



USAID
FROM THE AMERICAN PEOPLE

TO: Lisa C. Gomer

Determination to Grant Waiver and Waiver of Ethics Pledge Restriction on
Participating in Particular Matters Involving
the United Nations Development Program

Background Regarding Ethics Pledge

Executive Order (EO) 13490, "Ethics Commitments by Executive Branch Personnel," §1, requires all covered political appointees to abide by several commitments. One of those commitments provides that a covered appointee may not for a period of two years for the date of his or her appointment participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients. (President's Ethics Pledge, Paragraph 2.) For purposes of applying this restriction, the term "particular matter" has been interpreted to include "meetings or other communication relating to the performance of one's official duties with a former employer or client." DO-09-011, OGE Memorandum to Designated Agency Ethics Officials, March 26, 2009.

However, a waiver of the restrictions contained in Paragraph 2 may be granted upon a certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. EO, §3(b). By memorandum dated February 23, 2009, the Office of Government Ethics announced that the Designated Agency Ethics Official of each executive agency had been delegated the authority to grant such waivers, after consultation with the Counsel to the President. *See* DO-09-008, OGE Memorandum to Designated Agency Ethics Officials, February 23, 2009.

Background Regarding Your Appointment

You are the General Counsel of the U.S. Agency for International Development (USAID), as a Non-Career Member of the Senior Executive Service. In that capacity, you serve as the principal legal advisor to the Administrator of USAID, including all matters related to procurement law.

You were previously an employee of the United Nations (UN). That employment ended in 2006, and does not implicate Paragraph 2 of the President's Ethics Pledge. However, during the time period relevant to Paragraph 2 of the President's Ethics Pledge you engaged in several limited-term consultancies with the UN on discrete programs. There were a total of five such consultancies.

You requested a waiver of Paragraph 2 of the President's Ethics Pledge so that you may participate in certain particular matters involving the United Nations. Specifically, this request for a waiver is primarily focused on a U.S. Government need for you to participate in discussions among the United States Mission to the UN (USUN), USAID and the United Nations Development Program (UNDP). USUN (specifically Ambassador Rick Barton, the U.S. Representative to the UN Economic and Social Council (UN-ECOSOC)) is leading a forum for discussion on how best to influence UNDP's strategic direction and align U.S. national development policy with a key multilateral partner. You will be involved in working out how the USAID can work more closely together on special initiatives and in revising our public international organization agreement so that USAID can work more easily with UNDP when the decision is made to do so. The U.S. Government needs to negotiate a model that will meet both USAID and UNDP's needs. The forums/meetings are designed to provide for information gathering, brainstorming, analysis, and discussion of funding mechanisms broadly, rather than entering into details of any contractual partnerships.

After consultation with the Office of White House Counsel, I determine that first, the literal application of the restriction here is inconsistent with the purpose of the restriction, and second, it is in the public interest for you to participate in these discussions with UNDP.

When the former employer or client is an international organization, which consists of representatives of many countries, including the United States, the concerns underlying the restrictions are not implicated. Further, there is little likelihood of commercial gain that can be obtained by government employees engaged in activities affecting the interests of his or her former employer when the former employer is an international organization. Accordingly, literal application of the restriction in this situation is inconsistent with the purposes of the restriction.

In addition, it is essential that USAID, and the U.S. Government as a whole, have an effective voice in the previously-described discussions. You have a unique organization-wide view and will be involved in leadership meetings with the USAID Administrator, and because of your knowledge of and experience with the UN, including UNDP, your participation in these discussions would be vitally useful to U.S. Government interests. There is no other appointee at your senior level within the Agency who would have the ability to advance the Agency's interests at the same level. Accordingly, as a separate and independent basis of the waiver, I determine that it is in the public interest for you to participate in the defined matter relating to your former employer and client, the UN.

Based on the above analysis, I waive the requirements of Paragraph 2 of the President's Ethics Pledge as it pertains to your future involvement in discussions among the USUN, USAID and UNDP to revise, develop and review the public international organization agreement.

Furthermore, while a reasonable person with knowledge of the relevant facts may question your impartiality in matters pertaining to the UN, I make a separate determination, pursuant to 5 C.F.R. §2635.502, that the Government's interest in your ability to participate in these matters, given the critical responsibilities associated with your position as USAID General Counsel, outweighs the concern that a reasonable person may question the integrity of USAID's programs and operations.

7/27

Date

Arnold J. Haiman
Designated Agency Ethics Official