

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL (DAEO)

TO:

John N. Ohlweiler, Designated Agency Ethics Official

FROM:

Donald Keene, Resident Legal Officer, USAID/Kenya and East Africa

SUBJECT:

18 U.S.C. § 208(b)(1) Waiver for Mr. Scott Cameron

Issue

Whether to grant an 18 U.S.C. § 208(b)(1) waiver to USAID Foreign Service Officer Mr. Scott Cameron, USAID Deputy Coordinator for the Presidential Trade Africa Initiative, and Director of the USAID/Kenya & East Africa, Office of Regional Economic Integration (REI), so that he may participate in an official capacity as a representative of USAID on the Board of Directors (Board) of TradeMark East Africa (TMEA), a not-for profit Company limited by guarantee and established in 2010 in Nairobi, Kenya supporting the growth of regional and international trade in the East African Community (EAC). Mr. Cameron is replacing USAID Foreign Service Officer, Matthew Rees, who was previously approved to serve on the TMEA board. As the DAEO, you have authority to grant this waiver. No other request has been made regarding this waiver.

Background

Increasing trade with and within the EAC is the primary objective of the Presidential Trade Africa Initiative and its main African counterpart, the EAC. USAID/REI is responsible for implementation of Trade Africa in collaboration with the EAC through a variety of mechanisms which include a five-year, \$35 million Cooperative Agreement with TMEA to advance the regional economic integration of the EAC and providing trade facilitation assistance to ensure increased trade results in tangible gains for East Africans.

TMEA is funded by a range of international donors whose East Africa regional development objectives are aligned with those of TMEA and Trade Africa. TMEA and REI work closely with the EAC, its technical secretariats, EAC Partner State¹ governments, the private sector and civil society organizations.

¹ Kenya, Uganda, Rwanda, Tanzania and Burundi

The TMEA Constitution requires a full Board of at least five and no more than 11 members, constituted from the private sector and donor representatives selected for their technical and administrative expertise. The roles and obligations of TMEA Board members are derived from Kenyan corporate articles of association, general company law, and rules or by-laws prescribed by TMEA. The key role of the Board is to oversee operational delivery and management of TMEA's objectives. The Board is concerned with how TMEA is to achieve its targets in accordance with TMEA's outlined strategy, business plans and budget. The Board further advises the TMEA Chief Executive Officer and the Donor Committee, comprised of all nine donors funding TMEA, on TMEA performance and management. Current TMEA multi-donor funded commitments are upwards of \$540 million, which includes the aforementioned USAID commitment of \$35 million.

Mr. Cameron has been approached by TMEA and the Donor Committee to serve as a Donor Board Member. In the capacity of Board Member, Mr. Cameron will participate to execute all Board duties, and specifically to safeguard USG funds and ensure the transparent and accountable flow of resources. By being a full voting member, USAID will provide advice and counsel to TMEA and help ensure a high quality portfolio and compliance to its policies and procedures. USAID will also have full access to financial and performance information so it can track USAID and all donor investment.

Discussion

The criminal conflict of interest statute, 18 U.S.C. § 208(a), prohibits Executive Branch officers and employees from participating personally and substantially in any particular matter that will have a direct and predictable effect on their financial interests or the financial interests of any spouse; minor child; general partner of a partnership in which they are a general or limited partner; organization in which they serve as an employee, officer, director, partner or trustee; or person or organization with which they are negotiating or have an arrangement concerning prospective employment, unless he or she is granted a waiver is pursuant to 18 U.S.C. § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2).

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.

Because the financial interests of the TMEA Board would be imputed to Mr. Cameron under 18 U.S.C. § 208(a), he would be disqualified from participating in any particular matter affecting the Board's financial interests in the absence of a 18 U.S.C. § 208(b)(1) waiver.

Due to the alignment of TMEA objectives with the development goals of the Trade Africa Initiative, the interests of USAID and the Board are consonant to a significant degree, and

therefore, any potential conflict of interest would not be so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from Mr. Cameron. Additionally, the USG has a substantial interest in overseeing the use of funds, which are programmed and monitored pursuant to the administration of the Board. Moreover, because Mr. Cameron's service on the Board constitutes an official duty of his USAID employment, and because Mr. Cameron's position on the Board is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Mr. Cameron would be affected by his outside position on the Board is greatly diminished. Mr. Cameron will not be compensated for his service on the Board.

The Department of Justice's Office of Legal Counsel ("OLC") has determined that a USG employee may not serve even as an ex-officio board member of a nonfederal organization in the absence of express statutory authority or a waiver of the prohibition outlined in 18 U.S.C. § 208(a). OLC has not issued a formal opinion regarding whether TFCA § 809(c) provides specific statutory authority for placing a federal employee on an administering body required by that statute. The board does not qualify for the exception at 5 C.F.R. 2640.203(m). For the avoidance of doubt, we are asking you to utilize your authority to issue a 18 U.S.C. § 208(b)(1) waiver to permit Mr. Cameron to serve as the USG representative on the Board.

This waiver applies only to the financial interests of the Board that are imputed to Mr. Cameron and will not otherwise allow him to participate in any particular matter that will have a direct and predictable effect on his financial interests or other financial interests imputed to him under 18 U.S.C. § 208.

Please note that USAID has placed the following limitations on Mr. Cameron's actions as a USAID employee, including his service as the USAID representative on the Fund:

- Mr. Cameron will not prepare or present requests from TMEA to obtain federal funds or
 any other form of federal support for the TMEA, except in the case of requesting
 approval of official travel for Mr. Cameron to attend or to speak at a TMEA meeting or
 conference, based on a determination that to do so would be in the best interests of the
 Government;
- Mr. Cameron's participation in fundraising activities for TMEA will be limited to those
 activities that are determined by USAID to be in the best interest of USAID. Just as
 USAID has made the determination that Mr. Cameron's presence on the Board is in the
 Government's interest, so too has USAID made a determination that Mr. Cameron's
 participation in discussions with third parties intended to encourage outside investment
 may be in the Government's interest; and

• Mr. Cameron will not be soliciting funds from USAID on behalf of TMEA, nor will he apply for or help TMEA apply for grants, awards, or other funding from USAID. In his official USAID capacity, Mr. Cameron may be consulted by other USAID officials regarding Assembly operations and activities, and he may opine on funding decisions within USAID in relation to TMEA. However, in his official capacity, he will not make final funding decisions or awards to TMEA.

In order to reduce or eliminate the likelihood that the integrity of Mr. Cameron's role would be questioned by a reasonable person, Mr. Cameron has agreed that he will not (a) personally award any U.S. Government grants to the Board, (b) request U.S. Government funds on the Board's behalf and (c) participate in Board discussions or actions regarding any award of USAID funds to the Board. Mr. Cameron's agreement does not limit, in any fashion, USAID's ability to award funds to TMEA.

Recommendation

That you grant a waiver to permit Mr. Cameron's service as the USG representative on the Board.

Determination

Pursuant to 18 U.S.C. § 208(b)(1), the regulations of the Office of Government Ethics at 5 C.F.R. § 2640.301 and the above analysis; and pursuant to the authority vested in me as DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Mr. Cameron to participate personally and substantially as the USG representative on the TMEA Board. This waiver is based on my determination that the Board's financial interests, which are imputed to Mr. Cameron, are not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USG on the Board.

(b)(6)	
Approved	
Disappyoved:	
Date:	



UNCLASSIFIED

October 17, 2016

FROM:

John N. Ohlweiler

Designated Agency Ethics Official (DAEO)

TO:

Harold Cohen

SUBJECT:

Waiver under 18 U.S.C. § 208(b)(1) and 5 C.F.R. part 2635 for Harold Cohen

Determination:

I have determined that it is appropriate to grant a waiver to the conflict of interest provisions of 18 U.S.C. § 208(b)(1) and 5 C.F.R. 2635 to enable you to continue to provide legal support, directly and through your staff, related to particular matters involving United Nations organizations, including Specialized Agencies, Programs, Funds and other organizations (the UN System), and the International Organization for Migration (IOM),] all of which are public international organizations (PIOs) approved by the U.S. State Department (State) for transfers and details while he pursues employment as an initial step to a transfer pursuant to 5 U.S.C. §§ 3581-3584 and 22 U.S.C. § 2388. As required by Executive Order 12674 and 5 C.F.R. 2640.303, I have consulted with OGE regarding this 208 waiver and will forward a final, signed version of this waiver to OGE upon issuance.

Facts:

You currently serve as the Assistant General Counsel (AGC) for USAID's Bureau of Democracy, Conflict, and Humanitarian Assistance (DCHA) and the Bureau for Food Security (BFS). In this capacity, you provide legal support to senior management and staff of both Bureaus directly. You also oversee the work of other attorneys who provide similar support to Agency staff. Some of these attorneys are extremely junior in terms of this work. In the course of this work, you also interact directly with employees of PIOs. Both DCHA and BFS regularly enter into assistance awards (grants and cooperative agreements) with PIOs including the World Food Program (WFP), the United Nations Children's Fund (UNICEF), the World Health Organization (WHO), the Food and Agriculture Organization of the United Nations (FAO), the UN Secretariat, IOM, and others.

As AGC for DCHA and BFS, you and your staff provide legal support to DCHA and BFS on matters related to assistance awards the Agency makes to PIOs. You and your staff review awards to PIOs to ensure consistency with Agency policy and that funds to be used are available

¹ The State list of PIOs approved for transfers and details can be found on the State Department website: http://iocareers.state.gov/Main/Content/Page/approved-international-organizations.

for the activities to be carried out under the awards. You and your staff additionally work with USAID employees, and as needed, PIO staff, on issues that arise in the course of implementation of awards. You also engage in more general discussions with PIOs about matters such as the Agency's standard provisions for assistance awards.

Currently, one position has become available at WHO for which you are eminently qualified and for which you are considering seeking a transfer. Also at this time, you are interested in contacting other UN organizations and IOM to explore a similar transfer opportunity. ² In order to be considered for a transfer, you must initially apply for employment with the organizations and, when selected, seek the necessary authorizations for the formal "transfer." Having employees serve on a transfer to a PIO is considered extremely advantageous to the Agency and is something that is regularly approved where Agency employees are selected by the PIO.

USAID regularly enters into assistance awards with the UN System, IOM, and other PIOs included on State's approved list of organizations for transfer and detail. This is one of the primary ways that USAID carries out programming overseas, namely, supporting programs of these organizations where doing so coincides with needs identified by USAID and program and policy interests. In particular, USAID makes significant contributions to the UN System, IOM, and other PIOs in the context of natural and man-made disasters. Much of your work focuses on these humanitarian activities. For example, WHO and IOM are both key partners of USAID's humanitarian activities, receiving significant funding from USAID each year for health and other programming.

Legal Analysis:

18 U.S.C. § 208 prohibits an employee from participating personally and substantially, in an official capacity, in any "particular matter" that would have a direct and predictable effect on the employee's financial interests or on the financial interests of a person or organization with whom the employee is negotiating or has an arrangement concerning prospective employment. 5 C.F.R. § 2635 prohibits an employee from working on a particular matter if the employee is "seeking employment" with an organization affected by that matter, even though the employee's job search has not progressed to actual negotiations. An employee may participate in such matters if he or she is granted a waiver pursuant to 18 U.S.C. § 208(b)(1). Procedures for granting a waiver are outlined in 5 C.F.R. 2635.402 and 605.

Under 18 U.S.C. § 208(b)(1), 5 C.F.R. 2640.301(a), and 5 C.F.R. 2635.605(a), an agency may permit an employee to participate in a matter in which he or she has an otherwise disqualifying financial interest, if it is determined that the disqualifying is not so substantial as to be deemed

² Competition for positions with UN and other international organizations is very high. As such, to succeed in obtaining a transfer, it is common for federal employees to apply to many positions with multiple organizations until an application is ultimately successful.

likely to affect the integrity of the employee's services to the Government. Based on a full disclosure of the facts, and for the reasons described below, I have determined that the financial interests subject to this waiver are not so substantial as to be deemed likely to affect the integrity of your services to the government.

First, a number of statutory, regulatory and policy factors suggest that granting a 208(b)(1) waiver for an employee applying for a transfer to a PIO should be evaluated differently than a 208(b)(1) waiver for other employment negotiations as reflected in the unique relationship between the U.S. and various PIOs as well as the U.S. policy of encouraging the transfer of employees to PIOs.

PIOs are organizations composed principally of countries. The U.S. Government is a member of the vast majority of these organizations and sits on their governing bodies, to include the WHO, IOM, and others. These large public organizations generally operate in accordance with formal constitutive documents and rules and regulations approved by the member states.

There is a recognized U.S. Government interest in increasing the presence of well-qualified Federal employees in these PIOs by having explicit statutory authority to transfer Federal employees to certain PIOs. See 5 U.S.C. §§ 3581-3584 and 22 U.S.C. § 2388. More than just creating an authorization to transfer employees, 5 C.F.R. § 352 states that it is the policy of the U.S. Government to "encourage . . . transfers of employees for service with international organizations" and has put in place a wide range of benefits to persuade employees to consider this option. Executive Order 11552 notes that the transfer of employees to PIOs serves to enable the Federal Government to increase and improve its participation in international organizations through transfers (and details) of well-qualified Federal employees. Additionally, the State Department actively supports efforts to increase U.S. citizen employment in these organizations through information on their website, an American Citizen Employment team, and employment of experts on transfers and details.

Second, the interests of USAID and these PIOs are aligned to a significant degree, and therefore, any potential conflict of interest would not be so substantial as to be deemed likely to affect the integrity of the services which USAID expects from you. Additionally, the U.S. Government has a substantial interest in overseeing the use of USAID funds by these PIOs as well as insuring that the PIOs operate in accordance with U.S. legal, regulatory, policy and programmatic requirements. Given the U.S. Government participation in these PIOs as well as our express policy of encouraging employee transfers to them, the conflict of interest risk associated with engaging in particular matters with these organizations is significantly less than those that would be present with respect to for profit entities such as corporations.

³ I assess that Mr. Cohen is appropriately considered "well-qualified" given that he has received the highest possible ratings in all annual evaluations since joining the U.S. Government in 2002, merit promotions, and numerous awards and recognitions.

Third, the specific nature of your work supports a waiver of the conflict of interest provisions of 18 U.S.C. 208. The particular matters in which you are most frequently involved regarding the UN System. IOM, and other PIOs are those involving USAID assistance awards to these organizations. Neither you nor your staff makes decisions about whether to provide funding to a PIO, how much to provide, or which activities to support. Instead, these decisions are made by program staff and political leadership. Your efforts primarily focus on the legal assessment of proposed activities in light of statutory requirements/limitations. Similarly, if issues arise in the course of implementing programs by PIOs, you and your staff identify legally available options but decisions are ultimately made by program decision-makers or Agency Agreement Officers. In light of the limited legal advisory role that you play in interacting with these PIOs, I have determined that the likelihood that you would perform your legal duties in any different capacity after applying for positions with these PIOs is remote and the chance that you would be influenced by this conflict of interest is insubstantial.

Additionally, if you do accept a transfer to one of these PIOs, you must abide by the post-employment restrictions found in 18 U.S.C. 207, unless you first qualify for an exception pursuant to 18 U.S.C. 207(j) or obtain a waiver of these restriction pursuant to 18 U.S.C.§ 207(j)(3) and 5 C.F.R. 2641.301(h).

In sum, I conclude that the facts in this situation establish that authorizing a wavier to allow you to continue to engage personally and substantially in particular matters involving the UN System and IOM while you apply for positions that would enable a transfer to one of these organizations is in the best interest of the Agency and comports with the statutory and regulatory requirements.

John N. Ohlweiler

Designated Agency Ethics Official

Assistant General Counsel,

Ethics and Administration



July 1, 2016

ACTION MEMORANDUM

TO: The Alternate Designated Agency Ethics Official (ADAEO)

FROM: Thomas Moritz, Attorney-Advisor, GC/DCHA-BFS

SUBJECT: 18 U.S.C. § 208 Waiver for Mr. Eric Witte to Serve on the System

Council of the CGIAR System

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. § 208(b)(l) to Mr. Eric Witte, so that he may participate, in an official capacity as a representative of USAID, on the System Council of the CGIAR System. Mr. Witte will be the alternate representative, stepping into the representative role when USAID's primary representative is unable.

Discussion:

The CGIAR System originated as the Consultative Group on International Agricultural Research, established as a global partnership in 1971. Since that time, the United States has been a primary funder and participant in the partnership as it has evolved through various institutional forms. The purpose of the CGIAR System is to advance agri-food science and innovation to enable poor people, especially women, to better nourish their families, and improve productivity and resilience so they can share in economic growth and manage natural resources in the face of climate change and other challenges. To accomplish this, the CGIAR Research Centers conduct coordinated agricultural research, guided by the CGIAR System as a whole, and funded either directly from bilateral donors or through the CGIAR Trust Fund (for which the World Bank is Trustee).

