



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 2, 2017

ACTION MEMORANDUM

TO: DONALD F. McGAHN
WHITE HOUSE COUNSEL

FROM: Elizabeth A. Horton *EAC*
Deputy Assistant General Counsel for Ethics and
Alternate Designated Agency Ethics Official

SUBJECT: Limited Waiver of Ethics Pledge Paragraph 6 for Heath Price Tarbert

RECOMMENDATION

The Senate has confirmed Heath Tarbert, as the Department of the Treasury's Assistant Secretary for International Markets and Development. I recommend that you approve a limited waiver of paragraph 6 of the Ethics Pledge so that he may participate in matters involving the World Bank Group's International Finance Corporation (IFC), a client of his former law firm for which he provided 5.5 hours of services, completed in January 2016.

DFM Approve _____ Disapprove _____ Let's Discuss

BACKGROUND

Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," (EO) requires all Presidential appointees to sign an Ethics Pledge that, among other things, prohibits them from working on particular matters involving specific parties directly and substantially related to a former employer or client for a period of two years. Section 3 of the EO permits the President or his designee to grant a waiver of any restrictions contained in this pledge.

Beginning in January 2014, Mr. Tarbert was a partner at Allen & Overy, LLP, an international law firm. In late 2015 and January 2016, he provided several hours (5 hours and 24 minutes) of legal services to the IFC, which arose out of Allen & Overy's representation of the IFC on a matter in which Mr. Heath was not otherwise engaged. Notwithstanding this limited engagement with the IFC, pursuant to paragraph 6 of the Ethics Pledge, for two years from the date of his appointment he would not be able to participate in matters involving the IFC. His ability to participate in matters involving the IFC, and some matters involving both the World Bank Group and IFC, is integral to his position as Assistant Secretary for International Markets and Development.

ANALYSIS

Treasury's Office of International Affairs protects and supports U.S. economic prosperity by strengthening the external environment for U.S. growth, preventing and mitigating global financial instability, and managing key global challenges. The Assistant Secretary helps manage the international portfolio by leading Treasury's role on the Committee on Foreign Investment in the U.S., and also supports Treasury's work on international financial services regulation, trade, banking and securities, development, technical assistance, and climate finance.

The Assistant Secretary oversees several offices, including the Offices of International Development Policy and International Debt and Development. These offices lead the U.S. effort to promote economic growth and poverty reduction in developing countries through engagement with the various multilateral development banks (MDBs), including the World Bank Group, of which the IFC is a member institution. These offices also work with the U.S. Congress and other government agencies to secure U.S. funding to the MDBs, advise on potential reforms and innovative financing, and formulate the U.S. position on issues coming before the Paris Club (an informal group of creditors dedicated to supporting solutions to payment difficulties for debtor countries).

The World Bank Group, established in 1944, is comprised of five institutions (the International Bank for Reconstruction and Development, the International Development Association, the IFC, the Multilateral Investment Guarantee Agency, and the International Centre for Settlement of Investment Disputes) that are vital sources of financial and technical assistance to developing countries around the world. The World Bank is an international organization of which the United States is its largest shareholder and a leading member. Through its participation, the United States has supported the World Bank's mission of providing low-interest loans, interest-free credits, and grants to developing countries for education, health, infrastructure, and other purposes. The IFC is the largest global development institution focused exclusively on assisting the private sector in developing countries. Although part of the World Bank Group, the IFC is a separate legal entity with separate Articles of Agreement, share capital, financial structure, management, and staff. Membership in the IFC is open only to member countries of the World Bank (the United States is a member of the IFC). The President of the World Bank Group is also President of the IFC.

Mr. Tarbert has nearly 15 years of experience practicing international banking and financial law. Early in his career, he worked with a number of MDBs on their debt financing programs. More recently, he has been advising on financial regulatory issues, including those related to the Dodd-Frank Act. In mid to late 2015, and culminating in January 2016, Mr. Tarbert answered a discrete and ancillary question that arose from Allen & Overy's representation of the IFC on a matter with which Mr. Tarbert was not otherwise involved. He was asked to determine if the IFC is a "U.S. entity" for purposes of the Volcker Rule under the Dodd-Frank Act. According to firm billing records, he spent a total of 5 hours and 24 minutes on this question. This included one telephone call with lawyers from the IFC and no other contact or face-to-face meetings with officials or employees of the IFC. Mr. Tarbert has no financial interests in or other ties to the IFC or the World Bank Group. If paragraph 6 of the Ethics Pledge were applied literally to Mr. Tarbert, he would not be able to participate in any matters involving the IFC, including matters involving other members of the World Bank Group and IFC.

It is essential that the United States have an effective, credible voice in discussions with the World Bank Group and the IFC on the many important issues that arise in these fora. Mr. Tarbert's significant experience in the international arena will allow him to significantly advance U.S. interests within these organizations. It would be exceedingly difficult and impractical to segregate the Assistant Secretary's duties to shield him from engagement in matters that involve the World Bank Group and the IFC and such effort would significantly impair his effectiveness as Assistant Secretary.

A waiver is therefore appropriate because: (1) it is in the Department's and public's interest; (2) it will be impossible for Mr. Tarbert to properly perform all the duties of his position if he had to recuse from all matters involving the IFC; (3) Mr. Tarbert's participation in matters involving the IFC and World Bank Group will have no impact on his financial interests; and (4) a reasonable person knowing the facts would not question Mr. Tarbert's impartiality in working on IFC and World Bank Group matters based on a single, five-hour legal research project.

CONCLUSION

Based on the above analysis, a limited waiver of paragraph 6 of the Ethics Pledge so that Mr. Tarbert may participate in matters involving the International Finance Corporation, is appropriate.