

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

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AUTHORITY: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

SOURCE: 61 FR 66841, Dec. 18, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 2640.101 Purpose.

18 U.S.C. 208(a) prohibits an officer or employee of the executive branch, of any independent agency of the United States, of the District of Columbia, or Federal Reserve bank director, officer, or employee, or any special Government employee from participating in an official capacity in particular matters in which he has a personal financial interest, or in which certain persons or organizations with which he is affiliated have a financial interest. The statute is intended to prevent an employee from allowing personal interests to affect his official actions, and to

protect governmental processes from actual or apparent conflicts of interests. However, in certain cases, the nature and size of the financial interest and the nature of the matter in which the employee would act are unlikely to affect an employee's official actions. Accordingly, the statute permits waivers of the disqualification provision in certain cases, either on an individual basis or pursuant to general regulation. Section 208(b)(2) provides that the Director of the Office of Government Ethics may, by regulation, exempt from the general prohibition, financial interests which are too remote or too inconsequential to affect the integrity of the services of the employees to which the prohibition applies. The regulations in this part describe those financial interests. This part also provides guidance to agencies on the factors to consider when issuing individual waivers under 18 U.S.C. 208 (b)(1) or (b)(3), and provides an interpretation of 18 U.S.C. 208(a).

§ 2640.102 Definitions.

For purposes of this part:

(a) *Diversified* means that the fund, trust or plan 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 and, in the case of an employee benefit plan, means that the plan's trustee has a written policy of varying plan investments.

NOTE TO PARAGRAPH (a): A mutual fund is diversified for purposes of this part if it does not have a policy of concentrating its investments in an industry, business, country other than the United States, or single State within the United States. Whether a mutual fund meets this standard may be determined by checking the fund's prospectus or by calling a broker or the manager of the fund. An employee benefit plan is diversified if the plan manager has a written policy of varying assets. This policy might be found in materials describing the plan or may be obtained in a written statement from the plan manager. It is important to note that a mutual fund or employee benefit plan that is diversified for purposes of this part may not necessarily be an excepted investment fund (EIF) for purposes of reporting financial interests pursuant to 5 CFR 2634.310(c). In some cases, an employee may have to report the underlying assets of a fund or plan on his financial disclosure statement even though an