In 2010, the international agricultural research centers affiliated with the CGIAR formed the Consortium of International Agricultural Research Centers, headquartered in France. In 2012, this consortium was established as an international organization pursuant to an international agreement. On July 1, 2016, this organization amended its constitution, renaming itself the CGIAR System Organization (hereinafter "CGIAR"), providing for direct management of the organization by representatives of its constituent research centers, and agreeing to a new CGIAR System Framework which articulates the relationship between the funders of CGIAR research and the CGIAR System Organization. This framework provides for a System Council that, while not a formally incorporated entity, provides strategic guidance and oversight to the CGIAR System Organization.

The CGIAR System Framework provides that the System Council will include up to twenty voting members, up to fifteen of whom are representatives of funders. For the inaugural System Council, funders who contributed a weighted average of more than \$10,000,000 per

year to CGIAR Research for the three year period 2013-2015 are eligible for membership. The United States qualifies for System Council membership by this measurement. The USAID representative will be involved to steer overall policy and research priorities and to safeguard USG funds and ensure the transparent and accountable flow of resources. By being a full voting member, USAID, by acting through its representative, will provide advice and counsel to the CGIAR System Organization, and help ensure a high quality portfolio and compliance to its policies and procedures. USAID will also have full access to financial and performance information so it can track its investment.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that a USG employee refrain from participating personally and substantially in an official capacity in any particular matter than will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee.

The U.S. Department of Justice's Office of Legal Counsel has determined that, in the absence of: 1) specific statutory authority placing a federal employee in an officer or director position in an ex officio capacity, 2) a release of fiduciary obligations by the organization (if permitted by law), or 3) a waiver of the requirements of 18 U.S.C. 208(a), the conflicts statute precludes a federal employee from participating personally and substantially in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the CGIAR System Council. As a member of the System Council, Mr. Witte may incur fiduciary obligations to the CGIAR System Organization that could conflict with his duties as a USG employee. If such fiduciary obligations exist, it is not clear whether the CGIAR System Organization is legally permitted to waive them under French law. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. § 208(b)(l), to permit Mr. Witte to serve as a member of the System Council when needed.

According to the CGIAR System Framework, the functions of the System Council vis-à-vis the CGIAR System Organization include:

- 1) Reviewing and approving the CGIAR Strategy and Results Framework;
- 2) Providing input into the selection and the annual performance review of the Executive Director of the CGIAR System Organization;
- 3) Approving the terms of reference for and appointing leadership of the Independent Evaluation Arrangement (charged with performance evaluation) and the Independent Science and Partnership Council (charged with advising the CGIAR on science and research matters).
- 4) Reviewing arrangements for the Internal Audit Function of the CGIAR System Organization to ensure sufficient system-wide assurance consistent with the risk management framework of the CGIAR System;
- 5) Reviewing findings and follow-up emanating from the Internal Audit Function
- 6) Identifying and approving those CGIAR Policies that are strategic, system-wide policies that are critical to maintaining the reputation of the CGIAR System;
- Reviewing annually work programs and financing plans for CGIAR Research and provide strategic guidance to the System Management Board on CGIAR Research;
- 8) Approving allocation of Unrestricted Funding from the CGIAR Trust Fund for CGIAR Research;
- 9) Approving annual work programs and budgets;
- 10) Approving strategic action to ensure results and continued relevancy of

- agricultural research for development;
- 11) Reviewing information on corrective actions taken by the System Management Board under funding agreements with Centers and the risk management framework.

The System Council is expected to meet at least twice a year to carry out its functions.

If approved, Mr. Witte's imputed financial interest in the CGIAR arising solely as a result of his assignment as the USAID representative to CGIAR will be waived. This waiver does not, however, permit him to participate in an official capacity in any particular matter that will, to his knowledge, directly and predictably affect any other financial interest or relationship.

Please note that USAID has placed the following limitations on Mr. Witte's actions as a USAID employee, including his service as the USAID representative on CGIAR system council:

- Mr. Witte will not prepare or present requests from CGIAR to obtain federal
 funds or any other form of federal support for CGIAR, except in the case of
 requesting approval of his own official travel to attend or to speak at an CGIAR
 meeting or conference, based on a determination that to do so would be in the best
 interests of the Government;
- Mr. Witte will not be soliciting funds from USAID on behalf of the CGIAR, nor will he
 apply for or help the CGIAR apply for grants, awards, or other funding from USAID.
 In his official USAID capacity, Mr. Witte may be consulted by other USAID officials
 regarding CGIAR operations and activities, and he may opine on funding decisions
 within USAID in relation to the CGIAR. However, in his official capacity, he will not
 make final funding decisions or awards to the CGIAR; and
- Mr. Witte's participation in fundraising activities for the CGIAR will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Mr. Witte's presence on the CGIAR is in the Government's interest, so too has USAID made a determination that Mr. Witte's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest.

A waiver under 18 U.S.C. § 208(b)(1) is justified for the following reasons: first, because Mr. Witte would serve on the System Council as part of his official duties when he is needed to serve in that capacity, there is a greatly diminished risk that the integrity of the services that the USG expects from him would be affected. Mr. Witte's position on the System Council will be supervised and directed by BFS. Moreover, BFS believes that, to a significant degree, the interests of the USG and the interests of the System Council are consistent, i.e., that the CGJAR System Organization effectively and efficiently serve its purpose. Further, BFS expects that the interests of the USG and the interests of the CGJAR System can be mutually advanced by the performance of Mr. Witte's official duties by being a member of the System Council when he is needed to serve in that capacity. Finally, Mr. Witte will not receive any compensation from the CGJAR System Organization in connection with his service as a

member of the System Council.

In conclusion, because Mr. Witte's service on CGIAR constitutes an official duty of his service to USAID, and because his position at USAID is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from him would be compromised by this outside position is greatly diminished.

Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. § 208(b)(1) to permit Mr. Witte's service as a member of the System Council of the CGIAR when he is needed to serve in that capacity.

Determination:

Pursuant to 18 U.S.C. § 208(b)(1) and the regulations of the Office of Government Ethics at 5 CFR Part 2640, Subpart D, and pursuant to the authority vested in me as the Agency's ADAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Mr. Witte to participate, in an official capacity, as a member of the System Council of the CGIAR System when he is needed to serve in that capacity. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Witte on the System Council is not so substantial as to be deemed likely to affect the integrity of the services that the USG may expect from him. Further, Mr. Witte will help to safeguard the interests of the USG by representing the USG on the System Council.

(b)(6)	
Approved:	
Disapproved:	
Date: 7/7/16	

Cc: Mr. Eric Witte



UNCLASSIFIED

July 27, 2016

ACTION MEMORANDUM

TO: John N. Ohlweiler, Designated Agency Ethics Official (DAEO)

FROM: Siham Nurhussein, Attorney-Advisor, GC/DCHA-BFS

SUBJECT: 18 U.S.C. § 208(b)(1) Waiver for John Gattorn

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. § 208(b)(1) to John Gattorn, USAID/Office of Transition Initiatives' (OTI) acting Deputy Country Representative for Burma, so that he may participate in an official capacity as USAID's alternate representative on the Fund Board of the Joint Peace Fund (JPF). Section 208(b)(1) waivers were previously issued to two other USAID/OTI employees, Leslie Maccracken and Jessica Davey, to participate on the JPF Fund Board as USAID's representative and alternate representative, respectively. Because those employees have since left the USAID/OTI Burma program, and will therefore need to be replaced on the Fund Board, a waiver is now being sought for Mr. Gattorn.

Discussion:

The Joint Peace Fund (JPF) is a multi-donor trust fund administered by the United Nations Office for Project Services (UNOPS, as the Fund Manager) and the Nordic Institutional Support Foundation (NIS as the Technical Secretariat) supported by several donors working to support the peace process in Burma.

The JPF was established in December 2015 under the terms of a Joint Collaboration Arrangement, a non-binding understanding signed by a consortium of donors and UNOPS. With an initial obligation of \$1 million, USAID is a founding donor and will likely contribute \$3 million over three years. The JPF Fund Board provides strategic leadership for the fund and oversight of UNOPS, as the Trustee and Contract Manager. As a founding donor with prerequisite \$1 million contribution, USAID has a seat on the Fund Board renewable annually subject to continued minimum contributions. Mr. Gattorn has been nominated by the USAID/OTI Office Director to serve as USAID's alternate representative.

The Joint Collaboration Arrangement set out roles and responsibilities for the Fund Board in four general areas: strategic leadership, oversight of the fund manager, dialogue and communication and resource mobilization. Specifically, the Fund Board is tasked with, among others, the following responsibilities: (1) Receive and review funding proposals that have been assessed by the Technical Secretariat; (2) Make a decision on funding allocations to project proposals; (3) On confirmation from the Trustee that the funds are available,

¹ Mr. Gattorn will assume this role as of August 1, 2016.

direct the Trustee to develop a contract with the recipient entity and then disburse the funds to the entity; and (4) Provide oversight for the delivery of the Fund's programs, and for the periodic review, financial audit and the monitoring and evaluation of those programs.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that a U.S. Government (USG) employee refrain from participating personally and substantially in an official capacity in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee.

The U.S. Department of Justice's Office of Legal Counsel has determined that in the absence of: (1) specific statutory authority placing a federal employee in an officer or director position in an *ex officio* capacity; (2) a release of fiduciary obligations by the organization, if permitted by law; (3) satisfaction of an exception as outlined in subsection 208(b); or (4) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the Fund Board of the Joint Peace Fund. As a member of the Fund Board, Mr. Gattorn may incur fiduciary obligations to JPF that could conflict with his duties as a USG employee. If such fiduciary obligations exist, it is not clear whether JPF is legally permitted to waive them under local law. Because the financial interests of JPF will be imputed to him under 18 U.S.C. § 208(b)(1), Mr. Gattorn would be disqualified from participating in any particular matters affecting JPF's financial interests in the absence of a 208(b)(1) waiver. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. § 208(b)(1), to permit Mr. Gattorn to serve as a member of the JPF Fund Board.

If approved, Mr. Gattorn's imputed financial interests in the JPF arising solely as a result of his assignment as a USAID alternate representative to the Fund Board of JPF will be waived. This waiver does not, however, permit Mr. Gattorn to participate in an official capacity in any particular matter that will, to his knowledge, directly and predictably affect any other financial interest or relationship.

As the USAID/OTI acting Deputy Country Representative for Burma, Mr. Gattorn will have management responsibility for USAID's peace support activities. The USG has substantial interest in overseeing the use of funds by JPF and it is critical that a USAID representative be included in the membership of the Fund Board for that oversight function. The interests of the USG and JPF are aligned in their objectives to support sustainable, durable resolution to Burma's longstanding armed conflicts. Mr. Gattorn will not receive any compensation from JPF in connection with his service as a member of the Fund Board.

Please note that USAID has placed the following limitations on Mr. Gattorn's actions as a USAID employee, including his service as USAID's alternate representative on the JPF Fund Board:

a. Mr. Gattorn will not prepare or present requests from JPF to obtain federal funds or any other form of federal support for JPF, except in the case of requesting approval

of official travel to attend or to speak at a JPF meeting or conference, based on a determination that to do so would be in the best interest of the Government;

- b. Mr. Gattorn's participation in fundraising activities for JPF will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Mr. Gattorn's presence on the JPF Fund Board is in the Government's interest, so too has USAID made a determination that Mr. Gattorn's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Mr. Gattorn will not be soliciting funds from USG entities on behalf of the Board, nor will he apply for or help JPF apply for grants, awards, or other funding from USG entities. In his official USAID capacity, Mr. Gattorn may be consulted by other USAID officials regarding JPF operations and activities, and may opine on funding decisions within USAID in relation to JPF. However, in his official capacity, Mr. Gattorn will not make final funding decisions or awards to JPF.

In conclusion, because Mr. Gattorn's service on the Fund Board constitutes an official duty of his service to USAID/OTI, and because his position at USAID/OTI in Burma is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Mr. Gattorn would be compromised by this outside position is greatly diminished.

Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. § 208(b)(1) to permit Mr. Gattorn to serve as USAID's alternate representative on the Fund Board of JPF.

Determination:

Pursuant to 18 U.S.C. § 208(b)(1) and the regulations of the Office of Government Ethics at 5 CFR Part 2640, Subpart C, and pursuant to the authority vested in me as the Agency's DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize John Gattorn to participate in an official capacity as USAID's alternate representative on the Fund Board of JPF. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Gattorn on the Fund Board is not so substantial as to be likely to affect the integrity of the services that the USG may expect from him. Further, Mr. Gattorn will help to safeguard the interests of the USG by representing USAID on the Fund Board.

(b)(6)	
Approved	
Disapproved:	-
Date:	

cc: John Gattorn



UNCLASSIFIED

July 27, 2016

ACTION MEMORANDUM

TO: John N. Ohlweiler, Designated Agency Ethics Official (DAEO)

FROM: Siham Nurhussein, Attorney-Advisor, GC/DCHA-BFS

SUBJECT: 18 U.S.C. § 208(b)(1) Waiver for Robert Maroni

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. § 208(b)(1) to Robert Maroni, USAID/Office of Transition Initiatives' (OTI) Country Representative for Burma, so that he may participate in an official capacity as a representative of USAID on the Fund Board of the Joint Peace Fund (JPF). Section 208(b)(1) waivers were previously issued to two other USAID/OTI employees, Leslie Maccracken and Jessica Davey, to participate on the JPF Fund Board as USAID's representative and alternate representative, respectively. Because those employees have since left the USAID/OTI Burma program, and will therefore need to be replaced on the Fund Board, a waiver is now being sought for Mr. Maroni.

Discussion:

The Joint Peace Fund (JPF) is a multi-donor trust fund administered by the United Nations Office for Project Services (UNOPS, as the Fund Manager) and the Nordic Institutional Support Foundation (NIS as the Technical Secretariat) supported by several donors working to support the peace process in Burma.

The JPF was established in December 2015 under the terms of a Joint Collaboration Arrangement, a non-binding understanding signed by a consortium of donors and UNOPS. With an initial obligation of \$1 million, USAID is a founding donor and will likely contribute \$3 million over three years. The JPF Fund Board provides strategic leadership for the fund and oversight of UNOPS, as the Trustee and Contract Manager. As a founding donor with prerequisite \$1 million contribution, USAID has a seat on the Fund Board renewable annually subject to continued minimum contributions. Mr. Maroni has been nominated by the USAID/OTI Office Director to serve as USAID's representatives.

The Joint Collaboration Arrangement set out roles and responsibilities for the Fund Board in four general areas: strategic leadership, oversight of the fund manager, dialogue and communication and resource mobilization. Specifically, the Fund Board is tasked with, among others, the following responsibilities: (1) Receive and review funding proposals that have been assessed by the Technical Secretariat; (2) Make a decision on funding allocations to project proposals; (3) On confirmation from the Trustee that the funds are available, direct the Trustee to develop a contract with the recipient entity and then disburse the funds

to the entity; (4) Provide oversight for the delivery of the Fund's programs, and for the periodic review, financial audit and the monitoring and evaluation of those programs.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that a U.S. Government (USG) employee refrain from participating personally and substantially in an official capacity in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee.

The U.S. Department of Justice's Office of Legal Counsel has determined that in the absence of: (1) specific statutory authority placing a federal employee in an officer or director position in an *ex officio* capacity; (2) a release of fiduciary obligations by the organization (if permitted by law); (3) satisfaction of an exception as outlined in subsection 208(b); or (4) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the Fund Board of the Joint Peace Fund. As a member of the Fund Board, Mr. Maroni may incur fiduciary obligations to JPF that could conflict with his duties as a USG employee. If such fiduciary obligations exist, it is not clear whether JPF is legally permitted to waive them under local law. Because the financial interests of JPF will be imputed to him under 18 U.S.C. § 208(b)(1), Mr. Maroni would be disqualified from participating in any particular matters affecting JPF's financial interests in the absence of a 208(b)(1) waiver. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. § 208(b)(1), to permit Mr. Maroni to serve as a member of the JPF Fund Board.

If approved, Mr. Maroni's imputed financial interests in the JPF arising solely as a result of his assignment as a USAID representative to the Fund Board of JPF will be waived. This waiver does not, however, permit Mr. Maroni to participate in an official capacity in any particular matter that will, to his knowledge, directly and predictably affect any other financial interest or relationship.

As the USAID/OTI Country Representative for Burma, Mr. Maroni will have management responsibility for USAID's peace support activities. The USG has substantial interest in overseeing the use of funds by JPF and it is critical that a USAID representative be included in the membership of the Fund Board for that oversight function. The interests of the USG and JPF are aligned in their objectives to support sustainable, durable resolution to Burma's longstanding armed conflicts. Mr. Maroni will not receive any compensation from JPF in connection with his service as a member of the Fund Board.

