States v. Apple, Inc., Civ. No. 1:12-cv-2826 (S.D.N.Y.) (DOJ File No. 60-511130-0007)

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a limited waiver of the restrictions of paragraph 2 of the Ethics Pledge is in the public interest for appointee William J. Baer in the position of Assistant Attorney General in the Department of Justice. Mr. Baer shall not be restricted from participating in the Antitrust Division's E-books Litigation, United States v. Apple, Inc., Civ. No. 1:12-cv-2826 (S.D.N.Y.) (DOJ File No. 60-511130-0007), subject to the limitations set forth in the attached memorandum and without waiving the limitation on Mr. Baer's participation in regulations and contracts as provided in paragraph 2 of the Ethics Pledge. This waiver does not otherwise affect Mr. Baer's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed \_\_\_\_\_

  
Lee J. Lofthus  
Designated Agency Ethics Official  
Department of Justice

Date \_\_\_\_\_

4-2-2013



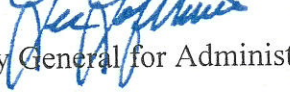
U.S. Department of Justice

Justice Management Division

APR - 2 2013

Washington, D.C. 20530

MEMORANDUM FOR THE ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION

From: Lee J. Lofthus   
Assistant Attorney General for Administration and Designated Agency Ethics  
Official

Re: Request to Authorize Assistant Attorney General William J. Baer to Participate in  
the Antitrust Division's E-books Litigation, *United States v. Apple, Inc.*, Civ. No.  
1:12-cv-2826 (S.D.N.Y.) (DOJ File No. 60-511130-0007)

The purpose of this memorandum is to waive the restriction in Executive Order 13490 of January 21, 2009, Ethics Commitments by Employees in the Executive Branch, and further to make a determination under the standards of conduct on impartiality, 5 C.F.R. Section 2635.502, that you may participate in a particular matter in which your former firm represents a party, relating to the Department's continuing e-books litigation, *United States v. Apple, Inc.*, Civ. No. 1:12-cv-2826 (S.D.N.Y.).

On April 11, 2012, the Department filed a civil antitrust lawsuit against Apple, Inc., Hachette Book Group, Inc., HarperCollins Publishers LLC, Simon & Schuster Inc., Holtzbrinck Publishers LLC (d/b/a/ Macmillan), and Penguin Group (USA), Inc. (and the parents of Macmillan and Penguin) for conspiring to raise retail e-book prices. At the same time the Complaint was filed, the Department filed a proposed settlement that resolved its concerns with Hachette, HarperCollins and Simon & Schuster. The Court approved these settlements on September 6, 2012. Since that time, Penguin and Holtzbrinck Publishers LLC (d/b/a/ Macmillan) have also settled; those consent decrees are pending court approval. The Division's case against Apple is set for trial on June 3, 2013.

You are generally recused from participation in particular matters with parties in which your former firm is or represents a party, under the standards of conduct for employees in the executive branch, 5 C.F.R. Section 2635.502, and under E.O. 13490. You left Arnold & Porter on January 2, 2013. Subsequent to your departure, Arnold & Porter appeared in this matter for HarperCollins – a publisher that settled with the Department nearly a year ago. This occurred under the somewhat unusual circumstance in which one of the attorneys for HarperCollins on this case left his old firm and began working as counsel for Arnold & Porter. This attorney continued to represent HarperCollins in this matter, along with attorneys at his old firm that also continue to represent HarperCollins in this matter. This attorney joined Arnold & Porter after you left. Thus, this matter was not pending at Arnold & Porter while you were there and you have had no involvement in it.

The Department has settled with HarperCollins, and any issues that arise in the future regarding its compliance under the court approved consent decree would be handled through separate proceedings and not through litigation on the substantive antitrust allegations in the Complaint. Nevertheless, HarperCollins is a party to the lawsuit. Thus, absent a waiver from the restriction in the Executive Order and the standards of conduct, you are recused from participating in the e-books litigation.

#### Executive Order 13490, Ethics Commitments by Employees in the Executive Branch

The Executive Order 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. Sec. 1, paragraph 2. The Executive Order further provides that "particular matter involving specific parties" shall have the same meaning as set forth in the ethics regulations at 5 C.F.R. Section 2641.201(h), 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." E.O. 13490, Sec. 2(h).

E.O. 13490 references the following definition provided in the standards of conduct (however, the E.O. specifically includes regulations and contracts):

5 C.F.R. Section 2641.201(h)(1): *Particular matter involving specific party or parties – (1) Basic Concept.* The prohibition applies only to communications or appearances made in connection with a "particular matter involving a specific party or parties." Although the statute defines "particular matter" broadly to include "any investigation, application, request for ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding," 18 U.S.C. 207(i)(3), only those particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product application, enforcement action, administrative adjudication, or court case.

The E.O. provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or his designee, in consultation with the Counsel to the President or his designee. E.O. 13490, Sec. 3(a). The Director, OMB, has designated the Designated Agency Ethics Official (DAEO) of each executive branch agency to exercise the Sec. 3 waiver authority, in writing, and in consultation with the Counsel to the President.

### Specific Waiver Request

The e-books litigation is a high-profile matter that has raised important substantive antitrust issues, and the Department's efforts to litigate its remaining case against Apple would be significantly enhanced by your participation. The Division has infrequently gone to trial in cases involving civil conspiracy allegations, and, in this matter, Apple is contending that the antitrust laws do not prohibit the conduct alleged in the Department's Complaint. A trial on the merits against Apple will be resource intensive, hotly contested, and generate a significant amount of publicity. Also, the contours and terms of any relief – whether a consent decree or a court order following a successful trial – will have lasting policy implications as it will be used by the Division and opposing counsel as precedent for future matters.

Due to the importance of this matter to the Division's mission, we believe that it is necessary you be able to exercise your leadership role as the Assistant Attorney General in reviewing, shaping, and managing the Division's litigation (although this waiver would not extend to any proceedings against HarperCollins for failing to comply with its consent decree). Notably, Civil DAAGs Renata Hesse and Leslie Overton -- one of whom would normally step in as Acting Assistant Attorney General -- are also currently recused on this matter.

Although your former firm, Arnold & Porter, is now involved in representing a party to the Department's lawsuit, the Department settled the lawsuit with respect to HarperCollins nearly a year ago. Moreover, as noted above, Arnold & Porter has now appeared in this matter under the somewhat unusual circumstance in which one of the attorneys for HarperCollins began working as counsel for Arnold & Porter after your departure.

Based on consultations with the Antitrust Division, I conclude that it is not necessary at this time for you to meet or communicate with your former firm, should they make such a request. If direct contact with Department officials is necessary, other officials from the Department would be available to meet with your former firm.

The standard for waiving the restriction in the E.O. is that it be in the public interest. E.O. 13490, Sec. 3. Based on the above, I believe that it directly serves the public interest that the Department have the benefit of your participation in this case, given the institutional interest of the Department, and the important legal, policy, resource and strategic considerations involved in this matter. I certify that it is in the public interest that you be able to participate in *United States v. Apple, Inc.*, Civ. No. 1:12-cv-2826 (S.D.N.Y.).

### 5 C.F.R. Section 2635.502

The standard of conduct at 5 C.F.R. Section 2635.502 requires an employee to take appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under Section 502, where an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to the matter, he should not participate in the matter



without informing an agency official and receiving authorization to participate. Included in the definition of a "covered relationship" is any person for whom the employee served, within the preceding year, as officer, director, trustee, general partner, agent attorney, consultant, contractor, or employee. 5 C.F.R. Section 2635.502(b)(1)(iv).

The Department has also been sensitive to appearances of partiality where the official's former firm or former client is, or represents, a person or entity that is not a party but is otherwise significantly affected by a matter. In these situations, the Department applies the "catch-all" provision in Section 502, which states that if circumstances other than those specifically provided in the regulation may cause an official's impartiality to be questioned, the Department should use the process provided in Section 502 to determine whether he should or should not participate in a particular matter.

You have a covered relationship with your former firm, Arnold & Porter. However, Arnold & Porter appeared in this matter on behalf of HarperCollins after you left the firm, and under the somewhat unusual circumstance in which one of the attorneys representing HarperCollins began working for Arnold & Porter after your departure. Thus, this matter was not pending at Arnold & Porter while you were there. Moreover, the Department has already settled the lawsuit with respect to HarperCollins.

Under the standard, I conclude that a reasonable person would not question the integrity of the Department's programs and operations based on your participation in the e-books case, and that should such questions arise, the Department's interest in your participation outweighs any possible concern.

WAIVER: I hereby certify that it is in the public interest for you as Assistant Attorney General to participate in *United States v. Apple, Inc.*, Civ. No. 1:12-cv-2826 (S.D.N.Y.), and pursuant to E.O. 13490 Sec. 3(a), I waive the restriction in Section 1 of E.O. 13490, on participation in a specific party matter that is directly and substantially related to your former employer, Arnold & Porter, except that you will not have any direct contact with Arnold & Porter and will not participate in decree compliance issues with respect to HarperCollins. We have consulted with the Office of the Counsel to the President concerning this waiver. Further, I hereby determine, under 5 C.F.R. Section 2635.502, that the interest of the Department in your participation in this case outweighs any possible concern that a reasonable person may question the Department's programs and operations.

