

What is a Conflict of Interest?

As an executive branch employee, you have the opportunity to use your talent and expertise to do work that benefits the public. Sometimes, though, your Government work may benefit you or your family personally, or may affect individuals or organizations that you have some connection with outside your Government job. In these circumstances, the public could be concerned that you will be motivated by considerations other than your desire to do what is best for the public as a whole.

Because the success of our Government system depends upon maintaining the confidence of the public, your department or agency might decide that you shouldn't be involved in a certain assignment because the public would be likely to question your objectivity. For example - depending on the circumstances - an agency might "disqualify" you from an assignment that will affect a member of your household or that involves a person with whom you do business outside the Government.

Of course, the public is likely to consider some circumstances more troublesome than others. Recognizing this, Congress passed a criminal conflict of interest law, 18 U.S.C. § 208, which prohibits you from working on an assignment in some situations - even if you know you can be objective and even if your supervisor wants you to work on it. Specifically, this law says that you may not work on an assignment that you know will affect your own financial interests or the financial interests of your spouse or your minor child. The prohibition also applies if you know the assignment will affect the financial interests of your general partner, or of an organization that you serve as an officer, director, employee, general partner, or trustee. And it even applies when you know the matter will affect the financial interests of someone with whom you have an arrangement for employment, or with whom you are negotiating for employment.

When you are unable to work on an assignment because of this conflict of interest law, an agency can often reassign the matter to another employee. However, if that is not possible or if your inability to work on that particular assignment means you really won't be doing the job the Government hired you to do, then your agency can require you to get rid of the interest that is causing the conflict.

Exemptions Allow You to Continue to Work on Your Official Assignments

In some cases, however, the law recognizes that your personal interest in an assignment may be so indirect or small that the interest should not prevent you from being involved in the assignment. In other words, certain interests you hold or relationships you have with other people or organizations may technically create a conflict of interest, but are too small or insignificant to trouble the public about whether you can be objective in carrying out your Government job. The Office of Government Ethics (OGE) may "exempt" these types of interests from the conflict of interest law. OGE has published a description of these exemptions in Title 5 of the Code of Federal Regulations, at part 2640. Most of the exemptions apply to employees of any department or agency. However, if your agency prohibits you from having a particular type of financial interest, the exemptions do not allow you to work on an assignment that affects that prohibited financial interest.

Using This Pamphlet

This pamphlet describes the exemptions that are published in the OGE regulation. The pamphlet covers three of the more widely-used exemptions - those for interests in mutual funds, employee benefit plans, and securities. It also contains a summary of the remaining exemptions, some of which apply only to particular employees or in special situations. If you find that you have a conflict of interest that would ordinarily mean you can't work on one of your assignments, but you are sure that one of the exemptions described in this pamphlet applies, you may go ahead and work on the assignment. But if you need help in deciding whether your situation presents a conflict or whether you can use any of the exemptions, you should consult with an ethics official at your agency. Sometimes, when an exemption does not apply, you might be able to obtain an individual waiver that will allow you to work on your assignment.

Exemptions from the Conflict of Interest Law

1 Diversified mutual funds

You may participate in assignments or projects affecting the holdings of a diversified mutual fund.

In order to determine whether you may use this exemption, you will need to know whether your interest is in a "diversified" mutual fund.

A fund is "diversified" if it does not have a policy of concentrating its investments in an industry, business, country (other than the U.S.) or State. You can often tell if a fund concentrates its investments by the name of the fund. For example, if the fund name contains the word "telecommunications" or "Canada" or "energy," it's a good indication that the fund is concentrated in those areas and therefore not diversified. Funds that concentrate their investments in this way are sometimes called "sector" funds. You can check the fund's prospectus or call a broker or the manager of the fund if you are in doubt. Also, keep in mind that a "mutual fund" is not an informal collection of stocks or bonds such as those held in a family trust.

Note: This exemption is not limited by the value of your interest in the fund or number of shares you hold. As long as your interest is in a diversified mutual fund, this exemption applies.

Example: You have purchased shares worth \$10,000 in a mutual fund whose portfolio contains, among other things, stock in a computer company. The prospectus you received when you purchased your shares does not state that the fund has a policy of concentrating its investments in a particular industry, business, State or country. You may participate in an assignment even if it will affect the computer company.

