



The Under Secretary for Science and Energy

Washington, DC 20585

MEMORANDUM FOR: JIGAR SHAH
DIRECTOR
LOAN PROGRAMS OFFICE

FROM: KATHLEEN HOGAN
ACTING UNDER SECRETARY FOR SCIENCE AND ENERGY

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

**Kathleen
B. Hogan** Digitally signed by
Kathleen B. Hogan
Date: 2021.03.18
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This memorandum provides you with a limited waiver, pursuant to 18 U.S.C. § 208(b)(1), which, subject to limitations stated below, allows you to participate in particular matters of general applicability in your position as Director of the Loan Programs Office (LPO) for the U.S. Department of Energy (DOE). This waiver is being issued based upon the information you have provided to me concerning your personal and imputed financial interests and the nature and circumstances of the potential particular matters involved in your position description.

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. Your interests in various tax equity investments and holdings in a number of stocks are a financial interest within the meaning of 18 U.S.C. § 208.

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 that would affect such interests. In a case where an otherwise disqualifying financial interest exists, an employee may act in his 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 of general

applicability that could have an effect on your financial interests, subject to the limitations described below.

Nature of Disqualifying Financial Interest

You are currently the Director of LPO at DOE. While reviewing the information in your Public Financial Disclosure Form OGE 278e, our General Counsel's office identified the following financial interests owned by you (the value of each is within the range noted below in parentheses):

1. NCS Holdco Solarworks 2018 LLC (\$50-100k): This is a privately-held single-purpose LLC, which, according to its website, was set up to own 272kW of low-income residential solar systems in the District of Columbia. The projects were developed, installed, and leased to households by Grid Alternatives, a non-profit solar developer, and are now being operated and maintained by New Columbia Solar, a DC-based solar developer, on behalf of NCS Holdco Solarworks 2018 LLC.
2. Lattice Impact Partners I LLC (\$150-250k): This is privately-held single-purpose LLC, which in turn owns 100% of NCS Solarworks 2019 LLC, a privately-held single-purpose LLC set up to own 1MW of residential and commercial solar systems in the District of Columbia. The commercial projects were also developed and installed by New Columbia Solar. The residential projects were developed, installed, and leased to households by Grid Alternatives, a non-profit solar developer. New Columbia Solar operates and maintains all of the systems on behalf of Lattice Impact Partners I LLC.
3. Lattice Big Sun I LLC (\$250-500k): This is a privately-held single-purpose LLC, which in turn owns 24% of Big Sun SA I LLC, a single-purpose LLC set up to own 6.3MW of commercial solar systems in Texas. The projects were developed, installed, and leased to businesses by GS Solar, a Texas-based solar developer, who also operates and maintains the systems.

As a result of your financial interests in these business ventures, you are prohibited from participating in any particular matter that would have a direct and predictable effect on the financial interests of these business ventures. It has been determined, however, that as Director of LPO, you may need to participate in a limited number of particular matters of general applicability that could have a direct and predictable effect on these financial interests. Therefore, you have requested a waiver pursuant to 18 U.S.C. § 208 (b)(1).

Nature of Official Duties

You are the Director of LPO at DOE. In this role, you are responsible for accelerating the deployment of innovative clean energy projects, tribal economic development, and domestic advanced vehicle manufacturing through direct loans and loan guarantees. LPO manages a \$40 billion loan portfolio through three distinct loans programs: the Title XVII Innovative Energy Loan Guarantee Program for advanced innovation in energy technology; the Tribal Energy Loan Guarantee Program (TELGP) for energy projects that promote tribal economic development; and the Advanced Technology Vehicles Manufacturing Loan Program (ATVM) for manufacturing light-duty vehicles and eligible components that promote fuel efficiency. LPO's loan programs provide financing to projects for which private investment is difficult to attract due to the project's technological risk, cost of capital, and/or access to capital. The Director oversees a team

of industry, technical, and project finance experts who provide loan recipients with the resources and funding to reach market commercialization.

As Director, you direct organizational activities and frame strategic plans based on broad organizational assessments and evaluations of long-term organizational objectives. You set all internal control standards for effectiveness, efficiency, and productivity and assess all organizational policy, program, and project viability. You determine the financial and personnel resources needed to achieve mission objectives and support mission operations; identify the need for major organizational improvements and develop the requisite plans and direct implementing actions. You oversee and direct the internal organization, staffing, policies, and personnel authorities required to carry out the responsibilities of the organization, including the recruitment of senior managers and technical experts necessary to ensure the success of the program.

You work at the direction of the Under Secretary for Science and Energy (S4) in managing and directing the LPO and serve as the principal advisor and point of contact to S4 and other DOE and Administration officials on matters involving LPO activities. Your duties include:

1. Reviewing and making determinations on loan applications, transactions, and portfolio activities to internal DOE committees.
2. Monitoring progress and evaluating the impact of projects on domestic and international commercial markets and assesses their competitive status.
3. Monitoring loan guarantee portfolios, manage project risks, and develop and execute loan portfolio management strategies.

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. As your supervisor, I have determined that your participation in the matters described below meet these criteria. This determination is made based upon the following facts:

- (1) You have agreed that you will divest of your holdings in common stock and vested restricted stock units, and forfeit your unvested restricted stock units in Generate Capital within 90 days of your appointment to your position as Director of LPO. You have divested of your holdings in Atlantica Sustainable Infrastructure, Brookfield Renewable Partners, Brookfield Renewable Corporation, Clearway Energy, Hannon Armstrong, Renewable Energy Group, and Nextera Energy Partners.
- (2) The combined value of your interests in NCS Holdco Solarworks 2018 LLC, Lattice Impact Partners I LLC, and Lattice Big Sun I LLC is approximately 2.7% of the value of your entire investment portfolio, and no single financial interest has a value of more than 1.6 % of your investment portfolio.

The aforementioned financial interests amount to only approximately 2.7% of your investment portfolio. Because the value of your holdings in NCS Holdco Solarworks 2018 LLC, Lattice Impact Partners I LLC, and Lattice Big Sun I LLC is so small compared to the overall

value of your portfolio, I find that, in light of these facts and circumstances, the otherwise disqualifying financial interests listed in (2) above are not so substantial as to be likely 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 any particular matter of general applicability that could have a direct and predictable effect on the following entities as members of a discrete and identifiable class of organizations which could be affected by your participation in matters on behalf of LPO: NCS Holdco Solarworks 2018 LLC, Lattice Impact Partners I LLC, and Lattice Big Sun I LLC.

Particular Matters to Which this Waiver Does Not Apply

This waiver does not authorize you to participate in particular matters where NCS Holdco Solarworks 2018 LLC, Lattice Impact Partners I LLC or Lattice Big Sun I LLC are directly and predictably affected either individually or uniquely by your participation in particular matters on behalf of LPO. This waiver also does not authorize you to participate in particular matters where any of these entities is a party or represents a party. In addition, this waiver does not authorize you to participate in particular matters that could have a direct and predictable effect on Generate Capital. You will remain recused from such matters unless and until you divest your common stock.

Please contact me or an ethics counselor if the total value of your financial interests listed above increase beyond 10% of the total value of your investment portfolio. Also, feel free to contact me or an ethics counsel 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. Also, a copy of this waiver will be made available upon request to the public in accordance with the procedures described in 5 C.F.R. § 2640.304.

cc: Susan Beard, GC-20