



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

January 11, 2022

MEMORANDUM FOR: SECRETARY YELLEN

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

SUBJECT: Participation in Certain Matters Involving Brookings

During your recent annual ethics briefing, we discussed the provision in your Ethics Agreement relating to the Brookings Institution (Brookings) and whether it precludes you from: 1) giving official speeches at events organized or hosted by Brookings; and 2) participating in briefings presented by Brookings on broad issues of policy.

This memorandum provides you with an authorization to give speeches and/or present information on behalf of the Department at Brookings events, with the rare exception of participating in events that would result in a demonstrable financial benefit to Brookings. This authorization does not extend to other particular matters involving Brookings as a party or party representative.

As discussed below, you also are permitted under your Ethics Agreement and under applicable law to consult with and participate in briefings by Brookings on general issues of policy, because such interaction is not deemed to constitute a particular matter involving Brookings as a party for purposes of the ethics rules.

BACKGROUND

Prior to your appointment as Secretary on January 25, 2021, you were a Distinguished Fellow in Residence at Brookings. As a Distinguished Fellow, you generally advised on fiscal and monetary policies and public understanding of them. Your spouse also currently consults for Brookings, serving on a panel that advises a research group on appropriate topics for study.

In your Ethics Agreement, executed in connection with your nomination, you agreed to resign from your position with Brookings upon confirmation, and you did so. You also agreed to seek an authorization, pursuant to 5 C.F.R. § 2635.502(d), for a period of one year after your resignation, or for as long as your spouse continues to consult for Brookings, prior to participating in any particular matter involving specific parties in which Brookings is or represents a party.

ANALYSIS

A. Official Speeches

A speech hosted by an outside organization is a “particular matter involving specific parties” for purposes of your Ethics Agreement and the impartiality regulation at Subpart E of the Standards of Ethical Conduct).¹ As such, since you have a “covered relationship” with Brookings, you may not give a speech at an event organized or hosted by Brookings in the absence of an authorization from the Treasury ethics office. We have determined that an authorization is appropriate here.

Subpart E of the Standards of Ethical Conduct 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. Under section 2635.502(d), even where an employee’s participation might create an appearance of impartiality, “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 agency’s programs and operations.” The authorization provision lays out factors that may be taken into consideration in deciding whether an authorization is appropriate:

- The nature of the relationship involved;
- The effect that resolution of the matter would have upon the financial interests of the non-federal entity or person involved in the relationship;
- 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;
- The sensitivity of the matter;
- The difficulty of reassigning the matter to another employee; and
- 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 you to present information on behalf of the Department in events sponsored, hosted, or organized by Brookings for the following reasons:

- Brookings is a not-for-profit public policy organization with a stated mission to “conduct in-depth research that leads to new ideas for solving problems facing society at the local, national, and global level.”² Brookings traces its beginnings to 1916, when a group of individuals founded the Institute for Government Research.³ The organization convenes

¹ See OGE DO-09-020, May 26, 2009 (“OGE . . . generally has viewed the decision to give an official speech as a particular matter involving the event sponsor as a specific party”); OGE 98 x 14, August 31, 1998 (noting that “‘appearances’ might require an employee’s disqualification from a speaking engagement under section 2635.502 of the Standards of Conduct”); OGE 96 x 2, January 26, 1996 (noting that the delivery of an official speech to an organization whose interests are imputed to the employee “amounts to participation in a particular matter,” requiring a waiver under 18 U.S.C. § 208(b)(1) if there is an effect on the financial interests of the organization).

² Brookings, About Us: <https://www.brookings.edu/about-us/> (last visited January 11, 2022).

³ *Id.*

experts in government and academia who provide research, policy recommendations, and analysis on a range of public policy issues.

- The Office of Public Affairs (OPA) has determined that certain events organized or hosted by Brookings present an ideal forum for you to make official speeches and convey messages regarding the priorities and activities of the Department. OPA has determined that having these speeches presented by you would be significantly more useful to the Department than having it conveyed by someone of lower rank.
- As a Distinguished Fellow in Residence, you did not earn compensation and did not have fiduciary duties to Brookings. You also did not participate in the internal governance of the organization.
- Your spouse earns approximately (b)(6) per year in his role as an advisor, recommending appropriate topics for study. He does not serve on the Board of Trustees and does not hold or seek to hold a leadership position with the entity.
- Your speeches and other official remarks conveying information on behalf of the Agency will be relayed only in connection with Brookings events that will not have a demonstrable financial effect on Brookings. That is, these events will not involve an admission fee, the raising of funds, or other type of revenue generating activity. While Brookings will have an academic or policy interest in the subject matter, it will not have a direct pecuniary interest in hosting your speeches.
- Brookings will be one of several forums where you will deliver official remarks, thus demonstrating that you are not endorsing or favoring that organization.

In short, the interest of the Government in your participation outweighs any concern that a reasonable person might question your impartiality in presenting information on behalf of the Agency at Brookings events.⁴

B. Briefings and Consultations

With respect to other official contacts or meetings with Brookings that do not involve the delivery of an official speech, such as briefings provided by Brookings on general policy matters, you may participate in these meetings without a separate authorization or Ethics Pledge waiver. First, these meetings are not particular matters focused on Brookings's interests; they are focused instead on topics Brookings has academic or policy interests in. Therefore, an authorization under § 2635.502(d) is not required. Second, while the expanded party matter definition under the Ethics Pledge prohibits any meeting or communication with a former employer or client relating to your official duties, the White House and OGE have advised that the Pledge "is not intended to interfere with the ability of appointees to consult with experts at educational institutions and 'think tanks' on general policy matters, at least where those entities do not have a

⁴ Your participation in Brookings events will not implicate paragraph 2 of the Ethics Pledge, EO 13989, because the Pledge does not prohibit an appointee from participating in an official speech, unless the speech would have a demonstrable financial effect on a former employer or client. Thus, an Ethics Pledge waiver is not required, as this authorization permits you to participate only in Brookings events that do not affect its financial interests.

financial interest, as opposed to an academic or ideological interest.”⁵ In sum, you may participate in meetings with Brookings on general policy matters.

⁵ OGE DO-09-011, March 26, 2009.