

THE WHITE HOUSE

Washington

November 18, 2011

MEMORANDUM FOR CHIEF OF STAFF WILLIAM M. DALEY

FROM: KATHRYN H. RUEMLER
Counsel to the President and Designated Agency Ethics Official

SUBJECT: Limited Public Interest Waiver and Authorization Pursuant to Section 3,
Executive Order 13490 and 5 C.F.R. § 2635.502

This limited waiver and authorization allows you to participate personally and substantially on a single occasion in a particular matter involving specific parties that is directly and substantially related to a nonprofit organization for which you previously served as an uncompensated member of the board of directors, subject to certain limitations described below. Specifically, you may accept the invitation to speak in an official capacity on behalf of the Government and present the views of the Administration of President Obama on December 7, 2011, at an event hosted by the United States-China Business Council (“Council”).

The Council is a “private, nonpartisan, nonprofit organization of roughly 220 American companies that do business with China.” Its declared mission is to expand the United States-China commercial relationship to the benefit of large and small businesses that comprise its membership and, more broadly, the United States economy. On its website, the Council indicates that it “favors constructive engagement with China to eliminate trade and investment barriers and develop a rules-based commercial environment that is predictable and transparent to all parties.” On December 7, 2011, the Council will hold its annual gala, which will be attended by Members of Congress, U.S. Government Officials, H.E. Zhang Yesui, Ambassador of the People’s Republic of China, and various other diplomats, as well as representatives of numerous U.S. businesses and nongovernmental organizations, and others in the Washington, D.C. community with interests in United States-China policy. You have been asked to give the keynote address at the event that will also feature remarks from Ambassador Zhang Yesui. The event will include approximately 400 guests and be open to the media.

Under the ethics pledge, an appointee must recuse from particular matters involving specific parties directly and substantially related to any “former employer.” (Executive Order 13490 [“EO”] Sec.1, para. 2) The pledge defines “former employer” to include any organization for which the appointee served as a director, whether or not such service was compensated. (EO Sec. 2) The Executive Order authorizes the issuance of a waiver of restrictions contained in the pledge upon certification that (i) the literal application of the restriction is inconsistent with the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver.

The Director of the Office of Management and Budget has delegated to each executive branch Designated Agency Ethics Official (DAEO) the authority to issue waivers under section 3 of the Executive Order. As the DAEO for the White House Office, I am issuing a limited waiver for the purpose of communicating the Administration's views regarding matters of vital national interest, including the U.S. jobs environment and trade and relations between the United States and China. I certify that it is in the public interest to grant this public interest waiver to you for the reasons discussed below.

In addition to the ethics pledge, you are bound by the Standards of Ethical Conduct for Employees of the Executive Branch ("Standards"). The Standards, at 5 C.F.R. § 2635.502, require that an employee take appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under Section 502, where an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to the matter, he should not participate in the matter without informing an agency official and receiving authorization to participate. Included in the definition of a "covered relationship" is any person for whom the employee served, within the preceding year, as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. 5 C.F.R. § 2635.502(b)(1)(iv).

You have a covered relationship with the Council. Under Section 502's standard, I conclude that a reasonable person would not question the integrity of the Government's programs and operations based on your participation as a speaker at the Council's December 7, 2011 event, subject to the limitations set forth in this memorandum; and that should such questions arise, the Government's interest in your participation outweighs any possible concern. Thus, for the reasons discussed below, I am granting both a waiver under the Executive Order and an authorization under the Standards.

As the President's Chief of Staff, you have a key role in developing and implementing the Administration's economic policies. You have intimate knowledge of the Administration's views on a wide range of topics and are uniquely situated to coordinate with the President and top Administration officials to develop a presentation that will advance the Administration's goals. You also serve as the President's liaison to the business community and have substantial knowledge of and experience with the subject of the United States-China commercial relationship, U.S. trade policy and the forum in which you will be delivering the presentation.

The opportunity that this event offers for effective communication of the Administration's message substantially outweighs any potential concern that a reasonable person would question your impartiality based upon your prior service as an uncompensated member of this nonprofit's 29-member board of directors, even though the event itself raises funds for the Council. The event will afford the Administration an opportunity to reach a range of significant stakeholders in trade between the United States and China, as well as a potentially broader audience who may follow any media coverage of the event. The official presence of the Ambassador of the Republic of China and United States Government officials further enhances the value of this event as a forum for a meaningful exchange of views that will serve the Government's interest. In addition, involvement of members of the nonprofit and business sectors is likely to allow the Administration to address some of those most directly affected by United States-China trade policies.

Although I have decided to authorize your participation in this matter, I am limiting your participation, as follows: You may not engage in any fundraising or solicit any donation, advocate membership in the Council, or encourage participation in events that the Council hosts. These limitations are intended to mitigate the effect of your participation on the Council and focus your participation on the message that you are communicating for the Administration. You also will be required to continue to comply with the remainder of the pledge and with all government ethics rules except as expressly waived herein.