



Department of Energy

Washington, DC 20585

MEMORANDUM FOR JOSHUA SHIODE
 CHIEF OF STAFF
 OFFICE OF SCIENCE

FROM: SUSAN BEARD
 DESIGNATED AGENCY ETHICS OFFICIAL

SUBJECT: LIMITED WAIVER OF EXECUTIVE ORDER 13989
 FOR JOSHUA SHIODE

Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021) and as designated by the Acting Director of the Office of Management and Budget (OMB), and after consultation with the Counsel to the President, I hereby grant you a limited waiver from the requirements of Section 1, paragraph 2 of the Executive Order. I have determined this waiver is necessary and it is in the public interest to grant this waiver to enable you to effectively carry out your duties as Chief of Staff, Office of Science, Department of Energy (DOE) and work on specific party matters involving Battelle Memorial Institute, a non-profit organization.

Background

On January 20, 2021, President Biden signed Executive Order 13989, “Ethics Commitments by Executive Branch Personnel” (Ethics Pledge). The Ethics Pledge imposes ethics requirements beyond federal ethics laws and regulations and attorney bar obligations. All individuals appointed to political positions on or after January 20, 2021, are required to sign the Ethics Pledge, which sets forth the “former employer” restriction at Section 1, paragraph 2:

I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

With the approval of the White House, the Acting Director of OMB has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.¹ Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon 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.

¹ Waiver Authority and Making Waivers Public under Section 3 of Executive Order 13989, “Ethics Commitments by Executive Branch Personnel,” U.S. Office of Government Ethics, Legal Advisory LA-21-04, (Feb. 18, 2021).

You were formerly an employee of Battelle Memorial Institute, working as the Federal Affairs Director for and an employee at the Pacific Northwest National Laboratory (PNNL). You were not a registered lobbyist. PNNL is a DOE laboratory operated under a Management and Operating (M&O) contract that the Department has with Battelle Memorial Institute (Battelle). Battelle is a non-profit organization.

The Department runs 18 national Federally-Funded Research and Development Center laboratory facilities. Of those 18 laboratory facilities, the Office of Science operates the following five: Pacific Northwest National Laboratory, Brookhaven National Laboratory, National Renewable Energy Laboratory, Oakridge National Laboratory, Savannah River National Laboratory. These five facilities are run by Battelle under M&O contracts, either individually or as part of a consortium.

Analysis

In accordance with Section 3 of Executive Order 13989, it is in the public interest to grant you a limited waiver of the requirements of Section 1, paragraph 2 of the Executive Order to enable you to effectively carry out your duties as Chief of Staff, Office of Science, DOE and work on specific party matters involving Battelle.

In making this assessment, 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.

As the Chief of Staff for the Office of Science, you are expected to be involved in all areas of operations of the Office of Science. The Office of Science is responsible for running the five laboratory facilities under its purview. Because Battelle is contracted to essentially manage all aspects of these facilities, most of the personnel at these laboratories are Battelle employees. As Chief of Staff, your role includes coordination of the Office of Science activities and priorities at all of the office's laboratories. In particular, you will serve as the lead contact for senior contractor personnel at the laboratories who wish to discuss activities and priorities at the laboratories. The most senior decisionmakers in these laboratories are Battelle personnel, not Federal employees, and as a result you must engage in day-to-day communications with Battelle employees in order to effectively do your job. These communications are necessary to monitor performance at all the laboratories, identify key priorities for the Office of Science, and to marshal DOE resources to respond to the Office of Science's needs. Moreover, the highest level contractor personnel at the facilities historically interact with the senior federal personnel in the Office of Science Headquarters in Washington, and making alternative arrangements would impact your ability as the Chief of Staff, to maintain these relationships with the laboratories as the Director of the Office of Science's primary representative.

Conclusion

The Chief of Staff position in the Office of Science has significant and broad responsibilities that impact all aspects of the Office of Science's mission, including running the Office's laboratories. If you were not allowed to operate and make recommendations to the Director of the Office of Science on all aspects of the office's portfolio, including those laboratories run by Battelle Memorial Institute, you would not be providing effective services as the Chief of Staff. In order to effectively operate those laboratories managed by Battelle, it is necessary for you to communicate with Battelle employees.

For the reasons set forth above, I have concluded that it is in the public interest to grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as Chief of Staff in the Office of Science at the Department of Energy. Pursuant to this limited waiver, you may participate in specific party matters arising in the Office of Science where Battelle is a party or represents a party subject to the limitations below, and you are permitted to participate in those specific party matters, including meetings or communications, where Battelle employees are present.

For the foregoing reasons, I grant you a limited waiver of the restrictions in Section 1, Paragraph 2 of the Executive Order to enable you to effectively carry out your duties as Chief of Staff, Office of Science.

Pursuant to this waiver, you may carry out all day-to-day activities as Chief of Staff that affect Battelle and Battelle-related entities. You will be recused from and may not participate in any procurement activities in which Battelle is a party or could foreseeably be a party (including drafting statements of work, or review or comments on responses to request for proposals (RFPs), or being involved in recommendations on responses to RFPs or in recommendations regarding the selection of M&O contractors) and annual performance appraisals or recommendations regarding fee determinations for Battelle.

This waiver does not otherwise affect your obligation to comply with all other applicable government ethics rules and provisions of the Executive Order.

cc: Stuart Delery, Counsel to the President, Office of the White House Counsel