

Conflicts of Interest Considerations: Legal Entities that Hold Assets

(Last updated August 2024)



Topics covered include: Brokerage Account | Business Development Company (BDC) | Individual Retirement Account (IRA), Roth IRA, Simplified Employee Pension IRA (SEP IRA), or Keogh Plan | Mutual Funds, Exchange-Traded Funds (ETFs), and Unit Investment Trusts (UITs) | Qualified Tuition Program (529 Plan) | Real Estate Holding Company (other than REITs) | Self-Funded Defined Benefit Pension Plan | Trust (revocable living) | Trust (irrevocable) | Trustees | Uniform Gifts to Minors Act (UGMA) or Uniform Transfers to Minors Act (UTMA) Account | Will or Estate

This guidance focuses on potential conflicts of interest that can arise from ownership of legal entities that hold assets (“investment vehicles”). For guidance regarding potential conflicts that can arise from private investment funds specifically, see [Conflicts of Interest Considerations: Private Investment Funds and Employment with an Investment Fund](#).

Under 18 U.S.C. § 208, an employee is prohibited from participating personally and substantially in any particular matter in which the employee knows they have a financial interest directly and predictably affected by the matter, or in which they know that a person whose interests are imputed to them has a financial interest directly and predictably affected by the matter. An employee has a financial interest in particular matters affecting an investment vehicle itself and in particular matters affecting the underlying assets held in the investment vehicle. Other than employees of agencies that regulate or investigate investment vehicles, few employees will be able to affect an investment vehicle as a specific entity or as a category of pooled investment vehicles. The more likely source of conflicts of interest is a vehicle’s underlying assets.

The guidance below addresses potential conflicts that can arise from assets owned by the employee. However, because the financial interests of an employee’s spouse or minor children are imputed to the employee, an asset that is owned by a spouse or minor child is analyzed under 18 U.S.C. § 208 as if the employee owns it. Therefore, unless otherwise noted, the section 208 analysis described in each entry applies in the same manner regardless of whether the asset is owned by the employee or by the employee’s spouse or minor child.

Please note that this guide is an evolving document that OGE plans to update over time. If you have any questions, please contact your OGE desk officer or your agency ethics official.

This guide does not contain legal advice. It is intended solely for educational and informational purposes for ethics officials in the Federal executive branch.

Brokerage Account

18 U.S.C. § 208

A brokerage account is an account through which individual investors can make investments. The investments can be directed by the investor (**standard brokerage account**) or made by an advisor without input from the investor (**managed account**). The account may hold, for example, cash, money market funds, mutual funds, private investment funds, stocks, and bonds.¹ The employee has a financial interest in particular matters affecting the assets held within a brokerage account. Therefore, each asset in the account should be analyzed under 18 U.S.C. § 208 using the guidance appropriate for that type of asset (*e.g.*, stock, mutual fund, etc.).

Exemptions: The brokerage account itself will not qualify for any of the regulatory exemptions at 5 C.F.R. Part 2640. However, the assets in the account may individually qualify for certain exemptions, such as an exemption for mutual funds at 5 C.F.R. § 2640.201 or a *de minimis* exemption for publicly traded securities at 5 C.F.R. § 2640.202. Additional information on analyzing mutual funds is available in this document under “Mutual Funds, Exchange-Traded Funds (ETFs), and Unit Investment Trusts (UITs).” Information on analyzing other assets that are typically held in a brokerage account is generally available in [Conflicts of Interest Considerations: Assets](#).

Caution: The analysis above also applies to a managed account, which is a type of brokerage account that is owned by the investor but managed for a fee by a financial advisor.² The employee’s lack of control over a managed account often makes it difficult for employees to avoid potential conflicts of interest. If the employee cannot prevent a managed account from acquiring potentially conflicting assets, the employee may need to exit the account. Note that some managed accounts mirror mutual funds and employees may believe they own a fund rather than have a managed account.