DEPARTMENT OF JUSTICE

Washington

November 6, 2013

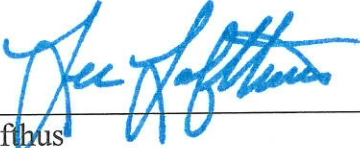
**CERTIFICATION OF PUBLIC INTEREST WAIVER FOR WILLIAM BAER**

**FROM:** Lee J. Lofthus  
Designated Agency Ethics Official, Department of Justice

**SUBJECT:** Request to Authorize Assistant Attorney General William J. Baer to Participate in the Antitrust Division's investigation of AT&T Inc.'s proposed acquisition of Leap Wireless International

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a limited waiver of the restrictions of paragraph 2 of the Ethics Pledge is in the public interest for appointee William J. Baer in the position of Assistant Attorney General in the Department of Justice. Mr. Baer shall not be restricted from participating in the Antitrust Division's Criminal Investigations in of AT&T Inc.'s proposed acquisition of Leap Wireless International, subject to the limitations set forth in the attached memorandum and without waiving the limitation on Mr. Baer's participation in regulations and contracts as provided in paragraph 2 of the Ethics Pledge. This waiver does not otherwise affect Mr. Baer's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed \_\_\_\_\_

  
Lee J. Lofthus  
Designated Agency Ethics Official  
Department of Justice

Date \_\_\_\_\_

11-6-2013



U.S. Department of Justice

Justice Management Division

Washington, D.C. 20530

November 6, 2013

MEMORANDUM FOR ASSISTANT ATTORNEY GENERAL WILLIAM J. BAER

From: Lee J. Lofthus   
Assistant Attorney General for Administration and Designated Agency Ethics  
Official

Re: Request to Authorize Assistant Attorney General William J. Baer to Participate in the Antitrust Division's investigation of AT&T Inc.'s proposed acquisition of Leap Wireless International

The purpose of this memorandum is to waive the restriction in Executive Order 13490 of January 21, 2009, Ethics Commitments by Employees in the Executive Branch, and further to make a determination under the standards of conduct on impartiality, 5 C.F.R. Section 2635.502, that you may participate in a particular matter in which your former firm represents a party, relating to the Department's investigation of AT&T's proposed acquisition of Leap Wireless International ("Leap"). The proposed transaction would combine the second- and fifth-largest wireless carriers in the nation. The Department's investigation will focus on whether the transaction may substantially lessen competition in mobile wireless telecommunications services in any area of the country.

You are generally recused from participation in particular matters with parties in which your former firm is or represents a party, under the standards of conduct for employees in the executive branch, 5 C.F.R. Section 2635.502, and under E.O. 13490. In this investigation, we recently learned that Arnold & Porter is assisting AT&T behind-the-scenes; a different large law firm is the Department's primary contact on this matter. We do not believe this matter was pending at Arnold & Porter while you were there. According to Leap's proxy statement filed with the SEC on July 30, 2013, the negotiations that culminated in the proposed transaction began on or around June 5, 2013. You left Arnold & Porter on January 2, 2013. AT&T is not a former client of yours, and you had no involvement in this matter while at Arnold & Porter.

Arnold & Porter represented AT&T in its unsuccessful, high-profile attempt to acquire T-Mobile in 2011 while you were head of the firm's antitrust practice group in Washington, DC. The proposed AT&T/T-Mobile merger involved the same products as here: mobile wireless telecommunications services. The parties abandoned that merger after the Department filed a lawsuit seeking to block it. See Complaint, *United States v. AT&T Inc. et al.*, Civil Action No. 1:11-cv-01560-ESH (D.D.C. filed Aug. 31, 2011). You were not involved in AT&T/T-Mobile, nor do you have confidential information about that matter or AT&T as a result of your work at Arnold & Porter.

## Executive Order 13490, Ethics Commitments by Employees in the Executive Branch

The Executive Order 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. Sec. 1, paragraph 2. The Executive Order further provides that "particular matter involving specific parties" shall have the same meaning as set forth in the ethics regulations at 5 C.F.R. Section 2641.201(h), 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." E.O. 13490, Sec. 2(h).

E.O. 13490 references the following definition provided in the standards of conduct (however, the E.O. specifically includes regulations and contracts):

5 C.F.R. Section 2641.201(h)(1): *Particular matter involving specific party or parties – (1) Basic Concept.* The prohibition applies only to communications or appearances made in connection with a "particular matter involving a specific party or parties." Although the statute defines "particular matter" broadly to include "any investigation, application, request for ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding," 18 U.S.C. 207(i)(3), only those particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product application, enforcement action, administrative adjudication, or court case.

The E.O. provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or his designee, in consultation with the Counsel to the President or his designee. E.O. 13490, Sec. 3(a). The Director, OMB, has designated the Designated Agency Ethics Official (DAEO) of each executive branch agency to exercise the Sec. 3 waiver authority, in writing, and in consultation with the Counsel to the President.

### Specific Waiver Request

This investigation will be a high-profile, resource-intensive matter that will raise important substantive antitrust and competition policy issues, and the Department's efforts would be substantially enhanced by your participation on this matter. It will be an analytically complex merger review in an industry that is driving towards consolidation, and will likely involve extensive coordination with the Federal Communications Commission (FCC). Your input and significant expertise on merger analytics would be extremely valuable and your leadership in our

coordination with the FCC would contribute significantly to continuing our track record of working seamlessly with the Commission.

It is important to note that, although Arnold & Porter is involved in representing AT&T, they are not the lead antitrust counsel for AT&T in this matter and are not expected to be the Department's primary contact. This significantly reduces any appearance issues involved. Due to the importance of the matter to the Antitrust Division's mission, including the expected need for high-level coordination with the FCC, we believe that it is necessary for the Department to benefit from your substantial merger expertise and for you to be able to exercise your leadership role as the Assistant Attorney General in reviewing, shaping, and managing the Division's investigation and any potential litigation.

Based on consultations with the Antitrust Division, I conclude that it is not necessary at this time for you to meet or communicate with your former firm, should they make such a request. If direct contact with Department officials is necessary, other officials from the Department would be available to meet with your former firm.

The standard for waiving the restriction in the E.O. is that it be in the public interest. E.O. 13490, Sec. 3. Based on the above, I believe that it directly serves the public interest that the Department have the benefit of your participation in this case, given the institutional interest of the Department, and the important legal, policy, resource and strategic considerations involved in this matter. I certify that it is in the public interest that you be able to participate in the Department's investigation of AT&T's proposed acquisition of Leap (DOJ File No. 60-517212-0014).

#### 5 C.F.R. Section 2635.502

The standard of conduct at 5 C.F.R. Section 2635.502 requires an employee to take appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under Section 502, where an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to the matter, he should not participate in the matter without informing an agency official and receiving authorization to participate. Included in the definition of a "covered relationship" is any person for whom the employee served, within the preceding year, as officer, director, trustee, general partner, agent attorney, consultant, contractor, or employee. 5 C.F.R. Section 2635.502(b)(1)(iv).

The Department has also been sensitive to appearances of partiality where the official's former firm or former client is, or represents, a person or entity that is not a party but is otherwise significantly affected by a matter. In these situations, the Department applies the "catch-all" provision in Section 502, which states that if circumstances other than those specifically provided in the regulation may cause an official's impartiality to be questioned, the Department should use the process provided in Section 502 to determine whether he should or should not participate in a particular matter.

You have a covered relationship with your former firm, Arnold & Porter. However, as explained above, Arnold & Porter is not the Department's primary contact for this matter, and we do not believe the matter was pending at Arnold & Porter while you were there. AT&T is a long-time client of Arnold & Porter, and Arnold & Porter represented AT&T before the Department in its high-profile, unsuccessful attempt to acquire T-Mobile in 2011. However, AT&T was not your client, you did not work on AT&T/T-Mobile, and do not have confidential information about that matter or AT&T as a result of your work while at Arnold & Porter.

Under the standard, I conclude that a reasonable person would not question the integrity of the Department's programs and operations based on your participation in the Department's investigation of AT&T's proposed acquisition of Leap, and that should such questions arise, the Department's interest in your participation outweighs any possible concern.

WAIVER: I hereby certify that it is in the public interest for you as Assistant Attorney General to participate in the Department's investigation of AT&T's proposed acquisition of Leap Wireless International, and pursuant to E.O. 13490 Sec. 3(a), I waive the restriction in Section 1 of E.O. 13490, on participation in a specific party matter that is directly and substantially related to your former employer, Arnold & Porter, except that you will not have any direct contact with Arnold & Porter. We have consulted with the Office of the Counsel to the President concerning this waiver. Further, I hereby determine, under 5 C.F.R. Section 2635.502, that the interest of the Department in your participation in this case outweighs any possible concern that a reasonable person may question the Department's programs and operations.

DEPARTMENT OF JUSTICE

Washington

September 11, 2013

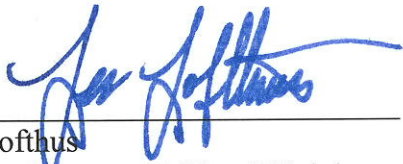
**CERTIFICATION OF PUBLIC INTEREST WAIVER FOR WILLIAM BAER**

**FROM:** Lee J. Lofthus  
Designated Agency Ethics Official, Department of Justice

**SUBJECT:** Waiver from Restrictions Related to Arnold & Porter, LLP in the Antitrust Division's Criminal Investigations in **[Product A, Product B, Product C, Product D, Product E, and Product F]**

Pursuant to the authority delegated under Section 3 of Executive Order 13490 and for the reasons stated in the attached memorandum and after consultation with the Counsel to the President, I hereby certify that a limited waiver of the restrictions of paragraph 2 of the Ethics Pledge is in the public interest for appointee William J. Baer in the position of Assistant Attorney General in the Department of Justice. Mr. Baer shall not be restricted from participating in the Antitrust Division's Criminal Investigations in **[Product A, Product B, Product C, Product D, Product E, and Product F]**, subject to the limitations set forth in the attached memorandum and without waiving the limitation on Mr. Baer's participation in regulations and contracts as provided in paragraph 2 of the Ethics Pledge. This waiver does not otherwise affect Mr. Baer's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed \_\_\_\_\_



Lee J. Lofthus  
Designated Agency Ethics Official  
Department of Justice

Date \_\_\_\_\_

9-11-2013



U.S. Department of Justice  
Justice Management Division

Washington, D.C. 20530

September 11, 2013

MEMORANDUM FOR ASSISTANT ATTORNEY GENERAL WILLIAM J. BAER

From: Lee J. Lofthus   
Assistant Attorney General for Administration and Designated Agency Ethics  
Official

Re: Request to Authorize Assistant Attorney General William J. Baer to Participate in  
the Antitrust Division's Criminal Investigations in the **[Products]**

The purpose of this memorandum is to waive the restriction in Executive Order 13490 of January 21, 2009, Ethics Commitments by Employees in the Executive Branch, and further to make a determination under the standards of conduct on impartiality, 5 C.F.R. Section 2635.502, that you may participate in the Department's criminal antitrust investigations in **[Product A, Product B, Product C, Product D, Product E, and Product F]** [collectively "**Products**"].

