

Department
of the
Treasury

Internal
Revenue
Service
**Office of
Chief Counsel**

Notice

CC-2002-036

October 8, 2002

Procedures for Reporting
Subject: Conflicts of Interest
Upon Incorporation
Cancel Date: into the CCDM

Purpose

The purpose of this notice is to review the procedures for reporting potential conflicts of interest or circumstances which would raise a question regarding a lack of impartiality in a work assignment. This notice is to replace N(30)(4)(8)(6) (August 14, 2000) and CCDM 30.4.8.6 (February 3, 1992).

Discussion

The procedures apply to reporting one's own financial conflicts and impartiality issues, as well as those of other employees who are working on matters that raise a potential conflict of interest or an appearance of a lack of impartiality. The notice also summarizes the conflict of interest and impartiality rules under 18 U.S.C. § 208 and the Standards of Ethical Conduct for Employees of the Executive Branch, and reflects recent amendments to the regulatory exemptions at 5 C.F.R. part 2640.

1. Seeking Advice Regarding the Application of the Rules
 - a. If an employee is given an assignment in which he or she has a financial interest, he or she should complete a Form 6782, Certification of Direct or Indirect Financial Interest in a Work Assignment, and file it with his or her immediate supervisor. The Supervisor, through Associate or Division Counsel, may seek the advice of General Legal Services on the proper

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resolution of the conflict (e.g. reassignment, regulatory exemption, individual waiver, directed divestiture).

- b. Questions regarding an employee's own participation, or the participation of another Counsel employee, in a matter because of a conflict of interest, or an impartiality issue should be referred through the employee's management chain to the Associate or Division Counsel. The Associate or Division Counsel may seek GLS advice on the appropriate course of action.
- c. Questions regarding the participation of the Chief Counsel or the Deputies Chief Counsel in particular matters should be referred through the Associate or Division Counsel to the Chief Counsel Front Office gatekeeper, who will coordinate with GLS as necessary.
- d. Standards of professionalism and courtesy require that any question concerning a potential conflict of interest or impartiality issue involving another employee be raised in a confidential manner through supervisory channels and not be made the subject of speculation or rumor.

2. Financial Conflicts of Interests under 18 U.S.C. § 208

- a. Absent the application of a regulatory exemption or the issuance of an individual waiver (discussed below), employees may not personally and substantially participate in any particular matter that will have a direct and predictable effect on the employee's financial interests. 18 U.S.C. § 208(a).
- b. A financial interest in a particular matter exists when an employee or a person whose financial interests are 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 other persons, including organizations or entities, are imputed to an employee if the employee serves as an officer, director, trustee, general partner, or employee of an organization or entity, or if the employee is negotiating with or has an arrangement concerning future employment with a person, organization, or entity.
- c. Particular matters under 18 U.S.C. § 208(a) include deliberations, decisions, or actions focused on the interests of either a specific party or parties or of a discrete and identifiable class of persons (e.g. a particular industry). A particular matter need not involve specific parties and may include a broad range of Government activities such as judicial or administrative proceedings, applications, requests for ruling, or other determinations, as well as general activities such as rulemaking or the formulation of general policies.

- d. A particular matter will have a direct effect on a financial interest if there is a close causal link between any action to be taken in the matter and any expected effect of the matter on the financial interest. It will have a predictable effect on a financial interest if there is a real as opposed to speculative possibility that the matter will affect the financial interest. The dollar amount of any gain or loss is immaterial.
3. Regulatory Exemptions Pursuant to 18 U.S.C. § 208(b)(2)
- a. The U.S. Office of Government Ethics (OGE) has the authority to issue regulatory exemptions to the prohibition of 18 U.S.C. § 208(a) if OGE determines that the financial interest is too remote or inconsequential to affect the integrity of the employee's services. Specific regulatory exemptions are discussed below and may be found at 5 C.F.R. part 2640, subpart B.
 - b. Diversified Mutual Funds
 - i. A fund is diversified if it does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States.
 - ii. An employee may participate in any particular matter that will have a direct and predictable effect on the underlying holdings of a diversified mutual fund.
 - c. Sector Mutual Funds
 - i. A sector fund is a mutual fund that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single State within the United States.
 - ii. An employee may participate in a particular matter affecting the underlying holdings of a sector fund if the employee's interest in the sector fund does not exceed \$50,000.
 - iii. An employee may participate in a particular matter affecting the underlying holdings of a sector fund if the affected underlying holdings are not part of the sector in which the fund concentrates.