Business Development Company (BDC)

18 U.S.C. § 208

A business development company (BDC) is a type of closed-end investment fund that often makes investments in developing and financially distressed companies, which do not have access to other financing options like issuing bonds. An employee who holds an interest in a BDC has an interest in the fund and its underlying holdings. For a BDC that does not qualify for a regulatory exemption, agency ethics officials will need to evaluate the fund itself and the

¹ Many brokerage accounts may also provide investors with a **sweep account** option. In general, you must analyze a sweep account in the same manner that you would another bank or cash account. If the sweep account holds a mutual fund, however, refer to the entry for “Mutual Funds, Exchange-Traded Funds (ETFs), and Unit Investment Trusts (UITs)” for additional guidance.

² For additional discussion of the conflicts of interest considerations for managed accounts, see OGE Legal Advisory LA-24-04 (2024).

individual holdings of the BDC for conflicts of interest, just as they would for any private investment fund.

Exemptions: A BDC may qualify for one or more of the regulatory exemptions at 5 C.F.R. Part 2640, depending on how it is registered under various securities laws. If a BDC registers as an investment company under the Investment Company Act of 1940 (1940 Act), the mutual fund exemptions at 5 C.F.R. § 2640.201 may be available.³ Additionally, if a BDC is registered under the Securities Exchange Act of 1934 (Exchange Act) and is publicly traded on a national or regional exchange, the exemptions at 5 C.F.R. § 2640.202 for interests in securities may be available.

Defined Contribution Plan

See Conflicts of Interest Considerations: Common Employment Interests.

Individual Retirement Account (IRA), Roth IRA, Simplified Employee Pension IRA (SEP IRA), or Keogh Plan

18 U.S.C. § 208

Individual Retirement Accounts (IRAs), Roth IRAs, Simplified Employee Pension Individual Retirement Accounts (SEP IRAs), and Keogh Plans are tax-deferred retirement accounts. In each case, the employee has a financial interest in particular matters affecting the assets held within the account or plan. Therefore, each asset in the account should be analyzed under 18 U.S.C. § 208 using the guidance appropriate for that type of asset (*e.g.*, stock, mutual fund, etc.).

Exemptions: The account itself will not qualify for any of the regulatory exemptions at 5 C.F.R. Part 2640. However, the assets in the account may individually qualify for certain exemptions, such as an exemption for mutual funds at 5 C.F.R. § 2640.201 or a *de minimis* exemption for publicly traded securities at 5 C.F.R. § 2640.202. Additional information on analyzing mutual funds is available in this document under “Mutual Funds, Exchange-Traded Funds (ETFs), and Unit Investment Trusts (UITs).” Information on analyzing other assets that are typically held in one of these accounts is generally available in Conflicts of Interest Considerations: Assets.

³ *See* OGE Legal Advisory LA-21-02 (2021). (“BDCs may elect to be regulated as business development companies under the 1940 Act; however, they are not required to register as investment companies under the 1940 Act.”)

Mutual Funds, Exchange-Traded Funds (ETFs), and Unit Investment Trusts (UITs)

18 U.S.C. § 208

A **mutual fund** is a company created and managed to hold a portfolio of securities. Specifically, it is an investment company registered with the U.S. Securities and Exchange Commission (SEC) under the Investment Company Act of 1940 (1940 Act), as amended. Investors purchase shares of the mutual fund, and the value of those shares typically rises and falls based on the performance of the mutual fund's underlying assets. An employee has a financial interest in particular matters affecting the mutual fund itself and particular matters affecting the underlying assets of the mutual fund. In most cases, the analysis under 18 U.S.C. § 208 will focus on potential conflicts of interest related to the underlying assets. OGE has issued several exemptions at 5 C.F.R. § 2640.201 that are applicable to mutual funds, which are discussed in detail below.