A recusal issue has arisen because your former firm appeared representing **[Company 4]** -- a corporate target believed to have been involved in a conspiracy involving **[Product B]**. It was not involved in the conspiracies related to **[Products A, C, D, E, and F]**, but those matters are related and thus a waiver was sought to permit your participation in all **[Products]**. I believe that it directly serves the public interest for the Department to have the benefit of your participation in each of these matters and that the Department's interest in your participation outweighs any possible concern that a reasonable person may question the Department's programs and operations. To find otherwise would deprive the Department of your leadership and expertise across multiple matters that do not even involve **[Company 4]**, thereby creating a hardship that is disproportionate to any potential appearance issue.

Background

On **[date]**, the Department opened a grand jury investigation in the **[district]** into price fixing and bid rigging on **[Product A]**. **[Description of Product A and volume of commerce estimate redacted.]** Once the investigation into this conspiracy started, the staff became aware of a second, separate conspiracy regarding **[Product B]**. On **[date]**, a separate grand jury investigation was opened in the **[district]** into **[Product B]**. **[Description of Product B and volume of commerce estimate redacted.]**

Four additional investigations are related to the **[Product A and Product B]** investigations: **[Product C]**, in which a grand jury was opened on **[date]** in **[district]**; **[Product D]**, in which a grand jury was opened on **[date]** in **[district]**; **Product E**, in which a grand jury opened on **[date]** in



the [district]; and [Product F], which is still at a preliminary stage. [Description of Products C, D, E, and F and volume of commerce estimates redacted].

You are generally recused from participation in particular matters with parties in which your former firm is or represents a party, under the standards of conduct for employees in the executive branch, 5 C.F.R. Section 2635.502, and under E.O. 13490. You left Arnold & Porter on January 2, 2013. Subsequent to your departure, Arnold & Porter appeared representing [Company 4], a potential target in the [Product B] conspiracy. We do not believe that these matters were pending at Arnold & Porter while you were there and, in any case, you had no involvement in them or knowledge about them. [Company 4] is not a former client of yours. Since Arnold & Porter represents a “party” as that term is defined for the purposes of E.O. 13490 and the standards of conduct, you are recused from participating in the [Product B] matter, absent a waiver.

It is important to highlight that [Company 4] is involved in [Product B] only; it is not involved in the suspected conspiracies involving [Products A, C, D, E, or F]. One of [Company 4’s] alleged co-conspirators, however, is believed to have been involved in conspiracies relating to [Product A and Product C], and the companies involved in [Product C] are also believed to have been involved in illegal conduct with respect to one or more of the following products: [Product D, Product E, and Product F]. Information leading to the opening of [Product B, Product C, and Product D] investigations came out of the [Product A] investigation. Information leading to the opening of the [Product E and Product F] investigations came out of the [Product C]. Thus, the [Product B] investigation is related to the Department’s investigations of these other products.

Due to these interrelationships, it was not workable to require your recusal in [Product B] but permit your participation in the others. Participation in any one of the matters requires access to confidential information and some degree of participation in the others. For that reason, a waiver was sought to permit your participation in each of the above-cited matters, even though your conflict is limited to [Product B].

#### Executive Order 13490, Ethics Commitments by Employees in the Executive Branch

The Executive Order 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. Sec. 1, paragraph 2. The Executive Order further provides that “particular matter involving specific parties” shall have the same meaning as set forth in the ethics regulations at 5 C.F.R. Section 2641.201(h), 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.” E.O. 13490, Sec. 2(h).

E.O. 13490 references the following definition provided in the standards of conduct (however, the E.O. specifically includes regulations and contracts):

5 C.F.R. Section 2641.201(h)(1): *Particular matter involving specific party or parties – (1) Basic Concept.* The prohibition applies only to communications or appearances made in connection with a “particular matter involving a specific party or parties.” Although the statute defines “particular matter” broadly to include “any investigation, application, request for ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding,” 18 U.S.C. 207(i)(3), only those particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product application, enforcement action, administrative adjudication, or court case.

The E.O. provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or his designee, in consultation with the Counsel to the President or his designee. E.O. 13490, Sec. 3(a). The Director, OMB, has designated the Designated Agency Ethics Official (DAEO) of each executive branch agency to exercise the Sec. 3 waiver authority, in writing, and in consultation with the Counsel to the President.

#### Specific Waiver Request

The matters that are the subject of this specific waiver request are significant to the Antitrust Division’s criminal program. The **[Product A]** investigation, in particular, will be high-profile in nature, and the conduct involved is believed to have inflicted considerable harm on U.S. businesses and consumers. Important decisions will need to be made in shaping these investigations, and in pursuing possible action to punish guilty parties and vindicate the public interest.

Moreover, these matters are expected to raise difficult evidentiary and charging issues, as well as important substantive issues on the proper methodology for calculating the volume of affected commerce for sentencing purposes. You have many years of experience on criminal antitrust investigations in the private sector. Accordingly, your participation in these matters going forward would be particularly valuable, not simply due to your position as the appointed and confirmed head of the Antitrust Division, but also due to your extensive expertise.

The Department’s efforts to successfully investigate and potentially to prosecute these matters would be significantly enhanced by your participation, and your participation would help to ensure consistency across the related matters. Depriving the Department of your leadership and valuable expertise in multiple important matters would create a hardship that is disproportionate to any potential appearance issue, particularly given that the suspected involvement of the entity that creates the conflict is limited to only one of the conspiracies under investigation – one believed to involve a relatively small amount of commerce. Due to the importance of these matters to the Division’s mission, and subject to the conditions outlined below, we believe it is necessary for you

to be able to exercise your leadership role as the Assistant Attorney General in reviewing, shaping, and managing the Division's investigations in **[the Products]**.

Based on consultations with the Antitrust Division, I conclude that it is not necessary at this time for you to meet or communicate with Arnold & Porter, should they make such a request. If direct contact with Department officials is necessary, other officials from the Department would be available to meet with your former firm. I have also concluded that, out of an abundance of caution, you should not be involved in charging decisions with respect to **[Company Z]** (or its employees), if they arise. **[Company Z]** may have been involved in the **[Product E]** conspiracy. **[Details redacted relating to Arnold & Porter representation in a separate Antitrust Division investigation involving Company Z]**. For several reasons, you have recused yourself from that separate matter.

The standard for waiving the restriction in the E.O. is that it be in the public interest. E.O. 13490, Sec. 3. Based on the above, I believe that it directly serves the public interest for the Department to have the benefit of your participation, given the institutional interests of the Department, and the important legal, policy, resource and strategic considerations that are involved. I certify that it is in the public interest that you be able to continue to participate in these matters.

#### 5 C.F.R. Section 2635.502

The standard of conduct at 5 C.F.R. Section 2635.502 requires an employee to take appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under Section 502, where an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to the matter, he should not participate in the matter without informing an agency official and receiving authorization to participate. Included in the definition of a "covered relationship" is any person for whom the employee served, within the preceding year, as officer, director, trustee, general partner, agent attorney, consultant, contractor, or employee. 5 C.F.R. Section 2635.502(b)(1)(iv).

The Department has also been sensitive to appearances of partiality where the official's former firm or former client is, or represents, a person or entity that is not a party but is otherwise significantly affected by a matter. In these situations, the Department applies the "catch-all" provision in Section 502, which states that if circumstances other than those specifically provided in the regulation may cause an official's impartiality to be questioned, the Department should use the process provided in Section 502 to determine whether he should or should not participate in a particular matter.

You have a covered relationship with your former firm, Arnold & Porter. However, Arnold & Porter appeared in the **[Product B]** matter after you left the firm. Thus, we do not believe the **[Product B]** matter was pending at Arnold & Porter while you were there, and, in any event, you did not participate in it or have knowledge of it. Arnold & Porter is not involved in **[Products A, C, D, E, or F]**.

Under the standard, and for the reasons described more fully above, I conclude that a reasonable person would not question the integrity of the Department's programs and operations based on your participation in the **[Products]** matters, and that should such questions arise, the Department's interest in your participation outweighs any possible concern. This is especially so given the adjustments the Department will make to reduce or eliminate the possibility that a reasonable person would question your impartiality. Namely, that you will not communicate with anyone from Arnold & Porter regarding these matters and will not be involved in the charging decisions with respect to **[Company Z]** (or its employees).

WAIVER: I hereby certify that it is in the public interest for you as Assistant Attorney General to participate in the **[Products]** matters, and pursuant to E.O. 13490 Sec. 3(a), I waive the restriction in Section 1 of E.O. 13490, on participation in a specific party matter that is directly and substantially related to your former employer, Arnold & Porter, except that you will not have any direct contact with Arnold & Porter and will not participate in charging decisions with respect to **[Company Z]** (or its employees). We have consulted with the Office of the Counsel to the President concerning this waiver. Further, I hereby determine, pursuant to 5 C.F.R. Section 2635.502, that the interest of the Department in your participation in these matters outweighs any possible concern that a reasonable person may question the Department's programs and operations.



United States Department of State

Washington, D.C. 20520

September 3, 2013

Waiver Pursuant to Section 3 of Executive Order 13490

After consulting with the Counsel to the President, I hereby grant a waiver of the requirements of paragraph 2 of the Ethics Pledge to Paul D. Frantz with respect to the Washington Post Company and its subsidiaries. Before his service as Assistant Secretary for Public Affairs at the U.S. Department of State, Mr. Frantz was the National Security Editor of the Washington Post, which was then published by The Washington Post Company.

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," Section 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 2 of the Ethics Pledge 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 employer. For purposes of applying this restriction, the term "particular matter" has been interpreted to include "any meeting or other communication relating to the performance of one's duties with a former employer." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

A waiver of the restriction 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 purposes of the restriction or that it is in the public interest to grant the waiver. E.O. 13490, Sec. 3(a). 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.

I have determined that the granting of this waiver is in the public interest. In his capacity as Assistant Secretary for Public Affairs, it is expected that Mr. Frantz will be an important point of contact between media outlets and the Department of State. It is in the public interest for Mr. Frantz to be able to communicate readily with a broad variety of news outlets, without preferential access being provided to outlets that were not his former employer. This will not only increase efficiency but also promote equal treatment of members of the press. It is also in the public interest for members of the public to have access to information about the work of the Department, and many Americans receive news through the Washington Post or through media outlets owned or controlled by The Washington Post Company.

