



USAID | AFGHANISTAN

FROM THE AMERICAN PEOPLE

UNCLASSIFIED

February 9, 2014

ACTION MEMORANDUM

TO: The Designated Agency Ethics Official (DAEO)
(b)(6)

FROM: John R. Power, Regional Legal Advisor

SUBJECT: 18 U.S.C. 208 Waiver for Mr. Wayne R. Nilsestuen

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. 208(b)(1) to Mr. Wayne R. Nilsestuen, Director of the Office of Agriculture (OAG), USAID/Afghanistan, so that he may participate, in an official capacity as a representative of USAID, on the High Council of the Agriculture Development Fund (ADF) of Afghanistan.

A waiver was granted on March 26, 2013 authorizing Ms. Dawn Thomas, Director of OAG to serve as the USAID representative on the High Council, and a waiver was granted on September 19, 2013 authorizing Mr. Stephen Orr, Deputy Director of OAG, to serve as the USAID representative on the High Council if Ms. Thomas is not available to serve. Ms. Thomas has departed USAID/Afghanistan and Mr. Nilsestuen has recently arrived and replaced her. Accordingly, a new waiver for Mr. Nilsestuen as Ms. Thomas's successor is needed to authorize Mr. Nilsestuen to serve as the USAID Representative on the ADF High Council.

Discussion:

The ADF was established on July 18, 2010 under a Strategic Objective Grant Agreement (SOAG), granting \$100 million to the Government of the Islamic Republic of Afghanistan, with an estimated completion date of December 31, 2014. The purpose of the ADF is to facilitate lending to the agricultural sector, in particular to benefit small commercial agricultural farmers. To reach this target group, the ADF works through intermediaries that borrow ADF funds and then on-lend these funds, either as cash or as inputs, to Afghan farmers and agribusinesses to expand their production.

The ADF's charter mandates that a USAID representative be included in its seven-member High Council, the highest decision-making body of ADF that performs similar functions as those of a Board of Directors. The USAID representative will be involved 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 the ADF 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 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.

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 High Council of the ADF. As a member of the High Council, Mr. Nilsestuen may incur fiduciary obligations to the ADF that could conflict with his duties as a USG employee. If such fiduciary obligations exist, it is not clear whether the ADF is legally permitted to waive them under Afghan law. Therefore, you, as the DAEO, are requested to grant a waiver, pursuant to 18 U.S.C. 208(b)(1), to permit Mr. Nilsestuen to serve as a member of the High Council when needed.

Under the ADF's Charter, the duties and responsibilities of the High Council include: 1) analyzing and evaluating the activities of the ADF; 2) approving general and financial policies of the ADF and monitoring their execution; 3) approving annual budgets, organizational structures and expenditures; 4) approving the appointments of, remuneration, incentives, dismissals, rewards to, and taking disciplinary actions against, members of the Executive Board; 5) approving the appointment and/or discharge of the ADF's external auditors; 6) approving annual and long-term work plans of the ADF; 7) approving the ADF's annual financial reports and reports of the national and international

auditors; 8) approving policies governing the provision of loans and financial services; 9) making determinations relating to doubtful and non-performing accounts; 10) approving the ADF's by-laws, policies, procedures, rules and guidelines for the fulfillment of its financial, operational and executive activities; and 11) establishing review committees, financial credit committee, compensation and governance committee and other committees, if needed, and the appointment of members and their power and duties. The High Council is expected to meet at least quarterly to carry out its functions.

As the Director of OAG at USAID/Afghanistan, Mr. Nilsestuen has primary management responsibility for the Mission's agricultural portfolio.

As a member of the ADF High Council, Mr. Nilsestuen may incur fiduciary obligations to the ADF that could conflict with his duties as a USG employee. In particular, Mr. Nilsestuen is being requested by USAID/Afghanistan to serve in his official Government capacity as a member of the ADF High Council. Because the financial interests of ADF will be imputed to him under 18 U.S.C. § 208(a), he would be disqualified from participating in any particular matter affecting ADF's financial interests in the absence of a section 208(b)(1) waiver. However, the USG has substantial interest in overseeing the use of funds by the ADF and it is deemed critical that a USAID representative be included in the membership of the High Council for that oversight function. Consequently, this waiver is being requested.

A waiver under 18 U.S.C. 208(b)(1) is justified for the following reasons: first, because Mr. Nilsestuen would serve on the High Council as part of his official duty 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. Nilsestuen's position on the High Council will be fully known to the Mission. Moreover, the Mission believes that, to a significant degree, the interests of the USG and the interests of the High Council are consistent, *i.e.*, that the ADF disperses loans and other financial assistance to Afghan farmers pursuant to its established policies and procedures in a transparent and accountable manner. Further, the Mission expects that the interests of the USG and the interests of the ADF can be mutually advanced by the performance of Mr. Nilsestuen's official duties by being a member of the High Council when he is needed to serve in that capacity. Finally, Mr. Nilsestuen will not receive any compensation from the ADF in connection with his service as a member of the High Council. In conclusion, because Mr. Nilsestuen's service at the High Council constitutes an official duty of his service to USAID/Afghanistan, and his position at USAID/Afghanistan is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government

expects from Mr. Nilsestuen would be affected 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. Nilsestuen's service as a member of the High Council of the ADF.

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 Mr. Wayne R. Nilsestuen to participate, in an official capacity, as a member of the High Council of the ADF. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Nilsestuen on the High 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. Nilsestuen will help to safeguard the interests of the USG by representing the USG on the High Council.

(b)(6)

Approved

Disapproved: _____

Date: _____

Cc: Mr. Wayne R. Nilsestuen

February 19, 2014

**ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS
OFFICIAL (DAEO)**

FROM: Karen R. Hunter, RLA/El Salvador

SUBJECT: 18 U.S.C. § 208(b)(1) Waiver for Jason Suec

Issue:

Whether to grant an 18 U.S.C. § 208(b)(1) waiver to Jason Suec, Environmental Officer, USAID/El Salvador, in order that he may participate as the alternate U.S. Government ("USG") representative on the Administering Commission of the Fondo de la Iniciativa para las Américas (the "Administering Commission"). The Fondo de la Iniciativa para las Américas ("FIAES") is the fund established by the Government of El Salvador to implement the El Salvador debt-reduction agreements under the Enterprise for the Americas Initiative (EAI), in the Jobs for Exports Act of 1992, Public Law 102-549, which was incorporated in the Foreign Assistance Act of 1961, Public Law No. 87-195, as amended ("FAA"), and under the Tropical Forest Conservation Act of 1998, Public Law 105-21, as amended ("TFCA"), and is comprised of segregated EAI and TFCA accounts. The Administering Commission, as the sole administering body of FIAES, oversees implementation of both debt-reduction agreements and, accordingly, the EAI and TFCA accounts. Mr. Suec would only serve on the Administering Commission if Mr. Kirk Dahlgren, Mission Director to USAID/El Salvador, is not available to serve. As the DAEO, you have the authority to grant this waiver.

Background:

Each of the EAI and the TFCA require the establishment of an administering body (i.e., the Administering Commission) to monitor the implementation of the debt reduction agreements established thereunder. Specifically, with respect to EAI, FAA Section 708(c)(2) provides that "The administering body shall consist of (A) *one or more individuals appointed by the United States Government*; (B) one or more individuals appointed by the government of the beneficiary country; and (C) individuals who represent a broad range of (i) environmental nongovernmental organizations of the beneficiary country; (ii) child survival and child development nongovernmental organizations of the beneficiary country; (iii) local community development nongovernmental organizations of the beneficiary country; and (iv) scientific or academic organizations or institutions of the beneficiary country." (*Emphasis added*) Likewise, Section 809(c)(2)(A) of the TFCA provides 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 USG has one seat on the Administering Commission. Mr. Suec has been directed to serve in his official government capacity as the alternate USG representative on the Administering Commission in cases where the USG representative, Mr. Dahlgren, is not available to serve.

The specific responsibilities of the Administering Commission are set forth in the El Salvador debt reduction agreements, specifically Article 6 (Functions of the Commission) of the Agreement between the Government of the United States and the Government of El Salvador ("GOES"), dated June 18, 1993 (the "Americas Framework Agreement") and in Article IV (Functions of the Commission) of the Agreement Concerning the Establishment of a Tropical Forest Conservation Fund and the Operation of the Tropical Forest Conservation Commission, between the USG and the GOES, dated September 14, 2001 (the "TFCA Agreement") (collectively, the "Agreements"). Section II of the TFCA Agreement provides for the establishment of a segregated account in FIAES (originally established under the Americas Framework Agreement) to implement the TFCA, and, accordingly, Section IV of the TFCA Agreement provides that the Administering Commission for FIAES established under the Americas Framework Agreement shall also serve as the administering body under the TFCA Agreement.

Under the Agreements, the Administering Commission is responsible for: (A) widely disseminating a public announcement of each call for grant proposals, which states the criteria for selection of projects eligible for grant assistance and the qualifications of organizations eligible to submit proposals for grant awards; (B) receiving proposals for grant assistance from eligible entities and making grants to eligible grant recipients for eligible activities; (C) publically announcing grants awarded by the Administering Commission; (D) presenting to the USG and GOES: (i) an annual program, by October 30; (ii) an annual report on the activities funded by the Administering Commission during the previous year, which shall include on-going, multi-year projects, by November 30; and (iii) an annual audit by an independent auditor, by November 30; (E) presenting proposed grants with a life-of-project total in excess of \$100,000 for approval to the USG and the GOES; (F) adopting, by majority vote procedures for its operation; (G) meeting at least once every four months; (H) ensuring that performance under grants and other agreements is monitored to determine whether time schedules and other performance goals are being achieved; (I) periodically drawing sums necessary for the Administering Commission's administrative functions, including technical assistance, expenses, including the fiscal and programmatic audits required pursuant to the Agreement, provided, that the sums may not exceed 7% per annum of the total annual payments made by the GOES pursuant to the Debt Reduction Agreements, except as the USG and GOES may otherwise agree; and (J) retaining and making publically available copies of the of the Administering Commission's organizing statutes, written policies, operating procedures, minutes of meetings, book, records, reports and the decision criteria used by the Administering Commission in the award of grants. Other, specific responsibilities of the Administering Commission are set forth in the internal

operating regulations (*Reglamento Interno Operativo*) of FIAES.¹ These responsibilities of the Administering Commission are consistent with FAA Section 708(c)(2) and TFCA Section 809(c)(2)(A). The Administering Commission meets periodically to carry out its functions under the Agreements.

As an Environmental Officer in El Salvador, Mr. Suec is responsible for managing aspects of the USAID assistance program in El Salvador. This includes, *inter alia*, the management of the development, design, and implementation of USAID-funded environmental programs and activities in El Salvador.

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

Due to the EAI and the TFCA, the interests of USG, USAID and FIAES 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 Government may expect from Mr. Suec. Additionally, the USG has a substantial interest in overseeing the use of funds, which are disbursed pursuant to the administration of the Agreements. Moreover, because Mr. Suec's service on the Administering Commission constitutes an official duty of his USAID employment, and because, if called to serve, Mr. Suec's position on the Administering Commission is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Mr. Suec would be affected by his outside position on the Administering Commission is greatly diminished. Mr. Suec will not be compensated for his service on the Administering Commission.

¹ Note that the *Reglamento Interno Operativo* of FIAES states that the USG representative will be the Director of USAID.

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 FAA § 708(c)(2) or TFCA § 809(c)(2)(A) provide specific statutory authority for placing a federal employee on an administering body of fund created pursuant to those statutes. 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 Jason Suec to serve as the alternate USG representative on Administering Commission.

In order to reduce or eliminate the likelihood that the integrity of Mr. Suec's services would be questioned by a reasonable person, Mr. Suec has agreed that he will not (a) personally award any USG government grants to FIAES, (b) request USG funds on FIAES's behalf, and (c) participate in Administering Commission discussions or actions regarding any award of USAID funds to FIAES. Mr. Suec's agreement does not limit in any fashion, USAID's ability to award funds to FIAES.

Recommendation:

That you grant a waiver to permit Mr. Suec's service as the alternate USG representative on FIAES's Administering Commission.

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 Jason Suec to participate personally and substantially as the alternate USG member of the Administering Commission. This waiver is based on my determination that the FIAES's financial interests, which are imputed to Mr. Suec, 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 Administering Commission.

Approve:

(b)(6)

Disapprove: _____

Date:

2/19/2014

CLEARANCE PAGE FOR ACTION MEMORANDUM requesting decision on 18
U.S.C. § 208(b)(1) Waiver for Jason Suec.

Clearances:

GC/EA: JPeters (b)(6) Date: 2/19/2014

RLA/El Salvador: Karen Hunter, January 27, 2014/EAI Waiver-Suec



USAID | SOUTHERN AFRICA

FROM THE AMERICAN PEOPLE

ACTION MEMORANDUM

TO: Marianne Perciaccante, Alternate Designated Agency Ethics Official (A/DAEO)

FROM: Tanya J. Nunn, Ethics Advisor, USAID/Southern Africa

SUBJECT: Request for 18 U.S.C. 208 Conflicts of Interest Waiver for Ms. Mamiki Sibanyoni

DATE: June 4, 2014

I. Issue for Decision:

This is a request to grant a conflict of interest waiver under 18 U.S.C. 208(b)(1) so that Ms. Mamiki Sibanyoni, a Foreign Service National Personal Services Contract (FSNPSC) employee who holds the position of Assistant Training Officer at USAID's Mission in Southern Africa can serve, in an official capacity, as a Member Trustee on the Foreign Service National (FSN) Southern Africa Pension Fund Board of Trustees.

II. Essential Factors:

A. The FSN Southern Africa Pension Fund

The FSN Southern Africa Pension Fund (hereinafter "Pension Fund") was established under the authority of Section 408 (Local Compensation Plans) of the Foreign Service Act of 1980, as amended (22 USC 3968), which provides, in pertinent part: "[a]ny compensation plan established under this section may include provision for ... payments by the Government to a trust or other fund in a financial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest for the benefit of covered employees." The Pension Fund was also established in accordance with South African law.

The Pension Fund is a defined contribution scheme which disburses the accumulated balance at retirement as either a one-third cash payment with a monthly annuity, or a straight monthly annuity. Pension Fund contributions include a 7.5% employee contribution per pay period accompanied by a USG pay period contribution of 8.5% for retirement and 2.4% for risk benefits.

