



Friday, July 01, 2011

VIA ELECTRONIC FILING

Richard M. Thomas  
Associate General Counsel  
Office of Government Ethics  
1201 New York Avenue, N.W.  
Suite 500  
Washington, DC 20005-3917

RE: RIN 3209-AA09  
[Proposed Rule Exemption and Amendment Under 18 U.S.C. 208(b)(2)]

Dear Mr. Thomas,

The Society of American Foresters (SAF), the national scientific and educational organization representing the forestry profession in the United States with over 14,000 members, commends the leadership of the Office of Government Ethics for its analysis of 18 U.S.C. 208 and the proposed rule that would ease the restrictions on Federal employee participation on nonprofit organizations' committees and boards in an official capacity.

Chartered as an organization to advance the science, education, technology, and practice of forestry for the benefit of society by the first Chief of the United States Forest Service, Gifford Pinchot, SAF maintains a close association with Federal natural resource management agencies. Today, eleven percent of SAF members are employed by the Federal government. Therefore, the provision in criminal code (U.S.C. 208) that fiduciary duties of board members to their scientific or professional organizations that might conflict with their duties to their agency employers was imputed to all board members restricts the contingent of talented, dedicated SAF members who can avail themselves to SAF boards and leadership positions. Further complicating matters, this statute has been interpreted inconsistently by Federal agencies, and the application of different standards has lead to confusion about the allowed levels of participation in nonprofit organizations.

The Office of General Counsel in several Government agencies is hesitant to issue the waivers allowed by the statute and often discourages employees from applying for waivers at all. The implicit directives do not encourage the participation by employees in nonprofit organizations allowed under the law, and therefore, limit the opportunities of Federal employees to enjoy all the potential benefits of membership in professional and scientific societies. The concern about participation on nonprofit boards impacts SAF directly by limiting the pool of qualified candidates available to serve on important boards and leadership positions while employed as a Federal employee.

The communication of mixed messages by Government offices is not confined to the Office of General Counsel. Federal agencies acknowledge that attendance at board and executive committee meetings could present a benefit to the agency, but worry about violating the 18 U.S.C. 208 leads supervisors to discourage employees from considering leadership positions. However, this reservation could be detrimental to employee advancement when the Research Grade Evaluation (RGE) standards are considered in conjunction with the conflict of interest concerns. Released by the Office of Personnel



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Management in 2006 to clarify promotion decision criteria, one of the evaluation metrics included was if a person held a leadership position in their field. Since this process was developed to assist with the employee promotion and retention decisions within agencies, the RGE could lead to promotions for one individual in an agency that may not be available to others due to differences in agency interpretation of the statute and the opinion released by the Department of Justice in the 1996 memo.

Therefore, SAF wholly endorses the Office of Government Ethics' proposed rule exemption and amendment Under 18 U.S.C. 208 (b)(2). The new regulatory exemption, section 2640.203 (m), promises to enhance the Federal Agency performance by offering employees additional opportunities to explore leadership positions on non profit boards. Federal employee participation in an official capacity for a scientific or professional organization allows career development opportunities that may not be accessible otherwise, and the meetings help federal employees keep current with current research pertaining to natural resource management, encourage the exchange of knowledge and expertise among individuals in the same field, prompts discussion about research opportunities and challenges faced in different regions, and give federal employees an occasion to share successes of their agency programs with nongovernmental employees who represent the private sector on boards and committees.

Service on national, state, and local SAF boards and SAF committees rarely requires that members decide on fiduciary duties that may conflict with the interests of Federal agency. We appreciate the concerns expressed by the Department of Justice that participating on a nonprofit board implies certain general fiduciary duties, and that service on a board of an outside organization could be a conflict of interest and therefore prohibited by the statute. However, the potential for problems could be avoided with ethics training, agency employee recusal on discussion and voting matters that constitute a potential conflict or involve fiduciary responsibilities, and prompt disclosure of potential conflicts of interest.

Representing 14,000 SAF members, we submit these comments on the proposed rule that would permit Government employees to participate in particular matters affecting the financial interests of nonprofit organizations in which they serve in an official capacity, notwithstanding the employees' imputed financial interest. We thank the Office of Government Ethics for reviewing this regulation and exercising its authority to make a clear statement and propose the regulatory change to 18 U.S.C. 208 (b)(2) with the section 2640.203 (m) exemption.

The Society of American Foresters encourages the Office of Government Ethics to work closely with the Attorney General, the Office of Personnel Management, and the White House Office of Science and Technology Policy to adjust their policies and practices to align with the addition of this important exemption. SAF appreciates the leadership of OGE in this matter and supports OGE's efforts to explore how to create additional opportunities for Federal employees to pursue career development opportunities and enhance their value to their employers.

Sincerely,



Michael T. Goergen  
Executive Vice President & CEO