**U. S. Department of Labor**

Office of the Solicitor
Washington, D.C. 20210

December 18, 2023

MEMORANDUM FOR: BART SHEARD

FROM: SEEMA NANDA
Solicitor of Labor
Designated Agency Ethics Official

SEEMA NANDA
Digitally signed by SEEMA NANDA
Date: 2023.12.18 09:47:44 -05'00'

SUBJECT: Limited Waiver of Section 1, Paragraph 3(b) and (c) of Executive Order 13989

Pursuant to the authority delegated under Section 3 of Executive Order 13989, Ethics Commitments by Executive Branch Personnel, January 20, 2021, ("Ethics Pledge") and, as designated by the Director of the Office of Management and Budget, I hereby grant you a limited waiver of the requirements in Section 1, Paragraph 3, (b) and (c) which will allow you to serve at the Department of Labor as a Senior Advisor in the Office of the Secretary and effectively carry out your duties in that position. This waiver is in the public interest.

This waiver shall not include any other provisions or subsections of the Ethics Pledge or relate to any other matters in which you are otherwise recused from participation under the Ethics Pledge. Specifically, in addition to other restrictions within the Ethics Pledge, you are restricted from participating in any particular matter involving specific parties that is directly and substantially related to your former employer, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), or former clients for a period of two years following the date of your appointment.[1]

**Background**

The Senior Advisor role and responsibility is to provide advice to the Secretary of Labor on complex and significant labor issues involving labor unions, organizing, and collective bargaining, to include the Department's Good Jobs Initiative. Additionally, the individual provides advice on the implications of policy, regulation, and legislative proposals and recommends new approaches and alternatives and provides options during managerial planning and policy and regulatory formulation. The individual is considered the Department of Labor's subject matter expert on unions, organizing, and collective bargaining. Among other duties, the Senior Advisor advises the Acting Secretary, performs significant outreach and liaison duties with external stakeholders and participates in the White House's Worker Organizing Task Force,

[1] The Ethics Pledge defines "former employer", in relevant part, as "any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner…". The Ethics Pledge defines a "former client" as "any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment but excluding instances where the service provided was limited to a speech or similar appearance. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Executive Order 13989, Sec. 2(k)-(l).

including managing Department of Labor deliverables and engaging with the Task Force on reports and policy work.

Prior to your appointment, you served as a Legislative Counsel for the AFL-CIO since January 2021. The AFL-CIO is a federation of 60 national and international labor unions that represent 12.5 million working people. In your role at the AFL-CIO, you were a registered lobbyist for the organization until the end of the first quarter of 2023 and were registered under the Lobbying Disclosure Act (LDA), 2 U.S.C. 1601 et seq. You lobbied on behalf of AFL-CIO on several labor-related issue areas. Although the AFL-CIO's lobbying reports can be read to indicate that you lobbied the Department of Labor, both you and the AFL-CIO have indicated that this attributable to the AFL-CIO's aggregate reporting, as discussed below. In fact, you never lobbied the Department of Labor, as your work was primarily directed to the United States Senate and House of Representatives.

Section 1, Paragraph 3 of the Ethics Pledge, which you will sign, states:

> "Revolving Door Ban — Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
>
> (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;
>
> (b) participate in the specific issue area in which that particular matter falls; or
>
> (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment."

Section 1, Paragraph 3(a) of the pledge has not been waived. Your prior activity does not include any particular matter in the past two years that we anticipate would come before the Department of Labor in any capacity in the future. If there were such a matter, you must recuse from participation.

Section 1, Paragraph 3(c) prevents federally registered lobbyists from seeking or accepting employment with an executive agency the individual lobbied in the two years preceding their appointment. You are listed on publicly available lobbying disclosures as one of the AFL-CIO's multiple employees who engaged in lobbying activities, some of whom lobbied the Department of Labor. We understand that per the AFL-CIO's understanding of the reporting instructions, its practice was to aggregate all of the lobbying activity done by its lobbyists in a given quarter, (see attached letter) without distinguishing which specific individuals worked on which matter, when, in fact, you never lobbied the Department of Labor. Relying upon this written affirmation and your own representations, Paragraph 3(c) would not limit your employment at the Department of

Labor. However, given the publicly available information regarding the AFL-CIO's lobbying activities writ large and in an abundance of caution, removing all doubt as to the consideration and proper application of that Ethics Pledge provision to you is in the Department of Labor's best interest.