Delegating these duties would inhibit Mr. Frantz from being able to communicate in high-level discussions regarding national security and other issues with the press and within his bureau. Given Mr. Frantz' background in national security, he is uniquely qualified for this position

position where it is incumbent that media and government officials have the opportunity to freely engage on these complex issues. The Office of Government Ethics, in discussing the Lobbyist Gift Ban, has provided similar guidance about unnecessary barriers to interaction between appointees and journalists and the unique constitutional role of the press in gathering and disseminating information. See DO-09-007, OGE Memorandum to Designated Agency Ethics Officials, February 11, 2009.

In accordance with 5 C.F.R. § 2635.502(d), I have also determined that, with respect to particular matters in which Mr. Frantz would participate personally and substantially that might involve the Washington Post or the Washington Post Company, the interests of the Government in his participation outweigh the concern that a reasonable person may question his impartiality or the integrity of the Department's programs and operations.

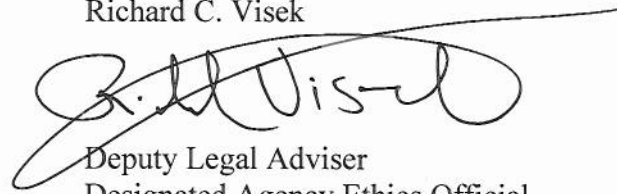
Reasons include:

- Mr. Frantz's continued relationship with the Washington Post and the Washington Post Company will be minimal during his employment. Although he will continue to participate in a 401(k) and a defined benefit pension plan, the benefits provided are pursuant to a contractual obligation and were set long before Mr. Frantz's employment with the Department. They constitute a small percentage of Mr. Frantz's overall wealth;
- In many cases, the decisions made by the Assistant Secretary for Public Affairs impact all media outlets rather than one particular media outlet, so the direct impact of a potential decision on the Washington Post or the Washington Post Company is reduced;
- Many decisions about media access, interviews, and public messages of the Department are made in conjunction with other high-level Department officials, including the Principal Deputy Assistant Secretary and others – so, the likelihood that the Assistant Secretary's sole discretion would be the determining factor is also reduced;
- Decisions about public access to information and Department communications are sensitive and often require high-level engagement: if the Assistant Secretary was not able to participate in these discussions and policy determinations, it would have a negative impact on the Department;
- Mr. Frantz' ability to work on matters involving the Washington Post or the Washington Post Company is of particular importance to the Public Affairs Bureau and to the Department due to his expertise in national security and in journalism and the media industry. It would be difficult to assign another employee to this matter and a detriment to the Department to lose Mr. Frantz' expertise on these issues.

Thus, I grant this waiver with the understanding that Mr. Frantz will comply with the remaining provisions of the Ethics Pledge and with all preexisting government ethics rules. Pursuant to the above determination, this waiver also serves as an authorization pursuant to 5

C.F.R. § 2635.502(d) to participate in particular matters involving the Washington Post or the Washington Post Company as a party.

Richard C. Visek

A handwritten signature in black ink, appearing to read "R. C. Visek", with a long horizontal flourish extending to the right.

Deputy Legal Adviser  
Designated Agency Ethics Official  
U.S. Department of State

THE WHITE HOUSE

Washington

July 18, 2013

MEMORANDUM FOR CHRISTOPHER JENNINGS

FROM: KATHRYN H. RUEMMLER *KR*  
COUNSEL TO THE PRESIDENT

SUBJECT: Limited Public Interest Waiver Pursuant to Section 3, Executive Order 13490

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Pursuant to Section 3 of Executive Order 13490, I hereby grant a limited waiver of the requirements of Paragraph 2 of the Ethics Pledge for Mr. Christopher Jennings solely with respect to certain former not-for-profit clients (“Health Care Non-Profits”).<sup>1</sup> I have determined that this waiver is necessary because it is in the public interest for Mr. Jennings, when representing the interests of the President and the United States as Deputy Assistant to the President for Health Policy and Coordinator for Health Reform, to be able to participate appropriately in official matters that may involve these entities.

Executive Order 13490, “Ethics Commitments by Executive Branch Personnel,” Section 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 2 of the Ethics Pledge provides that a covered appointee may 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 a former employer or client. 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.” OGE Memorandum to Designated Agency Ethics Officials, DO-09-011, 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. E.O. 13490, Sec. 3(b). The Director of the Office of Management and Budget has delegated to each executive branch Designated Agency Ethics Official the authority to issue waivers under section 3 of the Executive Order.

Mr. Jennings is a leading authority on health care policy with experience coordinating Federal policy on such matters. Mr. Jennings has served in health policy positions at the United States Congress, the White House, and the private sector. Mr. Jennings served as co-staff director of

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<sup>1</sup> These entities are AARP; Bipartisan Policy Center; Coalition to Transform Advanced Care; Federation of American Hospitals; Generic Pharmaceutical Association; Grantmakers in Health: Federal State Implementation Project; National Partnership for Women and Families; National Quality Forum; Pharmaceutical Care Management Association; Robert Wood Johnson Foundation; The SCAN Foundation; Service Employees International Union.



the Bipartisan Policy Center's health reform project, under the leadership of a bi-partisan group of former Senate Majority Leaders. Mr. Jennings previously served in the White House, as the Senior Health Care Advisor to President Clinton, where he contributed to enactment of bipartisan health legislation.

Prior to his appointment by President Obama as Deputy Assistant to the President for Health Policy and Coordinator for Health Reform, Mr. Jennings served as president of the consulting firm Jennings Policy Strategies and served on the boards of the National Quality Forum, the National Organization for Rare Disorders and the David A. Winston Health Policy Fellowship. Because of his unique expertise and long commitment to improving health care for all Americans, Mr. Jennings' consulting clients included some not-for-profit organizations that have been active in the health care field and specifically in matters related to the implementation of health reform. I have concluded that it is in the public interest to grant Mr. Jennings a waiver of Paragraph 2 of the Ethics Pledge with respect to the Health Care Non-profits. As Deputy Assistant to the President for Health Policy and Coordinator for Health Reform, Mr. Jennings will be responsible for advising the President and White House staff on health care initiatives, such as the effective implementation of health reform and ongoing policies to improve access to higher quality, more affordable health care for all Americans. Without this waiver, when advising the President on national health care policy, Mr. Jennings would be limited in his ability to communicate with some of the most widely recognized, respected, nonpartisan voices on health care policy matters. The Health Care Nonprofits comprise not-for-profit membership, educational and philanthropic organizations representing a range of viewpoints and the interests of tens of millions of ordinary Americans as well as the collective views of health care sectors implementing health reform. The Health Care Nonprofits serve as important conveners in the field of public health, bringing private, nonprofit and public actors together to achieve common objectives and promote the national interest. Collectively, the Health Care Nonprofits sponsor essential academic research, policy analysis, and public health programming that touch the lives of millions of Americans and inform and leverage the efforts of Federal public health and social service Departments. The Health Care Nonprofits embrace significant membership-based organizations that represent the diverse views of millions of Americans and multiple health care sectors whose experiences of health care and health reform implementation are important to the national policy dialogue. The President's policy advisors consult broadly with these and other key health care stakeholders, and it is in the public interest that the President's leading advisors not be hindered from continuing engagement with broad sections of health care stakeholders. The potential for appearance of undue access afforded in any communication is mitigated by the prominence, mission, and breadth of viewpoint of the Health Care Nonprofits. Therefore, I certify that it is in the public interest that this waiver be granted so that Mr. Jennings, as Deputy Assistant to the President for Health Policy and Coordinator for Health Reform, be able to freely communicate with all of the most widely recognized, respected, not-for-profit voices in the health care field to obtain the best information and build consensus on national health care policy.

This waiver is limited: this waiver does not cover Jennings Policy Strategies or any former clients of Mr. Jennings other than the Health Care Nonprofits named herein. This waiver does not permit Mr. Jennings to participate in any party-specific matters directly affecting the financial interests of the Health Care Nonprofits, including but not limited to contracts or grants.

Mr. Jennings will, of course, otherwise comply with the remainder of the Ethics Pledge and with all other applicable government ethics rules.



United States Department of State

Washington, D.C. 20520

February 6, 2013

### Limited Waiver Pursuant to Section 3 of Executive Order 13490

After consulting with the Counsel to the President, I hereby grant a limited waiver of the requirements of paragraph 2 of the Ethics Pledge to Glen D. Johnson with respect to Boston Globe Electronic Publishing LLC, the Globe Newspaper Company, Inc., and the New York Times Company and its subsidiaries. Mr. Johnson's former employer is the Boston Globe Electronic Publishing LLC, which is published by Globe Newspaper Company, Inc., a subsidiary of The New York Times Company.

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," Section 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 2 of the Ethics Pledge 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 employer. For purposes of applying this restriction, the term "particular matter" has been interpreted to include "any meeting or other communication relating to the performance of one's official duties with a former employer." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

A waiver of the restriction 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 purposes of the restriction or that it is in the public interest to grant the waiver. E.O. 13490, Sec. 3(a). 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 Senior Advisor to the Secretary of State, Mr. Johnson was an editor with Boston Globe Electronic Publishing, LLC, which is published by Globe Newspaper Company, Inc., a subsidiary of The New York Times Company. Mr. Johnson maintains a *de minimis* continuing financial interest in The New York Times Company in the form of stock and participation in a 401(k) retirement plan.

I have determined that this waiver is appropriate as a policy matter because it is in the public interest of Americans to have access to information about the Secretary of State's work, and many Americans receive news through media outlets owned or controlled by The Boston Globe or the New York Times Company. It is expected that the Senior Advisor will be an important point of contact between media outlets and the Department of State. Without this waiver Mr. Johnson would be limited in his ability to communicate with the Boston Globe or the New York

Times Company, and Americans' access to news about the activities of the Department of State would potentially be impaired. I grant this waiver with the understanding that Mr. Johnson will comply with the remaining provisions of the Ethics Pledge and with all preexisting government ethics rules.

Richard C. Visek

A handwritten signature in blue ink, appearing to read "R. C. Visek", with a long horizontal line extending to the right.

