



**DEPARTMENT OF THE TREASURY**  
WASHINGTON, D.C. 20220

May 25, 2023

**MEMORANDUM FOR** Chief Marilynn Malerba  
Treasurer of the United States

**FROM:** Brian Sonfield  
Assistant General Counsel for Ethics and  
Designated Agency Ethics Official

**SUBJECT:** Limited Waiver of Executive Order 13989

Pursuant to delegated authority under Section 3 of Executive Order 13989 (January 20, 2021) (“Executive Order”), and for the reasons stated below, I hereby grant you a limited waiver of the requirements of Section 1, Paragraph 2 (“Revolving Door Ban – All Appointees Entering Government”) of the Executive Order. I have determined this limited waiver is necessary and in the public interest so that you can effectively carry out your Treasury duties.

Background

The Executive Order requires all covered political appointees in the Biden-Harris Administration to abide by several commitments. In particular, Section 1, Paragraph 2 provides that a covered appointee may not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to a former employer or former client. The definition of that term includes giving an official speech at a conference sponsored by a former employer where the former employer charges an admission fee. This restriction would prevent you from discussing Treasury policies and priorities that promote economic growth and stability of Tribal Nations, including policies that address the unique challenges experienced by Tribal governments, during a panel at the Self-Governance Communication & Education Tribal Consortium’s (SGCETC) annual Tribal Self-Governance Conference.

In your role as Treasurer of the United States, you oversee the Office of Tribal and Native Affairs. You serve as Treasury’s main point of contact for Tribal Nations and Treasury stakeholders; coordinate with Tribal governments on consultation requests and related matters; and coordinate with points of contact for Tribal consultations, the Treasury Tribal Advisory Committee (TTAC), Treasury subject matter experts, senior leaders, tribal liaisons, and other federal agencies on matters that may have tribal implications. To effectively carry out your role and better inform Administration policies, you must be able to understand the concerns and priorities of Tribal Nations, Tribal governments, and Tribal communities.

The SGCETC is an IRC § 501(c)(3) non-profit consortium of Tribal Nations that elected to use self-governance for the delivery of programs and services to their citizens and communities. SGCETC assists Tribal Nations to achieve their goals of self-governance and seeks to ensure that the tenets and purpose of self-governance are accurately communicated and clearly understood by Congress, the executive branch, Tribal Nations, and other interested parties. SGCETC works

closely with federal agencies in the administration of the United States' treaty and funding obligations to Tribal Nations.

The Tribal Self-Governance Conference, sponsored by the SGCETC, in partnership with the Indian Health Service (IHS) and the Department of the Interior (DOI), is a decades-old annual event that brings together Tribal governments, federal agencies, Tribal organizations, and others for the purpose of improving the health and wellbeing of Tribal communities. Attendees observe and participate in panels, roundtables, and workshops that educate, identify challenges and solutions, share successes and best practices in the administration of programs, and further the nation-to-nation relationship between the U.S. and Tribal Nations. SGCETC has asked that you discuss Treasury policies and priorities that promote economic growth and stability, including policies that address the unique challenges experienced by Tribal governments, during a panel at the conference. Top officials from DOI, IHS, and other federal agencies are also speaking at the conference. The 2023 Tribal Self-Governance Conference takes place from June 26-29, 2023 in Tulsa, Oklahoma, and you have been invited to speak at the 2024 Tribal Self-Governance Conference. The SGCETC charges an admission fee for participants.

Up until your appointment as Treasurer, you served on the SGCETC Board of Directors, which is comprised of Tribal leaders representing ten diverse and unique Tribal Nations that elected to use self-governance authorities to assume control over federal programs that serve their citizens and communities. Your position with the SGCETC involved fiduciary duties of the kind exercised by officers, directors, or trustees. As such, the SGCETC is your "former employer" as defined by Section 1, Paragraph 2 of the Executive Order.

Section 3 of the Executive Order permits the Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, to grant a waiver of the restrictions contained in Section 1, Paragraph 2 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 the Designated Agency Ethics Official for Treasury.<sup>1</sup>

### Analysis

In accordance with Section 3 of the Executive Order, I have concluded that 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 Treasury duties.

In making that 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. Since you were not a lobbyist and other restrictions on your ability to

---

<sup>1</sup> See Office of Government Ethics (OGE) Legal Advisory LA-21-04, "Waiver Authority and Making Waivers Public under Section 3 of Executive Order 13989, 'Ethics Commitments by Executive Branch Personnel'" (Feb. 18, 2021).

speech about Treasury priorities at the Tribal Self-Governance Conference are not available, factors (iii) and (iv) are not applicable.

### *Government Need*

The government has a critical need for your services as the primary presidential appointee at Treasury responsible for Tribal priorities. Your official Treasury duties necessitate you speaking to and interacting with Tribal Nations. Your proposed participation in this event is limited to a speech that describes Treasury policies and priorities that promote economic growth and stability for Tribal Nations and is consistent with other speaking engagements as related to other similarly situated stakeholders. It would be difficult to assign the matter to another employee given the specific knowledge you possess about self-governance and the unique challenges experienced by Tribal governments. Further, top officials from IHS, DOI, the White House, and other federal agencies will participate. Your absence from this conference could cast doubt on the importance that Treasury places on Tribal affairs.

### *Unique Qualifications*

You are the chief of the Mohegan Tribe, a lifetime appointment by the Tribe's Council of Elders, and are the first woman to be the Tribe's chief in modern history. Prior to your appointment as Treasurer, you served on the TTAC, the Chairwoman of the Tribal Self-Governance Advisory Committee of the IHS, and as a member of both the U.S. Department of Justice's Tribal Nations Leadership Council and the Tribal Advisory Committee for the National Institutes of Health. You also previously served in Tribal Government as the Executive Director of Health and Human Services for the Mohegan Tribe.

### Conclusion

The significant public interest in Treasury's ability to accomplish its mission to promote economic growth and stability among Tribal Nations requires you to fully engage with Tribal leaders, Tribal communities, and Tribal organizations, and preventing you from speaking at this event would severely impact your ability to effectively carry out your responsibilities. For these reasons, I grant you a limited waiver of the restrictions in Section 1, Paragraph 2 of the Executive Order. Pursuant to this waiver, you may speak at the Tribal Self-Governance Conference in 2023 and 2024, if invited.

This waiver does not 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 work on particular matters involving specific parties that are directly and substantially related to a former employer or former client besides those granted by this waiver.