

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

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August 14, 2000

Upon Incorporation

Subject: Financial Conflicts of Interest

Cancel Date: into the CCDM

This notice is intended to remind Counsel employees of the restrictions on all Chief Counsel employees' participation in matters in which they have a financial interest. It also outlines the procedures to be followed, and the appropriate approval authorities, regarding requests for individual waivers to allow employees to participate in particular matters in which they hold financial interests.

Restrictions on Participating in Particular Matters (18 U.S.C. § 208(a))

An employee is prohibited by 18 U.S.C. § 208(a) from personally and substantially participating in a particular matter, if he or she has a financial interest in the particular matter and if the particular matter will have a direct and predictable effect on that financial interest.

A financial interest in a particular matter exists when an employee or an entity or person whose financial interest is imputed to the employee has a stake in the matter's outcome. Imputed financial interests include those held by the employee's spouse, minor child, or general partner. The financial interests of entities are imputed to an employee if the employee serves as an officer, director, trustee, general partner, or employee of the entity or if the employee is negotiating with or has an arrangement concerning future employment with the entity.

Particular matters under 18 U.S.C. § 208(a) need not involve specific parties and include a broad range of Government activities such as judicial or administrative proceedings, applications, request for rulings, or other determinations, as well as general activities such as rulemaking or the formulation of general policies.

A particular matter includes deliberations, decisions, or actions focused on the interests

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of either a specific party or parties or of a discrete and identifiable class of persons. For example, an employee may not work on oil depletion deduction regulations that would affect only three oil companies, if the employee owns stock in one of the three companies, because the regulations would have a direct and predictable effect on a company in which the employee, as a member of a discrete and identifiable class, has a financial interest. On the other hand, the employee could work on regulations that would affect a broad segment of the business community, even if such regulations affected a company in which the employee held stock, since a broad segment of the business community does not constitute a discrete and identifiable class.

An employee who fails to comply with the restrictions imposed under 18 U.S.C. § 208(a) could be subjected to fines or imprisonment. Under subsection 208(b), however, an employee may receive written permission to participate in a matter affecting a personal financial interest so that the employee will not incur the penalties provided under subsection 208(a).

Certification of a Direct or Indirect Financial Interest in a Work Assignment - Form 6782

An employee who is given an assignment in which he or she has a financial interest must notify his or her supervisor of the conflict of interest by executing Form 6782, Certification of a Direct or Indirect Financial Interest in a Work Assignment. The employee's supervisor should reassign the matter, unless the employee's financial interest is exempt from the statutory prohibition, an individual waiver is granted, or the employee divests the financial interest.

Exemptions

The Office of Government Ethics (OGE) has recognized that some financial interests are too remote or too inconsequential to affect the integrity of the services of the employees to which the prohibition applies. Therefore, under the authority granted to it under 18 U.S.C. § 208(b)(2), OGE has issued regulations granting certain exemptions from the general prohibition. 5 C.F.R. § 2640, subpart B. Employees qualifying under these regulatory exemptions may work on particular matters even though they may have a financial interest in the particular matter. The most common exemptions allow employees to participate in:

- any particular matter affecting holdings of a diversified mutual fund,
- any particular matter affecting holdings of a sector mutual fund where the affected holdings are not invested in the sector in which the fund concentrates,
- any particular matter affecting holdings of an employee benefit plan,
- any particular matter affecting publicly traded securities when the aggregate value of the employee's holdings in the securities does not exceed \$5,000, and
- any particular matter of general applicability, such as rulemaking, affecting publically traded securities when the market value of the employee's holdings in any one affected entity does not exceed \$25,000, and the holdings in all affected entities do not exceed \$50,000.

Any questions concerning the application of the regulatory exemptions should be referred to the Associate Chief Counsel (General Legal Services).

Individual Waivers

Where an employee's interest is not generally exempt, an individual waiver may nevertheless be appropriate. An individual waiver is available when an employee fully discloses the conflicting financial interest and a determination is made by an authorized agency official that the interest is not so substantial as to affect the integrity of the employee's Government services (see 5 C.F.R. §§ 2640.301 - 2640.304). Individual waivers are not routine and should only be sought where business dictates require. Coordination with the Office of Government Ethics by the Associate Chief Counsel (General Legal Services) is required before a waiver may be issued. 5 C.F.R. § 2640.303.

To obtain an individual waiver, an employee's supervisor should route a memorandum requesting waiver and a completed Form 6782 through the employee's chain of command (for concurrence by each successive level of supervision) to the responsible Associate Chief Counsel or Operating Division Counsel. Associate Chief Counsels and Operating Division Counsels should forward the memorandum request and form to the Associate Chief Counsel (General Legal Services) for advice and approval or further forwarding. The Associate Chief Counsel (General Legal Services) is delegated authority to grant the waiver, where appropriate, for employees graded GS-15 and below. For SES Counsel personnel, Associate Chief Counsels and Operating Division Counsels should forward the memorandum request and form to the Associate Chief Counsel (General Legal Services), who will render advice to the Deputy Chief Counsel (Operations). The Deputy Chief Counsel (Operations) has authority to grant the waiver, where appropriate, for any employee within the Office of Chief Counsel, except a Deputy Chief Counsel and any employee(s) appointed by the President and confirmed by the Senate. The Chief Counsel reserves the authority to grant a waiver, where appropriate, for the Deputy Chief Counsel (Operations) and the Deputy Chief Counsel (Technical).

