

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, 2014 – DECEMBER 31, 2014**

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## Preface

This is the sixth 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 2014 calendar year; the number and type of 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, 2014. 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 2014 Appointments)**

Executive branch agencies, in addition to the White House and the Office of the Vice President, reported that 1157 full-time, non-career appointees<sup>1</sup> were appointed during the period of January 1 through December 31, 2014. Of these appointees, 1084 were required to sign the Ethics Pledge, and 100% have done so.<sup>2</sup> In addition, agencies reported that during calendar year 2014, 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 eleven waivers during calendar year 2014. Copies of waivers issued to executive branch agency appointees are posted on OGE's website, [www.oge.gov](http://www.oge.gov), after OGE receives a copy from the waiver recipient's employing agency. Waivers issued by the White House are posted on the White House website, [www.whitehouse.gov](http://www.whitehouse.gov). All waivers issued during calendar year 2014 are found in Appendices IV, V, and VI.

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<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."

## Employees Subject to the Ethics Pledge

Of the 136 reporting agencies, 66 agencies and the White House and the Office of the Vice President<sup>3</sup> appointed full-time, non-career appointees subject to the Ethics Pledge during the period of January 1 through December 31, 2014.<sup>4</sup> Table 1 below provides additional details regarding the categories of full-time, non-career appointees who became subject to the Ethics Pledge in 2014.

Table 1: Full-Time, Non-Career Appointees  
(January 1 – December 31, 2014)

<b>PAS</b>	<b>PA</b>	<b>Non-Career SES</b>	<b>Schedule C</b>	<b>Other</b>	<b>Total</b>
<b>182</b>	<b>14</b>	<b>214</b>	<b>531</b>	<b>216</b>	<b>1157</b>

## Compliance with the 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 1157 full-time, non-career appointees were appointed during the period of January 1 through December 31, 2014. Table 2 shows that of the 1157 appointees, 1084, or approximately 94 percent, were required to sign the Ethics Pledge upon their appointment in 2014.<sup>5</sup> The largest category of appointees required to sign the Ethics Pledge is Schedule C appointees.

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<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 OGE’s website and Appendix I for detailed guidance regarding the appointees subject to the Ethics Pledge.

<sup>5</sup> Additionally, as Table 3 reflects, 54 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 2014.

Table 2: Ethics Pledge Signatures (by Appointee Type)  
(January 1 – December 31, 2014)

<b>Appointee Type</b>	<b>Required</b>	<b>Not Required</b>	<b>Total</b>
<b>PAS</b>	<b>162</b>	<b>20</b>	<b>182</b>
<b>PA</b>	<b>13</b>	<b>1</b>	<b>14</b>
<b>Non-career SES</b>	<b>203</b>	<b>11</b>	<b>214</b>
<b>Schedule C</b>	<b>492</b>	<b>39</b>	<b>531</b>
<b>Other</b>	<b>214</b>	<b>2</b>	<b>216</b>
<b>TOTAL<sup>6</sup></b>	<b>1084</b>	<b>73</b>	<b>1157</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. Seventy-three of the appointees who did not sign the Ethics Pledge fell into one of two categories, as detailed in Table 3. The two categories reflect OGE’s implementing guidance.

Table 3: Appointees Not Required to Sign the Ethics Pledge in 2014  
(January 1 – December 31, 2014)

<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>19</b>
Appointed without break in service after serving in another position subject to the Ethics Pledge	<b>54</b>
*Exempt, non-policymaking positions include schedulers, office assistants, drivers, and similar positions.	

Former Lobbyists Appointed in Calendar Year 2014

Executive branch agencies and the White House and Office of the Vice President reported that none<sup>7</sup> of the full-time, non-career appointees appointed January 1 through December 31, 2014, 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 six appointees appointed in 2014 signed the Ethics Pledge early in December 2013. Those appointees are included in Table 2. One agency reported that two appointees signed the Ethics Pledge in 2014 but were appointed in previous calendar years. Those appointees are not included in Table 2.

<sup>7</sup> One registered lobbyist was issued a waiver in 2014 but was not appointed until 2015.

## 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.

## Ethics Pledge 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>8</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.

Copies of waivers issued to executive branch agency appointees are posted on OGE’s website, [www.oge.gov](http://www.oge.gov), after OGE receives a copy from the waiver recipient’s employing agency. Waivers issued by the White House are posted on the White House website, [www.whitehouse.gov](http://www.whitehouse.gov).

## Reverse Revolving Door Waivers

Executive branch agencies and the Office of the Vice President reported that eight appointees were granted waivers from the requirements of Ethics Pledge paragraph 2 during the period from January 1, 2014 through December 21, 2014. Generally, paragraph 2 of the Ethics Pledge 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 waivers of the requirements of Ethics Pledge paragraph 2 and the executive agencies that issued the waivers are identified in Table 4 below. Appendix IV contains copies of Ethics Pledge paragraph 2 waivers issued in calendar year 2014.

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<sup>8</sup> Section 3 of Executive Order 13490 provides a waiver mechanism for restrictions contained in the Ethics Pledge including the standards that must be met for a waiver to be granted.

Table 4: Appointees who Received Paragraph 2 Waivers in 2014

<b>Appointee Name</b>	<b>Agency</b>
William Baer	Department of Justice
Sylvia Burwell	Department of Health and Human Services
Frank Klotz	Department of Energy
Maurice Obstfeld	Council of Economic Advisers
Evan Schrum	Office of the Vice President
Andrew Slavitt	Department of Health and Human Services
Richard Stengel	Department of State
Mary Jo White <sup>9</sup>	Securities and Exchange Commission

Lobbying Waivers

Mr. Paone, Deputy Assistant to the President and Senate Liaison, received a waiver from Ethics Pledge paragraph 3 allowing his appointment to an agency he lobbied within two years of appointment.<sup>10</sup> Generally, paragraph 3 of the Ethics Pledge restricts appointees from seeking or accepting employment with an executive agency that the appointee lobbied within the two years prior to appointment. Appendix V contains a copy of the waiver.

Post-Employment Waivers

Ms. Marshall, former Chief of Protocol of the United States, received a limited waiver of the restrictions of paragraph 4 of the Ethics Pledge. Generally, paragraph 4 of the Ethics Pledge restricts appointees from communicating with employees of their former executive agency for a period of two years following the end of their appointment. Appendix VI contains a copy of the waiver.

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 2014 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 2014 in which appointees may have had contact with former employers in violation of Ethics Pledge paragraph 2.

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<sup>9</sup> This appointee received two separate waivers of Ethics Pledge paragraph 2 in 2014.

<sup>10</sup> Mr. Paone was issued the waiver in 2014 but was not appointed until January 2015.



# **APPENDIX I**

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## 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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# **APPENDIX II**



## **Methodology**

In January 2015, each agency was asked to complete an assessment. The assessment focused on compliance with Executive Order 13490 for the period of January 1 through December 31, 2014.

The assessment was emailed on January 5, 2014 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**

## Ethics Pledge Compliance Assessment

(Executive Order 13490)

Calendar Year 2014

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

### Deadline

The deadline for completing the assessment is **February 2, 2015**.

### 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 that you provide 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, 2014 and December 31, 2014**:

- 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 requiring response. Based on your responses, the assessment may skip items not applicable to your agency.

**Please keep in mind that you are required to submit your completed assessment electronically.** You may start this process by clicking the "Next" button below.

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

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

### **Saving the Assessment**

If you want to save the assessment and complete it later, click the "Save and Continue Assessment Later" link available at the top of each page. You will be asked to provide an email address. A link will be sent to your email, which you may use to return to and complete the assessment.

### **Submitting the Assessment**

When you have completed the assessment, click the "Submit" button to send your assessment to OGE. At that time, you will be provided an opportunity to print a copy of your responses via your browser window.

### **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, 2014?

- 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, 2014, 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.*)

Number of Full-Time Non-Career Appointees	Type of Full-Time Non-Career Appointees					
	by Category					
	PAS	PA	Non-career SES	Schedule C	Other	Total
Appointed 01/01– 12/31/2014						
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) and indicate the total number of appointees who fit into that category.

Rationale for Not Signing the Ethics Pledge	Number and Type of Full-Time Non-Career Appointees					
	Who Did Not Sign the Ethics Pledge					
	PAS	PA	Non-career SES	Schedule C	Other	Total
a. Occupy an exempt non-policymaking 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, 2014 and subject to the Ethics Pledge were registered lobbyists during the two years prior to their appointment?

*NOTE: If none, enter "0" in the box below*

Please type comments in the box below.

*NOTE: If you did not have any appointees in 2014 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 your response to 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" in the box below)*

Please type comments in the box below.

7. For any appointee identified in your response to question 5 who does not have an ethics agreement, please provide their 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 2014; 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>Name(s) of Individual(s) 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.**

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

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

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

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

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



# **APPENDIX IV**



U.S. Department of Justice

Justice Management Division

Washington, D.C. 20530

June 9, 2014

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  
DirecTV

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 DirecTV. The proposed \$67.1 billion transaction will combine the nation's second and sixth largest providers of multi-channel video programming distribution services (MVPD).

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, Arnold & Porter is representing AT&T before the Federal Communications Commission (FCC), which is also reviewing the deal. A different large law firm is representing AT&T in the Department's investigation. You left Arnold & Porter on January 2, 2013. Arnold & Porter represented AT&T in several antitrust matters before the Department while you were head of the firm's antitrust practice group in Washington, DC. However, AT&T was not at any point your client, and you do not believe you have confidential information about the company as a result of your work at Arnold & Porter. You are not aware of this matter having been pending while you were at Arnold & Porter while you were there, as you did not do work for AT&T.

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 involving evolving markets moving toward consolidation, and the Department’s efforts would be substantially enhanced by your participation on this matter. It will also involve extensive coordination with the Federal Communications Commission (FCC). Your input and significant merger expertise would be extremely valuable here, and your leadership in our coordination with the FCC and in our communications with industry, consumer, and public policy groups is similarly essential.

It is important to note that, although Arnold & Porter is involved in representing AT&T, they are representing the company before the FCC, not before the Department. 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 DirecTV.

#### 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 the Standards of Conduct, an official is presumptively recused for one year from participating in matters in which his former firm is or represents a party because this is a "covered relationship" under 5 C.F.R. Section 2635.502. Although you have been separated from your firm for more than a year, and thus no longer have a "covered relationship" with Arnold & Porter, the Department has been sensitive to appearances of partiality, even after one year, if its senior officials participate in matters involving either (1) their former firms or (2) clients for which they performed a significant amount of legal work. In these circumstances, the Department has used the process described in 5 C.F.R. Section 2635.502 (d) to determine whether an official should participate in a matter. Thus, authorization for you to participate is based on a determination that the importance of your participation outweighs the concern that a reasonable person may question the integrity of the Department's programs and operations. 5 C.F.R. Section 2635.502(d).