Please note that USAID has placed the following limitations on Mr. Maroni's actions as a USAID employee, including his service as a USAID representative on the JPF Fund Board:

a. Mr. Maroni will not prepare or present requests from JPF to obtain federal funds or any other form of federal support for JPF, except in the case of requesting approval of official travel to attend or to speak at a JPF meeting or conference, based on a determination that to do so would be in the best interest of the Government;

- b. Mr. Maroni's participation in fundraising activities for JPF will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Mr. Maroni's presence on the JPF Fund Board is in the Government's interest, so too has USAID made a determination that Mr. Maroni's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Mr. Maroni will not be soliciting funds from USG entities on behalf of the Board, nor will he apply for or help JPF apply for grants, awards, or other funding from USG entities. In his official USAID capacity, Mr. Maroni may be consulted by other USAID officials regarding JPF operations and activities, and may opine on funding decisions within USAID in relation to JPF. However, in his official capacity, Mr. Maroni will not make final funding decisions or awards to JPF.

In conclusion, because Mr. Maroni's service on the Fund Board constitutes an official duty of his service to USAID/OTI, and because his position at USAID/OTI in Burma is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Mr. Maroni would be compromised by this outside position is greatly diminished.

Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. § 208(b)(1) to permit Mr. Maroni to serve as a representative of USAID on the Fund Board of JPF.

Determination:

Pursuant to 18 U.S.C. § 208(b)(1) and the regulations of the Office of Government Ethics at 5 CFR Part 2640, Subpart C, and pursuant to the authority vested in me as the Agency's DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Robert Maroni to participate in an official capacity as a USAID representative on the Fund Board of JPF. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Maroni on the Fund Board is not so substantial as to be likely to affect the integrity of the services that the USG may expect from him. Further, Mr. Maroni will help to safeguard the interests of the USG by representing USAID on the Fund Board.

	(b)(6)		
Approved:			
Disapprov	ed:		
Date:			

cc: Robert Maroni



UNCLASSIFIED

August 16, 2016

ACTION MEMORANDUM

TO: John N. Ohlweiler, Designated Agency Ethics Official (DAEO)

FROM: Julie Southfield, Resident Legal Officer

SUBJECT: 18 U.S.C. § 208(b)(1) Waiver for Benjamin Zinner

Issue:

This is a request to grant a conflict of interest waiver to Benjamin Zinner, Deputy Health Office Director, USAID/Burma under 18 U.S.C. § 208(b)(1), so that he may participate in an official capacity as an alternate representative of USAID on the Fund Board of the Three Millennium Development Goal Fund for Myanmar (3MDG). Mr. Zinner will attend meetings of the Fund Board when the regular USAID representative is unable to attend.

Discussion:

3MDG is a multi-donor trust fund administered by the United Nations Office for Project Services (UNOPS) as the Fund Manager. 3MDG currently has seven donors working to support the provisions of health services in Burma and contribute towards the country's efforts to achieve the three health-related Millennium Development Goals. These goals include reducing child mortality, improving maternal health and combating HIV, tuberculosis, and malaria. 3MDG partners with the Burmese Ministry of Health to contribute towards the development of a more effective and responsive health system. 3MDG was established in June 2012 under the terms of a "Joint Collaboration Arrangement between the Donors to the Three Millennium Development Goals Fund for Myanmar 2012-2016" (Joint Collaboration Arrangement), a non-binding understanding signed by a consortium of donors who desired to cooperate on efforts to improve the health of the people of Burma. USAID began contributing to 3MDG in 2013. USAID contributions to date total \$6.7 million as of FY15, and no further funding is anticipated as the award is now fully-funded. The 3MDG Fund Board provides strategic leadership for the fund and oversight of UNOPS as the Fund Manager. By virtue of its contribution, USAID has a seat as an Executive Member of the Fund Board. Mr. Zinner was nominated by the Mission Director to serve as USAID's alternate representative on the 3MDG Fund Board.

The Joint Collaboration Arrangement sets out roles and responsibilities for the Fund Board in four general areas: strategic leadership, oversight of the fund manager, dialogue and communication, and resource mobilization. Specifically the Fund Board is tasked with, among others, the following responsibilities:

- Appoint and oversee the Fund Manager;
- Support 3MDG Fund replenishments;

- Make funding decisions for the 3MDG Fund;
- Receive advice and recommendations for the Senior Consultation Group and wider implementing partners forum;
- · Review and approve operating policies developed by the Fund Manager;
- Receive analysis of national strategies and operational plans to inform decision making;
- Dialogue with Burmese Ministry of Health, national coordination structures including the Country Coordinating Mechanism and Technical Strategy Groups, and with other key stakeholders;
- Receive and approve annual work plan and budget, annual reports and audit reports and tracking of action points from the Fund Manager;
- Identify any additional output and result areas required;
- Ensure appropriate 'voice and accountability' within governance of the 3MDG Fund;
- Commission and receive independent external evaluation reports from the Evaluation Group;
- · Monitor, and where appropriate, mitigate risks; and
- Conduct official communications for the 3MDG Fund.

The Fund Board of 3MDG expects to meet three-four times per year, but may hold additional meetings as required.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that a U.S. Government (USG) employee refrain from participating personally and substantially in an official capacity in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee.

The U.S. Department of Justice's Office of Legal Counsel has determined that in the absence of: 1) specific statutory authority placing a federal employee in an officer or director position in an *ex officio* capacity, 2) a release of fiduciary obligations by the organization (if permitted by law), or 3) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the Fund Board of 3MDG. As an alternate member of the Fund Board, Mr. Zinner may incur fiduciary obligations to 3MDG that could conflict with his duties as a USG employee. If such fiduciary obligations exist, it is not clear whether 3MDG is legally permitted to waive them under Burmese law. Additionally, 3MDG is not a nonprofit organization for purposes of the exemption at 5 C.F.R. § 2640(m) as it is not subject to the tax laws of any country, including the United States. Because the financial interests of 3MDG will be imputed to him under 18 U.S.C. § 208(b)(1), he would be disqualified from participating in any particular matters affecting 3MDG's financial interests in the absence of a 208(b)(1) waiver. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C.

§ 208(b)(1), to permit Mr. Zinner to serve as an alternate member of the 3MDG Fund Board.

If approved, Mr. Zinner's imputed financial interest in 3MDG arising solely as a result of his assignment as a USAID representative to the Fund Board of 3MDG will be waived. This waiver does not, however, permit him to participate in an official capacity in any particular matter that will, to his knowledge, directly and predictably affect any other financial interest or relationship.

As Deputy Health Office Director at USAID/Burma, Mr. Zinner has management responsibility for the Mission's health portfolio. The USG has substantial interest in overseeing the use of funds by 3MDG and it is critical that a USAID representative be included in the membership of the Fund Board for that oversight function. The interests of the USG and 3MDG are aligned in their objectives to enhance the health outcomes of people in Burma. Mr. Zinner will not receive any compensation from 3MDG in connection with service as a member of the Fund Board.

Please note that USAID has placed the following limitations on Mr. Zinner's actions as a USAID employee, including his service as the USAID representative on the 3MDG Fund Board:

- a. Mr. Zinner will not prepare or present requests from 3MDG to obtain federal funds or any other form of federal support for 3MDG, except in the case of requesting approval of official travel for Mr. Zinner to attend or to speak at a 3MDG meeting or conference, based on a determination that to do so would be in the best interest of the Government;
- b. Mr. Zinner's participating in fundraising activities for 3MDG will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Mr. Zinner's presence on the 3MDG Fund Board is in the Government's interest, so too has USAID made a determination that Mr. Zinner's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Mr. Zinner will not be soliciting funds from United States government entities on behalf of the Board, nor will he apply for or help 3MDG apply for grants, awards, or other funding from any United States government entities. In his official USAID capacity, Mr. Zinner may be consulted by other USAID officials regarding 3MDG operations and activities. Additionally, although further funding is not anticipated, should additional funding occur, he may opine on funding decisions within USAID in relation to 3MDG. However, in his official capacity, he will not make final funding decisions or awards to 3MDG.

In conclusion, because Mr. Zinner's service on the Fund Board constitutes an official duty of his service to USAID/Burma, and because his position at USAID/Burma is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Mr. Zinner would be compromised by this outside position is greatly diminished.

Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. § 208(b)(1) to permit Mr. Zinner to serve as an alternate representative of USAID on the Fund Board of 3MDG.

Determination:

Pursuant to 18 U.S.C. § 208(b)(1) and the regulations of the Office of Government Ethics at 5 CFR Part 2640, Subpart C, and pursuant to the authority vested in me as the Agency's DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Benjamin Zinner to participate in an official capacity as an alternate USAID representative on the Fund Board of 3MDG. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Zinner on the Fund Board is not so substantial as to be deemed likely to affect the integrity of the services that the USG may expect from him. Further, Mr. Zinner will help to safeguard the interests of the USG by representing the USAID on the Fund Board.

(b)(6)	
Approved:	dy 22, 2016
Disapproved:	
Date:	

Cc: Benjamin Zinner



UNCLASSIFIED

October 4, 2016

ACTION MEMORANDUM

TO:

John N. Ohlweiler, Designated Agency Ethics Official (DAEO)

FROM:

Julie Southfield, Resident Legal Officer

SUBJECT:

18 U.S.C. § 208(b)(1) Waiver for Karen Cavanaugh

Issue:

This is a request to grant a conflict of interest waiver to Karen Cavanaugh, Health Office Director, USAID/Burma under 18 U.S.C. § 208(b)(1), so that she may participate in an official capacity as the representative of USAID on the Fund Board of the Three Millennium Development Goal Fund for Myanmar (3MDG).

Discussion:

3MDG is a multi-donor trust fund administered by the United Nations Office for Project Services (UNOPS) as the Fund Manager. 3MDG currently has seven donors working to support the provisions of health services in Burma and contribute towards the country's efforts to achieve the three health-related Millennium Development Goals. These goals include reducing child mortality, improving maternal health and combating HIV, tuberculosis, and malaria. 3MDG partners with the Burmese Ministry of Health to contribute towards the development of a more effective and responsive health system. 3MDG was established in June 2012 under the terms of a "Joint Collaboration Arrangement between the Donors to the Three Millennium Development Goals Fund for Myanmar 2012-2016" (Joint Collaboration Arrangement), a non-binding understanding signed by a consortium of donors who desired to cooperate on efforts to improve the health of the people of Burma. USAID began contributing to 3MDG in 2013. USAID contributions to date total \$6.7 million as of FY15, and no further funding is anticipated as the award is now fully-funded. The 3MDG Fund Board provides strategic leadership for the fund and oversight of UNOPS as the Fund Manager. By virtue of its contribution, USAID has a seat as an Executive Member of the Fund Board. Ms. Cavanaugh was nominated by the Mission Director of USAID/Burma to serve as USAID's representative on the 3MDG Fund Board.

The Joint Collaboration Arrangement sets out roles and responsibilities for the Fund Board in four general areas: strategic leadership, oversight of the fund manager, dialogue and communication, and resource mobilization. Specifically the Fund Board is tasked with, among others, the following responsibilities:

- Appoint and oversee the Fund Manager;
- Support 3MDG Fund replenishments;
- Make funding decisions for the 3MDG Fund;

- Receive advice and recommendations for the Senior Consultation Group and wider implementing partners forum;
- Review and approve operating policies developed by the Fund Manager;
- Receive analysis of national strategies and operational plans to inform decision making;
- Dialogue with Burmese Ministry of Health, national coordination structures including the Country Coordinating Mechanism and Technical Strategy Groups, and with other key stakeholders;
- Receive and approve annual work plan and budget, annual reports and audit reports and tracking of action points from the Fund Manager;
- Identify any additional output and result areas required;
- Ensure appropriate 'voice and accountability' within governance of the 3MDG Fund;
- Commission and receive independent external evaluation reports from the Evaluation Group;
- Monitor, and where appropriate, mitigate risks; and
- Conduct official communications for the 3MDG Fund.

The Fund Board of 3MDG expects to meet three-four times per year, but may hold additional meetings as required.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that a U.S. Government (USG) employee refrain from participating personally and substantially in an official capacity in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee.

The U.S. Department of Justice's Office of Legal Counsel has determined that in the absence of: 1) specific statutory authority placing a federal employee in an officer or director position in an *ex officio* capacity, 2) a release of fiduciary obligations by the organization (if permitted by law), or 3) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the Fund Board of 3MDG. As a member of the Fund Board, Ms. Cavanaugh may incur fiduciary obligations to 3MDG that could conflict with her duties as a USG employee. If such fiduciary obligations exist, it is not clear whether 3MDG is legally permitted to waive them under Burmese law. Additionally, 3MDG is not a nonprofit organization for purposes of the exemption at 5 C.F.R. § 2640.203(m) as it is not subject to the tax laws of any country, including the United States. Because the financial interests of 3MDG will be imputed to Ms. Cavanaugh under 18 U.S.C. § 208(b)(1), she would be disqualified from participating in any particular matters affecting 3MDG's financial interests in the absence of a 208(b)(1) waiver. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant

to 18 U.S.C. § 208(b)(1), to permit Ms. Cavanaugh to serve as a member of the 3MDG Fund Board.

If approved, Ms. Cavanaugh's imputed financial interest in 3MDG arising solely as a result of her assignment as a USAID representative to the Fund Board of 3MDG will be waived. This waiver does not, however, permit her to participate in an official capacity in any particular matter that will, to her knowledge, directly and predictably affect any other financial interest or relationship.

As Health Office Director at USAID/Burma, Ms. Cavanaugh has management responsibility for the Mission's health portfolio. The USG has substantial interest in overseeing the use of funds by 3MDG and it is critical that a USAID representative be included in the membership of the Fund Board for that oversight function. The interests of the USG and 3MDG are aligned in their objectives to enhance the health outcomes of people in Burma. Ms. Cavanaugh will not receive any compensation from 3MDG in connection with service as a member of the Fund Board.

Please note that USAID has placed the following limitations on Ms. Cavanaugh's actions as a USAID employee, including her service as the USAID representative on the 3MDG Fund Board:

- a. Ms. Cavanaugh will not prepare or present requests from 3MDG to obtain federal funds or any other form of federal support for 3MDG, except in the case of requesting approval of official travel for Ms. Cavanaugh to attend or to speak at a 3MDG meeting or conference, based on a determination that to do so would be in the best interest of the Government;
- b. Ms. Cavanaugh's participating in fundraising activities for 3MDG will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Ms. Cavanaugh's presence on the 3MDG Fund Board is in the Government's interest, so too has USAID made a determination that Ms. Cavanaugh's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Ms. Cavanaugh will not be soliciting funds from United States government entities on behalf of the Board, nor will she apply for or help 3MDG apply for grants, awards, or other funding from any United States government entities. In her official USAID capacity, Ms. Cavanaugh may be consulted by other USAID officials regarding 3MDG operations and activities, and she may opine on funding decisions within USAID in relation to 3MDG. However, in her official capacity, she will not make final funding decisions or awards to 3MDG.

In conclusion, because Ms. Cavanaugh's service on the Fund Board constitutes an official duty of her service to USAID/Burma, and because her position at USAID/Burma is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Ms. Cavanaugh would be compromised by this outside position is greatly diminished.

Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. § 208(b)(1) to permit Ms. Cavanaugh to serve as representative of USAID on the Fund Board of 3MDG.

Determination:

Pursuant to 18 U.S.C. § 208(b)(1) and the regulations of the Office of Government Ethics at 5 CFR Part 2640, Subpart C, and pursuant to the authority vested in me as the Agency's DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Karen Cavanaugh to participate in an official capacity as USAID representative on the Fund Board of 3MDG. This waiver is based on my determination that any disclosed financial interest as well as any participation by Ms. Cavanaugh on the Fund Board is not so substantial as to be deemed likely to affect the integrity of the services that the USG may expect from him. Further, Ms. Cavanaugh will help to safeguard the interests of the USG by representing the USAID on the Fund Board.

(b)(6)
Approved:

Disapproved:

Date: Oct 20, 2016

Cc: Karen Cavanaugh



UNCLASSIFIED

November 21, 2016

ACTION MEMORANDUM

TO:

John N. Ohlweiler, Designated Agency Ethics Official (DAEO)

FROM:

Julie Southfield, Resident Legal Officer

SUBJECT:

18 U.S.C. § 208(b)(1) Waiver for Daniel Swift

Issue:

This is a request to grant a conflict of interest waiver to Daniel Swift, Mission Economist, USAID/Burma under 18 U.S.C. § 208(b)(1), so that he may participate in an official capacity as the alternate representative of USAID on the Fund Board of the Livelihoods and Food Security Trust Fund for Myanmar (LIFT). Mr. Swift will attend meetings of the Fund Board when the regular USAID representative is unable to attend.

Discussion:

LIFT is a multi-donor trust fund administered by the United Nations Office for Project Services (UNOPS, as the Fund Manager) that currently has ten donors working to improve livelihoods, resilience and nutrition of poor people in Myanmar by focusing on interventions that increase income, food availability, utilization and stability of access to food. LIFT was established in 2009 and USAID began contributing in 2012. USAID contributions to date total \$9.9 million and it is anticipated that USAID will contribute up to \$20 million in total over the life of LIFT. The LIFT Fund Board provides strategic leadership for the fund and oversight of UNOPS, as the Fund Manager. By virtue of its contribution, USAID has a seat on the Fund Board.

