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USAID
FROM THE AMERICAN PEOPLE

SEP 02 2011

RE: F-00266-10

This final letter is in response to your Freedom of Information Act ("FOIA") request for a copy of each Ethics Waiver provided at USAID since January 1, 2001. Although the request dates back to 2001, we were only able to locate and provide Waivers dated 2004-2010, as we are only required to keep this data for 6 years.

Attached are the responsive documents released in their entirety. There is no cost for this FOIA request.

Sincerely,

Sylvia Lankford
FOIA Team Leader
Information and Records Division
Office of Management Services



USAID
FROM THE AMERICAN PEOPLE

450

January 25, 2010

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

FROM: John Niemeyer, Regional Legal Advisor and Deputy Ethics Officer,
USAID/Bolivia

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

SUBJECT: 18 U.S.C Section 208 Conflict of Interest Waiver for Michael Kaiser,
Program Officer, USAID/Paraguay

Issue:

Whether or not to grant an 18 U.S.C 208 (b) (1) waiver to Michael Kaiser, USDH Program Officer, USAID/Paraguay, in order to participate as the U.S. Government ("USG") representative on the Tropical Forest Conservation Fund/Paraguay ("TFCF") Board of Directors, established to monitor the implementation of the bilateral debt reduction agreement under the Tropical Forest Conservation Act ("TFCA").

Authority:

As USAID's DAEO, you have the authority to grant this waiver, and have granted similar waivers for USAID staff to participate on TFCF boards in the past.

Discussion:

The purpose of this memorandum is to request that you grant to an USAID/Paraguay employee, Michael Kaiser, a waiver of the criminal conflict of interest provisions that may apply to his service in an official capacity as the United States government-designated member of the Tropical Forest Conservation Board of Directors, established pursuant to *Agreement Between the Government of the United States of America and the Government of the Republic of Paraguay ("GOP) Concerning the Establishment of a Tropical Forest Conservation Fund (TFCF") and a Tropical Forest Conservation Board (Board)*, dated June 7, 2006 ("Agreement") and currently in effect according to its terms.

The TFCF, and the Board which controls it, were created as part of the debt reduction Agreement between the USG and GOP. The Agreement provides that USG will agree to reduce and close GOP outstanding debt to the USG, the reduced amount of which the GOP will pay into the TFCF, established by the two governments for the purpose of

promoting activities designed to conserve, maintain, and restore the forests of Paraguay. The Board of the TFCF is responsible for managing the fund's activities, investments and disbursement of its assets to conserve, maintain and restore Paraguayan forests, and both the USG and GOP have representative board members who participate fully in board deliberations to achieve these ends. Mr. Kaiser 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 expertise on environmental matters and other qualifications. It is in both the USG's and board's interest that he serve as fully functioning member of the board, a status that triggers both fiduciary responsibilities which may conflict with the duty of loyalty Mr. Kaiser owes to USAID by virtue of being a USAID employee, and which may raise potential conflicts on financial interest, depending on board investment and disbursement decisions. For these reasons, USAID/Paraguay seeks a waiver of section 208's criminal conflict of interest statute, on behalf of Mr. Kaiser, to enable his participation on the TFCF Board in furtherance of the USG's interests.

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 individual serves as an officer, director, trustee, or employee. The Department of Justice's Office of the Legal Counsel ("OLC") has determined that a USG employee may not serve even as an ex-officio board member of a non-federal organization in the absence of an express statutory authority of a waiver of the requirements of section 208(a). So far, 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 with the express statutory authority under FAA Section 809(c)(2), which deal with an 'administering' body in the context of the TFCA. In the absence of such guidance, and out of an abundance of caution, given that section 208 is a criminal statute, USAID/Paraguay is asking you to exercise section 208(b) waiver authority to permit Mr. Kaiser to serve as a member of the TFCF board in Paraguay. Under section 208(b)(1), a waiver may be granted upon determination that determination that Mr. Kaiser's disclosed or reasonably anticipated financial interests are "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from ... [the] employee."

Accordingly, 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 TFCF and board, including the making of grants or contracts with outside organizations, one of the main purposes of the TFCF. Perhaps in anticipation of potential conflicts of interest, the Agreement establishing the Board on which Mr. Kaiser has been designated to participate has 'built in' conflict of interest provisions which provide, first, that he, as the USG representative, will participate *ad honorem*, or without compensation, see Agreement, Article III.4, and second, that "[t]he Board may not consider any proposed grant which, if approved, would result in a financial benefit for a Board member of any person in his family, or for an organization which employes the member or in which the member has an affiliation or a direct financial interest." Agreement, Article III.5. These provisions signal that the

Board will be focused on conflicts of interest, and reduce the risk that Mr. Kaiser's, or any USG employee's, participation will conflict with the principles reflected in Section 208 or the Standards of Conduct for United States Government employees.

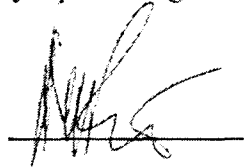
Recommendation:

That you grant a waiver permitting Mr. Kaiser's participation as the USG's representative on the TFCF board.

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 DAEO, I hereby waive the disqualification imposed by 18 U.S.C 208(a) and authorize Michael Kaiser's official appointment as the USG member of the TFCF Board. This waiver is based on my determination that any financial or other interests of the TFCF which are imputed to Mr. Kaiser are not so substantial to be deemed likely to affect the integrity of the services which the Government may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USG on the TFCF Board.

Approve: _____



Disapprove: _____

Date: _____

1/25/10

Clearances

USAID/Paraguay Michael Kaiser



USAID | PHILIPPINES

FROM THE AMERICAN PEOPLE

ACTION MEMORANDUM

TO: James Peters, Assistant General Counsel, Ethics and Administration (GC/EA) and Alternate Designated Agency Ethics Official (A/DAEO)

FROM: Tanya J. Nunn, Ethics Advisor, USAID/Philippines

SUBJECT: Request for 18 U.S.C. 208 Conflict of Interest Waiver for Mr. Rolf Anderson

DATE: February 23, 2010

I. Issue for Decision:

This is a request to grant a conflict of interest waiver under 18 U.S.C. 208(b)(1) to Mr. Rolf Anderson, Director, Environment Office, USAID/Philippines, so that he may participate, in an official capacity, on the Tropical Forest Conservation Board (hereinafter referred to as "the Board") established under the September 19, 2002 Agreement between the Government of the United States of America (USG) and the Government of the Republic of the Philippines (GRP) Concerning the Establishment of a Tropical Forest Conservation Fund and a Tropical Forest Board (hereinafter "the Agreement"). This agreement was executed in conjunction with a September 19, 2002 Agreement between the USG and the GRP Regarding the Reduction of a Certain Debt Owed to the USG and its Agencies (hereinafter "the Debt Reduction Agreement") entered into in accordance with the Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended ("the TFCA"). The need for a waiver is discussed below.

II. Essential Factors:

A. Brief Overview of the TFCA

The TFCA offers eligible developing countries options to relieve certain official debt owed the United States while at the same time generating funds in local currency to support eligible tropical forest conservation activities. In addition to forest conservation and debt relief, TFCA is intended to strengthen civil society by creating local

foundations to support small grants to non-governmental organizations (NGOs) and local communities.

TFCA is implemented through bilateral agreements with eligible countries. The USG has executed numerous TFCA agreements with developing countries around the world and these agreements have generated the local currency equivalents of millions United States Dollars for eligible conservation activities.

B. The Board Established under the Agreement

In accordance with the requirements of the TFCA, the Agreement includes a provision requiring the establishment of a Tropical Forest Conservation Fund (TFCF) to receive payments of interest on obligations undertaken by GRP under the Debt Reduction Agreement as well as other eligible monies. The Agreement also includes a provision calling for the establishment, in accordance with local law, of an administering body - i.e., the Board, to administer the TFCF. Article IV (Functions of the Board), outlines the powers and responsibilities of the Board, which are consistent with Section 809(c) of the TFCA. Specifically, under the TFCA, responsibilities of the administering body include: (A) receiving proposals for grant assistance from eligible grant recipients and making grants to eligible grant recipients in accordance with the priorities agreed upon in the FCA; (B) responsibility for the management of the program and oversight of grant activities funded from resources of the TFF; subjecting itself, on an annual basis, to an audit of financial statements conducted in accordance with generally accepted auditing standards by an independent auditor; (D) granting to representatives of the United States Government Accountability Office such access to books and records associated with operations of the Tropical Forest Fund as the Comptroller General of the United States may request; (E) presentation of an annual program for review each year by the Enterprise for the Americas Board; and (F) submission of a report each year on the activities that it undertook during the previous year to the Chair of the Enterprise for the Americas Board and to the government of the beneficiary country. TFCA Section 809(c)(3).

