DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

February 2, 2021

MEMORANDUM FOR: **JANET YELLEN**
SECRETARY

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

Brian J. Sonfield
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Date: 2021.02.02 16:03:58 -05'00'

SUBJECT: Participation in certain class matters per 5 C.F.R. § 2635.502

This memorandum provides you with an authorization to participate in certain "particular matters" focused on the interests of classes where you have a covered relationship with one or more class members. The covered relationships are of limited duration (ten months or less) and stem from honoraria you received for delivering speeches prior to your confirmation as Secretary. While we are not sure at this juncture whether you will in fact participate in particular matters of general applicability focused on these sectors, or whether these matters would present circumstances that would raise impartiality concerns, we nevertheless are issuing this authorization out of an abundance of caution. This authorization does not cover your participation in particular matters involving the specific sources of honoraria as parties or party representatives, for which you will seek a separate authorization prior to participating.

BACKGROUND

You were confirmed as Secretary of the Treasury on January 25, 2021. As the head of the Department of the Treasury, you are generally responsible for executing the Department's mission to maintain a strong economy, strengthen national security, and manage the U.S. Government's finances and resources effectively. Prior to your confirmation, you received honoraria for delivering speeches focused on general topics regarding financial markets, the U.S. and global economy and global developments.[1]

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 her official duties. Pursuant to these regulations, you have a "covered relationship" with each entity to which you delivered a paid speech until one year after having last provided the speech. 5 C.F.R. § 2635.502(b)(1)(iv). You are prohibited from participating in a "particular matter involving specific parties"[2] when a person with whom you have a covered

[1] With respect to one entity, Magellan Financial, you also consulted about the same general topics of your speeches – the U.S. and global economy, financial markets, and global developments.

[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 contracts, grants, licenses, product approval applications, litigation, enforcement actions, sanctions, and investigations.

relationship is or represents a party to the matter, and the circumstances 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). Further, under section 2635.502(a)(2), the impartiality regulation contains a "catch-all" provision that extends to circumstances other than those involving a covered relationship with a party or representative in a specific party matter that would raise a question regarding impartiality. This provision might be triggered by matters focused on the classes that the sources of honoraria belong to, but that do not involve specific parties.

The entities from which you received payment for speeches within the last year are members of the financial services sector, including banks, asset management, investment management and brokerage firms, companies engaged in the business of insurance, and private investment funds.[3] Class matters focused on these sectors may give rise to circumstances where your impartiality might be questioned by third parties due to your receipt of honoraria from entities that are members of these classes. However, it is critical that the head of the Treasury Department be able to participate fully in all particular matters of general applicability focused on these classes to the extent that they may arise. Accordingly, I have reviewed the factors set forth in the Office of Government Ethics' impartiality regulation and have independently determined that to avoid any possible future impediment to your ability to execute your duties as Secretary, and out of an abundance of caution, a limited authorization is necessary and appropriate.

ANALYSIS

Under section 2635.502(d), even where an employee's participation likely would create an appearance of impartiality, "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 agency's programs and operations." The authorization provision lays out factors that may be taken into consideration in deciding whether an authorization is appropriate:

- The nature of the relationship involved;
- The effect that resolution of the matter would have upon the financial interests of the non-federal entity or person involved in the relationship;
- 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;
- The sensitivity of the matter;
- The difficulty of reassigning the matter to another employee; and
- 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).

These factors weigh in favor of an authorization. With regard to the nature of the relationships involved, you delivered speeches to these entities based on broad topics and received honoraria. You did so prior to government service, when you had not yet been nominated for the position of

[3] These include: Advisor Group, Ares Management, Barclays, Citadel, Credit Suisse, Daiwa Securities, Goldman Sachs, Magellan Financial, Principal Financial, and Standard Chartered Bank.

Secretary. You do not have any existing commitment to provide additional speeches, with or without remuneration. You were not employed by any of the entities, did not provide consultation services for the entities (other than for Magellan Financial Group), or otherwise provide representational services, fiduciary duties, or other personal services. As such, you did not advise the entities on any of the potential class matters that you may participate in. While the amount of honoraria received was not insignificant, these discrete short-term engagements are not likely to raise impartiality concerns in the same way as longer-standing relationships like a recent employer or client. And neither you nor your spouse own stock in any of these entities.

You are the Secretary of the Treasury, the duties of which require you to be involved in a broad array of matters focused on these sectors. Issues relating to these sectors could arise at any time without the opportunity for consultation with the ethics office. These circumstances make it difficult, if not impossible, for you to recuse from matters relating to these sectors and also argue in favor of prior authorization.

After weighing the above factors, I grant this authorization to mitigate any appearance concerns with your participation in class matters focused on the interests of the class(es) the sources of honoraria belong to. The interest of the Government in your participation outweighs any concern that a reasonable person might question your impartiality in the administration of these matters.

Paragraph 2 of the Ethics Pledge prohibits political appointees from participating personally and substantially, during the first two years after entering federal service, in certain matters relating to their former employer or clients. However, the Pledge excludes from the definition of former client instances "where the service provided was limited to speeches or similar appearances." Therefore, a waiver of the Ethics Pledge is not required for your participation in broad policy discussions, sector-specific deliberations, or party matters involving these entities.[4]

[4] This excludes Magellan Financial Group, an entity that you also consulted for.