

June 6, 2007

MEMORANDUM

To: Agency Ethics Counselor

From: Melinda Loftin /s/
Designated Agency Ethics Official

Subject: Serving as Board Members on Behalf of Non-Federal Entities

This memorandum responds to situations in which senior officials were asked, because of their DOI positions, to serve on boards of non-Federal entities that are seeking official action, do business or seek to do business, or conducts activities regulated by the Department.

Service in your official capacity as a board member to a non-Federal entity has the potential to undermine the fairness of our acquisition and administrative processes, and otherwise to call into question the integrity of the Department. This memorandum clarifies the application of the governing regulations to assist ethics officials in advising DOI personnel who are invited to serve as Board Members to non-Federal entities.

Official Capacity: Personnel who seek to serve as board members (including serving on advisory boards and user groups) in their official capacity must adhere to the Conflicts of Interest statutes and Standards of Conduct regulations. However, since such official representation would involve a great potential for preferential treatment, improper official endorsement, improper use of official time, and improper disclosure of non-public information, it is unlikely that such official participation would ever be proper. Exceptions would include express statutory authority to participate as a board member, advice given pursuant to a contract, or authorized by the Federal Acquisition Regulations.

Personal Capacity: Personnel who seek to serve as board members or advisors to non-Federal entities in their personal capacity must also adhere to the Conflicts of Interest statutes and Standards of Conduct regulations. Personnel may not accept a position in their personal capacity if offered to them because of their official position. Undertakings in their personal capacity also present a heightened risk that DOI personnel may inadvertently violate the standards of conduct, engage in conduct that calls into question the impartiality or create the appearance of such violations.

Personnel who are invited to serve, in their personal capacity, as board members or advisors to non-Federal entities should consult with their ethics officials and be familiar with applicable restrictions, including:

- a. Personnel may not take official actions involving particular matters in which they (or any organization in which they are an officer, director, or employee) have a financial interest, if the particular matter has a direct and predictable effect on that interest. (18 U.S.C. 208, 5 C.F.R. 2635.502 and 402)
- b. Personnel must be impartial in performing official duties. (5 C.F.R. 2635.502)
- c. Personnel may not use their public office for the private gain of themselves, friends, or organizations with which the employees have an employment or business relationship. (5 C.F.R. 2635.702(a))
- d. Personnel may not permit the use of their Government title, position, or authority to imply Government sanction or endorsement. (5 C.F.R. 2635.702(b) and (c))
- e. Personnel may not engage in outside activities that conflict with their official duties, and in some cases, must obtain approval prior to undertaking such outside activities. (5 C.F.R. 2635.704 and 705)
- f. Since this is an outside activity, conducted in the employee's personal capacity, no appropriated funds, use of Government resources (including personnel), or official time may be expended. (5 C.F.R. 2635.704 and 705)
- g. Personnel may not use nonpublic information, nor allow its improper use, to further their own private interest or those of another. (5 C.F.R. 2635.703)
- h. Certain noncareer senior employees are limited in the amount of compensation that they may receive as a result of outside activities. (5 C.F.R. 2636 Subpart C)
- i. Full-time, non-career, Presidential appointees may not receive outside earned income for activities performed during their Presidential appointment. (Executive Order 12674)
- j. Since some positions involve fundraising, personnel are reminded that they may not personally solicit funds or other support from subordinates or prohibited sources. (5 C.F.R. 2635.808(c))
- k. Personnel who file financial disclosure reports (SF 278 and OGE Form 450) must disclose their outside position on their financial disclosure report. (5 C.F.R. 2634.307)

Liaison: DOI personnel may serve as DOI liaisons to non-Federal entities. Personnel may be appointed by the head of the organization, after consulting with their ethics counselor, if it is determined there is a significant and continuing DOI interest to be served by such representation. Liaisons serve as part of their official duties and represent only DOI interests to the non-Federal entity in an advisory capacity. Liaisons may not be

involved in matters of management or control of the non-Federal entity. Liaisons may officially represent DOI in discussions of matters of mutual interest with non-Federal entities providing it is made clear to the non-Federal entities that the opinions expressed by liaisons do not bind DOI or any DOI Bureau to any action.

In conclusion, it is DOI policy to scrutinize carefully requests from personnel who are invited to serve in their official capacity as board members for non-Federal entities that do business, seek to do business, or are regulated by DOI. While such outside activity is not always barred, its nexus with DOI inherently involves a heightened risk of a violation, or an appearance of a violation, of ethical standards thereby mandating careful evaluation and scrutiny.