The TFCA requires that the composition of the administering body include (i) one or more individuals appointed by the USG; (ii) one or more individuals appointed by the government of the beneficiary country; and (iii) individuals who represent a broad range of environmental nongovernmental organizations of, or active in, the beneficiary country; local community development nongovernmental organizations of the beneficiary country; and scientific, academic,

or forestry organizations of the beneficiary country. TFCA Section 809(c)(2).

Historically, one USG representative to the administering body has been the Director of the USAID/Philippines Environment and Energy Office, a position assumed by Mr. Rolf in the later part of 2009.

C. 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 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 preclude a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

Inasmuch as:

1) Section 809(c)(2)(A)(i) of the TFCA specifies that one or more individuals be appointed by the USG to the administering body (i.e., the Board) established under an FCA, not that a USG employee be appointed by the USG to such body and the legislative history of the TFCA does not indicate a Congressional intent that a USG employee be appointed by the USG to such body;

2) OLC has not opined on the question of whether service by a USG employee as the USG designee to an administering body established in accordance with the TFCA is pursuant to specific statutory authority; and

3) the responsibilities of the administering body as outlined in Section 809(c)(3) of the TFCA - including the fiduciary responsibilities of the body with regard to the TFF - cannot be waived,

you, as the Agency's A/DAEO are requested to grant, pursuant to

18 U.S.C. 208(b)(1), a waiver to permit Mr. Anderson to serve on the Board established under the Agreement following your determination that any disclosed financial interest as well as participation by Mr. Anderson on the Board is not so substantial as to be deemed likely to affect the integrity of the services which the USG may expect from him and that by participating on the Board, Mr. Anderson will actually help to safeguard the interests of the USG by representing the USG on the Board.

As the Director of USAID/Philippine's Environment and Energy Office, Mr. Anderson has overall management responsibility for the Mission's environment, energy and related programs.

As a member of the Board, Mr. Anderson may incur a fiduciary obligation to the Board that could conflict with his duties as USG employees. However, the USG has substantial interest in overseeing the use of funds deposited into the TFCF pursuant to the Debt Reduction Agreement and it is deemed important that the USG designee to the Board be a USG employee.

A waiver is justified for the following reasons:

First, because Mr. Anderson would serve on the Board as an assigned official duty activity, there is a greatly diminished risk that the integrity of the services that the USG and the Agency expect from him would be affected. Mr. Anderson's position on the Board will be fully known to the Agency and U.S. Embassy Manila. Moreover, the Agency believes that, to a significant degree, the interests of USG and the interests of Board are consonant - i.e., assurance that funds deposited into the TFCF are used only for purposes authorized under Section 809(d) of the TFCA, which includes, inter alia, support for the establishment, restoration, protection and maintenance of parks, protected areas and reserves. Further, the Agency expects that the interests of the USG, including USAID and the interests of Board can be mutually advanced through the performance of Mr. Anderson's official duties.

Second, most if not all of the particular matters in which Mr. Anderson would be involved in an official capacity will not have an effect on the financial interests of the Board.

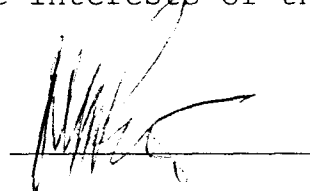
Finally, Mr. Anderson understands and agrees that, as an official duty activity, no separate compensation may be received from the Board in connection with his service as a member of the Board.

III. Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. 208(b)(1) to permit Mr. Anderson's service as the USG designee to the Board established under the Agreement.

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 A/DAEO, I hereby waive the disqualification imposed by 18 U.S.C. 208 (a) and authorize Mr. Anderson's official appointment to and service as the USG designee to the Board established under the Agreement. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Anderson on the Board 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 Board, Mr. Anderson will help to safeguard the interests of the USG by representing the USG on the Board.

Approved: 

Disapproved: _____

Date: 7/12/10

Cc: Mr. Rolf Anderson



USAID
FROM THE AMERICAN PEOPLE

February 13, 2009

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

FROM: Catherine Jones, GC/G

TO: James M. Peters, Assistant General
Counsel/DAEO

SUBJECT: 18 U.S.C. 208 Waiver For Alejandro Pontaza

Issue:

Whether to grant an 18 U.S.C. 208(b)(1) waiver to Alejandro Pontaza of USAID/Guatemala, in order that he may participate as the U.S. Government ("USG") alternate representative on the Oversight Committee established to monitor the implementation of the Guatemalan debt-for-nature swap (the "Oversight Committee") pursuant to the Tropical Forest Conservation Act ("TFCA"). As the DAEO, you have the authority to grant this waiver.

Discussion:

The Oversight Committee holds meetings periodically. The USG has one seat on the Oversight Committee. Committee members may incur a fiduciary obligation to the Oversight Committee that could conflict with their duties as USG employees. However, the USG has substantial interest in overseeing the use of funds in the debt-for-nature swap.

The Department of Justice's Office of Legal Counsel 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 Alejandro Pontaza to serve as the USG member of the Oversight Committee.

Recommendation:

That you grant a waiver to permit Alejandro Pontaza's service as the USG member of the Oversight Committee.

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 Alejandro Pontaza's official appointment as the USG member of the Oversight Committee. This waiver is based on my determination that Alejandro Pontaza's participation on the Oversight Committee is 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 Oversight Committee.

Approve:  _____

Disapprove: _____

Date: 2/13/09



USAID | INDONESIA

FROM THE AMERICAN PEOPLE

ACTION MEMORANDUM

TO: James Peters, Assistant General Counsel, Ethics and Administration (GC/EA) and Alternate Designated Agency Ethics Official (A/DAEO)

FROM: Tanya J. Nunn, Ethics Advisor, USAID/Indonesia

SUBJECT: Request for 18 U.S.C. 208 Conflict of Interest Waiver for Mr. Walter North

DATE: April 9, 2009

I. Issue for Decision:

This is a request to grant a conflict of interest waiver under 18 U.S.C. 208(b)(1) to Mr. Walter North, Mission Director, USAID/Indonesia, so that he may participate, in an official capacity, as the designee of the United States Government (USG) to the Oversight Committee established under the Forest Conservation Agreement among the Government of the Republic of Indonesia (GOI), Conservation International Foundation and Yayasan Keanekaragaman Hayati Indonesia, hereinafter "the Indonesia FCA," an agreement required under the Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended ("the TFCA") as part of the debt-for-nature swap agreement between the GOI and the USG with respect to certain debt owed by the GOI to the USG. The need for a waiver is discussed below.

II. Essential Factors:

A. Brief Overview of the TFCA

The TFCA offers eligible developing countries options to relieve certain official debt owed the United States while at the same time generating funds in local currency to support eligible tropical forest conservation activities. In addition to forest conservation and debt relief, TFCA is intended to strengthen civil society by creating local foundations to support small grants to non-governmental organizations (NGOs) and local communities.

TFCA is implemented through bilateral agreements with eligible countries. The USG has executed numerous TFCA agreements with developing countries around the world and these agreements have

generated the local currency equivalents of millions United States Dollars for eligible conservation activities.

B. The Oversight Committee Under the Indonesian FCA

The USG, represented by the U.S. Department of Treasury, is currently negotiating a TFCA debt-for-nature swap agreement with the GOI. The Indonesia FCA is simultaneously being negotiated among the above-referenced parties, with input from the USG.

In accordance with the requirements of the TFCA, the Indonesia FCA includes a provision requiring the establishment of a Tropical Forest Fund (TFF) to receive payments of interest and principal on obligations undertaken by GOI under the TFCA debt-for-nature swap agreement, as well as a provision calling for the establishment, in accordance with local law, of an administering body - i.e., the Oversight Committee, to administer local currencies disbursed from the TFF.

The TFCA requires that the composition of the Oversight Committee include (i) one or more individuals appointed by the USG; (ii) one or more individuals appointed by the government of the beneficiary country; and (iii) individuals who represent a broad range of environmental nongovernmental organizations of, or active in, the beneficiary country; local community development nongovernmental organizations of the beneficiary country; and scientific, academic, or forestry organizations of the beneficiary country. TFCA Section 809(c)(2).

The United States Ambassador to Indonesia has nominated Mr. Walter North to serve as the USG designee to the Oversight Committee under the Indonesia FCA. He has also nominated Mr. Alfred Nakatsuma, the Director of USAID/Indonesia's Environment Office to serve as the first alternate and Ms. Valerie Santos, a member of Mission's Environment team, to serve as second alternate.¹ The first alternate would only serve in the event that Mr. North is not available and the second alternate would only serve if the first is not available. Article 6.7 of the Indonesia FCS outlines the powers and responsibilities of the Oversight Committee, which are consistent with Section 809(c) of the TFCA, discussed below.