The revised Terms of Reference for the LIFT Fund Board dated September 2014 set out roles and responsibilities for the body in four general areas: strategic leadership, oversight of the fund manager, dialogue and communication and resource mobilization. Specifically the Fund Board is tasked with, among others, the following responsibilities: (1) developing a strategy that articulates LIFT's vision and approving an implementation plan for that strategy, (2) approving the design of new programs developed by the Fund Manager, (3) ensuring that the Fund Manager has appropriate risk management processes in place, (4) making grant allocation decisions with advice from the Fund Manager, (5) developing a performance management framework for the Fund Manager, (6) reviewing and approving policies for LIFT developed by the Fund Manager, (7) approving the annual work plan and budget of the Fund Manager, (8) commissioning and receiving an independent external evaluation of LIFT's performance and governance, (9) participating in consultative meetings and maintaining dialogue with national authorities, (10) promoting donor coordination and (11) seeking out additional contributions to LIFT. The Fund Board is expected to meet three times per year to carry out its functions.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that a U.S. Government (USG) employee refrain from participating personally and substantially in an official capacity in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee.

The U.S. Department of Justice's Office of Legal Counsel has determined that in the absence of: 1) specific statutory authority placing a federal employee in an officer or director position in an *ex officio* capacity, 2) a release of fiduciary obligations by the organization (if permitted by law), or 3) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the Fund Board of LIFT. As a member of the Fund Board, Mr. Swift may incur fiduciary obligations to LIFT that could conflict with his duties as a USG employee. If such fiduciary obligations exist, it is not clear whether LIFT is legally permitted to waive them under Burmese law. Additionally, LIFT is not a nonprofit organization for purposes of the exemption at 5 C.F.R. § 2640.203(m) as it does not have tax-exempt status under any subsection of section 501 of the Internal Revenue Code (title 26). Because the financial interests of LIFT will be imputed to Mr. Swift under 18 U.S.C. § 208(b)(1), he would be disqualified from participating in any particular matters affecting LIFT's financial interests in the absence of a 208(b)(1) waiver. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. § 208(b)(1), to permit Mr. Swift to serve as an alternate member of the LIFT Fund Board.

If approved, Mr. Swift's imputed financial interest in LIFT arising solely as a result of his assignment as a USAID representative to the Fund Board of LIFT will be waived. This waiver does not, however, permit him to participate in an official capacity in any particular matter that will, to his knowledge, directly and predictably affect any other financial interest or relationship.

As Mission Economist, working in the Economic Growth office, at USAID/Burma, Mr. Swift has management responsibility for programs related to economic growth, agriculture and economic policy reform. The USG has substantial interest in overseeing the use of funds by LIFT and it is critical that a USAID representative be included in the membership of the Fund Board for that oversight function. The interests of the USG and LIFT are aligned in their objectives to enhance economic growth in Burma, specifically through improving the livelihoods of smallholder farmers. Mr. Swift will not receive any compensation from LIFT in connection with service as a member of the Fund Board.

Please note that USAID has placed the following limitations on Mr. Swift's actions as a USAID employee, including his service as the USAID representative on the LIFT Fund Board:

a. Mr. Swift will not prepare or present requests from LIFT to obtain federal funds or any other form of federal support for LIFT, except in the case of requesting approval of official travel for Mr. Swift to attend or to speak at a LIFT meeting or conference, based on a determination that to do so would be in the best interest of the Government:

- b. Mr. Swift's participating in fundraising activities for LIFT will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Mr. Swift's presence on the LIFT Fund Board is in the Government's interest, so too has USAID made a determination that Mr. Swift's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Mr. Swift will not be soliciting funds from United States government entities on behalf of the Board, nor will he apply for or help LIFT apply for grants, awards, or other funding from any United States government entities. In his official USAID capacity, Mr. Swift may be consulted by other USAID officials regarding LIFT operations and activities, and he may opine on funding decisions within USAID in relation to LIFT. However, in his official capacity, he will not make final funding decisions or awards to LIFT.

In conclusion, because Mr. Swift's service on the Fund Board constitutes an official duty of his service to USAID/Burma, and because his position at USAID/Burma is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Mr. Swift would be compromised by this outside position is greatly diminished.

Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. § 208(b)(1) to permit Mr. Swift to serve as representative of USAID on the Fund Board of LIFT.

Determination:

Pursuant to 18 U.S.C. § 208(b)(1) and the regulations of the Office of Government Ethics at 5 CFR Part 2640, Subpart C, and pursuant to the authority vested in me as the Agency's DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Daniel Swift to participate in an official capacity as USAID representative on the Fund Board of LIFT. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Swift on the Fund Board is not so substantial as to be deemed likely to affect the integrity of the services that the USG may expect from him. Further, Mr. Swift will help to safeguard the interests of the USG by representing the USAID on the Fund Board.

(b)(6)		
Approved:		
Disapproved:	-	
Date: /// 28/16		

cc: Daniel Swift



December 12, 2016

ACTION MEMORANDUM

TO: John Ohlweiler, Designated Agency Ethics Official (DAEO)

FROM: Karen d'Aboville, Resident Legal Officer USAID/Dominican

Republic

SUBJECT: 18 U.S.C. § 208 Waiver for Ms. Maura Barry to serve on the

Boards of the Environmental Foundation of Jamaica and the

Oversight Committee of the Forest Conservation

Issue:

Whether to grant an 18 U.S.C. § 208(b)(1) waiver to allow USAID/Jamaica Mission Director and Foreign Service Officer Maura Barry, so that she may participate in her official capacity as the U.S. Government ("USG") primary representative on three oversight committees for organizations established under debt-for-nature swap agreements between the Governments of Jamaica and the United States, as described more fully below. The previous USAID/Jamaica Mission Director, Denise Herbol, received an 18 U.S.C. § 208(b)(1) waiver to participate on these oversight committees. Now that she has left her post, a new waiver is hereby requested so that her successor Ms. Barry must conduct these duties.

The concerned oversight committees are: 1) the Board of the Environmental Foundation of Jamaica (EFJ); 2) the Oversight Committee of the Forest Conservation Fund (FCF); and 3) the Board of Directors of the consolidated entity which will operate under EFJ's name. As the DAEO, you have the authority to grant this waiver.

Discussion:

Bilateral agreements under the Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended (TCFA) and the Enterprise for the Americas Initiative (EAI), Public Law No. 102-49, benefit participating countries and the United States through debt-for-nature swaps or debt reduction programs. The EFJ was established in 1991 under an agreement between the Government of Jamaica (GOJ) and the United States Government (USG) through the Enterprise for the Americas Initiative. The FCF was subsequently created when the GOJ, the USG and The Nature Conservancy (TNC) signed a subsidized debt swap agreement under the Tropical Forest Conservation Act

¹ The EFJ and FCF have recently merged, as explained more fully hereafter, and this waiver also covers participation on the Board of Directors of the consolidated entity.

(TFCA) in 1994. The EFJ and the FCF recently consolidated under the EFJ name, but the original organizations still exist and are in the process of winding up. Each of the three entities requires the establishment of an administering body to monitor the implementation of their activities.

Specifically, both the TFCA and EAI require the establishment of an administering body to monitor the implementation of the debt-for-nature swap. TFCA § 809(c)(2) and EAI § 708(c) both provide that "The administering body shall consist of (i) **one or more individuals appointed by the United States Government**; (ii) one or more individuals appointed by the government of the beneficiary country; and (iii) individuals who represent a broad range of (I) environmental nongovernmental organizations of, or active in, the beneficiary country; (II) local community development nongovernmental organizations of the beneficiary country; and (III) scientific, academic or forestry organizations of the beneficiary country." (Emphasis added).

The FCF is governed by an administering body known as the "Oversight Committee" with seven voting members, three permanent and four temporary. The USG is a permanent member of the Oversight Committee, which makes all decisions relating to the use of the FCF income and manages the FCF Secretariat.

The USG has one seat on the Oversight Committee of the FCF, currently held by the alternate representative member USAID/Jamaica Supervisory Program Officer Ms. Rebecca Robinson, who was directed to serve in her official Government capacity as the USG representative alternate member for this Oversight Committee and has received an 18 U.S.C. § 208(b)(1) waiver to participate on this committee.

The EFJ is governed by a nine-member Board of Directors, including the one required USG-appointed Director and a majority of nongovernmental organization (NGO) representatives. The Directors have broad authorities to manage the business of the EFJ, including approval of payments and loans. The USG-appointed alternative Director is currently USAID/Jamaica Supervisory Program Officer Ms. Rebecca Robinson, who was directed to serve in her official Government capacity as the USG representative alternate member for this Board, and has received an 18 U.S.C. § 208(b)(1) waiver to participate on this Board, as well as the consolidated EFJ Board of Directors, of which the USG is be a permanent member.

The consolidated EFJ Board of Directors is governed by eleven members, including one required GOJ permanent representative, one required USG permanent representative, one required TNC permanent representative, one required GOJ institution representative and seven NGO representatives. Under this new consolidation four out of the seven NGO representatives are assigned to specific institutions or specialties. Specifically, one member must be from an Academic Institution, one member must have a background in children and youth issues, one member must have finance expertise and one must be an attorney. Three other spots are open to any field across NGOs. The children and youth issues representative remains from the original EAI where programs were aimed at helping the environment and children survival in developing countries. It is important to

note that under the unconsolidated EFJ board, the only eligible academic representative is from the University of the West Indies. Now with various academic institutions specializing in Environmental issues, the Academic NGO representative on the consolidate EFJ Board is open all academic institutions in Jamaica.

With respect to the EFJ Board of Directors, the FCF Oversight Committee and the consolidated EFJ Board of Directors, participation in these bodies by a USG representative furthers the USG interests in overseeing the use of funds in the debt-fornature swap and in overseeing that all necessary actions have been taken to effectuate the merger and closeout the original entities. In addition to promoting adaptation to global climate change and environmental conservation (priorities of USAID and the Mission through President Obama's Global Climate Change Initiative), as well as promoting debt relief, the TFCA and EAI are intended to strengthen civil society by creating mechanisms to support small grants to NGOs, such as environmental and community groups. In Jamaica, a TFCA Oversight Committee oversaw management of the TFCA account which was administered by the FCF, while a Board of Directors oversees management of the EAI account originally administered under the EFJ. Now both FCF and EFJ have been consolidated into an entity also managed by a Board of Directors. USG representatives to these bodies provide oversight and ensure that all funds are operated in accordance with the agreements to which the USG and the Government of Jamaica are parties. The EFJ Board of Directors, the FCF Oversight Committee, and the consolidated EFJ Board of Directors' authorities relate exclusively to providing direction related to the administration and implementation of the debt-for-nature swaps.

As committee members, USG representatives have a fiduciary obligation to these bodies. The criminal conflict of interest statute, 18 U.S.C. § 208(a), prohibits Executive Branch officers and employees from participating personally and substantially in any particular mater that will have a direct and predictable effect on their financial interests or the financial interests of any spouse; minor child; general partner of a partnership in which they are a general or limited partner; organization in which they serve as an employee, officer, director, partner or trustee; or person or organization with which they are negotiating or have an arrangement concerning prospective employment, unless he or she is granted a waiver pursuant to 18. U.S.C. § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2).

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 policy making that is narrowly focused on the interests of a discrete and identifiable class of persons.

Because the financial interests of the EFJ Board of Directors, the FCF Oversight Committee, and the consolidated EFJ Board of Directors, to the extent that they exist, would be imputed to Ms. Barry under 18 U.S.C. § 208(a), she would be disqualified from participating in any particular matter affecting the administering bodies' financial interests in the absence of a 18 U.S.C. § 208(b)(1) waiver.

Due to the TFCA, the interests of USAID and EFJ Board of Directors, the FCF Oversight Committee, and the consolidated EFJ Board of Directors are consonant to a significant degree, and therefore, any potential conflict of interest would not be so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from Ms. Barry. Additionally, the USG has a substantial interest in overseeing the use of funds, which are disbursed pursuant to the administration of the debt-for-nature swaps and debt reduction agreements. Moreover, because Ms. Barry's service on each of the three administering bodies constitutes an official duty of her USAID employment, and because Ms. Barry's position on bodies is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the USG expects from Ms. Barry would be affected by her outside position as primary representative to the EFJ Board of Directors, the FCF Oversight Committee and the consolidated EFJ Board of Directors is greatly diminished. Ms. Barry will not be compensated for her service on any of such administering bodies.

The Department of Justice's Office of Legal Counsel (OLC) has determined that a USG employee may not serve even as an ex-officio board member of a nonfederal organization in the absence of express statutory authority or a waiver of the requirements of § 208(a). OLC has not issued a formal opinion regarding whether an oversight committee in the case of debt-for-nature swaps falls within the express statutory authority under the Foreign Assistance Act of 1961 (FAA), as amended, § 809(c)(2). For the avoidance of doubt, we are asking you to exercise 18 U.S.C. § 208(b)(1) waiver authority to permit Ms. Barry to serve as the USG member of the EFJ Board of Directors, the FCF Oversight Committee and the consolidated EFJ Board of Directors. The alternate member, currently the USAID/Jamaica Supervisory Program Officer Rebecca Robinson, serves when the primary member, the USAID/Jamaica Mission Director, is not available.

Because the interests of USAID, the EFJ, the FCF, and the consolidated entity under the EFJ name are consonant to a significant degree, and therefore no conflict of interest is likely to arise in the employee's performance of her official duties while serving on these entities' administering bodies, this waiver request has considered, but determined that no limitations on Ms. Barry's participation on the EFJ, the FCF and the consolidated entity's administering bodies are necessary based upon the TFCA's and EAI's requirements. This waiver applies only to the financial interests of the EFJ, the FCF, and the consolidated entity under the EFJ name that are imputed to Ms. Barry. It will not otherwise allow her to participate in any particular matter that will have a direct and predictable effect on her financial interests or other financial interests imputed to her under 18 U.S.C. § 208.

In order to reduce or eliminate the likelihood that the integrity of Ms. Barry's role would be questioned by a reasonable person, Ms. Barry has agreed that she will not (a) personally award any USG grants to EFJ, FCF, or the consolidated entity under the EFJ name; (b) request USG funds on the behalf of EFJ, FCF, or the consolidated entity under the EFJ name; and (c) participate in EFJ Board/FCF Oversight Committee/consolidated entity Board discussions or actions regarding any award of USAID funds to EFJ, FCF, or the consolidated entity under the EFJ name. Ms. Barry's agreement does not limit, in any fashion, USAID's ability to award or contribute funds under the TFCA and/or EAI, to EFJ, FCF or the consolidated entity under the EFJ name.

Recommendation:

That you grant a waiver to permit Ms. Maura Barry to serve as the primary USG member of the EFJ Board of Directors, the FCF Oversight Committee and the consolidated EFJ Board of Directors as outlined above.

Determination:

Pursuant to 18 U.S.C. § 208(b)(1) and regulations of the Office of Government Ethics (OGE) at 5 C.F.R. Part 2640, Subpart C; and pursuant to the authority vested in me as DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Ms. Barry's appointment as the primary USG member of the EFJ Board of Directors, the FCF Oversight Committee and the consolidated EFJ Board of Directors. This waiver is based on my determination that such administering bodies' financial interests, which are imputed to Ms. Barry are not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from her. Furthermore, she will be safeguarding the interests of the USG by representing the USG on the Boards and Oversight Committee.

(b)(6) Approve:

cc: Maura Barry, Director, USAID/Jamaica

(b)(6)	
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ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

(b)(6)

To:

John Ohlweiler, Designated Agency Ethics Official (DAEO

From:

James A. Noel, Resident Legal Officer USAID/Bangladesh

Date:

November 16, 2017

Subject:

18 U.S.C. § 208(b)(1) Waiver for Todd Andrews, Program Office Director for

USAID/Bangladesh

Action Requested: Grant a 18 U.S.C. § 208(b)(1) waiver to Todd Andrews, Program Office Director to allow his participation as the U.S. Government (USG) representative on the Board of Directors (BOD) of the Bangladesh Tropical Forest Foundation (Foundation), established to monitor the implementation of the Bangladesh debt-for-nature swap under the Tropical Conservation Act of 1998, Public Law No. 105-214, as amended (TFCA). As the DAEO, you have the authority to grant this waiver.

Background:

The TFCA requires the establishment of an administering body to monitor the implementation of the Bangladesh debt-for-nature swap. Section 809(c)(2) states that "The administering body shall consist of (i) one or more individuals appointed by the United States Government; (ii) one or more individuals appointed by the government of the beneficiary country; and (iii) individuals who represent a broad range of (I) environmental nongovernmental organizations of, or active in, the beneficiary country; (II) local community development nongovernmental organizations of the beneficiary country; and (III) scientific, academic, or forestry organizations of the beneficiary country." The USG has one seat on the Foundation's BOD. The Mission desires to direct Mr. Andrews to serve in his official government capacity as the USG representative on the Foundation's BOD.

