




The Administrator

DATE: July 6, 2021

MEMORANDUM FOR: NINA ALBERT
COMMISSIONER
PUBLIC BUILDINGS SERVICE (P)

FROM: ROBIN C. CARNAHAN
ADMINISTRATOR (A) 

SUBJECT: Limited Authorization Pursuant to 5 C.F.R. § 2635.502(d) to Participate in GSA Matters Related to the Federal Bureau of Investigation (FBI) Headquarters Project and the Washington Metropolitan Area Transit Authority (WMATA)

Prior to your appointment as Public Buildings Service Commissioner (PBS Commissioner), on July 6, 2021, you served as the Vice President, Real Estate & Parking for the Washington Metropolitan Area Transit Authority (WMATA). You terminated your position with WMATA on July 2, 2021.

This memorandum assesses your relationship to WMATA and how that relationship might affect your participation in the Federal Bureau of Investigation (FBI) Headquarters Project. The FBI Headquarters Project (the Project) is of significant interest to a number of stakeholders and is a critical project for the PBS Commissioner to manage and lead.

After careful review of the relevant facts and authorities, I am authorizing you, as PBS Commissioner, to participate in matters related to the planning for and potential execution of an FBI Headquarters Project notwithstanding any potential involvement (or perceived involvement) of WMATA in that project. In particular, it is important to recognize that WMATA is a tri-jurisdictional government agency rather than a profit-making enterprise, and the ethics rules must be understood through that lens. Moreover, the public interest will be substantially served by ensuring that a high-level political appointee is accountable to Congress and the public for the direction of the FBI Project. In deciding to authorize your participation as described herein, I am confident and fully expect that any decisions you advise or make will be guided by what is best for the FBI, GSA, the Federal Government, and taxpayers.

Ethics Commitments by Executive Branch Personnel (Executive Order 13989)

Under Executive Order 13989 on Ethics Commitments by Executive Branch Personnel (the Biden Ethics Pledge), you are prohibited from participating in specific party matters in which your former employer is a party. However, the Biden Ethics Pledge defines “former employer” to exclude state or local government entities, and the Office of Government Ethics has determined that WMATA, a tri-jurisdictional government

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agency, is excluded from the prohibition under this definition. Accordingly, the Ethics Pledge does not apply to your participation on GSA matters related to your former employer, WMATA.

However, because other federal ethics rules do not contain a similar exclusion for state and local governments, those rules do apply to your participation in matters related to WMATA.

Acts Affecting Personal Financial Interests (18 U.S.C. § 208)

You have a defined contribution plan with WMATA, to which WMATA no longer contributes. Under 18 U.S.C. § 208, you cannot participate personally or substantially in any particular GSA matter that will affect WMATA's willingness or ability to honor its contractual obligations with respect to this retirement interest. As PBS Commissioner, it is extremely unlikely that you will be in a position to affect WMATA's willingness or ability to pay this benefit to its employees. As such, I do not expect this asset to be a disqualifying financial interest under 18 U.S.C. § 208.

Impartiality in Performing Official Duties (5 C.F.R. § 2635.501 et. seq)

However, potential concerns may arise under 5 C.F.R. § 2635.501 et. seq, the rules on maintaining impartiality in the performance of your official duties. As PBS Commissioner, you have a covered relationship with WMATA pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). Accordingly, for one year from your last day at WMATA, July 2, 2021, absent an impartiality authorization from me, you cannot participate in any specific party matter in which WMATA is a party or represents a party to the matter if that matter is likely to have a direct and predictable effect on WMATA. Likewise, if I determine that a reasonable person might question your impartiality and integrity in other matters related to WMATA that do not fall under the specific party matter provision, you also cannot work on those other matters absent an impartiality authorization from me.

Under 5 C.F.R. § 2635.502(d), you are permitted to participate in matters that might raise impartiality concerns if I make a determination, in light of all relevant circumstances, that the interest of the Government in your participation in certain matters outweighs the concern that a reasonable person may question the integrity of GSA's programs and operations. Such an authorization may only be given in circumstances where, as has already been determined, your participation in a particular matter involving specific parties would not violate 18 U.S.C. § 208(a).

Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As PBS Commissioner, you are responsible for providing broad program management for all PBS programs and activities. In this role, you are likely to weigh in on matters involving the potential rebuilding or relocation of the FBI Headquarters. Matters related to the FBI Project could potentially be some of the largest matters in your portfolio. Further, some of these matters could involve WMATA, directly or indirectly, or appear to involve WMATA. Because I conclude that the interest of the Government in your participation in FBI Headquarters related matters involving WMATA outweighs any concerns about your impartiality, I am authorizing you to participate in all FBI Headquarters Project matters where WMATA may be involved or appear to be involved, including but not limited to specific party matters.

In making this determination, I have taken the above factors into consideration:

The Nature of the Relationship Involved

You have a covered relationship with WMATA until July 2, 2022. While WMATA does not appear to be a GSA prohibited source, it does have several contracts with various other Government agencies. If the Government were to again consider relocating the FBI Headquarters from its current location, this could create a new relationship between the Government and WMATA, with both direct and indirect benefits to WMATA, as described with respect to the next factor.

The Effect That Resolution of the Matter(s) Would Have Upon the Financial Interests of the Person Involved in the Relationship

As PBS Commissioner, you may be asked to weigh in on decisions that would have an impact on WMATA's financial interests, including but not limited to matters related to the potential rebuilding or relocation of FBI Headquarters. It is feasible that WMATA would be involved in improvement to transportation infrastructure and facilities, ridership to the WMATA station(s) near where the new building would be located would increase, and WMATA would receive an uptick in revenue from increased parking. It is also feasible that WMATA may own part or all of the site of a potential proposed location of the FBI Headquarters. WMATA could, among other things: (i) receive purchase funds for the site; (ii) receive replication facilities constructed by the developer that would enhance and improve a nearby Metro station; (iii) benefit from likely additional ridership to that station; and (iv) likely experience additional income associated with parking at that station. That said, it should be noted that WMATA is a tri-jurisdictional governmental organization that does not operate as a profit-making enterprise, and the ethics rules should be understood through this lens. Moreover, virtually any transit-adjacent or

transit-oriented development in the National Capital Region will have at least some effect on or involvement of WMATA.

The Nature and Importance of the Employee's Role in the Matter(s), Including the Extent to Which the Employee is Called Upon to Exercise Discretion in the Matter(s)

As PBS Commissioner, you are responsible for providing broad program management for all PBS programs and activities. You are responsible for the design, construction, management, maintenance, operation, extension, remodeling, preservation, repair, alteration, protection, and control of all federally owned and leased buildings, which provide housing accommodations for Government activities. You represent the Administrator in major policy discussions with top officials of other agencies, representatives of industry, and officials of state and local governments. It is crucial that you be able to freely communicate with these stakeholders without encumbrances and provide leadership to the agency on critical, high-profile projects such as the FBI Project.

The Sensitivity of the Matter(s)

It is likely that you would work with high-level Government officials, members of Congress, and nongovernmental organizations on FBI Headquarters Project-related matters. The high-profile nature of this matter counsels in favor of an authorization because of the importance that a high-level political appointee be accountable for management and communication to key stakeholders about the status of the FBI Project.

The Difficulty of Reassigning the Matter(s) to Another Employee

Much of the work of the PBS Commissioner can technically be delegated down to the Deputy PBS Commissioner or the PBS Regional Commissioner for the National Capital Region. However, such reassignments related to a project as large and important as the FBI Headquarters Project would be impractical and could be a hindrance to efficiently and effectively carrying out GSA's mission. Your participation as PBS Commissioner in such matters would be of importance to the Administrator and, therefore, in the Agency's best interest. In these situations, it may not be appropriate to reassign these matters to another employee.

Adjustments That May Be Made in the Employee's Duties that Would Reduce or Eliminate the Likelihood that a Reasonable Person Would Question the Employee's Impartiality

If issues related to WMATA outside of the FBI Project arise, you would need to handle other potential impartiality issues on a case-by-case basis.

Limited Authorization

Under this limited authorization, you may participate in all FBI Headquarters Project matters where WMATA may be involved. This authorization does not extend beyond

FBI Headquarters related matters involving WMATA. If potential issues should arise outside of the scope of this authorization, I will consider the relevant facts and factors on a case-by-case basis.

Please note that this authorization does not affect your obligation to otherwise comply with all other pre-existing Government ethics rules. Should you have any questions about the scope of this authorization, you must notify me promptly and refrain from participating in any related matter until a determination is made on how to proceed. Such a determination should be made only after consultation with a Deputy Standards of Conduct Counselor or the Ethics Law Division.

cc: Nitin Shah, General Counsel
Allison Azevedo, Deputy PBS Commissioner