C. 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

¹ Individual waivers under 18 U.S.C. 208(b)(1) have also been requested for Mr. Nakatsuma and Ms. Santos respectively.

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 section 208(a), the conflicts statute preclude a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

Inasmuch as:

1) Section 809(c)(2)(A)(i) of the TFCA specifies that one or more individuals be appointed by the USG to the administering body (i.e., the Oversight Committee) established under an FCA, not that a USG employee be appointed by the USG to such body and the legislative history of the TFCA does not indicate a Congressional intent that a USG employee be appointed by the USG to such body;

2) OLC has not opined on the question of whether service by a USG employee as the USG designee to an administering body established in accordance with the TFCA is pursuant to specific statutory authority; and

3) the responsibilities of the administering body as outlined in Section 809(c)(3) of the TFCA - including the fiduciary responsibilities of the body with regard to the TFF - cannot be waived,

you, as the Agency's A/DAEO are requested to grant, pursuant to 18 U.S.C. 208(b)(1), a waiver to permit Mr. North to serve on the Oversight Committee of the Indonesia FCA following your determination that any disclosed financial interest as well as participation by Mr. North on the Oversight Committee is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him and that by participating on the committee, Mr. North will actually help to safeguard the interests of the USG by representing the USG on the Oversight Committee.

Under the TFCA, responsibilities of the administering body include: (A) receiving proposals for grant assistance from eligible grant recipients and making grants to eligible grant recipients in accordance with the priorities agreed upon in the FCA; (B) responsibility for the management of the program and oversight of grant activities funded from resources of the TFF; subjecting itself,

on an annual basis, to an audit of financial statements conducted in accordance with generally accepted auditing standards by an independent auditor; (D) granting to representatives of the United States Government Accountability Office such access to books and records associated with operations of the Tropical Forest Fund as the Comptroller General of the United States may request; (E) presentation of an annual program for review each year by the Enterprise for the Americas Board; and (F) submission of a report each year on the activities that it undertook during the previous year to the Chair of the Enterprise for the Americas Board and to the government of the beneficiary country. TFCA Section 809(c)(3). Its specific responsibilities are set forth at Article 6.7 (Powers and Responsibilities of the Oversight Committee) of the Indonesia FCA. The Oversight Committee will be expected to meet periodically to carry out its functions under the Indonesia FCA.

As the USAID Mission Director in Indonesia, Mr. North is responsible for all aspects of the USAID assistance program in Indonesia. This includes, inter alia, providing executive leadership for and setting the strategic direction of the USAID bilateral program in Indonesia, overseeing the development, design, and implementation of USAID-funded programs and activities in Indonesia, and serving as the lead USAID representative in U.S. Embassy Jakarta inter-agency fora that address U.S. foreign policy and economic development objectives and challenges in Indonesia.

As a member of the Oversight Committee, Mr. North may incur a fiduciary obligation to the Oversight Committee that could conflict with his duties as USG employees. However, the USG has substantial interest in overseeing the use of funds under the USG-GOI debt-for-nature swap agreement and it is deemed important that the USG designee to the Oversight Committee be a USG employee.

A waiver is justified for the following reasons:

First, because Mr. North would serve on the Oversight Committee as an assigned official duty activity, there is a greatly diminished risk that the integrity of the services that the USG and the Agency expect from him would be affected. Mr. North's position on the Oversight Committee will be fully known to the Agency and U.S. Embassy Jakarta. Moreover, the Agency believes that, to a significant degree, the interests of USG and the interests of Oversight Committee are consonant - i.e., assurance that funds deposited into the TFF are used only for purposes authorized under Section 809(d) of the TFCA, which includes, inter alia, support for the establishment, restoration, protection and maintenance of parks, protected areas and reserves. Further, the Agency expects that the interests of the USG, including

USAID and the interests of Oversight Committee can be mutually advanced through the performance of Mr. North's official duties.

Second, most if not all of the particular matters in which Mr. North would be involved in an official capacity will not have an effect on the financial interests of Oversight Committee.

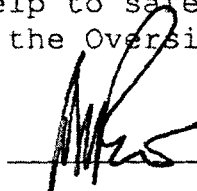
Finally, Mr. North understands and agrees that, as an official duty activity, no separate compensation may be received from the Oversight Committee in connection with his service as a member of the committee.

III. Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. 208(b)(1) to permit Mr. Walter North's service as the USG designee to the Oversight Committee of the Indonesia FCA.

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 A/DAEO, I hereby waive the disqualification imposed by 18 U.S.C. 208 (a) and authorize Mr. Walter North's official appointment to and service as the USG designee to the Oversight Committee of the Indonesia FCA. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. North on the Oversight Committee 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 committee, Mr. North will help to safeguard the interests of the USG by representing the USG on the Oversight Committee.

Approved: 

Disapproved: _____

Date: 4/14/09

Cc: Mr. Walter North



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FROM THE AMERICAN PEOPLE

278

ACTION MEMORANDUM

TO: James Peters, Assistant General Counsel, Ethics and Administration (GC/EA) and Alternate Designated Agency Ethics Official (A/DAEO)

FROM: Tanya J. Nunn, Ethics Advisor, USAID/Indonesia

SUBJECT: Request for 18 U.S.C. 208 Conflict of Interest Waiver for Mr. Alfred Nakatsuma

DATE: April 13, 2009

I. Issue for Decision:

This is a request to grant a conflict of interest waiver under 18 U.S.C. 208(b)(1) to Mr. Alfred Nakatsuma, Director of the Environment Office, USAID/Indonesia so that he may participate, in an official capacity, as the first alternate designee of the United States Government (USG) to the Oversight Committee established under the Forest Conservation Agreement among the Government of the Republic of Indonesia (GOI), Conservation International Foundation and Yayasan Keanekaragaman Hayati Indonesia, hereinafter "the Indonesia FCA," an agreement required under the Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended ("the TFCA") as part of the debt-for-nature swap agreement between the GOI and the USG with respect to certain debt owed by the GOI to the USG. Mr. Nakatsuma would only serve on the Oversight Committee if Mr. Walter North, Mission Director to USAID/Indonesia is not available to serve.¹ The need for a waiver is discussed below.

II. Essential Factors:

A. Brief Overview of the TFCA

The TFCA offers eligible developing countries options to relieve certain official debt owed the United States while at the same time generating funds in local currency to support eligible tropical forest conservation activities. In addition to forest conservation and debt

¹ An individual waiver under 18 U.S.C. 208(b)(1) has also been requested for Mr. North.

relief, TFCA is intended to strengthen civil society by creating local foundations to support small grants to non-governmental organizations (NGOs) and local communities.

TFCA is implemented through bilateral agreements with eligible countries. The USG has executed numerous TFCA agreements with developing countries around the world and these agreements have generated the local currency equivalents of millions United States Dollars for eligible conservation activities.

B. The Oversight Committee Under the Indonesia FCA

The USG, represented by the U.S. Department of Treasury, is currently negotiating a TFCA debt-for-nature swap agreement with the GOI. The Indonesia FCA is simultaneously being negotiated among the above-referenced parties, with input from the USG.

In accordance with the requirements of the TFCA, the Indonesia FCA includes a provision requiring the establishment of a Tropical Forest Fund (TFF) to receive payments of interest and principal on obligations undertaken by GOI under the TFCA debt-for-nature swap agreement, as well as a provision calling for the establishment, in accordance with local law, of an administering body - i.e., the Oversight Committee, to administer local currencies disbursed from the TFF.

The TFCA requires that the composition of the Oversight Committee include (i) one or more individuals appointed by the USG; (ii) one or more individuals appointed by the government of the beneficiary country; and (iii) individuals who represent a broad range of environmental nongovernmental organizations of, or active in, the beneficiary country; local community development nongovernmental organizations of the beneficiary country; and scientific, academic, or forestry organizations of the beneficiary country. TFCA Section 809(c)(2).

The United States Ambassador to Indonesia has nominated Mr. Walter North, Mission Director, USAID/Indonesia, to serve as the USG designee to the Oversight Committee under the Indonesia FCA.² He has also nominated Mr. Alfred Nakatsuma to serve as the first alternate and Ms. Valerie Santos, a member of Mission's Environment team, to serve as second alternate. The first alternate would only serve in the event that Mr. North is not available and the second alternate would only serve if the first is not available. Article 6.7 of the Indonesia FCS outlines the powers and responsibilities of the Oversight Committee, which are consistent with Section 809(c) of the TFCA, discussed below.

² An individual waiver under 18 U.S.C. 208(b)(1) has also been requested for Ms. Santos.