I have considered the factors set forth in 5 C.F.R. Section 2635.502(d), and I believe they weigh in favor of your participation. The nature of the relationship involved is a former law firm from which you have been separated for 16 months, and the law firm's involvement is in a parallel FCC proceeding, not the Department's investigation. Further, Arnold & Porter is a large firm with hundreds of lawyers, and it appears unlikely that your work on the antitrust review could have a material impact on the firm's finances simply because the firm is handling the FCC aspects of the transaction. Although this is a high-profile matter in which you would be a decision-maker if authorized to participate, these factors are, again, mitigated by the role your former firm plays (*i.e.*, as counsel for the FCC proceedings, not the Department's review). Moreover, although there are qualified officials to whom this matter can be reassigned, it is preferable that a matter of this magnitude – which will involve extensive coordination with FCC leadership, coordination with industry, consumer, and public policy groups, and attention from Congress – be decided by the individual who has been appointed by the President and confirmed by the Senate to head the Antitrust Division. Of course, your extensive merger expertise will be especially valuable in analyzing the important and substantive antitrust and competition policy issues raised by this transaction involving evolving markets moving toward consolidation.

Finally, adjustments will be made to your duties that will reduce or eliminate any appearance concern. As discussed above, I have concluded that it is not necessary for you to meet or communicate with your former firm.

We have also considered whether your recusal on *Comcast/Time Warner* would restrict your ability to participate in this matter or create an appearance issue of its own. The two matters are separate transactions, involving two different companies albeit in the same industry. After careful review of the circumstances presented by each matter, and based on confidential information, we have concluded that it is possible to participate in *AT&T/DirecTV* without participating in *Comcast/Time Warner*.

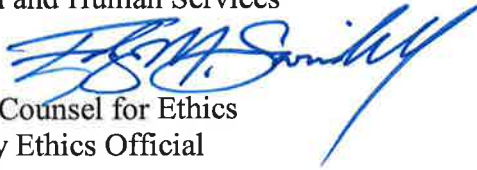
Under the standard, I conclude that a reasonable person would not question the integrity of the Department's programs and operations based on your participation in the Department's investigation of AT&T's proposed acquisition of DirecTV, and that should such questions arise, the Department's interest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



October 9, 2014

MEMORANDUM FOR SYLVIA MATHEWS BURWELL  
Secretary of Health and Human Services

FROM: Edgar M. Swindell   
Associate General Counsel for Ethics  
Designated Agency Ethics Official

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

The purpose of this memorandum is to provide a limited waiver of the restrictions in Section 1, Paragraph 2, of Executive Order 13490 (the Ethics Pledge or E.O.), to permit your participation, subject to certain restrictions and conditions, in particular matters involving the Bill and Melinda Gates Foundation (Gates Foundation) that relate to the ongoing Ebola epidemic response. Subject to the limitations set forth below, this waiver will facilitate your ability to lead and coordinate HHS's efforts to respond to the epidemic and is therefore in the public interest. I have consulted with the Office of the Counsel to the President concerning this waiver and notified the Office of Government Ethics (OGE). This document will be made publicly available on the OGE website.

The Ethics Pledge provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients, including regulations and contracts. *See* E.O. 13490, § 1, ¶ 2. The Ethics Pledge further provides that "particular matter involving specific parties" shall have the same meaning as set forth in 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."

The E.O. defines "former employer" to include any person for whom the appointee has, within the two years prior to the date of appointment, served as an employee, officer, director, trustee, or general partner. You were appointed initially to the position of Director of the Office of Management and Budget (OMB) on April 26, 2013. Within two years prior to your federal appointment, you served as the President of Global Development for the Gates Foundation. You resigned from this position in November 2011. For purposes of Section 1, Paragraph 2 of the Ethics Pledge, the Gates Foundation is a former employer.

Section 3 of the E.O. provides for waiver of the recusal provisions that apply with respect to a former employer. As the Designated Agency Ethics Official (DAEO) for the Department of



Health and Human Services (HHS), I am authorized to exercise that waiver authority in consultation with the Office of the Counsel to the President and pursuant to a delegation from the OMB Director. *See* Office of Government Ethics Memorandum Re: Authorizations Pursuant to Section 3 of Executive Order 13490, DO-09-008 (Feb. 23, 2009). The standard for waiving the restriction in the Ethics Pledge is that the literal application of the restriction would be inconsistent with the purposes of the restriction, or that it would be in the public interest to grant the waiver. *See* E.O. 13490, § 3(a). The E.O. states that “[t]he public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy.” *Id.*, § 3(b).

The Gates Foundation is one of several non-profit entities that are working worldwide to control the deadly Ebola epidemic. Coordination of federal government efforts to combat Ebola with those of non-profit organizations, private industry, international relief organizations, and foreign governments is a function that requires your participation as the Secretary of HHS.

Accordingly, this limited waiver is issued in the public interest, inasmuch as exigent circumstances related to national security, global public health, and the global economy are involved. Issuance of this limited Ethics Pledge waiver will allow your full participation in HHS efforts to combat the Ebola epidemic. Your management skills and leadership are considered essential to this strategic effort. The Ethics Pledge recusal obligation, to which you would be subject absent this waiver, would render you unable to carry out effectively significant duties of your office. For example, you may be limited, under certain circumstances, in your ability to personally communicate with the Gates Foundation and key partners that work with it to discuss issues related to effective strategies to contain the spread of the Ebola virus.

In light of the critical importance of combating Ebola, I find that the public interest warrants that I grant you a waiver of the provisions of Section 1, Paragraph 2 of Executive Order 13490, to allow you to participate in meetings and other specific party matters related to the Ebola epidemic response in which the Gates Foundation is a party or representative of a party. Accordingly, you are not precluded from participating personally and substantially in those matters directly and substantially related to your former employer, the Gates Foundation, that effectuate global efforts to control the Ebola epidemic and alleviate suffering of those infected. This may include, for example, meetings with representatives from the Gates Foundation and possibly other nonprofit organizations to collaborate on the appropriate deployment of resources to combat this disease.

This waiver is limited. In the unlikely event that direct funding relationships with the Gates Foundation are contemplated, you are not authorized by this waiver to participate in any grant awards or procurement contracts given by HHS to the Gates Foundation to perform Ebola-related functions or tasks, or in any similar transactions that would result in a transfer of federal funds to the Gates Foundation. This waiver does not otherwise affect your obligation to comply with other provisions of the Ethics Pledge or with all other applicable government ethics rules.



## Department of Energy

Washington, DC 20585

APR 18 2014

MEMORANDUM FOR: FRANK G. KLOTZ  
UNDER SECRETARY FOR NUCLEAR SECURITY/  
ADMINISTRATOR FOR THE NATIONAL NUCLEAR  
SECURITY ADMINISTRATION

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

SUBJECT: Limited Waiver of Paragraph 2 of the Ethics Pledge for  
Specific Party Matters Involving Bechtel National Corporation

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 you to receive a limited waiver of the restrictions in paragraph 2 of the Ethics Pledge with respect to Bechtel National Corporation (Bechtel).

### Background

The Under Secretary for Nuclear Security serves also as the Administrator for Nuclear Security (NNSA), a separately organized agency within the Department of Energy. See 50 U.S.C. 2402; 42 U.S.C. 7132(c)(3). The Under Secretary for Nuclear Security has authority over, and is responsible for, all NNSA programs and activities (with the exception of the functions of the Deputy Administrator for Naval Reactors). NNSA is responsible for the management and security of the nation's nuclear weapons, nuclear non-proliferation, and naval reactor programs. It also responds to nuclear and radiological emergencies in the United States and abroad. Additionally, NNSA federal agents provide safe and secure transportation of nuclear weapons and components and special nuclear materials along with other missions supporting the national security.

Prior to your appointment as Under Secretary for Nuclear Security, you provided consulting services to Bechtel through the Klotz Consulting Group, LLC, related to Bechtel's proposal for the management and operating (M&O) contract procurement for the Y-12 National Security Complex and Pantex Plant, identified as procurement action DE-SOL-001458 (the Y-12 M&O contract). You did not provide any other consulting services to Bechtel.

Bechtel has a number of large contracts with DOE, including NNSA, and operates facilities dedicated to critical DOE programs. Bechtel is a partner in the M&O contracts for two out of the three DOE weapons laboratories (i.e., Los Alamos National Laboratory and Lawrence Livermore National Laboratory). The Y-12 M&O contract on which you consulted was recently awarded to Bechtel. The Bettis Atomic Power Laboratory, dedicated to the joint Navy-DOE program





responsible for nuclear-powered warships, is managed and operated by Bechtel Marine Propulsion Corporation which is a subsidiary of Bechtel. The Deputy Administrator for Naval Reactors, who oversees the Bettis Lab, reports to the Secretary of Energy through the Under Secretary for Nuclear Security. *See* 50 U.S.C. 2406.

In light of the critical services that Bechtel provides the Department with respect to national nuclear facilities, it is necessary that you participate in matters in which Bechtel is a party or represents a party in order for you to perform your duties as Under Secretary for Nuclear Security.

#### Waiver Pursuant to Executive Order 13490

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" includes "meetings or other communications relating to the performance of one's official duties with a former employer or client." 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 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 Section 3 waiver authority, in writing, and in consultation with the Counsel to the President. 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).

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 Bechtel is or represents a party. As discussed above, it is necessary that you participate in matters in which Bechtel is a party or represents a party in order for you to perform your duties as Under Secretary for Nuclear Security. After consultation with the Office of the Counsel to the President, I have determined that it is in the public interest for you to participate in matters relating to Bechtel. Substantial national security challenges require your expertise and judgment in making sound decisions on major defense and public security programs, several of which involve Bechtel or one of its subsidiaries.

Your extensive knowledge of and experience in managing complex national nuclear weapons and security programs, including an expertise in the geopolitical landscape associated with nuclear weapons, their production and deployment, and nuclear non-proliferation will be critical to the success of NNSA. Prior to your appointment as Under Secretary for Nuclear Security, you served in the United States Air Force for 38 years, retiring as Lieutenant General, and served as Commander of the Global Strike Command in which you were responsible for organizing, training, equipping and maintaining all U.S. intercontinental ballistic missile and nuclear-capable bomber forces. In this role, you led more than 23,000 professionals operating at various locations

around the world who operated the nation's inventory of ballistic missiles and nuclear-capable bomber aircraft. You have served at NATO Headquarters, at the American Embassy in Moscow, and as Director for Nuclear Policy and Arms Control for the National Security Council at the White House. Your experience with nuclear weapons command, maintenance, diplomacy and policy uniquely qualify you for this position, and the government will benefit greatly from your expertise. With regard to the consulting services you provided to Bechtel, I understand the services were limited to a single procurement (the Y-12 M&O contract), and you provided actual services to Bechtel on only 10 days in 2012.