The TFCA requires the BOD to further the Foundation's objectives in all manners managerial and fiduciary. The BOD (a) prepares annual and supplementary budgets for General Body approval; (b) prepares the annual report and an annual audit; (c) appoint and terminate senior staff, upon the recommendation of the Executive Director; (d) receive funds and resources; (e) manage properties; (f) incur expenditures subject to the provisions of the approved budget; (g) enter into agreements on behalf of the Foundation, including agreements with arbitration clauses; (h) determine the terms governing grants; (i) enter into agreements with

governments and international agencies and other public or private bodies, or individuals, for securing and/or accepting loans or grants; (j) acquire (by purchase, gift, exchange, lease, hire or otherwise) from the Government of Bangladesh (GOB), foreign governments (including the USG), international agencies, other public or private bodies or individuals, immovable or moveable properties, endowments or other funds together with any attendant obligations; (k) appoint boards, committees, sub-committees and panels; consisting of persons who may or may not be Members or employees; (1) impose and recover fees, charges and expenses for services; (m) approve procedures and schedules for the grant-making process, including procedures and schedules relating to public announcements, grant applications, and review monitoring and auditing; (n) maintain and make available for public inspection on the Foundation's organizational documents, by-laws, policies, procedures, grant decision-making processes, minutes, reports and records; and (o) other functions or actions as required by present or future bilateral agreements made between the Governments. See TFCA Section 809(c)(3). The specific responsibilities of the Foundation's BOD are set forth in Article 19 of the Foundation's Articles of Association, dated June 3, 2003, created under the auspices of the Agreement between the USG and GOB Regarding the Reduction of a Certain Debt Related to Agricultural Trade Owed to the Government of the U.S. and its Agencies, date September 12, 2000 (the "Agreement"). These responsibilities are consistent with TFCA Section 809 (c). Participation of a USG Representative furthers the USG interests in overseeing the use of funds in the debt-fornature swap. The USG representative(s) provide oversight and ensure that all funds are operated in accordance with the agreements between the USG and the Government of Bangladesh. Consistent with the Agreement, the Foundation's BOD meets periodically to carry out its functions under the Foundation's mandate.

As the Program Office Director in Bangladesh, Mr. Andrews is responsible for managing strategy, project design, budget formulation, monitoring, evaluation, communications and government relations for the USAID Mission in Bangladesh.

Discussion:

The criminal conflict of interest statute, 18 U.S.C. § 208(a), prohibits Executive Branch officers and employees from participating personally and substantially in any particular matter that will have a direct and predictable effect on their financial interests or the financial interests of any spouse; minor child; general partner of a partnership in which they are a general or limited partner; organization in which they serve as an employee, officer, director, partner or trustee; or person or organization with which they are negotiating or have an arrangement concerning prospective employment, unless he or she is granted 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).

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 extend to legislation or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons.

Because the financial interests of the Foundation will be imputed to Mr. Andrews, he would be disqualified from participating personally and substantially in any particular matter affecting the Foundation's financial interests absent a waiver pursuant to 18 U.S.C. § 208(b)(1).

Due to the TFCA and the Foundation's mandate, the interests of USAID and the Foundation are significantly consonant, and therefore any potential conflict of interest would not be so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from Mr. Andrews. Additionally, the USG has a substantial interest in overseeing the use of funds disbursed pursuant to the administration of the Foundation's BOD in the debt-for-nature swap. Service on the Foundation's BOD will constitute an official duty of the officer's USAID employment. The USAID position on the BOD is unpaid and subject to continuing supervision and direction of USAID. Accordingly, the risk that the integrity of the services expected from Mr. Andrews would be affected by the outside position is greatly diminished.

The Department of Justice's Office of Legal Counsel (OLC) has determined that a USG employee may not serve even as an ex-officio board member of a nonfederal organization in the absence of express statutory authority or a waiver of the prohibition as detailed in 18 U.S.C. § 208(b). OLC has not issued a formal opinion regarding whether TFCA Section 809(c)(2) provides specific authority for placing a federal employee on the administering body of a covered debt-for-nature swap. Accordingly, USAID/Bangladesh requests that you utilize your authority to issue an 18 U.S.C. § 208(b)(1) waiver to permit Mr. Andrews to serve as the USG member of the Foundation's BOD.

In order to reduce or eliminate the likelihood that the integrity of Mr. Andrews services to the Government would be questioned by a reasonable person, Mr. Andrew will be subject to the following limitations: he will not (a) personally award any U.S. Government grants to the Foundation, (b) request U.S. Government funds on the Foundation's behalf, and (c) participate in BOD discussions or actions regarding any award of USAID funds to the Foundation. The Office of Government Ethics has been consulted on this waiver during this deliberative process.

Recommendation: That you grant a waiver to permit Mr. Andrews to serve as the USG member to the Bangladesh Tropical Forest Foundation Board of Directors.

Determination: Pursuant to 18 U.S.C. § 208(b)(1) and regulations of the Office of Government Ethics (OGE) at 5 CFR Part 2640, Subpart C; and pursuant to the authority vested in me as DAEO in USAID ADS 109, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize a waiver granted to Mr. Andrews to participate as the U.S. Government representative on the Bangladesh Tropical Forest Foundation's Board of Directors. This waiver is based on my determination that such administering bodies' financial interests, which are imputed to Mr. Andrews, are not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him. Furthermore, he will be safeguarding the interests of the USG.



<u>UNCLASSIFIED</u>

January 19, 2017

ACTION MEMORANDUM

TO:

Jack Ohlweiler, Designated Agency Ethics Official

(DAEO)

FROM:

Siham Nurhussein, Attorney, GC/DCHA-BFS

SUBJECT:

18 U.S.C. § 208(b)(1) Waiver for Linnea Beatty

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. § 208(b)(1) to Linnea Beatty, USAID/Office of Transition Initiatives' (OTI) Deputy Country Representative for Burma, so that she may participate in an official capacity as USAID's alternate representative on the Fund Board of the Joint Peace Fund (JPF). Conflict of interest waivers are currently in place for two other USAID/OTI employees, John Gattorn and Rob Maroni, to participate on the JPF Fund Board (as USAID's representative and alternate representative, respectively). Because Ms. Beatty will replace Mr. Gattorn as permanent Deputy Country Representative for the USAID/OTI Burma program, and will therefore take his place on the Fund Board, a waiver is now being sought for Ms. Beatty.

Discussion:

The Joint Peace Fund (JPF) is a multi-donor trust fund administered by the United Nations Office for Project Services (UNOPS, as the Fund Manager) and the Nordic Institutional Support Foundation (NIS as the Technical Secretariat) supported by several donors working to support the peace process in Burma.

The JPF was established in December 2015. With an initial obligation of \$1 million, USAID is a founding donor and will likely contribute \$3 million over three years. The JPF Fund Board provides strategic leadership for the fund and oversight of UNOPS, as the Trustee and Contract Manager. As a founding donor with prerequisite \$1 million contribution, USAID has a seat on the Fund

¹ Ms. Beatty will assume this role as of January 24, 2017.

Board renewable annually subject to continued minimum contributions. Ms. Beatty has been nominated by the USAID/OTI Office Director to serve as USAID's representative.

The Joint Collaboration Arrangement set out roles and responsibilities for the body in four general areas: strategic leadership, oversight of the fund manager, dialogue and communication and resource mobilization. Specifically, the Fund Board is tasked with, among others, the following responsibilities: (1) Receive and review funding proposals that have been assessed by the Technical Secretariat; (2) Make a decision on funding allocations to project proposals; (3) On confirmation from the Trustee that the funds are available, direct the Trustee to develop a contract with the recipient entity and then disburse the funds to the entity; (4) Provide oversight for the delivery of the Fund's programs, and for the periodic review, financial audit and the monitoring and evaluation of those programs.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that a U.S. Government (USG) employee refrain from participating personally and substantially in an official capacity in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee.

The U.S. Department of Justice's Office of Legal Counsel has determined that in the absence of: 1) specific statutory authority placing a federal employee in an officer or director position in an *ex officio capacity*; 2) a release of fiduciary obligations by the organization (if permitted by law); 3) satisfaction of an exception as outlined in subsection 208(b); or 4) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the Fund Board of the Joint Peace Fund. As a member of the Fund Board, Ms. Beatty may incur fiduciary obligations to JPF that could conflict with her duties as a USG employee. If such fiduciary obligations exist, it is not clear whether JPF is legally permitted to waive them under local law. Because the financial interests of JPF will be imputed to her under 18 U.S.C. § 208(b)(1), Ms. Beatty would be disqualified from participating in any particular matters affecting JPF's financial interests in the absence of a 208(b)(1) waiver. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. § 208(b)(1), to permit Ms. Beatty to serve as a member of the JPF Fund Board.

If approved, Ms. Beatty's imputed financial interests in the JPF arising solely as a result of her respective assignment as a USAID alternate representative to the Fund Board of JPF will be waived. This waiver does not, however, permit Ms. Beatty to participate in an official capacity in any particular matter that will, to her knowledge, directly and predictably affect any other financial interest or relationship.

As the USAID/OTI Deputy Country Representative for Burma, Ms. Beatty will have management responsibility for USAID's peace support activities. The USG has substantial interest in overseeing the use of funds by JPF and it is critical that a USAID representative be included in the membership of the Fund Board for that oversight function. The interests of the USG and JPF are aligned in their objectives to support sustainable, durable resolution to Burma's longstanding armed conflicts. Ms. Beatty will not receive any compensation from JPF in connection with her service as a member of the Fund Board.

Please note that USAID has placed the following limitations on Ms. Beatty's actions as a USAID employee, including her service as USAID's alternate representative on the JPF Fund Board:

- a. Ms. Beatty will not prepare or present requests from JPF to obtain federal funds or any other form of federal support for JPF, except in the case of requesting approval of official travel to attend or to speak at a JPF meeting or conference, based on a determination that to do so would be in the best interest of the Government;
- b. Ms. Beatty's participation in fundraising activities for JPF will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Ms. Beatty's presence on the JPF Fund Board is in the Government's interest, so too has USAID made a determination that Ms. Beatty's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Ms. Beatty will not be soliciting funds from USAID on behalf of the Board, nor will she apply for or help JPF apply for grants, awards, or other funding from USAID. In her official USAID capacity, Ms. Beatty may be consulted by other USAID officials regarding JPF operations and activities, and either may opine on funding decisions within USAID in relation to JPF. However, in her official capacity, Ms. Beatty will not make final funding decisions or awards to JPF.

In conclusion, because Ms. Beatty's service on the Fund Board constitutes an official duty of her service to USAID/OTI, and because her position at USAID/OTI in Burma is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Ms. Beatty would be compromised by this outside position is greatly diminished.

Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. § 208(b)(1) to permit Ms. Beatty to serve as USAID's alternate representative on the Fund Board of JPF.

Determination:

Pursuant to 18 U.S.C. § 208(b)(1) and the regulations of the Office of Government Ethics at 5 CFR Part 2640, Subpart C, and pursuant to the authority vested in me as the Agency's DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Linnea Beatty to participate in an official capacity as USAID's alternate representative on the Fund Board of JPF. This waiver is based on my determination that any disclosed financial interest as well as any participation by Ms. Beatty on the Fund Board is not so substantial as to be likely to affect the integrity of the services that the USG may expect from her. Further, Ms. Beatty will help to safeguard the interests of the USG by representing USAID on the Fund Board.

(1	0)(6)	
Approved		
Disapprove	d:	
Date:		

Cc: Linnea Beatty



TO:

John N. Ohlweiler, Designated Ethics Official

FROM:

Diane A. Perone, TDY Resident Legal Officer, USAID/Kenya and East Africa

DATE:

July 5, 2017

SUBJECT:

18 U.S.C. § 208(b)(1) Waiver for Mr. Mark Carrato

Issue

Whether to grant an 18 U.S.C. § 208(b)(1) waiver to USAID Foreign Service Officer, Mr. Mark Carrato, a USAID Foreign Service Officer in the USAID Kenya and East Africa, Office of Economic Growth. If a waiver is granted, Mr. Carrato will participate in an official capacity as a representative of USAID and serve as a member of the Board of Directors of B Lab East Africa (EA), a newly formed regional partner of B Lab. As the DAEO, you have authority to grant this waiver. No other request has been made regarding this waiver.

Background

B Lab East Africa Overview

B Lab is a non-profit organization that works to build a global community of Certified B Corporations who meet the highest standards of verified, overall social and environmental performance, public transparency, and legal accountability. B Lab East Africa is a newly formed regional partner of B Lab. B Lab East Africa's Board of Directors will work to create Certified B Corporations in East Africa. The Board will support the work of B Lab EA and provide leadership and strategic governance while day-to-day operations are led by B Lab East Africa's Executive Directors.

Board Member responsibilities include:

- Leadership, governance and oversight
 - Serving as a trusted advisor to the team in developing and implementing B Lab EA's strategic plan
 - Overseeing strategy, budget and operations of B Lab including oversight of management compensation and material business decisions
 - Contributing to an annual performance evaluation of the senior team
 - Assisting the Director in identifying and recruiting other staff and Board Members
 - Representing B Lab EA to stakeholders, acting as an ambassador for the organization by helping to recruit B Corps, MWM partners, forming relevant working groups/advisory committees

 Ensuring B Lab EA's commitment to a diverse board and staff that reflects the community B Lab EA serves

Fundraising

- Assisting in identifying and cultivating potential philanthropic donors/investors to ensure funding of B Lab EA's operations prior to sustainability via licensing income

Board Members will serve a three-year term to be eligible for re-appointment for two additional terms. Member responsibilities include participation in bi-monthly calls, and two annual inperson meetings held in Nairobi in March and October. Service on B Lab EA's Board of Directors is without remuneration, except for administrative support, travel, and accommodation costs in relation to Board Members' duties.

Discussion

The criminal conflict of interest statute, 18 U.S.C. § 208(a), prohibits Executive Branch officers and employees from participating personally and substantially in any particular matter that will have a direct and predictable effect on their financial interests or the financial interests of any spouse; minor child; general partner of a partnership in which they are a general or limited partner; organization in which they serve as an employee, officer, director, partner or trustee; or person or organization with which they are negotiating or have an arrangement concerning prospective employment, unless he or she is granted a waiver is pursuant to 18 U.S.C. § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2).

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.

Because the financial interests of B Lab East Africa would be imputed to Mr. Carrato under 18 U.S.C. § 208(a), he would be disqualified from participating in any particular matter affecting the financial interests of B Lab East Africa in the absence of an 18 U.S.C. § 208(b)(1) waiver. Under 18 U.S.C. § 208(b)(1), an agency may permit an employee to participate in a matter in which he or she has an otherwise disqualifying financial interest, if it is determined that the disqualifying is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

The U.S. Department of Justice's Office of Legal Counsel has determined that, in the absence of: (1) specific statutory authority placing a federal employee in an officer or director position in an ex officio capacity, (2) a release of fiduciary obligations by the organization (if permitted by law), or (3) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from participating personally and substantially in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the B Lab East Africa Board of Directors. As a member of the Board, Mr. Carrato may incur fiduciary obligations to the B Lab East Africa Board of Directors that could conflict with his duties as a USG employee. If such fiduciary obligations exist, then it is not clear whether the B Lab East Africa Board of Directors is legally permitted to waive them under Kenyan law. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. 208 § (b)(l), to permit Mr. Carrato to serve as a member of the Board when needed.

This waiver applies only to the financial interests of B Lab East Africa that are imputed to Mr. Carrato and will not otherwise allow him to participate in any particular matter that will have a direct and predictable effect on his financial interests or other financial interests imputed to him under 18 U.S.C. § 208.

Due to the alignment of B Lab's and B Lab East Africa's objectives with the development goals of USAID/Kenya and East Africa, the interests of USAID and B Lab East Africa are consonant to a significant degree, and therefore any potential conflict of interest would not be so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from Mr. Carrato. Additionally, the USG has previously provided funding to both B Lab and will be providing funding to B Lab East Africa. Consequently, the USG has a substantial interest in overseeing the use of funds, which are programmed and monitored pursuant to the administration of the Board. Moreover, because Mr. Carrato's service among the B Lab East Africa's Board of Director's constitutes an official duty of his USAID employment, and because Mr. Carrato's position as a Member is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the USG expects from Mr. Carrato would be affected by his fulfilling the position as a member of B Lab East Africa's Board of Directors is greatly diminished. Mr. Carrato will not be compensated for his service as a Board Member.

Please note that USAID has placed the following limitations on Mr. Carrato's actions as a USAID employee, including his service as Member of B Lab East Africa's Board of Directors:

- Mr. Carrato will not prepare or present requests from B Lab East Africa to obtain federal funds or any other form of federal support for B Lab East Africa, except in the case of requesting approval of official travel for Mr. Carrato to attend or to speak at a meeting or conference, based on a determination that to do so would be in the best interests of the Government;
- Mr. Carrato's participation in fundraising activities for B Lab East Africa will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Mr.Carrato's participation on the B Lab East Africa's Board of Directors is in the Government's interest, so too has USAID made a determination that Mr. Carrato's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- Mr. Carrato will not be soliciting funds from USAID or another federal agency on behalf of B Lab East Africa nor will he apply for or help B Lab East Africa apply for grants, awards, or other funding from USAID or another federal agency. In his official USAID

capacity, Mr. Carrato may be consulted by other USAID officials regarding B Lab East Africa's operations and activities, and he may opine on funding decisions within USAID in relation to B Lab East Africa. However, in his official capacity, he will not make U.S. Government final funding decisions or awards to B Lab East Africa.

