



CONFLICT OF INTEREST REMEDIES

Tools for Selecting the Best Option

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Objective

Determining the best remedy for a conflict of interest will depend on the facts of each individual situation. The objective of this presentation is to discuss various conflict of interest remedies and highlight the positives and negatives of each remedy.

18 U.S.C. § 208

- An officer or employee
- may not
- participate personally and substantially
- in a particular matter
- in which, to his knowledge, he has a financial interest
- (including those interests imputed to him: his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment)
- The remedies discussed are for conflicts under § 208, 5 C.F.R. § 2635, subpart E, and agency supplemental regulations.

Remedies

Remedy #1 – Exemptions

Remedy #2 – Divestiture

Remedy #3 – Resignation

Remedy #4 – Waiver

Remedy #5 – Recusal

Remedy #6 – Transfer/Reassignment

Remedy #7 - Trusts

4

Remedy #1 - Exemptions

18 U.S.C. § 208(b)(2); 5 C.F.R. § 2640, subpart B.

OGE has determined that certain financial holdings are too remote or too inconsequential as to affect the integrity of the employee's services.

5

Diversified Mutual Fund

5 C.F.R. § 2640.201(a).

An employee may participate in any particular matter affecting one or more holdings of a diversified mutual fund or a diversified unit investment trust.

6

Sector Mutual Fund De Minimis

5 C.F.R. § 2640.201(b)(2)(i).

An employee may participate in a particular matter affecting one or more holdings of a sector mutual fund where the aggregate market value of interests in any sector fund or funds does not exceed \$50,000.

7

De Minimis Exemption for Matters Involving Parties

5 C.F.R. § 2640.202(a).

An employee may participate in any particular matter involving specific parties if:

1. the conflicting security is publicly traded, or is a long-term Federal Government or municipal security; and
2. the aggregate market value of the holdings in the securities of all affected entities does not exceed \$15,000.

8

De Minimis Exemption for Matters of General Applicability

5 C.F.R. § 2640.202(c)(1)(i).

An employee may participate in any particular matter of general applicability if the securities issued by one or more entities affected by the matter are publicly traded, or are municipal securities, the market value of which does not exceed:

1. \$25,000 in any one such entity; and
2. \$50,000 in all affected entities.

9

Remedy #2 - Divestiture

Prior to participating in a particular matter an employee may eliminate actual or potential conflicts of interest by divesting himself of the conflicting property.

If the employee sells a conflicting asset and incurs a capital gain, he may be eligible for a certificate of divestiture that allows him to defer the capital gain under 5 C.F.R. §2634, subpart J.

10

Remedy #3 - Resignation

5 U.S.C. § 106(b)(3).

Prior to participating in a particular matter, and often upon entering government service, an employee may eliminate actual or potential conflicts of interest by resigning from the conflicting outside position.

11

Remedy #4 - Waivers

18 U.S.C. § 208(b)(1) ; 5 C.F.R. § 2640, subpart C.

An agency may determine in an individual case that a disqualifying financial interest in a particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

12

Remedy #4 – Waivers (cont'd)

18 U.S.C. § 208(b)(3) ; 5 C.F.R. § 2640, subpart C.

An agency may determine in an individual case that the need for a special Government employee serving on, or an individual being considered for, an appointment to an advisory committee established under the Federal Advisory Committee Act, outweighs the potential for a conflict of interest created by the financial interest involved.

13

Remedy #5 - Recusal

18 U.S.C. § 208 and 5 C.F.R. § 2635.502.

The employee agrees not to participate in a particular matter in which she has a conflict of interest.

14

Remedy #6 – Transfer/Reassignment

5 U.S.C. § 106(b)(3).

An employee may voluntarily agree to a transfer or reassignment to a position in which his duties will not conflict with his financial holdings or an outside position.

15

Remedy #7 - Trusts

5 U.S.C. 102(f)(3); 5 C.F.R. 2634, subpart D.

An employee may put her assets in a trust so that she is no longer involved with the assets or has knowledge of them. There are two kinds of qualified trusts:

1. qualified blind trusts; and
2. qualified diversified trusts.

16

Conclusion

There is no “one size fits all” approach to selecting a conflict of interest remedy. It is important to review each of the remedies, and focus on those that will resolve the conflict.

17

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18