Separately, regarding Section 1, Paragraph 3(b), your relevant lobbying disclosures indicate that under the LDA, you lobbied on issue areas for labor, antitrust, and workplace issues. A further review of your lobbying activity indicates that your portfolio was varied, and included a number of legislative, collective bargaining, and worker rights issues that could overlap with issue areas that are a critical a part of your anticipated portfolio and duties at the Department of Labor.

**Analysis**

In determining this waiver is in the public interest due to the Senior Advisor role's vital importance to the economy and the working conditions of employees across the country, I have considered the following factors:

i. the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;

ii. the uniqueness of the individual's qualifications to meet the government's needs;

iii. the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and

iv. the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services, such as those required by paragraph 3(a) of the pledge.

In this case, an exigent public interest is clearly established. In the past three months alone, significant labor strikes in the automobile and healthcare industries have required continued focused efforts and collaboration with the Office of the Secretary. In order to address these workers' concerns and support these important priorities, the role needs to be filled by a highly qualified individual, with unique insight into collective bargaining, education, worker empowerment, and the diverse needs of a national workforce. The limited waiver granted permits you to advise the Acting Secretary and senior Department of Labor officials, and to coordinate with officials across the Administration on matters crucial to unions and workers.

Your professional experience working for the AFL-CIO and the Senate HELP Committee, and time practicing law at a law firm focused on labor and employment law on behalf of building trades unions makes you uniquely qualified to serve in this capacity. Your legal background is a significant asset to the Department's work monitoring collective bargaining activities. Further, your legislative and policy work would allow you to work closely with our component agencies on the policy issues that impact labor unions, organizing, and collective bargaining. Your most

recent work with the AFL-CIO, meeting with and educating members of Congress, their staff, and outside stakeholders on labor issues, makes you uniquely qualified to fulfill the outreach and liaison duties of the Senior Advisor role.

Further, the Department of Labor is assured that the broader purposes and intent of the lobbying restriction of the Ethics Pledge will be addressed in full by your adherence to Paragraph 3(a), as well as your commitment to recuse from particular matters involving specific parties to which the AFL-CIO is a party or represents a party for the required time periods. A limited waiver of Section 1, Paragraphs 3(b) and (c) does not run counter to any additional ethics requirements.

**Limited Waiver Granted**

After careful consideration, I find that it is appropriate and in the public interest to grant you this limited waiver. The position is of critical importance to an Administration priority and the United States economy. I find that you are uniquely qualified to serve in the role, given your legal expertise on collective bargaining and workers' rights, combined with your extensive legislative and policy experience. This expertise proves critical for the Administration and the Department of Labor, especially given the current exigencies surrounding collective bargaining negotiations.

This waiver does not affect the application of any other provision of law, including but not limited to any other provision of the Ethics Pledge; the Standards of Ethical Conduct for Executive Branch

Employees (5 C.F.R. part 2635); the criminal bribery and conflict of interest statutes (18 U.S.C. §§ 201-209); or the Hatch Act (5 U.S.C. § 7323). These provisions will adequately guard against other ethics concerns that may be raised regarding your former employer and lobbying activities.

Copy to:

Edward Siskel, Counsel to the President
Shelley K. Finlayson, Acting Director, U.S. Office of Government Ethics

Attachment: AFL CIO Affirmation Statement

AFL-CIO

AMERICA'S UNIONS

**American Federation of Labor and Congress of Industrial Organizations**

815 Black Lives Matter Plaza NW
Washington, DC 20006

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aflcio.org

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October 23, 2023

Seema Nanda
Solicitor of Labor
Office of the Solicitor
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20210

Dear Solicitor Nanda:

I am writing to offer clarification regarding the AFL-CIO's lobbying disclosure forms filed pursuant to the Lobbying Disclosure Act (LDA) and the lobbying activities of Bart Sheard, Legislative Counsel with the AFL-CIO. Because the LDA and Congress' instructions for electronic filing of lobbying disclosure forms instruct otherwise, the AFL-CIO does not list specific issues on which individual employees engage in lobbying activities. Instead, the AFL-CIO discloses the general issue areas in which each lobbyist engages in lobbying.

