

July 5, 2011

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:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) to endorse the proposed removal of the bar against federal employees serving as officers and directors of nonprofit groups in their official capacities.

Federal civil servants had been free to serve in leadership roles within nonprofits prior to 1996 without any evidence of ill effects upon their public service. We wholeheartedly agree with the rationale put forward by your Office of Government Ethics (OGE) that the broad prohibition against federal employees serving in their official capacities as officers or directors in nonprofit organizations should be removed from the regulations implementing criminal conflict of interest law because “the potential for a real conflict of interest is too remote or inconsequential to affect the integrity of an employee’s service.”

To the contrary, this change will, in our view, actually further the quality of information used in official decision-making and enhance the transparency of that decision-making.

Professional collaboration with outsiders often deters political manipulation and improves the quality of the final product. Anything that increases the transparency of federal agencies, particularly on scientific and technical matters, is welcome. As President Obama in his March 9, 2009 directive on Scientific Integrity made clear, technical quality of information and transparency are inextricably linked.

Peer review with outside experts has been problematic in federal service, however, in part because official policies generally restrain agency scientists from interacting with these outsiders, many of whom are affiliated with professional societies. For example, the U.S.

Fish & Wildlife Service (FWS) on May 5, 2004 held an all-staff “Town Meeting” to tout its “scientific excellence.” That afternoon, all employees took part in an “interactive discussion” via telephone conference, Internet connection or satellite download with then-Director Steve Williams. At that meeting, Mr. Williams announced that FWS would begin concerted interaction with professional societies. He was then asked by a participant whether he would address the Interior ethics guidelines which discourage agency scientists from more than passing involvement with associations dedicated to raising and protecting scientific standards. The ethics guidelines classify these professional societies as the sources of potential conflict of interest. Mr. Williams had no answer and the meeting ended in confusion.

This proposed regulation change will revive the stillborn 2005 FWS initiative on professional openness and enable its application to all federal science-based agencies.

As the White House Office of Science & Technology Policy guidance document of December 2010 made clear, federal employee involvement with professional organizations dedicated to improving the quality of science is not a real or apparent conflict of interest but is just the opposite – an activity that furthers the agency mission. Thus, increasing the transparency of agency scientific decision-making, particularly by involving knowledgeable, credible and disinterested outside specialists contributes to the factors safeguarding scientific integrity.

In addition, as the Office of Personnel Management points out, current “restrictions act as a barrier to employees achieving professional stature in their respective fields,” thus putting federal scientists and other specialists at a competitive disadvantage with colleagues not so constrained.

Apart from professional advancement, however, civil servants should be able to participate in civil society so long as it does not interfere with their public service. These public agency specialists enrich their profession with their participation and, in turn, through this interaction, bring back perspectives that enrich the civil service.

After this regulatory change, there will remain ample checks against abuse. Federal employees will still need permission from their agencies to spend official time and resources in nonprofit work. Each federal department must decide if service in a scientific or other professional society is consistent with the needs and interests of the agency. Moreover, whether on official or personal time, federal employees still are subject to limitations on their roles in nonprofit fundraising, lobbying and litigation.

This change will not be the end of the discussion but will open discussion on a new suite of topics. We would urge OGE to remain actively involved in dialogue with agencies to ensure that their implementation of this new allowance is consistent, fair and in the public interest. Thus, OGE should begin assisting agencies in developing policies that, among other things, provide –

- Consistent consideration of the nature of the nonprofits eligible for involvement

with employees' official time and resources, so that there are not dramatic differences from agency to agency in eligibility;

- Clear guidance for sharing technical information and collaboration with non-federal peers. Principal benefits of this rule change will be lost if agencies insist that scientists and other specialists only discuss what has already been publicly posted by the agency; and
- Strong safeguards allowing scientists and other specialists to voice their own professional opinions when collaborating within nonprofit professional societies rather than confining their opinions to the pre-approved agency talking points. Otherwise these nonprofit collaborations will be seen as opportunity for propagating official propaganda rather than sharing expertise.

There are no simple, one-size-fits all maxims that will adequately govern these and myriad more interactions between federal employees and nonprofit organizations. There should be guiding principles, however. Those principles should spring from the values that gave rise to this rule change: the need to promote government transparency, professional excellence and unquestioned integrity of technical information upon which government decisions are based.

For these reasons, this rule change marks the beginning of an important new journey in public service.

Sincerely,

Jeff Ruch  
Executive Director