Accordingly, I hereby waive the requirements of paragraph 2 of the Ethics Pledge as it pertains to your future involvement in particular matters involving Bechtel or any of its divisions or subsidiaries. A separate determination has been made under 5 C.F.R. § 2635.502 that the Department's interest in your ability to participate in these matters, given the critical responsibilities associated with your position, outweighs any possible concern that a reasonable person may question the integrity of DOE programs and operations.

This waiver does not affect your obligation to comply with other provisions of the Ethics Pledge and all other applicable government ethics rules.

EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL OF ECONOMIC ADVISERS  
WASHINGTON, D.C. 20502

July 21, 2014

MEMORANDUM FOR MAURICE OBSTFELD

FROM: JESSICA SCHUMER   
Chief of Staff and General Counsel  
Designated Agency Ethics Official  
Council of Economic Advisers (Council)

SUBJECT: Limited Waiver under E.O. 13490

This purpose of this memorandum is to provide a waiver of the restrictions in Section 1, Paragraph 2, of Executive Order 13490 (the Ethics Pledge or E.O.) to permit your participation in particular matters involving specific parties that involve the European Commission (EC).

Background Regarding the Ethics Pledge

The Ethics Pledge provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients, including regulations and contracts. *See* E.O. 13490, § 1, ¶ 2. 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." *See* DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009. The E.O. defines former client to include any person for whom the appointee has, within the two years prior to the date of his appointment, personally served as an agent, attorney, or consultant

Section 3 of the E.O. provides for waiver of the recusal provisions. As the Council of Economic Adviser's (Council) Designated Agency Ethics Official (DAEO), I exercise that waiver authority in consultation with the Office of the Counsel to the President and pursuant to a delegation from the Director of the Office of Personnel Management. *See* Office of Government Ethics Memorandum Re: Authorizations Pursuant to Section 3 of Executive Order 13490, DO-09-008 (Feb. 23, 2009). The standard for waiving the restriction in the Ethics Pledge is that the literal application of the restriction is inconsistent with the purposes of the restriction, or that it be in the public interest to grant the waiver. *See* E.O. 13490, § 3(a).

Analysis

Within two years prior to your appointment to the Council, you personally provided consulting services to the EC. Specifically, between April 2012 and April 2013, you spent approximately

25 days providing consulting and writing services related to conferences hosted by the European Commission. The EC is an international organization made up of commissioners from 28 member states that represents the interests of the European Union as a whole. Its responsibilities include upholding the EU treaties and proposing new legislation to the European Parliament and the Council of the European Union. The EC's proposals have usually centered on economic regulation. Before making proposals, the EC consults widely so that all stakeholders' views can be taken into account, and the EC conducts an extensive assessment of the potential economic, social and environmental impact of each proposal.

As a Member of the Council, your official duties include: (1) assisting and advising the President, the Chairman and Senior Staff on the general state of the economy and assisting in the preparation of the Economic Report; (2) gathering timely and authoritative information concerning economic developments and economic trends to analyze and interpret the information; and, (3) advising on policies to foster and promote free competitive enterprise, avoid economic fluctuations, and maintain full employment and purchasing power. One of the areas in which the Council is Congressionally-mandated to focus is trade deficits, which requires the Council to examine policies to promote the achievement of a free and fair international trading system and a sound and stable international monetary order.

If paragraph 2 of the Ethics Pledge was applied literally, you would not be able to participate in particular matters, including meetings and other communications, relating to the EC or any of the EC's bodies, officers or components and therefore could not fully advise the Chairman, White House Senior Staff, or President on matters of international economics or their impact on the U.S. domestic economy.

After reviewing all 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 you with respect to your former client, the European Commission, because the literal application of the restriction is inconsistent with its purpose and because a waiver is in the public interest.

First, the European Commission is not a private company but rather is an international organization made of up 28 member states, which represent the European Union. The European Union and the U.S. have held diplomatic relations since 1953, and this relationship is viewed as one of the most important bilateral relationships in the world. The European Union and the U.S. are among the biggest economic powers in the world and dominate global trade, accounting for about half of world GDP in terms of value.

Second, in your capacity as Member of the Council of Economic Advisers, you may need to exercise discretion on particular matters where the European Commission is or represents a party. For example, you may need to meet with representatives from the EC to get additional information or adequately assess the economic impact on the U.S. of proposals submitted by the EC. Trade agreements, including the Transatlantic Trade and Investment Partnership, will likely include particular matters where the European Commission is or represents a party, such as the position on a specific provision of the agreement. As one of the leading and most influential international economists in the world, it will be difficult to assign such matters to another



employee nor can adjustments reasonably be made to your official duties. You were appointed by the President based in large part on your international economic expertise and the Council will rely on you for your expertise in international macroeconomic policy. Third, it should be noted that you will not be in a position to financially benefit from your EC relationship while with the Council. Moreover, there is little likelihood that you could take official action to favor the European Commission at the expense of the United States. Accordingly, a 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 in the public interest for you to participate in specific-party matters relating to the European Commission. It is essential that the Council, and the U.S. Government as a whole, have an effective voice in discussions with the European Commission on the many important issues that arise in that forum. You have significant expertise in the field of international macroeconomic policy. For over 30 years you have been a professor of economics. You have been a visiting professor and scholar and honorary advisor to various international economic organizations, such as the Bank of Japan, the International Monetary Fund, the Kiel Institute of World Economics, and Stockholm University. You have authored hundreds of research publications in the area of international economics and global markets, and you have no fewer than six published textbooks that focus on global or international economics. You have worked with multiple international organizations, including the EC, and have provided consulting and teaching services to organizations across the globe. The knowledge, skills and relationships that you possess will allow you to significantly advance the Council's and United States' interests before the EC. Accordingly, a waiver is appropriate for the separate and independent reason that it is in the public interest for you to participate in matters relating to your former client. Based on the above, analysis I waive the requirement of paragraph 2 of the Ethics Pledge as it pertains to your future involvement in particular matters relating to the EC and any of its bodies, officer or components.

#### Impartiality Rules under Section 2635.502

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards) require an employee to take appropriate steps to avoid an appearance of any lack of impartiality in the performance of the employee's official duties. 5 C.F.R. § 2635.502(a). Under section 502, when an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to a specific party matter and a reasonable person would question the employee's impartiality in the matter, the employee should not participate in the matter without informing an agency official and receiving authorization to participate. An employee has a "covered relationship" under this section with any entity for which the employee has, within the last year, served as a consultant, contractor or employee. 5 C.F.R. § 2635.502(b)(1)(iv). More than a year has passed since you provided consulting services to the EC, and therefore, you no longer have a "covered relationship" with the EC under the Standards.

THE WHITE HOUSE

Washington

September 4, 2014

MEMORANDUM FOR EVAN M. SCHRUM

FROM: VICTORIA NOURSE  
COUNSEL TO THE VICE PRESIDENT

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

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In consultation with the Counsel to the President, I hereby grant a limited waiver of the requirements of paragraph 2 of the Ethics Pledge to Mr. Evan Schrum with respect to his former employer, the Democratic National Committee (DNC). As Special Assistant to the President and Advisor to the Vice President, Mr. Schrum is the Vice President's traveling advisor, commonly referred to as a "body man." This waiver is necessary so that Mr. Schrum, when representing the interests of the Office of the Vice President, may communicate with 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(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 the Vice President's body man, Mr. Schrum was the Deputy Finance Director at the DNC. If paragraph 2 of the Ethics Pledge were applied literally to Mr. Schrum, would be restricted from participating in particular matters involving the DNC and from communicating with the DNC on official matters concerning the Vice President and the President's agenda. As the Vice President's body man, Mr. Schrum travels with the Vice President on a regular basis during which time he will be required to fulfill a range of tasks to support the Vice President's official activities. In this role, Mr. Schrum will be called upon to

coordinate the administrative details of the Vice President's activities with the DNC. Further, as the Vice President is a leader of the Democratic Party, the DNC often seeks to communicate the Vice President's actions and activities to the American people. Mr. Schrum's communications with the DNC will substantially further these activities. 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 communications between a national party committee and the Vice President's body man regarding either the administrative details involving the Vice President or facts related to the Vice President's actions and activities. Accordingly, I certify that the literal application of the restriction under the circumstances here would be inconsistent with the purpose of the restriction and therefore grant Mr. Schrum 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. Schrum does not have any continuing financial interest in the DNC. I grant this waiver with the understanding that Mr. Schrum will comply with the remaining provisions of the Ethics Pledge and with all preexisting government ethics rules.

/s/ Victoria Nourse

Dated: September 4, 2014


Counsel to the Vice President and  
Designated Agency Ethics Official



July 11, 2014

MEMORANDUM FOR ANDREW M. SLAVITT

Principal Deputy Administrator  
Centers for Medicare & Medicaid Services

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

SUBJECT: Limited Pledge Waiver under E.O. 13490, § 3, and Limited Authorization  
Pursuant to 5 C.F.R. § 2635.502(d)

The purpose of this memorandum is to provide a limited waiver of the restrictions in Section 1, Paragraph 2, of Executive Order 13490 (the Ethics Pledge or E.O.), and a limited authorization, pursuant to 5 C.F.R. § 2635.502(d), to permit your participation, subject to certain restrictions and conditions, in extant particular matters involving specific parties that involve the UnitedHealth Group (UHG), its subcomponents or subsidiaries, including your former employer, Optum and its operating companies, such as Quality Software Services, Inc. (QSSI) and the Lewin Group. I have consulted with the Office of the Counsel to the President concerning this waiver and notified the Office of Government Ethics (OGE). This document will be made publicly available on the OGE website.

This limited waiver and limited authorization is issued in the public interest to allow your participation in the implementation of the Affordable Care Act (ACA) and the systems supporting the health insurance marketplaces. Your management skills, budgetary acumen, and knowledge of systems integration gained from over twenty years' experience in technology and health care are considered essential to that effort. The recusal obligations to which you would otherwise be subject, absent this action, would render you unable to carry out effectively your duties as the Principal Deputy Administrator of the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

## I. Background Regarding Your Appointment and Recusal Obligations

### Current Duties

You have been appointed to serve as the CMS Principal Deputy Administrator. CMS administers the Medicare and Medicaid programs, which provide health care to almost one in every three Americans. Medicare provides health insurance for more than 44.6



million elderly and disabled Americans. Medicaid, a joint federal-state program, provides health coverage for some 50 million low-income persons, including 24 million children, and nursing home coverage for low-income elderly. CMS also administers the State Children's Health Insurance Program that covers more than 4.4 million children. While serving as the Principal Deputy Administrator for CMS, you are responsible for the overall executive leadership, direction, and coordination of all federal health care financing programs under Titles XI (Administrative Simplification, Quality Improvement Organizations and other miscellaneous provisions), XVIII (Medicare), XIX (Medicaid) and XXI (Children's Health Insurance Program or CHIP) of the Social Security Act, as amended. More specifically, among your many duties, you oversee the establishment of program goals and objectives and the development of policies and standards to accomplish these goals. You work with states, other HHS and federal agencies, and non-governmental organizations and industry stakeholders in administering health care financing programs. Your duties encompass responsibility for the development and implementation of health quality and safety standards, including evaluation of their impact on the utilization, quality, and cost of health care services. You have broad responsibility to oversee the development of methods, systems, procedures and specifications for Medicare claims processing and improvements to program management. Additionally, you have broad responsibility for development of policies and procedures relating to assessment of CMS contractor performance. Likewise, you have overall responsibility for the development, coordination, evaluation, review and promulgation of CMS policy related to eligibility, coverage of benefits, reimbursement and other matters for Medicare, Medicaid, and CHIP. Your duties also include overseeing the critical and time sensitive mission of implementation of the ACA at CMS which encompasses insurance marketplaces, electronic enrollment in the federal marketplaces through healthcare.gov, and the ACA as it impacts all of the other above responsibilities.