The LDA requires lobbying organizations to register and file reports of their lobbying activities with the Secretary of the Senate and the Clerk of the House of Representatives. Accordingly, the AFL-CIO files quarterly activity reports (form LD-2) no later than 20 days after the end of the quarterly period beginning on the first day of January, April, July, and October of each year. Because the AFL-CIO employs in-house lobbyists, we file one comprehensive report covering in-house lobbying activities for each quarterly reporting period.

LDA Section 1604(b) requires registrants to list general areas in which the organization lobbied. For each general area, registrants must also report, among other things: a list of the specific issues on which the organization engaged in lobbying activities (within the general area) and a list of employees who acted as lobbyists on behalf of the organization. However, the LDA does not require – and the forms and instructions provided by Congress do not allow – a registrant to indicate the specific issues on which each individual employee engaged in lobbying activities.

Congress' "Instructions for Form LD-2, Lobbying Report" direct registrants to list all general areas in which the organization engaged in lobbying during the reporting period. The guidance further instructs that line 18 of form LD-2 must "List the name of each **lobbyist** who had **any activity** in this general issue

area." (emphasis in original). Line 18 is the only listing of lobbyists in the LD-2 form, and does not instruct registrants to specify which issue any individual lobbyist worked on.

For example, the AFL-CIO's 2023 first quarter report lists Mr. Sheard under the general issue area for labor, antitrust, and workplace issues (code "LBR"). The report then lists the AFL-CIO's specific lobbying issues within the labor general issue area, and the corresponding houses of Congress or federal agencies contacted, including U.S. House of Representatives, U.S. Senate, Department of Health & Human Services (HHS), Department of Labor (DOL), Bureau of Labor Statistics (BLS), Environmental Protection Agency (EPA), and Centers For Disease Control & Prevention (CDC). The report lists five individuals who lobbied in the general issue area, including Mr. Sheard.

Although Mr. Sheard is listed under the general issue area, he did not lobby on every specific issue, nor did he lobby every house of Congress or federal agency listed. More specifically, Mr. Sheard did not lobby the Department of Labor.

In accordance with Congress' instructions, the AFL-CIO lists (1) the specific issues the organization lobbied on and (2) each lobbyist who lobbied on any issue within the general issue area. In compliance with the language of the statute and Congress' instructions, the AFL-CIO's LD-2 forms do not delineate which individual lobbyist engaged on any specific issue within that general issue area or with any specific federal entity.

Thus, the fact that Mr. Sheard is listed on the AFL-CIO's LD-2 forms under a general issue area in which the AFL-CIO lobbied the Department of Labor (DOL) does *not* indicate that Mr. Sheard lobbied DOL.

To the contrary, the internal documentation maintained by the AFL-CIO for the purpose of preparing its LD-2 reports demonstrates that Mr. Sheard has in fact *not* lobbied DOL on the AFL-CIO's behalf. All AFL-CIO lobbyists and all other employees who have LDA-defined lobbying contacts are required to submit worksheets to the Office of General Counsel each calendar quarter. The worksheets summarize the employees' lobbying activities during each month in the quarter and detail every specific issue on which the employee lobbied and which houses of Congress and agencies they lobbied. The undersigned has reviewed Mr. Sheard's lobbying worksheets listing his issue-by-issue lobbying activities and, on the basis of this review, confirms that Mr. Sheard has not lobbied DOL while employed at the AFL-CIO.

Please feel free to contact me with any questions at (202) 637-5397 or mginsburg@aflcio.org.

Sincerely,

Matthew Ginsburg
General Counsel