C. 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 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 preclude a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

Inasmuch as:

1) Section 809(c)(2)(A)(i) of the TFCA specifies that one or more individuals be appointed by the USG to the administering body (i.e., the Oversight Committee) established under an FCA, not that a USG employee be appointed by the USG to such body and the legislative history of the TFCA does not indicate a Congressional intent that a USG employee be appointed by the USG to such body;

2) OLC has not opined on the question of whether service by a USG employee as the USG designee to an administering body established in accordance with the TFCA is pursuant to specific statutory authority; and

3) the responsibilities of the administering body as outlined in Section 809(c)(3) of the TFCA - including the fiduciary responsibilities of the body with regard to the TFF - cannot be waived,

you, as the Agency's A/DAEO are requested to grant, pursuant to 18 U.S.C. 208(b)(1), a waiver to permit Mr. Nakatsuma to serve as first alternate on the Oversight Committee of the Indonesia FCA in the event that Mr. North is not available following your determination that any disclosed financial interest as well as participation by Mr. Nakatsuma on the Oversight Committee is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him and that by participating on the committee, Mr. Nakatsuma will actually help to safeguard the interests of the USG by representing the USG on the Oversight Committee.

Under the TFCA, responsibilities of the administering body include: (A) receiving proposals for grant assistance from eligible grant recipients and making grants to eligible grant recipients in accordance with the priorities agreed upon in the FCA; (B) responsibility for the management of the program and oversight of grant activities funded from resources of the TFF; subjecting itself, on an annual basis, to an audit of financial statements conducted in accordance with generally accepted auditing standards by an independent auditor; (D) granting to representatives of the United States Government Accountability Office such access to books and records associated with operations of the Tropical Forest Fund as the Comptroller General of the United States may request; (E) presentation of an annual program for review each year by the Enterprise for the Americas Board; and (F) submission of a report each year on the activities that it undertook during the previous year to the Chair of the Enterprise for the Americas Board and to the government of the beneficiary country. TFCA Section 809(c)(3). Its specific responsibilities are set forth at Article 6.7 (Powers and Responsibilities of the Oversight Committee) of the Indonesia FCA. The Oversight Committee will be expected to meet periodically to carry out its functions under the Indonesia FCA.

As the Director of the Environment Office at USAID/Indonesia, Mr. Nakatsuma has overall management responsibility for the Mission's environment, energy and related programs.

As a member of the Oversight Committee, Mr. Nakatsuma may incur a fiduciary obligation to the Oversight Committee that could conflict with his duties as USG employees. However, the USG has substantial interest in overseeing the use of funds under the USG-GOI debt-for-nature swap agreement and it is deemed important that the USG designee to the Oversight Committee be a USG employee.

A waiver is justified for the following reasons:

First, because Mr. Nakatsuma would serve, if called, on the Oversight Committee as an assigned official duty activity, there is a greatly diminished risk that the integrity of the services that the USG and the Agency expect from him would be affected. Mr. Nakatsuma's position on the Oversight Committee will be fully known to the Agency and U.S. Embassy Jakarta. Moreover, the Agency believes that, to a significant degree, the interests of USG and the interests of Oversight Committee are consonant - i.e., assurance that funds deposited into the TFF are used only for purposes authorized under Section 809(d) of the TFCA, which includes, inter alia, support for the establishment, restoration, protection and maintenance of parks, protected areas and reserves. Further, the Agency expects that the

interests of the USG, including USAID and the interests of Oversight Committee can be mutually advanced through the performance of Mr. Nakatsuma's official duties.

Second, most if not all of the particular matters in which Mr. Nakatsuma would be involved in an official capacity will not have an effect on the financial interests of Oversight Committee.

Finally, Mr. Nakatsuma understands and agrees that, as an official duty activity, no separate compensation may be received from the Oversight Committee in connection with his service as a member of the committee.

III. Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. 208(b)(1) to permit Mr. Alfred Nakatsuma's service as the first alternate USG designee to the Oversight Committee of the Indonesia FCA in the event Mr. North is not available to serve.

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 A/DAEO, I hereby waive the disqualification imposed by 18 U.S.C. 208 (a) and authorize Mr. Alfred Nakatsuma's official appointment to and service as the first alternate USG designee to the Oversight Committee of the Indonesia FCA. This waiver is based on my determination that any disclosed financial interest as well as any participation by Mr. Nakatsuma on the Oversight Committee 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 committee, Mr. Nakatsuma will help to safeguard the interests of the USG by representing the USG on the Oversight Committee.

Approved: _____

Disapproved: _____

Date: _____

4/14/09

Cc: Mr. Alfred Nakatsuma



USAID | INDONESIA

FROM THE AMERICAN PEOPLE

ACTION MEMORANDUM

TO: James Peters, Assistant General Counsel, Ethics and Administration (GC/EA) and Alternate Designated Agency Ethics Official (A/DAEO)

FROM: Tanya J. Nunn, Ethics Advisor, USAID/Indonesia

SUBJECT: Request for 18 U.S.C. 208 Conflict of Interest Waiver for Ms. Valerie Santos

DATE: April 13, 2009

I. Issue for Decision:

This is a request to grant a conflict of interest waiver under 18 U.S.C. 208(b)(1) to Ms. Valerie Santos, a key member of the Environment team at USAID/Indonesia, so that she may participate, in an official capacity, as a second alternate designee of the United States Government (USG) to the Oversight Committee established under the Forest Conservation Agreement among the Government of the Republic of Indonesia (GOI), Conservation International Foundation and Yayasan Keanekaragaman Hayati Indonesia, hereinafter "the Indonesia FCA," an agreement required under the Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended ("the TFCA") as part of the debt-for-nature swap agreement between the GOI and the USG with respect to certain debt owed by the GOI to the USG. Ms. Santos would only serve on the Oversight Committee if Mr. Alfred Nakatsuma, Director, Environment Office, USAID/Indonesia is not available to serve as the first alternate.¹ The need for a waiver is discussed below.

II. Essential Factors:

A. Brief Overview of the TFCA

The TFCA offers eligible developing countries options to relieve certain official debt owed the United States while at the same time generating funds in local currency to support eligible tropical forest

¹ An individual waiver under 18 U.S.C. 208(b)(1) has also been requested for Mr. Nakatsuma.

conservation activities. In addition to forest conservation and debt relief, TFCA is intended to strengthen civil society by creating local foundations to support small grants to non-governmental organizations (NGOs) and local communities.

TFCA is implemented through bilateral agreements with eligible countries. The USG has executed numerous TFCA agreements with developing countries around the world and these agreements have generated the local currency equivalents of millions United States Dollars for eligible conservation activities.

B. The Oversight Committee Under the Indonesian FCA

The USG, represented by the U.S. Department of Treasury, is currently negotiating a TFCA debt-for-nature swap agreement with the GOI. The Indonesia FCA is simultaneously being negotiated among the above-referenced parties, with input from the USG.

In accordance with the requirements of the TFCA, the Indonesia FCA includes a provision requiring the establishment of a Tropical Forest Fund (TFF) to receive payments of interest and principal on obligations undertaken by GOI under the TFCA debt-for-nature swap agreement, as well as a provision calling for the establishment, in accordance with local law, of an administering body - i.e., the Oversight Committee, to administer local currencies disbursed from the TFF.

The TFCA requires that the composition of the Oversight Committee include (i) one or more individuals appointed by the USG; (ii) one or more individuals appointed by the government of the beneficiary country; and (iii) individuals who represent a broad range of environmental nongovernmental organizations of, or active in, the beneficiary country; local community development nongovernmental organizations of the beneficiary country; and scientific, academic, or forestry organizations of the beneficiary country. TFCA Section 809(c)(2).

The United States Ambassador to Indonesia has nominated Mr. Walter North, Mission Director, USAID/Indonesia, to serve as the USG designee to the Oversight Committee under the Indonesia FCA.² He has also nominated Mr. Alfred Nakatsuma to serve as the first alternate and Ms. Valerie Santos to serve as second alternate. The first alternate would only serve in the event that Mr. North is not available and the second alternate would only serve if the first is not available. Article 6.7 of the Indonesia FCS outlines the powers and

² An individual waiver under 18 U.S.C. 208(b)(1) has also been requested for Ms. North.

responsibilities of the Oversight Committee, which are consistent with Section 809(c) of the TFCA, discussed below.

C. 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 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 preclude a federal employee from serving, in an official capacity, as an officer, director or trustee of a non-federal organization.

