



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 12, 2023

MEMORANDUM FOR **Chief Marilyn Malerba,**
Treasurer

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 by speaking at the 2023 United Southern and Eastern Tribes Sovereignty Protection Fund (USET SPF) Board of Directors Annual Meeting on either October 23 or 24, 2023, which will be in Verona, New York. The Board has asked that you discuss Treasury’s continued efforts to deliver upon trust and treaty obligations to Tribal Nations.

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, if not waived, 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, at the USET SPF Board of Directors Annual Meeting that will have representation from leaders and representatives from 33 Tribal nations.

You serve as the Treasurer of the United States, which is a Presidentially Appointed position and is subject to the Executive Order. One of your duties at Treasury is to oversee the Office of Tribal and Native Affairs. In this role you serve as Treasury’s Point of Contact for Tribal Consultation (POCTC) for the Tribal Nations and Treasury stakeholders; coordinate with tribal governments on consultation requests and related matters; and coordinate with 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.

The United South and Eastern Tribes, Inc. (USET), established in 1969, is a non-profit, inter-Tribal organization serving thirty-three federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET is dedicated to enhancing the development of Tribal Nations, improving the capabilities of Tribal governments, and improving the quality of life for Indian people through a variety of technical and supportive programmatic services. The USET Sovereignty Protection Fund, established in 2014, is a non-profit, inter-Tribal organization advocating on behalf of the USET member Tribal Nations. USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues. Just prior to your appointment as Treasurer in August 2022, you were a member of the USET Board of Directors¹ in your capacity as Lifetime Chief of the Mohegan Tribe. As such, USET (including its subordinate Fund) is your “former employer” as defined by Section 1, Paragraph 2 of the Executive Order.²

The Board of Directors Annual Meeting will bring together leaders and other representatives from the 33 member Tribal Nations. Since its establishment in 2012, Treasury’s delegation to this event has been the person serving as the POCTC, which has been at least at a Deputy Assistant Secretary (DAS) level. Having Treasury’s engagement at this senior level ensures that the Tribal Nations are afforded the proper respect at a sovereign-to-sovereign level.

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 speak about Treasury priorities at the Annual Meeting are not available, factors (iii) and (iv) are not applicable.

Government Need

The government has a need for your services as the primary presidential appointee at Treasury responsible for Tribal priorities. Your official Treasury duties necessitate you speaking to and

¹ Your role on USET’s Board of Directors was uncompensated.

² To cover its costs for the event, USET is charging a nominal fee for all its attendees. Therefore, this event would not meet the Executive Order’s exception for giving official speeches to former employers because there would be a “demonstrable financial impact” to USET for this event. See OGE Legal Advisory LA-09-020.

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 your stature within the Department, the specific knowledge you possess about Treasury's policies and priorities across the Department, and the unique challenges experienced by Tribal governments. Your absence from this conference (by either sending a more junior career employee or not engaging at all) could cast doubt on the importance that Treasury places on Tribal affairs.

Unique Qualifications

Aside from your current role as Treasurer, 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 as a representative member on the TTAC, as 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. You are, without question, the most knowledgeable senior Departmental official on issues related to Tribal priorities, and the most appropriate Treasury representative to speak at this event.

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 limiting 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 limited waiver, you may speak at the 2023 USET SPF Board of Directors Annual Meeting on matters of general applicability and not specific to USET, its SPF, or its Board of Directors.

This limited waiver does not apply to any entity covered by Paragraph 2 of the Executive Order other than USET, nor does it apply to any engagement with USET other than the 2023 USET SPF Board of Directors Annual Meeting. This limited waiver does not otherwise affect your obligation to comply with all other applicable government ethics laws and regulations and provisions of the Executive Order, including other applicable recusals. Specifically, this limited 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 explicitly granted by this limited waiver.