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THE WHITE HOUSE
Washington
January 20, 2021

FROM: DANA A. REMUS
COUNSEL TO THE PRESIDENT

TO: ANDREW M. SLAVITT
SENIOR ADVISOR FOR COVID RESPONSE

SUBJECT: LIMITED WAIVER PURSUANT TO 18 U.S.C. § 208(b)(1)

This memorandum provides you with a waiver, pursuant to 18 U.S.C. § 208(b)(1), that, subject to the limitations stated at the end of this memorandum, will allow you to participate as a special government employee in certain particular matters. This waiver is being issued based on full disclosure of your financial interests and consideration of the nature and circumstances of matters in which you may be involved as Senior Advisor for Covid Response. For the reasons discussed below, I have determined that the financial interests covered by this waiver are not so substantial as to be deemed likely to affect the integrity of your services to the Government.

The nation is suffering through a deadly pandemic that has taken over 335,000 American lives and infected over 19,000,000 other Americans. The death rate now exceeds over 4,000 deaths per day. More Americans have died in the past year from COVID-19 than died in battle in all four years of the nation's engagement in World War II.¹ The economic effects have been devastating for the nation's economy. A study released by the University of Southern California on December 10, 2020, projected that "the net U.S. GDP losses from COVID-19 would range from \$3.2 trillion (14.8%) to \$4.8 trillion (23.0%) in a 2-year period" in three different scenarios.²

The American people deserve an urgent, robust, and professional response to the public health and economic crisis caused by the coronavirus (COVID-19) outbreak. The federal government must act swiftly and aggressively to help protect and support our families, small businesses, first responders and caregivers, those who are most vulnerable to health and economic impacts, and our broader communities. Defeating the pandemic is a matter of life and death for Americans, and restoring the health of our economy is vital to combat the secondary effects of this disaster.

¹ Department of Veterans Affairs, American Wars (2019), <https://bit.ly/3rzcJM4>.

² Walmsley, T., Rose, A. and Wei, D., The Impacts of the Coronavirus on the Economy of the United States, *Journal of the Economics of Disasters and Climate Change* (2020), <https://bit.ly/3rbIne>.

For this reason, you have been appointed to provide critical support in the effort to combat the pandemic based on your unique expertise in executing complex government health care programs which serve the general public, particularly situations where there is limited time to conduct a meaningful response. You have agreed to serve on a temporary basis as a special government employee, and have agreed to take a number of steps to assume this temporary assignment. Those steps include resigning from your role at the non-profit United States of Care, where you serve as Board Chair, which is focused on expanding health care for all Americans; taking a leave of absence from your podcast *In the Bubble*; taking a leave of absence from Town Hall Ventures, the firm you set up to invest in underserved communities; resigning from the boards of all of the companies you serve on; divesting assets; and agreeing to delay the release of your book, *Preventable*, for the duration of your service as a special government employee.

As a special government employee, you are not subject to the full range of conflict of interest laws applicable to other government employees. You are, however, subject to the conflict of interest prohibition at 18 U.S.C. § 208(a). That provision prohibits an executive branch employee from participating personally and substantially in any particular matter in which the employee knows that he has a financial interest directly and predictably affected by the matter, or in which the employee knows that a person whose interests are imputed to the employee has a financial interest directly and predictably affected by the matter, unless the employee first receives a waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). For purposes of this provision, the financial interests of the following persons are imputed to an executive branch employee: any spouse or minor child of the employee; any general partner of a partnership in which the employee is a limited or general partner; any organization in which the employee serves as officer, director, trustee, general partner or employee; and any person or organization with which the employee is negotiating or has an arrangement concerning prospective employment.

The term “particular matter” includes only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters that do not involve formal parties and may extend to legislation or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons. Regulations of the U.S. Office of Government Ethics (OGE), at 5 C.F.R. § 2640.103(a), offer the following examples of one matter that does not qualify as a “particular matter” and one matter that does:

A legislative proposal for broad health care reform is not a particular matter because it is not focused on the interests of specific persons, or a discrete and identifiable class of persons. It is intended to affect every person in the United States. However, consideration and implementation, through regulations, of a

section of the health care bill limiting the amount that can be charged for prescription drugs is sufficiently focused on the interests of pharmaceutical companies that it would be a particular matter.

Your work is likely to be analogous to the broad health care reform described in OGE's example. If you are not involved in matters that focus on the interests of parties or a discrete and identifiable class of persons, 18 U.S.C. § 208(a) will be inapplicable. Like OGE's example of an omnibus health care reform bill, the matters in which you will be involved could focus on a broad swath of economic sectors. For example, the government's vaccine distribution project will likely involve the nationwide coordination of all of the following: logistics management companies; pharmaceutical manufacturers; cold storage providers; extreme cold freezer manufacturers; dry ice manufacturers; cold-chain transportation companies; other types of delivery companies for related supplies; medical waste disposal companies; insurance companies; medical billing companies; personal protective equipment companies; primary care providers; medical centers and hospitals; retail pharmacies; providers of *ad hoc* facilities for mass vaccination; federal agencies; state and local government agencies; advertising companies for public service announcement; media outlets; and other entities.