Deputy Legal Adviser  
Designated Agency Ethics Official



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

**MEMORANDUM**

**TO:** ALEXIA LATORTUE  
Deputy Assistant Secretary  
International Development Policy

**FROM:** Rochelle F. Granat *RF*  
Assistant General Counsel  
General Law, Ethics and Regulation &  
Designated Agency Ethics Official

Elizabeth A. Horton *EAC*  
Deputy Assistant General Counsel for Ethics  
General Law, Ethics and Regulation

**DATE:** November 26, 2013

**RE:** Waiver Pursuant to Section 3 of Executive Order 13490

The following documents the waiver granted to you orally on November 6, 2013, after consultation with the Office of the Counsel to the President.

Pursuant to Section 3 of Executive Order 13490, I hereby waive the requirements of paragraph 2 of the Ethics Pledge of Ms. Alexia Latortue solely with respect to her former employer, the World Bank, except for matters that require direct engagement with the Consultative Group to Assist the Poor (CGAP). This waiver is necessary so that Ms. Latortue, when representing the interests of the Department of the Treasury as Deputy Assistant Secretary, International Development Policy, may participate appropriately in official matters that involve the World Bank.

**Background**

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

## **Analysis**

Before her service as Deputy Assistant Secretary, International Development Policy, Ms. Latortue served as the Deputy CEO of the Consultative Group to Assist the Poor (CGAP) within the World Bank, and prior to that she served as a Senior Microfinance Specialist for the CGAP<sup>1</sup>. If paragraph 2 of the ethics pledge were applied literally to Ms. Latortue, she would not be able to participate in matters relating to the World Bank and any of its bodies, offices or agencies and therefore could not advise the Assistant Secretary for International Markets and Development appropriately on such matters in her role as Deputy Assistant Secretary, International Development Policy.

After reviewing all of the relevant facts and circumstances, and after consultation with the Office of the Counsel to the President, I have concluded that a waiver of paragraph 2 of the Ethics Pledge is appropriate for Ms. Latortue with respect to her former employer, the World Bank, except for matters that require direct engagement with the CGAP, because the literal application of the restriction is inconsistent with its purpose and because waiver is in the public interest.

The World Bank is not a private company, but rather an international organization of which the United States is a leading member. The United States has been a member country of the World Bank since its inception in 1944 and it is currently the Bank's largest shareholder. Through its participation, the United States has supported the Bank's mission of providing low-interest loans, interest-free credits, and grants to developing countries for education, health, infrastructure and other purposes. The World Bank is not a conventional private lending institution that extends credit to parties on commercial or market terms, but rather, the World Bank is an international financial institution that seeks to further public objectives. The U.S. participates with an aim to reduce poverty, support development, and further U.S. economic and national security objectives. As such, there is little likelihood that a government employee could take action to favor the commercial interests of his or her former employer at the expense of the United States. Accordingly, literal application of paragraph 2 in this situation is inconsistent with the purposes of the restriction and a waiver is appropriate.

In addition, it is also in the public interest for Ms. Latortue to participate in matters relating to the World Bank. It is essential that the United States have an effective, credible voice in discussions

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<sup>1</sup> Established in 1995, CGAP is a self-governed policy and research center established in 1995 to advance poor people's access to finance. It is administratively held by the World Bank Group, which has legal, financial, and administrative oversight of CGAP, with trust fund contributions as the primary funding mechanism.

with the World Bank on the many important issues that arise in that forum. Ms. Latortue has significant expertise in the field of international development. She spent the past eleven years working as a senior official of CGAP, within the World Bank, and as a result has developed an intimate knowledge its organization and operations including its governance structure; the functions of its different lending windows and trust funds; lending instruments; and oversight and accountability mechanisms. The knowledge, skills and relationships that Ms. Latortue developed during her time at the World Bank give her credibility, enhance her effectiveness, and will allow her to significantly advance U.S. interests within the organization. Accordingly, a waiver is appropriate for the separate and independent reason that it is in the public interest for Ms. Latortue to participate in matters relating to her former employer.

Based on the above analysis, I waive the requirements of paragraph 2 of the Pledge as it pertains to Ms. Latortue's future involvement in particular matters relating to the World Bank and any of its bodies, offices or agencies (other than matters involving CGAP, as described above). Furthermore, while a reasonable person with knowledge of the relevant facts may question Ms. Latortue's impartiality in matters relating to the World Bank, I make a separate determination, pursuant to 5 C.F.R. § 2635.502, that the Government's interest in Ms. Latortue's ability to participate in these matters, given the critical responsibilities associated with her position as Deputy Assistant Secretary, International Development Policy, outweighs the concern that a reasonable person may question the integrity of the Department of the Treasury's programs and operations.

This waiver of the requirements of paragraph 2 of the Ethics Pledge for Ms. Latortue does not constitute a waiver of 18 U.S.C. § 208. Ms. Latortue has a continuing financial interest in World Bank as a result of the payment of her pension. Until Ms. Latortue has received all of her pension payments, pursuant to 18 U.S.C. § 208, she may not participate personally and substantially in any particular matter that would have a direct and predictable effect on the ability or willingness of the World Bank to provide these payments to her.

Ms. Latortue will, of course, otherwise comply with the remainder of the pledge and with all other preexisting government ethics rules.



EXPORT-IMPORT BANK  
OF THE UNITED STATES

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OFFICE OF THE GENERAL COUNSEL

July 24, 2013

Ms. Patricia M. Loui  
Director  
Export-Import Bank of the United States  
811 Vermont Avenue, N.W.  
Washington, DC 20571

Dear Director Loui,

Pursuant to the authority delegated under Section 3 of Executive Order 13490, and after consultation with the Office of 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 solely with respect to BNP Paribas, the corporate parent of your former client First Hawaiian Bank (FHB). Your participation is necessary to ensure that the Export-Import Bank of the United States (Ex-Im Bank) continues to carry out its mission of encouraging U.S. exports to maintain and create U.S. jobs and contribute to a stronger national economy.

*Background*

You were appointed as a Director of the Board of the Ex-Im Bank on November 8, 2011. Prior to joining Ex-Im Bank, your employer OmniTrak Group, Inc., provided consulting services to FHB. Specifically, such services included conducting customer satisfaction surveys of FHB retail banking customers. Pursuant to Executive Order 13490, you may not participate for two years after the date of your appointment in any particular matter that is directly and substantially related to your former client, FHB, a wholly owned subsidiary through BancWest of BNP Paribas, unless you receive a waiver. This restriction expires on November 8, 2013. Accordingly, during your appointment as Director of Ex-Im Bank, you have recused yourself from voting and other involvement in transactions where BNP Paribas is a party.

Effective July 21, 2013, as a result of the term expiration of two Directors, Ex-Im Bank may not have quorum for transaction of business involving BNP Paribas by the Board of Directors. The Ex-Im Bank Board is composed of a Chairman, Vice Chairman and three Directors for a total of five voting members of the Board. A quorum of at least three member Directors must be present in order for the Board of Directors to transact business, including the approval of any transaction in excess of \$10 million.



transactions which come before the Ex-Im Bank Board of Directors. Were the Board to lack quorum to act in such matters, it could disrupt Ex-Im Bank's ability to transact routine business, for example financing the purchase of U.S. exports by foreign buyers working with BNP Paribas. Such a disruption would negatively impact Ex-Im Bank's ability to carry out its function of export promotion and job creation.

*Executive Order 13490*

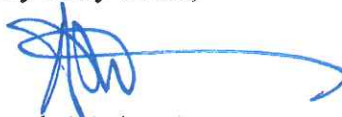
Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," Section 1 ("Ethics Pledge"), provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients. The Executive Order further provides that "particular matter involving specific parties" shall have the same meaning as set forth in the ethics regulations at 5 C.F.R. § 2641.201(h), 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." E.O. 13490, Sec. 2(h).

The Executive Order provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or her designee, in consultation with the Counsel to the President or her designee. E.O. 13490, Sec. 3(a). The Director, OMB, has designated the Designated Agency Ethics Official (DAEO) of each executive branch agency to exercise the Section 3 waiver authority, in writing, and in consultation with the Counsel to the President or his or her designee. 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. *Id.*, Sec. 3(b).

As discussed above, your vote may become necessary for the Ex-Im Bank Board to continue to act in matters involving BNP Paribas. BNP Paribas is a routine participant in major structured transactions which come before the Ex-Im Bank Board of Directors. Given the significant public interest in avoiding disruption to Ex-Im Bank's ability to transact routine business and finance export transactions, it is important that you be able to participate in such matters in order that quorum not be denied. BNP Paribas's retail operations include one United States bank holding company subsidiary, BancWest, which operates retail banks under the name Bank of the West in the western United States, as well as state-chartered FHB in Hawaii. Prior to joining Ex-Im Bank, you provided consulting services to FHB concerning the retail business of that entity. You did not provide consulting services to FHB's corporate parent, BNP Paribas. The nature of your previous consulting arrangement with FHB does not in any way relate to BNP Paribas's export financing, structured finance and project finance transactions that come before the Board of Directors of Ex-Im Bank. You have no continuing financial interest in FHB, BancWest or BNP Paribas. Therefore, your prior consulting relationship with FHB presents little potential to give rise to an appearance of partiality or undue access with respect to corporate parent, BNP Paribas. Accordingly, I hereby waive the requirements of paragraph 2 of your Ethics Pledge as it pertains to your future involvement with particular matters relating to BNP Paribas.

This waiver is limited: this waiver does not permit you to participate in any transaction or other particular matter where FHB, BancWest, or Bank of the West is a party until the expiration of the two-year recusal period. This waiver does not affect your obligation to comply with all other applicable government ethics rules.

Very Truly Yours,



Angela Mariana Freyre  
Senior Vice President, General Counsel  
and Designated Agency Ethics Official

Moniz



Department of Energy  
Washington, DC 20585

May 21, 2013

MEMORANDUM FOR THE SECRETARY

FROM: SUSAN F. BEARD *Susan F. Beard*  
DESIGNATED AGENCY ETHICS OFFICIAL

SUBJECT: Determination to Grant a Limited Waiver of Ethics Pledge Restriction and Authorization pursuant to 5 C.F.R. § 2635.502(d)

Pursuant to 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 waive the restrictions in Paragraph 2 of the Ethics Pledge, solely with respect to your former client, General Electric. I have determined that this limited waiver is necessary because it is in the public interest for you, when representing the interests of the Department of Energy and the United States, to be able to participate in certain official matters that involve General Electric ("GE").

