



Department of Energy

Washington, DC 20585

August 18, 2009

MEMORANDUM FOR STEVEN SPINNER
SMALL BUSINESS LOAN GUARANTEE ADVISOR

FROM: MATT ROGERS
SENIOR ADVISOR TO THE SECRETARY FOR
RECOVERY ACT IMPLEMENTATION

SUBJECT: Authorization Pursuant to 5 C.F.R. § 2635.502

The Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635, provide that when an employee knows that a person with whom he has a "covered relationship" is or represents a party to a particular matter involving specific parties, the employee should not participate in the matter without prior authorization if the employee determines that a reasonable person with knowledge of the relevant facts would question his impartiality in that matter. 5 C.F.R. § 2635.502. In context, impartiality is best understood as your ability to faithfully represent the Department's interests without giving preferential treatment to any private organization or individual. For purposes of analyzing the effects of section 2635.502 of the Standards of Ethical Conduct, you have a "covered relationship" with Wilson, Sonsini, Goodrich & Rosati, Inc. (Wilson) because your spouse is an employee and shareholder in the firm. You are currently serving as the Small Business Loan Guarantee Advisor in the Loan Guarantee Program.

Section 2635.502(d) directs that an agency designee may authorize an employee to participate in a particular matter involving specific parties notwithstanding the possibility that a reasonable person might question an employee's impartiality where the employee's participation would not violate 18 U.S.C. 208(a),¹ the federal conflict of interest statute, if the designee determines, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the Department's programs and operations. 5 C.F.R. § 2635.502(d). Pursuant to the Department's regulations, I am the agency designee.

Your spouse is an equity partner in Wilson. To date, Wilson is providing representation services to a small number of applicants in the Department's Title XVII Loan Guarantee Program and Advanced Technology Vehicle Manufacturing Loan Program. You have been appointed as Small Business Loan Guarantee Advisor. In that position, you are tasked to assist in ensuring that the management and execution of the programs meets established deadlines and

¹ The Designated Agency Ethics Officer for the Department has advised me that you have a financial interest in your spouse's equity ownership of the firm; however, she has determined that because your spouse has agreed that she will not receive any compensation that results from Wilson's representation of clients submitting applications in the programs under your official duties, you do not have a conflict under 18 U.S.C. 208. However, you continue to have a conflict as a result of your "covered relationship" with Wilson.



milestones. To that end, your official activities are to embrace strategic objectives, inquire on overall progress of applications to the program staff, anticipate and help senior management clear any institutional roadblocks to accomplishment of the program's objectives. Your position requires that you understand the types of applications received but it does not require your participation in the details of any one application.

It is appropriate that I review your new responsibilities and make a determination whether it is appropriate to authorize you to participate in particular matters involving specific parties that are likely to have a direct and predictable effect on clients represented by Wilson. Pursuant to section 502(d), the following factors may be taken into consideration in making a determination to authorize your participation: (i) the nature of the relationship involved; (ii) the effect that the resolution of the matter would have upon the financial interests of the persons involved in the relationship; (iii) the nature and importance of the Federal employee's role in the particular matter, including the extent to which the employee is called upon to exercise discretion in the particular matter; (iv) the sensitivity of the particular matter; (v) the difficulty of reassigning the particular matter to another Federal employee; and (vi) adjustments that may be made in the Federal employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

This memorandum confirms that I have determined that the circumstances warrant authorizing your participation in certain particular matters involving specific parties in which Wilson is providing services to an identified applicant. In reaching this determination, I considered the following:

You personally have no other relationship to Wilson other than your spouse's equity position in the firm and your spouse has agreed to forgo any compensation from the firm earned as a result of its representation of applicants in programs within your official duties.

Your official duties do not require you to review or evaluate any individual application in the loan guarantee program.

All review of applications and recommendations for action are made by program and merit reviewers. You do not participate in decisions with regard to the merits of any specific application.

You may achieve your performance objectives with knowledge of the general make-up and type of applications. You may be briefed on the general status of any application, but you may not participate in any discussion of any application involving Wilson.

You will not participate in any discussion regarding any application involving Wilson.

Bearing in mind these factors, including the great importance to the Department in obtaining your expertise with respect to the operations of the Loan Guarantee and Recovery Act Programs, I have concluded that the interest of the Government in your participation in particular matters

affecting Wilson outweigh any concern that your participation might raise questions about the Government's decision-making in the mind of a reasonable person.

Therefore, this memorandum confirms that pursuant to 5 C.F.R. § 2635.502(d), I have authorized you to participate in all of your responsibilities provided they are as described above. However, this authorization does not extend to your participation in any application in which Wilson is a party or represents a party in the matter.

cc: Susan Beard, GC-77