#### Recusal Obligations Resulting from Prior Employment

You were previously employed by Optum, which owns QSSI, and is an operating business of UHG. UHG also owns United Healthcare which offers health benefit plans and services for large national employers, public sector employers, mid-sized employers, small businesses, and individuals; health and well-being services; services dealing with chronic disease and other specialized issues for older individuals; Medicaid plans, Children's Health Insurance Programs, and health care programs; Medicare Advantage Plans; Prescription Drug Plans under Medicare Part D, and health services, including commercial health and dental benefits. United Healthcare has a network of 820,000 physicians and other health care professionals, and approximately 6,000 hospitals and other facilities nationwide.

QSSI has worked with CMS since 2006 and is one of the many contractors currently working on the online health care marketplaces. In your prior position, you were responsible for Optum's business strategy, public policy, corporate development, marketing, and international and federal government businesses. Additionally, your responsibilities in your prior position included working with HHS on the QSSI contracts

related to healthcare.gov and the health insurance exchanges created by the ACA. There were approximately 18 contracts that created the health care insurance exchanges. QSSI had contracts for the Exchange Data Services Hub, Enterprise Identity Management (EIDM) system, and is currently the ACA testing contractor for functionality of the federal health insurance marketplaces and related ACA implementation systems.

You confirm that you are not entitled to any deferred compensation from your former employer, other than the UHG retirement plans reported on your OGE 278 Public Financial Disclosure Report. You have resigned from, severed financial ties to, relinquished all claims for compensation against, and agreed to divest all stocks, stock options, and financial investments in UHG within time frames specified in your ethics agreement. Upon completion of these obligations, you will have no continuing financial interests in Optum, QSSI, or UHG, and as a result, under the law, will be empowered to participate fully in particular matters of general applicability, such as regulation and policy determinations, that affect the healthcare-related industries in which your former employer operates, except those particular matters of general applicability that have a special or distinct effect on the identified party other than as part of a class.

However, absent a waiver of Section 1, Paragraph 2 of the Ethics Pledge and an authorization under 5 C.F.R. § 2635.502(d), you will be prohibited from participating officially in particular matters involving specific parties in which UHG, its subcomponents, or subsidiaries is a party or represents a party, including meetings at which representatives of these entities seek official action.<sup>1</sup> Covered particular matters would include any specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties. Frequently cited examples of such “specific party matters” include contracts, grants, licenses, product approval applications, program waivers, contractual bonus or quality award determinations, investigations, disputes, disallowances, administrative adjudications, and court litigation. Optum, QSSI, and UHG are participants in specific party matters before CMS; for example, the QSSI contracts related to healthcare.gov and the health insurance exchanges created by the ACA are specific party matters, as are the Medicare Advantage contracts under which United Healthcare Medicare & Retirement provides health insurance coverage in exchange for a fixed monthly premium per member from CMS. Additionally, Optum includes the Lewin Group which is currently the contractor for statistical analysis for CMS as required under the Improper Payments Elimination and Recovery Act; any CMS contracts with the Lewin Group are specific party matters.

Although the majority of such specific party matters would not rise to the level of the Office of the Administrator for participation or disposition, the CMS Administrator envisions a need for you to become involved in policy direction, management, and oversight of those specific party matters involving your former employer that involve implementation of health care reform under the ACA, including insurance marketplaces, electronic enrollment in the federal marketplaces through healthcare.gov, and systems

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<sup>1</sup> This restriction applies to any subsidiary that UHG controls. Pursuant to 5 C.F.R. § 2635.102(k), the corporation would be deemed to control a subsidiary if it owns 50% or more of the subsidiary’s voting securities.

integration and coordination to ensure operability, as you have unique expertise in these matters because of your work in the private sector for Optum. Accordingly, in order to undertake these functions and to meet with representatives of your former employer for these limited purposes, your appointing official has requested a limited waiver of Section 1, Paragraph 2 of the Ethics Pledge with respect to your two-year, specific party matter recusal obligation as to this former employer, and a limited authorization to release you from the parallel one-year regulatory recusal period. An Ethics Pledge waiver may be issued when the “literal application of the restriction is inconsistent with the purpose of the restriction” or when “it is in the public interest to grant the waiver.” An authorization under 5 C.F.R. § 2635.502(d) with respect to this former employer may be issued if the interest of the Government in your participation outweighs any concern that a reasonable person may question the integrity of the Government’s programs and operations.

## II. Ethics Commitments by Non-Career Employees in the Executive Branch – E.O. 13490

### Background Regarding the Ethics Pledge

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

The E.O. defines “former employer” to include any person for whom the appointee has, within the two years prior to the date of his appointment, served as an employee, officer, director, trustee, or general partner. For purposes of Section 1, Paragraph 2 of the Ethics Pledge, UHG, including Optum, QSSI, and any other UHG subcomponents or subsidiaries, is your former employer.

The E.O. defines “former clients” as those persons for whom the appointee served personally as an agent, attorney, or consultant. Typical examples include a party to whom an attorney or other fiduciary personally provides professional advice on a billable hours basis or a recipient of individually tracked and billed consulting services rendered by an individual in a small, closely held company, such as a Subchapter S firm under which consulting revenues are passed through to the principal. For purposes of Section 1, Paragraph 2 of the Ethics Pledge, the clients or customers of UHG, including those of Optum, QSSI, and any other UHG subcomponents or subsidiaries, to whom you personally provided services—when charged as overhead costs and rendered as an executive directing your former employer’s fulfillment of its corporate obligations under multiple contracts with a broad customer base—generally are not considered your former clients.

Section 3 of the E.O. provides for waiver of the recusal provisions that apply with respect to a former employer or former clients. As the HHS Designated Agency Ethics Official (DAEO), I exercise that waiver authority in consultation with the Office of the Counsel to the President and pursuant to a delegation from the Director of the Office of Management and Budget. *See* Office of Government Ethics Memorandum Re: Authorizations Pursuant to Section 3 of Executive Order 13490, DO-09-008 (Feb. 23, 2009). The standard for waiving the restriction in the Ethics Pledge is that the literal application of the restriction is inconsistent with the purposes of the restriction, or that it be in the public interest to grant the waiver. *See* E.O. 13490, § 3(a). The E.O. states that “the public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy.” *Id.*, § 3(b).

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

Information provided by CMS and representations adduced by your appointing official demonstrate to my satisfaction that the public interest is served by permitting you, subject to certain limitations, to work on implementation of health care reform under the ACA generally, and in the context of a specific party matter involving your former employer, given the magnitude of the impact on the well-being of the American people, your central role in advising on health care reform programs, systems and policies, and the importance of your participation in coordinating health care reform with executive level officials at other federal agencies. Your record indicates that you are uniquely qualified for this task.

The information provided to me indicates that you bring an exceptional blend of managerial experience, health care industry acumen, and hands-on experience from working for the systems integrator for healthcare.gov, Optum. Those who attest to your qualifications aver that over the past 20 years you have worked to make health care systems more responsive and more consumer-oriented by leveraging technology, information, and market forces. You have founded and led various health information technology, data and analytics, and health care consulting and fulfillment organizations. Your responsibilities have included overseeing business strategy, public policy, corporate development, marketing, and international and federal government businesses.

Throughout your career, you have provided operational solutions to health care entities and consumers. Examples provided to me include: the founding of the health care industry’s first open innovation center, which now houses integrated clinical and claims research data; and the establishment of Optum 360, which provides end-to-end patient registration, billing, coding and collection management between health systems and patients. You also led the expansion into new areas of health care information technology and consulting, including cloud-based electronic medical records, quality measurement, consumer tools and portals, and clinical assessment businesses. I have been apprised that you oversaw the development of industry-wide innovations for consumers, providers and payers, several of which resulted in certain company-granted patents focused on improving health care delivery, payments or administrative efficiency. Reportedly, you were also a pioneer in crafting the online consumer health care shopping

experience and helped pave the way for service offerings to be made directly to consumers, including benefit offerings, access programs, and web portals.

Additionally, CMS finds you well qualified for the role of Principal Deputy Administrator because you have successfully overseen large budgets in your past positions and have skillfully directed large teams comprised of staff from various organizations. Most recently, you participated in the leadership of an organization with over 45,000 employees across 42 states and 14 countries. In another position, you oversaw the organization's growth from 3,500 to 13,000 employees. In another position, you founded your own company, developed its concept, raised \$38 million in venture capital financing, hired a management team and launched an Internet enabled consumer health technology business that provided health care services to underinsured and uninsured individuals nationwide.

In your previous positions, you have extensive involvement with state and federal health care programs, including oversight of Medicaid data warehousing and analytics, Medicaid program integrity, state and federal insurance exchanges, IT systems integration, Medicaid behavioral health, and long-term care services. Most recently, in October 2013, you were brought on to participate in the healthcare.gov initiative and played a critical role in improving the operability of the federally-facilitated marketplace. CMS attributes to you and your organization the marked improvement in coordination among the contractors working to repair the site in the midst of a challenging period.

CMS has informed me that they are unaware of any other candidate with this unique blend of skills and knowledge who is available and willing to take on this challenging and critical position. Moreover, if another candidate was available, he or she would likely bring similar former employment affiliations requiring recusal and would lack the specific familiarity and experience with health care marketplaces and, specifically, with healthcare.gov. Given the time sensitivity of the future marketplace rollouts under the ACA, any alternative candidate would not be able to master the complexities of the ACA implementation systems to be able to handle the immediate workload of the Principal Deputy Administrator.

Given your extensive background in health care and health care systems including the healthcare.gov site, and your ability to oversee and direct large organizations with numerous stakeholders, you are the most qualified Administration official to assist with the health care reform efforts at CMS. These efforts go directly to the health and well-being of the American people and present the types of exigent circumstances that the waiver provision was designed to permit.