Inasmuch as:

1) Section 809(c)(2)(A)(i) of the TFCA specifies that one or more individuals be appointed by the USG to the administering body (i.e., the Oversight Committee) established under an FCA, not that a USG employee be appointed by the USG to such body and the legislative history of the TFCA does not indicate a Congressional intent that a USG employee be appointed by the USG to such body;

2) OLC has not opined on the question of whether service by a USG employee as the USG designee to an administering body established in accordance with the TFCA is pursuant to specific statutory authority; and

3) the responsibilities of the administering body as outlined in Section 809(c)(3) of the TFCA - including the fiduciary responsibilities of the body with regard to the TFF - cannot be waived,

you, as the Agency's A/DAEO are requested to grant, pursuant to 18 U.S.C. 208(b)(1), a waiver to permit Ms. Santos to serve as second alternate on the Oversight Committee of the Indonesia FCA in the event that Mr. Nakatsuma is not available following your determination that any disclosed financial interest as well as participation by Ms. Santos on the Oversight Committee is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from her and that by participating on the

committee, Ms. Santos will actually help to safeguard the interests of the USG by representing the USG on the Oversight Committee.

Under the TFCA, responsibilities of the administering body include: (A) receiving proposals for grant assistance from eligible grant recipients and making grants to eligible grant recipients in accordance with the priorities agreed upon in the FCA; (B) responsibility for the management of the program and oversight of grant activities funded from resources of the TFF; subjecting itself, on an annual basis, to an audit of financial statements conducted in accordance with generally accepted auditing standards by an independent auditor; (D) granting to representatives of the United States Government Accountability Office such access to books and records associated with operations of the Tropical Forest Fund as the Comptroller General of the United States may request; (E) presentation of an annual program for review each year by the Enterprise for the Americas Board; and (F) submission of a report each year on the activities that it undertook during the previous year to the Chair of the Enterprise for the Americas Board and to the government of the beneficiary country. TFCA Section 809(c)(3). Its specific responsibilities are set forth at Article 6.7 (Powers and Responsibilities of the Oversight Committee) of the Indonesia FCA. The Oversight Committee will be expected to meet periodically to carry out its functions under the Indonesia FCA.

As a member of the Oversight Committee, Ms. Santos may incur a fiduciary obligation to the Oversight Committee that could conflict with her duties as USG employees. However, the USG has substantial interest in overseeing the use of funds under the USG-GOI debt-for-nature swap agreement and it is deemed important that the USG designee to the Oversight Committee be a USG employee.

A waiver is justified for the following reasons:

First, because Ms. Santos would serve, if called, on the Oversight Committee as an assigned official duty activity, there is a greatly diminished risk that the integrity of the services that the USG and the Agency expect from her would be affected. Ms. Santos's position on the Oversight Committee will be fully known to the Agency and U.S. Embassy Jakarta. Moreover, the Agency believes that, to a significant degree, the interests of USG and the interests of Oversight Committee are consonant - i.e., assurance that funds deposited into the TFF are used only for purposes authorized under Section 809(d) of the TFCA, which includes, inter alia, support for the establishment, restoration, protection and maintenance of parks, protected areas and reserves. Further, the Agency expects that the interests of the USG, including USAID and the interests of Oversight Committee can be

mutually advanced through the performance of Ms. Santos's official duties.

Second, most if not all of the particular matters in which Ms. Santos would be involved in an official capacity will not have an effect on the financial interests of Oversight Committee.

Finally, Ms. Santos understands and agrees that, as an official duty activity, no separate compensation may be received from the Oversight Committee in connection with her service as a member of the committee.

III. Recommendation:

It is recommended that you grant a waiver pursuant to 18 U.S.C. 208(b)(1) to permit Ms. Valerie Santos's service as the second alternate USG designee to the Oversight Committee of the Indonesia FCA in the event Mr. Nakatsuma is not available to serve.

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 A/DAEO, I hereby waive the disqualification imposed by 18 U.S.C. 208 (a) and authorize Ms. Valerie Santos's official appointment to and service as the second alternate USG designee to the Oversight Committee of the Indonesia FCA. This waiver is based on my determination that any disclosed financial interest as well as any participation by Ms. Santos on the Oversight Committee 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 committee, Ms. Santos will help to safeguard the interests of the USG by representing the USG on the Oversight Committee.

Approved:  _____

Disapproved: _____

Date: 4/14/09

Cc: Ms. Valerie Santos



USAID | PERU

FROM THE AMERICAN PEOPLE

September 24, 2009

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

FROM: Suzette A. Smikle, RLA, USAID/Peru

TO: James M. Peters, Alternate Designated Agency Ethics Official

SUBJECT: 18 U.S.C. Section 208 waiver for Diana Darsney in Peru

Issue:

Whether to grant 18 U.S.C. § 208(b)(1) waiver to Diana Darsney, Economic Growth Officer, so that she may participate as the U.S. Government representative (principal or alternate) on the oversight committee established to monitor the implementation of the Colombia and Peru debt-for-nature swaps under the Tropical Forest Conservation Act ("TFCA") and on the local oversight committee for the Americas Fund Board.

Authority:

As the Alternate DAEO, you have the authority to grant this waiver. On March 13, 2008, you granted this waiver for five USAID/Peru and USAID/Colombia employees.

Discussion:

TFCA agreements benefit participating countries and the United States. In addition to promoting forest conservation and providing debt relief, TFCA is intended to strengthen civil society by creating local foundations to support small grants to nongovernmental organizations, such as environmental, community and forestry groups. Under the subsidized debt-for-nature swap approach used in Colombia and Peru, both the U.S. Government and NGOs contribute funds to reduce or cancel a portion of eligible host country debt. Payments on treated debt are made in local currency for conservation activities as agreed by the host country, U.S. Government and contributing NGOs. A local oversight committee is established to administer the program and has both governmental and NGO members. The USG has one seat on each oversight committee and designates a principle and an alternate for each. The Colombia and Peru oversight committees meet periodically. Committee members may incur a fiduciary obligation to the oversight committee that could conflict with their duties as USG employees. However, the USG has substantial interest in overseeing the use of funds in the debt-for-nature swap, and the Department of State has concurred in the appointment of Ms. Darsney to the Peru oversight committees.

Fondo de las Américas del Perú (FONDAM) serves as the local oversight committee to administer the TFCA program. FONDAM works towards the preservation, protection and administration of Peruvian natural and biological resources in a sustainable and environmentally healthy manner. It promotes the improvement of children survival and development in Peru. FONDAM was created in compliance with the Debt Reduction Agreement Program, and the Framework Agreement for the Creation of the Fondo de las Américas and its Board of Directors, undersigned between the Governments of Peru and the United States of America on June 26, 1997, and December 24, 1997, respectively.

The Department of Justice's Office of the 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 section 208(a). OLC has not issued a formal opinion regarding whether an oversight committee in the case of a debt-for-nature swaps fall within the express statutory authority under FAA § 809(c)(2), which deals with an "administering" body in the context of the TFCA. For the avoidance of doubt, we are asking you to exercise 18 U.S.C. § 208(b) waiver authority to permit Diana Darsney to serve as a USG member of the oversight committees, either as primary member-representative or as an alternate.

Recommendation:

That you grant a waiver to permit Diana Darsney to serve as the USG member (principal or alternate) of the oversight committees as indicated 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 Diana Darsney's official appointment as a USG member of the Peru oversight committees. This waiver is based on my determination that her participation on the oversight committee is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from them. Furthermore, she will be safeguarding the interests of the USG by representing the USG on the oversight committees.

Approve:  _____

Disapprove: _____

Date: 9/28/09

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

Clearances:

GC/G:CJones:2/13/09:Word:208 Waiver-Pontaza

February 27, 2008

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

FROM: Joakim Parker, RLA, USAID/Peru

TO: James M. Peters, Alternate Designated Agency Ethics Official

SUBJECT: 18 U.S.C. section 208 waivers for five employees in Colombia and Peru

Issue:

Whether to grant 18 U.S.C. section 208(b)(1) waivers to the following individuals:

Liliana Ayalde, Mission Director, USAID/Colombia
Bruce Bayle, Regional Environmental Officer, USAID/Colombia
Lawrence Hardy, Deputy Mission Director, USAID/Peru
Steven Olive, Chief, Economic Growth and Environment Office, USAID/Peru
Susan Reichle, Deputy Mission Director, USAID/Colombia

so that they may participate as the U.S. Government representative (principal or alternate) on the oversight committees established to monitor the implementation of the Colombia and Peru debt-for-nature swaps under the Tropical Forest Conservation Act ("TFCA"). As the Alternate DAEO, you have the authority to grant this waiver.

