



NATIONAL ARCHIVES

Date: July 14, 2023
To: Dr. Colleen J. Shogan, Archivist of the United States (N)
From: Jennifer Klein, Designated Agency Ethics Official (NGC)
Subject: Limited Waiver of Executive Order 13989

Pursuant to Section 3 of Executive Order 13989 “Ethics Commitments by Executive Branch Personnel” (Executive Order), I hereby grant a limited waiver of the requirements in Paragraph 2 of Section 1 of the Executive Order for Dr. Colleen J. Shogan with respect to the Presidential Sites Summit (PSS) hosted by the White House Historical Association (WHHA). Following consultation with the Counsel to the President, it has been determined that Dr. Shogan’s participation in the Presidential Sites Summit in her official capacity as the Archivist of the United States is in the public interest and, therefore, warrants a waiver.

Background

The Executive Order requires all covered political appointees to abide by several commitments in a pledge contained in Section 1 (Ethics Pledge). In particular, Section 1, Paragraph 2 of the Executive Order provides that a covered appointee may not participate in any official matter involving specific parties that is directly and substantially related to an appointee’s former employer, for two years from the date of appointment. Section 2(k) of the Executive Order defines “former employer” 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,” excluding certain government entities and international organizations. Section 2(m) of the Executive Order defines “directly and substantially related” to an appointee’s former employer as matters in which the appointee’s former employer “is a party or represents a party.” The purpose of Paragraph 2 of the Ethics Pledge is to address concerns that a former employer may have, or appear to have, privileged access to a covered appointee.

Section 3(a) of the Executive Order provides that the Director of the Office of Management and Budget, in consultation with the Counsel to the President, may grant a waiver of the restrictions in the Ethics Pledge to a political appointee if it is in the public interest to do so or if the literal application of a restriction is inconsistent with the purposes of the restriction. The authority to grant a waiver to the Ethics Pledge has been delegated to Designated Agency Ethics Officials. *See Office of Government Ethics, LA-21-04, Waiver Authority and Making Waivers Public*

NATIONAL ARCHIVES *and*
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under Section 3 of Executive Order 13989, “Ethics Commitments by Executive Branch Personnel” (Feb. 18, 2021).

As Archivist of the United States, Dr. Shogan oversees the National Archives and Records Administration (NARA), an independent federal agency that serves American democracy by safeguarding and preserving the records of our government, so people can discover, use, and learn from this documentary heritage. NARA ensures continuing access to the essential documentation of the rights of American citizens and the actions of their government. NARA supports democracy, promotes civic education, and facilitates historical understanding of our national experience and carries out its mission through a nationwide network of archives, records centers, and Presidential Libraries as well as online. NARA’s Presidential Library system is composed of fifteen Presidential Libraries. NARA’s Presidential Libraries and Museums promote understanding of the presidency and the American experience, and preserve and provide access to historical materials, support research, and create interactive programs and exhibits that educate and inspire.

Prior to being sworn in as Archivist on May 17, 2023, Dr. Shogan was the Director of the David M. Rubenstein Center for White House History and Senior Vice President of the White House Historical Association. Dr. Shogan began work with the WHHA in February of 2020. The WHHA is Dr. Shogan’s “former employer” as defined by Section 1, Paragraph 2 of the Executive Order. The White House Historical Association is a private, non-profit organization with a mission to protect, preserve and provide public access to the history of the White House.¹

Analysis

Due to Dr. Shogan’s prior employment with the White House Historical Association, Paragraph 2 of the Ethics Pledge prevents her from participating in the Presidential Sites Summit, including presenting on a panel, unless she receives a waiver. Guidance by the Office of Government Ethics on Paragraph 2 of the Ethics Pledge confirms that, while Paragraph 2 does not generally prohibit official speeches hosted by former employers, the Pledge restriction applies where the former employer charges a registration fee, which the WHHA does for the Presidential Sites Summit. *See* Office of Government Ethics, DO-09-020, *Ethics Pledge Issues: Speeches and Pledge Paragraph 2; Intergovernmental Personnel Act Detailees* (May 26, 2009).