Executive Order 13490 requires all covered appointees to abide by certain 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 employer or former client. "Former client" includes anyone for whom the appointee has served personally as a consultant within two years prior to his appointment. GE meets the definition of "former client" because of your prior position as a member of the GE Reimagination Advisory Board. The restrictions contained in Paragraph 2 of the Ethics Pledge may be waived upon a determination that it is in the public interest to grant a waiver.

Secretary of the Department of Energy

As Secretary of the Department of Energy, you will be responsible for directing the Department in its stated mission to: catalyze the timely, material, and efficient transformation of the nation's energy system and secure U.S. leadership in clean energy technologies; maintain a vibrant U.S. effort in science and engineering as a cornerstone of our economic prosperity with clear leadership in strategic areas; enhance nuclear security through defense, nonproliferation, and environmental efforts; and establish an operational and adaptable framework that combines the best wisdom of all Department stakeholders to maximize mission success.

General Electric

In the two year period prior to your appointment as Secretary, you served as a member of the Advisory Board of Reimagination – a clean technology research and development initiative of



GE – providing advice on a roughly one-day per year basis. This limited relationship with GE did not include the provision of advice on nuclear matters. Your compensation was not so significant that it would cause a reasonable person to question your ability to be impartial with respect to official matters involving GE.

GE is active in industries aligned with the Department's broad mission in solar, wind, nuclear, natural gas, and smart grid technologies. Further, GE is subject to regulation by the Department. At present, the Department has a number of pending rulemaking proceedings to establish energy conservation standards for certain residential products and commercial equipment. These rulemakings include particular matters involving specific parties (including GE), in which the Secretary would be expected to have significant involvement in the underlying substantive policy decisions.

GE is also one of two primary U.S. designers and suppliers of nuclear reactors and reactor components. The Department and the Secretary are key advocates for advancing U.S.-constructed nuclear power plants abroad. The Secretary is expected to encourage other nations to join the Convention on Supplementary Compensation for Nuclear Damage ("CSC"), which would strengthen the ability of U.S. nuclear suppliers – including GE – to compete for the sale of commercial power plants overseas.

In addition, pursuant to section 57b of the Atomic Energy Act of 1954, as amended, the Secretary is required to make a determination regarding the export of unclassified nuclear technology. The responsibility to make these determinations is nondelegable. This statutory provision includes implementing regulations at 10 C.F.R. Part 810. Historically, GE has frequently applied for Part 810 export applications, and it is anticipated that GE will continue to do so.

GE Nuclear designed and constructed the Fukushima Daiichi Nuclear Power Plant reactors affected by the 2011 tsunami. The Department and its national laboratories continue to be involved in the aftermath of the Fukushima disaster. Secretary Chu has been actively involved in discussions with the government of Japan since the tsunami, and it is expected that you would be the Department's representative and technical expert to the Japanese government on this matter.

In the area of renewable energy technology, it is anticipated that the Secretary will play an instrumental role in a number of current and proposed tax credits that will directly affect industries which, in some cases, are made up of a small number of producers, including GE.

Because GE's business lines overlap with portions of the Department's portfolio, it is anticipated that in order to effectively lead the Department, you will need to be involved in several matters and initiatives in which GE is a party or will be directly affected as part of a small group of entities.

#### Waiver of Paragraph 2 of the Ethics Pledge

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 GE is or represents a party. I have

determined that it is in the public interest to waive this restriction as it pertains to GE for the following reasons:

Your knowledge of theoretical nuclear physics, energy technology, and policy studies are essential to the United States energy program;

Your prior service as Under Secretary of the Department of Energy, from 1997 to January 2001, and as Associate Director for Science in the Office of Science and Technology Policy in the Executive Office of the President, from 1995 to 1997, uniquely qualify you to lead the Department in its broad-based mission;

Your technical and subject-matter expertise, and your unrestricted personal involvement, is crucial to carrying out the Department's core missions, in furtherance of the public interest;

In your role as Secretary, you will be expected to represent the Department and the United States in discussions with the government of Japan concerning the Fukushima Daiichi Nuclear Power Plant and with other foreign governments regarding the CSC;

Your prior affiliation with GE was limited to service as a member of the GE Ecomagination Advisory Board, a roughly once-a-year commitment. Your compensation was not so significant that it would cause a reasonable person to question your ability to be impartial; and

Your advisory duties were limited to GE – Ecomagination – and did not include the provision of advice on nuclear energy matters.

Accordingly, you are provided a limited waiver of Paragraph 2 of the Ethics Pledge, permitting you – when representing the interests of the Department of Energy and the United States as Secretary – to be involved in non-monetary, specific party matters involving GE. This waiver also serves as an authorization pursuant to 5 C.F.R. § 2635.502(d) to participate in particular matters in which GE is or represents a party with the same restrictions outlined below.

This limited waiver does not permit you to participate in: (1) the evaluation of any application for funding or decision to award, extend or modify any contract; grant; or other financial agreement between the Department and GE; or (2) any matter in which you have participated as a member of the GE Ecomagination Advisory Board.

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

THE WHITE HOUSE

Washington

July 15, 2013

MEMORANDUM FOR DAVID SIMAS

FROM: KATHRYN H. RUEMMLER *KR*  
COUNSEL TO THE PRESIDENT

SUBJECT: Limited Waiver Pursuant to Section 3, Executive Order 13490

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I hereby waive the requirements of paragraph 2 of the Ethics Pledge of Mr. David Simas solely with respect to his former employer, the Democratic National Committee (DNC). This waiver is necessary so that Mr. Simas, when representing the interests of the Administration as Assistant to the President and Deputy Senior Advisor for Communications and Strategy, may participate in matters that involve the DNC.

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," Section 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 2 of the Ethics Pledge 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. 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." OGE Memorandum to Designated Agency Ethics Officials, DO-09-011, 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. E.O. 13490, Sec. 3(b). The Director of the Office of Management and Budget has delegated to each executive branch Designated Agency Ethics Official the authority to issue waivers under Section 3 of the Executive Order.

Mr. Simas previously served in the White House communications office as Deputy Assistant to the President. Mr. Simas left the White House to advise the President's re-election campaign and was briefly employed by the DNC until his return to government service. If paragraph 2 of the Ethics Pledge were applied literally to Mr. Simas, he would be restricted from participating in particular matters involving the DNC and from communicating with the DNC on official matters concerning the President and the White House. As the Assistant to the President and Deputy Senior Advisor for Communications and Strategy, Mr. Simas is responsible for advising the President and White House staff with respect to the President's policy agenda and reporting

the activities and programs of the government to the American public. The DNC and other organizations of the Democratic Party also often seek to communicate the President's actions and policies to the American public. The restriction in paragraph 2 of the Ethics Pledge addresses concerns that former employers and clients may appear to have privileged access. No appearance of privileged access is raised by communication between a national party committee and the President's communications staff regarding the facts of the President's actions and policy agenda. Accordingly, I certify that the literal application of the restriction under the circumstances here would be inconsistent with the purpose of the restriction and therefor grant Mr. Simas a waiver of paragraph 2 of the Ethics Pledge with respect to his former employer, the DNC.

This waiver is limited and only applies to paragraph 2 of the Ethics Pledge as it relates to the DNC. Mr. Simas does not have any continuing financial interest in the DNC. Mr. Simas will, of course, otherwise comply with the remainder of the Ethics Pledge and with all other applicable government ethics rules.



# UNITED STATES DEPARTMENT OF EDUCATION

## OFFICE OF THE GENERAL COUNSEL

December 12, 2013

### Waiver Pursuant to Section 3 of Executive Order 13490

After consulting with the Office of the Counsel to the President, I hereby grant a waiver of the requirements of paragraph 2 of the Ethics Pledge to Dorie Nolt with respect to her former employer, the Associated Press ("AP"), with whom she was employed as an education reporter until June 2012.

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," § 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 2 of the Ethics Pledge provides that a covered appointee may not for a period of two years from the date of her appointment participate in any particular matters involving specific parties that is directly and substantially related to her former employer. "Former employer" is defined as "any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee...." *Id.* at § 2 (e). For purposes of applying this restriction, the term "particular matter" includes "any meeting or other communication relating to the performance of one's official duties with a former employer." DO-09-011, OGE Memorandum to Designated Agency Officials, March 26, 2009.

A waiver of the restriction 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 purposes of the restriction or that it is in the public interest to grant the waiver. E.O. 13490, § 3(a). The Office of Government Ethics announced that the Designated Agency Ethics Official of each executive branch agency is 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 becoming Press Secretary, Ms. Nolt was employed by the AP, an independent, not-for-profit news cooperative owned by American newspaper and broadcasters, until June 2012. Ms. Nolt has no continuing financial interest in the AP.

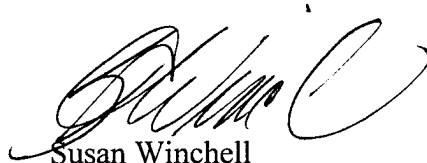
I have determined that granting a waiver is appropriate as a policy matter because it is in the public interest for Americans to have unfettered access to information about the Department's work, and many Americans receive their news through reporting provided by the AP.

As Press Secretary, Ms. Nolt is the Department's primary contact with media outlets. It serves the public interest for the individual in this position to be able to communicate readily with a broad variety of news outlets, without conferring preferential treatment on



outlets that are not her former employer. The waiver will increase efficiency and promote equal treatment of all members of the press. Absent a waiver Ms. Nolt will be limited in her ability to communicate with the AP, and Americans' access to news about the Department's activities may be impaired.

Thus, I grant this waiver with the understanding that Ms. Nolt will comply with the remaining provisions of the Ethics Pledge and with all preexisting government ethics rules.

A handwritten signature in black ink, appearing to read "Susan Winchell", with a large, stylized flourish at the end.

Susan Winchell  
Assistant General Counsel for Ethics and  
Designated Agency Ethics Official



United States Department of State

Washington, D.C. 20520

August 9, 2013

**Limited Waiver Pursuant to Section 3 of Executive Order 13490**

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 Office of the Counsel to the President, I hereby certify, for the reasons stated below, that it is in the public interest for Mr. Clifford Sloan to receive a limited waiver of the restrictions in paragraph 2 of the Ethics Pledge with respect to his former client the Ministry of Justice, Government of Ukraine.