2 Employee benefit plans

You may participate in assignments or projects affecting the holdings of the Federal Government Thrift Savings Plan, a State or local Government pension plan, or other diversified employee benefit plan.

Many of you may already be participants in the Thrift Savings Plan for Federal employees. Your interest in the holdings of this plan, as well as in the holdings of State or local Government pension plans, are considered too indirect or inconsequential to concern the public that the integrity of your Government services will be affected.

The exemption also applies to interests in other types of employee benefit plans, usually **pension plans** from former employers. In the case of these other plans:

- the plan manager should have a written policy of diversifying assets (if you are not sure you can call the plan manager);
- the investments of the plan must be administered by an independent trustee (you may not be participating in the selection of the investments);
- the plan must not be a profit-sharing or stock bonus plan (other than a 401(k) plan).

Note: If the trustee doesn't have a formal document stating that the plan assets will be diversified, he can simply provide that information in a letter to you.

Example: An attorney leaves a law firm to take a position with the Department of Justice. As a result of his employment with the firm, the employee has interests in a 401(k) plan. The plan invests in stocks and bonds chosen by an independent financial management firm. As long as the financial management firm that selects the plan's investments has a written policy of diversifying the plan's assets, the employee may participate in assignments affecting the holdings of the plan.

3 Securities

With certain limitations described below, you may participate in assignments or projects affecting companies or other entities in which you own stocks, bonds or other securities. The exemption applies only if the "securities" are listed on a stock exchange or through NASDAQ, or are issued by a registered investment company, or are long-term Government bonds or municipal bonds.

If the company that issued the stock or bond you own is directly involved in a matter to which you have been assigned, then you may participate in the matter if you have no more than **\$15,000** in holdings in the company. In practical terms, this exemption applies when you've been assigned to work on a grant, contract, application for approval or benefits, case in litigation, claim against the Government, or other type of similar matter that involves the company as a "party."

If the Government matter to which you've been assigned doesn't involve "parties," but is a broader or more general type of matter (like drafting a regulation) focused on the interests of a distinct class of persons, you may go ahead and work on your assignment if you own no more than **\$25,000** worth of securities in a company that is part of the class affected by the matter. If you have holdings in more than one company affected by the matter, you can work on your assignment if the combined value of those holdings is no more than **\$50,000**.

Note: To decide whether this exemption may be used, you must add together your holdings and those of your spouse and minor children, in calculating the value of the securities.

Sometimes stock (or other security) that is valued under the maximum amount allowable at the beginning of an assignment increases in value while you are working on the assignment. This might happen, for example, when you are monitoring a contract with a company in which you own less than \$15,000 worth of stock. As soon as you realize that the value of the stock is more

than \$15,000, you must stop working on the assignment until you divest the amount of stock over \$15,000 or receive an individual waiver that would allow you to continue to participate.

Example 1: An employee of the General Services Administration owns stock in XYZ Corp. valued at \$3,000. Her husband also owns \$10,000 worth of stock in XYZ Corp. As part of her official duties, the employee is assigned to evaluate bids for maintenance services at her agency. When the bids are opened, she discovers that XYZ Corp. is one of the companies that has submitted a bid. The employee does not need to disqualify herself from evaluating the bids because the combined value of her stock and her husband's stock is no more than \$15,000.

Example 2: An employee of the Bureau of Export Administration is assigned to draft a regulation concerning exportation of portable computers. The regulation will affect all domestic companies that sell portable computers abroad. She owns \$17,000 worth of stock in CompAmerica and \$20,000 worth of stock in Laptops, Inc. Even though both of these companies will be affected by the regulation, she may continue with her assignment because the value of the stock she owns in any one affected company is no more than \$25,000 and value of her stock in all affected companies is no more than \$50,000.

Other Exemptions

There are several more exemptions in addition to the three previously discussed. Many of these exemptions relate to financial interests that don't cause a conflict of interest for most employees. Therefore, the remaining exemptions mentioned below may apply only to certain employees or only in special situations. Some of the summaries of these exemptions may not provide the detail you may need in order to determine whether the exemption applies. Based on the brief summaries below, if you believe you are in a situation in which an exemption is available, contact your ethics official for further advice.