In addition, in order to further reduce or eliminate the likelihood that the integrity of Mr. Carrato's role would be questioned by a reasonable person, Mr. Carrato has agreed that he will not participate in Member discussions or actions regarding any award of USAID funds to B Lab East Africa. Mr. Carrato's agreement does not limit, in any fashion, USAID's ability to award funds to B Lab East Africa.

Recommendation

That you grant a waiver to permit Mr. Carrato to serve as USAID's representative on the B Lab East Africa's Board of Directors.

Determination

Pursuant to 18 U.S.C. § 208(b)(1), the regulations of the Office of Government Ethics at 5 C.F.R. § 2640.301 and the above analysis; and pursuant to the authority vested in me as DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Mr. Carrato to participate personally and substantially as the USAID Board member on B Lab Africa's Board of Directors. This waiver is based on my determination that B Lab East Africa's financial interests, which are imputed to Mr. Carrato, are not as substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USAID Board member. 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.

(b)(6)		
Approved		
Disapproved:		
Date: July	19,2017	



September 12, 2017

TO: John N. Ohlweiler, Designated Agency Ethics Official

FROM: Jeff Meyers, Attorney Advisor, GC/E&E

SUBJECT: 18 U.S.C. § 208(b)(1) Waiver for Mark Kamiya to Serve as an Alternate Representative on the Assembly of Contributors of a Non-USG Entity

Issue:

Whether to grant an 18 U.S.C. § 208(b)(1) waiver for Mark Kamiya, a USAID direct-hire employee and Environmental Officer for the Bureau of Europe and Eurasia, to serve and participate as an alternate U.S. Government ("USG") representative on the Assembly of Contributors (the "Assembly") which supervises implementation of the activities of the National Safety Account (the "NSA") established by the European Bank for Reconstruction and Development (the "EBRD"). As the Designated Agency Ethics Official, you have the authority to grant this waiver.

Discussion:

The Assembly is comprised of donors to the EBRD's Nuclear Safety Account, the primary purpose of which is to finance projects designed to address immediate operational and technical safety improvement measures for nuclear reactors in the countries of Central and Eastern Europe, including republics of the former USSR. While not a formally incorporated entity, the Assembly is specifically described in the Rules of the NSA ("Rules") as the body under which the EBRD shall administer the activities of the NSA. Donor representatives serve on the Assembly without remuneration. Since the USG is a donor to the NSA, it has the right to have one seat on the Assembly.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), prohibits Executive Branch officers and employees from participating personally and substantially in any particular matter that will have a direct and predictable effect on their financial interests or the financial interests of any spouse; minor child; general partner of a partnership in which they are a general or limited partner; organization in which they serve as an employee, officer, director, partner or trustee; or person or organization with which they are negotiating or have an arrangement concerning prospective employment, unless he or she is granted a waiver is pursuant to 18 U.S.C. § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2).

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.

Because the financial interests of the NSA would be imputed to Mr. Kamiya under 18 U.S.C. § 208(a), he would be disqualified from participating in any particular matter affecting the financial interests of the NSA in the absence of an 18 U.S.C. § 208(b)(1) waiver. Under 18 U.S.C. § 208(b)(1), an agency may permit an employee to participate in a matter in which he or she has an otherwise disqualifying financial interest, if it is determined that the disqualifying is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

The U.S. Department of Justice's Office of Legal Counsel has determined that, in the absence of: (1) specific statutory authority placing a federal employee in an officer or director position in an ex officio capacity, (2) a release of fiduciary obligations by the organization (if permitted by law), or (3) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from participating personally and substantially in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the NSA Board. As a member of the Board, Mr. Kamiya may incur fiduciary obligations to the Assembly that could conflict with his duties as a USG employee. If such fiduciary obligations exist, then it is not clear whether the NSA is legally permitted to waive them under local law. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. 208 § (b)(l), to permit Mr. Kamiya to serve as a member of the Assembly when needed.

The Assembly is required by the Rules to have a regular annual meeting at which the financial statements for the NSA's previous fiscal year are submitted for approval. Additional duties that the Rules impose on the Assembly include the following: monitoring the payment of contributions to the NSA; approving the annual budget and financial statements of the NSA; approving guidelines for the management of the liquid assets of the NSA; monitoring disbursements of grants by the EBRD; and providing guidance to the EBRD as NSA Manager in carrying out its duties to administer the NSA. However, the USG, through USAID, has made previous financial contributions to the NSA and in the future will likely provide an additional \$29 million.

This waiver applies only to the financial interests of NSA that are imputed to Mr. Burns and will not otherwise allow him to participate in any particular matter that will have a direct and predictable effect on his financial interests or other financial interests imputed to him under 18 U.S.C. § 208.

Due to the alignment of NSA's objectives with the development goals of USAID, the interests of USAID and NSA are consonant to a significant degree, and therefore any potential conflict of interest would not be so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from Mr. Burns. Additionally, the USG has previously provided funding to NSA and will be providing funding to NSA in the future. Consequently, the USG has a substantial interest in overseeing the use of funds, which are programmed and monitored

pursuant to the administration of the Board. Moreover, because Mr. Burns's service with the Assembly constitutes an official duty of his USAID employment, and because Mr. Burns's position as a Member is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the USG expects from Mr. Burns would be affected by his fulfilling the position as a member of the NSA is greatly diminished. Mr. Burns will not be compensated for his service as a Board Member.

This waiver applies only to the financial interests of NSA that are imputed to Mr. Kamiya and will not otherwise allow him to participate in any particular matter that will have a direct and predictable effect on his financial interests or other financial interests imputed to him under 18 U.S.C. § 208.

Due to the alignment of NSA's objectives with the development goals of USAID, the interests of USAID and NSA are consonant to a significant degree, and therefore any potential conflict of interest would not be so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from Mr. Kamiya. Additionally, the USG has previously provided funding to NSA and will be providing funding to NSA in the future. Consequently, the USG has a substantial interest in overseeing the use of funds, which are programmed and monitored pursuant to the administration of the Board. Moreover, because Mr. Kamiya's service with the Assembly constitutes an official duty of his USAID employment, and because Mr. Kamiya's position as a Member is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the USG expects from Mr. Kamiya would be affected by his fulfilling the position as a member of the NSA is greatly diminished. Mr. Kamiya will not be compensated for his service as a Board Member.

Please note that USAID has placed the following limitations on Mr. Kamiya's actions as a USAID employee, including his service as the USAID representative on the Assembly:

- Mr. Kamiya will not prepare or present requests from the Assembly to obtain federal
 funds or any other form of federal support for the NSA or the Assembly, except in the
 case of requesting approval of official travel for Mr. Kamiya to attend or to speak at an
 Assembly meeting or conference, based on a determination that to do so would be in the
 best interests of the Government;
- Mr. Kamiya's participation in fundraising activities for the Assembly will be limited to
 those activities that are determined by USAID to be in the best interest of USAID. Just
 as USAID has made the determination that Mr. Kamiya's presence on the Assembly is in
 the Government's interest, so too has USAID made a determination that Mr. Kamiya's
 participation in discussions with third parties intended to encourage outside investment
 may be in the Government's interest; and
- Mr. Kamiya will not be soliciting funds from USAID or another federal agency on behalf
 of the Assembly, nor will he apply for or help the Assembly apply for grants, awards, or
 other funding from USAID. In his official USAID capacity, Mr. Kamiya may be
 consulted by other USAID officials regarding Assembly operations and activities, and he

may opine on funding decisions within USAID in relation to the NSA. However, in his official capacity, he will not make U.S. Government final funding decisions on awards for the NSA.

In conclusion, because Mr. Kamiya's service on the Assembly arises out of his official duties at USAID, and because his position at USAID is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from him would be compromised by this outside position is greatly diminished.

Recommendation:

That, by signing on the approval line below under the heading "Determination", you grant a waiver to permit Mr. Kamiya to serve as the alternate USG donor representative to the NSA's Assembly of Contributors, which governs the activities of the NSA as described above.

DETERMINATION

Pursuant to 18 U.S.C. § 208(b)(1) and regulations of the Office of Government Ethics at 5 C.F.R. Part 2640, Subpart C. and pursuant to the authority vested in me as the Designated Agency Ethics Official, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a), and authorize Mr. Mark Kamiya's official participation as the alternate USG donor representative to the Assembly of Contributors of the EBRD's Nuclear Safety Account. This waiver is based on my determination that any financial or other interests of the Assembly or the NSA which are imputed to Mr. Kamiya are not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USG on the Assembly of Contributors of the NSA. . 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.

(b))(6)	
Approve:		
Disapprove:		
Date:	10.0	

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

(b)(6)

(b)(6)

To:

John Ohlweiler, Designated Agency Ethics Official (DAEO)

From:

James A. Noel, Resident Legal Officer USAID/Banglades/

Date:

November 16, 2017

Subject:

18 U.S.C. § 208(b)(1) Waiver for Kerry Reeves, Supervisory Environment Officer

for USAID/Bangladesh

Action Requested: Grant a 18 U.S.C. § 208(b)(1) waiver to Kerry Reeves, Supervisory Environment Officer to allow his participation as the U.S. Government (USG) alternate representative on the Board of Directors (BOD) of the Bangladesh Tropical Forest Foundation (Foundation), established to monitor the implementation of the Bangladesh debt-for-nature swap under the Tropical Conservation Act of 1998, Public Law No. 105-214, as amended (TFCA). As the DAEO, you have the authority to grant this waiver.

Background:

The TFCA requires the establishment of an administering body to monitor the implementation of the Bangladesh debt-for-nature swap. Section 809(c)(2) states that "The administering body shall consist of (i) one or more individuals appointed by the United States Government; (ii) one or more individuals appointed by the government of the beneficiary country; and (iii) individuals who represent a broad range of (I) environmental nongovernmental organizations of, or active in, the beneficiary country; (II) local community development nongovernmental organizations of the beneficiary country; and (III) scientific, academic, or forestry organizations of the beneficiary country." The USG has one seat on the Foundation's BOD. The Mission desires to direct Mr. Reeves to serve in his official government capacity as the alternate USG representative on the Foundation's BOD.

The TFCA requires the BOD to further the Foundation's objectives in all manners managerial and fiduciary. The BOD (a) prepares annual and supplementary budgets for General Body approval; (b) prepares the annual report and an annual audit; (c) appoint and terminate senior staff, upon the recommendation of the Executive Director; (d) receive funds and resources; (e) manage properties; (f) incur expenditures subject to the provisions of the approved budget; (g) enter into agreements on behalf of the Foundation, including agreements with arbitration clauses; (h) determine the terms governing grants; (i) enter into agreements with

governments and international agencies and other public or private bodies, or individuals, for securing and/or accepting loans or grants; (j) acquire (by purchase, gift, exchange, lease, hire or otherwise) from the Government of Bangladesh (GOB), foreign governments (including the USG), international agencies, other public or private bodies or individuals, immovable or moveable properties, endowments or other funds together with any attendant obligations; (k) appoint boards, committees, sub-committees and panels; consisting of persons who may or may not be Members or employees; (l) impose and recover fees, charges and expenses for services; (m) approve procedures and schedules for the grant-making process, including procedures and schedules relating to public announcements, grant applications, and review monitoring and auditing; (n) maintain and make available for public inspection on the Foundation's organizational documents, by-laws, policies, procedures, grant decision-making processes, minutes, reports and records; and (o) other functions or actions as required by present or future bilateral agreements made between the Governments. See TFCA Section 809(c)(3). The specific responsibilities of the Foundation's BOD are set forth in Article 19 of the Foundation's Articles of Association, dated June 3, 2003, created under the auspices of the Agreement between the USG and GOB Regarding the Reduction of a Certain Debt Related to Agricultural Trade Owed to the Government of the U.S. and its Agencies, date September 12, 2000 (the "Agreement"). These responsibilities are consistent with TFCA Section 809 (c). Participation of a USG Representative furthers the USG interests in overseeing the use of funds in the debt-fornature swap. The USG representative(s) provide oversight and ensure that all funds are operated in accordance with the agreements between the USG and the Government of Bangladesh. Consistent with the Agreement, the Foundation's BOD meets periodically to carry out its functions under the Foundation's mandate.

As the Supervisory Environmental Officer in Bangladesh, Mr. Reeves is responsible for managing the design and implementation of environmental and energy programs the USAID Mission in Bangladesh.

Discussion:

The criminal conflict of interest statute, 18 U.S.C. § 208(a), prohibits Executive Branch officers and employees from participating personally and substantially in any particular matter that will have a direct and predictable effect on their financial interests or the financial interests of any spouse; minor child; general partner of a partnership in which they are a general or limited partner; organization in which they serve as an employee, officer, director, partner or trustee; or person or organization with which they are negotiating or have an arrangement concerning prospective employment, unless he or she is granted 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).

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 extend to legislation or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons.

Because the financial interests of the Foundation will be imputed to Mr. Reeves, he would be disqualified from participating personally and substantially in any particular matter affecting the Foundation's financial interests absent a waiver pursuant to 18 U.S.C. § 208(b)(1).

Due to the TFCA and the Foundation's mandate, the interests of USAID and the Foundation are significantly consonant, and therefore any potential conflict of interest would not be so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from Mr. Reeves. Additionally, the USG has a substantial interest in overseeing the use of funds disbursed pursuant to the administration of the Foundation's BOD in the debt-for-nature swap. Service on the Foundation's BOD will constitute an official duty of the officer's USAID employment. The USAID position on the BOD is unpaid and subject to continuing supervision and direction of USAID. Accordingly, the risk that the integrity of the services expected from Mr. Reeves would be affected by the outside position is greatly diminished.

The Department of Justice's Office of Legal Counsel (OLC) has determined that a USG employee may not serve even as an ex-officio board member of a nonfederal organization in the absence of express statutory authority or a waiver of the prohibition as detailed in 18 U.S.C. § 208(b). OLC has not issued a formal opinion regarding whether TFCA Section 809(c)(2) provides specific authority for placing a federal employee on the administering body of a covered debt-for-nature swap. Accordingly, USAID/Bangladesh requests that you utilize your authority to issue an 18 U.S.C. § 208(b)(1) waiver to permit Mr. Reeves to serve as the USG member of the Foundation's BOD.

In order to reduce or eliminate the likelihood that the integrity of Mr. Reeves services to the Government would be questioned by a reasonable person. Mr. Reeves will be subject to the following limitations: he will not (a) personally award any U.S. Government grants to the Foundation, (b) request U.S. Government funds on the Foundation's behalf, and (c) participate in BOD discussions or actions regarding any award of USAID funds to the Foundation. The Office of Government Ethics has been consulted on this waiver during this deliberative process.

Recommendation: That you grant a waiver to permit Mr. Reeves to serve as the USG alternate member to the Bangladesh Tropical Forest Foundation Board of Directors.

Determination: Pursuant to 18 U.S.C. § 208(b)(1) and regulations of the Office of Government Ethics (OGE) at 5 CFR Part 2640, Subpart C; and pursuant to the authority vested in me as DAEO in USAID ADS 109, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize a waiver granted to Mr. Reeves to participate as the U.S. Government alternative representative on the Bangladesh Tropical Forest Foundation's Board of Directors. This waiver is based on my determination that such administering bodies' financial interests, which are imputed to Mr. Reeves, are not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him. Furthermore, he will be safeguarding the interests of the USG.



ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL (DAEO)

TO:

John N. Ohlweiler, Designated Ethics Official

FROM:

Donald Keene, Resident Legal Officer, USAID/Kenya and East Africa

SUBJECT:

18 U.S.C. § 208(b)(1) waiver for Ms. Lisa Walker

Issue

Whether to grant an 18 U.S.C. § 208(b)(1) waiver to USAID Foreign Service Officer, Ms. Lisa Walker, a USAID Foreign Service Officer in the USAID Kenya and East Africa, Regional Economic Integration (REI) Office, and Manager for the Trade Infrastructure Program (TIP) implemented by TradeMark East Africa (TMEA). TradeMark is a multi-donor funded not-for-profit Company limited by guarantee and established in 2009 in Nairobi, Kenya. TMEA is supporting the growth of regional and international trade in the East African Community (EAC), by implementing activities that support the aspirations of the President's Trade Africa Initiative. If a waiver is granted, Ms. Walker will participate in an official capacity as a representative of USAID among the Members of TMEA and also sit in the Council of donors that fund TMEA. As the DAEO, you have authority to grant this waiver. No other request has been made regarding this waiver.

Background

Increasing trade with and within the EAC is the primary objective of the President's Trade Africa Initiative and its main African counterpart, the EAC. USAID/REI is responsible for implementation of Trade Africa activities in collaboration with the EAC through a variety of mechanisms which include a five-year, \$35 million Cooperative Agreement with TMEA to advance the regional economic integration of the EAC by providing trade facilitation assistance to ensure increased trade results in tangible gains for East Africans.