An **exchange-traded fund (ETF)** is a fund that pools investors' money in a variety of investments. Most ETFs are organized either as open-end investment management companies or as unit investment trusts (UITs). ETFs usually are registered with the SEC under the same statutory authorities as traditional mutual funds and, therefore, satisfy OGE's definition of a "mutual fund" at 5 C.F.R. § 2640.102(k). Likewise, an ETF that is organized as a UIT satisfies OGE's definition of a "unit investment trust" at 5 C.F.R. § 2640.102(u). An employee has a financial interest in particular matters affecting the ETF itself and particular matters affecting the underlying holdings of the ETF. In most cases, the analysis under 18 U.S.C. § 208 will focus on potential conflicts of interest related to the underlying holdings.

Most ETFs qualify as mutual funds or UITs under § 2640.102(k) or .102(u) and are eligible for the mutual fund and UIT exemptions in § 2640.201, as discussed in detail below.⁴ ETFs that do not qualify as mutual funds or unit investment trusts under § 2640.102(k) or .102(u), such as commodity-focused ETFs that register with the Commodity Futures Trading Commission but not with the SEC under the 1940 Act, are not eligible for the mutual fund and unit investment trust exemptions in § 2640.201. In these cases, the employee would have a potential conflict of interest with the underlying holdings of the ETF and, in certain cases, with the fund itself as a separate legal entity.

A **unit investment trust (UIT)** is a type of investment company regulated under the 1940 Act.⁵ It buys a relatively fixed portfolio of securities and holds them with little or no change until the UIT's termination date. An employee has a financial interest in particular matters affecting the UIT itself and particular matters affecting the underlying assets of the UIT. In most cases, the analysis under 18 U.S.C. § 208 will focus on potential conflicts of interest related to the UIT's underlying assets. OGE has issued several exemptions at 5 C.F.R. § 2640.201 that are applicable to both mutual funds and UITs. To qualify for the UIT exemptions in 5 C.F.R. § 2640.201, the

⁴ Because ETFs are not necessarily subject to all requirements of the relevant statutory authorities, the SEC does not allow ETFs to market themselves to consumers as "mutual funds," but they still qualify for the exemptions.

⁵ A UIT's status as a 1940 Act registered investment company can be confirmed by reviewing its prospectus.

UIT must be an investment company as defined in 15 U.S.C. § 80a-4(2) that is a regulated investment company under the 1940 Act.

A **money market mutual fund** is a type of mutual fund that holds financial interests in certain short-term, low-risk investments, such as government securities, certificates of deposit, and high-quality bank or corporate obligations. As with mutual funds, an employee has a financial interest in particular matters affecting the money market mutual fund itself and particular matters affecting the underlying assets of the fund. Ordinarily, a money market mutual fund will qualify for the “diversified mutual fund” exemption at 5 C.F.R. § 2640.201(a). A money market mutual fund that concentrates in the obligations of a single U.S. state would not qualify as diversified but may qualify for one of the sector mutual fund *de minimis* exemptions at 5 C.F.R. § 2640.201(b). Both exemptions are discussed in detail below.

Tip: Most funds whose ticker symbols are five letters and end with an “X” are open-end mutual funds that may qualify for a mutual fund exemption, and most funds that are listed on securities-quoting websites whose ticker symbols are five letters and end with an “XX” are money market funds that may qualify for an exemption.⁶ There are some real estate funds with an “X” ticker symbol that are not registered under the 1940 Act and do not qualify for the mutual fund exemptions.

Exemptions for Underlying Assets: OGE has issued several exemptions at 5 C.F.R. § 2640.201 that are available for mutual funds, ETFs, and UITs. To qualify for these exemptions, the fund must be registered with the SEC as a management company under the Investment Company Act of 1940. Different exemptions will apply depending on whether the fund is a “diversified mutual fund or UIT” or a “sector mutual fund or UIT,”⁷ as described below.