The Pension Fund is managed by a Board of Trustees which includes Locally Engaged Staff (LES) or FSN employees from the various USG departments and agencies in South Africa, individually referred to as "Member Trustee" and U.S. citizen employee representatives from the same USG departments and agencies, individually referred to as an "Employer Trustee." Pension Fund assets are managed by Old Mutual while the Fund is administered by Alexander Forbes.

USAID has been allocated one (1) Member Trustee position with an alternate and one (1) Employer Trustee position with an alternate on the Pension Fund Board of Trustees.

B. 18 U.S.C. 208

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that an 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.

The U.S. Department of Justice's Office of Legal Counsel (OLC) 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 section 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.

Inasmuch as:

1) Section 408 of the Foreign Service Act of 1980, as amended (22 USC 3968), does not provide express statutory authority for a USG employee to serve on an administering body or board of a pension fund established under the authority of this section;

2) OLC has not opined on the question of whether service by a USG employee as either an employer or member trustee or board member on a pension fund established in accordance with Section 408 of the Foreign Service Act of 1980, as amended (22 USC 3968), is pursuant to specific statutory authority; and

3) it is not known if South African law and regulations permit the waiver or release of fiduciary obligations of Pension Fund employer and member trustees,

you, as the Agency's Alternate DAEO, are requested to grant, pursuant to 18 U.S.C. 208(b)(1), a waiver to permit Ms. Sibanyoni to serve as a Member Trustee on the Pension Fund Board of Trustees, following your determination that any disclosed financial interest as well as participation by this USAID employee on the Pension Fund Board of Trustees is not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from her by participating on the Pension Fund Board of Trustees.

C. Justification

An 18 U.S.C. 208 waiver for Ms. Sibanyoni is justified for the following reasons:

1) It is highly unlikely that the work and fiduciary obligations undertaken by Ms. Sibanyoni as a Member Trustee on the Pension Fund Board will conflict with her official duties as a USG employee as none of her regular duties have any connection to the Pension Fund. Additionally, because she would serve on the Pension Fund Board as an assigned official duty activity along with numerous representatives from other USG departments and agencies at post, there is a greatly diminished risk that the integrity of the services she provides to the USG would be affected by her participation on the Pension Fund Board of Trustees.

2) The USG has a substantial interest in helping to ensure that LES or FSN employees who have faithfully served the USG Missions in Southern Africa enjoy financial security in retirement. Service on the Pension Fund Board by Ms. Sibanyoni can actually advance this interest as she, along with Pension Fund Board of Trustee members from other USG departments and agencies at post, will work to ensure that Pension Fund monies are invested into solid instruments that provide positive rates of return and that no Pension Fund monies are misappropriated or otherwise diverted for an illegal or corrupt purpose.

3) Ms. Sibanyoni understands and agrees that, as an official duty activity, no separate compensation may be received by her from the Pension Fund Board of Trustees in connection with her service as a trustee of the Board.

III. Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. 208(b)(1) to permit Ms. Sibanyoni to serve as a Member Trustee on the Pension Fund Board of Trustees. This waiver also permits Ms. Sibanyoni to participate in particular matters that would have a

direct and predictable effect on the FSN Fund or the underlying holdings of the Pension Fund as part of her official duties as a Member Trustee of the Pension Fund Board, so long as she does not make any determination, request or recommendation that would individually or specially affect her own benefit in the Pension Fund or the benefit of any person enumerated in 18 U.S.C. 208(a). This waiver does not permit her to participate in any other particular matter that would directly and predictably affect the underlying holdings of the Pension Fund, unless she qualifies for a regulatory exception pursuant to 18 U.S.C. 208(b)(2).

IV. 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 the Agency's Alternate DAEO, I hereby waive the disqualification imposed by 18 U.S.C. 208 (a) and authorize Ms. Sibanyoni to serve as a Member Trustee on the Pension Fund Board of Trustees.

This waiver is based on my determination that any disclosed financial interest as well as any participation by Ms. Sibanyoni on the Pension Fund Board of Trustees is not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from her. Further, by participating on the Pension Fund Board of Trustees, she can actually help to safeguard the interests of the USG by representing the USG on the Board.

Approved:

(b)(6)

Disapproved: _____

Date: 6/6/2014

Cc: Mamiki Sibanyoni
Patrick Robinson
Elias Nkadimeng



USAID | SOUTHERN AFRICA

FROM THE AMERICAN PEOPLE

ACTION MEMORANDUM

TO: Marianne Perciaccante, Alternate Designated Agency Ethics Official (A/DAEO)

FROM: Tanya J. Nunn, Ethics Advisor, USAID/Southern Africa

SUBJECT: Request for 18 U.S.C. 208 Conflicts of Interest Waiver for Mr. Charles Mandivenyi

DATE: June 4, 2014

I. Issue for Decision:

This is a request to grant a conflict of interest waiver under 18 U.S.C. 208(b)(1) so that Mr. Charles Mandivenyi, a Foreign Service National Personal Services Contract (FSNPSC) employee who holds the position of Project Development Specialist at USAID's Mission in Southern Africa, can serve, in an official capacity, as an Alternate Member Trustee on the Foreign Service National (FSN) Southern Africa Pension Fund Board of Trustees.

II. Essential Factors:

A. The FSN Southern Africa Pension Fund

The FSN Southern Africa Pension Fund (hereinafter "Pension Fund") was established under the authority of Section 408 (Local Compensation Plans) of the Foreign Service Act of 1980, as amended (22 USC 3968), which provides, in pertinent part: "[a]ny compensation plan established under this section may include provision for ... payments by the Government to a trust or other fund in a financial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest for the benefit of covered employees." The Pension Fund was also established in accordance with South African law.

The Pension Fund is a defined contribution scheme which disburses the accumulated balance at retirement as either a one-third cash payment with a monthly annuity, or a straight monthly annuity. Pension Fund contributions include a 7.5% employee contribution per pay period accompanied by a USG pay period contribution of 8.5% for retirement and 2.4% for risk benefits.

The Pension Fund is managed by a Board of Trustees which includes Locally Engaged Staff (LES) or FSN employees from the various USG departments and agencies in South Africa, individually referred to as "Member Trustee" and U.S. citizen employee representatives from the same USG departments and agencies, individually referred to as an "Employer Trustee." Pension Fund assets are managed by Old Mutual while the Fund is administered by Alexander Forbes.

USAID has been allocated one (1) Member Trustee position with an alternate and one (1) Employer Trustee position with an alternate on the Pension Fund Board of Trustees.

B. 18 U.S.C. 208

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that an 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.

The U.S. Department of Justice's Office of Legal Counsel (OLC) 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 section 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.

Inasmuch as:

1) Section 408 of the Foreign Service Act of 1980, as amended (22 USC 3968), does not provide express statutory authority for a USG employee to serve on an administering body or board of a pension fund established under the authority of this section;

2) OLC has not opined on the question of whether service by a USG employee as either an employer or member trustee or board member on a pension fund established in accordance with Section 408 of the Foreign Service Act of 1980, as amended (22 USC 3968), is pursuant to specific statutory authority; and

3) it is not known if South African law and regulations permit the waiver or release of fiduciary obligations of Pension Fund employer and member trustees,

you, as the Agency's Alternate DAEO, are requested to grant, pursuant to 18 U.S.C. 208(b)(1), a waiver to permit Mr. Mandivenyi to serve as an Alternate Member Trustee on the Pension Fund Board of Trustees, following your determination that any disclosed financial interest as well as participation by this USAID employee on the Pension Fund Board of Trustees is not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him by participating on the Pension Fund Board of Trustees.

C. Justification

An 18 U.S.C. 208 waiver for Mr. Mandivenyi is justified for the following reasons:

1) It is highly unlikely that the work and fiduciary obligations undertaken by Mr. Mandivenyi as an Alternate Member Trustee on the Pension Fund Board will conflict with his official duties as a USG employee as none of his regular duties have any connection to the Pension Fund. Additionally, because he would serve on the Pension Fund Board as an assigned official duty activity along with numerous representatives from other USG departments and agencies at post, there is a greatly diminished risk that the integrity of the services he provides to the USG would be affected by his participation on the Pension Fund Board of Trustees.

2) The USG has a substantial interest in helping to ensure that LES or FSN employees who have faithfully served the USG Missions in Southern Africa enjoy financial security in retirement. Service on the Pension Fund Board by Mr. Mandivenyi can actually advance this interest as he, along with Pension Fund Board of Trustee members from other USG departments and agencies at post, will work to ensure that Pension Fund monies are invested into solid instruments that provide positive rates of return and that no Pension Fund monies are misappropriated or otherwise diverted for an illegal or corrupt purpose.

3) Mr. Mandivenyi understands and agrees that, as an official duty activity, no separate compensation may be received by him from the Pension Fund Board of Trustees in connection with his service as a trustee of the Board.

III. Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. 208(b)(1) to permit Mr. Mandivenyi to serve as an Alternate Member Trustee on the Pension Fund Board of Trustees. This waiver permits Mr. Mandivenyi to participate in particular matters that would have a

direct and predictable effect on the FSN Fund or the underlying holdings of the Pension Fund as part of her official duties as a Member Trustee of the Pension Fund Board, so long as she does not make any determination, request or recommendation that would individually or specially affect her own benefit in the Pension Fund or the benefit of any person enumerated in 18 U.S.C. 208(a). This waiver does not permit her to participate in any other particular matter that would directly and predictably affect the underlying holdings of the Pension Fund, unless she qualifies for a regulatory exception pursuant to 18 U.S.C. 208(b)(2).

IV. 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 the Agency's Alternate DAEO, I hereby waive the disqualification imposed by 18 U.S.C. 208(a) and authorize Mr. Mandivenyi to serve as an Alternate Member Trustee on the Pension Fund Board of Trustees.

This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Mandivenyi on the Pension Fund Board of Trustees is not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him. Further, by participating on the Pension Fund Board of Trustees, he can actually help to safeguard the interests of the USG by representing the USG on the Board.

Approved: _____

(b)(6)

Disapproved: _____

Date: 6/6/2014

Cc: Charles Mandivenyi
Patrick Robinson
Elias Nkadameng



USAID | SOUTHERN AFRICA

FROM THE AMERICAN PEOPLE

ACTION MEMORANDUM

TO: Marianne Perciaccante, Alternate Designated Agency Ethics Official (A/DAEO)

FROM: Tanya J. Nunn, Ethics Advisor, USAID/Southern Africa

SUBJECT: Request for 18 U.S.C. 208 Conflicts of Interest Waiver for Mr. Marty George

DATE: June 4, 2014

I. Issue for Decision:

This is a request to grant a conflict of interest waiver under 18 U.S.C. 208(b)(1) so that Mr. Marty George, a United States Direct Hire (USDH) Foreign Service Officer (FSO) assigned to USAID's Mission in Southern Africa as Deputy Executive Officer, can serve, in an official capacity, as an Alternate Employer Trustee on the Foreign Service National (FSN) Southern Africa Pension Fund Board of Trustees.

II. Essential Factors:

A. The FSN Southern Africa Pension Fund

The FSN Southern Africa Pension Fund (hereinafter "Pension Fund") was established under the authority of Section 408 (Local Compensation Plans) of the Foreign Service Act of 1980, as amended (22 USC 3968), which provides, in pertinent part: "[a]ny compensation plan established under this section may include provision for ... payments by the Government to a trust or other fund in a financial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest for the benefit of covered employees." The Pension Fund was also established in accordance with South African law.

The Pension Fund is a defined contribution scheme which disburses the accumulated balance at retirement as either a one-third cash payment with a monthly annuity, or a straight monthly annuity. Pension Fund contributions include a 7.5% employee contribution per pay period accompanied by a USG pay period contribution of 8.5% for retirement and 2.4% for risk benefits.

The Pension Fund is managed by a Board of Trustees which includes Locally Engaged Staff (LES) or FSN employees from the various USG departments and agencies in South Africa, individually referred to as "Member Trustee" and U.S. citizen employee representatives from the same USG departments and agencies, individually referred to as an "Employer Trustee." Pension Fund assets are managed by Old Mutual while the Fund is administered by Alexander Forbes.

USAID has been allocated one (1) Member Trustee position with an alternate and one (1) Employer Trustee position with an alternate on the Pension Fund Board of Trustees.

B. 18 U.S.C. 208

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that an 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.

The U.S. Department of Justice's Office of Legal Counsel (OLC) 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 section 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.

Inasmuch as:

1) Section 408 of the Foreign Service Act of 1980, as amended (22 USC 3968), does not provide express statutory authority for a USG employee to serve on an administering body or board of a pension fund established under the authority of this section;

2) OLC has not opined on the question of whether service by a USG employee as either a member or employer trustee or board member on a pension fund established in accordance with Section 408 of the Foreign Service Act of 1980, as amended (22 USC 3968), is pursuant to specific statutory authority; and

3) it is not known if South African law and regulations permit the waiver or release of fiduciary obligations of Pension Fund member or employer trustees,

you, as the Agency's Alternate DAEO, are requested to grant, pursuant to 18 U.S.C. 208(b)(1), a waiver to permit Mr. George to serve as an Alternate Employer Trustee on the Pension Fund Board of Trustees, following your determination that any disclosed financial

interest as well as participation by this USAID employee on the Pension Fund Board of Trustees is not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him by participating on the Pension Fund Board of Trustees.

C. Justification

An 18 U.S.C. 208 waiver for Mr. George is justified for the following reasons:

1) It is highly unlikely that the work and fiduciary obligations undertaken by Mr. George as an Alternate Employer Trustee on the Pension Fund Board will conflict with his official duties as a USG employee as none of his regular duties have any connection to the Pension Fund. Additionally, because he would serve on the Pension Fund Board as an assigned official duty activity along with numerous representatives from other USG departments and agencies at post, there is a greatly diminished risk that the integrity of the services he provides to the USG would be affected by his participation on the Pension Fund Board of Trustees.

2) The USG has a substantial interest in helping to ensure that LES or FSN employees who have faithfully served the USG Missions in Southern Africa enjoy financial security in retirement. Service on the Pension Fund Board by Mr. George can actually advance this interest as he, along with Pension Fund Board of Trustee members from other USG departments and agencies at post, will work to ensure that Pension Fund monies are invested into solid instruments that provide positive rates of return and that no Pension Fund monies are misappropriated or otherwise diverted for an illegal or corrupt purpose.

3) Mr. George understands and agrees that, as an official duty activity, no separate compensation may be received by him from the Pension Fund Board of Trustees in connection with his service as a trustee of the Board.

III. Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. 208(b)(1) to permit Mr. George to serve as an Alternate Employer Trustee on the Pension Fund Board of Trustees.