TMEA was established on 23 June 2009, under CAP 486 of the Laws of Kenya, as a Kenyan incorporated company limited by guarantee. It was designed as a platform for delivering significant support to the regional integration and trade improvement processes of the EAC. Its

efforts focus on the achievement of the objectives set out in the EAC's Development Strategy. TMEA is funded by multiple international donors whose East Africa regional development objectives are aligned with those of TMEA and the Trade Africa Initiative. TMEA and REI work closely with the EAC, its technical secretariats, EAC Partner State governments, the private sector and civil society organizations. Participating donors fund TMEA through grants for all its operations (known as 'core' funding) or contributions which are 'earmarked' for a specific program. TMEA's main aim is to increase trade by unlocking economic potential through increased market access; enhanced trade environment; and increased business competitiveness. TMEA has its headquarters in Nairobi, Kenya. It has country offices in both Arusha and Dar es Salaam in Tanzania, Bujumbura in Burundi, Kampala in Uganda, Kigali in Rwanda and Juba in South Sudan. Its offices are therefore spread throughout all six EAC Partner States.

The TMEA Constitution requires that at least two and a maximum fifty of the donor community funding TMEA serve as Members of the company. The roles and obligations of TMEA Members are derived from Kenyan corporate articles of association, general company law, and rules or bylaws prescribed by TMEA. The Members have an obligation under the Articles of Association to hold annual general meetings and vote on certain matters pertaining to the governance of the company. The Members are concerned with the quality and composition of the Board, appointment of external auditors and ensuring and that the TMEA Constitution is adhered to. The Members further receive and approve audited annual accounts and approve Board remuneration. Current TMEA multi-donor funded commitments are upwards of \$560 million, which includes the aforementioned USAID commitment of \$35 million.

Ms. Walker has been approached by TMEA and the Donor Committee to represent USAID in serving as a TMEA Member. In the capacity of TMEA Member, Ms. Walker will participate to execute all Member duties, and specifically to ensure that TMEA has a Board that competently safeguards United States Government (USG) funds and ensures the transparent and accountable flow of resources. In the TMEA Council, Ms. Walker will participate among other donors to shape the strategic focus of TMEA and its investments. By being a full voting Member, USAID will provide advice and counsel to TMEA and help ensure a high quality portfolio and compliance to its policies and procedures. USAID will also have full access to financial and performance information so it can track all donor investments, including those of USAID. Ms. Walker will also serve as the Agreement Officer's Representative (AOR) to TMEA and hence serving as a TMEA Member is a natural extension of the AOR duties.

Discussion

The criminal conflict of interest statute, 18 U.S.C. § 208(a), prohibits Executive Branch officers and employees from participating personally and substantially in any particular matter that will have a direct and predictable effect on their financial interests or the financial interests of any spouse; minor child; general partner of a partnership in which they are a general or limited partner; organization in which they serve as an employee, officer, director, partner or trustee; or

person or organization with which they are negotiating or have an arrangement concerning prospective employment, unless he or she is granted a waiver is pursuant to 18 U.S.C. § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2).

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.

Because the financial interests of TMEA, to the extent they exist, would be imputed to Ms. Walker under 18 U.S.C. § 208(a), she would be disqualified from participating in any particular matter affecting the TMEA's financial interests in the absence of an 18 U.S.C. § 208(b)(1) waiver.

Due to the alignment of TMEA objectives with the development goals of the Trade Africa Initiative, the interests of USAID and TMEA are consonant to a significant degree, and therefore, any potential conflict of interest would not be so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from Ms. Walker. Additionally, the USG has a substantial interest in overseeing the use of funds, which are programmed and monitored pursuant to the administration of the Board. Moreover, because Ms. Walker's service among the TMEA Members and Council constitutes an official duty of her USAID employment, and because Ms. Walker's position as a Member is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the USG expects from Ms. Walker would be affected by her fulfilling the position of TMEA Member is greatly diminished. Ms. Walker will not be compensated for her service as a Member.

The Department of Justice's Office of Legal Counsel ("OLC") has determined that a USG employee may not serve even as an ex-officio board member of a nonfederal organization in the absence of express statutory authority or a waiver of the prohibition outlined in 18 U.S.C. § 208(a). For the avoidance of doubt, we are asking you to utilize your authority to issue a 18 U.S.C. § 208(b)(1) waiver to permit Ms. Walker to serve as the USG Member to TMEA.

This waiver applies only to the financial interests of TMEA that are imputed to Ms. Walker and will not otherwise allow her to participate in any particular matter that will have a direct and predictable effect on her financial interests or other financial interests imputed to her under 18 U.S.C. § 208.

Please note that USAID has placed the following limitations on Ms. Walker's actions as a USAID employee, including his service as the USAID Member to TMEA:

- Ms. Walker will not prepare or present requests from TMEA to obtain federal funds or
 any other form of federal support for the TMEA, except in the case of requesting
 approval of official travel for Ms. Walker to attend or to speak at a TMEA meeting or
 conference, based on a determination that to do so would be in the best interests of the
 Government;
- Ms. Walker's participation in fundraising activities for TMEA will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Ms. Walker's presence as a TMEA Member is in the Government's interest, so too has USAID made a determination that Ms. Walker's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- Ms. Walker will not be soliciting funds from USAID on behalf of TMEA, nor will she apply for or help TMEA apply for grants, awards, or other funding from USAID. In her official USAID capacity, Ms. Walker may be consulted by other USAID officials regarding TMEA operations and activities, and she may opine on funding decisions within USAID in relation to TMEA. However, in her official capacity, she will not make U.S. Government final funding decisions or awards to TMEA.

In addition, in order to further reduce or eliminate the likelihood that the integrity of Ms. Walker's role would be questioned by a reasonable person, Ms. Walker has agreed that she will not participate in Member discussions or actions regarding any award of USAID funds to the Members. Ms. Walker's agreement does not limit, in any fashion, USAID's ability to award funds to TMEA. Although it is not clear the extent to which Ms. Walker has a fiduciary duty to TMEA as a Member, in an abundance of caution we are seeking this waiver.

Recommendation

That you grant a waiver to permit Ms. Walker's service as the USAID representative among the TMEA Council Members.

Determination

Pursuant to 18 U.S.C. § 208(b)(1), the regulations of the Office of Government Ethics at 5 C.F.R. § 2640.301 and the above analysis; and pursuant to the authority vested in me as DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Ms. Walker to participate personally and substantially as the USG TMEA Member. This waiver is based on my determination that TMEA's financial interests, which are imputed to Ms. Walker, are not as substantial as to be deemed likely to affect the integrity of the services which the USG may

expect from her. Furthermore, she will be safeguarding the interests of the USG by representing the USG as a TMEA Member.

d:		
	d:	d:



September 12, 2017

TO: John N. Ohlweiler, Designated Agency Ethics Official

FROM: Jeff Meyers, Attorney Advisor, GC/E&E

SUBJECT: 18 U.S.C. §208(b)(1) Waiver for Steven Burns to Serve as a Representative on the Assembly of Contributors of a Non-USG Entity

Issue:

Whether to grant an 18 U.S.C. §208(b)(1) waiver for Steven Burns, a USAID direct-hire employee and Supervisory Physical Scientist for the Bureau of Europe and Eurasia, to serve and participate as a U.S. Government ("USG") representative on the Assembly of Contributors (the "Assembly") which supervises implementation of the activities of the National Safety Account (the "NSA") established by the European Bank for Reconstruction and Development (the "EBRD"). As the Designated Agency Ethics Official, you have the authority to grant this waiver.

Discussion:

The Assembly is comprised of donors to the EBRD's Nuclear Safety Account, the primary purpose of which is to finance projects designed to address immediate operational and technical safety improvement measures for nuclear reactors in the countries of Central and Eastern Europe, including republics of the former USSR. While not a formally incorporated entity, the Assembly is specifically described in the Rules of the NSA ("Rules") as the body under which the EBRD shall administer the activities of the NSA. Donor representatives serve on the Assembly without remuneration. Since the USG is a donor to the NSA, it has the right to have one seat on the Assembly.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), prohibits Executive Branch officers and employees from participating personally and substantially in any particular matter that will have a direct and predictable effect on their financial interests or the financial interests of any spouse; minor child; general partner of a partnership in which they are a general or limited partner; organization in which they serve as an employee, officer, director, partner or trustee; or person or organization with which they are negotiating or have an arrangement concerning prospective employment, unless he or she is granted a waiver is pursuant to 18 U.S.C. § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2).

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.

Because the financial interests of the NSA would be imputed to Mr. Burns under 18 U.S.C. § 208(a), he would be disqualified from participating in any particular matter affecting the financial interests of the NSA in the absence of an 18 U.S.C. § 208(b)(1) waiver. Under 18 U.S.C. § 208(b)(1), an agency may permit an employee to participate in a matter in which he or she has an otherwise disqualifying financial interest, if it is determined that the disqualifying is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

The U.S. Department of Justice's Office of Legal Counsel has determined that, in the absence of: (1) specific statutory authority placing a federal employee in an officer or director position in an ex officio capacity, (2) a release of fiduciary obligations by the organization (if permitted by law), or (3) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from participating personally and substantially in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the NSA Board. As a member of the Board, Mr. Burns may incur fiduciary obligations to the Assembly that could conflict with his duties as a USG employee. If such fiduciary obligations exist, then it is not clear whether the NSA is legally permitted to waive them under local law. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. 208 § (b)(l), to permit Mr. Burns to serve as a member of the Assembly when needed.

The Assembly is required by the Rules to have a regular annual meeting at which the financial statements for the NSA's previous fiscal year are submitted for approval. Additional duties that the Rules impose on the Assembly include the following: monitoring the payment of contributions to the NSA; approving the annual budget and financial statements of the NSA; approving guidelines for the management of the liquid assets of the NSA; monitoring disbursements of grants by the EBRD; and providing guidance to the EBRD as NSA Manager in carrying out its duties to administer the NSA. Some of these duties are fiduciary duties. However, the USG, through USAID, has made previous financial contributions to the NSA and in the future will likely provide an additional \$29 million.

This waiver applies only to the financial interests of NSA that are imputed to Mr. Burns and will not otherwise allow him to participate in any particular matter that will have a direct and predictable effect on his financial interests or other financial interests imputed to him under 18 U.S.C. § 208.

Due to the alignment of NSA's objectives with the development goals of USAID, the interests of USAID and NSA are consonant to a significant degree, and therefore any potential conflict of interest would not be so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from Mr. Burns. Additionally, the USG has previously provided funding to NSA and will be providing funding to NSA in the future. Consequently, the USG has a substantial interest in overseeing the use of funds, which are programmed and monitored

pursuant to the administration of the Board. Moreover, because Mr. Burns's service with the Assembly constitutes an official duty of his USAID employment, and because Mr. Burns's position as a Member is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the USG expects from Mr. Burns would be affected by his fulfilling the position as a member of the NSA is greatly diminished. Mr. Burns will not be compensated for his service as a Board Member.

Please note that USAID has placed the following limitations on Mr. Burns' actions as a USAID employee, including his service as the USAID representative on the Assembly:

- Mr. Burns will not prepare or present requests from the Assembly to obtain federal funds
 or any other form of federal support for the NSA or the Assembly, except in the case of
 requesting approval of official travel for Mr. Burns to attend or to speak at an Assembly
 meeting or conference, based on a determination that to do so would be in the best
 interests of the Government;
- Mr. Burn's participation in fundraising activities for the Assembly will be limited to
 those activities that are determined by USAID to be in the best interest of USAID. Just
 as USAID has made the determination that Mr. Burn's presence on the Assembly is in the
 Government's interest, so too has USAID made a determination that Mr. Burn's
 participation in discussions with third parties intended to encourage outside investment
 may be in the Government's interest; and
- Mr. Burns will not be soliciting funds from USAID another federal agency on behalf of the Assembly, nor will he apply for or help the Assembly apply for grants, awards, or other funding from USAID. In his official USAID capacity, Mr. Burns may be consulted by other USAID officials regarding Assembly operations and activities, and he may opine on funding decisions within USAID in relation to the NSA. However, in his official capacity, he will not make U.S. Government final funding decisions on awards for the NSA.

In conclusion, because Mr. Burns' service on the Assembly constitutes an official duty of his service to USAID, and because his position at USAID is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from him would be compromised by this outside position is greatly diminished.

Recommendation:

That, by signing on the approval line below under the heading "Determination," you grant a waiver to permit Mr. Burns to serve as the USG donor representative to the NSA's Assembly of Contributors, which governs the activities of the NSA as described above.

DETERMINATION

Pursuant to 18 U.S.C. § 208(b)(1) and regulations of the Office of Government Ethics at 5 CFR Part 2640, Subpart C. and pursuant to the authority vested in me as the Designated Agency Ethics Official, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a), and authorize Mr. Steven Burns' official participation as the USG donor representative to the Assembly of Contributors of the EBRD's Nuclear Safety Account. This waiver is based on my determination that any financial or other interests of the Assembly or the NSA which are imputed to Mr. Burns are not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USG on the Assembly of Contributors of the NSA. 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.

	(b)(6)			
Approve				
Disappro				
Date:				



UNCLASSIFIED

December 28, 2017

FROM:

John N. Ohlwener

Designated Agency Ethics Official (DAEO)

TO:

Maria Covalenco-Tietz

SUBJECT:

5 C.F.R. § 2635.502(d) Determination for Maria Covalenco-Tietz

Issue:

This is a determination that the conflict of interest provisions under 18 U.S.C. § 208(b)(1) and 5 C.F.R. 2635.502 do not preclude Maria Covalenco-Tietz, a Technical Specialist (Institutional Support Contractor) in OAPA from (1) providing democracy and governance support to Washington DC and missions in Afghanistan and Pakistan; and (2) serve in an advisory capacity on the Afghanistan's Measure for Accountability and Transparency (AMANAT) award to Management Systems International (MSI). Ms. Covalenco-Tietz served as a contract employee for 19 days in August-October 2017 with MSI. During this limited engagement, Ms. Covalenco-Tietz did research in support of an evaluation (of USIAD/E3 Women's Leadership Programs) that USAID has contracted out to MSI. During the contract period she did not work on AMANAT.

Discussion:

MSI is an implementing partner which was recently awarded the AMANAT award. AMANAT is a contract with a value of \$31,986,588. It is an anti-corruption activity to improve the performance, legitimacy, and capacity of the Government of the Islamic Republic of Afghanistan (GIRoA). AMANAT, meaning "entrusted" in both Dari and Pashto, is aimed at reducing and preventing corruption in government public services. Interventions will strengthen the credibility and legitimacy of the government and improve service delivery to the Afghan people.

Ms. Covalenco-Tietz was paid \$322.00 per day for 19 days in August-October 2017 to work on unrelated matters for MSI. In that role, Ms. Covalenco-Tietz did research in support of an evaluation (of USIAD/E3 Women's Leadership Programs) that USAID has contracted out to MSI. During the contract period she did not work on AMANAT. She retains no financial connection to MSI. MSI owes Ms. Covalenco-Tietz no money and she is not eligible for a business or additional payments from MSI.

Ms. Covalenco-Tietz's current duties require her to provide support to a variety of OAPA projects, including the AMANAT award. Her duties include: project/program tracking, data

analysis and documentation; program document preparation and communications support, country-backstop and field support; and general administration.

Ms. Covalenco-Tietz has no decision-making responsibilities connected to AMANAT. Instead she serves in an advisory capacity. To the extent that she provides an assessment of the ongoing AMANAT award, those recommendations are routed through the CO, COR and Alternate, in Kabul. The vision of the program will be guided by the strategy / ODG management / USAID Kabul Front Office. She will not be providing direction to implementing partners on programs, includingMSI.

Legal Analysis:

Two provisions could potentially apply in Ms. Covalenco-Tietz's situations: 18 U.S.C. § 208 and 5 C.F.R § 2635.502. This memorandum considers them in turn.

18 U.S.C. § 208

18 U.S.C. § 208(a) requires that a USG employee refrain from participating personally and substantially in an official capacity in any particular matter that will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee unless he or she is granted a waiver pursuant to 18 U.S.C. § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2).

Section 208(a) does not preclude Ms. Covalenco-Tietz from advising on the AMANAT contract because Ms. Covalenco-Tietz's actions would not have a "direct and predictable" effect on her financial interests. Mrs. Dickerson will not have any direct decision making authority on the AMANAT contract. Second, Ms. Covalenco-Tietz no longer has any financial tie to MSI, meaning she no longer retains any financial interest in MSI. She is not eligible for any bonuses or other compensation from MSI.

5 C.F.R. § 2635.502(b) and (d) Determination

An employee has a "covered relationship" with any person for whom the employee has, within the past year, served as... a consultant, contractor or employee. Ms. Covalenco-Tietz's former employment with MSI means that she currently has a covered relationship with that entity.

However, the DAEO herein determines that Ms. Covalenco-Tietz can serve in the limited capacity as a technical advisor on the AMANAT award. Ms. Covalenco-Tietz's involvement would not cause a reasonable person to question the employee's impartiality on her execution of duties related to this particular award involving MSI. This determination is made after consideration of (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.

