

This is a summary of the changes to the regulation as outlined in DAEOgram DO-02-006.

Summary of Amendments to 5 CFR Part 2640

1. The definition of *security* was clarified to indicate that it is limited to stock except in specific circumstances where the definition also includes mutual funds.
2. *De minimis* level was added for interests in Sector Mutual Funds [2640.201(b)].

This section was amended to include a second scenario of permitted involvement in particular matters when an employee has a disqualifying financial interest under 18 USC § 208.

- **(b)(1) [No Change]** Employees may participate in any particular matter affecting one or more holdings of a sector mutual fund, where the affected holding is NOT in the sector in which the fund concentrates, and where the disqualifying financial interest arises because the employee owns an interest in the fund.

For example, if the fund concentrates in pharmaceuticals but has some information technology holdings, an employee with holdings in the IT portion of the pharmaceutical sector fund may participate in a particular matter affecting the IT companies included in the fund. Note there is no regulatory limit in this case.

- **(b)(2) [New]** Employees may now participate in a particular matter affecting one or more holdings of a sector mutual fund where the disqualifying financial interest arises from ownership of an interest in the fund, and the aggregate market value of the employee's interest (and those imputed to him) in any sector fund or funds does not exceed \$50,000.

For example, if the fund concentrates in pharmaceuticals, an employee can participate in a particular matter affecting the pharmaceutical companies in the fund if his total aggregated holdings (self and imputed) in this and other pharmaceutical sector funds do not exceed \$50,000.

3. *De minimis* levels were changed for interests in securities [2640.202]

- (a) This paragraph applies to matters affecting parties: Employees may now participate in a particular matter involving specific parties where the disqualifying financial interest arises from ownership (by the employee, spouse or minor children) of securities issued by one or more entities affected by the matter IF:
 - (1) the securities are publicly traded, or long-term Federal Government, or municipal securities, AND
 - (2) the aggregate market value of the holdings (employee + spouse + children) of all entities does not exceed **\$15,000**.
- (b) This paragraph applies to matters affecting non-parties (not involved in the matter but affected by the matter): Employees may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership (employee + spouse + children) of securities issues by one or more entities that are NOT parties to the matter but that are affected by the matter, IF:
 - (1) the securities are publicly traded, or are long-term Federal Government or municipal securities, AND
 - (2) the aggregate market value of the holdings (employee + spouse + children) of the securities of all affected entities (including securities exempted under paragraph (a) above, does not exceed \$25,000.

For example: An FDA advisory committee is asked to review a new drug application from Alpha Drug for a new lung cancer drug. A member of the advisory committee owns \$20,000 worth of stock in Mega Drug, which manufactures the only similar lung cancer drug on the market. Both companies' stock is publicly traded. If approved, Alpha Drug's new drug would directly compete with the drug sold by Mega, resulting in decreased sales of its lung cancer drug. The committee member may participate in the review of the new drug. But if the member held \$30,000 worth of stock in Mega Drug, he could not participate as the value of his disqualifying interest would exceed the *de minimis* level.

4. 2640.204 Prohibited financial interests

This applies to those employees in agencies with supplemental regulations which limit their financial interests, such as the Federal Deposit Insurance Corporation. The amendment only revises the example to show that an agency supplemental *de minimis* takes precedence over the *de minimis* values set in this regulation.

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