IV. 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 the Agency's Alternate DAEO, I hereby waive the disqualification imposed by 18 U.S.C. 208 (a) and

authorize Mr. George to serve as an Alternate Employer Trustee on the Pension Fund Board of Trustees.

This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. George on the Pension Fund Board of Trustees is not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him. Further, by participating on the Pension Fund Board of Trustees, he can actually help to safeguard the interests of the USG by representing the USG on the Board.

Approved:

(b)(6)

Disapproved: _____

Date: _____

6/6/2014

Cc: Marty George
Patrick Robinson
Elias Nkadameng



USAID | SOUTHERN AFRICA

FROM THE AMERICAN PEOPLE

ACTION MEMORANDUM

TO: Marianne Perciaccante, Alternate Designated Agency Ethics Official (A/DAEO)

FROM: Tanya J. Nunn, Ethics Advisor, USAID/Southern Africa

SUBJECT: Request for 18 U.S.C. 208 Conflicts of Interest Waiver for Mr. John Vernon

DATE: June 4, 2014

I. Issue for Decision:

This is a request to grant a conflict of interest waiver under 18 U.S.C. 208(b)(1) so that Mr. John Vernon, a United States Direct Hire (USDH) Foreign Service Officer (FSO) assigned to USAID's Mission in Southern Africa as Regional Controller, can serve, in an official capacity, as an Employer Trustee on the Foreign Service National (FSN) Southern Africa Pension Fund Board of Trustees.

II. Essential Factors:

A. The FSN Southern Africa Pension Fund

The FSN Southern Africa Pension Fund (hereinafter "Pension Fund") was established under the authority of Section 408 (Local Compensation Plans) of the Foreign Service Act of 1980, as amended (22 USC 3968), which provides, in pertinent part: "[a]ny compensation plan established under this section may include provision for ... payments by the Government to a trust or other fund in a financial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest for the benefit of covered employees." The Pension Fund was also established in accordance with South African law.

The Pension Fund is a defined contribution scheme which disburses the accumulated balance at retirement as either a one-third cash payment with a monthly annuity, or a straight monthly annuity. Pension Fund contributions include a 7.5% employee contribution per pay period accompanied by a USG pay period contribution of 8.5% for retirement and 2.4% for risk benefits.

The Pension Fund is managed by a Board of Trustees which includes Locally Engaged Staff (LES) or FSN employees from the various USG departments and agencies in South Africa, individually referred to as "Member Trustee" and U.S. citizen employee representatives from the same USG departments and agencies, individually referred to as an "Employer Trustee." Pension Fund assets are managed by Old Mutual while the Fund is administered by Alexander Forbes.

USAID has been allocated one (1) Member Trustee position with an alternate and one (1) Employer Trustee position with an alternate on the Pension Fund Board of Trustees.

B. 18 U.S.C. 208

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that an 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.

The U.S. Department of Justice's Office of Legal Counsel (OLC) 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 section 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.

Inasmuch as:

- 1) Section 408 of the Foreign Service Act of 1980, as amended (22 USC 3968), does not provide express statutory authority for a USG employee to serve on an administering body or board of a pension fund established under the authority of this section;

- 2) OLC has not opined on the question of whether service by a USG employee as either a member or employer trustee or board member on a pension fund established in accordance with Section 408 of the Foreign Service Act of 1980, as amended (22 USC 3968), is pursuant to specific statutory authority; and

- 3) it is not known if South African law and regulations permit the waiver or release of fiduciary obligations of Pension Fund member or employer trustees,

you, as the Agency's Alternate DAEO, are requested to grant, pursuant to 18 U.S.C. 208(b)(1), a waiver to permit Mr. Vernon to serve as an Employer Trustee on the Pension Fund Board of Trustees, following your determination that any disclosed financial interest as well as participation by this USAID employee on the Pension Fund Board of Trustees is not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him by participating on the Pension Fund Board of Trustees.

C. Justification

An 18 U.S.C. 208 waiver for Mr. Vernon is justified for the following reasons:

1) It is highly unlikely that the work and fiduciary obligations undertaken by Mr. Vernon as an Employer Trustee on the Pension Fund Board will conflict with his official duties as a USG employee as none of his regular duties have any connection to the Pension Fund. Additionally, because he would serve on the Pension Fund Board as an assigned official duty activity along with numerous representatives from other USG departments and agencies at post, there is a greatly diminished risk that the integrity of the services he provides to the USG would be affected by his participation on the Pension Fund Board of Trustees.

2) The USG has a substantial interest in helping to ensure that LES or FSN employees who have faithfully served the USG Missions in Southern Africa enjoy financial security in retirement. Service on the Pension Fund Board by Mr. Vernon can actually advance this interest as he, along with Pension Fund Board of Trustee members from other USG departments and agencies at post, will work to ensure that Pension Fund monies are invested into solid instruments that provide positive rates of return and that no Pension Fund monies are misappropriated or otherwise diverted for an illegal or corrupt purpose.

3) Mr. Vernon understands and agrees that, as an official duty activity, no separate compensation may be received by him from the Pension Fund Board of Trustees in connection with his service as a trustee of the Board.

III. Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. 208(b)(1) to permit Mr. Vernon to serve as an Employer Trustee on the Pension Fund Board of Trustees.

IV. 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 the Agency's Alternate DAEO, I hereby waive the disqualification imposed by 18 U.S.C. 208 (a) and authorize Mr. Vernon to serve as an Employer Trustee on the Pension Pension Fund Board of Trustees.

This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Vernon on the Pension Fund Board of Trustees is not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him. Further, by participating on the Pension Fund Board of Trustees, he can actually help to safeguard the interests of the USG by representing the USG on the Board.

Approved:

(b)(6)

Disapproved: _____

Date: 6/6/2014

Cc: John Vernon
Patrick Robinson
Elias Nkadameng



USAID
FROM THE AMERICAN PEOPLE

ACTION MEMORANDUM

TO: James Peters, USAID Designated Agency Ethics Official
FROM: Matthew Cohen, Resident Legal Officer, USAID/Peru
DATE: September 10, 2014
SUBJECT: Title 18, Section 208 of the United States Code (U.S.C.) Waiver for Mr. Jerry Marcus

1. Issue

This is a request to grant a limited conflict of interest under Title 18, Section 208 of the U.S.C. to Jerry Marcus, USAID/Paraguay Assistant Mission Director, so that he may participate as the U.S. Government (USG) representative on the Tropical Forest Conservation Fund (TFCF) Board of Directors in Paraguay.

2. Discussion

The TFCF was established pursuant to an agreement dated June 7, 2006 (hereafter, the "Agreement"), between the USG and the Government of the Republic of Paraguay (GOP). The Board of Directors (hereafter, the "Board") helps administer and govern the TFCF.

The TFCF, and the Board which controls it, were created as part of the debt reduction Agreement between the USG and the GOP. The Agreement provides that the USG will reduce and close the GOP outstanding debt to the USG, the reduced amount of which the GOP will pay into the TFCF. The TFCF was established by the two governments for the purpose of promoting activities designed to conserve, maintain, and restore the tropical forests of Paraguay. The TFCF Board is responsible for managing the fund's activities, investments, and disbursement of its assets to conserve, maintain, and restore Paraguayan forests. Both the USG and GOP have representative board members who participate fully in board deliberations to achieve these ends. Mr. Marcus of USAID/Paraguay has been selected by the United States diplomatic mission to Paraguay to serve as the USG's TFCF/Paraguay Board Member because of his extensive experience working in development and with development organizations in numerous settings in Latin America.

It is both the USG's and board's interest that he serves as a fully functioning member of the Board, a status that triggers both fiduciary responsibilities which may conflict with the loyalty Mr. Marcus owes to USAID by virtue of being a USAID employee, and which may raise potential conflicts of financial interest, depending on board investments and disbursements decisions. For these reasons USAID/Paraguay seeks a waiver of section 208's criminal conflict of interest statute, on behalf of Mr. Marcus, to enable his participation on the TFCF Board in furtherance of the USG's interests.

The criminal conflict of interest statute, Title 18, Section 208(a) of the U.S.C. 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 interest of any organization in which the individual serves as an officer, director, trustee, or employee.

The U.S. Department of Justice's Office of the Legal Counsel (OLC) 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 Title 18, Section 208(a) of the U.S.C 208A), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director, or trustee of a non-federal organization.

OLC has not issued a formal opinion whether or not an oversight committee or participation on a board of directors created by debt exchanges or debt-for-nature swaps falls within the express statutory authority under Section 809(c)(2) of the Foreign Assistance Act of 1961, as amended, which deal with an "administering" body in the context of the TFCA. Therefore, I am asking you to exercise your waiver authority to permit Jerry Marcus to serve as the principal USG representative to the TFCA Fund Board.

If approved, the employee's imputed financial interest in TFCF arising solely as a result of his assignment as U.S Representative to TFCF Board will be waived. This waiver does not, however, permit the employee to participate in an official capacity in any particular matter that will directly and predictably affect any other financial interest or relationship. For example, this waiver would not permit Mr. Marcus to participate in any decision regarding board investments or disbursements that would have a direct and predictable effect on his personal finances or those of any other person enumerated in section 208(a).

As the Supervisory Project Development Officer and Assistant Mission Director at USAID/Paraguay, Mr. Marcus has primary management responsibility for the Mission's conservation related portfolio.

As a member of the Board of Directors, Mr. Marcus may incur fiduciary obligations to the TFCF. The USAID/Paraguay Mission is requesting, however, that Mr. Marcus serve in his official USG capacity as a member of the TFCF Board. Because the financial interests of TFCF will be imputed to him under Title 18, Section 208(a) of the U.S.C., he would be disqualified from participating in any particular matter affecting TFCF's financial interests in

the absence of a section 208(b)(1) waiver. The USG has a substantial interest in overseeing the use of funds by the TFCF, and it is deemed critical that a USAID representative be included in the membership of the High Council for that oversight function.

A waiver under Title 18, Section 208(b)(1) of the U.S.C. is justified for the following reasons: first, because Mr. Marcus would serve on the Board as part of his official duties, there is a greatly diminished risk that the integrity of the services that the USG expects from him would be affected. Mr. Marcus's position on the Board will be fully known to the Mission. Moreover, the Mission believes that, to a significant degree, the interests of the USG and the interests of the Board are consistent, *i.e.*, that the TCFC utilizes funds otherwise designated for debt relief payments to protect and enhance tropical forests in Paraguay. Further, the Mission expects that the interests of the TFCF and the USG can be mutually advanced by the performance of Mr. Marcus's official duties by being a member of the Board when he is needed in that capacity. Finally, as noted above, Mr. Marcus will not receive any compensation from the TFCF in connection with his service as a member of the Board.

In conclusion, because Mr. Marcus's official duties as a member of the Board constitutes an official duty of his service to USAID/Paraguay, and his position at USAID/Paraguay is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the USG expects from Mr. Marcus would be affected by his position is greatly diminished.

3. Recommendation

That you grant a waiver to permit Jerry Marcus to serve as the USG member of the Board, notwithstanding his otherwise disqualifying imputed financial interests arising from Board membership with the TCFC, as indicated above.

4. Determination

Pursuant to Title 18, Section 208(b)(1) of the U.S.C. and regulation of the Office of Government Ethics at Title 5, Part 2640, Subpart C of the Code of Federal Regulations; and pursuant to the authority vested in me as the Agency's Designated Agency Ethics Official, I hereby waive the disqualification imposed by Title 18, Section 208(a) of the U.S.C. and authorize Jerry Marcus to be appointed as USG representative to the TFCF Board of Directors in Paraguay. This limited waiver is based on my determination that the imputed financial interests of the TFCF arising from Mr. Marcus' appointment to the Board of Directors, are not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect of him. Further, he will be safeguarding the interests of the USG by representing the USG on the Board.

(b)(6)

Approve:

9/12/2014

Disapprove: _____

Date: _____

Attachment.



USAID
FROM THE AMERICAN PEOPLE

September 24, 2014

ACTION MEMORANDUM

TO: James M. Peters, Designated Agency Ethics Official ("DAEO")
FROM: Leigh Fraiser, Attorney Advisor GC/Lab & E3 (b)(6)
SUBJECT: 18 U.S.C § 208(b)(1) Waiver for Mr. Michael Kremer

Issue

This is a request to grant a conflict of interest waiver under 18 U.S.C. § 208(b)(1) to Mr. Michael R. Kremer, an employee of USAID within USAID's Global Development Lab, so that he may participate in an official capacity as a representative of USAID on the board of directors of Global Innovation Fund ("GIF"). Mr. Kremer is employed by USAID under a two-year, time-limited appointment on the General Schedule grade 15, step 10 under a Schedule A(r) appointment mechanism.

Discussion

GIF is a not-for-profit company formed on September 17, 2014 under the laws of England and Wales by the UK Department for International Development ("DFID").¹ DFID established GIF pursuant to a Delegated Cooperation Arrangement ("DCAR"), which was entered into on September 25, 2013 by USAID and DFID and under which the parties agreed to "work together and provide funding to support" GIF as a "global innovation platform that will find and support breakthrough solutions to the world's most intractable development

¹ GIF is incorporated under the laws of England and Wales and has not applied to the U.S. Internal Revenue Service for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. Accordingly, GIF is not a "501(c)(3) organization." However, as noted in Article 5.2 of the GIF Articles of Association, GIF's operations are exclusively charitable. In addition, Article 6 of the GIF Articles of Association directs GIF to apply as soon as reasonably practicable to the Charity Commission for England and Wales for registration as a charitable company under the UK Charities Act 2011, which registration would render GIF eligible for certain tax exemptions.

challenges." Under the terms of the DCAR, USAID and DFID anticipate making contributions to GIF in the amount of \$78 million each over the course of five years, subject to the availability of funds.

The purpose of GIF is to accelerate the development, rigorous testing, and scaling up of cost-effective innovations by financially supporting a portfolio of innovations that collectively open up opportunities and improve lives for hundreds of millions of people across multiple developing countries. GIF is modeled on the USAID's existing Development Innovation Ventures ("DIV") program, which uses a venture-capital-like approach to early stage investing, drawing on the success of the industry to discover and support innovative ventures that have the potential to commercially scale across the developing world. GIF will use a competition model to attract applications from innovators. It will employ staged financing, with small awards for piloting, moderate awards for testing and positions for scale, and larger awards to transition innovations to scale that have either passed a market test or have rigorously demonstrated impact and cost-effectiveness.