○ Sector mutual funds: An employee may work on assignments or projects affecting holdings in his sector mutual fund as long as the affected holdings are not in the fund's area of concentration. For example, an employee who owns shares in the Alpha Utility Fund may work on an agency procurement for the acquisition of computers from IBM even though IBM stock is one of the holdings of the Alpha Utility Fund. IBM is not in the fund's area of concentration, the utilities sector. If the affected holdings are in a fund or funds' area of concentration, the employee may work on the assignment or project when the aggregate value of all sector funds that concentrate in the sector is no more than \$50,000.

○ Matters affecting nonparties: An employee may work on assignments or projects involving specific parties that affect publicly traded securities issued by a nonparty where the

aggregated value of those holdings is no more than \$25,000. The stock of all affected nonparties held by the employee, the employee's spouse, and minor children must be aggregated.

○ Federal Government securities: An employee may work on assignments or projects affecting short-term Federal Government securities or U.S. Savings bonds. Short-term Federal Government securities are U.S. Treasury bills that mature in one year or less.

○ Securities held by tax-exempt organizations: An employee may work on assignments or projects affecting certain securities held for investment by a tax-exempt organization in which the employee holds an unpaid position. The exemption applies in cases where the employee's assignment affects the organization's investments (as opposed to the organization itself), and where the employee is not making investment decisions for the organization.

○ General partners: An employee may work on assignments or projects affecting companies or other entities in which his general partner owns stocks, bonds or other securities. This exemption may be used when the value of the securities is no more than \$200,000. Also, in cases where an employee is a *limited* partner in a large partnership, he may participate in projects and assignments affecting any interest of his *general* partner.

○ Hiring decisions: An employee may participate in a hiring decision involving a job applicant currently employed by a corporation that issues publicly traded securities when the employee owns securities issued by the corporation or participates in a pension plan sponsored by the corporation.

○ Employees on leave from institutions of higher education: An employee on leave of absence from an institution of higher education may work on broad or general assignments or projects that affect the university from which he is on leave. The project or assignment must be one that affects the university as part of a group of entities that will be affected.

○ Multi-campus institutions of higher education: An employee may work on assignments or projects affecting one campus of a State multi-campus university if the employee is employed at a separate campus of the university and his position at the separate campus does not involve multi-campus responsibilities.

○ Financial interests arising from Federal Government employment or from Social Security or veterans' benefits: An employee may work on assignments or projects where his interest in the assignment or project arises from his Federal Government salary, or his Social Security or veterans benefits. He may not, however, make decisions that will specially affect his own salary or benefits, or make decisions or even

recommendations that specially affect the salary or benefits of his spouse, minor child, or general partner.

○ Commercial discount and incentive programs: An employee may work on a project or assignment affecting the sponsor of a discount or other similar benefit program (like a Frequent Flyer club sponsored by an airline) even if he is participating in the program. The program must be open to the public. If the program requires any other interest in the sponsor, such as the ownership of stock, the employee cannot use the exemption.

○ Mutual insurance companies: An employee may hold a policy with a mutual insurance company and work on a project or assignment affecting that company as long as the matter does not affect the company's ability to pay claims under the policy or pay the cash value of the policy.

○ Employment interests of special Government employees serving on advisory committees: A special Government employee serving on an advisory committee may work on broad or general assignments or projects that affect his non-Federal employer or prospective employer. The assignment or project must not have a special effect on the employee or the employer except as part of a class.

○ Medical products: A special Government employee serving on an advisory committee may work on committee matters involving medical products that he or the medical facility with which he is affiliated uses or prescribes for patients.

○ Nonvoting members of standing technical advisory committees established by the Food and Drug Administration (FDA): A special Government employee serving as a nonvoting representative on an FDA advisory committee may participate in a committee matter that affects the class he represents.

○ Employees of Tennessee Valley Authority (TVA): A TVA employee may work on assignments affecting the cost of electric power sold by the TVA even if he uses the electric power.

○ Directors of Federal Reserve Banks: An employee serving as a Director of a Federal Reserve Bank or branch may establish rates charged for advances and discounts, and participate in certain other matters specified in the OGE regulation.

○ Employees of the Bureau of the Census: Certain employees of the Bureau of the Census may participate in the decennial census notwithstanding certain disqualifying financial interests.

CONFLICTS OF INTERESTS AND GOVERNMENT EMPLOYMENT



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