- d. Interests in Securities
 - i. An employee may participate in a particular matter involving specific parties that will affect the employee's, his or her spouse's or minor child's interest in publicly traded securities if the value of the interest does not exceed \$15,000.
 - ii. An employee may participate in a particular matter of general applicability that will affect the employee's, his or her spouse's or minor child's interest in publicly traded securities if the value of each affected interest does not exceed \$25,000, and the total value of all affected interests does not exceed \$50,000.
 - e. Employee Benefit Plans
 - i. An employee may participate in any particular matter affecting the underlying holdings of the Thrift Savings Plan.
 - ii. An employee may participate in any particular matter affecting the underlying holdings of a pension plan established or maintained by a State government or any political subdivision of a State government for its employees.
 - iii. An employee may participate in any particular matter affecting the underlying holdings of a diversified employee benefit plan provided the investments of the plan are administered by an independent trustee and the plan is not a profit-sharing or stock bonus plan.
4. Individual Waivers Pursuant to 18 U.S.C. § 208(b)(1)
- a. An individual waiver is available where it is determined that a financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services.
 - b. Requests for individual waivers should be submitted by Associate or Division Counsel to the Associate Chief Counsel (General Legal Services). The Associate Chief Counsel (GLS) will prepare the waiver and consult with OGE, as required by OGE regulations.
 - c. Approving Officials
 - i. The Associate Chief Counsel (GLS) has authority to issue waivers for all counsel employees, except Senior Executive Service (SES) employees.

- ii. The Deputy Chief Counsel (Operations) has authority to issue waivers for SES counsel employees except the Chief Counsel and the Deputy Chief Counsel (Technical)
 - iii. The Chief Counsel has authority to issue waivers for the Deputies Chief Counsel.
5. Appearances of a Lack of Impartiality Pursuant to 5 C.F.R. part 2635, subpart E
- a. Absent authorization, an employee should not participate in a specific party matter where the matter will have a direct and predictable effect on the financial interests of a member of his or her household, or where a person with whom he or she has a covered relationship is a party or a representative of a party to the matter if a reasonable person would question the employee's impartiality.
 - b. An employee has a covered relationship with the following persons:
 - i. A person with whom the employee seeks a business, contractual or financial relationship other than a routine consumer transaction;
 - ii. A person who is a member of the employee's household, or a relative with whom the employee has a close personal relationship;
 - iii. A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
 - iv. Any person for whom the employee has within the last year served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
 - v. An organization, other than a political party, in which the employee is an active participant.
 - c. The employee's immediate supervisor may authorize the employee to participate despite the appearance of a lack of impartiality if he or she determines, in light of all relevant circumstances, that the Government's interest in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. The criteria for making the authorization determination are set forth in subpart E of the Standards of Standards of Ethical Conduct. 5 C.F.R. § 2635.502(d). Supervisors should consult with the Associate Chief Counsel (GLS) when issuing an authorization.

- d. The above procedures should also be followed where an employee has a relationship, other than a covered relationship described above, with a person who has an interest in a matter before the Office of Chief Counsel, and a reasonable person with knowledge of all facts and circumstances would question the employee's impartiality in participating in the matter.

Any questions concerning this notice should be directed to Kirsten Witter of this office at (202) 283-7900.

_____/s/
Mark S. Kaizen
Associate Chief Counsel
(General Legal Services)