Pursuant to the GIF corporate "articles of association" and "byelaws,"² Mr. Kremer is proposed to be the USAID representative on the initial GIF board of directors. As an initial board member, the USAID representative will have a term of three years, after which GIF funders will elect members of subsequent boards, possibly including the USAID representative.³ Subject to the granting of this waiver request, USAID has selected Mr. Kremer to be its representative on the initial GIF board because of his expertise in designing and implementing USAID's DIV program, the successful program upon which USAID and DFID have designed GIF. In addition, USAID intends to make substantial financial contributions over the next five years in support of GIF. By being present as a full voting member of the GIF board of directors, a USAID representative will provide advice and counsel to GIF and will help ensure that USAID funds are managed and used by the board and by GIF senior management in a cost-effective manner to

² Under English law, the corporate "articles of association" are analogous to the corporate bylaws under the laws of many states in the United States and must be filed with the UK Companies House. The "byelaws" provide more detailed or nuanced corporate governance provisions than the articles of association and need not be filed with the Companies House.

³ We note that Mr. Kremer's initial term of three years as a director of GIF exceeds his term of employment under his current two-year appointment at USAID. At the expiration of his two-year appointment at USAID, USAID may extend Mr. Kremer's appointment as an employee, in which case Mr. Kremer would continue to serve as the USAID representative on the GIF board of directors. In the event that USAID did not extend Mr. Kremer's appointment as an employee, Mr. Kremer would be required to resign his service as the USAID representative on the GIF board of directors. If he resigned his service as the USAID representative on the GIF board of directors, Mr. Kremer could possibly return to the GIF board of directors at a later date in a different capacity. In the event that USAID did not extend Mr. Kremer's appointment as an employee, USAID would counsel Mr. Kremer on post-employment restrictions and would require him to consult with USAID on post-employment activities with GIF.

achieve the goal of creating GIF. USAID will also have full access to financial and performance information so that it can track its investment.

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that a U.S. government 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 employee 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 U.S. government employee is placed on the GIF board of directors. As a member of the GIF board of directors, Mr. Kremer may incur fiduciary obligations to GIF that could conflict with his duties as a U.S. government employee. According to advice of USAID's English corporate law counsel at Sullivan & Cromwell in London, English law does not permit a corporation such as GIF to waive fiduciary obligations owed to the company by its directors. Therefore, you as the DAEO, are requested to grant a waiver pursuant to 18 U.S.C. § 208(b)(1) to permit Mr. Kremer to serve as a member of the GIF board of directors.

Under GIF articles of association and byelaws, the board of directors is responsible for management oversight of the business of the company. The board is not expected to involve itself in the day-to-day management of the company but instead is authorized to appoint and dismiss a chief executive officer, who will be entrusted with the operational management of GIF and will take primary responsibility for ensuring that its aims and objectives are achieved. The duties and responsibilities of the GIF board include the following: (1) overseeing the selection of the chief executive officer and the senior management team; (2) deciding whether to admit new GIF funders; (3) overseeing the development of criteria under which proposals from potential grantees and other beneficiaries seeking GIF "venture capital-like" funding will be reviewed to determine whether they will receive funding from GIF; (4) overseeing proposed staffing plans for the structure of senior management; (5) engaging external consultants for investigating any specific compliance failures or allegations of wrongdoings; (6) commissioning independent external evaluations of GIF; (7) creation of advisory committees to provide input on GIF's design and strategy, to help with outreach, or to support the sourcing and scaling of innovations; and (8) creation of other committees, possibly including among others an audit committee; a compensation committee; a health, safety, environment, and corporate responsibility committee;

and a membership committee. The board is expected to meet at least three times per year to carry out its functions.

As an employee of USAID, Mr. Kremer has responsibilities for providing advice on the design, negotiation, and operation of the GIF program. Mr. Kremer's work at USAID on the GIF program is substantially reviewed by Mr. David Ferguson, Director of the USAID Global Development Lab Center for Development Innovation, prior to any action being taken by the agency with regard to GIF. USAID expects Mr. Kremer to report back to Mr. Ferguson and other USAID officials on GIF operations. Mr. Kremer remains subject to USAID supervision in his role on the GIF board to ensure that the interests of USAID and the GIF board remain parallel. Mr. Kremer will not be soliciting funds from USAID on behalf of the Board, nor will he apply for or help GIF apply for grants, awards, or other funding from USAID. In his official USAID capacity, Mr. Kremer may be consulted by other USAID officials regarding GIF operations and activities, and he may opine on funding decisions within USAID vis-à-vis the Board. However, in his official USAID capacity, he will not make final funding decisions or awards to GIF.

As a member of the GIF board of directors, Mr. Kremer may incur fiduciary obligations to GIF that could conflict with his duties as a U.S. government employee. In particular, Mr. Kremer is being requested by USAID to serve in his official USAID capacity as a member of the GIF board of directors. Because the financial interests of GIF will be imputed to him under 18 U.S.C. § 208(a), he would be disqualified from participating in any particular matter affecting GIF's financial interests in the absence of a section 208(b)(1) waiver. However, the U.S. government has a substantial interest in overseeing the use of funds by GIF, and it is deemed critical that a USAID representative be included on the GIF board of directors for that oversight function. Consequently, this waiver is being requested.

Please note that the GIF corporate articles of association include provisions governing declaration and conflicts of interests of directors. First, article 34 prohibits directors and connected persons from buying from, selling to, or receiving any financial benefit from GIF on any terms other than arms-length and subject to other provisions. In addition, each director must expressly declare the nature and extent of any interests that he or a connected person has. Finally, a director must "absent himself ... from any discussions of the directors in which it is possible that a conflict will arise between his ... duty to act solely in the interests of [GIF] and any personal interest ... of his ... or his ... connected person."

Please note also that USAID has placed the following limitations on Mr. Kremer's actions as a USAID employee, including his service as the USAID representative on the GIF board of directors:

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

conference, based on a determination that to do so would be in the best interest of the Government;

- b. Mr. Kremer's participation in fundraising activities for GIF will be limited to those activities that are determined by USAID to be in the best interest of USAID. Specifically, USAID has determined that it is in the government's interest for GIF to attract additional donors, possibly including foreign governments such as the Governments of Canada, Australia, Sweden, and possibly including private entities and charitable foundations. Just as USAID has made a determination that Mr. Kremer's presence on the GIF board of directors is in the government's interest, so too has USAID made a determination that Mr. Kremer's participation in discussions with third parties intended to encourage outside investment may be in the government's interest; and
- c. Mr. Kremer will not be soliciting funds from USAID on behalf of the Board, nor will he apply for or help GIF apply for grants, awards, or other funding from USAID. In his official USAID capacity, Mr. Kremer may be consulted by other USAID officials regarding GIF operations and activities, and he may opine on funding decisions within USAID vis-à-vis the Board. However, in his official USAID capacity, he will not make final funding decisions or awards to GIF

A waiver under 18 U.S.C. § 208(b)(1) is justified for the following reasons: first, because Mr. Kremer would serve on the GIF board of directors as part of his official government duties, there is a greatly diminished risk that the integrity of the services that the U.S. government expects from him would be affected. Mr. Kremer's position on the GIF board of directors will be fully known by and under the ultimate supervision of USAID. Moreover, USAID believes that, to a significant degree, the interests of the U.S. government and the interests of the GIF board of directors are parallel, *i.e.*, both USAID and GIF are interested in awarding assistance to innovators of solutions to development challenges pursuant to established policies and procedures in a transparent and accountable manner. Further, USAID expects that the interests of the U.S. government and the interests of GIF can be mutually advanced by the performance of Mr. Kremer's official duties by being a member of the board of directors. Finally, Mr. Kremer will not receive any compensation from GIF in connection with his service as a member of the board of directors. In conclusion, because Mr. Kremer's service on the GIF board of directors constitutes an official duty of his service to USAID, and his position at USAID is subject to continuing supervision and direction of USAID, the risk that the integrity of the services that the government expects from Mr. Kremer would be affected 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. Kremer to serve as a member of the GIF board of directors.

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 USAID's Designated Agency Ethics Official, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Mr. Michael Kremer to participate in an official capacity as a member of the GIF board of directors. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Kremer on the GIF board of directors is not so substantial as to be deemed likely to affect the integrity of the services that the U.S. government may expect from him. Further, Mr. Kremer will help to safeguard the interests of the U.S. government by representing USAID on the GIF board of directors.

Approve: _____

(b)(6)

Disapprove: _____

Date: 12/3/14

cc: Mr. David Ferguson, Director, USAID Global Development Lab, Center for Development
Innovation
Mr. Michael Kremer



USAID | PERU

ACTION MEMORANDUM

TO: James Peters, USAID Designated Agency Ethics Officer (b)(6) *JP*

FROM: Matthew Cohen, Resident Legal Officer, USAID/Peru

DATE: November 10, 2014

SUBJECT: Title 18, Section 208 of the United States Code (U.S.C.) Waiver for Ms. Emily Waytoti as Alternate Board Member for the Fund of the Americas

1. Issue

This is a request to grant a conflict of interest under Title 18, Section 208 of the U.S.C. to Ms. Emily Waytoti, USAID/Peru Office of Environment and Sustainable Development, Environment Officer, so that she may participate as the U.S. Government (USG) alternate representative on the Board of Directors for the Fund of the Americas (FONDAM) in Peru.

2. Discussion

The United States and Peru are signatories to the following "Debt for Nature Swap" agreements:

- Enterprise for the Americas Initiative (EAI): 1997 Americas Framework Agreement (Article III); 1997 Program Agreement Concerning the Sale, Reduction and Cancellation of Certain Loans; and
- Tropical Forest Conservation Act (TFCA II): 2008 Tropical Forest Agreement (Article III); 2008 Debt Reduction Agreement.

These Agreements provide that the USG will reduce and close the Government of Peru (GOP) outstanding debt to the USG, the reduced amount of which the GOP will pay into an environmental conservation fund.

FONDAM manages funds from the two distinct debt swap agreements described above. The first tranche of funds totaling \$22.8 million was issued under the 1997 EAI Agreement. This established a specific account "Americas Account." The Americas Account aims to promote activities relating to the preservation, protection, or management of the natural and

biological resources of Peru in a sustainable and environmentally clean manner, while simultaneously promoting involvement in the survival and development of children nationwide.

A second tranche of funds totaling \$25.1 million was issued under the 2008 TFCA II Agreement, which established as the "Forest Account." The Tropical Forest Account aims to contribute to conserve, maintain, and restore Peru's forests.

A Board of Directors is responsible for managing FONDAM activities, investments, and disbursement of its assets to conserve, maintain, and restore Peruvian forests. This oversight includes the funds allocated to the Americas and Forest Accounts. Both the USG and GOP have representative Board Members who participate fully in board deliberations to achieve these ends. The Board is made up of three representatives from the GOP, one representative from the USG, and six representatives from the civil society, one of which chairs the Board.

Ms. Waytoti of USAID/Peru has been selected by the United States diplomatic mission to Peru to serve as the alternate FONDAM Board Member because of her extensive experience working in development, and with development organizations in numerous settings in Latin America.

It is both the USG's and Board's interest that she serves as an alternate member of the Board to provide oversight and ensure that all funds are managed in accordance with the agreements to which the USG and the GOP are parties. Status as an alternate Board member triggers fiduciary responsibilities that may conflict with the loyalty Ms. Waytoti owes to USAID by virtue of being a USAID employee, and which may raise potential conflicts of financial interest, depending on Board investments and disbursements decisions. For these reasons USAID/Peru seeks a waiver of section 208's criminal conflict of interest statute, on behalf of Ms. Waytoti, to enable her participation on the FONDAM Board in furtherance of the USG's interests.

The criminal conflict of interest statute, Title 18, Section 208(a) of the U.S.C. 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 interest of any organization in which the individual serves as an officer, director, trustee, or employee, unless she is granted a waiver for 18 U.S.C., Section 208(b)(1) or qualifies for an exemption under 18 U.S.C., Section 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.

The U.S. Department of Justice's Office of the Legal Counsel (OLC) 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 Title 18, Section

208(a) of the U.S.C 208A), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director, or trustee of a non-federal organization.

OLC has not issued a formal opinion whether or not an oversight committee or participation on a board of directors created by debt exchanges or debt-for-nature swaps falls within the express statutory authority under Section 809(c)(2) of the Foreign Assistance Act of 1961, as amended, which deal with an "administering" body in the context of the FONDAM. Therefore, I am asking you to exercise your waiver authority to permit Ms. Waytoti to serve as the alternate USG representative to the FONDAM Board.

If approved, the requested waiver will apply fully to the employee's participation in an official capacity in any particular matter that will directly and predictably affect the financial interest of FONDAM and the Board, including the making of grants and contracts with outside organizations, one of the main purposes of FONDAM. This waiver applies only to the financial interests of FONDAM and the Board that are imputed to Ms. Waytoti and will not 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 Section 208. In addition the waiver will be subject to the limitations discussed below.

Perhaps in anticipation of potential conflicts of interest, the Agreement establishing the Board to which Ms. Waytoti has been designated to participate has "built in" conflict of interest provisions which provide, first, that she, as USG representative, will participate *ad honorem*, or without compensation, *see* Agreement Article III.3, and second, that "a Board Member may not participate in the approval of any proposed grant which, if approved, would result in a financial benefit for the member or any member of his family has a direct financial interest. Further, a Board member may not participate in the approval of any proposed grant to an organization which the member represents." Agreement Article III.4. These provisions signal that the Board will be focused on conflicts of interest, and thereby reduce the risk that Ms. Waytoti's or any USG employee's participation will conflict with the principles reflected in Section 208 or the Standards of Conduct for USG employees.

As Environment Officer with the Office of Environment and Sustainable Development at USAID/Peru, Ms. Waytoti has management responsibility for the Mission's conservation related portfolio.

As a member of the Board of Directors, Ms. Waytoti may incur fiduciary obligations to FONDAM that could conflict with her duties as a USG employee. The USAID/Peru Mission is requesting, however, that Ms. Waytoti serve in her official USG capacity as a member of the FONDAM Board. Because the financial interests of FONDAM will be imputed to her under Title 18, Section 208(a) of the U.S.C., she would be disqualified from participating in any particular matter affecting FONDAM's financial interests in the absence of a section 208(b)(1) waiver. The USG has a substantial interest in overseeing the use of funds by FONDAM, and it is deemed critical that a USAID representative be included in the membership of the Board of Directors for that oversight function.

