



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 29, 2021

MEMORANDUM FOR CELESTE DRAKE

FROM: SAMUEL R. BAGENSTOS  
GENERAL COUNSEL

A handwritten signature in blue ink, appearing to read "SRB", is located to the right of the "FROM:" field.

SUBJECT: LIMITED PUBLIC INTEREST WAIVER PURSUANT TO SECTION 2,  
EXECUTIVE ORDER 13989

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Pursuant to Section 3 of Executive Order 13989 (Ethics Commitments by Executive Branch Personnel) (to which I will refer as “EO 13989” or “the Ethics Pledge”), I hereby grant you a limited waiver of the requirements of Section 1, Paragraphs 2 and 3 of EO 13989. I have determined that this waiver is necessary and that it is in the public interest to enable you to effectively carry out your duties as the Director of the Made in America office at the Office of Management and Budget.

You are expected to advise and counsel the President, the Director of OMB, and other Federal Agencies on international trade, federal procurement, manufacturing, and other matters of national and international importance. Absent this waiver, you would be restricted for two years following your appointment from communicating with your former employers, the Director’s Guild of America and the American Federation of Labor and Congress of Industrial Organizations, except if those organizations took part in a public event. You would also be prohibited from participating in any particular matter on which you lobbied in the two years before your appointment. Finally, you would be restricted from participating in the specific issue area in which particular matters involving those areas fall.

Managing an ongoing recusal for you would significantly and negatively affect several of OMB’s important missions. The successful accomplishment of the mission of the newly created Made in America Office relies on extensive, open, and collaborative communications within OMB, between OMB and other parts of the Executive and Legislative Branches of the U.S. Government, and between OMB and non-governmental entities including labor organizations. Without this waiver, the adjustments that would be necessary to maintain your recusal would result in serious limitations in your ability to perform the essential duties of your position. That would, in turn, seriously limit OMB’s ability to implement Executive Order 14005 (Ensuring the Future is Made in All of America by All of America’s Workers) (to which I will refer as “EO 14005”).

## Background

Section 1 of EO 13989 requires all covered political appointees to abide by certain commitments.

Paragraph 2 of Section 1 bars a covered appointee, for a period of two years from the date of appointment, from participating in any particular matter involving specific parties that is directly and substantially related to a former employer or former client. The Ethics Pledge defines the term “particular matter involving specific parties” to include “*any* meeting or other communication relating to the performance of one’s official duties with a former employer or former client.” EO 13989 § 2(j) (emphasis added). As a result, absent a waiver Paragraph 2 would bar you from any discussions with the employers for whom you have worked since March 2019.

Paragraph 3 of Section 1 bars a covered appointee from participating, for a period of two years from the date of appointment, either in any particular matter on which the appointee lobbied within the two years prior to their appointment, or in the specific issue area in which that particular matter falls. Paragraph 3 also bars a covered appointee from seeking or accepting employment with any executive agency that the appointee lobbied within two years of the date of appointment.

Section 3 of EO 13989 permits the Director of OMB, in consultation with the Counsel to the President, to grant a waiver of those restrictions 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. The Director has delegated that authority to me, as OMB’s Designated Agency Ethics Officer.

You are a lawyer and a leading authority on international trade, procurement provisions included in trade agreements, union and labor organizations, and government affairs.

Between May, 2019 and March, 2021, you served as the Executive in Charge of Government Affairs at the Directors Guild of America. The Directors Guild is a nonprofit labor organization that represents directors of films, television content, commercials, documentaries, news, and sports with respect to matters of interest to its membership. At the Directors Guild, you were responsible for legislative and regulatory efforts, including with respect to online piracy and copyright infringement, pensions and healthcare, and promoting film production within U.S. borders. While with the Directors Guild, you registered to lobby with respect to a variety of topics including international trade treaties (NAFTA, USMCA, the U.S.-Japan Trade Agreement, the U.S.-U.K. Trade Deal), COVID relief, and intellectual property protection. Although your registration was for broad topics, in fact you lobbied only with respect to the narrow issue of online copyright theft, an issue that is of great importance to the Directors Guild. The vast majority of your lobbying efforts were directed toward Congress. In some instances, the President was copied on letters and lobbying materials sent to members of Congress. Additionally, on one occasion you were one of a number of participants that took part in a very brief conversation with the United States Trade Representative’s Office about online copyright theft.

Immediately prior to your time with the Directors Guild, you served as a Trade and Globalization Specialist with the AFL-CIO. The AFL-CIO is a nonprofit and the largest federation of unions in the United States. At the AFL-CIO, you focused on international trade, trade agreements, and worker protection and rights with the goal of ensuring that U.S. trade policies create good jobs for U.S. workers.

You have also held senior staff positions with various members of Congress, including as Legislative Director, Acting Chief of Staff, Senior Counsel and Legislative Counsel.

As the head of OMB's Made in America Office, you will be responsible for implementing EO 14005, building the Made in America Office, leading OMB's efforts to update Buy American and other domestic preference requirements through policy and the regulatory process, developing and managing a waiver process with respect to Made in America requirements, and coordinating with the U.S. Trade Representative and the State Department with respect to the international implications of domestic preference, including supporting international negotiations.

### Analysis

In accordance with Section 3 of EO 13989, I have concluded that it is in the public interest to grant you a limited waiver of the of the requirements of Section 1, Paragraphs 2 and 3 of the Ethics Pledge to enable you to effectively carry out your duties as OMB's Director of the Made in America Office.

In making that assessment with respect to Paragraph 2,\* I have determined that the AFL-CIO is unique in its coverage of labor organizations and unions in a number of areas directly relevant to your responsibilities at OMB. These areas include: union views on international trade, manufacturing, and labor policies. The AFL-CIO also plays a unique role in shaping congressional, press, and public understanding of these issues. If you were not permitted to have direct communication with the AFL-CIO, your ability to fully and effectively perform the duties of your position would be impaired.

In making this assessment with respect to Paragraph 3, I have considered the factors set forth in Section 3 of the Executive Order, which include: (i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment; (ii) the uniqueness of the individual's qualifications to meet the government's needs; (iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and (iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services.

Here, these factors demonstrate that it is in the public interest to grant you a limited waiver. The government has a critical need for your services as Director of the Made in America Office. This position affects several of OMB's important economic and related missions. You are uniquely qualified to meet the government's needs given your vital

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\* You are also restricted from communicating with your most recent former employer, the Director's Guild, but you are not seeking a waiver to permit you to speak in a private form with that entity.

expertise in international trade, labor organizations, government affairs, and procurement provisions in trade agreements. It is relevant to this analysis that your prior lobbying activities were rendered on behalf of a nonprofit organization, that you have not lobbied on behalf of any paying clients beyond that nonprofit organization, and that you have almost exclusively worked with Congress in your lobbying activities. Finally, the adjustments that would be necessary to maintain other limitations on your services would result in serious limitations, and you would be unable to capably perform the duties of your position.

#### Conclusion

For the foregoing reasons, I grant you a limited waiver of the restrictions in Section 1, Paragraphs 2 and 3 of EO 13989 to enable you to effectively carry out your duties as the Director of the Made in America Office. Pursuant to this waiver, you may have direct communication with the AFL-CIO, and you may work for OMB on matters that are related to issues on which you lobbied in the last two years. This waiver does not otherwise affect your obligation to comply with all other applicable government ethics rules and provisions of the Executive Order. Specifically, this waiver does not permit you to participate in any party-specific matters directly affecting the financial interests of the Directors Guild or the AFL-CIO, including but not limited to contracts or grants.

CC: Dana Remus, Counsel to the President, Office of the White House Counsel