

November 1, 2017

FROM: Margaret P. Lyons *MLyons*
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Office of the Under Secretary
Food Nutrition and Consumer Services
USDA

TO: Brandon Lipps *Brake Lipps, acting*
Under Secretary
Food Nutrition and Consumer Services
USDA

Stuart Bender
Designated Agency Ethics Official and
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SUBJECT: Ethics Agreement

The purpose of this ethics agreement is to set forth the steps that I will take to avoid any actual or apparent conflict of interest with my duties as Chief of Staff to the Under Secretary of the Food Nutrition and Consumer Services. The following agreement is designed to address potential ethics problems identified by the Office of Ethics based upon its review of the financial information provided by me in my Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e). I will provide my supervisor with a copy of this agreement. I recognize that this agreement may need to be modified if my financial interests or duties change.

AGREEMENT

Conflicts of Interest (18 USC § 208). As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver from the Office of Ethics, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). "Particular matters" include not only matters involving a specific proceeding affecting the legal rights of the parties, such as contracts, claims, controversies, investigations, grants, loans, agreements, litigation, and other arrangements involving a specific party or parties, but also legislation, regulation, broad policymaking, and program development that are focused on a particular sector or the interests of a discrete and identifiable class of persons. I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment. By law, this means that all financial interests of these persons are considered to be mine as if I owned them personally.

General impartiality. In addition to conflicting financial interests, I am aware that certain financial interests and covered relationships may affect my ability to perform my duties. While these financial interests and covered relationships will not result in prosecution, they may, depending upon the circumstances, lead to administrative actions, including removal.

A "particular matter involving specific parties" typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties. Such matters generally include any investigation, application, request for a ruling or determination, grant, license, enforcement action, administrative adjudication, rulemaking, specific contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. However, it does not normally include legislation, regulation, broad policymaking, and program development even if such may directly and predictably affect the interest as one of a group or sector.

Where I or a member of my household have a financial interest, I will not participate in any particular matter involving specific parties in which that financial interest is affected, unless I am authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

I have a covered relationship with any person, other than a prospective employer, with whom I have or seek a business, contractual or other financial relationship that involves other than a routine consumer transaction; any person who is a member of my household or a relative with whom I have a close personal relationship; any person for whom my spouse, parent or dependent child is, to my knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; any person for whom I have within the last year served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or any organization, other than a political party, in which I am an active participant.

Where such covered relationships exist, I understand that I may not participate in any particular matter involving specific parties in which the covered relationship is, or represents, a party, unless I am authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

Prior Employment

I was employed by the National Grocer's Association (NGA) from January 24, 2014 to July 7, 2017. NGA is the national trade association representing the retail and wholesale grocers that comprise the independent sector of the food distribution industry. NGA also represents affiliated associations, manufacturers, and service suppliers, as well as other entrepreneurial companies that support NGA's mission and philosophy.

While employed by NGA I served as Senior Director of Government Relations as a registered lobbyist. My NGA duties required me to work with Congress and NGA members to advance the priorities of the independent supermarket industry. I did respond to inquiries from individual NGA members on occasion and in a handful of cases made inquiries on administrative matters with USDA on their behalf, primarily to check on the status of Supplemental Nutrition Assistance Program's (SNAP) applications. I did not advocate for the individual member in these cases but merely checked on the status of the action with USDA. I do not believe these

individual members should be considered my clients for purposes of Executive Order 13770, Ethics Commitments by Executive Branch Appointees (January 28, 2017) because my interaction with the individual members was brief and transitory and I never developed a fiducial relationship with any of these individual members.

I currently have a financial interest stemming from my past employment at NGA. I will continue to participate in the NGA's standard defined contribution plan, a 401k retirement account administered by MassMutual Financial Group (hereinafter NGA401k).

I did not receive a severance package from NGA when my employment with them terminated in July 2017, nor have I received an extraordinary payment from NGA as that term is defined in 5 C.F.R. § 2635.503(b)(1). However, the NGA may make one final contribution of approximately \$2,700 to my NGA401k in March 2018.

The NGA offers its employees a retirement plan that includes an additional matching contribution to be made at the discretion of the NGA board of directors each year. The potential March 2018 contribution to my NGA401k would be made pursuant to this aspect of NGA's established compensation and benefits program. The NGA board of director's decision is based at least in part on whether NGA has sufficient financial resources to make an additional contribution to the NGA401ks of participating NGA employees. The board's decision does not target individual employees but is a single decision that is applicable to all NGA401k participants. My understanding is that this discretionary annual contribution to a participating employee's NGA401k is a function of the employee's prior contributions to their NGA401k, NGA's revenues from member dues paid for the applicable year, the employee's base NGA compensation level, and the number of days the employee worked at NGA during the relevant calendar year.

I worked at NGA long enough in 2017 to be eligible for the anticipated March 2018 contribution to my NGA401k. I have a history of similar contributions from NGA to my NGA401k for 2015 and 2016. I was not planning to enter Federal service at the time the previous years' payments were made. The payment will not be affected by anything I do in the wake of my departure from NGA, nor will any matters I work on as Chief of Staff have a direct and predictable impact on the potential March 2018 contribution to my NGA401k.

I will have a covered relationship with NGA under the provision of 5 C.F.R. § 2635.502(b)(1)(iv) until July 7, 2018. Because of this I will not participate personally and substantially in any particular matter involving specific parties in which the NGA is a party until July 9, 2018, unless I am authorized in accordance with 5 C.F.R. § 2635.502(d).

