



## Department of Energy

Washington, DC 20585

MEMORANDUM FOR: THE SECRETARY

FROM: SUSAN BEARD                      SUSAN BEARD  
DESIGNATED AGENCY ETHICS OFFICIAL

SUBJECT: Authorization Pursuant to 5 C.F.R. 2635.502(d)

Digitally signed by SUSAN BEARD  
Date: 2021.07.26.07:52:01 -0500

The Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, provide that when an employee knows that a person with whom he/she has a “covered relationship” is or represents a party to a particular matter involving specific parties, the employee should not participate in the matter without prior authorization if the employee determines that a reasonable person with knowledge of the relevant facts would question his impartiality in that matter. 5 C.F.R. 2635.502. In context, impartiality is best understood as an employee’s ability to faithfully represent the Department’s interests without giving preferential treatment to any private organization or individual. For purposes of analyzing the effects of section 2635.502 of the Standards of Ethical Conduct, you have a “covered relationship” with CNN because you were a Senior Political Consultant for the Cable News Network (CNN) within the last 12 months prior to your appointment as Secretary of Energy.

Section 2635.502(d) directs that an agency designee may authorize an employee to participate in a particular matter involving specific parties notwithstanding the possibility that a reasonable person might question an employee’s impartiality where the employee’s participation would not violate 18 U.S.C. 208(a), the Federal financial conflict of interest statute, if the designee makes a determination, made in light of all relevant circumstances, that the interest of the Government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the Department’s programs and operations. As the Department’s Designated Agency Ethics Official, I serve as the agency designee pursuant to guidance from the U.S. Office of Government Ethics.

Pursuant to 5 C.F.R. 502(d), the following factors may be taken into consideration: (i) the nature of the relationship involved; (ii) the effect that the resolution of the matter would have upon the financial interests of the persons involved in the relationship; (iii) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter; (iv) the sensitivity of the matter; (v) the difficulty of reassigning the matter to another Federal employee; and (vi) adjustments that may be made in the Federal employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As the Designated Agency Ethics Official, I have determined that a reasonable person would not be likely to question your impartiality when it comes to granting CNN interviews in your capacity as Secretary of Energy. Nevertheless, in the unlikely event a question is raised about your impartiality in granting and conducting interviews with CNN, and after consultation with the Office of Government Ethics, I have determined that it is appropriate for me to authorize your participation in granting and conducting interviews with CNN.

In reaching this determination, I considered the following:

- The position of Secretary of Energy was established by section 201 of the Department of Energy Organization Act (Pub. L. 95-91) to serve as the head of the Department of Energy. You are the highest ranking official at the Department of Energy, chosen for this position by the President and confirmed by the United States Senate.
- From January 2017 to November 2020 you were a Senior Political Consultant for CNN where you provided services to CNN as an on-air senior political consultant.
- You have no continuing financial interest or arrangement with CNN.
- CNN is a major national and international news organization. As of September 2018, more than 95% of households with cable in the United States subscribed to CNN. CNN is also seen by viewers in more than 200 countries and territories.
- Your decision to grant interviews with CNN in your capacity of Secretary of Energy is highly unlikely to have an impact on CNN's financial interests. However, your inability to speak on behalf of the Department and the Biden-Harris Administration to all news organizations will hinder the important business of the Government in ensuring that the citizens of the United States and of other countries are well informed about the Department's work and Administration initiatives.

Bearing in mind these factors, for one year from the date when you severed your relationship with CNN, I hereby determine that the interest of the Government in your participation in the decision to grant and conduct interviews with CNN, outweighs the concern that a reasonable person may question the integrity of the Department's programs and operations.

Therefore, pursuant to 5 C.F.R. 2635.502(d), you are hereby authorized to participate in the decision to grant and to conduct interviews with CNN.

I have determined that Paragraph 2 of the Biden-Harris Administration Ethics Pledge contained in Executive Order 13989 does not generally apply to your prior relationship with CNN when it comes to conducting interviews with CNN reporters and consultants. The Office of Government Ethics issued a memorandum interpreting a similar provision

of Executive Order 13490, Memorandum from Robert I. Cusick to Designated Agency Ethics Officials, Subject: Ethics Pledge Issues: Speeches and Pledge Paragraph 2: Intergovernmental Personnel Act Detailees, Dated May 26, 2009 (DO-09-020). In that memorandum the Office of Government Ethics “determined that the Pledge is not intended to prohibit an appointee from participating in an official speech unless the speech would have a demonstrable financial effect on the former employer or client.” As noted above, I have concluded that it is highly unlikely that your participation in an interview with CNN would have any financial effect on CNN. Therefore, a waiver of Paragraph 2 of the Pledge is not needed for you to conduct interviews with CNN.



## Department of Energy

Washington, DC 20585

MEMORANDUM FOR: THE SECRETARY

FROM: SUSAN BEARD  
DESIGNATED AGENCY ETHICS OFFICIAL

SUSAN BEARD  
Digitally signed by SUSAN BEARD  
Date: 2021.02.26 08:04:30 -05'00'

SUBJECT: Authorization Pursuant to 5 C.F.R. 2635.502(d)

The Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, provide that when an employee knows that a person with whom he/she has a “covered relationship” is or represents a party to a particular matter involving specific parties, the employee should not participate in the matter without prior authorization if the employee determines that a reasonable person with knowledge of the relevant facts would question his impartiality in that matter. 5 C.F.R. 2635.502. In context, impartiality is best understood as an employee’s ability to faithfully represent the Department’s interests without giving preferential treatment to any private organization or individual. For purposes of analyzing the effects of section 2635.502 of the Standards of Ethical Conduct, you have a “covered relationship” with the University of California because you have been a salaried employee of the University of California within the last 12 months prior to your appointment as Secretary of Energy and your spouse is a salaried employee of the University of California.

