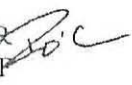


Department of Energy
Washington, DC 20585

May 21, 2009

MEMORANDUM FOR: DANIEL B. PONEMAN
DEPUTY SECRETARY

FROM: ROD O'CONNOR 
CHIEF OF STAFF

SUBJECT: WAIVER PURSUANT TO 18 U.S.C. § 208(b)

Section 208, Title 18 of the United States Code prohibits employees from participating personally and substantially, as Government employees, in any particular matter in which, to the employee's knowledge, a financial interest is held by the employee, a spouse, minor child, general partner, any organization in which the employee is serving as an officer, director, trustee, general partner, or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment. This participation prohibition not only covers such items as contracts, grants, cooperative agreements, and claims, but it also includes legislation and policy-making that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.

The statute does not bar an employee from having any particular financial interest, but it does require an employee to refrain from participating in matters which would affect such interests. In a case where a conflicting financial interest exists, an employee may act in his official capacity only "if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee." 18 U.S.C. § 208(b)(1).

You have advised that when you were employed at Hogan & Hartson you invested in the Hogan & Hartson Partners Investment Fund ("Fund"). Your investment in the Fund is valued at approximately (b) (6) which is less than (b) (6) of your total investments. Your interest in the Fund is approximately (b) (6) of the total value of the Fund. The Fund currently invests in seven private equity and venture capital fund investments. Some of these equity and venture capital funds invest in entities that may do or seek to do business with the Department of Energy or be affected by policy matters on which you work. As part of your nomination process you disclosed that you would seek a waiver under section 208(b)(1).

The Secretary has delegated to me the authority to issue a waiver under 18 U.S.C. § 208(b)(1). I have determined that your otherwise disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of your services to the Government.



This determination is made based upon the value of the investment in question and the value of your total investment portfolio.

This waiver applies to your official duties with regard to particular matters that affect the entities that the Fund invests in, including the entities that are held within those investments. However, it is narrowly limited to waive your conflict of interest solely as to your investment in the Fund and does not provide a waiver as any other investments you have.

The Office of Government Ethics has been consulted about the issuance of this waiver, and an executed copy will be provided to them as required by 5 C.F.R. § 2640.303.

cc: Susan Beard, GC-77