Accordingly, I hereby certify that it is in the public interest for you to participate, subject to certain limitations outlined below, in those specific party matters involving your former employer that involve implementation of health care reform under the ACA, including insurance marketplaces, electronic enrollment in the federal marketplaces through healthcare.gov, and systems integration and coordination to ensure operability. For example, you may participate in meetings where personnel from your former

employer may be present to discuss technical issues or progress on existing contracts to support health care reform systems including the healthcare.gov site, the Exchange Data Services Hub, and the EIDM system. Likewise, you may weigh in on or make decisions on policy matters or technical direction that could result in the necessity of your former employer having to perform additional compensated work under existing contracts to implement health care reform under the ACA.

#### Limitations on the Waiver of Section 1, Paragraph 2 of the Ethics Pledge

To ensure the integrity of the procurement process and to avoid any appearance of special access or advantage for your former employer, you must adhere to certain limitations which are necessary to mitigate the appearance concerns that normally inhere in such situations. To that end, this limited waiver and limited authorization is expressly conditioned upon the limitations enumerated below that circumscribe your discretion in acting on matters that redound to the future financial benefit of your former employer. Pursuant to E.O. 13490, § 3(a), I waive the restriction in Section 1, Paragraph 2, of E.O. 13490, on participation in those particular matters involving specific parties where UHG, its subcomponents, or subsidiaries is a party or represents a party to the particular matter as delineated above, subject to the following exceptions.

With respect to the existing HHS contracts to which this limited waiver and limited authorization pertain, you will be permitted to evaluate and oversee performance under these contracts and direct work that may result in additional charges to the Government under the existing contracts, but you will be required to recuse from participation in the consideration, determination, settlement, negotiation, or resolution of any contract:

- (1) performance bonus or award fee decisions;
- (2) payment disputes;
- (3) material modifications or extensions;<sup>2</sup>
- (4) compliance audits; and
- (5) litigation.

These actions involving your former employer, should they come to you for your participation, must be elevated to the CMS Administrator, the HHS Deputy Secretary, or HHS Chief of Staff, as appropriate, for disposition without your input or recommendation. With respect to recompetitions or requests for proposals for new work in the areas to which the existing contracts pertain, you will be permitted to develop and

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<sup>2</sup> A contract modification generally is material if changes in the type of work, performance period, and costs fall outside the scope of the awarded contract to a degree which would not have reasonably been anticipated by potential offerors and which, as a result, would require full and open competition, absent a sole source justification. *See* 48 C.F.R. part 6. Your participation in policy matters or technical direction that necessitates additional compensated work by your former employer within the scope of existing contracts to implement health care reform under the ACA is permitted by this limited waiver and thus not subject to the recusal requirement.

approve the statement of work notwithstanding that your former employer may be a potential bidder. However, under the terms of this limited waiver and limited authorization, you must recuse from participation in any sole source contract awards to your former employer during the two year period covered by the Ethics Pledge, and similarly recuse from evaluation of bid proposals and award selection determinations for any recompetition of existing contracts or request for proposals for any new contract in which your former employer has submitted a bid. In the event that your former employer is awarded a sole source contract or competitively selected for an add-on or new contract, and provided that you have recused as required under the terms of this waiver, you may undertake oversight and implementation with respect to the new contract in the same manner as is authorized under this waiver for the existing contract.

This limited waiver does not affect your obligation to comply with the provisions of the Ethics Pledge in other contexts. Therefore, you may not participate in your official capacity in any particular matter involving specific parties where UHG or any of its subcomponents or subsidiaries is a party or represents a party which falls outside of the scope of this waiver. Please note that the examples of specific party matters that fall outside of the scope of the limited waiver and limited authorization that are provided in this document are intended to be illustrative rather than to provide a comprehensive listing. In light of the broad range of business activities undertaken by UHG and its subsidiaries and subcomponents, a number of specific party matters could come before you in your official capacity as Principal Deputy Administrator from which you would be required to recuse. For example, you may not participate in the evaluation or oversight of the Medicare Advantage contracts under which United Healthcare Medicare & Retirement provides health insurance coverage in exchange for a fixed monthly premium per member from CMS. Similarly, you are precluded from directing any statistical analysis work undertaken by the Lewin Group under contract to CMS, or participating in a meeting with UHG staff regarding the administration of the Medicare Part D program in regard to prescription drug plans offered by a UHG subcomponent.

To assist you in complying with your recusal obligations, I am including an overview of several CMS programs that may give rise to specific party matters from which you would be required to recuse should they involve UHG or its subsidiaries or subcomponents as a party or representative of a party.

***Examples of Programs Relating to Health Reform Under the ACA that May Give Rise to Specific Party Matters that Fall Outside the Scope of this Limited Waiver and Limited Authorization:***

Under the ACA, CMS promotes health care access, implements certain insurance market reforms, and promotes the availability of insurance coverage through the Marketplaces (also known as Exchanges).

***Market Reform Standards***

HHS may initiate actions to enforce market reform standards which could impact issuers and parent companies such as UHG under title XVII of the Public Health Service Act

(PHS Act), where the state, which would otherwise be the primary enforcer, has notified HHS that it will not enforce or where HHS has determined that the state has substantially failed to enforce. Enforcement is conducted through the imposition of civil money penalties (CMPs). Examples of provisions that are subject to this type of enforcement include: guaranteed availability and renewability, essential health benefits (EHB), actuarial value levels (metal tiers and catastrophic plans), and cost-sharing limits, prohibition on annual and lifetime limits, prohibition on pre-existing condition exclusions, and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). PHS Act §§ 2722 (pre-ACA), 2723 (as added by ACA); 45 C.F.R. part 150.

#### *Risk Adjustment, Risk Corridors, and Reinsurance Programs*

The Risk Adjustment, Risk Corridors, and Reinsurance programs provide for certain types of payments to insurers to counteract any potentially destabilizing effects of the various market reform and insurance exchange provisions and requirements. These programs are designed to address the risk that insurers might need to increase their premiums, for example, because their policies must cover individuals with pre-existing medical conditions. Issuers and parent companies, such as UHG, could be subject to audits, penalty assessments, debt collection, enforcement actions, and litigation surrounding the implementation and operation of the Risk Adjustment, Risk Corridors, and Reinsurance programs, as described more fully below.

Data Collection: In states where HHS is operating a risk adjustment or reinsurance program on behalf of a state, an issuer must establish a dedicated data environment and provide data access to HHS. Issuers could be subject to CMPs where they fail to comply with data submission and storage requirements. Issuers could also face enforcement actions for failing to adhere to the reinsurance data submission requirements or failure to comply with risk adjustment issuer requirements, such as failing to remit risk adjustment charges. If an issuer fails to establish a dedicated data environment or to provide HHS access to the required data, HHS may assess a risk adjustment default charge. 45 C.F.R. §§ 153.400, 153.405, 153.540, 153.740, 156.800(c).

Audits: HHS has the authority to conduct audits of issuers to assess compliance with the reinsurance program requirements, risk corridor standards, and risk adjustment requirements. 45 C.F.R. §§ 153.405(i), 153.540, 153.620(c).

Debt Collection: HHS may also seek to collect a debt owed to the federal government by the issuer for failure to pay the required reinsurance contribution, risk adjustment or risk corridor amounts. 45 C.F.R. § 156.1215(c).

#### *Qualified Health Plans*

HHS may also initiate actions to enforce standards applicable to issuers of qualified health plans (QHPs) in the Federally-facilitated Exchanges (FfEs) and Federally-facilitated Small Business Health Options Programs (Ff-SHOPs). Enforcement is conducted formally through the imposition of CMPs and/or decertification of QHPs. Informal enforcement is conducted through a “progressive approach,” including technical



assistance, notices and warning letters, and voluntary corrective action plans. Compliance Reviews and periodic audits of financial records may also be conducted. Examples of provisions that are subject to this type of enforcement include: network adequacy and essential community provider requirements; non-discrimination provisions; requirement to charge the same premium for a QHP when offered through and outside the Exchange; and compliance with FFE/FF-SHOP operational standards. 45 C.F.R. §§ 156.705, 156.715, 156.800, 156.805, 156.810. HHS may impose CMPs for improper use or disclosure of information provided by an Exchange applicant, ACA § 1411(h)(2); 45 C.F.R. § 155.285(a)(1)(iii), or for the provision of false or fraudulent information on an Exchange application, ACA § 1411(h)(1); 45 C.F.R. § 155.285(a)(1)(i) – (ii).

#### *Medical Loss Ratio*

The ACA requires health insurance issuers to submit data on the proportion of premium revenues spent on clinical services and quality improvement, also known as the Medical Loss Ratio (MLR). It also requires them to issue rebates to enrollees if this percentage does not meet minimum standards. HHS has authority to perform MLR audits and investigations, and take enforcement action. For example, HHS may impose CMPs if an issuer fails to:

- (1) submit annual MLR data;
- (2) submit a substantially complete or accurate report;
- (3) timely and accurately pay rebates owed;
- (4) respond to HHS inquiries as part of a non-compliance investigation;
- (5) maintain records used in compiling MLR reports and calculating and paying rebates;
- (6) allow access and entry to premises, facilities and records;
- (7) comply with corrective actions resulting from audit findings; or
- (8) accurately and truthfully represent data, reports, or other MLR information.

45 C.F.R. part 158.

#### *Termination of Direct Enrollment (Written Contracts)*

Some issuers have been granted a direct connection to the Federal Marketplace system that enables them to assist consumers in obtaining an eligibility determination from the Marketplace. Where an issuer misuses information or otherwise violates privacy or security requirements under the written agreement that authorizes the issuer's connection with the Federal Marketplace system, the issuer's direct connection may be terminated, thereby terminating the issuer's ability to provide direct enrollment services to consumers.

#### *Basic Health Program*

The Basic Health Program (BHP) is an optional state program authorized by section 1331 of the ACA, under which states will contract for "standard health plan" coverage for individuals with incomes above the Medicaid eligibility threshold up through 200 percent of the federal poverty line who would otherwise enroll in coverage through the Marketplace through qualified health plans (QHPs). Electing states will receive federal

payments equal to 95 percent of the amount that would have been paid in premium tax credits and cost sharing reductions had the individuals enrolled in QHPs through the Marketplace, which will be deposited into a trust fund to be used for premiums, cost sharing reductions, and additional benefits for enrollees.

CMS will exercise its authorities across a broad range of issues relating to BHP, including several which could lead to covered specific party matters, including the review of:

- (1) competitive processes for awarding contracts (and transition plans);
- (2) contract terms;
- (3) benefits and cost sharing levels;
- (4) availability and access; or
- (5) procedures for selecting BHP trustees.

This program is codified at 42 U.S.C. § 18051 and implementing regulations discussing the above review criteria are codified at 42 C.F.R. § 600.110.

