U.S. Department of Transportation
Office of the Secretary of Transportation

GENERAL COUNSEL

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To: Ross Templeton
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From: Judith S. Kaleta
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JUDITH SUE KALETA

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Date: 2024.03.11 17:48:24 -04'00'

Subject: Limited Waiver of Executive Order 13989

I. Executive Summary

Pursuant to delegated authority under Section 3 of Executive Order 13989 (EO 13989 or the Ethics Pledge), for the reasons stated below, I am granting you a limited waiver of the requirements of Section 1, Paragraph 3 (a), (b), and (c) of EO 13989. This waiver does not include any other provisions or subsections of the Ethics Pledge. Specifically, in addition to other restrictions within the Ethics Pledge, you will continue to be subject to the recusal restrictions in Section 1, Paragraph 2 of the Pledge, which requires you to recuse from participation in any particular matter involving specific parties that is directly and substantially related to your former employer, the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers (Iron Workers) for a period of two years following the date of your appointment. This waiver is in the public interest to enable you to effectively carry out your responsibilities as the Labor Policy Advisor at the U.S. Department of Transportation (DOT or the Department).

II. Background

The Ethics Pledge requires political appointees in the Biden-Harris Administration to abide by several ethics commitments in addition to the Standards of Ethical Conduct that apply to all Executive Branch employees. Section 1, Paragraph 3 of the Ethics Pledge imposes a two-year restriction on registered lobbyists, barring them from (1) working at any executive branch agency they lobbied in the past two years, and (2) participating in a particular matter or the specific issue area in which a particular matter falls if they lobbied on that particular matter in the past two years. A waiver of EO 13989's restrictions may be granted when the literal application of the restriction is inconsistent with the restriction's purpose or when it is in the public interest to grant a waiver. This waiver is being granted because it is in the public interest.

In your role as Labor Policy Advisor, you will be the primary policy advisor to the Secretary on labor issues and support the Department on a wide array of labor issues and policies. You will engage with other government officials, union members, labor leaders, and other stakeholders about policies related to safety, job creation, climate, and equity within the transportation workforce.

Prior to joining the Department, you were employed by Iron Workers. You joined Iron Workers, a non-profit organization, in 2012 where you spent the entirety of your career as a union educator and organizer. Since 2017, you have served as its Political and Legislative Director. During this time, you led the Iron Workers' engagement regarding the implementation of the Bipartisan Infrastructure Law (BIL), Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act and Inflation Reduction Act (IRA). You also developed Iron Workers' member mobilization and education programs, conducted classes for local unions and district councils, advocated for union positions on policy and legislation, and became their primary training instructor for union education.

You also represented Iron Workers in your capacity as Vice President for Unions for Jobs and Environmental Progress, a membership association of national and international labor unions, and as an Executive Committee Member of the Union Veterans Council, an organization focused on bringing working-class veterans together to speak about their needs.

You first registered as a federal lobbyist for Iron Workers in 2017 and had the primary responsibility of issue lobbying for Iron Workers. You have represented to the Department that from 2021 through 2023, only about 5% of your overall time working for Iron Workers was spent lobbying DOT.

Absent this waiver, you would be restricted for two years following your appointment from working on any particular matter that you lobbied on for Iron Workers within the two years prior to your appointment, or from participating in the specific issue area in which that particular matter falls. For example, because you lobbied on broad issues including project labor agreements (PLAs), registered apprenticeship utilization, domestic procurement, workforce diversity issues, and a variety of grant programs under BIL while at Iron Workers, absent a waiver, you would not be able to work on these issues or BIL-funded programs, matters on which the Labor Policy Advisor is expected to advise. The successful advancement of the Administration's policy of support for worker power, worker organizing, and collective bargaining depends in part on the ability of the Department's Labor Policy Advisor to work on matters in broad issue areas that advance the interests of workers in the transportation industry, including work in the issue areas in which you lobbied. Without this waiver, your recusal restrictions under Paragraph 3 of the Ethics Pledge would result in serious limitations and inefficiencies in the Department's work to effectively advance the Administration's labor policy priorities.

Your comprehensive experience as a union educator and organizer, combined with your labor policy experience, makes you distinctly qualified to carry out the responsibilities of the Labor Policy Advisor position. However, because you lobbied DOT within the last two years, a limited waiver is necessary for you to serve in this role.

III. Analysis

In making this assessment, I considered the factors set forth in Section 3 of EO 13989, which include: (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 non-profit organization; and (iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services. Here, these factors demonstrate that it is in the public interest to grant you a limited waiver of EO 13989.

Government Need

The government has a critical need for your services as the Department's Labor Policy Advisor to aid the Department's efforts in carrying out BIL, the largest long-term investment in our infrastructure and economy in our nation's history. As Labor Policy Advisor, your expertise will enhance the Department's approach to labor issues related to key initiatives under BIL such as High-Speed Rail and other intercity passenger rail projects, the Bridge Improvement Program, and the Airport Terminals Program.

The Advisor position plays a pivotal role in advancing the Administration's work on issues that affect transportation-related labor unions, including PLAs, procurement, prevailing wage issues and other workforce matters. As stated in your position description, you will be asked to provide workforce and labor-related recommendations and considerations to bear on key Departmental and Administration policy priorities such as safety, job creation, climate, equity, and innovation. Your prior work experience and expertise in the specific DOT programs that you will be asked to work on make you exceptionally qualified to advise on these issues.