- *Diversified Mutual Funds and UITs:* A diversified mutual fund or UIT is a fund that 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.⁸ Because a broad exemption exists at 5 C.F.R. § 2640.201(a) for any financial interest arising from the underlying assets of a diversified mutual fund or UIT, the underlying assets of a diversified mutual fund or UIT do not need to be examined.
- *Sector Mutual Funds and UITs:* A sector mutual fund or UIT is a 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.⁹ A different, narrower set of exemptions at 5 C.F.R. § 2640.201(b) applies to financial interests arising from the underlying assets of a sector mutual fund or UIT:

⁶ However, some mutual funds, such as closed-end funds, do not end with an “X” or “XX.” For those, the fund’s registration status can be found in the prospectus available on the issuer’s website or through the EDGAR website maintained by the SEC.

⁷ See OGE DAEogram DO-00-030 (2000), OGE Legal Advisory LA-15-09 (2015), and OGE Legal Advisory LA-19-06 (2019) for assistance in differentiating between diversified and sector mutual funds.

⁸ 5 C.F.R. § 2640.102(a).

⁹ *Id.* § 2640.102(q).

- The employee may participate personally and substantially in any particular matter affecting assets not invested in the sector in which the fund concentrates (*e.g.*, a pharmaceutical stock held within a financial services sector fund).¹⁰
- The employee may participate personally and substantially in a particular matter affecting one or more of the underlying assets of a fund (or funds), provided the market value of the interest in the affected fund (or funds) does not exceed \$50,000.¹¹ To calculate this amount, consider the total amount of the employee’s investment (as well as that of the employee’s spouse and minor children) in mutual funds and unit investment trusts that (1) concentrate in the same sector and (2) have one or more holdings that may be affected by the particular matter.¹²
- Note that certain mutual funds and UITs may at first glance appear to be sector funds, but ultimately qualify for the broader diversified mutual fund and UIT exemption. Relatively general or superficial similarities among a group of disparate industries or businesses will not be sufficient to trigger the stricter “sector fund” treatment. For example, “natural resources,” “entertainment,” or “consumer product” funds qualify for the diversified mutual fund exemption at 5 C.F.R. § 2640.201(a) rather than the sector fund exemptions.¹³

Exemption for the Mutual Fund or UIT as a Legal Entity: Employees at certain agencies may have a potential conflict of interest with the mutual fund or UIT itself in addition to having conflicts with the underlying assets of the mutual fund or UIT. This would most likely occur if the employee is employed by an agency that regulates mutual funds or UITs. However, the exemption at 5 C.F.R. § 2640.201(d) generally permits employees to participate in particular matters of general applicability affecting a mutual fund or UIT when the disqualifying financial interest arises because of ownership in the mutual fund or UIT.

Caution: Employees may sometimes describe an investment as a “mutual fund” even though the investment does not qualify as a mutual fund for purposes of the conflict of interest exemptions. To qualify for the mutual fund and UIT exemptions in 5 C.F.R. § 2640.201, the fund must be registered with the SEC as a management company under the 1940 Act. Note that some ETFs focused on commodities, such as gold or silver, or real

¹⁰ The employee may also participate in a particular matter that affects a non-sector line of business or a subsidiary of a company that operates within the sector that is the focus of the fund. *See* OGE Legal Advisory LA-22-02 (2022).

¹¹ 5 C.F.R. § 2640.201(b)(2)(i).

¹² *Id.* § 2640.201(b)(2)(ii).

¹³ OGE DAEogram DO-00-030, at 12 (2000) provides guidance for differentiating between diversified and sector mutual funds. This guidance is also applicable to exchange-traded funds that qualify as mutual funds or unit investment trusts. Please note that with regard to real estate funds, DO-00-030 was updated in 2015 by OGE Legal Advisory LA-15-09 (2015). Additionally, with regard to information technology and internet funds, DO-00-030 was updated in 2019 by OGE Legal Advisory LA-19-06 (2019).

estate, are not registered under the 1940 Act and as a result do not qualify for the exemptions discussed above.¹⁴

Managed accounts, brokerage accounts, and individual retirement accounts are not themselves mutual funds, even though some holdings of those accounts may be mutual funds.

