



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

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