DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

February 23, 2021

MEMORANDUM FOR **DAVID LIPTON**
COUNSELOR TO THE SECRETARY

FROM: Brian Sonfield
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Assistant General Counsel, General Law, Ethics & Regulation and Designated Agency Ethics Official

SUBJECT: Participation in Matters Regarding the International Monetary Fund (IMF)

This memorandum memorializes the ethics office's authorization related to your participation in matters that involve your former employer, the International Monetary Fund (IMF), as a party or representative of a party.

You recently joined Treasury as Counselor to the Secretary. In this role, you advise the Secretary on (among other things) international monetary system operations and stabilization issues, including matters relating to the formulation of U.S. views on IMF lending to member countries, IMF policies on lending and surveillance, and IMF resources. Thus, your work includes matters that involve the IMF as a party or party representative.

Prior to joining Treasury, you were First Deputy Managing Director of the IMF. You were employed from July 2011 until your retirement in March 2020. You currently participate in a defined benefit plan with your former employer, under which you receive fixed monthly distributions pursuant to IMF's established retirement program.

Subpart E of the Standards of Conduct regulations contains provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of absence of impartiality in the performance of his official duties. Due to your former employment with IMF within the past year, and your current participation in IMF's defined benefit plan, you have a "covered relationship" with the IMF.[1] 5 C.F.R. § 2635.502(b)(1)(i) and (iv). As such, you are prohibited from participating in a "particular matter involving specific parties"[2] when "a person with whom you have a covered relationship is or represents a party" to the matter, and the circumstances

[1] In addition to these regulations, the criminal conflict of interest statute, 18 U.S.C. § 208, requires you to recuse from particular matters affecting the IMF's ability or willingness to meet its pension commitments – that is, particular matters affecting the financial stability of the IMF. This authorization does *not* cover such matters – i.e., particular matters that would affect the continued existence of IMF or its ability to support the defined benefit plan, a highly unlikely occurrence.

[2] A particular matter involving specific parties "typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties." 5 C.F.R. § 2640.102(1). Examples of particular matters involving specific parties include such matters as contracts, grants, licenses, product approval applications, litigation, and investigations.

would cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter. 5 C.F.R. § 2635.502(a)(1). Therefore, absent authorization or affirmative application of this reasonable person standard, you would not be permitted to participate in a particular matter where IMF is or represents a party until the one-year covered relationship period has elapsed.

Under section 2635.502(d), even when an employee's participation in a particular matter involving specific parties likely would create an appearance of partiality, "the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the Government's programs and operations." The authorization provision lays out factors that may be taken into consideration in deciding whether an authorization is appropriate:

> 1) The nature of the relationship involved;
> 2) The effect that resolution of the matter would have on 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.

Id. at § 2635.502(d).

After weighing these factors, we authorized your participation in Treasury matters where IMF is or represents a party for the following reasons:

- The IMF is an international organization that works to foster global monetary cooperation and exchange rate stability, facilitates international trade, promotes high employment and sustainable economic growth, and works to reduce poverty around the world. It is not a conventional private lending institution. The United States is a member country of the IMF and its largest shareholder, contributing financially to its mission. As such, there is little likelihood that a government employee could take action to favor the commercial interest of IMF at the expense of the United States.
- Your Treasury duties involving IMF generally involve formulating and advising on international monetary system operations and sustainability. You are uniquely well qualified to perform this work given your prior experience at the IMF, the White House National Economic Council and National Security Council, private sector institutions, and as Under Secretary for International Affairs at the Department. You bring a distinctive skill set to Treasury, and reassignment of this IMF-related work to another employee would be inefficient and deprive the Department of your expertise in these matters.
- You will not be the deciding official on any decisions related to the United States engagement with IMF for the remainder of the one-year period following your retirement from the IMF. During this time, the acting Deputy Secretary and/or the Secretary will be the deciding official.

- While you participate in an IMF defined benefit plan and receive monthly distributions, this amount is fixed, and you will not participate in matters affecting the IMF's ability or willingness to meet its pension commitments under the plan or in any matter related or affecting the IMF retirement system.
- Lastly, your covered relationship stemming from your former employment, under 5 C.F.R. § 2635.502(b)(1)(iv), expires approximately one month into your Treasury tenure.[3]

In conclusion, after careful consideration of the provisions in 5 C.F.R. § 2635.502, we authorize you to participate in any such matter in which the IMF is a party or representative of a party, except matters pertaining or affecting the IMF retirement system. Given the factors discussed above, we conclude that the interest of the Government in your participation outweighs concern that a reasonable person might question your impartiality in the administration of these matters.[4]

[3] After the expiration of the one-year period following your retirement from IMF, on March 1, 2021, you will continue to have a covered relationship with IMF due to your participation in the IMF defined benefit plan. 5 C.F.R. § 2635.502(b)(1)(i). However, we find that a reasonable person would not question your impartiality in working on the IMF matters within your portfolio, given the nature of your interest. Out of an abundance of caution, however, the same factors relied upon herein will serve as the basis to authorize you to participate in these matters following the expiration of the one-year period.

[4] Paragraph 2 of President Biden's Ethics Pledge, Executive Order 13989, prohibits political appointees from participating personally and substantially, during the first two years after entering federal service, in any particular matter involving former employers or clients the employees served in the two years prior to entering federal service. However, Paragraph 2 of the Ethics Pledge is not implicated here, because "former employer" under the Pledge does not include any international organization in which the United States is a member state. Section 2(k), EO 13989.