Discussion:

TFCA agreements benefit participating countries and the United States. In addition to promoting forest conservation and providing debt relief, TFCA is intended to strengthen civil society by creating local foundations to support small grants to nongovernmental organizations, such as environmental, community and forestry groups. Under the subsidized debt-for-nature swap approach used in Colombia and Peru, both the U.S. Government and NGOs contribute funds to reduce or cancel a portion of eligible host country debt. Payments on treated debt are made in local currency for conservation activities as agreed by the host country, U.S. Government and contributing NGOs. A local oversight committee is established to administer the program, and has both governmental and NGO members. The USG has one seat on each oversight committee, and designates a principals and alternates for each. The Colombia and Peru oversight committees meet periodically. Committee members may incur a fiduciary obligation to the oversight committee that could conflict with their duties as USG employees. However, the USG has substantial interest in overseeing the use of funds in the debt-for-nature swap, and the Department of State has concurred in the appointments of Ms. Ayalde and Mr. Bayle to the Colombia oversight committee, and of Mr. Hardy and Mr. Olive to the Peru oversight committee. Ms. Reichle is slated to replace Ms. Ayalde as USAID/Colombia's Director, and presumably its oversight committee member, in a few months, and is included in this waiver in anticipation of that change.

The Department of Justice's Office of Legal Counsel 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 section 208(a). OLC has not issued a formal opinion regarding whether an oversight committee in the case of a debt-for-nature swaps falls within the express statutory authority under FAA section 809(c)(2), which deals with an "administering" body in the context of the TFCA. For the avoidance of doubt, we are asking you to exercise 18 U.S.C. section 208(b) waiver authority to permit the five individuals identified above to serve as USG members of the oversight committee, either as primary member-representative or as alternate.

Recommendation:

That you grant waivers to permit these five individuals to serve as the USG member (principal or alternate) of the oversight committees as indicated above.

Determination:

Pursuant to 18 U.S.C. section 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. section 208(a) and authorize Liliana Ayalde's and Bruce Bayle's official appointment as USG members of the Colombia oversight committee (and Susan Reichle's likely future appointment as Ms. Ayalde's replacement on the Colombia oversight committee), and Lawrence Hardy and Steven Olive as USG members of the Peru oversight committee. This waiver is based on my determination that their participation on the oversight committees is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from them. Furthermore, they will be safeguarding the interests of the USG by representing the USG on the oversight committees.

Approve:  _____

Disapprove: _____

Date: 3/13/08



USAID
FROM THE AMERICAN PEOPLE

June 4, 2008

FROM: Designated Agency Ethics Official,
James Peters

SUBJECT: 18 U.S.C. 208 Waiver for Joseph VanMeter and Karen d'Aboville

RE: FSYF Finding of Non-Conflict

Issue:

The Foreign Service Youth Foundation (FSYF) is a non-profit organization with 501(c)(3) status dedicated to the well-being and development of the children of foreign service officers. USAID does not currently have a partnership with the organization and is not directly connected in any particular matter. Query as to whether it is permissible for USAID employees, particularly Joseph VanMeter and Karen d'Aboville, to serve on the board of the FSYF in their private capacities.

According to 18 U.S.C. 208(a), a federal employee is prohibited from participating in his or her official capacity in any particular matter in which he has a financial interest. An organization's financial interest is imputed to the employee if that individual serves as a member of the organization's board.

Joseph VanMeter and Karen d'Aboville will serve on the FSYF board in their private capacities. While the organization's focus is on the families of FS officers, neither federal employee's occupation will benefit or hinder the operation of the organization. Moreover, USAID is not involved in a business relationship with the FSYF.

Determination:

Pursuant to the regulations of the Office of Government Ethics (OGE) at 5 CFR Part 2640, Subpart C; and pursuant to the authority vested in me as Ethics Advisor, I hereby find no 18 U.S.C. 208 conflict due to the participation of Joseph VanMeter and Karen d'Aboville on the board of the FSYF. Moreover, it is the position of GC/EA that the participation of the abovementioned employees is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him.

Approve: _____

Disapprove: _____

Date: _____

Clearance:
ES:Daller _____ date _____



USAID
FROM THE AMERICAN PEOPLE

August 19, 2008

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

FROM: Catherine Jones, GC/G

SUBJECT: 18 U.S.C. 208 Waiver For Littleton Tazewell

Issue:

Whether to grant an 18 U.S.C. 208(b)(1) waiver to Littleton Tazewell, Mission Director, USAID/Panama, in order that he may participate as the U.S. Government ("USG") representative on the two Oversight Committees established to monitor the implementation of the Panama debt-for-nature swap (the "Oversight Committees") pursuant to the Tropical Forest Conservation Act ("TFCA"). As the DAEO, you have the authority to grant this waiver.

Discussion:

The Oversight Committees holds meetings periodically. The USG has one seat on each Oversight Committee. Committee members may incur a fiduciary obligation to the Oversight Committee that could conflict with their duties as USG employees. However, the USG has substantial interest in overseeing the use of funds in the debt-for-nature swap.

The Department of Justice's Office of Legal Counsel 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 Littleton Tazewell to serve as the USG member of the Oversight Committees.

Recommendation:

That you grant a waiver to permit Littleton Tazewell's service as the USG member of the Oversight Committees.

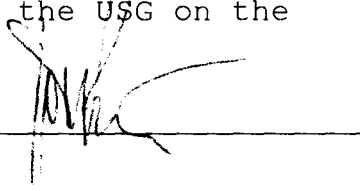
Determination:

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 Littleton Tazewell's official appointment as the USG member of the Oversight Committees. This waiver is based on my determination that the Oversight Committee's financial interests which are imputed to Mr. Littleton are not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USG on the Oversight Committees.

Approve: _____

Disapprove: _____

Date: _____

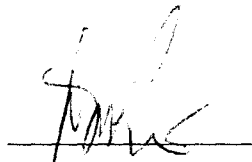
A handwritten signature in dark ink, appearing to be "J. M. ...", is written over the "Approve:" line.

August 19, 2008

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

Clearances:

GC/EA: JPeters

 date 8/19/08

GC/G:CJones:9/18/19/08:Word:208 Waiver-Tazewell(08)

ACTION MEMORANDUM

To: James M. Peters, Alternate Designated Agency Ethics Official (DAEO)
From: Andrew M. Herscowitz, RLA, USAID/Peru
Date: November 21, 2008
Subject: 18 U.S.C. Section 208 Waiver for employees in Peru

Issue:

Whether to grant an 18 U.S.C. Section 208(b)(1) waiver to the following individual:

Martin McLaughlin, Deputy, Economic Growth and Environment Office, USAID/Peru

so that he may participate as the U.S. Government (USG) representative (principal or alternate) on the oversight committees established to monitor the implementation of the Peru debt-for-nature swap under the Tropical Forest Conservation Act ("TFCA"). As the Alternate DAEO, you have the authority to grant this waiver.

Discussion and Recommendation:

On February 27, 2008, you granted Section 208 waivers to allow certain individuals to serve as USG representatives on TFCA oversight committees in Colombia and in Peru. A copy of that Waiver is attached hereto. There have been personnel changes at the USAID/Peru Missions since that time, including the departure of Lawrence Hardy. No other conditions have changed. For the reasons set forth in the February 27, 2008 Section 208 Waiver Memorandum, you are requested to exercise your waiver authority under 18 U.S.C. Section 208(b) to permit Mr. McLaughlin to serve as a USG member of the TFCA oversight committee in Peru instead of Lawrence Hardy.

Determination:

Pursuant to 18 U.S.C. Section 208(b)(1) and regulations of the Office of Government Ethics (OGE) at 5 CFR 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. Section 208(a) and authorize Martin McLaughlin's official appointment as a USG member of the Peru TFCA oversight committee. This waiver is based on my determination that his participation on the oversight committee is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USG on the oversight committee.

Approve: _____

Disapprove: _____

Date: 12/3/08



USAID
FROM THE AMERICAN PEOPLE

December 3, 2008

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

FROM: Catherine Jones, GC/G

TO: James M. Peters, Assistant General
Counsel/DAEO

SUBJECT: 18 U.S.C. 208 Waiver For Sean Osner

Issue:

Whether to grant an 18 U.S.C. 208(b)(1) waiver to Sean Osner, Deputy Director/Office of Sustainable Development, USAID/Jamaica, in order that he may participate as the U.S. Government ("USG") representative on the Oversight Committee established to monitor the implementation of the Jamaica debt-for-nature swap (the "Oversight Committee") pursuant to the Tropical Forest Conservation Act ("TFCA"). As the DAEO, you have the authority to grant this waiver.

Discussion:

The Oversight Committee holds meetings periodically. The USG has one seat on the Oversight Committee. Committee members may incur a fiduciary obligation to the Oversight Committee that could conflict with their duties as USG employees. However, the USG has substantial interest in overseeing the use of funds in the debt-for-nature swap.

The Department of Justice's Office of Legal Counsel 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 Sean Osner to serve as the USG member of the Oversight Committee.