**Background**

Executive Order 13490, “Ethics Commitments by Executive Branch Personnel,” Section 1, requires all covered political appointees to abide by certain commitments. Paragraph 2 of the Ethics Pledge provides that a covered appointee may not for a period of two years from the date of his appointment participate in any particular matters involving specific parties that is directly and substantially related to his former employer. For purposes of applying this restriction, the term “particular matter” includes “any meeting or other communication relating to the performance of one’s official duties with a former employer.” *Id.*, Sec. 2(h).

A waiver of the restriction 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 purposes of the restriction or that it is in the public interest to grant the waiver. E.O. 13490, Sec. 3(a). The Director of the Office of Management and Budget has designated the Designated Agency Ethics Official of each executive branch agency to exercise the Section 3 waiver authority, in writing, and in consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

**Analysis**

As the Special Envoy for Guantanamo at the U.S. Department of State, Mr. Sloan serves as a senior point of contact regarding the transfer of Guantanamo detainees abroad and manages the multitude of diplomatic issues related to the detention facility, including implementation of transfer determinations and conducting a periodic review of those detainees who are not approved for transfer.

Before his service as Special Envoy for Guantanamo at the U.S. Department of State, Mr. Sloan was a partner at Skadden, Arps, Slate, Meagher & Flom LLP. While there, he provided legal services to the Ministry of Justice, Government of Ukraine, a client of the firm, until December

2012. Mr. Sloan has no continuing financial relationship with the Ministry of Justice, Government of Ukraine.

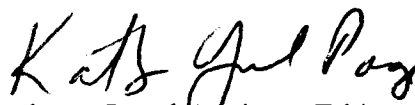
Absent a waiver, Mr. Sloan would be prohibited by paragraph 2 of the Ethics Pledge from participating in any particular matter involving specific parties in which the Ministry of Justice, Government of Ukraine is or represents a party.

After reviewing all of the relevant facts and circumstances and consulting with the Office of the Counsel to the President, I have concluded that this waiver is in the public interest. It is in the public interest that the Special Envoy for Guantanamo be able to engage freely in high-level discussions and negotiations with foreign government counterparts to carry out the President's directives regarding the Guantanamo Bay facility. It is expected that the Special Envoy for Guantanamo will be an important point of contact between the Ministry of Justice, Government of Ukraine, and the Department of State. Without this waiver, Mr. Sloan would be limited in his ability to communicate with the Ministry of Justice, Government of Ukraine, and the Department's ability to engage with them at a high level on matters related to detainees at Guantanamo could be impaired. Accordingly, I hereby waive the requirements of paragraph 2 of the Ethics Pledge as it pertains to Mr. Sloan's future involvement in particular matters involving the Ministry of Justice, Government of Ukraine in his capacity as Special Envoy for Guantanamo.

Furthermore, I make a separate determination, pursuant to 5 C.F.R. § 2635.502, that the Government's interest in Mr. Sloan's ability to participate in these matters, given the critical responsibilities associated with his position as the Special Envoy for Guantanamo at the U.S. Department of State, outweighs any concern that a reasonable person may question the integrity of the U.S. Department of State's programs and operations.

I grant this waiver with the understanding that Mr. Sloan will comply with the remaining provisions of the Ethics Pledge and with all other applicable government ethics rules.

Kathryn Youel Page



Assistant Legal Adviser - Ethics and Financial Disclosure  
Alternate Designated Agency Ethics Official  
U.S. Department of State

UNCLASSIFIED



United States Department of State

Washington, D.C. 20520

*www.state.gov*

Waiver Pursuant to Section 3 of Executive Order 13490

After consulting with the Counsel to the President, I hereby grant a waiver of the requirements of paragraph 2 of the Ethics Pledge to Gregory B. Starr with respect to his former employer, the United Nations, an international organization.

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," Section 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 2 of the Ethics Pledge 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 employer. For purposes of applying this restriction, the term "particular matter" has been interpreted to include "any meeting or other communication relating to the performance of one's official duties with a former employer." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

A waiver of the restriction 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 purposes of the restriction or that it is in the public interest to grant the waiver. E.O. 13490, Sec. 3(a). 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 Assistant Secretary of State for Diplomatic Security, Mr. Starr was the Under Secretary General for Safety and Security with the United Nations, which is an international organization with 193 member states, including the United States. The United Nations' facilitates international cooperation in areas of human rights, economic development, democracy, security, among many others. Mr. Starr does not have a financial interest in the United Nations.

I have determined that this waiver is appropriate as a policy matter because it is in the strong public interest of Americans to have the Assistant Secretary coordinate with the United Nations on matters critical to the nation's security. The Assistant Secretary is a primary point of contact for coordinating the Department of State's response to threats against U.S. personnel and facilities in the United States and abroad. To this end he needs to discuss security issues of mutual concern with various high level officials in the United Nations system. Without this waiver Mr. Starr would be unable to communicate with the United Nations, which is an important partner in responding to threats shared against U.S. Government personnel and civilians and foreign diplomats. Thus, America's interest in protecting the safety and security of such individuals would be impaired.

I grant this waiver with the understanding that Mr. Starr will comply with the remaining provisions of the Ethics Pledge and with all preexisting government ethics rules. However, this waiver also serves as an authorization pursuant to 5 C.F.R. § 2635.502(d) to participate in particular matters in which the United Nations is a party or represents a party within the same parameters outlined above.



Richard C. Visek  
Deputy Legal Adviser and  
Designated Agency Ethics Official

Date: 11/22/13



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the  
General Counsel

August 5, 2013

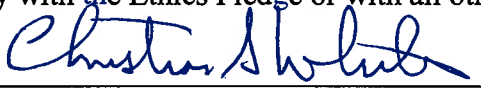
**CERTIFICATION OF PUBLIC INTEREST WAIVER FOR JOSHUA D. WRIGHT**

**FROM:** Christian S. White  
Designated Agency Ethics Official

**SUBJECT:** Limited Waiver from Restrictions Related to Charles River Associates

Pursuant to the authority delegated under Section 3 of Executive Order 13490 ("Ethics Pledge"), for the reasons stated in the attached memorandum, and after consultation with the Office of the White House Counsel, I hereby certify that a limited waiver of the restrictions of paragraph 2 of the Ethics Pledge is in the public interest for appointee Joshua D. Wright in the position of Commissioner at the Federal Trade Commission ("FTC" or "Commission"). Commissioner Wright previously held the position of Senior Consultant at Charles River Associates ("CRA"). Absent a waiver, Commissioner Wright would be prohibited by paragraph 2 of the Ethics Pledge from participating in any particular matter involving specific parties in which CRA is or represents a party.

I authorize Commissioner Wright to participate in particular matters involving CRA, subject to the limitations set forth below and in the attached memorandum. This waiver is deemed only applicable in those circumstances where CRA represents a party to an FTC matter involving specific parties and the matter rises to the level of Commission review. This authorization does not remove the bar on engaging in one-on-one meetings or communications with CRA as set forth in the Ethics Pledge. This waiver does not authorize Commissioner Wright to participate in contracting matters, including contract determinations, involving CRA as a party or to participate in those particular matters involving specific parties in which he participated as a Senior Consultant for CRA. This waiver does not otherwise affect Commissioner Wright's obligation to comply with the Ethics Pledge or with all other applicable federal government ethics rules.

Signed   
Christian S. White  
Designated Agency Ethics Official  
Federal Trade Commission

Date 8/5/13




UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the  
General Counsel

August 5, 2013

MEMORANDUM

TO: Joshua D. Wright  
Commissioner

FROM: Christian S. White   
Designated Agency Ethics Official

SUBJECT: Limited Waiver under E.O. 13490 and Limited Authorization under 5 C.F.R.  
§ 2635.502(d) for matters involving Charles River Associates

The purpose of this memorandum is to document the basis for waiving the restriction in Executive Order 13490 of January 21, 2009, Ethics Commitments by Employees in the Executive Branch ("Ethics Pledge"), and for my determination under the Standards of Ethical Conduct for Employees of the Executive Branch ("Standards of Conduct"), 5 C.F.R. § 2635, that you may participate in certain FTC particular matters in which your former client, Charles River Associates ("CRA"), represents a party.

Background

You were sworn in as a Commissioner of the Federal Trade Commission ("FTC" or "Commission") on January 11, 2013, to a term that expires in September 2019. The FTC's mission is to prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity. The FTC deals with issues that touch the economic life of every American.

The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy. The FTC pursues vigorous and effective law enforcement; advances consumers' interests by sharing its expertise with federal and state legislatures and U.S. and international government agencies; develops policy and research tools through hearings, workshops, and conferences; and creates practical and plain-language educational programs for consumers and businesses in a global marketplace with constantly changing technologies.

Many of the particular matters that come before the Commission involve extensive economic analysis. While this is true for FTC matters generally (including those that originate in the agency's Bureau of Consumer Protection), specific party matters that stem from the FTC's Bureau of Competition almost always involve detailed economic analysis of alternative antitrust actions. Further, parties to FTC antitrust matters routinely obtain support from economics

experts who are affiliated with major consulting firms, such as CRA (FTC staff also occasionally uses economics experts who are affiliated with major consulting firms, including CRA). Economic experts generally affiliate with major consulting firms either through an employer-employee relationship or as an independent contractor. Economic experts commonly enter into simultaneous independent contractor affiliations with multiple consulting firms. Unlike the wide variety of large law firms that have or seek to do business before the Commission, there are a small number of large economic consulting firms that routinely have matters before the FTC. Over the past decade, the key players have included CRA, Compass Lexecon, NERA, Bates White, and LECG Corporation (now defunct). While smaller economic consulting firms occasionally may be involved in FTC matters, a major firm like CRA is involved as an expert in roughly one-third of all antitrust specific party matters pending at the FTC.

