



The Under Secretary for Science and Energy

Washington, DC 20585

MEMORANDUM FOR: JENNIFER WILCOX
 PRINCIPAL DEPUTY ASSISTANT SECRETARY
 FOSSIL ENERGY

FROM: KATHLEEN HOGAN
 ACTING UNDER SECRETARY
 FOR SCIENCE AND ENERGY

SUBJECT: WAIVER PURSUANT TO 18 U.S.C. § 208(b)

Kathleen B. Hogan
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 Kathleen B. Hogan
 Date: 2021.03.19
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This memorandum provides you with a waiver, pursuant to 18 U.S.C. § 208(b)(1), that, subject to the limitations stated below, allows you to participate in your position as the Principal Deputy Assistant Secretary, Fossil Energy, Department of Energy (DOE) in certain particular matters that will have a direct and predictable effect on the imputed financial interests that result from your unpaid leave of absence from the University of Pennsylvania (hereafter, "Penn"). This waiver is being issued based on full disclosure of your financial interests and consideration of the nature and circumstances of matters in which you may be involved as the Principal Deputy Assistant Secretary, Fossil Energy.

Section 208, Title 18 of the United States Code prohibits employees from participating personally and substantially, as Government employees, in any particular matter in which, to the employee's knowledge, the employee, his or her spouse, minor child, general partner, any organization in which the employee is serving as an officer, director, trustee, general partner, or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment has a financial interest. The term "particular matter" includes only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters that do not involve formal parties and may extend to legislation or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons.

The statute does not bar an employee from having any particular financial interest, but it does require an employee to refrain from participating in particular matters which would affect such interests. In a case where an otherwise disqualifying financial interest exists, an employee may act in his or her official capacity only if he or she is granted an individual waiver pursuant to 18 U.S.C. § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2). Under 18 U.S.C. § 208(b)(1), an agency may permit an employee to participate in a particular matter in which he or she has an otherwise disqualifying financial interest, "if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the . . . particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee." 18 U.S.C. § 208(b)(1).

Based on the totality of the circumstances and the limitations stated below, I have determined that the financial interests subject to this waiver are not so substantial as to be deemed likely to affect the integrity of your services to the government. On that basis, this waiver authorizes you to participate in a limited number of particular matters that could have an effect on the financial interests of Penn, subject to the limitations described below.

Nature of Disqualifying Financial Interest

During your service as the Principal Deputy Assistant Secretary, Fossil Energy, you will be on an unpaid leave of absence from Penn, from your position as the Presidential Distinguished Professor of Chemical Engineering and Energy Policy. In this role, at Penn, you are a tenured professor in the Department of Chemical Engineering, wherein you taught courses in chemical engineering and a course on carbon capture. Your duties also included participation in research group activities that focused on carbon capture from mineralization to membranes and adsorption-based separation processes, as well as life cycle assessment and techno-economic analysis of different carbon capture systems, from point-source capture to carbon removal, from the accumulated pool in the atmosphere.

As a result of your leave of absence arrangement with Penn, the financial interests of Penn are imputed to you for the purposes of the criminal conflict of interest statute, 18 U.S.C. § 208(a). As such, you would generally be prohibited from participating in any particular matter that would have a direct and predictable effect on the financial interests of Penn, or that could affect your employment status with Penn, or the benefits you are entitled to receive as a result of your continued employment with Penn.¹ It has been determined, however, that as Principal Deputy Assistant Secretary, Fossil Energy you may need to participate in a limited number of particular matters that could have a direct and predictable effect on the financial interests of Penn. Therefore, you have requested a waiver pursuant to section 208(b)(1).

Nature of Official Duties

You are the Principal Deputy Assistant Secretary, Fossil Energy (PDAS-FE) in the Office of Fossil Energy, which has a mission to enhance U.S. economic and energy security by managing and performing energy-related research that maximizes the efficient and environmentally sound production and use of fossil fuels; supporting the development of policy options that benefit the U.S. public by ensuring access to adequate supplies of affordable and clean energy; partnering with industry and others to advance clean and efficient FE technologies towards commercialization in the U.S. and international markets; maintaining strategic crude and heating oil supplies to protect the U.S. against sudden and major supply interruptions and shortages; and maximizing the value of certain Government-owned oil and gas fields. The Assistant Secretary for Fossil Energy is responsible for all matters relating to the execution of these programmatic areas.

As the PDAS-FE, you provide technical advice and guidance on the full range of energy issues related to fossil energy; you exercise full managerial authority, as directed by the

¹ Pursuant to an exemption at 5 CFR 2640.203(b), as an employee on a leave of absence from an institution of higher education, such as Penn, you may participate in any particular matter of general applicability affecting the financial interests of Penn, provided that the matter will not have a special or distinct effect on Penn, other than as part of a class.

Assistant Secretary, of all operational missions and major staff functions of the Office of Fossil Energy; and develop long-range planning goals and measures for Fossil Energy programs that will promote the efficient production and use of domestic fossil fuels; and, you will participate in research and studies as necessary. Further, you serve as the first assistant to the Assistant Secretary for Fossil Energy and act as Assistant Secretary for Fossil Energy during any absences of the Assistant Secretary for Fossil Energy.

The Office of Fossil Energy is responsible for Federal research, development, and demonstration efforts on advanced power generation; power plant efficiency; water management; carbon capture, utilization, and storage technologies; and emission control technologies, as well as the development of technological solutions for the prudent and sustainable development of our unconventional oil and gas domestic resources. It also manages the Nation's Strategic Petroleum Reserve and Northeast Home Heating Oil Reserve, both key emergency response tools available to the President to protect the U.S. energy supply.