Recommendation:

That you grant a waiver to permit Sean Osner's service as the USG member of the Oversight Committee.

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 Sean Osner's official appointment as the USG member of the Oversight Committee. This waiver is based on my determination that Sean Osner's participation on the Oversight Committee is 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 Oversight Committee.

Approve: 

Disapprove: _____

Date: 12/3/08

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

Clearances:

GC/G:CJones:9/112/3/08:Word:208 Waiver-Osner

UNITED STATES GOVERNMENT
MEMORANDUM

December 19, 2007

**ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS
OFFICIAL**

FROM: Jason D. Fraser, Regional Legal Advisor USAID/CAR
TO: Arnie Haiman, Acting General Counsel/DAEO
SUBJECT: 18 U.S.C. 208 Waiver for James Harmon

Issue:

Whether to grant an 18 U.S.C 208 (b) (1) waiver to James Harmon, Deputy Mission Director, USAID/Jamaica, in order to participate as the U.S. Government (USG) representative on the Forest Conservation Fund ("FCF") Oversight Committee (the "Oversight Committee") established to monitor the implementation of the Jamaica debt-for nature swap under the Tropical Forest Conservation Act ("TFCA"). As the DAEO, you have the authority to grant this waiver.

Discussion:

The Oversight Committee holds meetings periodically. The USG has one seat on the Oversight Committee. Committee members may or may not incur a fiduciary obligation to the Oversight Committee that could conflict with the employee's duties as a USG employee. However, the USG has substantial interest in overseeing the use of funds in the debt-for-nature swap.

The Department of Justice's Office of the Legal Counsel ("OLC") has determined that a USG employee may not serve even as an ex-officio 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 an Oversight Committee in the case of a debt-nature swap 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) authority to permit Mr. James Harmon to serve the USG member of the Oversight Committee.

Recommendation:

That you grant a waiver to permit Mr. Harmon's service as the USG member of the Oversight Committee.

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 DAEO, I hereby waive the disqualification imposed by 18 U.S.C 208(a) and authorize James Harmon's official appointment as the USG member of the Oversight Committee. This waiver is based on my determination that any financial or other interests of the Oversight Committee which are imputed to Mr. Harmon are not so substantial to be deemed likely to affect the integrity of the services which the Government may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USG on the Oversight Committee.

Approve: _____

Disapprove: _____

Date: _____

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

Clearances:

GC/EA: JPeters _____ **date** _____



USAID | DOMINICAN REPUBLIC

FROM THE AMERICAN PEOPLE

UNITED STATES GOVERNMENT MEMORANDUM

December 19, 2007

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

FROM: Jason D. Fraser, Regional Legal Advisor USAID/CAR

TO: Arnie Haiman, Acting General Counsel/DAEO

SUBJECT: 18 U.S.C. 208 Waiver for Nathan Carter

Issue:

Whether to grant an 18 U.S.C 208 (b) (1) waiver to Nathan Carter, Economic Officer, Embassy/Jamaica, in order to participate as an alternate U.S. Government (“USG”) representative on the Forest Conservation Fund (“FCF”) Oversight Committee (the “Oversight Committee”) established to monitor the implementation of the Jamaica debt-for nature swap under the Tropical Forest Conservation Act (“TFCA”). As the DAEO, you have the authority to grant this waiver.

Discussion:

The Oversight Committee holds meetings periodically. The USG has one seat on the Oversight Committee, which is held by the Deputy Mission Director of USAID/Jamaica, James Harmon. In the event that Mr. Harmon is unable to serve as the USG member at the meetings of the Oversight Committee, Mr. Nathan Carter, Economic Officer at Embassy/Jamaica, may be required to assume the role as an alternate. Committee members may or may not incur a fiduciary obligation to the Oversight Committee that could conflict with the employees’ duties as USG employees. However, the USG has a substantial interest in overseeing the use of funds in the debt-for-nature swap.

The Department of Justice’s Office of the Legal Counsel (“OLC”) has determined that a USG employee may not serve even as an ex-officio 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 an Oversight Committee in the case of a debt-nature swap 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) authority to permit Mr. Nathan Carter to serve as the alternate USG member of the Oversight Committee.

Recommendation:

That you grant a waiver to permit Mr. Carter's service as the USG member of the Oversight Committee.

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 DAEO, I hereby waive the disqualification imposed by 18 U.S.C 208(a) and authorize Nathan Carter's official appointment as an alternate USG member of the Oversight Committee. This waiver is based on my determination that any financial or other interests of the Oversight Committee which are imputed to Mr. Carter are not so substantial to be deemed likely to affect the integrity of the services which the Government may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USG on the Oversight Committee.

Approve: _____

Disapprove: _____

Date: _____

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

Clearances:

GC/EA: JPeters _____ **date** _____



USAID

FROM THE AMERICAN PEOPLE

September 29, 2006

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

FROM: Diane Bui, GC/G

SUBJECT: 18 U.S.C. 208 Waiver For Wayne Nilsestuen

Issue:

Whether to grant an 18 U.S.C. 208(b)(1) waiver to Wayne Nilsestuen, Mission Director, USAID/Guatemala, in order that he may participate as the U.S. Government ("USG") representative on the Oversight Committee established to monitor the implementation of the Guatemala debt-for-nature swap (the "Oversight Committee") under the Tropical Forest Conservation Act ("TFCA"). As the DAEO, you have the authority to grant this waiver.

Discussion:

The Oversight Committee holds meetings periodically. The USG has one seat on the Oversight Committee. Committee members may incur a fiduciary obligation to the Oversight Committee that could conflict with their duties as USG employees. However, the USG has substantial interest in overseeing the use of funds in the debt-for-nature swap.

The Department of Justice's Office of Legal Counsel 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 a 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 Wayne Nilsestuen to serve as the USG member of the Oversight Committee.

Recommendation:

That you grant a waiver to permit Mr. Nilsestuen's service as the USG member of the Oversight Committee.

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 Wayne Nilsestuen's official appointment as the USG member of the Oversight Committee. This waiver is based on my determination that the Oversight Committee's financial interests which are imputed to Mr. Nilsestuen are not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him. Furthermore, he will be safeguarding the interests of the USG by representing the USG on the Oversight Committee.

Approve: 

Disapprove: _____

Date: 9/29/06

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

Clearances:

GC/EA: JPeters



date 9/29/06

GC/G:Dibui:DB:20529:9/1/06:Word:208 Waiver-Nilsestuen



USAID
FROM THE AMERICAN PEOPLE

September 29, 2006

ACTION MEMORANDUM FOR THE DESIGNATED AGENCY ETHICS OFFICIAL

FROM: Diane Bui, GC/G

SUBJECT: 18 U.S.C. 208 Waiver For Jill Kelley

Issue:

Whether to grant an 18 U.S.C. 208(b)(1) waiver to Jill Kelley, Environmental Officer and Natural Resources Officer, USAID/Guatemala, in order that she may participate as an alternate U.S. Government ("USG") representative on the Oversight Committee established to monitor the implementation of the Guatemala debt-for-nature swap (the "Oversight Committee") pursuant to the Tropical Forest Conservation Act ("TFCA"). As the DAEO, you have the authority to grant this waiver.

Discussion:

The Oversight Committee holds meetings periodically. The USG has one seat on the Oversight Committee, which is held by the Mission Director of USAID/Guatemala, Wayne Nilsestuen. In the event that Mr. Nilsestuen is unable to serve as the USG member at meetings of the Oversight Committee, Ms. Kelley may be required to assume a role as an alternate. Committee members may incur a fiduciary obligation to the Oversight Committee that could conflict with their duties as USG employees. However, the USG has substantial interest in overseeing the use of funds in the debt-for-nature swap.

The Department of Justice's Office of Legal Counsel 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 a 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 Jill Kelley to serve as an alternate USG member of the Oversight Committee.

Recommendation:

That you grant a waiver to permit Ms. Kelley's service as an alternate USG member of the Oversight Committee.

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 Jill Kelley's official appointment as an alternate USG member of the Oversight Committee. This waiver is based on my determination that the Oversight Committee's financial interests which are imputed to Ms. Kelley are not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from her. Furthermore, she will be safeguarding the interests of the USG by representing the USG on the Oversight Committee.

