**INFORMATION PAPER**

SAGC-EF

22 May 2014

SUBJECT: Exemptions to Financial Conflicts of Interest Created by Holdings in Securities and Sector Mutual Funds; “*De Minimis* Exemptions”

1. PURPOSE: To provide an overview of the *de minimis* exemption to financial conflicts of interest (COI) for securities and sector mutual funds.

2. BACKGROUND: 18 U.S.C. 208 makes it a criminal offense for an employee to participate in an official capacity in any particular matter in which he (or certain associated persons or organizations) has a financial interest. The purpose of this statute is to prevent an employee from being influenced in the performance of his official duties by his personal financial interests. The Office of Government Ethics has, however, determined that some financial interests are so remote or minimal - i.e., *de minimis* - that they are unlikely to have such an effect. Therefore, an employee who has a financial COI based on holdings in securities or sector mutual funds may participate in a matter if his holdings are within the *de minimis* exemptions outlined below. The holdings of the employee’s spouse and minor children must be aggregated with the employee’s when determining the applicability of any *de minimis* exemption.

3. *DE MINIMIS* EXEMPTIONS FOR INTERESTS IN SECURITIES (5 C.F.R. 2640.202): This exemption applies to publicly traded securities and long-term Federal Government or municipal (state/local government) securities. The limits of this exemption vary depending on whether the matter involved has parties associated with it or it is a general matter such as a rulemaking. An employee may participate in a matter despite owning securities that create a financial COI when:

a. For matters involving specific parties:

1) if issued by a party to the matter, the aggregate value does not exceed $15,000; or

2) if issued by a non-party affected by the matter, the aggregate value of the securities do not exceed $25,000, including the securities exempted in “i” above.

b. For matters of general applicability (e.g. rulemaking), when issued by one or more entities affected by the matter:

1) the securities are publicly traded or are municipal securities and the market value does not exceed $25,000 in any one such entity and $50,000 in all such entities; or

2) the securities are long-term Federal Government securities and the market value does not exceed $50,000.

4. *DE MINIMIS* EXEMPTIONS FOR INTERESTS IN SECTOR MUTUAL FUNDS (5 C.F.R. 2640.201(b)): A sector mutual fund concentrates investments in a particular economic or geographic sector and normally does not qualify as a diversified fund exempt from financial disclosure reporting.

a. An employee may participate in a particular matter that affects holdings of a sector mutual fund where the aggregate value of interests in any sector fund or funds does not exceed $50,000; all funds the employee owns in a particular sector must be aggregated.

b. Regardless of the value of the employee’s holdings, an employee may participate in a particular matter that affects holdings of a sector mutual fund if the holdings are not in the sector in which the fund concentrates. Example 1 to 5 C.F.R. 2640.201(b) illustrates this provision:

An employee of the Federal Reserve owns shares in a mutual fund that expressly concentrates its holdings in the stock of utility companies. In addition to holdings in utility companies, the mutual fund contains stock in certain regional banks and bank holding companies whose financial interests would be affected by an investigation in which the Federal Reserve employee would participate. The employee is not disqualified from participating in the investigation because the banks that would be affected are not part of the sector in which the fund concentrates.

5. RELATIONSHIP TO OTHER STATUTES AND REGULATIONS: While the *de minimis* exemptions are part of regulations issued by the Office of Government Ethics, other Federal Government agencies may be implicated in this area. For example, because 18 U.S.C. 208 is a criminal statute, DOJ makes the determinations on what cases it will prosecute, although it can consider an employee’s good faith reliance on the advice of an ethics official. Likewise, the Government Accountability Office (GAO) makes the final determinations in bid protests or contract appeals, though it can take the advice of ethics officials into consideration. For example, if an employee reviews bids from Company A and Company Z also owns $10,000 worth of stock in Company A, Company Z may submits a bid protest alleging that the employee cannot be impartial in his review because his stock in Company A creates a COI. While the employee’s holdings qualify for the *de minimis* exemption for securities (thus, the holdings are not prohibited). the GAO may nonetheless consider the employee’s financial interest in Company A when making its determination on Company Z’s bid protest.

6. OTHER EXEMPTIONS: The *de minimis* exemptions for securities and sector mutual funds are the most commonly used exemptions. Other exemptions to financial COI are found at 5 CFR § 2640.201(a) and (c), and 5 CFR § 2640.203.

7. CONCLUSION: For the public to maintain its confidence in the Federal Government, employees and supervisors must understand and abide by the statutes and regulations related to financial COI. While an employee reports his assets only once a year, the potential for financial conflicts of interest exist year-round. It is ultimately the responsibility of the employee to identify and resolve any potential or actual COI before taking any step to personally and substantially participate in any particular matter.