To the extent that your activities as a special government employee might require your participating in "particular matters," not all such matters would directly and predictably affect your financial interests. For example, a policy determination that increases the production costs of a vaccine would not have a direct and predictable effect on the financial interests of a health care provider if the patient is not being charged for the vaccine. The same would be true of a policy determination that increases the cost of delivery, if the patient is not being charged for delivery.

For these reasons, a waiver of 18 U.S.C. § 208(a) may be unnecessary. Out of an abundance of caution, however, this waiver is being issued to ensure that you are fully available to assist in crucial aspects of the government's response to this urgent national crisis. At the same time, this waiver memorandum imposes several limitations on your work to ensure that the public can have confidence that the government will act solely in the interests of the American people.

As a special government employee, you filed a confidential financial disclosure report in which you have disclosed your personal financial interest in two social investment funds: Town Hall Ventures, L.P. and Town Hall Ventures II, L.P. These are venture capital funds, which have invested in a number of health care services for underserved communities. In addition, you have disclosed your imputed financial interest as a managing member of Town Hall Ventures GP, LLC, which as the fund manager has invested in these two funds. You also have disclosed your

separate financial interest in two of the portfolio companies, Bright Health and City Block Health, in which you hold an interest both directly and through the two funds.

Although your combined financial interest in Town Hall Ventures represents roughly [REDACTED] of your total investment portfolio, your financial interest in any one holding of these funds is only a small fraction of this amount. Your separate financial interest in Bright Health represents [REDACTED] of your total investment portfolio and your interest in City Block Health represents [REDACTED] of your total investment portfolio. In evaluating your relative financial interest in any one particular matter, it is necessary to consider the value of your interest in only those companies directly and predictably affected by the particular matter.

Significantly, no one particular matter is likely to affect all of the holdings of these funds, which span several lines of business. For example, a particular matter directly and predictably affecting at-home care providers is unlikely to directly and predictably affect a data analytics company. Moreover, most of the companies in which you have a financial interest through these venture capital funds are unlikely to be affected directly and predictably by any particular matter in which you would participate as a special government employee. This is true for companies providing kidney disease services, substance abuse treatment and mental health services—all of which are unlikely to be tasked with administering a COVID-19 vaccine to patients. Health insurance providers are also unlikely to be directly and predictably affected by a particular matter in which you would participate because the government has already announced that the vaccine will be provided free of charge, regardless of whether a patient has health insurance.

For these reasons, the majority of the holdings of the Town Hall Ventures funds—including the two portfolio companies in which you also have separate financial interests—are unlikely to be directly and predictably affected by any particular matter in which you will participate. On the other hand, certain companies may pose more potential for a conflict of interest. As discussed above, it is possible that your work may not involve any particular matters at all. If matters in which you participate do rise to the level of a particular matter, however, the following companies might potentially be directly and predictably affected: Action, which evaluates data on the effectiveness of various therapies; Signify Health, an at-home provider of care management, which has participated as a member of the Trump Administration’s pandemic roundtable; and Welbehealth, which provides an in-home care alternative to nursing homes for frail seniors.

No one particular matter is likely to affect Action, which analyzes data, and both Signify Health and Welbehealth, which themselves provide different types of at-home services. Signify Health does home health assessments by non-clinicians while Welbehealth provides clinical services to fragile seniors. Therefore, the value of your interests in these distinct categories of holdings are necessarily evaluated separately for purposes of issuing a waiver. The value of the

two venture capital fund's investment in Signify Health represents only [REDACTED] of the combined total investment of these two venture capital funds. The value of the two capital venture fund's investment in Welbehealth represents only [REDACTED] of the combined total investment of these two funds. The value of the two venture capital funds' investment in Aetion represents only [REDACTED] of their combined total investment. As a result, no one particular matter is likely to affect more than [REDACTED] of your own investment portfolio. Likewise, no one particular matter is likely to affect more than [REDACTED] of the financial interest of Town Hall Ventures GP, LLC, in these funds, which is imputed to you as a managing member.³

One consideration that affects this analysis is that the second of the two venture capital funds, Town Hall Ventures II, L.P., is a [REDACTED] fund that is still actively making new investments. The fund's governing documents contain various restrictions regarding the type, number and size of the investments the fund may make. Any such investment must be in a company that serves the underserved and may not be in a medical device or life sciences company. You have indicated that the fund is unlikely to make more than two investments, if any, during the term of your services as a special government employee and that the maximum investment in any single entity during this time period would not be greater than [REDACTED] of the fund and likely would be substantially less than that amount. Town Hall Ventures GP, LLC has agreed that it will notify you of any proposed future investment (other than three investments already in the later stages of due diligence which have already been reviewed for conflict of interest purposes) by Fund II prior to approving such investment so that any such investment may be reviewed by White House ethics officials to determine whether the investment would pose a conflict of interest and what mitigating steps are necessary.

