



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

**CONFLICT OF INTEREST WAIVER FOR MINA HSIANG –
MFN PARTNERS MANAGEMENT, LP**

This memorandum provides a temporary conflict of interest waiver for Mina Hsiang concerning her financial interests in the MFN Partners Management, LP hedge fund (“MFN Partners”) and its underlying holdings, some of which may give rise to a financial conflict of interest with Mina Hsiang’s proposed duties as Administrator of the U.S. Digital Service (USDS). This waiver will allow Mina Hsiang to participate as a Government official in matters of general applicability that directly and predictably affect the holdings of the underlying assets of MFN Partners while she divests her interests in MFN Partners over the next three and a half years. As the Designated Agency Ethics Official (DAEO) of the Office of Management and Budget (OMB), I have been authorized to issue conflict of interest waiver determinations with respect to the financial interests of Mina Hsiang.

Background

Mina Hsiang is being considered for the position of Administrator of the USDS, which is a non-career SES position. In her role as Administrator of USDS, Ms. Hsiang would advise OMB Senior Leadership and White House (WH) Officials, up to and including the OMB Director, the OMB Deputy Director for Management, and the WH Deputy Chief of Staff, about technical approaches and the strategic delivery of government services through technology and design. The Administrator serves as the technical authority and creator in the development and delivery of the full spectrum of Federal digital services, and is responsible for the creation, transmission, use, transformation, interoperability, storage, sharing, and safeguarding of government services through technology.

Given the range of responsibilities and programs of USDS, Mina Hsiang’s decisions and other official actions as Administrator may have a direct and predictable effect on the financial interests of the largest cloud providers such as Alphabet, Inc./Google LLC (“Google”), Amazon.com, Inc./Amazon Web Services (“Amazon”), Microsoft Corporation (“Microsoft”), International Business Machines Corporation (“IBM”), and Oracle Corporation (“Oracle”), because these companies’ cloud platforms, products, and services are involved with nearly everything the federal government will accomplish through technology and design over the next several years. For example, Ms. Hsiang may advise federal agencies to “move . . . to the cloud,” which could affect at least one of the cloud providers mentioned above. However, the Administrator’s advice to federal agencies is not likely to have a direct and predictable effect on companies that provide specific technologies that are used by cloud providers or provide specific cloud computing services, because federal agencies, not USDS, are responsible for the actual selection and

procurement of cloud and other design or technology products and services.¹ Only the applicable federal agencies are legally authorized to obtain these products and services.

Waiver Request and Analysis

A Federal conflict of interest statute, 18 U.S.C. § 208, generally prohibits a Government employee from participating in matters in which that employee has a financial interest. This statute, however, permits an employee to participate in such a matter upon a prior written determination by the employee's appointing authority that "the [financial] interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee." 18 U.S.C. § 208(b)(1).

Mina Hsiang requests a temporary waiver for MFN Partners, a hedge fund that actively trades and is diversely invested in several publicly-traded companies. Ms. Hsiang's ownership of MFN Partners represents less than 9 percent of her total investment portfolio and is valued at approximately \$950,000. None of the holdings reported on the fund's latest 13F filing with the SEC would pose a conflict with Ms. Hsiang's duties as Administrator. Furthermore, even if MFN Partners acquires holdings that would be affected by an official action taken by Ms. Hsiang, any such action she may take would be likely to affect only a small number of the holdings of MFN Partners, and therefore, a very small percentage of her total investment portfolio. For example, when Ms. Hsiang prepared a draft 2021 OGE 278 New Entrant Public Financial Disclosure Report, MFN Partners' interest in Google – which it has since divested – was approximately 1.7 percent of its portfolio, which represented only 0.14 percent of Ms. Hsiang's total investment portfolio.

Due to the uncertainty of MFN Partners' future holdings, Mina Hsiang has agreed to divest her interest in MFN Partners, but is not able to completely divest of this asset until December 31, 2024, due to MFN Partners' investment withdrawal policy. MFN Partners informed Ms. Hsiang that if she submitted a complete withdrawal request at least 90 days before December 31, 2021, she would be able to withdraw twenty percent of her investment on December 31, 2022; twenty-five percent of the remaining investment on December 31, 2023; and, the rest of the remaining investment on December 31, 2024.

Temporary Waiver and Recusal

To allow Mina Hsiang to serve as Administrator of USDS, the Office of Management and Budget is granting her a temporary waiver as she divests of her interest in MFN Partners over the next three and a half years. Per OGE guidance, a temporary waiver may be considered when an employee has agreed to divest, but divestiture cannot be completed immediately.² Due to MFN Partners' diversified portfolio and the small fraction of Ms. Hsiang's interest in any one holding of MFN Partners as compared to her entire investment portfolio – which will decrease to an even smaller fraction as Ms. Hsiang divests a substantial percentage of her investment in MFN Partners

¹ The Administrator is not a procurement official or contracting officer for the federal government or USDS. While the Administrator may have a role in awarding contracts for services specifically provided to USDS, other USDS employees may be delegated that role.

² Office of Government Ethics DAEOgram DO-07-006 (Feb. 23, 2007).

each year – OMB believes that Ms. Hsiang meets the standard under 18 U.S.C. § 208(b)(1) for a temporary waiver with respect to Ms. Hsiang’s interest in MFN Partners until she can divest of her entire interest. Ms. Hsiang will be permitted to work on particular matters of general applicability (i.e. policy matters) that will have a direct and predictable effect on the underlying assets of MFN Partners. However, the waiver does not cover “particular matters involving specific parties,” which means that Ms. Hsiang must recuse herself from any particular matter in which any of the underlying assets of MFN Partners are specific parties if her proportionate ownership of the underlying asset at issue exceeds the *de minimis* regulatory exemption threshold. See 5 C.F.R. § 2640.202(a). Further, Ms. Hsiang agrees to monitor the underlying assets of MFN Partners, particularly MFN Partners’ filings with the SEC, and inform OMB Ethics if her proportional interest in cloud provider companies (Google, Amazon, Microsoft, IBM, or Oracle) exceeds seven (7) percent of the value of her overall investment portfolio so that this temporary waiver can be reconsidered. Ms. Hsiang also agrees to inform OMB Ethics if MFN Partners invests in a company that may come before the Administrator or USDS as a specific party so that OMB Ethics can assess Ms. Hsiang’s proportionate interest in that company and determine the appropriate remedy. As Ms. Hsiang’s interests in MFN Partners, which is diversely invested, diminish over time, her proportionate interest in any of MFN Partners’ underlying assets will represent an insignificant fraction of her overall investment portfolio.

If any questions arise as to whether her participation in any particular matter is permitted under this waiver, Ms. Hsiang should consult with her supervisor and agency ethics official, as appropriate.

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 and 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.

Dated: August 18, 2021



Samuel R. Bagenstos
General Counsel and
Designated Agency Ethics Official
Office of Management and Budget