A waiver under Title 18, Section 208(b)(1) of the U.S.C. is justified for the following reasons: first, because Ms. Waytoti would serve on the Board as part of her official duties, there is a greatly diminished risk that the integrity of the services that the USG expects

from her would be affected. Ms. Waytoti's position on the Board will be fully known to the Mission. Moreover, the Mission believes that, to a significant degree, the interests of the USG and the interests of the Board are consistent, *i.e.*, that FONDAM utilizes funds otherwise designated for debt relief payments to protect and enhance tropical forests in Peru. Further, the Mission expects that the interests of FONDAM and the USG can be mutually advanced by the performance of Ms. Waytoti's official duties by being a member of the Board when she is needed in that capacity.

In order to reduce or eliminate the likelihood that the integrity of Ms. Waytoti's role would be questioned by a reasonable person, Ms. Waytoti agreed that she will not: (a) personally award any USG grants to FONDAM; (b) request USG funds on FONDAM's behalf; and (c) participate in Board discussions or actions regarding any award of USAID funds to FONDAM. Ms. Waytoti's agreement does not limit, in any fashion, USAID's ability to award funds to FONDAM.

Finally, as noted above, Ms. Waytoti will not receive any compensation from FONDAM in connection with her service as a member of the Board. In conclusion, because Ms. Waytoti's official duties as a member of the Board constitutes an official duty of her service to USAID/Peru, and her position at USAID/Peru is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the USG expects from Ms. Waytoti would be affected by this position is greatly diminished.

3. Recommendation

That you grant a waiver to permit Emily Waytoti to serve as the alternate USG member of the Board as indicated above.

4. Determination

Pursuant to Title 18, Section 208(b)(1) of the U.S.C. and regulation of the Office of Government Ethics at Title 5, Part 2640, Subpart C of the Code of Federal Regulations; and pursuant to the authority vested in me as the Agency's Designated Agency Ethics Official, I hereby waive the disqualification imposed by Title 18, Section 208(a) of the U.S.C. and authorize Emily Waytoti to be appointed as alternate USG representative to the FONDAM Board of Directors in Peru. This waiver is based on my determination that any financial interests of the FONDAM Board of Directors imputed to Ms. Waytoti, are not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect of her. Further, she will be safeguarding the interests of the USG by representing the USG on the Board.

Approve: X

Disapprove:

Date: 11/26/14

Attachment.



ACTION MEMORANDUM

TO: James Peters, USAID Designated Agency Ethics Officer (b)(6) *for JP*

FROM: Matthew Cohen, Resident Legal Officer, USAID/Peru

DATE: November 10, 2014

SUBJECT: Title 18, Section 208 of the United States Code (U.S.C.) Waiver for Ms. Holly Ferrette as Primary Board Member for the Fund of the Americas

1. Issue

This is a request to grant a conflict of interest under Title 18, Section 208 of the U.S.C. to Ms. Holly Ferrette, USAID/Peru Office of Environment and Sustainable Development, Office Chief, so that she may participate as the U.S. Government (USG) representative on the Board of Directors for the Fund of the Americas (FONDAM) in Peru.

2. Discussion

The United States and Peru are signatories to the following "Debt for Nature Swap" agreements:

- Enterprise for the Americas Initiative (EAI): 1997 Americas Framework Agreement (Article III); 1997 Program Agreement Concerning the Sale, Reduction and Cancellation of Certain Loans; and
- Tropical Forest Conservation Act (TFCA II): 2008 Tropical Forest Agreement (Article III); 2008 Debt Reduction Agreement.

These Agreements provide that the USG will reduce and close the Government of Peru (GOP) outstanding debt to the USG, the reduced amount of which the GOP will pay into an environmental conservation fund.

FONDAM manages funds from the two distinct debt swap agreements described above. The first tranche of funds totaling \$22.8 million was issued under the 1997 EAI Agreement. This established a specific account "Americas Account." The Americas Account aims to promote activities relating to the preservation, protection, or management of the natural and biological

resources of Peru in a sustainable and environmentally clean manner, while simultaneously promoting involvement in the survival and development of children nationwide.

A second tranche of funds totaling \$25.1 million was issued under the 2008 TFCA II Agreement, which established as the "Forest Account." The Tropical Forest Account aims to contribute to conserve, maintain, and restore Peru's forests.

A Board of Directors is responsible for managing FONDAM activities, investments, and disbursement of its assets to conserve, maintain, and restore Peruvian forests. This oversight includes the funds allocated to the Americas and Forest Accounts. Both the USG and GOP have representative Board Members who participate fully in board deliberations to achieve these ends. The Board is made up of three representatives from the GOP, one representative from the USG, and six representatives from the civil society, one of which chairs the Board.

Ms. Ferrette of USAID/Peru has been selected by the United States diplomatic mission to Peru to serve as the FONDAM Board Member because of her extensive experience working in development, and with development organizations in numerous settings in Latin America.

It is both the USG's and Board's interest that she serves as a fully functioning member of the Board to provide oversight and ensure that all funds are managed in accordance with the agreements to which the USG and the GOP are parties. Status as a Board Member triggers fiduciary responsibilities that may conflict with the loyalty Ms. Ferrette owes to USAID by virtue of being a USAID employee, and which may raise potential conflicts of financial interest, depending on Board investments and disbursements decisions. For these reasons USAID/Peru seeks a waiver of section 208's criminal conflict of interest statute, on behalf of Ms. Ferrette, to enable her participation on the FONDAM Board in furtherance of the USG's interests.

The criminal conflict of interest statute, Title 18, Section 208(a) of the U.S.C. 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 interest of any organization in which the individual serves as an officer, director, trustee, or employee, unless she is granted a waiver for 18 U.S.C., Section 208(b)(1) or qualifies for an exemption under 18 U.S.C., Section 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.

The U.S. Department of Justice's Office of the Legal Counsel (OLC) 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 Title 18, Section 208(a) of the U.S.C (208A), the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director, or trustee of a non-federal organization.

OLC has not issued a formal opinion whether or not an oversight committee or participation on a board of directors created by debt exchanges or debt-for-nature swaps falls within the express statutory authority under Section 809(c)(2) of the Foreign Assistance Act of 1961, as amended, which deal with an "administering" body in the context of the FONDAM. Therefore, I am asking you to exercise your waiver authority to permit Holly Ferrette to serve as the principal USG representative to the FONDAM Board.

If approved, the requested waiver will apply fully to the employee's participation in an official capacity in any particular matter that will directly and predictably affect the financial interest of FONDAM and the Board, including the making of grants and contracts with outside organizations, one of the main purposes of FONDAM. This waiver applies only to the financial interests of FONDAM and the Board that are imputed to Ms. Ferrette and will not 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 Section 208. In addition the waiver will be subject to the limitations discussed below.

Perhaps in anticipation of potential conflicts of interest, the Agreement establishing the Board to which Ms. Ferrette has been designated to participate has "built in" conflict of interest provisions which provide, first, that she, as the USG representative, will participate *ad honorem*, or without compensation, *see* Agreement Article III.3, and second, that "a Board Member may not participate in the approval of any proposed grant which, if approved, would result in a financial benefit for the member or any member of his family has a direct financial interest. Further, a Board member may not participate in the approval of any proposed grant to an organization which the member represents." Agreement Article III.4. (Attached.) These provisions signal that the Board will be focused on conflicts of interest, and thereby reduce the risk that Ms. Ferrette's or any USG employee's participation will conflict with the principles reflected in Section 208 or the Standards of Conduct for USG employees.

As the Officer Director for the Officer of Environment and Sustainable Development at USAID/Peru, Ms. Ferrette has primary management responsibility for the Mission's conservation related portfolio.

As a member of the Board of Directors, Ms. Ferrette may incur fiduciary obligations to FONDAM that could conflict with her duties as a USG employee. The USAID/Peru Mission is requesting, however, that Ms. Ferrette serve in her official USG capacity as a member of the FONDAM Board. Because the financial interests of FONDAM will be imputed to her under Title 18, Section 208(a) of the U.S.C., she would be disqualified from participating in any particular matter affecting FONDAM's financial interests in the absence of a section 208(b)(1) waiver. The USG has a substantial interest in overseeing the use of funds by FONDAM, and it is deemed critical that a USAID representative be included in the membership of the Board of Directors for that oversight function.

A waiver under Title 18, Section 208(b)(1) of the U.S.C. is justified for the following reasons: first, because Ms. Ferrette would serve on the Board as part of her official duties, there is a greatly diminished risk that the integrity of the services that the USG expects from her would be affected. Ms. Ferrette's position on the Board will be fully known to the Mission.

Moreover, the Mission believes that, to a significant degree, the interests of the USG and the interests of the Board are consistent, *i.e.*, that FONDAM utilizes funds otherwise designated for debt relief payments to protect and enhance tropical forests in Peru. Further, the Mission expects that the interests of FONDAM and the USG can be mutually advanced by the performance of Ms. Ferrette's official duties by being a member of the Board when she is needed in that capacity.

In order to reduce or eliminate the likelihood that the integrity of Ms. Ferrette's role would be questioned by a reasonable person, Ms. Ferrette agreed that she will not: (a) personally award any USG grants to FONDAM; (b) request USG funds on FONDAM's behalf; and (c) participate in Board discussions or actions regarding any award of USAID funds to FONDAM. Ms. Ferrette's agreement does not limit, in any fashion, USAID's ability to award funds to FONDAM.

Finally, as noted above, Ms. Ferrette will not receive any compensation from FONDAM in connection with her service as a member of the Board. In conclusion, because Ms. Ferrette's official duties as a member of the Board constitutes an official duty of her service to USAID/Peru, and her position at USAID/Peru is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the USG expects from Ms. Ferrette would be affected by this position is greatly diminished.

3. Recommendation

That you grant a waiver to permit Holly Ferrette to serve as the USG member of the Board as indicated above.

4. Determination

Pursuant to Title 18, Section 208(b)(1) of the U.S.C. and regulation of the Office of Government Ethics at Title 5, Part 2640, Subpart C of the Code of Federal Regulations; and pursuant to the authority vested in me as the Agency's Designated Agency Ethics Official, I hereby waive the disqualification imposed by Title 18, Section 208(a) of the U.S.C. and authorize Holly Ferrette to be appointed as USG representative to the FONDAM Board of Directors in Peru. This waiver is based on my determination that any financial interests of the FONDAM Board of Directors that are imputed to Ms. Ferrette, are not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect of her. Further, she will be safeguarding the interests of the USG by representing the USG on the Board.

Approve: X

Disapprove:

Date:

11/26/14

Attachment.



USAID | BURMA

FROM THE AMERICAN PEOPLE

UNCLASSIFIED

March 10, 2015

ACTION MEMORANDUM

TO: James Peters, Designated Agency Ethics Official (DAEO)

FROM: Julie Southfield, Resident Legal Officer

SUBJECT: 18 U.S.C. § 208(b)(1) Waiver for ThuVan T. Dinh

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. § 208(b)(1) to ThuVan T. Dinh, Health Technical Advisor at USAID/Burma, so that she may participate in an official capacity as the alternate representative of USAID on the Fund Board of the Three Millennium Development Goals Fund for Myanmar (3MDG). Ms. Dinh attends meetings of the Fund Board when the official 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) that currently has seven donors working to support the provision of health services in Myanmar 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 and USAID began contributing in 2013. USAID contributions to date total \$3.0 million and it is anticipated that USAID will contribute up to \$5.0 million in total over the life of 3MDG. 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. Dinh was nominated by the Mission Director to serve as USAID's alternate representative on the 3 MDG Fund Board.

The "Joint Collaboration Arrangement between the Donors to the Three Millennium Development Goal Fund (3MDGF) for Myanmar 2012-2016" document 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 from 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 the 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 Fund.

The Fund Board is expected to meet four 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 3MDG. As an alternate member of the Fund Board, Ms. Dinh 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 local law. Because the financial interests of 3MDG will be imputed to her 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. Dinh to serve as an alternate member of the 3MDG Fund Board.

If approved, Ms. Dinh's imputed financial interest in 3MDG arising solely as a result of her assignment as the alternate 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 Technical Advisor at USAID/Burma, Ms. Dinh has primary management responsibility for the Mission's public health development 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 improve the health of the people of Burma. Ms. Dinh 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. Dinh's actions as a USAID employee, including her service as the USAID representative on the 3MDG Fund Board:

- a. Ms. Dinh 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. Dinh 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. Dinh'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. Dinh's presence on the 3MDG Fund Board is in the Government's interest, so too has USAID made a determination that Ms. Dinh's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Ms. Dinh will not be soliciting funds from USAID on behalf of the Board, nor will she apply for or help 3MDG apply for grants, awards, or other funding from USAID. In her official USAID capacity, Ms. Dinh 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. Dinh'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 her 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. Dinh to serve as the 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 ThuVan T. Dinh 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 Ms. Dinh 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 her. Further, Ms. Dinh will help to safeguard the interests of the USG by representing the USAID on the Fund Board.

Approved: (b)(6)
Disapprove: _____
Date: 4/20/2015

Cc: ThuVan T. Dinh



USAID | BURMA

FROM THE AMERICAN PEOPLE

UNCLASSIFIED

March 10, 2015

ACTION MEMORANDUM

TO: James Peters, Designated Agency Ethics Official (DAEO)

FROM: Julie Southfield, Resident Legal Officer

SUBJECT: 18 U.S.C. § 208(b)(1) Waiver for William Slater

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. § 208(b)(1) to William Slater, Director of the Office of Public Health (OPH), USAID/Burma, so that he may participate in an official capacity as the representative of USAID on the Fund Board of the Three Millennium Development Goals 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) that currently has seven donors working to support the provision of health services in Myanmar 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 and USAID began contributing in 2013. USAID contributions to date total \$3.0 million and it is anticipated that USAID will contribute up to \$5.0 million in total over the life of 3MDG. 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. Slater was nominated by the Mission Director to serve as USAID's representative on the 3MDG Fund Board.

The "Joint Collaboration Arrangement between the Donors to the Three Millennium Development Goal Fund (3MDGF) for Myanmar 2012-2016" document 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 from 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 the 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 Fund.

The Fund Board is expected to meet four 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 3MDG. As a member of the Fund Board, Mr. Slater may incur fiduciary obligations to 3MDG that could conflict with his duties as USG employee. If such fiduciary obligations exist, it is not clear whether 3MDG is legally permitted to waive them under local law. 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. Slater to serve as a member of the 3MDG Fund Board.