Under 18 U.S.C. § 208(b)(1), an agency may permit an employee to participate in a matter in which the employee has an otherwise disqualifying financial interest, if it is determined that the financial interest is "not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government." Under the totality of the circumstances, I find that neither your personal financial interest nor your imputed financial interest is so substantial as to be deemed likely to affect the integrity of your services to the Government. Therefore, I grant this waiver, pursuant to 18 U.S.C. § 208(b)(1), which authorizes you to participate in particular matters affecting your financial interests in Town Hall Ventures, L.P.; Town Hall Ventures II, L.P.; Town Hall Ventures GP, LLC, and the two portfolio companies in which you have separate financial interests. This waiver, however, is subject to the limitations described at the end of this memorandum.

³ Although it is unlikely that Bright Health or City Block Health would be directly affected by a particular matter in which you might participate, your interests in these companies, both through Town Hall Ventures and through your separate holdings, represents a small portion of your total investment portfolio -- [REDACTED] for Bright Health and [REDACTED] for City Block Health.

In determining that a waiver is warranted under 18 U.S.C. § 208(b)(1), I have considered several factors that the U.S. Office of Government Ethics deems relevant to the waiver analysis. First, OGE's regulations establish that the "sensitivity of the matter" is a relevant factor. 5 C.F.R. § 2640.301(b)(6). As discussed at the beginning of this memorandum, the nation is engulfed in a once-in-a-century calamity that, in less than one year, has killed more Americans than died in combat in World War II. It has infected millions of other Americans with a disease that can inflict severe suffering and that may have long-term consequences for their health. The economy is reeling, and many Americans are already suffering the secondary effects of financial loss, with untold numbers dropping below the poverty line. The urgency of this matter cannot be overstated.

Second, although you will make recommendations to Mr. Zients, you will not make final, unreviewable decisions for the government and you will not be the supervisor of record for any government official. Your government work will be reviewable by Mr. Zients or his designee. This oversight will serve to protect the procedural integrity of the government's decision making and the integrity of your services.

Third, OGE's regulation establishes that "the need for the employee's services in the particular matter" is another relevant factor. The White House has an urgent need for the assistance of highly skilled experts like yourself. Your expertise makes your time-limited service an essential component of the President's strategy for combating the pandemic. You bring with you decades of experience serving in leadership roles in health care and business, including your recent service as the Acting Administrator for the Centers for Medicare and Medicaid Services in the Obama-Biden administration. During the COVID-19 epidemic, you also have been a powerful public voice for responsible crisis management.

Fourth, OGE's regulation establishes that the following factor is relevant: "The value of the financial instrument or holding from which the disqualifying financial interest arises . . . in relationship to the individual's assets." 5 C.F.R. § 2640.301(b)(4). As discussed above, the imputed financial interest of Town Hall Ventures GP, LLC, is limited to [REDACTED] of its investment in the two venture capital funds. Your own combined total personal investment in Town Hall Ventures GP, LLC and the two venture funds is limited to [REDACTED] of your investment portfolio, and your interest in any one company within the fund (not including Bright Health and City Block Health) is considerably smaller. No one particular matter is likely to affect more than [REDACTED] of your investment portfolio. And your separate interests, in Bright Health and City Block Health, which are unlikely to be affected by your government work, represent [REDACTED] and [REDACTED] of your investment portfolio.

Fifth, OGE's regulation establishes that the following factor is relevant: "Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that the

integrity of the employee's services would be questioned by a reasonable person" 5 C.F.R. § 2640.301(b)(6). Therefore, I have taken into consideration the following conditions and limitations that I am imposing to mitigate or offset any concerns about your participation in the government's pandemic response:

- To the extent you have not already done so, you will reduce your potential exposure to conflicts of interest by divesting your financial interest in General Atlantic Private Equity Fund, Exact Sciences, Oak Street Health, Alignment Healthcare, Teledoc, Nuna and Somatus consistent with a timeline approved by the Designated Agency Ethics Official. I understand that you have already divested all of the publicly traded stocks in your managed account,
- You will take an unpaid leave of absence from Town Hall Ventures GP, LLC during the period of your service as a special government employee. For purposes of this instruction, "unpaid" means that you will not receive any salary or bonus for the period while you are in government. You have also agreed to voluntarily reduce your carried interest in Fund II [REDACTED] to approximate any proceeds that could be gained by you during your period of service.
- You may not participate in any particular matter involving specific parties in which Town Hall Ventures GP, LLC, Town Hall Ventures, L.P., or Town Hall Ventures II, L.P. is a party or represents a party.
- You may not participate in any particular matter involving specific parties in which any holding of Town Hall Ventures GP, LLC, Town Hall Ventures, L.P., or Town Hall Ventures II, L.P is a party or represents a party.

If any questions arise as to whether your participation in any particular matter is permitted under this waiver, you should consult with a White House ethics official. In accordance with 5 C.F.R. § 2640.303, I have consulted with the U.S. Office of Government Ethics prior to granting this waiver. A signed, final copy of this waiver will be forwarded to that office. A copy of this waiver will be made available upon request to the public in accordance with the procedures described in 5 C.F.R. § 2640.304.

This waiver is effective upon signature.



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