Approve: 

Disapprove: _____

Date: 9/29/06

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

Clearances:

GC/EA: JPeters



date 9/29/06

GC/G:Dibui:DB:20529:9/1/06:Word:208 Waiver-Kelley(9 2006)



USAID
FROM THE AMERICAN PEOPLE

August 31, 2005

ACTION MEMORANDUM

TO: THE ADMINISTRATOR

FROM: Designated Agency Ethics Official,
Arnold J. Haiman |s|

SUBJECT: 18 U.S.C. 208 Waiver For Kent R. Hill

ISSUE FOR DECISION

Whether to grant an 18 U.S.C. 208(b)(1) waiver to Kent R. Hill, Acting Assistant Administrator, Global Health, in order that he may participate as an alternate United States Government member of the Board of Directors for the Global Fund to Fight AIDS, Tuberculosis, and Malaria (GFATM). As the Agency head, you have the authority to grant this waiver.

ESSENTIAL FACTORS

The GFATM holds Board meetings twice a year and other meetings periodically. The Government has one seat on the Board of Directors which is held by the U.S. Global AIDS Coordinator, Ambassador Randall Tobias. The alternate United States delegate is Mr. William Steiger, Director of the Office of Global Health Affairs at HHS.

In the event that Mr. Steiger were unable to serve as an alternate at GFATM Board meetings, Dr. Hill would be required to assume a role as an alternate. Should Dr. Hill be required to assume this role, this waiver would be necessary as a result of a determination by the Department of Justice's Office of Legal Counsel that a USG employee may not serve even as an ex-officio board member of a nonfederal organization without a waiver.

You previously granted a waiver to Dr. Hill to serve as an alternate board member at the April 21, 2005, GFATM meeting. You also previously granted waivers to Anne Peterson, Michael Miller, and John Gardner to serve as alternate members of the Board.

Ambassador Tobias and Mr. Steiger have each received such waivers in the past.

RECOMMENDATION

That you grant a waiver to permit Dr. Hill's service as an alternate USG Board member of the GFATM, in the event such service is necessary.

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 Administrator, I hereby waive the disqualification imposed by 18 U.S.C. 208(a) and authorize Kent R. Hill's official appointment as an alternate Board member of the GFATM. This waiver is based on my determination that Dr. Hill's participation as an alternate Board member is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him.

Approve: Andrew S. Vatsios

Disapprove: _____

Date: 2 September 2005

CLEARANCE PAGE FOR ACTION MEMORANDUM requesting decision on 18 USC
208 Waiver for Kent Hill.

Clearances:

ES: Daller  date 9/3
GC/EA JPeters  date 8/31/05

GC/G: MMclaughlin: ML:20659:8/26/05:Word:208 Waiver-Hill

ES 200502629

USAID
ROUTINE SECRETARIAT

2005 SEP -1 P 2:02



USAID

FROM THE AMERICAN PEOPLE

September 22, 2005

ACTION MEMORANDUM

TO: The Administrator

FROM: James M. Peters /s/
Alternate Designated Agency Ethics Official

SUBJECT: 18 U.S.C. 208 Waiver For Michael Miller

ISSUE FOR DECISION

Whether to grant an 18 U.S.C. 208(b)(1) waiver to Michael Miller, Deputy Assistant Administrator, Global Health, in order that he may participate as an alternate United States Government member of the Board of Directors for the Global Fund to Fight AIDS, Tuberculosis, and Malaria (GFATM). As the Agency head, you have the authority to grant this waiver.

ESSENTIAL FACTORS

The GFATM holds Board meetings twice a year and other meetings periodically. The Government has one seat on the Board of Directors which is held by The U.S. Global AIDS Coordinator, Ambassador Randall Tobias. The alternate United States delegate is Mr. William Steiger, Director of the Office of Global Health Affairs at HHS. Kent Hill is an alternate delegate for Mr. Steiger.

In the event that Mr. Steiger and Dr. Hill are unable to serve as alternates at GFATM Board meetings, Mr. Miller may be required to assume a role as an alternate. Should Mr. Miller be required to assume this role, this waiver would be necessary as a result of a determination by the Department of Justice's Office of Legal Counsel that a USG employee may not serve even as an ex-officio board member of a nonfederal organization without a waiver. You have previously granted a waiver to Dr. Hill for this purpose.

You previously granted a waiver to Mr. Miller to serve as an alternate board member at the November 17, 2004, GFATM meeting. You also previously granted waivers to Anne Peterson and John Gardner to serve as alternate members of the Board.

Ambassador Tobias and Mr. Steiger have each received such waivers.

RECOMMENDATION

That you grant a waiver to permit Mr. Miller's service as an alternate USG Board member of the GFATM, in the event such service is necessary.

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 Administrator, I hereby waive the disqualification imposed by 18 U.S.C. 208(a) and authorize Michael Miller's official appointment as an alternate Board member of the GFATM. This waiver is based on my determination that Mr. Miller's participation as an alternate Board member is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him.

Approve: Andrew S. Katsaris

Disapprove: _____

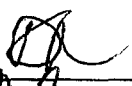
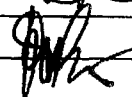
Date: 27 Sept. 2005

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

Clearances:

ES: Daller

GC/EA: JPeters

 date 9/23
 date 9/23/05

GC/G:MMclaughlin:ML:20659:9/21/05:Word:208 Waiver-Miller

ES 200502907

USAID
EXECUTIVE SECRETARIAT
2005 SEP 23 A 10:56

November 8, 2004

ACTION MEMORANDUM FOR THE ADMINISTRATOR

FROM: Designated Agency Ethics Official,
Arnold J. Haiman

SUBJECT: 18 U.S.C. 208 Waiver For John S. Gardner

Issue:

Whether to grant an 18 U.S.C. 208(b)(1) waiver to John S. Gardner, General Counsel, in order that he may participate as a temporary United States Government Board member (the second alternate) on the Global Fund to Fight AIDS, Tuberculosis, and Malaria (GFATM). As the Agency head, you have the authority to grant this waiver.

Discussion:

The GFATM will hold a board meeting in Arusha, Tanzania, on November 17, 2004. With the absence of Dr. Anne Peterson, and with Secretary Thompson serving as chair of the GFATM Board, Mr. Gardner reports that he will be the senior-ranking member of the U.S. delegation to the meeting. In anticipation of the State Department designating him to temporarily serve as the United States' second alternate of the GFATM¹, Mr. Gardner seeks a conflict of interest waiver under 18 U.S.C. 208. This waiver is necessary as a result of a determination by the Department of Justice's Office of Legal Counsel that a USG employee may not serve even as an ex-officio board member of a nonfederal organization.

¹ William Steiger of HHS will serve as the first alternate Board member.

Recommendation:

That, assuming you approve his travel, pursuant to the following determination you grant a waiver to permit John Gardner's service as a temporary USG Board member of the GFATM.

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 Administrator, I hereby waive the disqualification imposed by 18 U.S.C. 208(a) and authorize John Gardner's official appointment as a temporary United States alternate Board member of the GFATM. This waiver is based on my determination that Mr. Gardner's participation as a temporary alternate Board member is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him.

Approve: _____

Disapprove: _____

Date: _____

Clearance:

ES:Daller _____ date _____

November 9, 2004

ACTION MEMORANDUM FOR THE ADMINISTRATOR

FROM: Designated Agency Ethics Official,
Arnold J. Haiman

SUBJECT: 18 U.S.C. 208 Waiver For Michael Miller

Issue:

Whether to grant an 18 U.S.C. 208(b)(1) waiver to Michael Miller, Deputy Assistant Administrator, Global Health, in order that he may participate as a temporary United States Government Board member (the second alternate) on the Global Fund to Fight AIDS, Tuberculosis, and Malaria (GFATM). As the Agency head, you have the authority to grant this waiver.

Discussion:

The GFATM will hold a board meeting in Arusha, Tanzania, on November 17, 2004. With the absence of Dr. Anne Peterson, with Secretary Thompson serving as chair of the GFATM Board, and in anticipation of the State Department designating him to temporarily serve as the United States' second alternate of the GFATM¹, Mr. Miller seeks a conflict of interest waiver under 18 U.S.C. 208. This waiver is necessary as a result of a determination by the Department of Justice's Office of Legal Counsel that a USG employee may not serve even as an ex-officio board member of a nonfederal organization.

¹ William Steiger of HHS will serve as the first alternate Board member. In an Action Memorandum dated November 8, 2004, you were asked to grant a similar waiver for John Gardner to serve as a second alternate. Mr. Miller and Mr. Gardner are the only USAID officials we anticipate being designated as second alternates.

Recommendation:

That, pursuant to the following determination, you grant a waiver to permit Mr. Miller's service as a temporary USG Board member of the GFATM.

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 Administrator, I hereby waive the disqualification imposed by 18 U.S.C. 208(a) and authorize Michael Miller's official appointment as a temporary United States alternate Board member of the GFATM. This waiver is based on my determination that Mr. Miller's participation as a temporary alternate Board member is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him.

Approve: _____

Disapprove: _____

Date: _____

Clearance:

ES:Daller _____ date _____