



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

August 31, 2021

**MEMORANDUM FOR**      **NELLIE LIANG**  
**UNDER SECRETARY FOR DOMESTIC FINANCE**

**FROM:**                      Brian Sonfield, Assistant General Counsel,  
General Law, Ethics & Regulation and  
Designated Agency Ethics Official

**Brian J. Sonfield**

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**SUBJECT:**                      Participation in Matters Regarding the Financial Stability Board  
(FSB) per 5 C.F.R. § 2635.502

This memorandum authorizes you to participate in matters that involve the Financial Stability Board (FSB).

**BACKGROUND**

You joined Treasury as Counselor to the Secretary in January 2021. You were sworn in as Under Secretary for Domestic Finance on July 22, 2021. Prior to joining Treasury, you served as an academic advisor to the FSB on the Too Big to Fail Project, where you advised the FSB on a study of the effects of financial regulatory reforms.

As Under Secretary for Domestic Finance, you provide advice to the Secretary on domestic finance policy and strategic issues. These duties include providing the Secretary information needed to make policy decisions on a range of domestic financial issues including the areas of financial institutions, federal debt finance, capital markets, financial regulations and supervision, and financial stability. In your role as Under Secretary for Domestic Finance, the Secretary has asked you to represent Treasury to the FSB as a Member of the FSB.

The FSB promotes international financial stability by coordinating national financial authorities and international standard-setting bodies as they work toward developing strong regulatory, supervisory and other financial sector policies. It fosters a level playing field by encouraging coherent implementation of these policies across sectors and jurisdictions.

The FSB, working through its members, seeks to strengthen financial systems and increase the stability of international financial markets by addressing issues such as climate related risks; cross border payments; crypto assets; cyber resilience; FinTech; and non-bank financial intermediation. The policies developed in the pursuit of this agenda are implemented by jurisdictions and national authorities.

Subpart E of the Standards of Conduct regulations contains provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of absence of impartiality in the performance of her official duties. Due to your former role with FSB within the past year, you have a “covered relationship” with the FSB. 5 C.F.R. § 2635.502(b)(1)(iv). As such, you are

prohibited from participating in a “particular matter involving specific parties”<sup>1</sup> when “a person with whom you have a covered relationship is or represents a party” to the matter, and the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter. 5 C.F.R. § 2635.502(a)(1).

## ANALYSIS

Under section 2635.502(d), even when an employee’s participation in a particular matter involving specific parties likely would create an appearance of partiality, “the agency designee may authorize the employee to participate in the matter based on 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 Government’s programs and operations.” The authorization provision lays out factors that may be taken into consideration in deciding whether an authorization is appropriate:

- 1) The nature of the relationship involved;
- 2) The effect that resolution of the matter would have on the financial interests of the person involved in the relationship;
- 3) 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;
- 4) The sensitivity of the matter;
- 5) The difficulty of reassigning the matter to another employee; and
- 6) Adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

*Id.* at § 2635.502(d).

After weighing these factors, we authorize your participation to represent Treasury to the FSB for the following reasons:

- The FSB is an international body that monitors and makes recommendations about the global financial system. The United States is a member country of the FSB. As such, there is little likelihood that a government employee could take action to favor the commercial interest of FSB at the expense of the United States.
- You do not have financial interests in FSB, including outstanding consulting fees or retirement plans or other continuing benefits.
- Your work at FSB was limited as an academic advisor to the Too Big to Fail project.
- The FSB’s mandate involves areas that are a core part of your portfolio as the Under Secretary for Domestic Finance. You are uniquely well qualified to perform this work given your prior experience at the International Monetary Fund, the Federal Reserve, the Financial Stability Board, and the Brookings Institution. You bring a distinctive skill set to Treasury, and reassignment of this FSB-related work to another employee would be inefficient and deprive the Department of your expertise in these matters.

In conclusion, after careful consideration of the provisions in 5 C.F.R. § 2635.502(d), we authorize you to participate in as the Treasury representative to the FSB. Given the factors

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<sup>1</sup> 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.” 5 C.F.R. § 2640.102(1). Examples of particular matters involving specific parties include such matters as contracts, grants, licenses, product approval applications, litigation, and investigations.

discussed above, we conclude that the interest of the Government in your participation outweighs concern that a reasonable person might question your impartiality in the administration of these matters.<sup>2</sup>

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<sup>2</sup> Paragraph 2 of President Biden's Ethics Pledge, Executive Order 13989, prohibits political appointees from participating personally and substantially, during the first two years after entering federal service, in any particular matter involving former employers or clients the employees served in the two years prior to entering federal service. However, Paragraph 2 of the Ethics Pledge is not implicated here, because "former employer" under the Pledge does not include any international organization in which the United States is a member state. Section 2(k), EO 13989. Further, the definition of "former client" under the Pledge is intended to exclude the same entities as those excluded under the definition of former employer. Office of Government Ethics, Legal Advisory DO-09-011, at page 4, March 26, 2019; Office of Government Ethics Legal Advisory, LA-21-05, February 23, 2021 (noting the applicability of prior OGE guidance to E.O. 13989).