Agency-Specific Restrictions

Some agencies have prohibited holdings statutes or regulations that restrict ownership of an investment fund or the underlying holdings of the fund. If a prohibited holdings statute or regulation applies, then the exemptions in 5 C.F.R. Part 2640 will not be available for that asset.¹⁵

Qualified Tuition Program (529 Plan)

18 U.S.C. § 208

There are two types of qualified tuition programs or “529 plans.”

One type, the **college savings plan**, is an investment account in which individuals choose among various investment options, which often consist of mutual funds. Because the plan does not guarantee the value of those underlying assets, the employee has a financial interest in particular matters affecting the performance of the assets that have been selected under the plan. For example, if the employee selected the “Age 0-5” portfolio and that portfolio holds mutual funds, the employee has an interest in particular matters affecting those mutual funds.

The other type of qualified tuition program is the **prepaid tuition plan**. A prepaid tuition plan is a contract between an individual and the plan’s sponsor that allows the individual to prepay future tuition expenses at current tuition rates. The employee has a financial interest in particular matters affecting the sponsor’s ability or willingness to fulfill the terms of the contract. Regardless of whether the sponsor of a plan is a state government or the Tuition Plan Consortium, LLC, the plan normally will not pose a conflict of interest for most employees.

Exemptions: In many college savings plans, the mutual funds selected by the employee will qualify for the diversified mutual fund exemption at 5 C.F.R. § 2640.201(a) or one of the sector mutual fund exemptions at § 2640.201(b). Additional information on analyzing mutual funds is available in this document under “Mutual Funds, Exchange-Traded Funds (ETFs), and Unit Investment Trusts (UITs).”

¹⁴ Additional information on analyzing commodities and real estate is available in [Conflicts of Interest Considerations: Assets](#) under “Futures Contract” and “Real Estate.”

¹⁵ 5 C.F.R. § 2640.204. Note, however, that “once an agency grants an employee’s request for a waiver of the agency’s prohibited holding regulation or statute, the employee may rely on any applicable 2640 exemption for the waived asset.” OGE Legal Advisory LA-23-09 (2023).

Real Estate Holding Company (other than REITs)

18 U.S.C. § 208

An employee has a financial interest in particular matters affecting the real estate holding company itself and in the properties held by the company. In determining whether a potential conflict of interest under 18 U.S.C. § 208 may arise from an employee's interest in a real estate holding company, first determine whether the value of real estate could be directly and predictably affected by agency matters in which the employee might participate personally and substantially. If it can, then consider the location and use of the underlying properties in that company and determine whether the value of that specific real estate could be directly and predictably affected by agency matters in which the employee might participate personally and substantially.

Employees at some agencies might also have a potential conflict of interest with the real estate holding company itself, either because they can investigate the entity or regulate the entity as a type of investment vehicle.

Other Considerations

A real estate investment trust (REIT) is a specific type of real estate holding company that has specific legal requirements that distinguishes it from other real estate holdings companies. Analysis of potential conflicts that could arise from the ownership of REITs can be found in [Conflicts of Interest Considerations: Assets](#).

Self-Funded Defined Benefit Pension Plan

18 U.S.C. § 208

Self-funded defined benefit pension plans are funded by individuals instead of employers. Individuals invest money to meet a certain benefit amount in the future. The performance of the assets held by the plan affects how much the employee must contribute to meet a specified level of retirement benefits. Therefore, unlike a typical defined benefit plan, the employee has a financial interest in particular matters affecting the underlying assets held by the plan, just as with a defined contribution plan. Each asset should be analyzed under 18 U.S.C. § 208 using the guidance appropriate for that type of asset (*e.g.*, stock, mutual fund, etc.).