These ACA-related matters, should they involve your former employer as a party or party representative, are expressly excluded from this limited waiver and limited authorization. In the event that any audit, penalty assessment, debt collection, enforcement action, or litigation matter—including, but not limited to, those described above—should arise that involves UHG, its subcomponents, or subsidiaries, as a party or representative of a party, you must remain recused and elevate them to the CMS Administrator, the HHS Deputy Secretary, or HHS Chief of Staff, as appropriate, for disposition without your input or recommendation.

***Examples of Programs Unrelated to Health Reform Under the ACA that May Give Rise to Specific Party Matters that Fall Outside the Scope of this Limited Waiver and Limited Authorization:***

Specific party matters not covered under the limited waiver and limited authorization may also relate to CMS programs and activities that pre-date or are unrelated to health care reform under the ACA.

***Medicare Parts A and B***

Medical providers and suppliers that wish to participate in the Medicare Part A and Part B programs must agree to follow Medicare's "Conditions of Participation." These conditions are set forth in regulations at 42 C.F.R. part 418 relating to health, safety, personnel, record-keeping and other facility regulations, which Medicare uses to ensure that its beneficiaries receive high-quality and effective services. In order to enforce these conditions, Medicare contracts with state survey agencies, or accepts accreditation from a Medicare-approved accreditation organization as alternate evidence that a provider is complying with Medicare's Conditions of Participation. If a service provider is determined by CMS to be out of compliance, the agency can require that the provider follow a corrective action plan; if the provider does not follow the plan, then the provider

will be terminated from the Medicare program. These enforcement actions give rise to both administrative and judicial appeal rights.

Additionally, with respect to reimbursement under Medicare Part A or Part B, participating providers and suppliers are typically paid standard rates, pursuant to predetermined payment methodologies. In the case of hospice care providers, such as Optum Palliative and Hospice Care, reimbursement rates are based on the acuity of the services provided in each appropriate category: routine home care, continuous home care, general inpatient care and inpatient respite care. Hospice facilities' reimbursement rates are also subject to a cap on reimbursement for inpatient services and a separate yearly aggregate cap, which limits the total amount of reimbursement to a hospice based on the number of patients to which the hospice provided services during the "cap year." Disputes regarding reimbursement amounts for institutional providers including hospices and inpatient hospitals may be resolved by appeal to either the Medicare Administrative Contractor or to the Provider Reimbursement Review Board (PRRB). Any continuing controversy may be appealed to the Secretary, and subject to judicial review as permitted by the Social Security Act. In general, the Principal Deputy Administrator of CMS has been delegated authority to conduct the final agency review of such matters. Some disputes regarding payment of specific claims, for both institutional providers and for physicians and suppliers, are appealable to the Office of Medicare Hearings and Appeals and the Departmental Appeals Board.

Any specific party matter arising under Medicare Part A or B, involving UHG or any of its subsidiaries or subcomponents as a party or party representative, including but not limited to questions of compliance with Medicare's Conditions of Participation, a corrective action, a payment dispute or otherwise, are expressly excluded from this limited waiver and limited authorization. As to all such matters described above involving your former employer, should they come to you for your participation, you must remain recused and elevate them to the CMS Administrator, the HHS Deputy Secretary, or HHS Chief of Staff, as appropriate, for disposition without your input or recommendation.

#### *Medicare Parts C and D*

With respect to the Medicare Advantage Part C and the Medicare Part D programs, specific party matters which may involve UHG, its subcomponents, or subsidiaries as parties or representatives of parties would include (all cites are to 42 C.F.R.):

- (1) contract determinations and appeals where CMS determines whether to award, has terminated, refused to renew, or refused to award a contract to an organization applying for a Medicare Advantage (MA) or Part D Plan contract (parts 422 and 423, subparts K and N);
- (2) appeals of quality bonus payment determinations and Part D payment appeals (§§ 422.260, 423.350);
- (3) disputes and appeals related to risk adjustment data verification audits and other payment-related data (§ 422.311; part 423, subpart G);
- (4) investigations, disputes, and appeals related to oversight or the imposition of

- intermediate sanctions and civil monetary penalties for compliance with the law governing MA and Part D plans (parts 422 and 423, subparts O and T);
- (5) disputes related to CMS action on overpayments to MA organizations and Part D Plan sponsors (no specific administrative process in Part C);
  - (6) recovery audit contractor determination appeals (subpart Z); and
  - (7) in Part D only, a dispute involving a drug manufacturer with respect to coverage gap discounts (§ 423.2330).

In some cases, Medicare beneficiaries may appeal coverage denials by a Part C or Part D plan through an administrative process that includes the Office of Medicare Hearings and Appeals and the Medicare Appeals Council. 42 C.F.R. part 422, subpart M; part 423, subpart U. Non-administrative claims against the MA organization or Part D plan sponsor by beneficiaries or network/contracted providers may result in CMS involvement. For example, recent action by an MA organization to terminate a number of network providers resulted in CMS investigation and correspondence activity and monitoring of litigation between the providers and the MA organization, even though CMS did not take any formal compliance action.

These Medicare Part C and Part D matters, should they involve your former employer as a party or party representative, are expressly excluded from this limited waiver and limited authorization. As to all such matters described above involving your former employer, should they come to you for your participation, you must remain recused and elevate them to the CMS Administrator, the HHS Deputy Secretary, or HHS Chief of Staff, as appropriate, for disposition without your input or recommendation.

#### *Medigap Plans*

HHS also retains the authority to impose civil and criminal penalties on persons and issuers for failure to meet all of the federal requirements relating to Medigap plans, such as UnitedHealthcare Medicare & Retirement. For example, issuers could be subject to civil and criminal penalties for knowingly selling coverage to a Medicare beneficiary that duplicates Medicare coverage; making a false representation with regard to the compliance of a policy with the federal requirements or in regard to a relationship with a federal agency or the Medicare program for the purpose of selling insurance; knowingly soliciting, advertising, or offering for sale Medigap policies by mail into a state if those policies have not been approved or deemed approved for sale within the state; failing to suspend a Medigap policy at the policyholder's request if the policyholder applies for and is determined eligible for Medicaid; failure to automatically reinstate a policy as of the date a policyholder loses medical assistance eligibility (if the policyholder provides timely notice of his or her loss of Medicaid eligibility); or failure to provide MLR rebates or credits owed. 42 C.F.R. part 403, subpart B.

Such determinations, including the exercise of HHS' enforcement discretion, are covered specific party matters, and are expressly excluded from this limited waiver and limited authorization. As discussed above, if UHG or any of its subsidiaries or subcomponents is involved in such a penalty determination, should such a matter come to you for your participation, you must remain recused and elevate any such matters to the CMS

Administrator, the HHS Deputy Secretary, or HHS Chief of Staff, as appropriate, for disposition without your input or recommendation

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

#### Background Regarding the Recusal Obligation under 5 C.F.R. § 2635.502

The Standards of Ethical Conduct for Employees of the Executive Branch require an employee to take appropriate steps to avoid an appearance of any lack of impartiality in the performance of the employee's official duties. 5 C.F.R. § 2635.502(a). Under section 2635.502, when an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to a specific party matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter without informing an agency official and receiving authorization to participate. An employee has a "covered relationship" under this section with any entity for which the employee has, within the last year served, *inter alia*, as an employee or officer. 5 C.F.R. § 2635.502(b)(1)(iv). Accordingly, you have a "covered relationship" with UHG and its subcomponents or subsidiaries, including Optum, QSSI and the Lewin Group, for purposes of 5 C.F.R. § 2635.502.

As noted above, I have been informed by management at CMS, that the Department critically needs your participation in specific party matters including meetings and communications relating to health care reform implementation under the ACA, which includes health insurance marketplaces and the healthcare.gov website. Section 2635.502(d) directs that an agency designee may authorize an employee to participate in a particular matter involving specific parties, which would otherwise be subject to the recusal requirements of that section, if the designee makes a determination, in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs any concern that a reasonable person may question the integrity of the Government's programs and operations. Factors which may be taken into consideration include:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Limited Authorization Pursuant to 5 C.F.R. § 2635.502(d)

As the HHS DAEO, after weighing the factors articulated in 5 C.F.R. § 2635.502(d), I have determined that it is permissible to authorize your participation in particular matters involving specific parties where UHG, or its subcomponents or subsidiaries, are parties or party representatives as described above regarding the limited waiver of Section 1, Paragraph 2, of Executive Order 13490, subject to the same limitations and for the same reasons.

In particular, I have taken into account that you have agreed to divest your UHG stock holdings as directed and will have no personal financial interests in your former employer that would be affected by particular matters in which you participate. Further, the delineated limitations on this authorization circumscribe your role in the described matters and protect the procurement process. Equally important to this authorization determination is the highly sensitive nature of and critical need for your technical expertise in the described interactions that might be necessary with your former employer. CMS has indicated that you are the only available employee with this unique skill blend. As the CMS Principal Deputy Administrator, you are the Administration official with direct responsibility for advising the CMS Administrator and serving as the Acting Administrator in her absence. The importance of health care reform to the nation weighs against reassignment to others who have less expertise and management experience for this critical senior policy role. In light of these factors and the requirement that you abide by the aforementioned limitations, I hereby determine that the governmental interest in your participation outweighs any countervailing appearance concerns and authorize your participation in the particular matters involving specific parties as above described.

#### IV. Conclusion

In light of the breadth of your potential tasks under health care reform, I am issuing this limited waiver and limited authorization. Your disqualification from matters that are not covered by this limited waiver and limited authorization will not materially impair your ability to perform the duties of your position. This limited waiver and limited authorization does not affect your obligation otherwise to comply with other provisions of the Ethics Pledge and with all other Standards of Ethical Conduct for Employees of the Executive Branch and the HHS Supplemental Ethics Regulations. Additionally, when you leave government service, you will be subject to a range of post-Government employment rules. These rules will restrict your post-government employment activities including your ability to influence government actions on behalf of others by limiting your contacts to your former agency and other government officials.

If you have any questions about the interpretation of this document or its applicability to any specific situation, you should seek counsel from my office prior to participation.



United States Department of State

Washington, D.C. 20520

February 14, 2014

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 Richard A. Stengel to receive a limited waiver of the restrictions in paragraph 2 of the Ethics Pledge with respect to the subsidiaries of Time Warner Inc., excluding Time Inc. and HBO. Prior to his service as Under Secretary for Public Diplomacy and Public Affairs at the U.S. Department of State, Mr. Stengel was the Managing Editor of Time Magazine, published by Time, Inc., a wholly-owned subsidiary of Time Warner, Inc. Mr. Stengel also recently contracted with HBO, which is also a wholly-owned subsidiary of Time Warner, Inc., to sell a concept for a video magazine. Mr. Stengel has not worked for any of Time Warner, Inc.'s other subsidiaries during his career.