Unique Qualifications

Based on your career as a union organizer and educator, you are uniquely qualified for the Labor Policy Advisor position because, in addition to your expertise in transportation, infrastructure and workforce development issues, your labor organizing experience allowed you to build strong relationships throughout the labor community. You spent a decade developing trust and open communication while working closely with different unions to learn about their decision-making processes, values and leadership which taught you how unions, beyond Iron Workers, operate. As a result of your positions at Iron Workers, you understand what difficulties, requests, and gaps exist throughout the industry, as well as how to improve upon them. Your comprehensive expertise will provide Departmental leadership with the perspectives of organized labor and union members and will assist DOT in ensuring that labor policy is being developed, implemented, and evaluated with input from a variety of labor stakeholders.

You also have extensive knowledge and experience regarding key policy issues for this role. For example, you submitted recommendations to the Biden-Harris Administration through the Task Force on Worker Organizing and Empowerment, which was established by President Biden under the Executive Order on Worker Organizing and Empowerment (EO 14025). Your work on BIL implementation focused on authoring recommendations for pro-labor elements of infrastructure projects, such as PLAs and registered apprenticeship utilization, that could be used as grant award criteria by implementing agencies. You also developed and conducted an education campaign for unions and potential grant applicants on how to utilize these standards in Notices of Funding Opportunities for BIL grant programs. During this time, you worked directly

with local unions, state and local governments, private sector companies, and coalitions of international unions to help adopt these criteria in application.

These collective experiences demonstrate your understanding of labor issues from a variety of different perspectives, and more specifically how those issues are related to the Department's efforts to implement BIL.

Prior Lobbying

You have represented to the Department that from 2021 to 2023, only about 5% of your overall time working for Iron Workers was spent lobbying DOT. The entirety of your lobbying was done on behalf of Iron Workers, a non-profit organization, as an employee of that organization. Based on your representations and public disclosures pursuant to the Lobbying Disclosure Act, you have not lobbied on behalf of any other clients beyond this non-profit organization.

While working for Iron Workers, you lobbied the Department on labor issues such as the Davis-Bacon Act, PLAs, registered apprenticeship utilization, workforce diversity, domestic procurement, and local hire. You also lobbied the Department on programs including the Mega Program (the National Infrastructure Project Assistance program), Bridge Investment Program (BIP), Airport Terminals Program (ATP), the Port Infrastructure Development Program (PIDP), Federal State Partnership for Intercity Passenger Rail, the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Program and the Infrastructure for Rebuilding America (INFRA) Grant Program. You also lobbied the Department on the I-10 Calcasieu River Bridge; Blatnik Bridge, Alligator Bridge, the Dakota County Bridge/Greenway, Brent Spence Bridge, Portland, ME Port Improvement Project, Pacific Coast Intermodal Port; Brightline West High-Speed Rail, and California High Speed Rail, as well as airport projects at Orlando Airport, Houston Airport, Dulles International Airport, Chattanooga Airport, Kansas City Airport and Omaha Airport.

Other Limitations

You will continue to be subject to the recusal restrictions in Paragraph 2 of the Ethics Pledge and the impartiality regulation (5 CFR 2635.502), which require you to recuse from participation in any particular matter involving specific parties that is directly and substantially related to your former employer. Under Paragraph 2 of the Ethics Pledge, this recusal restriction will continue for a period of two years after the date of your appointment to the Department. You will be recused from specific party matters involving Iron Workers on projects and programs that you lobbied on, including those listed "Prior Lobbying" section above, because you will remain subject to Paragraph 2 of the Ethics Pledge and the impartiality regulation. It is possible that other matters related to the projects on which you lobbied, including matters that do not involve Iron Workers, will arise over the course of your time at DOT. If you are asked to work on those matters, you have agreed that you will consult with a DOT ethics official prior to working on the matter to ensure that it does not directly and substantially relate to Iron Workers.

You are recused from participation in matters involving building and construction trades councils that are made up of union representatives where a council's president is an Iron Workers representative. Your recusal restrictions would not necessarily preclude you from working on a matter involving a building and construction trades council that includes membership by Iron Workers if the matter is not specific to Iron Workers and the council president is not a representative of Iron Workers. For example, where union representatives from twelve or more different unions make up a building and construction trades council, you would not necessarily be precluded from working on council-related matters where an Iron Workers representative sits on the council so long as the matter involves engagement with the council as a distinct entity on behalf of the council. You have agreed that you will consult with a DOT ethics official on a case-by-case basis on matters involving building and construction trades councils to determine whether you may participate.

To the extent that you cannot work on a particular matter due to your recusal restrictions under Paragraph 2 of the Ethics Pledge and the impartiality regulation, another employee in the Department will participate in the matter. In addition, another employee in the Department will screen for any matters that should not be brought to your attention due to your continuing recusal obligations under the impartiality regulation and Paragraph 2 of the Ethics Pledge.

IV. Conclusion

The ability of the Department of Transportation to advance the Administration's policy of supporting labor organizing and empowerment of workers requires you to advise on a broad range of labor policy matters and engage with government officials, union members, labor leaders, and other stakeholders about labor policies related to safety, job creation, climate, and equity in the transportation workforce. Absent this waiver, you would be limited in your ability to work on those issues on behalf of the Department.

Due to the scope of Section 1, Paragraph 3 of the Ethics Pledge, a broad application of this prohibition would be detrimental to the Department's labor policy work because it would substantially limit your ability to perform the duties of your position. For the foregoing reasons, I grant you a limited waiver of the restrictions in Section 1, Paragraph 3 (a), (b), and (c) of the Executive Order to enable you to effectively carry out your duties as Labor Policy Advisor. Pursuant to this waiver, you may participate in matters on which you lobbied on for Iron Workers within the two years before your appointment and in the specific issue area in which those matters fall, subject to the limitation that you may not participate in any party-specific matters involving Iron Workers, including, but not limited to, contracts or grants. This waiver does not otherwise affect your requirement to comply with all other applicable government ethics rules and provisions of the Ethics Pledge.