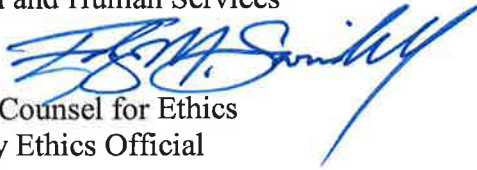




October 9, 2014

MEMORANDUM FOR SYLVIA MATHEWS BURWELL  
Secretary of Health and Human Services

FROM: Edgar M. Swindell   
Associate General Counsel for Ethics  
Designated Agency Ethics Official

SUBJECT: Limited Pledge Waiver Pursuant to Section 3, Executive Order 13490

The purpose of this memorandum is to provide a limited waiver of the restrictions in Section 1, Paragraph 2, of Executive Order 13490 (the Ethics Pledge or E.O.), to permit your participation, subject to certain restrictions and conditions, in particular matters involving the Bill and Melinda Gates Foundation (Gates Foundation) that relate to the ongoing Ebola epidemic response. Subject to the limitations set forth below, this waiver will facilitate your ability to lead and coordinate HHS's efforts to respond to the epidemic and is therefore in the public interest. I have consulted with the Office of the Counsel to the President concerning this waiver and notified the Office of Government Ethics (OGE). This document will be made publicly available on the OGE website.

The Ethics Pledge provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients, including regulations and contracts. *See* E.O. 13490, § 1, ¶ 2. The Ethics Pledge further provides that "particular matter involving specific parties" shall have the same meaning as set forth in 5 C.F.R. § 2641.201(h), "except that it shall also include any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties."

The E.O. defines "former employer" to include any person for whom the appointee has, within the two years prior to the date of appointment, served as an employee, officer, director, trustee, or general partner. You were appointed initially to the position of Director of the Office of Management and Budget (OMB) on April 26, 2013. Within two years prior to your federal appointment, you served as the President of Global Development for the Gates Foundation. You resigned from this position in November 2011. For purposes of Section 1, Paragraph 2 of the Ethics Pledge, the Gates Foundation is a former employer.

Section 3 of the E.O. provides for waiver of the recusal provisions that apply with respect to a former employer. As the Designated Agency Ethics Official (DAEO) for the Department of

Health and Human Services (HHS), I am authorized to exercise that waiver authority in consultation with the Office of the Counsel to the President and pursuant to a delegation from the OMB Director. *See* Office of Government Ethics Memorandum Re: Authorizations Pursuant to Section 3 of Executive Order 13490, DO-09-008 (Feb. 23, 2009). The standard for waiving the restriction in the Ethics Pledge is that the literal application of the restriction would be inconsistent with the purposes of the restriction, or that it would be in the public interest to grant the waiver. *See* E.O. 13490, § 3(a). The E.O. states that “[t]he public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy.” *Id.*, § 3(b).

The Gates Foundation is one of several non-profit entities that are working worldwide to control the deadly Ebola epidemic. Coordination of federal government efforts to combat Ebola with those of non-profit organizations, private industry, international relief organizations, and foreign governments is a function that requires your participation as the Secretary of HHS.

Accordingly, this limited waiver is issued in the public interest, inasmuch as exigent circumstances related to national security, global public health, and the global economy are involved. Issuance of this limited Ethics Pledge waiver will allow your full participation in HHS efforts to combat the Ebola epidemic. Your management skills and leadership are considered essential to this strategic effort. The Ethics Pledge recusal obligation, to which you would be subject absent this waiver, would render you unable to carry out effectively significant duties of your office. For example, you may be limited, under certain circumstances, in your ability to personally communicate with the Gates Foundation and key partners that work with it to discuss issues related to effective strategies to contain the spread of the Ebola virus.

In light of the critical importance of combating Ebola, I find that the public interest warrants that I grant you a waiver of the provisions of Section 1, Paragraph 2 of Executive Order 13490, to allow you to participate in meetings and other specific party matters related to the Ebola epidemic response in which the Gates Foundation is a party or representative of a party. Accordingly, you are not precluded from participating personally and substantially in those matters directly and substantially related to your former employer, the Gates Foundation, that effectuate global efforts to control the Ebola epidemic and alleviate suffering of those infected. This may include, for example, meetings with representatives from the Gates Foundation and possibly other nonprofit organizations to collaborate on the appropriate deployment of resources to combat this disease.

This waiver is limited. In the unlikely event that direct funding relationships with the Gates Foundation are contemplated, you are not authorized by this waiver to participate in any grant awards or procurement contracts given by HHS to the Gates Foundation to perform Ebola-related functions or tasks, or in any similar transactions that would result in a transfer of federal funds to the Gates Foundation. This waiver does not otherwise affect your obligation to comply with other provisions of the Ethics Pledge or with all other applicable government ethics rules.