Executive Order 13490, 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" includes "any meeting or other communication relating to the performance of one's 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. *See* 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 consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

In his capacity as Under Secretary for Public Diplomacy and Public Affairs, Mr. Stengel serves as the principal adviser to the Secretary and Deputy Secretaries on matters of public diplomacy and public affairs and directs formulation of and/or coordinates Department policies and positions on public diplomacy and public affairs issues. It is in the public interest for Mr. Stengel to be able to lead the United States government's public affairs and public diplomacy efforts engaging the full spectrum of news, entertainment and media outlets, including Time Warner, Inc. subsidiaries reaching hundreds of millions of domestic and foreign residents. The



purpose of the Ethics Pledge is to address concerns of special access, not to erect unnecessary barriers to interaction with the press. *See* DO-09-007, OGE Memorandum to Designated Agency Ethics Officials, February 11, 2009. With the limitations discussed below, this waiver will enable Mr. Stengel to lead a broad-based public engagement strategy while guarding against any appearance of special access for outlets with which he recently held direct employment or contractual relationships.

Without this waiver, Mr. Stengel would be limited in his ability to communicate directly on official matters with any of the more than 200 subsidiaries of Time Warner, Inc., or to participate in decisions regarding public affairs and public diplomacy initiatives involving those subsidiaries. Delegating these duties would inhibit Mr. Stengel from being able to participate in strategic discussions regarding the Department's outreach to the international community through public messaging, as well as its dissemination of information about the Department and foreign policy issues to the American public. Time Warner, Inc. subsidiaries reach a very large American and international audience. Journalists of some of these subsidiaries may travel with the Secretary when he takes official trips or may otherwise engage with the Secretary or other high level officials. Mr. Stengel may be asked to weigh in on high-level strategic decisions about which media outlets are best suited for certain access or interviews with Department officials, and on how best to frame news coverage of Department policies, operations, and activities. As Under Secretary, Mr. Stengel will also oversee the Bureaus of Public Affairs, International Information Programs, and Educational and Cultural Affairs, as well as the Center for Strategic Counterterrorism Communications. This responsibility may require him to participate in decisions about allocating funding for content acquisition or dissemination, partnerships, or media initiatives. Without this waiver, Mr. Stengel would not have the latitude to engage in these regular discussions and decisions, as Time Warner, Inc. subsidiaries are potential partners and content providers among others in the media industry.

Therefore, I certify that it is in the public interest that this waiver be granted so Mr. Stengel may supervise the Department's public affairs program, and lead a broad based public diplomacy strategy on behalf of the U.S. Department of State to support the achievement of U.S. foreign policy goals and objectives, advance national interests, and enhance national security by informing and influencing foreign publics and by expanding and strengthening the relationship between the people and the Government of the United States and citizens of the rest of the world.

While it is in the public interest to waive the requirements of Paragraph 2 of the Ethics Pledge regarding most of the subsidiaries of Time Warner, Inc., it is not equally in the public interest to waive such requirements with respect to Time Warner, Inc. itself, Time, Inc., or HBO. Mr. Stengel was employed directly by Time Inc. for seven years prior to his appointment and he recently entered into a contract with HBO before joining the Department. By virtue of his employment with Time, Inc., Mr. Stengel also received employment-related benefits, including a 401(k), supplemental savings plan, defined benefit pension plan, and excess defined benefit pension plan from Time Warner, Inc. Thus, because of his relationships with Time, Inc., HBO, and Time Warner, Inc., these entities are not included within this Limited Waiver Pursuant to Section 3 of Executive Order 13490.



Mr. Stengel's connection to Time Warner, Inc.'s over 200 remaining subsidiaries is attenuated. In fact, the subsidiaries of Time Warner, Inc. are separate and distinct entities and operated autonomously from Mr. Stengel's former employer, Time, Inc. The subsidiaries do not share the same boards with Time, Inc., and the executives of the subsidiaries did not have any connection with or authority over his employment with or benefit packages provided by Time, Inc. Thus, this attenuated connection between Mr. Stengel and the other subsidiaries of Time Warner, Inc. is unlikely to give rise to any perceived conflict of interest or cause a reasonable person with knowledge of the relevant facts to question his impartiality.

In accordance with 5 C.F.R. § 2635.502(d), I have also determined that with respect to particular matters in which Mr. Stengel would participate personally and substantially that might involve Time Warner, Inc.'s subsidiaries, other than Time, Inc. and HBO, 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:

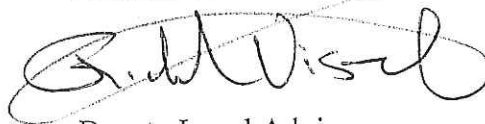
- Mr. Stengel's continued relationship with Time Warner, Inc. will be minimal during his employment. Although he will continue to participate in a 401(k), supplemental savings plan, defined benefit pension plan, and excess defined benefit pension plan, the benefits provided are pursuant to a contractual obligation and were set long before Mr. Stengel's employment with the Department and accordingly cannot be affected by his official participation. Mr. Stengel will be divesting all of his stock and equity interests in Time Warner, Inc. within 90 days of confirmation;
- Many decisions about media access, interviews, and public messages of the Department are made by or in conjunction with other high-level Department officials, including the Assistant Secretary for Public Affairs, the Department Spokesperson, and others – so, the likelihood that the Under Secretary's sole discretion would be the determining factor is reduced;
- Decisions about public access to information and Department communications are sensitive and often require senior engagement. If the Under Secretary was not able to participate in these discussions and policy determinations, it would have a negative impact on the Department;
- Mr. Stengel's ability to work on matters involving Time Warner, Inc.'s subsidiaries is of particular importance to the Department's public affairs and public diplomacy missions, given the broad variety of media outlets owned by Time Warner, Inc. Many of these subsidiaries are regularly engaged in covering the Department's activities and require the Under Secretary to be able to weigh in on decisions that might impact individual outlets' news coverage; and
- Due to his expertise in journalism and the media industry, including new and social media, Mr. Stengel brings an important perspective and experience to the Department's

public diplomacy and public affairs missions; it would be a detriment to the Department to lose Mr. Stengel's expertise on these issues.

This waiver and authorization is limited in scope. It does not cover Mr. Stengel's participation in any particular matter involving specific parties in which Time Warner, Inc., Time, Inc., or HBO are parties or represent parties. It covers only his participation in particular matters in which Time Warner, Inc.'s other subsidiaries are parties or represent parties. It does not cover those matters that would have a direct and predictable effect on Time Warner, Inc.'s ability and willingness to fulfill their contractual obligations to Mr. Stengel in the form of his 401K, pension plan, and supplemental savings plan.

Thus, I grant this waiver with the understanding that Mr. Stengel will comply with the remaining provisions of the Ethics Pledge and with all preexisting government ethics rules, and will abide by the limitations herein described. 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 in which Time Warner, Inc.'s subsidiaries are parties or represent parties - excluding Time Warner, Inc. itself, Time, Inc., and HBO.

Richard C. Visek

A handwritten signature in black ink, appearing to read "Richard C. Visek", written over a horizontal line.

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



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

OFFICE OF  
ETHICS COUNSEL

**MEMORANDUM**

**TO:** Mary Jo White  
Chair

**FROM:** Shira Pavis Minton   
Ethics Counsel  
Designated Agency Ethics Official

**DATE:** February 6, 2014

**SUBJECT:** 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 waive certain requirements of paragraph 2 of the Ethics Pledge you signed pursuant to Executive Order 13490 (the “Pledge”) with respect to your former client, Simpson, Thacher & Bartlett LLP (“Simpson Thacher”). This waiver pertains to particular matters involving specific parties arising at the United States Securities and Exchange Commission (the “Commission”).<sup>1</sup>

Executive Order 13490 provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee’s former employer or former clients, including regulations and contracts. Sec. 1, par. 2. A waiver of the Pledge restriction may be granted upon a finding that a 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. Executive Order 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 consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

You were appointed to the Commission on April 9, 2013. I understand that for several years prior to your appointment Simpson Thacher was a client for whom you performed attorney services. However, during the two years preceding your appointment the amount of time you spent providing services for Simpson Thacher as an attorney was minimal: between April 2011

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<sup>1</sup> Authorization under 5 C.F.R. § 2635.502(d) is not required here because Simpson Thacher has not been your client within the past year.



and the date of your appointment, you billed in total less than one hour for work on Simpson Thacher matters (.2 hours in May 2011 and and 0 hours in 2012).<sup>2</sup>

The purpose of the Ethics Pledge is to address concerns of special access. *See* DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009. Given the minute amount of work you did for Simpson Thacher in the two years prior to your appointment, there is no reason that you should not be able to function objectively in matters in which Simpson Thacher is, or represents, a party. Although de minimis time alone does not justify waving the Pledge, the United States Office of Government Ethics has observed that “the Pledge is not intended to require a two-year recusal based on activities so insubstantial that they are not likely to engender the kind of lingering affinity and mixed loyalties at which the Executive Order is directed.” DO-09-011. Here, the minimal amount of your work for Simpson Thacher during the two years prior to your appointment does not present a significant concern regarding the appearance of undue influence that the Pledge is designed to prevent.

The waiver of your Pledge restriction as to Simpson Thacher will directly serve the public interest. Simpson Thacher is an international law firm with a significant securities practice in the United States. As such, they represent a large number of entities regulated by the Commission and appear before the Commission regularly. Thus far, as Chair of the Commission, you have recused from particular matters in which Simpson Thacher represents a party. This has led to a situation in which your leadership, experience, and expertise have not been brought to bear on significant matters before the Commission. Your involvement would be invaluable to Commission staff and your fellow Commissioners to ensure that the Commission’s responsibilities to the American investing public are being met. Your knowledge, expertise, and leadership in such matters will help the Commission best carry out its mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Accordingly, I certify that it is in the public interest that this waiver be granted. This waiver is granted with the understanding that you will comply with the remaining provisions of the Executive Order and with all other applicable government ethics rules.

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<sup>2</sup> I note you did approximately 6 hours of work for Simpson Thacher in January, 2011, which is outside the 2 year period prior to your appointment.




UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

OFFICE OF  
ETHICS COUNSEL

**MEMORANDUM**

**TO:** Mary Jo White  
Chair

**FROM:** Shira Pavis Minton   
Ethics Counsel  
Designated Agency Ethics Official

**DATE:** February 6, 2014

**SUBJECT:** 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 waive certain requirements of paragraph 2 of the Ethics Pledge you signed pursuant to Executive Order 13490 (the “Pledge”) with respect to your former client, Credit Suisse Group AG (“Credit Suisse”). This waiver pertains to particular matters involving specific parties arising at the United States Securities and Exchange Commission (the “Commission”).<sup>1</sup>

Executive Order 13490 provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee’s former employer or former clients, including regulations and contracts. Sec. 1, par. 2. A waiver of the Pledge restriction may be granted upon a finding that a 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. Executive Order 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 consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

You were appointed to the Commission on April 9, 2013. I understand that for several years prior to your appointment Credit Suisse was a client for whom you performed attorney services. However, during the two years preceding your appointment the amount of time you spent

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<sup>1</sup> Authorization under 5 C.F.R. § 2635.502(d) is not required here because Credit Suisse has not been your client within the past year.

providing services for Credit Suisse as an attorney was minimal: during the two years preceding your appointment, you billed in total less than one hour (0.5 hours in January 2012 and 0.4 hours in February 2012) for work on Credit Suisse matters.