Section 2635.502(d) directs that an agency designee may authorize an employee to participate in a particular matter involving specific parties notwithstanding the possibility that a reasonable person might question an employee’s impartiality where the employee’s participation would not violate 18 U.S.C. 208(a),<sup>1</sup> the Federal financial conflict of interest statute, if the designee makes a determination, made in light of all relevant circumstances, that the interest of the Government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the Department’s programs and operations. As the Department’s Designated Agency Ethics Official, I serve as the agency designee pursuant to guidance from the U.S. Office of Government Ethics.

Pursuant to 5 C.F.R. 502(d), the following factors may be taken into consideration: (i) the nature of the relationship involved; (ii) the effect that the resolution of the matter would have upon the financial interests of the persons involved in the relationship; (iii) the

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<sup>1</sup> As the Designated Agency Ethics Officer for the Department, I have determined that you do not have a financial interest in the University of California under 18 U.S.C. § 208 aside from your spouse’s employment. However, you continue to have a conflict as a result of your “covered relationship” with the University of California for one year after your separation from the University of California or until your spouse no longer holds a position with the University of California, whichever date is later.

nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter; (iv) the sensitivity of the matter; (v) the difficulty of reassigning the matter to another Federal employee; and (vi) adjustments that may be made in the Federal employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

After consultation with the U.S. Office of Government Ethics, I have determined that it is appropriate for me to authorize your participation in particular matters involving specific parties in which the University of California is a party or represents a party with certain limitations enumerated below.

In reaching this determination, I considered the following:

- The position of Secretary of Energy was established by section 201 of the Department of Energy Organization Act (Pub. L. 95-91) to serve as the head of the Department of Energy. You are the highest ranking official at the Department of Energy, chosen for this position by the President and confirmed by the United States Senate.
- You were recently employed by the University of California, Berkeley as an Adjunct Professor. The University of California is a public multi-campus institution established in 1869, and UC Berkeley is one campus in the institution.<sup>2</sup> As an Adjunct Professor, your responsibilities included serving as a Senior Research Fellow to the Berkeley Center for Information Technology Research in the Interest of Society and the California Institute for Energy and Environment. Effective January 8, 2021, you severed these relationships.
- Aside from your spouse's continued employment, both of your defined benefit pension plans, and both of your defined contribution plans, you have no continuing financial interest in the University of California.
- The University of California is the management and operations contractor for the Lawrence Berkeley National Laboratory (LBNL) and has numerous other grants, contracts and cooperative agreements with the Department.<sup>3</sup> Your ability to manage the entire budgetary and operational aspects of the Department's mission is dependent upon your ability to manage the entire National Laboratory system and the Department's grants, contracts and cooperative agreements.

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<sup>2</sup> The Biden-Harris Ethics Pledge provides that all appointees, for a period of two years from the date of their appointment, shall not participate in any particular matter involving specific parties that is directly and substantially related to their former employers or former clients, including regulations and contracts. As an entity of a State government, the University of California is excluded from the definition of "former employer" and you are therefore not subject to this restriction with regard to the University of California.

<sup>3</sup> In addition, the University of California has a non-controlling equity interest in the LLCs that manage and operate Los Alamos National Laboratory and Lawrence Livermore National Laboratory.

- The University of California has been engaged to provide highly specialized and technical services to the Department in fulfilling the Department's mission of energy, science, and national security. Therefore, the overall interests of the Department and these entities are aligned, notwithstanding the occasional potential for a divergence of interests concerning the performance by these entities of their responsibilities to the Department.
- As a former Governor of Michigan, you have both specialized expertise in and a thorough knowledge of the Department's programs and missions that are carried out, in large part, through its National Laboratory system.
- You have advised me that the only particular matter involving specific parties, in which the Department of Energy is a party or has a substantial interest, in which you participated personally and substantially with the University of California was when, in conjunction with your role as an employee of the University of California Berkley, you served as an uncompensated Faculty Scientist to LBNL as a Senior Advisor to The Americans Job Project from September 1, 2015 until July 12, 2019.

Bearing in mind these factors, for one year from the date when you severed your relationship with the University of California or upon your spouse's termination of employment with the University of California Berkeley, whichever is later, I hereby determine that the interest of the Government in your participation in particular matters involving specific parties in which the University of California is a party or represents a party, with the exception of the specified exclusions described below, outweighs the concern that a reasonable person may question the integrity of the Department's programs and operations.

Therefore, pursuant to 5 C.F.R. 2635.502(d), you are hereby authorized to participate in particular matters involving specific parties in which the University of California is a party or represents a party. This authorization allows you to participate personally and substantially in particular matters that to your knowledge have a direct and predictable effect on LBNL.

However, this authorization does not extend to your participation in the following aspects of particular matters involving specific parties in which the University of California is a party or represents a party: (1) any evaluation of the work performed; (2) any award fee process; (3) any extension of a grant, contract or cooperative agreement; (4) any recompetition of a grant, contract or cooperative agreement; (5) any competition for a new grant, contract, or cooperative agreement; (6) any approval of technology transfer transactions (e.g., licenses); (7) any approval of real property transactions with the Department of Energy; (8) any approval of other specific agreements with the Department of Energy; or (9) direct negotiations related to financial arrangements with the Department of Energy.

Further, this authorization does not extend to your participation in the following:

- Any particular matter that to your knowledge has a direct and predictable effect on the ability or willingness of the State of California or the University of California to provide contractual pension benefits to you or your spouse;
- Any particular matter that to your knowledge has a direct and predictable effect on your spouse's compensation or employment with his employer, the University of California, Berkeley; and
- Any particular matter that to your knowledge has a direct and predictable effect specifically and uniquely on the University of California, Berkeley.