It is in the public interest to grant Dr. Shogan a limited waiver of the requirements of Paragraph 2 of the Ethics Pledge to enable her to participate in her official capacity as Archivist in WHHA’s Presidential Sites Summit. In making this assessment, I have considered the factors set forth in Section 3 of the Executive Order, 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

¹ White House Historical Association, <https://www.whitehousehistory.org/>, last accessed June 29, 2023.

nonprofit organization; and (iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services.

Government Need

The Presidential Sites Summit will be hosted by the White House Historical Association in September 2023. The Summit gathers leaders of presidential sites to discuss management and outreach of presidential libraries, historic homes, and museums and to share information and best practices.² The White House Historical Association will have a panel discussing presidential and American history collections featuring the leaders of several federal cultural institutions.

As Archivist of the United States, Dr. Shogan is responsible for the National Archives, which includes NARA's Presidential Library system, composed of fifteen Presidential Libraries that promote understanding of the presidency and the American experience. It is in NARA's interest to be represented at the Summit given its mission and its Presidential Library system. Dr. Shogan is uniquely positioned to speak on behalf of the entire agency regarding its presidential and American history collections, as well as other relevant NARA issues and priorities. Having Dr. Shogan participate in the conference and on the panel will enable NARA to be fully represented.

Unique Qualifications

As the appointed head of NARA, Dr. Shogan is uniquely positioned to speak on behalf of NARA. As the Archivist of the United States, she has the authority and insight into the entirety of NARA, its priorities, and its programs. Dr. Shogan has been invited to participate on a panel with senior leaders from other federal cultural institutions; as the agency head, she would be the most appropriate choice from NARA to participate on the panel.

Prior Lobbying

Dr. Shogan was not a lobbyist for WHHA, and WHHA is not a federally registered lobbying organization.

Other Limitations

This waiver is limited to Dr. Shogan's official participation in Presidential Sites Summit and does not otherwise affect her former employer recusal obligation under the Ethics Pledge.

In addition, the literal application of the restriction is inconsistent with the purposes of the restriction. Dr. Shogan's participation in the Presidential Sites Summit will not meaningfully change the access that WHHA has to NARA. Moreover, Dr. Shogan's participation in the conference is unlikely to draw attendees to the conference because Dr. Shogan is only one among several speakers who will be participating in the multi-day conference, and the

² White House Historical Association, *Presidential Sites Summit: September 25-28, 2023*, <https://www.whitehousehistory.org/presidential-sites-summit>, last accessed June 29, 2023.

conference is one of the few annual opportunities for representatives of presidential sites to gather in conference.

Conclusion

The significant public interest in NARA's ability to accomplish its mission requires Dr. Shogan to participate in the Presidential Sites Summit conference, including presenting on the panel for federal cultural institutions. Preventing Dr. Shogan from speaking at this event would impact her ability to effectively carry out her responsibilities. For these reasons, I grant Dr. Shogan a limited waiver of the restrictions in Section 1, Paragraph 2 of the Executive Order.

Pursuant to this waiver, Dr. Shogan may attend and speak at the Presidential Sites Summit. This waiver does not affect her obligation to comply with all other applicable government ethics rules and provisions of the Executive Order. It does not apply to any entity covered by Paragraph 2 of the Executive Order other than WHHA, nor does it apply to any engagement with WHHA other than the Presidential Sites Summit. It also does not remove Dr. Shogan's obligation to follow any other provision of the Executive Order or any other ethics law, rule, or regulation.³



JENNIFER KLEIN
Designated Agency Ethics Official

CC: Stuart Delery, Counsel to the President

³ Dr. Shogan has a recusal obligation under 5 C.F.R. 2635.502 with respect to her former employment at WHHA, for which Dr. Shogan will receive a separate Authorization to participate in the PSS.