Exemptions: The plan itself will not qualify for any of the regulatory exemptions at 5 C.F.R. Part 2640. However, its underlying assets may individually qualify for certain exemptions, such as an exemption for mutual funds at 5 C.F.R. § 2640.201 or a *de minimis* exemption for publicly traded securities at 5 C.F.R. § 2640.202. Additional information on analyzing mutual funds is available in this document under “Mutual Funds, Exchange-Traded Funds (ETFs), and Unit Investment Trusts (UITs).” Information on analyzing other assets that are typically held in one of these plans is generally available in [Conflicts of Interest Considerations: Assets](#).

Trust (revocable living)

18 U.S.C. § 208

An employee does not have a financial interest in particular matters affecting the holdings of a revocable living trust unless the employee, the employee's spouse, or the employee's minor child is a grantor of the trust or has received mandatory distributions.¹⁶ If the employee, employee's spouse, or employee's minor child is the grantor, the assets of a revocable living trust must be analyzed under 18 U.S.C. § 208 in the same way that any other assets belonging to the employee, employee's spouse, or employee's minor child would be analyzed.

Exemptions: The trust itself will not qualify for any of the regulatory exemptions at 5 C.F.R. Part 2640. However, its underlying assets may individually qualify for certain exemptions, such as the exemption for mutual funds at 5 C.F.R. § 2640.201 or a *de minimis* exemption for publicly traded securities at 5 C.F.R. § 2640.202. Additional information on analyzing mutual funds is available in this document under "Mutual Funds, Exchange-Traded Funds (ETFs), and Unit Investment Trusts (UITs)." Information on analyzing other assets that are typically held in a trust is generally available in [Conflicts of Interest Considerations: Assets](#).

5 C.F.R. Part 2635, Subpart B (*Gifts from Outside Sources*)

Discretionary distributions received by the employee must be analyzed as gifts under Subpart B of the Standards of Ethical Conduct for Employees of the Executive Branch. Typically, however, such distributions would not be prohibited because they would usually be motivated by a family relationship or personal friendship rather than the position of the employee.¹⁷

Trust (irrevocable)

18 U.S.C. § 208

An irrevocable trust is a trust from which assets cannot be removed, except as described in the trust document. Employees who have a vested beneficial interest in an irrevocable trust or who pay the taxes for an irrevocable trust have a financial interest in particular matters affecting the trust and its holdings for the purposes of 18 U.S.C. § 208. Each asset of the trust is analyzed for conflicts for interest using the guidance appropriate for that type of asset (*e.g.*, stock, mutual fund, etc.).

A **discretionary trust** is "a trust whose terms provide that the trustee pays to a beneficiary 'only so much of the income and principal or either as the trustee in his uncontrolled discretion shall see fit.'"¹⁸ If the employee is entitled to non-discretionary distributions from a trust, the employee has a disqualifying financial interest in particular matters affecting the trust. OGE does not view individuals who are solely discretionary income beneficiaries of an irrevocable trust as having a

¹⁶ OGE DAEOgram DO-02-015 (2002).

¹⁷ See 5 C.F.R. § 2635.204(b).

¹⁸ OGE DAEOgram DO-08-024, at 1 (2008) (quoting RESTATEMENT (SECOND) OF TRUSTS § 155 (AM. LAW INST. 1959)). *But see* OGE Legal Advisory LA-13-04 (2013) (modifying the 2008 DAEOgram).

financial interest in particular matters affecting the holdings of the trust for purposes of 18 U.S.C. § 208.¹⁹ However, if the employee is a trustee and a discretionary beneficiary, a grantor and a discretionary beneficiary, or a vested remainder beneficiary, then 18 U.S.C. § 208 applies.

Exemptions: The trust itself will not qualify for any of the regulatory exemptions at 5 C.F.R. Part 2640. However, its underlying assets may individually qualify for certain exemptions, such as the exemption for mutual funds at 5 C.F.R. § 2640.201 or an exemption for publicly traded securities at 5 C.F.R. § 2640.202. Additional information on analyzing mutual funds is available in this document under “Mutual Funds, Exchange-Traded Funds (ETFs), and Unit Investment Trusts (UITs).” Information on analyzing other assets that are typically held in a trust is generally available in Conflicts of Interest Considerations: Assets.

