

THE WHITE HOUSE

Washington

MEMORANDUM FOR ANDREW OLMEM, SPECIAL ASSISTANT TO THE PRESIDENT

FROM: Counsel to the President

SUBJECT: Waiver Certification Under Section 3 of Executive Order 13770 for Ethics Pledge Paragraphs 6 and 7 and Authorization to Participate Under 5 C.F.R. Section 2635.502

Pursuant to section 3 of Executive Order 13770, “Ethics Commitments by Executive Branch Employees,” (“Ethics Pledge”), and 5 C.F.R. § 2635.502(d), I am issuing for you this memorandum to provide a limited waiver to the restrictions found in paragraphs 6 and 7 of the Ethics Pledge and section 2635.502(a). This limited waiver authorizes you from the date of your appointment to participate in communications and meetings with Franklin Advisers; Angelo Gordon & Co.; Blue Mountain Capital Management; De Shaw Galvanic Portfolios; Knighthead Capital Management; and Marathon Asset Management (“covered former clients”) and their affiliate entities as it relates to Puerto Rico fiscal issues notwithstanding the limitations found in paragraphs 6 and 7 of the Ethics Pledge and section 2635.502(a).

This limited waiver also authorizes you from the date of your appointment to participate in activities related to the following issues: improving disclosure of international insurance capital agreements; making technical and clarifying amendments to the Flood Disaster Protection Act and the National Flood Insurance Act; eliminating deposits held at the Federal Reserve from the calculation of the enhanced supplementary leverage ratio; revising the foreign exposure threshold for the application of the Advanced Approaches capital requirements; reforming the Financial Stability Oversight Council’s (“FSOC”) procedures; regulating credit rating agencies; calculation of the Federal Reserve’s dividend for member institutions; and the Federal regulation of the business of insurance (the “covered matters”), notwithstanding the limitations found in paragraphs 6 and 7 of the Ethics Pledge and section 2635.502(a).

In addition to other restrictions found in the Ethics Pledge, paragraph 6 establishes certain restrictions related to an appointee’s “former employers”¹. In particular, paragraph 6 prohibits all appointees, including commissioned officers, from:

- Participating in any particular matter involving specific parties in which a “former employer” is a party or represents a party for two years from the date of their appointment; and

¹ A “former employer” is defined by the pledge as “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.” Executive Order 13770, Sec. 2(j).

- Participating in any official meeting or communication with a former employer or former client, except where such meeting or communication relates to a particular matter of general applicability and the meeting or other event is open to all interested parties.

Paragraph 7 of the Ethics Pledge prohibits all appointees, including commissioned officers, who were registered lobbyists within the 2 years before the date of their appointment, from:

- Participating in any particular matter on which they lobbied within the 2 years before the date of appointment; or
- Participating in the specific issue area in which that particular matter falls.

In addition, Section 2635.502(a) states, in part:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his/her household, or knows that a person with whom he has a covered relationship is or represents a party to such a matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his/her impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee . . .

Authorization under section 2635.502(d) may be granted by the designated White House Ethics Official when

. . . an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. § 208(a), but would raise a question in the mind of a reasonable person about his/her impartiality . . . [but] 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.

After careful consideration, I have determined that it is appropriate and in the public interest to provide a limited waiver of the restrictions in section 1, paragraphs 6 and 7, of the Executive Order and section 2635.502(a) and I authorize you to participate in covered matters and meetings and communications with covered former clients regarding particular matters involving policies impacting Puerto Rico's fiscal issues and to participate generally in any particular matter involving Puerto Rico's fiscal issues. The Administration, through the National Economic Council, has established a working group to address the fiscal issues being faced by Puerto Rico. The Administration has an interest in you working on covered matters and serving on that working group due to your experience and expertise in working on these issues in the past. It is important that you participate in covered matters and be able to communicate and meet with the covered former clients as they may be involved in policy-making discussions, and disqualification from such matters, meetings, or communications would limit the ability of the White House Office to effectively carry out its duties. Furthermore, in accordance with section

2635.502(d), the need for your services outweighs the concern that a reasonable person may question the integrity of the White House Office's programs and operations.

This limited waiver does not affect the application of any other provision of law, including any other provision of the Ethics Pledge; the Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. part 2635); the criminal bribery, graft and conflict of interest statutes (18 U.S.C. 201-209); or the Hatch Act (5 U.S.C. 7323), and is limited to the covered matters and particular matters involving Puerto Rico fiscal issues.