Prior to being confirmed as a Commissioner, you were affiliated with CRA as an independent contractor in the position of Senior Consultant beginning October 2009.<sup>1</sup> You have indicated that the title of “Senior Consultant” to CRA is a term of art distinguishing employees (who generally are labeled as “Principals” or other titles such as President or Vice-President) from independent contractors. In practice, you contracted with CRA in order to obtain the firm’s support for your individual consulting activities at your discretion. Specifically, you contracted with CRA to handle billing services and (on occasion and upon your request) to provide staffing for research needs in connection with economic consulting work that you independently secured. I understand CRA provided billing and staffing support services to you on a single antitrust matter.<sup>2</sup> Despite receiving your payments through CRA, you retained 100% of the billings for your personal work and received a percentage of the billings CRA obtained for the services provided by its staff. Further, you did not have an exclusive relationship with CRA. In practice, you determined which firm you would affiliate with on a project-by-project basis and, on several occasions, you decided to use another consulting firm. You did not closely interact with individuals affiliated with CRA beyond those you specifically selected to support you on the single matter you sourced to CRA and you rarely had reason to be inside the CRA workplace (you performed your consulting work elsewhere). Although you acknowledge you were a consultant in the traditional sense with respect to the persons you personally serviced (*i.e.*, you were a consultant to Church & Dwight, the party who paid CRA for your personal services), you believe your relationship with CRA was an independent contractor relationship. In essence, you have characterized your relationship with CRA as that of a sole proprietor contracting with an entity to obtain administrative support and other assistance at your discretion. Despite the title of Senior Consultant, a title granted to the overwhelming majority if not all non-employee academic affiliates of CRA such as yourself, you believe it is inaccurate to state that you provided *personal services to CRA* as a consultant (*e.g.*, you did not provide consulting services to CRA regarding its business practices, you did not work for CRA clients at the firm’s request—you independently sourced the one consulting project for which CRA provided you billing and support services).

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<sup>1</sup> Section 5 of your contract with CRA describes the relationship between you and CRA as one of an independent contractor.

<sup>2</sup> That matter involved an FTC investigation and private antitrust litigation against Church & Dwight, Inc. Pursuant to the Ethics Pledge, during your two-year “cooling-off” period, you must not participate in FTC matters where Church & Dwight, Inc. is or represents a party. Further, ethics restrictions generally prohibit you from participating in the same matter in which you participated in private practice for the life of that matter.



## Ethics Pledge

As you are aware, 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. E.O. 13490, Sec. 1, paragraph 2. The Ethics Pledge further provides that a "particular matter involving specific parties" shall have the same meaning as set forth in the ethics regulations at 5 C.F.R. § 2641.201(h), except that it shall also include "any 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." E.O. 13490, Sec.2(h).

The Ethics Pledge references the following definition provided in the Standards of Conduct; however, the Ethics Pledge specifically includes regulations and contracts:

5 C.F.R. § 2641.201(h)(1): *Particular matter involving a specific party or parties* – (1) *Basic concept.* The prohibition applies only to communications or appearances made in connection with a "particular matter involving a specific party or parties." Although the statute defines "particular matter" broadly to include "any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding," 18 U.S.C. § 207(i)(3), only those particular matters that involve a specific party or parties fall within the prohibition of section 207(a)(1). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product application, enforcement action, administrative adjudication, or court case.

The Ethics Pledge provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or his designee, in consultation with the Counsel to the President or his designee. E.O. 13490, Sec. 3(a). The Director of OMB has designated the Designated Agency Ethics Official of each agency to exercise the Section 3 waiver authority, in writing, and in consultation with the Counsel to the President or her designee.

Although I have no doubt that your characterization of your relationship with CRA is accurate, I believe the firm meets the definition of "former client" for purposes of Section 1, Paragraph 2 of the Ethics Pledge. My belief primarily stems from the firm's public marketing, with your consent, of your relationship with CRA as a consultant to the firm<sup>3</sup> and the language in your

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<sup>3</sup> Your contract expressly gives CRA the right to disclose publicly that you are affiliated with the firm as an economic, financial or business consultant and it appears CRA took advantage of that clause. For example, the firm announced via press release that "Senior Consultant to CRA Joshua Wright [was] nominated as FTC Commissioner." CRA, Senior Consultant to CRA Joshua Wright nominated as FTC Commissioner, CRA Announcement Antitrust & Competition, [http://www.crai.com/uploadedFiles/RELATING\\_MATERIALS/Publications/LAE/Antitrust\\_and\\_Competition\\_Economics/Wright%20Announcement\\_0912.pdf](http://www.crai.com/uploadedFiles/RELATING_MATERIALS/Publications/LAE/Antitrust_and_Competition_Economics/Wright%20Announcement_0912.pdf) (last visited April 30, 2013). Further, the profiles of CRA Senior Consultants appear alongside the profiles for CRA senior employees in the firm's online professional directory. Finally, CRA appears to publicly announce (via press release) new Senior Consultant affiliations in the same manner it announces the hiring or promotion of senior staff.

contract with CRA suggesting the firm had some degree of control over your consulting services even if not exercised in practice.<sup>4</sup> Further, simply due to your prior service as an independent contractor, you have a “covered relationship” with CRA for purposes of 5 C.F.R. § 2635.502. Accordingly, without a waiver of Section 1, Paragraph 2 of the Ethics Pledge and an authorization under 5 C.F.R. § 2635.502(d), you are prohibited from participating in FTC particular matters where CRA is a party or represents a party.

### Pledge Waiver

The standard for waiving the recusal provisions in the Ethics Pledge is that it be in the public interest. E.O. 13490, Sec. 3. As a Commissioner, it directly serves the public interest that the FTC have the benefit of your participation in matters before the Commission. A number of important specific party matters involving CRA, in particular antitrust matters that raise significant competition policy questions, are likely to come before the Commission. Your recusal would deprive the Commission of one of its Presidentially-appointed decision makers and the Commission would not be able to benefit from your expertise and judgment. You are the only current Commissioner who has both a JD and a PhD in economics, and are the second Commissioner ever with that distinction, making you uniquely qualified to participate in the many complex antitrust matters before the Commission that intersect those disciplines. Moreover, many of the FTC’s antitrust matters (merger reviews in particular) are incredibly time sensitive and it can be difficult to determine with certainty whether CRA represents a party in such matters.<sup>5</sup> Finally, the recusal provides an opportunity for litigants to engage in strategic and pre-emptive hiring of CRA to create a conflict that would compel your recusal. [As you have

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<sup>4</sup> For example, your contract provided that “[w]hile the Consultant is consulting for CRA, the Consultant shall” comply with CRA’s standard policies for consultants. You agreed you would not take on work that would materially limit your ability to fulfill commitments to CRA due to conflicts of interest concerns. Further, you were required to give CRA the first right of refusal for all of your economic, financial, litigation or business consulting work. However, you were free to take the work elsewhere if the client refused to retain CRA or if there was an instance in which CRA did not have the necessary staff expertise or availability for the particular project. In practice, I understand that you did in fact take all projects but one to other consulting firms during the term of the CRA contract.

<sup>5</sup> Unlike formal notifications provided to staff regarding the status of attorney representatives, CRA’s involvement in a particular matter may not be readily apparent. Generally, FTC staff become aware of CRA’s involvement in a matter by receiving reports from parties to that matter that have been prepared by experts affiliated with CRA or by meeting in person with CRA-affiliated experts along with parties to the matter (typically, the parties’ legal representatives are also present). Economic consulting firms commonly engage in analysis that informs the parties’ assessment of antitrust risk in a particular matter without appearing in the more formal sense of submitting expert reports, white papers, or other submissions. Further complicating matters is that CRA’s involvement in FTC matters may be limited in scope and time. For example, CRA may provide an economic analysis at the initial phase of an investigation but may not otherwise appear before or communicate to FTC staff in connection with that matter. Assuming the analysis provided by CRA is no longer at issue in the matter, CRA’s continued involvement in the FTC proceeding may be unclear at any given time (particularly with respect to providing “behind the scenes” assistance).

mentioned, since you have become a Commissioner, numerous antitrust practitioners have inquired with you about your recusals related to CRA which heightens this concern.] Should you continue to be recused from matters involving CRA, the corresponding administrative burdens on your fellow Commissioners may lead to operational and procedural inefficiencies – the agency currently has a vacancy at the Commissioner level and the offices of existing Commissioners are leanly staffed.

After consultation with the Office of the White House Counsel, I have determined that it is in the public interest that you be able to participate in certain FTC particular matters relating to CRA. Your expertise and judgment in making sound decisions on major issues before the Commission is required to address significant legal and economic challenges and further the Commission's mission of protecting competition and consumers. In my judgment, the nature of your former consulting arrangement with CRA does not restrict your ability to address those concerns impartially. Accordingly, I hereby provide a limited waiver of the requirements of paragraph 2 of the Ethics Pledge as it pertains to your future involvement with particular matters related to CRA. Specifically, I authorize you to participate in FTC particular matters involving CRA, subject to the following limitations:

- This waiver is deemed only applicable in those circumstances where CRA represents a party to an FTC matter involving specific parties and the matter rises to the level of Commission review.
- This authorization does not remove the bar on engaging in one-on-one meetings or communications with CRA as set forth in the Ethics Pledge.
- This waiver does not authorize you to participate in contracting matters, including contract determinations, involving CRA as a party.<sup>6</sup>
- This authorization does not permit you to participate in those particular matters involving specific parties in which you participated as a Senior Consultant with support from CRA.

#### Standards of Conduct Waiver

The Standards of Conduct require employees to act impartially, and to avoid the appearance of impropriety. 5 C.F.R. § 2635.101(b). More specifically, the Standards of Conduct require employees to take appropriate steps to avoid a loss of impartiality in the performance of their official duties. *Id.* at § 2635.502(a). Where an employee knows that a person with whom he has a “covered relationship” is a party or represents a party to an official matter, he should not participate in that matter without informing an agency ethics official and receiving authorization to participate. Included in the definition of a “covered relationship” is any person for whom the employee has served, within the preceding calendar year, as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. *Id.* at § 2635.502(b)(1)(iv).

Accordingly, you have a “covered relationship” with CRA, where you held the position of Senior Consultant as an independent contractor. I conclude that a reasonable person would not question the integrity of the FTC's programs and operations based on your participation in matters that come before the Commission involving CRA as described above. Should such questions nevertheless arise, I further conclude that, given the critical responsibilities associated with your

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<sup>6</sup> To be clear, with this waiver, you may participate in the FTC matters where staff has retained the services of CRA without your personal and substantial participation in that contractual process.

position as Commissioner, the United States' interest in your participation outweighs the concern that a reasonable person may question the integrity of the FTC's programs and operations.

Accordingly, as the Designated Agency Ethics Official for the FTC, 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 the Ethics Pledge.

Finally, this limited waiver and authorization does not otherwise affect your obligation to comply with the Ethics Pledge or with all other applicable federal government ethics rules.