The purpose of the Ethics Pledge is to address concerns of special access. *See* DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009. Given the minute amount of work you did for Credit Suisse in the two years prior to your appointment, there is no reason that you should not be able to function objectively in matters in which Credit Suisse is a party. Although de minimis time alone does not justify waving the Pledge, the United States Office of Government Ethics has observed that “the Pledge is not intended to require a two-year recusal based on activities so insubstantial that they are not likely to engender the kind of lingering affinity and mixed loyalties at which the Executive Order is directed.” DO-09-011. Here, the minimal amount of your work for Credit Suisse during the two years prior to your appointment does not present a significant concern regarding the appearance of undue influence that the Pledge is designed to prevent.

The waiver of your Pledge restriction as to Credit Suisse will directly serve the public interest. Credit Suisse is a global financial services company with significant US operations. As such, they are heavily involved in many areas that are regulated by the Commission, such as broker-dealer activities, asset management services, private placements, and investment banking activities. Thus far, as Chair of the Commission, you have recused from particular matters involving Credit Suisse. This has led to a situation in which your leadership, experience, and expertise have not been brought to bear on significant matters before the Commission. Your involvement would be invaluable to Commission staff and your fellow Commissioners to ensure that the Commission’s responsibilities to the American investing public are being met. Your knowledge, expertise, and leadership in such matters will help the Commission best carry out its mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

This waiver is limited: you will remain recused from any particular matter on which you personally provided advice to Credit Suisse.

Accordingly, I certify that it is in the public interest that this waiver be granted. This waiver is granted with the understanding that you will comply with the remaining provisions of the Executive Order and with all other applicable government ethics rules.



# **APPENDIX V**

THE WHITE HOUSE

Washington

December 19, 2014

MEMORANDUM FOR MARTIN P. PAONE

FROM: NEIL EGGLESTON   
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 waiver of the requirements of Paragraph 3 of the Ethics Pledge for Mr. Martin P. Paone. I have determined that this waiver is necessary because it is in the public interest for Mr. Paone to serve as Deputy Assistant to the President and Senate Liaison. This waiver is limited, and Mr. Paone will abide by all other restrictions imposed by Executive Order 13490, including without limitation, communication and recusal requirements concerning former employers and clients.

Section 1 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" ("Ethics Pledge"), requires all covered political appointees to abide by certain commitments above those required by preexisting government ethics rules. Paragraph 3 of the Ethics Pledge applies to any covered appointee who was a registered lobbyist within the two years prior to the date of appointment. Paragraph 3 restricts a covered appointee's ability, among other things, to seek or accept employment with an executive agency that the appointee lobbied within the two years prior to appointment.

A waiver of Paragraph 3 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 Executive Order 13490.

Immediately prior to his appointment by President Obama as Deputy Assistant to the President and Senate Liaison, Mr. Paone served as Executive Vice President of Prime Policy Group, a subsidiary of Burson-Marsteller Global Public Relations, a marketing and government relations consultancy. Prime Policy Group was registered under the Lobbying Disclosure Act, and Mr. Paone made lobbying contacts with the Executive Office of the President within the past two years. As such, absent a waiver of Paragraph 3, Mr. Paone is barred from employment with the Executive Office of the President.

For the position of Senate Liaison, the President requires a candidate who possesses deep and long-standing relationships in both parties in order to facilitate productive dialogue between the

Senate and the White House and build on progress creating jobs and expanding broad-based growth and opportunity for every American.

Mr. Paone served in the Senate for 29 years, including over ten years as an officer of the Senate as Democratic Secretary, to which he was elected by a unanimous vote of the Democratic caucus. As a Senate officer, Mr. Paone worked closely with Democratic and Republican Senators and their staffs, providing strategic advice on moving legislation and nominations. He also managed the day-to-day operations of the Democratic Cloakroom, which is one of the nerve centers for all Senate business. Mr. Paone was honored by the Senate with a unanimous resolution commending his outstanding service and recognizing that he had earned the respect and admiration of Democratic and Republican Senators alike, as well as their staffs. Upon his departure, both Majority and Minority leaders and a bi-partisan assembly of Senators expressed on the floor their admiration and appreciation for his skills and service. One Senator observed that Mr. Paone "possesses a vast and detailed knowledge of the history and procedures of the Senate that is possibly second only to that of our distinguished President Pro Tempore, Senator Robert C. Byrd," then the longest serving member of Congress. Mr. Paone's knowledge and experience in the Senate, as well as the hard earned trust of Senate Leaders in both parties, make him uniquely qualified to advise the President on Senate relations and to represent the President to members of the Senate.

Accordingly, I have concluded that it is in the public interest to grant Mr. Paone a waiver of Paragraph 3 of the Ethics Pledge. This waiver is limited and does not permit Mr. Paone to participate in party-specific matters involving his former employer, Prime Policy Group, or his former clients. Mr. Paone will otherwise comply with the remainder of the Ethics Pledge and all other applicable government ethics rules.

# **APPENDIX VI**



United States Department of State

Washington, D.C. 20520

November 5, 2014

### 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 Capricia P. Marshall, former Chief of Protocol of the United States, to receive a limited waiver of the restrictions of Paragraph 4 of the Ethics Pledge with respect to service as a member of the Board of Trustees (the Board) of the Blair House Restoration Fund (the Fund). The Fund has invited Ms. Marshall to serve as a Board member in her private capacity. Ms. Marshall left her government position in August 2013.

Executive Order 13490, Section 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 4 of the Ethics Pledge provides that a covered appointee for a period of two years following the end of her appointment is “covered by the post-employment restrictions on communicating with employees of [the Department of State] set forth in section 207(c) of title 18, United States Code” (also known as the former senior employee cooling off period).

Section 207(c) states that former senior employees such as Ms. Marshall may not within the cooling off period “knowingly make[], with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served . . . on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency . . . .” 18 U.S.C. § 207(c) (2009). The current Chief of Protocol of the United States serves in his official capacity as the Board’s honorary chairman. To the extent that Ms. Marshall would be representing the Board to him with the intent to influence him in connection with a matter where she seeks official action, section 207(c) concerns are triggered.

A waiver of the restriction contained in Paragraph 4 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. *See* 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 consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.



It is in the public's interest that Ms. Marshall be issued this waiver because of the strong governmental purpose served by the Board. Blair House, in addition to being known as the "President's guest house" for providing lodging to visiting foreign leaders, is a stage for a multitude of internationally focused events that help to advance America's relationship with foreign nations. Such events have included a summit of the G-8 Foreign Ministers and many initiatives for the Washington Diplomatic Corps such as the State of the Administration briefings by Cabinet members and White House officials and exchanges for foreign diplomats and their families. Blair House is the residence of the president-elect in the days prior to moving into the White House. Blair House has been a residence for the family of a deceased former President during a state funeral. A typical schedule for Blair House in a calendar year may include up to thirty visits by foreign leaders, multiple foreign policy related luncheons, dinners, receptions and teas, and official meetings, all of which underscore the unique diplomatic role of Blair House. Blair House overnight visitors have included Queen Elizabeth II, Charles de Gaulle, Vaclav Havel, and the Emperor and Empress of Japan. Blair House is linked to the State Department's appropriation accounts and has been designated part of the White House Security Complex.

The Fund was established in 1985 as a charitable, non-partisan organization dedicated to raising private funds to create and maintain the rooms, gardens, and amenities of Blair House. The Fund is a tax-exempt organization pursuant to section 503(c)(1) of the tax code. The Fund has the responsibility to preserve and refresh the furnishings, décor, fine arts, and gardens of Blair House. Reaching out to United States citizens, foundations, and corporations, the Fund's work is vital to ensure that Blair House remains a beautiful and welcoming historic showcase of American hospitality, elegance, design, and craftsmanship.

This waiver would enable Ms. Marshall to serve on the Fund's Board without regard to the presence of the current Chief of Protocol of the United States or any other Department official who may also be Board members or present at Board meetings. I determine that this waiver is in the public interest.

Reasons for this determination include:

- Ms. Marshall will be able to put her considerable experience to work on behalf of the Fund which in turn supports the important services Blair House provides to the federal government and the American people. Without public spirited commitments by individuals such as Ms. Marshall it would be difficult for the Fund to cultivate the substantial fundraising, endowment, and in-kind donations necessary for Blair House to remain a significant symbol of our nation.
- There is a strong official connection between Blair House and the Department of State. Ms. Marshall's service on the Board will support this connection. It is in the public interest that these institutionalized connections be nurtured and strengthened given the unique foreign policy niche Blair House occupies.
  - Approximately seventeen Department of State employees comprise the staff of Blair House.



- The Department assists the General Services Administration with federal funds to pay for Blair House's structural "brick and mortar" needs.
- The Department permits the Chief of Protocol to serve as honorary chairman of the Fund, acting in his official capacity.
- The Congress has statutorily supported the Blair House-Department of State link by providing that fees received by the State Department in connection with Blair House may be credited to a Department appropriation account. 22 U.S.C. § 2718 (2014). Such fees are available only for Blair House maintenance and expenses. *Id.*
- The Congress has underscored Blair House's significance to the federal government by designating it as part of the White House Security Complex for certain purposes connected to the protection of the President and the Vice President. Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, Div. A, Title I, § 101(b), 110 Stat. 3009-108 (1996).
- The revolving door concerns which gave rise to the Obama Pledge do not apply in these particular circumstances. The Fund serves no purpose other than to preserve and enhance a unique historic property owned by the federal government since 1942. Ms. Marshall's proposed role as a member of the Fund's Board is uncompensated so her service provides her with no personal financial advantage.
- This waiver is limited in scope. Ms. Marshall will remain subject to Paragraph 4 of the Ethics Pledge with respect to communications and appearances to the Department on behalf of any other person besides the Fund and the Board. Ms. Marshall will also remain subject to the restrictions in 18 U.S.C. § 207(a) concerning communications and appearances on behalf of another in connection with specific party matters that she personally worked on or that were under her official responsibility when she was a Department of State employee. These restrictions include matters deriving from her prior service as honorary chairman of the Fund while she was a Department employee.

Thus, I grant this waiver with the understanding that Ms. Marshall will comply with the remaining provisions of the Ethics Pledge, with all preexisting government ethics rules otherwise applicable to her, and with the limitations described here.



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