Consequently, Ms. Covalenco-Tietz can participate personally and substantially by serving in a strictly advisory capacity to the AMANAT award. This determination is limited to this particular matter.

Sincerely,

John N. Ohlweiler
Designated Agency Ethics Official
Assistant General Counsel,
Ethics and Administration



UNCLASSIFIED

August 17, 2017

ACTION MEMORANDUM

TO:

John N. Ohlweiler, Designated Agency Ethics Official (DAEO)

FROM:

Julie Southfield, Resident Legal Officer

SUBJECT:

18 U.S.C. § 208(b)(1) Waiver for Mathew Curtis

Issue:

This is a request to grant a conflict of interest waiver to Mathew Curtis, Agriculture Development Officer, USAID/Burma under 18 U.S.C. § 208(b)(1), so that he may participate in an official capacity as an alternate representative of USAID on the Fund Board of the Livelihoods and Food Security Trust Fund for Myanmar (LIFT). Mr. Curtis will attend meetings of the Fund Board when the regular USAID representative is unable to attend.

Discussion:

LIFT is a multi-donor trust fund administered by the United Nations Office for Project Services (UNOPS, as the Fund Manager) that currently has ten donors working to improve livelihoods, resilience and nutrition of poor people in Myanmar by focusing on interventions that increase income, food availability, utilization and stability of access to food. LIFT was established in 2009 and USAID began contributing in 2012. USAID contributions to date total \$11.0 million and it is anticipated that USAID will contribute up to \$20 million in total over the life of LIFT. The LIFT Fund Board provides strategic leadership for the fund and oversight of UNOPS, as the Fund Manager. By virtue of its contribution, USAID has a seat on the Fund Board.

The revised Terms of Reference for the LIFT Fund Board dated September 2014 set out roles and responsibilities for the body in four general areas: strategic leadership, oversight of the fund manager, dialogue and communication and resource mobilization. Specifically the Fund Board is tasked with, among others, the following responsibilities: (1) developing a strategy that articulates LIFT's vision and approving an implementation plan for that strategy, (2) approving the design of new programs developed by the Fund Manager, (3) ensuring that the Fund Manager has appropriate risk management processes in place, (4) making grant allocation decisions with advice from the Fund Manager, (5) developing a performance management framework for the Fund Manager, (6) reviewing and approving policies for LIFT developed by the Fund Manager, (7) approving the annual work plan and budget of the Fund Manager, (8) commissioning and receiving an independent external evaluation of LIFT's performance and governance, (9) participating in consultative meetings and maintaining dialogue with national authorities, (10) promoting donor coordination and (11) seeking out additional contributions to LIFT. The Fund Board is expected to meet three times per year to carry out its functions.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that a U.S. Government (USG) employee refrain from participating personally and substantially in an official capacity in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee.

The U.S. Department of Justice's Office of Legal Counsel has determined that in the absence of: 1) specific statutory authority placing a federal employee in an officer or director position in an ex officio capacity, 2) a release of fiduciary obligations by the organization (if permitted by law), or 3) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the Fund Board of LIFT. As an alternate member of the Fund Board, Mr. Curtis may incur fiduciary obligations to LIFT that could conflict with his duties as a USG employee. If such fiduciary obligations exist, it is not clear whether LIFT is legally permitted to waive them under Burmese law. Additionally, LIFT is not a nonprofit organization for purposes of the exemption at 5 C.F.R. § 2640.203(m) as it is not subject to the tax laws of any country, including the United States. Because the financial interests of LIFT will be imputed to Mr. Curtis under 18 U.S.C. § 208(a), he would be disqualified from participating in any particular matters affecting LIFT's financial interests in the absence of a 208(b)(1) waiver. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. § 208(b)(1), to permit Mr. Curtis to serve as an alternate member of the LIFT Fund Board.

If approved, Mr. Curtis's imputed financial interest in LIFT arising solely as a result of his assignment as a USAID alternate representative to the Fund Board of LIFT will be waived. This waiver does not, however, permit him to participate in an official capacity in any particular matter that will, to his knowledge, directly and predictably affect any other financial interest or relationship.

Mr. Curtis oversees the Agriculture Team in the Office of Economic Growth, and serves as the inter-agency "Feed the Future" Coordinator at post. LIFT is one of several activities that the Office of Economic Growth funds as part of its agriculture portfolio. The USG has substantial interest in overseeing the use of funds by LIFT and it is critical that a USAID representative be included in the membership of the Fund Board for that oversight function. The interests of the USG and LIFT are aligned in their objectives to enhance economic growth in Burma, specifically through improving the livelihoods of smallholder farmers. Mr. Curtis will not receive any compensation from LIFT in connection with service as an alternate member of the Fund Board.

Please note that USAID has placed the following limitations on Mr. Curtis' actions as a USAID employee, including his service as the alternate USAID representative on the LIFT Fund Board:

a. Mr. Curtis will not prepare or present requests from LIFT to obtain federal funds or any other form of federal support for LIFT, except in the case of requesting approval of official travel for Mr. Curtis to attend or to speak at a LIFT meeting or

- conference, based on a determination that to do so would be in the best interest of the Government;
- b. Mr. Curtis' participating in fundraising activities for LIFT will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Mr. Curtis' presence on the LIFT Fund Board is in the Government's interest, so too has USAID made a determination that Mr. Curtis' participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Mr. Curtis will not be soliciting funds from United States government entities on behalf of the Board, nor will be apply for or help LIFT apply for grants, awards, or other funding from any United States government entities. In his official USAID capacity, Mr. Curtis may be consulted by other USAID officials regarding LIFT operations and activities, and he may opine on funding decisions within USAID in relation to LIFT. However, in his official capacity, he will not make final funding decisions or awards to LIFT.

In conclusion, because Mr. Curtis' service on the Fund Board constitutes an official duty of his service to USAID/Burma, and because his position at USAID/Burma is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Mr. Curtis would be compromised by this outside position is greatly diminished.

Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. § 208(b)(1) to permit Mr. Curtis to serve as alternate representative of USAID on the Fund Board of LIFT.

DAEO Determination:

Pursuant to 18 U.S.C. § 208(b)(1) and the regulations of the Office of Government Ethics at 5 CFR Part 2640, Subpart C, and pursuant to the authority vested in me as the Agency's DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Mathew Curtis to participate in an official capacity as an alternate USAID representative on the Fund Board of LIFT. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Curtis on the Fund Board is not so substantial as to be deemed likely to affect the integrity of the services that the USG may expect from him. Further, Mr. Curtis will help to safeguard the interests of the USG by representing the USAID on the Fund Board. 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.

(b)(6)

Approved:

Disapproved:

Date: 8/23/17

Cc: Mathew Curtis



UNCLASSIFIED

October 17, 2017

FROM:

John N. Ohlweiler

Designated Agency Ethics Official (DAEO)

TO:

Rachel Marcus

SUBJECT:

5 C.F.R. § 2635.502(d) Waiver for Rachel Marcus

<u>Issue</u>:

This is a determination that the conflict of interest provisions under 18 U.S.C. § 208(b)(1) and 5 C.F.R. § 2635.502 do not preclude Rachel Marcus, Public Health Advisor, Office of Population and Reproductive Health, Global Health from (1) providing technical support to the K4Health mechanism and (2) serving as the AOR to the K4Health mechanism, so long as there are no plans for a financial ceiling increase to this project. Ms. Marcus intends to (b)(6)

(b)(6)

(b)(6 is the current awardee on the K4Health award.

Discussion:

18 U.S.C. § 208(a) requires that a USG employee refrain from participating personally and substantially in an official capacity in any particular matter that will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee unless he or she is granted a waiver pursuant to 18 U.S.C. § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2).

Section 208(a) does not preclude Ms. Marcus from serving as the AOR or providing technical support to the K4Health mechanism because Ms. Marcus's actions would not have a "direct and predictable" effect on Ms. Marcus's financial interests. Importantly, Ms. Marcus will not have the authority to increase the financial ceiling on the K4Health mechanism, (b)(6)

(b)(6) Furthermore, Ms. Marcus will not receive a stipend or other financial

compensation (b)(6)

(b)(6)

Under 5 C.F.R. § 2635.502(d), in situations where an employee participates in matters involving an entity with which s/he has a covered relationship and the employee's participation would raise a question in the mind of a reasonable person about the employee's impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made

in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. In making this determination, the agency designee considers the factors discussed below.

1. The nature of the relationship involve	<u>d. Ms. Marcus intends to apply for add</u>	mission to the		
(b)(6)		While Ms.		
Marcus's application, along with her rol				
potential to raise a question in the mind of a reasonable person about Ms. Marcus's				
impartiality, the nature of her relationship with (b) (6 as an applicant to one of its many				
programs is limited. If admitted, Ms. M	arcus will not receive a stipend or other	er payment		
from(b)(6)	Further, the program to which Ms.	Marcus is		
(b)(6)				

- 2. The effect that resolution of the matter would have upon the financial interests of the entity involved in the relationship. Because Ms. Marcus does not have the authority to impact the financial ceiling on the contract already awarded to (b)(6) (which currently ends in September 2018), and she rarely serves as the AOR, I conclude that the interest of the Government in having her expertise applied to the K4Health program outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.
- 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. Ms. Marcus's involvement is limited to rarely serving as the AOR and more frequently providing technical advice. Because Ms. Marcus's involvement on this matter would benefit USAID's interests and goals, I conclude that the interest of the Government outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.
- 4. The sensitivity of the matter. Given that the mechanism has already been awarded and the financial ceiling cannot change, I conclude that the sensitivity of this matter is low and that the interest of the Government outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.
- 5. The difficulty of reassigning the matter to another employee. Given Ms. Marcus's recent long-term work as AOR of the K4Hcalth activity, her familiarity and expertise is an important resource for USAID in monitoring and implementing this mechanism. Therefore, it is not feasible to assign these duties to another employee. I conclude that the interest of the Government outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

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. Because Ms. Marcus rarely fills the AOR role and her role is primarily that of technical advisor, there is a low likelihood that a reasonable person would question her ability to influence the interests of either (b)(6) or herself. Ms. Marcus is instructed to contact me if any of these factors change.

Given the factors addressed above, I have decided to grant Ms. Marcus a waiver which will enable her to work on matters related to the K4Health activity (serving as the AOR and technical advisor). If you have any questions, please do not hesitate to contact me.

Sincerely,
(b)(6)

John N. Ohlweiler

Assistant General Counsel
Ethics and Administration



UNCLASSIFIED

August 17, 2017

ACTION MEMORANDUM

TO:

John N. Ohlweiler, Designated Agency Ethics Official (DAEO)

FROM:

Julie Southfield, Resident Legal Officer

SUBJECT:

18 U.S.C. § 208(b)(1) Waiver for Travis Guymon

Issue:

This is a request to grant a conflict of interest waiver to Travis Guymon, Agriculture Development Officer, USAID/Burma under 18 U.S.C. § 208(b)(1), so that he may participate in an official capacity as an alternate representative of USAID on the Fund Board of the Livelihoods and Food Security Trust Fund for Myanmar (LIFT). Mr. Guymon will attend meetings of the Fund Board when the regular USAID representative is unable to attend.

Discussion:

LIFT is a multi-donor trust fund administered by the United Nations Office for Project Services (UNOPS, as the Fund Manager) that currently has ten donors working to improve livelihoods, resilience and nutrition of poor people in Myanmar by focusing on interventions that increase income, food availability, utilization and stability of access to food. LIFT was established in 2009 and USAID began contributing in 2012. USAID contributions to date total \$11 million and it is anticipated that USAID will contribute up to \$20 million in total over the life of LIFT. The LIFT Fund Board provides strategic leadership for the fund and oversight of UNOPS, as the Fund Manager. By virtue of its contribution, USAID has a seat on the Fund Board.

The revised Terms of Reference for the LIFT Fund Board dated September 2014 set out roles and responsibilities for the body in four general areas: strategic leadership, oversight of the fund manager, dialogue and communication and resource mobilization. Specifically the Fund Board is tasked with, among others, the following responsibilities: (1) developing a strategy that articulates LIFT's vision and approving an implementation plan for that strategy, (2) approving the design of new programs developed by the Fund Manager, (3) ensuring that the Fund Manager has appropriate risk management processes in place, (4) making grant allocation decisions with advice from the Fund Manager, (5) developing a performance management framework for the Fund Manager, (6) reviewing and approving policies for LIFT developed by the Fund Manager, (7) approving the annual work plan and budget of the Fund Manager, (8) commissioning and receiving an independent external evaluation of LIFT's performance and governance, (9) participating in consultative meetings and maintaining dialogue with national authorities, (10) promoting donor coordination and (11) seeking out additional contributions to LIFT. The Fund Board is expected to meet three times per year to carry out its functions.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that a U.S. Government (USG) employee refrain from participating personally and substantially in an official capacity in any particular matter that, to the employee's knowledge, will have a direct and predictable effect on the financial interests of any organization in which the individual serves as an officer, director, trustee or employee.

The U.S. Department of Justice's Office of Legal Counsel has determined that in the absence of: 1) specific statutory authority placing a federal employee in an officer or director position in an *ex officio* capacity, 2) a release of fiduciary obligations by the organization (if permitted by law), or 3) a waiver of the requirements of 18 U.S.C. § 208(a), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

There is no specific statutory authority pursuant to which a USG employee is placed on the Fund Board of LIFT. As an alternate member of the Fund Board, Mr. Guymon may incur fiduciary obligations to LIFT that could conflict with his duties as a USG employee. If such fiduciary obligations exist, it is not clear whether LIFT is legally permitted to waive them under Burmese law. Additionally, LIFT is not a nonprofit organization for purposes of the exemption at 5 C.F.R. § 2640.203(m) as it is not subject to the tax laws of any country, including the United States. Because the financial interests of LIFT will be imputed to Mr. Guymon under 18 U.S.C. § 208(a)(1), he would be disqualified from participating in any particular matters affecting LIFT's financial interests in the absence of a 208(b)(1) waiver. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. § 208(b)(1), to permit Mr. Guymon to serve as an alternate member of the LIFT Fund Board.

If approved, Mr. Guymon's imputed financial interest in LIFT arising solely as a result of his assignment as a USAID alternate representative to the Fund Board of LIFT will be waived. This waiver does not, however, permit him to participate in an official capacity in any particular matter that will, to his knowledge, directly and predictably affect any other financial interest or relationship.

As an Agriculture Development Officer, Mr. Guymon participates in setting the agriculture development vision for the Mission and designs agriculture and rural development programs and projects. He serves as a technical resource for USAID/Burma's agriculture development projects, including LIFT. The USG has substantial interest in overseeing the use of funds by LIFT and it is critical that a USAID representative be included in the membership of the Fund Board for that oversight function. The interests of the USG and LIFT are aligned in their objectives to enhance economic growth in Burma, specifically through improving the livelihoods of smallholder farmers. Mr. Guymon will not receive any compensation from LIFT in connection with service as an alternate member of the Fund Board.

Please note that USAID has placed the following limitations on Mr. Guymon's actions as a USAID employee, including his service as the USAID alternate representative on the LIFT Fund Board:

a. Mr. Guymon will not prepare or present requests from LIFT to obtain federal funds or any other form of federal support for LIFT, except in the case of requesting approval of official travel for Mr. Guymon to attend or to speak at a LIFT meeting

- or conference, based on a determination that to do so would be in the best interest of the Government;
- b. Mr. Guymon's participating in fundraising activities for LIFT will be limited to those activities that are determined by USAID to be in the best interest of USAID. Just as USAID has made the determination that Mr. Guymon's presence on the LIFT Fund Board is in the Government's interest, so too has USAID made a determination that Mr. Guymon's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Mr. Guymon will not be soliciting funds from United States government entities on behalf of the Board, nor will he apply for or help LIFT apply for grants, awards, or other funding from any United States government entities. In his official USAID capacity, Mr. Guymon may be consulted by other USAID officials regarding LIFT operations and activities, and he may opine on funding decisions within USAID in relation to LIFT. However, in his official capacity, he will not make final funding decisions or awards to LIFT.

In conclusion, because Mr. Guymon's service on the Fund Board constitutes an official duty of his service to USAID/Burma, and because his position at USAID/Burma is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Mr. Guymon would be compromised by this outside position is greatly diminished.

Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. § 208(b)(1) to permit Mr. Guymon to serve as an alternate representative of USAID on the Fund Board of LIFT.

DAEO Determination:

Pursuant to 18 U.S.C. § 208(b)(1) and the regulations of the Office of Government Ethics at 5 CFR Part 2640, Subpart C, and pursuant to the authority vested in me as the Agency's DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Travis Guymon to participate in an official capacity as a USAID alternate representative on the Fund Board of LIFT. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Guymon on the Fund Board is not so substantial as to be deemed likely to affect the integrity of the services that the USG may expect from him. Further, Mr. Guymon will help to safeguard the interests of the USG by representing the USAID on the Fund Board. 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.

(b)(6)
Approved
Disapproved:

Date: 8/23/17

Ce: Travis Guymon