In fulfillment of its research responsibilities, the Office of Fossil Energy partners with industry, academia, and research facilities to further the development of advanced fossil technologies. Competitive solicitations issued as Funding Opportunity Announcements (FOAs) are the principal mechanism used to foster cost-shared research, development, and demonstration projects. As the PDAS-FE, you will assist the Assistant Secretary in formulating and determining Office of Fossil Energy research priorities, initiatives, policies and goals, including those that will involve or effect FOA matters. Each FOA is a particular matter and as a result of your personal and imputed financial interest in Penn, you would be disqualified under 18 U.S.C. § 208(a) from participating in a FOA process whenever Penn is seeking funding, either as a lead grantee or a sub-grantee. Your availability to assist in policy matters etc. that regard the FOA process is an important responsibility of the PDAS-FE.

This waiver is issued based upon the information you have provided me concerning your financial interests and the nature and circumstances of the potential particular matters involved within your position description.

Penn is a prominent education and research institution and has previously sought funding from FOAs issued on behalf of the Office of Fossil Energy, and may do so in the future. As a result of your personal and imputed financial interest in Penn, you would be disqualified under 18 U.S.C. § 208(a) from participating in your duties, such as policy matters that regard FOA matters (e.g., identifying and setting research subject areas and priorities).

Determination Regarding Substantiality of Financial Interest and Likely Effect on Your Services

The prohibition established in 18 U.S.C. § 208(a) may be waived under 18 U.S.C. § 208(b)(1) where a written determination is made that an employee's otherwise disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the services that the government may expect from the employee. I have determined that your participation in the matters described below meet these criteria. This determination is made based upon the following facts:

Penn is a private research university founded in 1740. Its total endowment in 2020 was \$14.9 billion. It has received three funding awards from the Office of Fossil Energy

(for \$625K, \$300K and \$800K) that are small in comparison to the financial worth of the University.

You have no other financial relationship with Penn, other than your employment/unpaid leave of absence and employee benefits that may continue to inure to you.

You will not act on matters that would affect your Penn employment status, or any employment benefits that you may be entitled to.

Your work is accountable to me and the Assistant Secretary of Fossil Energy and you are required to keep me and the Assistant Secretary informed of significant events and any recommended options regarding specific programs, or policies under the purview of the Office of Fossil Energy.

Your education and experience give you a unique ability to perform the PDAS-FE Duties. You have a B.S. in mathematics from Wellesley College, and an M.A. in physical chemistry and Ph.D. in chemical engineering from the University of Arizona. In addition to your affiliation with Penn, you previously served as a Professor of Chemical Engineering at the Worcester Polytechnic Institute and are a former Stanford University Assistant Professor in Energy Resources Engineering. You have served on committees within the National Academy of Sciences and the American Physical Society to assess carbon capture methods and impacts on climate. You are the author of the first textbook on carbon capture.

You will not participate in any particular matter involving specific parties in which Penn is a party or represents a party. You will also not make any decision regarding overall research programs or policies that would affect Penn in a special or unique manner. Ultimately, once there is a Senate confirmed Assistant Secretary for Fossil Energy, all final policy decisions that regard the Office of Fossil Energy will be made by the Assistant Secretary.

Accordingly, I find that, in light of the facts and circumstances as described above, the otherwise disqualifying financial interests covered by this waiver are not so substantial as to belikely to affect the integrity of your services to the Government.

Particular Matters to Which this Waiver Applies

Pursuant to this waiver, you are permitted to participate in particular matters² of general applicability that have a direct and predictable effect on the financial interests of Penn.

² The terms “particular matter involving specific parties” and “particular matter of general applicability” as used in this waiver are defined at 5 C.F.R. 2640.102. A particular matter involving specific parties typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties. Examples include: judicial proceedings, litigation, contracts, applications, investigations, and enforcement actions. A particular matter of general applicability is one that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties.

Particular Matters to Which this Waiver Does Not Apply

This waiver does not authorize you to participate in any particular matter involving specific parties, including as part of the FOA process that could have a direct and predictable effect on the financial interests of Penn, or in which Penn is a party. You may not participate in the evaluation of any applications for any funding when Penn is one of the applicants. Thus, you are prohibited from participating in the evaluation of any application for funding, any decision to award, extend or modify, or tasks and actions to administer or monitor any contract, grant, or other financial agreement or arrangement between the Office of Fossil Energy and Penn or that involve Penn as a participating party. In addition, this waiver does not authorize you to participate in any application (including pre-application or concept paper) in response to a FOA, filed by Penn or collaborations in which Penn is a party, at any stage in the review process. You are required to physically walk out of the room/leave a meeting, phone or video conference, etc., when any Penn related specific matter is discussed. Further, you will not participate in the administration of awards to which Penn is a party, nor will these duties be assigned to anyone that directly reports to you.

Finally, this waiver does not permit you to participate in any particular matter, either of general applicability or involving specific parties, that will have a direct and predictable effect on your employment status with Penn or on any of the benefits that you are eligible to receive as a result of your leave of absence arrangement with Penn.

Please contact me or the Office of the Assistant General Counsel for Ethics and Personnel Law should you have any questions regarding this waiver or your participation in a certain matter.

The Office of Government Ethics has been consulted in the issuance of this waiver, and an executed copy will be provided to them as required by 5 C.F.R. § 2640.303.

cc: Susan Beard, GC-20