I understand that as an appointee I must continue to abide by the Ethics Pledge (Exec. Order No. 13770) that I signed on July 10, 2017. I did receive a limited waiver to Paragraph 7 of the Ethics Pledge that authorized me to participate personally and substantially in matters regarding SNAP and The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). However, I understand that my Pledge prohibits me from participating for a period of 2 years after the date of my appointment in any particular matter on which I lobbied, other than

particular matters regarding WIC or SNAP, within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.

I understand that I am still bound by my Pledge's other requirements and restrictions in addition to the commitments I have made in this ethics agreement, which may overlap. Of particular note is paragraph 6 of the Ethics Pledge. I agreed not to participate in any particular matter involving specific parties that are directly and substantially related to my former employer or former clients, including regulations and contracts for a period of 2 years from the date of my appointment. Although "Particular matter involving specific parties" as used in the Pledge includes the definitions of the term as set forth in 5 C.F.R. § 2635.502(b) and 5 C.F.R. § 2641.201(h), the term also includes any meeting or other communication relating to the performance of my 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.

I will not communicate with NGA or its representatives on a particular matter, unless the communication is: (1) about a particular matter of general applicability and (2) is made at a meeting or other event at which participation is open to all interested parties. This communication ban will remain in place till July 10, 2019.

Investments

When I was appointed Chief of Staff I had financial interests in the securities listed in the table below.

Description of Property	Quantity or Percentage Owned	Owner(s) of the property	Relationship to the employee
Coca Cola (KO)	375 shares (value as of 9/22/2017- \$17,242.50)	Margaret Lyons	Self
Dr. Pepper Snapple Group (DPS)	135 shares (value as of 9/22/2017- \$12,082.50)	Margaret Lyons	Self
National Beverage Corp (FIZZ)	202 shares (value as of 9/22/2017- \$24,280.40)	Margaret Lyons	Self

Each of these companies are sweetened beverage manufacturers and marketers. I understand that my ownership of stock in KO, DPS, and FIZZ gave me a financial interest in these companies for purposes of 18 U.S.C. § 208.

I have reason to believe that I may be called upon to participate personally and substantially in particular matters that could have a direct and predictable impact upon the sweetened beverage industry as my duties and responsibilities at times may focus on NRCS and the Supplemental Nutrition Assistance Program's (SNAP) policy regarding the use of SNAP benefits by program

participants to procure sweetened beverages such as soft drinks, fruit juices, energy drinks and sweetened teas. My involvement in these policy discussions would probably be personal and substantial and the resulting policy, or lack thereof, could have a direct and predictable impact on members of the sweetened beverage industry and the value of the stock I own in sweetened beverage companies.

I understand that under 5 C.F.R. § 2640.202(a), a regulatory exemption to 18 U.S.C. § 208, I may participate in a particular matter involving specific parties in which I have a disqualifying financial interest arising from my ownership of securities issued by one or more entities who are parties to the matter, if the aggregate market value of all such securities issued by entities who are party to the matter does not exceed \$15,000 and the securities are publicly traded.

I understand that under 5 C.F.R. § 2640.202(b), a regulatory exemption to 18 U.S.C. § 208, I may participate in a particular matter involving specific parties in which I have a disqualifying financial interest arising from my ownership of securities issued by one or more entities who are not parties to the matter but are affected by it, if the aggregate market value of all such securities issued by entities who are affected by the matter does not exceed \$25,000 and the securities are publicly traded.

I understand that under 5 C.F.R. § 2640.202(c), a regulatory exemption to 18 U.S.C. § 208, I may participate in any particular matter of general applicability in which the disqualifying financial interest arises from my ownership of securities issued by one or more entities affected by the matter, if the securities are publicly traded where the market value of any one such entity does not exceed \$25,000; and the combined fair market value in all such entities does not exceed \$50,000.

I understand that in the event I must divest myself of securities to avoid violating 18 U.S.C. § 208, I may be eligible to request a Certificate of Divestiture that may allow me to defer capital gain taxes arising from the sale of the divested assets. 5 C.F.R. § 2634.1006.

I elected to eliminate my financial interests in the Coca Cola (KO), the Dr. Pepper Snapple Group(DPS), and the National Beverage Corporation (FIZZ). I sold my stock in DPS and part of my holdings of FIZZ and KO on September 25, 2017. I sold my remaining holdings in KO and FIZZ on October 19, 2017. I no longer own stock in KO, DPS, FIZZ, or any other company involved in the production or marketing of sweetened beverages. I do not intend to acquire securities in any other company or sector mutual fund that would cause me to have a financial interest in the sweetened beverage industry. I will inform any financial advisor or manager who I allow to engage in securities transactions on my behalf to avoid acquiring securities in any other company that is involved in the sweetened beverage industry, or any sector mutual funds that might cause me to have a financial interest in the sweetened beverage industry.

Conclusion

I believe that the above actions will serve to keep me free from any actual or apparent violation of conflicts laws and regulations. This agreement is effective immediately. If I have any

questions regarding the scope or application of this agreement, I will consult the USDA Office of Ethics.

I have been advised that this ethics agreement, as well as my OGE Form 278E, Public Financial Disclosure Report, will be available to the public upon request, consistent with ethics agreements and OGE Form 278Es of other employees who file public financial disclosure reports.

Margaret P. Lyons