If approved, Mr. Slater's imputed financial interest in 3MDG arising solely as a result of his assignment as the 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 the Director of OPH at USAID/Burma, Mr. Slater has primary management responsibility for the Mission's public health development portfolio and is responsible for managing approximately \$30 million in development assistance health funding, covering a variety of sectors including maternal and child health, malaria, HIV/AIDS and tuberculosis. 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 improve the health of the people of Burma. Mr. Slater will not receive any compensation from 3MDG in connection with his service as a member of the Fund Board.

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

- a. Mr. Slater 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. Slater 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. Slater'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. Slater's presence on the 3MDG Fund Board is in the Government's interest, so too has USAID made a determination that Mr. Slater's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Mr. Slater will not be soliciting funds from USAID on behalf of the Board, nor will he apply for or help 3MDG apply for grants, awards, or other funding from USAID. In his official USAID capacity, Mr. Slater may be consulted by other USAID officials regarding 3MDG operations and activities, and 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. Slater'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 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. Slater to serve as the 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 William Slater to participate, in an official capacity, as the 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. Slater 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. Slater will help to safeguard the interests of the USG by representing the USAID on the Fund Board.

Approved: _____

Disapproved: _____

Date: _____

(b)(6)

Cc: William Slater



USAID
FROM THE AMERICAN PEOPLE

UNCLASSIFIED

March 12, 2015

ACTION MEMORANDUM

TO: James Peters, Designated Agency Ethics Official (DAEO)
FROM: Julie Southfield, Resident Legal Officer
SUBJECT: 18 U.S.C. § 208(b)(1) Waiver for Megan Willis

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. § 208(b)(1) to ~~Megan Willis~~, Agriculture Officer, USAID/Burma, so that she 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).

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 ~~\$2.6 million~~ and it is anticipated that USAID will contribute up to ~~\$12.5 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. ~~Ms. Willis~~ serves as an alternate representative to the Fund Board and attends meetings when USAID's representative is unavailable.

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, Ms. Willis may incur fiduciary obligations to LIFT that could conflict with her duties as a USG employee. If such fiduciary obligations exist, it is not clear whether LIFT is legally permitted to waive them under local law. Because the financial interests of LIFT will be imputed to her under 18 U.S.C. § 208(b)(1), she 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 Ms. Willis to serve as an alternate member of the LIFT Fund Board.

If approved, the Ms. Willis's imputed financial interest in LIFT arising solely as a result of her assignment as a USAID representative to the Fund Board of LIFT 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 Agriculture Officer at USAID/Burma, Ms. Willis has primary management responsibility for the Mission's 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 the livelihoods of poor farmers in Burma. Ms. Willis 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 Ms. Willis's actions as a USAID employee, including her service as the USAID representative on the LIFT Fund Board:

- a. Ms. Willis 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 Ms. Willis 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. Ms. Willis'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 Ms. Willis's presence on the LIFT Fund Board is in the Government's interest, so too has USAID made a determination that Ms. Willis's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Ms. Willis will not be soliciting funds from USAID on behalf of the Board, nor will she apply for or help LIFT apply for grants, awards, or other funding from USAID. In her official USAID capacity, Ms. Willis may be consulted by other USAID officials regarding LIFT operations and activities, and she may opine on funding decisions within USAID in relation to LIFT. However, in her official capacity, she will not make final funding decisions or awards to LIFT.

In conclusion, because Ms. Willis'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. Willis 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. Willis serve as an alternate 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 Megan Willis 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 Ms. Willis 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 her. Further, Ms. Willis will help to safeguard the interests of the USG by representing the USAID on the Fund Board.

Approved

(b)(6)

Disapproved: _____

Date: 4/21/2015

Cc: Megan Willis



USAID
FROM THE AMERICAN PEOPLE

UNCLASSIFIED

March 12, 2015

ACTION MEMORANDUM

TO: James Peters, Designated Agency Ethics Official (DAEO)
FROM: Julie Southfield, Resident Legal Officer
SUBJECT: 18 U.S.C. § 208(b)(1) Waiver for James Goggin

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. § 208(b)(1) to ~~James Goggin~~, Agriculture Officer, USAID/Burma 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).

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 ~~\$2.6 million~~ and it is anticipated that USAID will contribute up to ~~\$12.5 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. ~~Mr. Goggin~~ serves as an alternate representative to the Fund Board and attends meetings when USAID's representative is unavailable.

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. Goggin may incur fiduciary obligations to LIFT that could conflict with his duties as USG employee. If such fiduciary obligations exist, it is not clear whether LIFT is legally permitted to waive them under local law. Because the financial interests of LIFT will be imputed to him 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. Goggin to serve as an alternate member of the LIFT Fund Board.

If approved, Mr. Goggin'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 an Agriculture Officer at USAID/Burma, Mr. Goggin has primary management responsibility for the Mission's 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 the livelihoods of poor farmers in Burma. Mr. Goggin 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. Goggin's actions as a USAID employee, including his service as the USAID representative on the LIFT Fund Board:

- a. Mr. Goggin 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. Goggin 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. Goggin'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. Goggin's presence on the LIFT Fund Board is in the Government's interest, so too has USAID made a determination that Mr. Goggin's participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. Mr. Goggin will not be soliciting funds from USAID on behalf of the Board, nor will he apply for or help LIFT apply for grants, awards, or other funding from USAID. In his official USAID capacity, Mr. Goggin 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. Goggin'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. Goggin 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. Goggin to serve as an alternate 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 James Goggin 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. Goggin 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. Goggin will help to safeguard the interests of the USG by representing the USAID on the Fund Board.

Approved:

(b)(6)

Disapproved: _____

Date: 4/21/2015

Cc: James Goggin



USAID
FROM THE AMERICAN PEOPLE

UNCLASSIFIED

March 12, 2015

ACTION MEMORANDUM

TO: James Peters, Designated Agency Ethics Official (DAEO)
FROM: Julie Southfield, Resident Legal Officer
SUBJECT: 18 U.S.C. § 208(b)(1) Waiver for ~~Leslie Marbury~~

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. § 208(b)(1) to ~~Leslie Marbury~~, Director of the Office of Economic Growth (OEG), USAID/Burma, so that she may participate in an official capacity as a representative of USAID on the Fund Board of the Livelihoods and Food Security Trust Fund for Myanmar (LIFT).

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 ~~\$2.6 million~~ and it is anticipated that USAID will contribute up to ~~\$12.5 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. ~~Ms. Marbury~~ was nominated by the Mission Director to serve as USAID's representative.

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, ~~Ms. Marbury~~ may incur fiduciary obligations to LIFT that could conflict with her duties as a USG employee. If such fiduciary obligations exist, it is not clear whether LIFT is legally permitted to waive them under local law. Because the financial interests of LIFT will be imputed to her under 18 U.S.C. § 208(b)(1), she 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 ~~Ms. Marbury~~ to serve as a member of the LIFT Fund Board.

If approved, ~~Ms. Marbury's~~ imputed financial interest in LIFT arising solely as a result of her assignment as a USAID representative to the Fund Board of LIFT 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 the Director of OEG at USAID/Burma, ~~Ms. Marbury~~ has primary management responsibility for the Mission's 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 the livelihoods of poor farmers in Burma. ~~Ms. Marbury~~ will not receive any compensation from LIFT in connection with her service as a member of the Fund Board.

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

- a. ~~Ms. Marbury~~ 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 ~~Ms. Marbury~~ 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. ~~Ms. Marbury'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 ~~Ms. Marbury's~~ presence on the LIFT Fund Board is in the Government's interest, so too has USAID made a determination that ~~Ms. Marbury's~~ participation in discussions with third parties intended to encourage outside investment may be in the Government's interest; and
- c. ~~Ms. Marbury~~ will not be soliciting funds from USAID on behalf of the Board, nor will she apply for or help LIFT apply for grants, awards, or other funding from USAID. In her official USAID capacity, ~~Ms. Marbury~~ may be consulted by other USAID officials regarding LIFT operations and activities, and she may opine on funding decisions within USAID in relation to LIFT. However, in her official capacity, she will not make final funding decisions or awards to LIFT.

In conclusion, because ~~Ms. Marbury'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. Marbury~~ 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. Marbury~~ to serve as a 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 ~~Leslie Marbury~~ to participate in an official capacity as a 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 ~~Ms. Marbury~~ 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. Marbury~~ will help to safeguard the interests of the USG by representing the USAID on the Fund Board.

Approved: _____

(b)(6)

Disapproved: _____

Date: 4/21/2015

Cc: ~~Leslie Marbury~~



USAID
FROM THE AMERICAN PEOPLE

July 17, 2015

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

TO: James M. Peters, Designated Agency Ethics
Official (DAEO)

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

SUBJECT: 18 U.S.C. 208 Waiver For Esther Zeledon

Issue:

Whether to grant an 18 U.S.C. 208(b)(1) waiver to allow USAID Foreign Service Officer Esther Zeledon, USAID/Jamaica Environment Officer, so that she may participate in official capacity as the U.S. Government ("USG") alternate representative on two 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 two oversight committees are: a) the Board of the Environmental Foundation of Jamaica (EFJ); and 2) the Oversight Committee of the Forest Conservation Fund (FCF). The EFJ and FCF are merging effective as of September x, 2015 and this waiver covers participation on the Board of Directors of the consolidated entity as well 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) 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 (TFCA) in 1994. The EFJ and the FCF are currently in process of consolidating under the EFJ name. Both entities require the establishment of an administering body to monitor the implementation of their activities.

Specifically, the TFCA requires the establishment of an administering body (i.e., the Oversight Committee) to monitor the implementation of the debt-for-nature swap. TFCA Section 809(c)(2) provides 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 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 Committees of the FCF, currently held by USAID Mission Director Denise Herbol. Ms. Esther Zeledon has been directed to serve in her official Government capacity as the USG representative alternate member for this Oversight Committee.

The EFJ is governed by a nine-member Board of Directors, including one USG-appointed Director and a majority of NGO representatives. The Directors have broad authorities to manage the business of the EFJ, including approval of payments and loans. The USG-appointed Director is currently USAID/Jamaica Mission Director Denise Herbol. Ms. Zeledon has been directed to serve in her official Government capacity as the USD-appointed alternate representative.

As noted above, the EFJ and FCF are in the process of merging and signed merger papers on June 26, 2015 to this effect, subject to certain conditions that must be met before September 15, 2015, before the merger is to become effective on a date to be agreed by the USG, EFJ and FCF. The merged entity will operate under the EFJ name and will have a Board of Directors, of which the USG will be a permanent member. The expertise and skills of the EFJ will be merged with the ongoing debt swap agreement administered by the FCF, and as the EFJ has a more established "brand" in Jamaica, together this will promote the sustainability and longevity of the new entity.

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-for-nature swap. 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 non-governmental organizations (NGOs), such as environmental and community groups. In Jamaica, a TFCA Oversight Committee oversees management of the TFCA account administered by the Forest Conservation Fund (FCF), while a Board oversees management of the EAI account administered under the Environmental Foundation of Jamaica (EFJ). 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. To the extent that there may be any other conflicts of interests, the USG employees must recuse themselves from participating in any decision on a matter for which they may have an imputed interest.

As committee members, USG representatives have a fiduciary obligation to these bodies. The USG has substantial interest in overseeing the use of funds under debt-for-nature swaps and debt reduction agreements, and the need for the employee's services as the USG

representative to these bodies outweighs the risk of a potential conflict of interest.

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 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. Their 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. Zeledon 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. Zeledon. 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. Moreover, because Ms. Zeledon's service on each of the three administering bodies

constitutes an official duty of her USAID employment, and because Ms. Zeledon'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. Zeledon would be affected by her outside position as alternate representative to the EFJ Board of Directors, the FCF Oversight Committee and the consolidated EFJ Board of Directors is greatly diminished. Ms. Zeledon 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 FAA §809(c)(2). For the avoidance of doubt, we are asking you to exercise 18 U.S.C. 208(b) waiver authority to permit Ms. Esther Zeledon to serve as the alternate USG member of the EFJ Board of Directors, the FCF Oversight Committee and the consolidated EFJ Board of Directors. The alternate member serves where the primary member, currently the USAID/Jamaica Mission Director, is not available.

Recommendation:

That you grant a waiver to permit Ms. Esther Zeledon to serve as the alternate 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 CFR 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 Esther Zeledon's appointment as the alternate 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. Zeledon 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.

Approve:

(b)(6)

Disapprove:

Date:

7/17/2015

CLEARANCE PAGE FOR ACTION MEMORANDUM requesting decision on
18 U.S.C. 208 Waiver for Esther Zeledon

Clearances:



USAID
FROM THE AMERICAN PEOPLE

AFGHANISTAN

UNCLASSIFIED

July 18, 2015

ACTION MEMORANDUM

TO: The Designated Agency Ethics Official (DAEO)
FROM: Brandon Edward Miller, Resident Legal Officer
SUBJECT: 18 U.S.C. 208 Waiver for Mr. Michael Martin

Issue:

This is a request to grant a conflict of interest waiver under 18 U.S.C. 208(b) (1) to Mr. Michael Martin, Director of the Office of Agriculture (OAG), USAID/Afghanistan, so that he may participate, in an official capacity as a representative of USAID, on the High Council of the Agriculture Development Fund (ADF) of Afghanistan.

A waiver was granted on February 9, 2014, authorizing Mr. Wayne Nilsestuen, Director of OAG, to serve as the USAID representative on the High Council.

Mr. Wayne Nilsestuen is departing USAID/Afghanistan on July 8, 2015, and Mr. Martin, replacing Mr. Nilsestuen on July 8, 2015, is needed to serve on the High Council.

Discussion:

The ADF was established on July 18, 2010 under a Strategic Objective Grant Agreement (SOAG), granting \$100 million to the Government of the Islamic Republic of Afghanistan (GoA), with an estimated completion date of December 31, 2014. The ADF has been successful and is ongoing, with the initial \$100 million from the USG continuing to sustain its operations. The ADF's High Council has passed a resolution to extend USAID's membership through December 31, 2019. The purpose of the ADF is to facilitate lending to the agricultural sector, in particular to benefit small commercial agricultural farmers. To reach this target group, the ADF works through intermediaries that borrow ADF funds and then on-lend these funds, either as cash or as inputs, to Afghan farmers and agribusinesses to expand their production.

The ADF's charter mandates that a USAID representative be included in its seven-member High Council, the highest decision-making body of ADF that performs similar functions as those of a Board of Directors. The USAID representative will be involved specifically to safeguard USG funds and ensure transparent and accountable flow of resources. By being a full voting member,

USAID will provide advice and counsel to the ADF and help ensure a high quality portfolio and compliance with 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 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.

