THE WHITE HOUSE

Washington

MEMORANDUM FOR JOHN A. EISENBERG, DEPUTY ASSISTANT TO THE PRESIDENT

FROM: Counsel to the President

SUBJECT: Waiver Certification Under Section 3 of Executive Order 13770 for Ethics Pledge Paragraph 6 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 paragraph 6 of the Ethics Pledge and section 2635.502(a). This limited waiver is granted to John A. Eisenberg, Deputy Assistant to the President (hereinafter "covered employee"). This limited waiver authorizes covered employee to participate in communications and meetings pertaining to litigation involving the United States of America in which one or more parties is represented by Kirkland & Ellis LLP, notwithstanding the limitations found in paragraph 6 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

- 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.

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

[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).

> 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, paragraph 6, of the Executive Order and section 2635.502(a) to allow the covered employee to participate in communications and meetings pertaining to litigation in which one or more parties is represented by Kirkland & Ellis LLP regarding particular matters of general applicability and particular matters involving specific parties where Kirkland & Ellis represents parties in matters affecting public policy issues which are important to the priorities of the Administration. This shall not include matters in which he participated personally and substantially while serving as an attorney at Kirkland & Ellis LLP or where he represented a party involved in the matter. The Administration has an interest in the covered employee interacting with Kirkland & Ellis LLP in those limited instances to ensure its interests are protected and advanced. Disqualification from such meetings or communications would limit the ability of the covered employee from effectively carrying out his duties on behalf of the Administration. Furthermore, in accordance with section 2635.502(d), the need for the covered employee's 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).