



United States
Office of Government Ethics
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DO-02-006

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Marilyn L. Glynn
General Counsel

SUBJECT: Publication of Final Rule Amending 5 C.F.R. Part 2640

The Office of Government Ethics (OGE) today is publishing a final rule amending the regulations in 5 C.F.R. part 2640 that exempt certain financial interests as being too remote or inconsequential to affect the integrity of the services of employees, under 18 U.S.C. § 208(b)(2). [See 67 Federal Register 12443-12446.](#)

OGE published a proposed rule on September 6, 2000. [See 65 Federal Register 53942.](#) During the subsequent comment period, OGE received and considered 13 comment letters; OGE's discussion of the comments, as well as certain technical issues, may be found in the preamble to the final rule. The final rule does not differ significantly from the proposed rule, except as noted below.

The amendments make three important changes to the regulatory exemptions in subpart B of part 2640:

First, the final rule establishes a new de minimis exemption for particular matters affecting the holdings of a sector mutual fund. [See 5 C.F.R. § 2640.201\(b\)\(2\).](#) The exemption applies to the ownership of no more than \$50,000, by the employee and anyone else whose interests are imputed to the employee, in all affected sector funds that concentrate in the same sector. The \$50,000 limit applies to the value of the person's interest in the fund as a whole, not to the proportionate share of any particular underlying holding of the fund. The language of the proposed rule inadvertently limited the application of the sector mutual fund provision to interests of the employee, the employee's spouse and the employee's minor children; the final rule clarifies that it is OGE's intention that the

exemption apply to interests of the employee and all others whose interests are imputed to the employee under 18 U.S.C. § 208(a).

Second, the final rule raises the current \$5,000 de minimis exemption for publicly traded securities to \$15,000, with respect to particular matters involving specific parties. See 5 C.F.R. § 2640.202(a)(2). The definition of "security," at 5 C.F.R. § 2640.102(r), also has been amended, in order to make clear that mutual funds are no longer covered by this exemption -- or any other exemption for securities, except section 2640.202(e) and (f) -- in view of the new de minimis exemption expressly for sector funds.

Third, the final rule creates a new \$25,000 de minimis exemption, with respect to particular matters involving specific parties, where the interest is in publicly traded securities issued by a non-party. See 5 C.F.R. § 2640.202(b). The proposed rule would have limited the application of this exemption to litigation matters; however, the final rule was expanded to cover all types of particular matters involving specific parties that might have an effect on non-parties. Like the exemption in section 2640.202(a), this new exemption applies only to securities owned by the employee and the employee's spouse and minor children, and the affected holdings of all of those individuals must be aggregated. The language of this exemption makes clear that the \$25,000 limit includes securities exempt under section 2640.202(a).

The new rule will be effective on April 18, 2002, 30 days after publication in the Federal Register.