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 High Council of the ADF. As a member of the High Council, Mr. Martin may incur fiduciary obligations to the ADF that could conflict with his duties as a USG employee. If such fiduciary obligations exist, it is not clear whether the ADF is legally permitted to waive them under Afghan law. Therefore, you, as the DAEO, are requested to grant a waiver pursuant to 18 U.S.C. 208(b)(1), to permit Mr. Martin to serve as a member of the High Council when needed.

Under the ADF's Charter, the duties and responsibilities of the High Council include: 1) analyzing and evaluating the activities of the ADF; 2) approving general and financial policies of the ADF and monitoring their execution; 3) approving annual budgets, organizational structures and expenditures; 4) approving the appointments of, remuneration, incentives, dismissals, rewards to, and taking disciplinary actions against Executive Board members; 5) approving the appointment and/or discharge of the ADF's external auditors; 6) approving annual and long-term work plans of the ADF; 7) approving the ADF's annual financial reports and reports of the national and international auditors; 8) approving policies governing the provision of loans and financial services; 9) making determinations relating to doubtful and non-performing accounts; 10) approving the ADF's bylaws, policies, procedures, rules and guidelines for the fulfillment of its financial, operational and executive activities; and 11) establishing review committees, financial credit committee, compensation and governance committee and other committees, if needed, and the appointment of members and their power and duties. The High Council is expected to meet at least quarterly to carry out its functions.

As the Director of OAG at USAID/Afghanistan, Mr. Martin has the primary management responsibility for the Mission's agricultural portfolio.

As a member of the High Council, Mr. Martin may incur fiduciary obligations to the ADF that could conflict with his duties as a USG employee. In particular, Mr. Martin is being requested by USAID/Afghanistan to serve in his official Government capacity as a member of the ADF High Council. Because the financial interests of ADF will be imputed to him under 18 U.S.C. § 208(a), he would be disqualified from participating in any particular matter affecting ADF's financial interests in the absence of a § 208(b)(1) waiver. However, the USG has substantial interest in overseeing the use of funds by the ADF and it is deemed critical that a USAID representative be included in the membership of the High Council for that oversight function.

A waiver under 18 U.S.C. 208(b)(1) is justified for the following reasons: first, because Mr. Martin would serve on the High 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. Martin's position on the High Council will be fully known to the Mission. Moreover, the Mission believes that, to a significant degree, the interests of the USG and the interests of the High Council are consistent, *i.e.*, that the ADF disperses loans and other financial assistance to Afghan farmers pursuant to its established policies and procedures in a transparent and accountable manner. Further, the Mission expects that the interests of the USG and the interests of the ADF can be mutually advanced by the performance of Mr. Martin's official duties by being a member of the High Council when he is needed to serve in that capacity. In addition, most if not all of the particular matters in which Mr. Martin would be involved in an official capacity will not have an effect on the financial interests of the ADF. Moreover, Mr. Martin will not receive any compensation from the ADF in connection with his service as a member of the High Council. In conclusion, because Mr. Martin's service at the High Council constitutes an official duty of his service to USAID/Afghanistan, and his position at USAID/Afghanistan is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Mr. Martin would be affected 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. Martin's service as a member of the High Council of the ADF 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 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 Mr. Martin to participate in an official capacity, as a member of the High Council of the ADF 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. Martin on the High 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. Martin will help to safeguard the interests of the USG by representing the USG on the High Council.

Approved:

(b)(6)

Disapproved: _____

Date: 7/20/2015

Cc: Mr. Michael Martin

UNITED STATES GOVERNMENT

MEMORANDUM

August 20, 2015

TO: Marianne Perciaccante, Alternate Designated Agency Ethics Official

FROM: Mark Fittipaldi, Attorney Advisor, GC/E&E

SUBJECT: 18 U.S.C. 208 Waiver for Andrew Popelka to Serve as an Alternate U.S. Government 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 Andrew Popelka, Senior Energy Advisor in the E&E Bureau's Office of Economic Growth (E&E/EG) and a program-funded U.S. personal services contractor employee, to serve and participate as the alternate U.S. Government ("USG") representative on the Assembly of Contributors (the "Assembly") which supervises implementation of the activities of the Eastern Europe Energy Efficiency and Environment Partnership Regional Fund (the "ESP Regional Fund" or "Fund") established by the European Bank for Reconstruction and Development (the "EBRD").

As the Alternate Designated Agency Ethics Official, you have the authority to grant this waiver.

Discussion:

The Assembly is comprised of donors to the EBRD's ESP Regional Fund, the primary purpose of which is to support energy efficiency and environmental projects in Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. While not a formally incorporated entity, the Assembly is specifically described in the rules ("Rules") of the Fund as being the Fund's governing body and, as such, is responsible for the overall policy of the Fund and for supervising its implementation. Donor representatives serve on the Assembly without remuneration. Since the USG will be a donor to the Fund it will have the right to have one seat on the Assembly. The Assembly is required by the Rules to have a regular annual meeting at which the financial statements for the Fund's previous fiscal year are submitted for approval. The additional duties which the Rules impose on the Assembly include the following: monitoring the payment of contributions to the Fund; approving the annual budget and financial statements of the Fund; endorsing guidelines for the management of the liquid assets of the Fund; monitoring disbursements of Fund resources by the Fund Manager; and providing guidance to the Fund Manager in carrying out its duties to administer the Fund. Some of these duties are fiduciary duties. However, the USG, through USAID, has a substantial interest in overseeing the use of contributions to the Fund since USAID seeks to ensure that the Fund supports viable projects in a way that does not undercut the significant ongoing efforts of the USAID Mission in this area, and that the use of the contributed funds meets Administration guidelines for climate change/clean energy activities.

The Department of Justice's Office of the Legal Counsel ("OLC") has determined that a USG employee may not serve as a board member of a non-federal 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 the kinds of responsibilities required of donor representatives to the Assembly of the Fund fall within the statutory restrictions of §208(a). However, since it is clear that some of the duties required of representatives to the Assembly are fiduciary in nature, we are asking you to exercise 18 U.S.C. 208(b)(1) authority to permit Andrew Popelka to serve as the alternate USG donor representative to the Assembly of Contributors of the E5P Regional Fund.

As mentioned above, Mr. Popelka is a program-funded U.S. personal services contractor. This waiver would not affect any of the terms and conditions of Mr. Popelka's personal services contract. Also, Mr. Popelka's duties as an alternate USG representative to the Assembly, should he ever be called upon to act in this capacity, will certainly account for less than 50% of his work responsibilities under his contract. Any service provided to the Assembly by Mr. Popelka will be in his official capacity. Further, he will ensure that the principal representative (a U.S. direct-hire employee) is kept apprised of all of his activities as such alternate representative.

Recommendation:

That, by signing on the approval line below under the heading "Determination", you grant a waiver to permit Mr. Popelka's service as an alternate USG representative to the Fund's Assembly of Contributors that governs the activities of the Fund 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. Andrew Popelka's official participation as an alternate USG donor representative to the Assembly of Contributors of the EBRD's Eastern Europe Energy Efficiency and Environment Partnership Regional Fund. This waiver is based on my determination that any financial or other interests of the Assembly or the Fund which are imputed to Mr. Popelka 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 Fund.

Approve: _____

(b)(6)

Disapprove: _____

Date: _____

8/20/2015

Attachment: a/s



USAID
FROM THE AMERICAN PEOPLE

ACTION MEMORANDUM

TO: Marianne Perciaccante, Acting - USAID Designated Agency Ethics Official

FROM: Dan Stoll, Ethics Program Specialist

DATE: September 9, 2015

SUBJECT: Title 18, Section 208 of the United States Code (U.S.C.) Waiver for Mr. ~~Robert Horvath~~ as Board Member for the International Committee of the Red Cross' Special Fund for the Disabled

1. Issue

This is a request to grant a conflict of interest waiver under Title 18, Section 208 of the U.S.C. to Mr. ~~Robert Horvath~~, USAID/Bureau for Democracy, Conflict, and Humanitarian Assistance (DCHA), Division Chief, Empowerment and Inclusion Center of Excellence on Democracy, Human Rights, and Governance, so that he may participate as the U.S. Government (USG) representative on the Board of the International Committee of the Red Cross' Special Fund for the Disabled.

2. Discussion

The International Committee of the Red Cross (ICRC) Special Fund for the Disabled (SFD) was created by the ICRC in 1983 to ensure the continuity of former ICRC programs for populations affected by conflict, and support other physical rehabilitation centers in low-income countries. The SFD's ultimate goal is to promote socio-economic integration for people living with physical disabilities, while still focusing on their initial needs. The aim is to remove – or to reduce as far as possible – restrictions on activities and thereby enable people with physical disabilities to become more independent and enjoy the highest possible quality of life.

The origin of the SFD dates back to 1981 when a resolution was adopted at the 24th International RC/RC Conference recommending that *"a special fund be formed for the benefit of the disabled and to promote the implementation of durable projects to aid disabled persons"*. In January 2001, the ICRC Assembly converted the SFD into an independent foundation that allowed members of other organizations to be elected to its Board.

Today, the SFD Board is composed of ICRC senior management staff members and of non- ICRC members representing donors, experts on disability issues and the Movement of Red Cross/Crescent Society. It has its own separate management structure. Nonetheless, the SFD can still rely on

administrative, logistical and technical support from the ICRC, both in the field and at its headquarters in Geneva. The SFD's general policy is determined by the Board, while operational decisions are taken by an Executive Committee composed of four Board members in close consultation with the director of the SFD.

The SFD has been a keystone partner of USAID/Leahy War Victims Fund (LWVF) for more than twenty years. They are a core global implementing organization in the field of physical rehabilitation, especially in conflict and post-conflict countries. ~~Mr. Horvath~~ was selected to serve on the Board based on his work with USAID/Leahy War Victims Fund and his extensive experience working on physical rehabilitation activities. ~~Mr. Horvath~~ has been serving on the Board since 2009. A waiver, if approved, would not be retroactive.

As a member of the Board, the USG Representative provides technical expertise as well as contributes to policy decisions. The Board does approve yearly budgeting presented by the director and regional teams. USAID currently has a PIO grant with the SFD. This grant clearly states the technical areas and regions for which USAID funds can be used. In Board meetings there is no separate discussion of how individual donor funds will be used as the executive committee allocates budget per region based on agreements already in place. The Board reviews big picture issues such as should additional countries be considered, when should we be moving towards close out, sustainability plans, etc. It is both the USG's and the Board's interest that he serve as a fully functioning member of the Board to provide oversight and expertise.

The criminal conflict of interest statute, Title 18, Section 208(a) of the U.S.C. 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 interest of any organization in which the individual serves as an officer, director, trustee, or employee, unless he is granted a waiver for 18 U.S.C., Section 208(b)(1) or qualifies for an exemption under 18 U.S.C., Section 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.

The U.S. Department of Justice's Office of the Legal Counsel (OLC) 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 Title 18, Section 208(a) of the U.S.C, the conflicts statute precludes a federal employee from serving, in an official capacity, as an officer, director, or trustee of a non-federal organization.

Therefore, I am asking you to exercise your waiver authority to permit ~~Robert Horvath~~ to serve as the principal USG representative to the ICRC SFD Board.

If approved, the requested waiver will apply fully to the employee's participation in an official

capacity in any particular matter that will directly and predictably affect the financial interest of the ICRC SFD Board, including the making of grants and contracts with outside organizations, one of the main purposes of the ICRC SFD. This waiver applies only to the financial interests of the ICRC SFD Board that are imputed to ~~Mr. Horvath~~ and will not 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 Section 208. In addition the waiver will be subject to the limitations discussed below.

As the Division Chief for the Empowerment and Inclusion Center of Excellence on Democracy, Human Rights, and Governance, USAID/DCHA, ~~Mr. Horvath~~ serves as the U.S. Government Special Advisor for children in adversity and has been filling the role of disability coordinator as well.

As a member of the Board of Directors, ~~Mr. Horvath~~ may incur fiduciary obligations to the ICRC SFD that could conflict with his duties as a USG employee. USAID/DCHA is requesting, however, that ~~Mr. Horvath~~ serve in his official USG capacity as a member of the ICRC SFD Board. Because the financial interests of the ICRC SFD will be imputed to him under Title 18, Section 208(a) of the U.S.C., he would be disqualified from participating in any particular matter affecting the ICRC SFD's financial interests in the absence of a section 208(b)(1) waiver. The USG has a substantial interest in overseeing the use of funds by the ICRC SFD, and it is deemed critical that a USAID representative be included in the membership of the Board for that oversight function.

A waiver under Title 18, Section 208(b)(1) of the U.S.C. is justified for the following reasons: first, because ~~Mr. Horvath~~ would serve on the Board as part of his official duties, there is a greatly diminished risk that the integrity of the services that the USG expects from him would be affected. ~~Mr. Horvath's~~ position on the Board will be fully known to the Bureau.

Moreover, the Bureau believes that, to a significant degree, the interests of the USG and the interests of the Board are consistent. Further, the Bureau expects that the interests of the ICRC SFD and the USG can be mutually advanced by the performance of ~~Mr. Horvath's~~ official duties by being a member of the Board when he is needed in that capacity.

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

As noted above, ~~Mr. Horvath~~ will not receive any compensation from the ICRC SFD in connection with his service as a member of the Board. In conclusion, because ~~Mr. Horvath's~~ official duties as a member of the Board constitutes an official duty of his service to USAID/DCHA, and his position at USAID/DCHA is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the USG expects from ~~Mr. Horvath~~ would be affected by this position is greatly diminished.

1. Recommendation

That you grant a waiver to permit ~~Robert Horvath~~ to serve as the USG member of the Board as indicated above.

2. Determination

Pursuant to Title 18, Section 208(b)(1) of the U.S.C. and regulation of the Office of Government Ethics at Title 5, Part 2640, Subpart C of the Code of Federal Regulations; and pursuant to the authority vested in me as the Agency's Designated Agency Ethics Official, I hereby waive the disqualification imposed by Title 18, Section 208(a) of the U.S.C. and authorize ~~Robert Horvath~~ to be appointed as USG representative to the ICRC SFD Board of Directors. This waiver is based on my determination that any financial interests of the ICRC SFD Board that are imputed to ~~Mr. Horvath~~, are not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect of him. Further, he will be safeguarding the interests of the USG by representing the USG on the Board.

