

MEMORANDUM

TO: Donald F. McGahn II
Counsel to the President

FROM: Elizabeth J. Fischmann 
Designated Agency Ethics Official
Associate General Counsel

DATE: June 21, 2017

SUBJECT: Request for limited waiver of Executive Order 13770

Pursuant to Executive Order 13770, Section 3, (January 28, 2017) (the Executive Order) you have been delegated authority by the President to grant a waiver. Ms. Keagan Lenihan, Senior Counselor to the Secretary, United States Department of Health and Human Services (HHS), requires a limited waiver of Section 1, paragraph 7 of the Executive Order to enable her to effectively carry out the full range of duties of her HHS position. On behalf of Ms. Lenihan, I request your consideration of this limited waiver.

Prior to her service at HHS, Ms. Lenihan worked for McKesson Specialty Health, Office of Government Affairs, as the Senior Director of Government Affairs. During the course of her work for McKesson Specialty Health, and within the two years before the date of her HHS appointment, she registered under the Lobbying Disclosure Act. Absent this limited waiver, by the terms of the Executive Order, Ms. Lenihan would be restricted for two years after her appointment date from participating in any particular matters on which she lobbied within the two years before the date of her appointment. Moreover, she would be restricted from participating in the specific issue area in which those particular matters fall.

The information provided to me indicates that Ms. Lenihan has a unique level of technical expertise, legislative experience, and strategic insight on a broad range of healthcare issues. Prior to joining HHS, Ms. Lenihan handled legislative issues involving Part B Medicare payments, specifically seeking parity in fee schedules used for physician versus hospital outpatient treatments and preventing reductions to Medicare Part B drug reimbursement payments to physicians. The primary focus of her responsibilities for her former employer was advocating on behalf of cancer patients or oncologists. This subspecialty is a highly technical area of the Medicare rules where expertise is developed through experience. Prior to her work for McKesson Specialty Health, Ms. Lenihan was a Legislative Director for Congressman Pete Sessions and an Associate Staff Member for the U. S. House of Representative Committee on Rules from March of 2008 until October of 2011. She also worked as a Senior Legislative

Assistant for Secretary Price from March 2005 until March 2008 when he served in Congress. Accordingly, she combines her technical healthcare expertise with experience and familiarity with the processes and procedures of the legislative branch.

As a Senior Counselor to the Secretary, Ms. Lenihan's expertise is needed to implement and drive key public health and safety policy initiatives for the Department. These nation-wide initiatives require her to have extensive, open, and collaborative communications within HHS and with external stakeholders and other government officials in order to assist with any Department-wide response to public health emergencies such as the national opioid addiction crises, drug pricing issues, or Medicare and health insurance coverage and payment issues, among other duties. Granting this limited waiver will allow Ms. Lenihan to freely carry out the full responsibilities of her position in service to the American people rather than requiring her to continue to recuse from particular matters on which she lobbied and the specific issue area in which those particular matters fall.

As you consider the merits of granting this limited waiver, it is important to note that Ms. Lenihan has no personal financial interest in her former employer or in the particular matters on which she lobbied or the specific issue area in which those particular matters fall. She will continue to recuse pursuant to 5 C.F.R. § 502 and Section 1, paragraph 6, of the Executive Order, for the time frames dictated by those restrictions, from participation in any particular matters involving specific parties where her former employer is a party or party representative.

Moreover, in order to avoid potential conflicts of interest during her appointment as Senior Counselor to the Secretary, she has agreed that neither she, her spouse, nor any of her minor children will acquire any direct financial interest in entities involved, directly or through subsidiaries, in the following industries: (1) research, development, manufacture, distribution, or sale of pharmaceutical, biotechnology, or medical devices, equipment, preparations, treatment, or products; (2) veterinary products; (3) healthcare management or delivery; (4) health, disability, or workers compensation insurance or related services; (5) food and/or beverage production, processing or distribution; (6) communications media; (7) computer hardware, computer software, and related internet technologies; (8) wireless communications; (9) social sciences and economic research organizations; (10) energy or utilities; (11) commercial airlines, railroads, shiplines, and cargo carriers; or (12) sector mutual funds that concentrate their portfolios on one country other than the United States. In addition, she will not acquire any interests in sector mutual funds that concentrate in any of these sectors.

LIMITATIONS

This limited waiver will not affect the application of any other provision of law, including any other provision of the Ethics Pledge; the Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. part 2635); or the criminal bribery, graft and conflict of interest statutes (18 U.S.C. 201-209). In particular, as noted above, Ms. Lenihan will remain restricted by the Executive Order, Section 1, paragraph 6, from participating in any particular matter involving specific parties that is directly and substantially related to her former employer, McKesson Specialty Health. Accordingly, although this limited waiver permits her to participate in the specific issue area in which particular matters on which she lobbied fall, she is still required to

recuse from any particular matter involving specific parties that is directly and substantially related to her former employer:

LIMITED WAIVER ISSUANCE

After consideration of the information provided above, please indicate your final decision concerning a limited waiver for Ms. Keagan Lenihan by signing below.

Please do not hesitate to contact me if you have any questions or need further information.

A limited waiver pursuant to Section 3 of Executive Order 13770 (January 28, 2017), as described in detail above, promotes the public interest and, accordingly, is granted to Ms. Keagan Lenihan.



Donald F. McGahn II
Counsel to the President

30 June 2017
Date