Approve: -

(b)(6)

ADAEO

Disapprove: -

Date: -

9/24/2015



USAID | EAST AFRICA

FROM THE AMERICAN PEOPLE

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL (DAEO)

FROM: Donald Keene, Regional Legal Advisor, USAID/Kenya and East Africa

SUBJECT: 18 U.S.C. § 208(b)(1) waiver for Mr. Nzuki Mwanja

Issue

Whether to grant an 18 U.S.C. § 208(b)(1) waiver to USAID Foreign Service National Officer, Mr. Nzuki Mwanja, a USAID Senior Program Management Specialist in the USAID Kenya and East Africa, Regional Economic Integration (REI) Office, and Activity 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 promote the aspirations of the President's Trade Africa Initiative. If a waiver is granted, Mr. Mwanja will participate in an official capacity as a representative of USAID among the Members of 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 and 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 five EAC Partner States and South Sudan.

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 by-laws 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 \$540 million, which includes the aforementioned USAID commitment of \$35 million.

Mr. Mwanja has been approached by TMEA and the Donor Committee to represent USAID in serving as a TMEA Member. In the capacity of TMEA Member, Mr. Mwanja 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. 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. Mr. Mwanja also serves as the Agreement Officer's Representative (AOR) to TMEA. Serving as a TMEA Member is a natural extension of his 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 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 Mr. Mwanja under 18 U.S.C. § 208(a), he would be disqualified from participating in any particular matter affecting the TMEA'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 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 Mr. Mwanja. 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. Mwanja's service as a Member constitutes an official duty of his USAID employment, and because Mr. Mwanja'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. Mwanja would be affected by him fulfilling the position of TMEA Member is greatly diminished. Mr. Mwanja will not be compensated for his 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 Mr. Mwanja to serve as the USG Member to TMEA.

This waiver applies only to the financial interests of TMEA that are imputed to Mr. Mwanja 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.

In order to reduce or eliminate the likelihood that the integrity of Mr. Mwanja's role would be questioned by a reasonable person, Mr. Mwanja has agreed that he will not (a) personally award any U.S. Government grants to TMEA, (b) request U.S. Government funds on TMEA's behalf and (c) participate in Member discussions or actions regarding any award of USAID funds to the Members. Mr. Mwanja'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 Mr. Mwanja 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 Mr. Mwanias service as the USAID representative among the TMEA 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 Mr. Mwanias to participate personally and substantially as the USG TMEA Member. This waiver is based on my determination that TMEAs financial interests, which are imputed to Mr. Mwanias, 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 as a TMEA Member.

Approved: (b)(6) *ADAEO*

Disapproved: _____

Date: 9/17/2015



USAID
FROM THE AMERICAN PEOPLE

November 2, 2015

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

TO: Marianne Perciaccante, Alternate Designated
Agency Ethics Official (A-DAEO)

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

SUBJECT: 18 U.S.C. § 208 Waiver for Ms. Rebecca
Robinson 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 Foreign Service Officer **Rebecca Robinson**, USAID/Jamaica Supervisory Program Officer, so that she may participate in official capacity as the U.S. Government ("USG") alternate representative on two 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 two oversight committees are: a) the Board of the Environmental Foundation of Jamaica (EFJ); and 2) the Oversight Committee of the Forest Conservation Fund (FCF). The EFJ and FCF are in the process of merging, as explained more fully hereafter, and this waiver also covers future participation on the Board of Directors of the consolidated entity which will operate under EFJ's name. As the Alternate 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 (TFCA) in 1994. The EFJ and the FCF are currently in process of consolidating under the EFJ name. Both entities require 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 USAID Mission Director Denise Herbol. Ms. Rebecca Robinson has been directed to serve in her official Government capacity as the USG representative alternate member for this Oversight Committee.

The EFJ is governed by a nine-member Board of Directors, including the one required USG-appointed Director and a majority of NGO representatives. The Directors have broad authorities to manage the business of

the EFJ, including approval of payments and loans. The USG-appointed Director is currently USAID/Jamaica Mission Director Denise Herbol. Ms. Robinson has been directed to serve in her official Government capacity as the USG-appointed alternate representative.

As noted above, the EFJ and FCF are in the process of merging and signed merger papers on June 26, 2015 to this effect, subject to certain conditions that must be met before the merger is to become effective on a date to be agreed by the USG, EFJ and FCF. The merged entity will operate under the EFJ name and will have a Board of Directors, of which the USG will be a permanent member. The expertise and skills of the EFJ will be merged with the ongoing debt swap agreement administered by the FCF, and as the EFJ has a more established "brand" in Jamaica, together this will promote the sustainability and longevity of the new entity.

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-for-nature swap. 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 non-governmental organizations (NGOs), such as environmental and community groups. In Jamaica, a TFCA Oversight Committee oversees management of the TFCA account administered by the Forest Conservation Fund (FCF), while a Board oversees management of the EAI account administered under the Environmental Foundation of Jamaica (EFJ). 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 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 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. Robinson 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. Robinson. 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. Robinson's service on each of the three administering bodies constitutes an official duty of her USAID employment, and because Ms. Robinson'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. Robinson would be affected by her outside position as alternate representative to the EFJ Board of Directors, the FCF Oversight Committee and the consolidated EFJ Board of Directors is greatly diminished. Ms. Robinson 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. Robinson to serve as the alternate USG member of the EFJ Board of Directors, the FCF Oversight Committee and the consolidated EFJ Board of Directors. The alternate member serves where the primary member, currently the USAID/Jamaica Mission Director, is not available.

Because, as noted above, 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 been considered, but determined that no limitations on Ms. Robinson'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. Robinson. It will not otherwise allow her to participate in any other 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. Robinson's role would be questioned by a reasonable person, Ms. Robinson 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. Robinson'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. Rebecca Robinson to serve as the alternate 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 CFR Part 2640, Subpart C; and pursuant to the authority vested in me as Alternate DAEO, I hereby waive the disqualification imposed by 18 U.S.C. § 208(a) and authorize Ms. Robinson's appointment as the alternate 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. Robinson 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.

Approve: _____

(b)(6)

Disapprove: _____

Date: _____

11/2/2015

CLEARANCE PAGE FOR ACTION MEMORANDUM requesting decision on
18 U.S.C. 208 Waiver for Rebecca Robinson

Clearances:



USAID
FROM THE AMERICAN PEOPLE

November 4, 2015

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL (DAEO)

TO: Marianne Perciaccante, Alternate Designated Agency Ethics Official (A-DAEO)

FROM: Denise Manning, RLO/El Salvador

SUBJECT: Whether to grant a 18 U.S.C. § 208(b)(1) Waiver for Lawrence J. Sacks to serve on the board of the Administering Commission of the Fondo de la Iniciativa para las Américas

Issue:

Whether to grant an 18 U.S.C. § 208(b)(1) waiver to Lawrence J. Sacks, Mission Director, USAID/El Salvador, in order that he may participate as the U.S. Government ("USG") representative on the Administering Commission of the Fondo de la Iniciativa para las Américas (the "Administering Commission"). The Fondo de la Iniciativa para las Américas ("FIAES") is the fund established by the Government of El Salvador ("GOES") to implement the El Salvador debt-reduction agreements under the Enterprise for the Americas Initiative ("EAI"), in the Jobs for Exports Act of 1992, Public Law 102-549, which was incorporated in §§ 701-709 of the Foreign Assistance Act of 1961, Public Law No. 87-195, as amended ("FAA"), and under the Tropical Forest Conservation Act of 1998, Public Law 105-214, as amended ("TFCA"), which was incorporated in §§ 801-803 of the FAA and is comprised of segregated EAI and TFCA accounts. The Administering Commission, as the sole administering body of FIAES, oversees implementation of both debt-reduction agreements and, accordingly, the EAI and TFCA accounts. As the DAEO, you have the authority to grant this waiver.

Background:

Each of the EAI and the TFCA require the establishment of an administering body (i.e., the Administering Commission) to monitor the implementation of the debt reduction agreements established thereunder. Specifically, with respect to the EAI, FAA § 708(c)(2) provides that "The administering body shall consist of (A) *one or more individuals appointed by the United States Government*; (B) *one or more individuals appointed by the government of the beneficiary*

country; and (C) individuals who represent a broad range of (i) environmental nongovernmental organizations of the beneficiary country; (ii) child survival and child development nongovernmental organizations of the beneficiary country; (iii) local community development nongovernmental organizations of the beneficiary country; and (iv) scientific or academic organizations or institutions of the beneficiary country." (*Emphasis added*). Likewise, § 809(c)(2)(A) of the TFCA provides 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 USG has one seat on the Administering Commission. Mr. Sacks has been directed to serve in his official government capacity as the USG representative on the Administering Commission.

The specific responsibilities of the Administering Commission are set forth in the Agreement between the Government of the United States and the Government of the Republic of El Salvador Concerning the Establishment of an Americas Fund and Administering Commission, dated June 18, 1993 (the "Americas Framework Agreement"), specifically in Article IV (Functions of the Commission) and in Article IV (Functions of the Commission) of the Agreement between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Establishment of a Tropical Forest Conservation Fund and the Operation of the Tropical Forest Conservation Commission, dated September 14, 2001 (the "TFCA Agreement") (collectively, the "Agreements"). Section II of the TFCA Agreement provides for the establishment of a segregated account in FIAES (originally established under the Americas Framework Agreement) to implement the TFCA, and, accordingly, Section III of the TFCA Agreement provides that the Administering Commission for FIAES established under the Americas Framework Agreement shall also serve as the administering body under the TFCA Agreement.

Under the Agreements, the Administering Commission is responsible for: (A) widely disseminating a public announcement of each call for grant proposals, which states the criteria for selection of projects eligible for grant assistance and the qualifications of organizations eligible to submit proposals for grant awards; (B) receiving proposals for grant assistance from eligible entities and making grants to eligible grant recipients for eligible activities; (C) publicly announcing grants awarded by the Administering Commission; (D) presenting to the USG and GOES: (i) an annual program, by October 30; (ii) an annual report on the activities funded by the Administering Commission during the previous year, which shall include on-going, multi-year projects, by November 30; and (iii) an annual audit by an independent auditor, by

November 30; (E) presenting proposed grants with a life-of-project total in excess of \$100,000 for approval to the USG and the GOES; (F) adopting, by majority vote, procedures for its operation; (G) meeting at least once every four months; (H) ensuring that performance under grants and other agreements is monitored to determine whether time schedules and other performance goals are being achieved; (I) periodically drawing sums necessary for the Administering Commission's administrative expenses, including technical assistance and the fiscal and programmatic audits required pursuant to the Agreement, provided that the sums may not exceed 15% per annum of the respective total amount of grants approved for implementation in such year, except as the USG and GOES may otherwise agree; and (J) retaining and making publicly available copies of the Administering Commission's organizing statutes, written policies, operating procedures, minutes of meetings, books, records, reports and the decision criteria used by the Administering Commission in the award of grants. Other, specific responsibilities of the Administering Commission are set forth in the internal operating regulations (*Reglamento Interno Operativo*) of FIAES.¹ These responsibilities of the Administering Commission are consistent with FAA § 708(c)(2) and TFCA § 809(c)(2)(A). The Administering Commission meets periodically to carry out its functions under the Agreements.

As the Mission Director in El Salvador, Mr. Sacks is responsible for managing all aspects of the USAID assistance program in El Salvador. This includes, *inter alia*, providing executive leadership for and setting the strategic direction of the USAID bilateral program in El Salvador, overseeing the development, design, and implementation of USAID-funded programs and activities in El Salvador, and serving as the lead USAID representative in U.S. Embassy/El Salvador inter-agency meetings to address U.S. foreign policy and economic development objectives and challenges in El Salvador.

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 under 18 U.S.C. § 208(b)(2).

¹ Note that the *Reglamento Interno Operativo* of FIAES states that the USG representative will be the Mission Director of USAID/El Salvador.

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 FIAES will be imputed to Mr. Sacks under 18 U.S.C. § 208(a), he would be disqualified from participating in any particular matter affecting FIAES' financial interests in the absence of an 18 U.S.C. § 208(b)(1) waiver.

Due to the EAI and the TFCA, the interests of USG, USAID and FIAES 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 Government may expect from Mr. Sacks. Additionally, the USG has a substantial interest in overseeing the use of funds, which are disbursed pursuant to the administration of the Agreements. Moreover, because Mr. Sacks' service on the Administering Commission constitutes an official duty of his USAID employment, and because Mr. Sacks' position on the Administering Commission is subject to the continuing supervision and direction of USAID, the risk that the integrity of the services the Government expects from Mr. Sacks would be affected by his outside position on the Administering Commission is greatly diminished. Mr. Sacks will not be compensated for his service on the Administering Commission.

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 FAA § 708(c)(2) or TFCA § 809(c)(2)(A) provide specific statutory authority for placing a federal employee on an administering body of a fund created pursuant to those statutes. For the avoidance of doubt, we are asking you to utilize your authority to issue an 18 U.S.C. § 208(b)(1) waiver to permit Lawrence J. Sacks to serve as the USG representative on the Administering Commission.

Because, as noted above, the interests of USAID and the FIAES Administering Commission are consonant to a significant degree; and therefore, no conflict of interest is likely to arise in the employee's performance of his official duties while serving on the Administering Commission, this waiver request has considered, but determined that no limitations on Mr. Sacks' participation on the FIAES Administering Commission are necessary based upon the TFCA's and EAI's requirements. This waiver applies only to the financial interests of the FIAES that are imputed to Mr. Sacks. It will not otherwise allow him to participate in any other 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.

In order to reduce or eliminate the likelihood that the integrity of Mr. Sacks' services would be questioned by a reasonable person, Mr. Sacks has agreed that he will not (a) personally award any USG grants to FIAES, (b) request USG funds on FIAES' behalf, or (c) participate in Administering Commission discussions or actions regarding any award of USAID funds to FIAES. Mr. Sacks' agreement does not limit in any fashion USAID's ability to award funds to FIAES.

Recommendation:

That you grant a waiver to permit Mr. Sacks' service as the USG representative on FIAES' Administering Commission.

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 Lawrence J. Sacks to participate personally and substantially as the USG member of the Administering Commission. This waiver is based on my determination that FIAES' financial interests, which are imputed to Mr. Sacks, are not so substantial as to be deemed likely to affect the integrity of the services that the USG may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USG on the Administering Commission.

Approve:

(b)(6)

Disapprove:

Date:

11/4/2015

CLEARANCE PAGE FOR ACTION MEMORANDUM requesting decision on 18 U.S.C. § 208(b)(1)
Waiver for Lawrence Sacks.

Clearances:

GC/EA: HWade (b)(6) Date: 11/4/2015

RLO/El Salvador: Denise Manning, May 15, 2015/Waiver-Sacks