5 C.F.R. § 2635.502 (Impartiality)

In the case of a discretionary trust, “where there is a history of discretionary payments actually received by the beneficiary, potential appearances of a lack of impartiality should be handled under 5 C.F.R. § 2635.502, including paragraph (a)[(3)] of that provision.”²⁰ Additionally, if a discretionary trust concentrates its holdings in a single asset, participation in party matters affecting that asset could raise impartiality concerns, even if the employee is not receiving distributions.

5 C.F.R. Part 2635, Subpart B (Gifts from Outside Sources)

Discretionary distributions received by the employee must be analyzed as gifts under Subpart B of the Standards of Ethical Conduct for Employees of the Executive Branch. Typically, however, an employee’s receipt of such distributions would not be prohibited because they would not be from a prohibited source and, in any event, would usually be motivated by a family relationship or personal friendship rather than the position of the employee.²¹

Trustees

Employee as Trustee

18 U.S.C. § 208

18 U.S.C. § 208 imputes the interests of the trust to an employee serving as trustee. Therefore, an employee may not participate personally and substantially in any particular matter that the employee knows would have a direct and predictable effect on the underlying assets of the trust or the trust itself. In addition, the employee will have a personal financial interest in a particular

¹⁹ OGE DAEogram DO-08-024, at 1 (2008). *But see* OGE Legal Advisory LA-13-04 (2013) (modifying the 2008 DAEogram).

²⁰ OGE DAEogram DO-08-024, at 2 (2008). *But see* OGE Legal Advisory LA-13-04 (2013) (modifying the 2008 DAEogram).

²¹ *See* 5 C.F.R. § 2635.204(b).

matter affecting the trust holdings if the employee has a vested beneficial interest in the trust (*e.g.*, is a beneficiary) or receives fees tied to the performance of the trust holdings.²²

Outside Earned Income Restrictions

Presidential appointees to full-time noncareer positions are subject to the ban on receiving any outside earned income for activities performed during Government service.²³ Covered noncareer employees, as defined by 5 C.F.R. § 2636.303(a), are subject to a ban on receiving, in a calendar year, outside earned income – including honoraria – that exceeds 15% of the annual rate of basic pay for level II of the Executive Schedule (\$31,815 for calendar year 2024).²⁴

Spouse as Trustee

18 U.S.C. § 208

18 U.S.C. § 208 does not impute the interests of a trust to the employee simply because the employee's spouse serves as trustee. Nevertheless, 18 U.S.C. § 208 does prohibit the employee from participating personally and substantially in any particular matter that the employee knows would have a direct and predictable effect on the spouse's personal financial interest in the trust (*e.g.*, if a spouse were a vested beneficiary or if the spouse's fee was directly tied to the performance of the trust).

Uniform Gifts to Minors Act (UGMA) or Uniform Transfers to Minors Act (UTMA) Account

18 U.S.C. § 208

A Uniform Gifts to Minors Act (UGMA) or Uniform Transfers to Minors Act (UTMA) account is an account into which property is set aside for a minor's benefit. Transfers made to a UGMA or UTMA account are irrevocable and belong to the child in whose name the account is registered. The account is controlled by the custodian until the child reaches a certain age, which varies by state (usually 18 or 21). As the beneficiary of a UGMA or UTMA account, an employee's minor child will have a financial interest, which is imputed to the employee, for all assets held in the account.

Once the beneficiary is no longer a minor, the employee no longer has a financial interest under 18 U.S.C. § 208.

Exemptions: The UGMA or UTMA account itself will not qualify for any of the regulatory exemptions at 5 C.F.R. Part 2640. However, the assets in the account may individually qualify for certain exemptions, such as an exemption for mutual funds at 5 C.F.R. § 2640.201 or a *de minimis* exemption for publicly traded securities at 5 C.F.R. § 2640.202. Additional information on

²² See OGE DAEOgram DO-01-029 (2001) (explaining when an employee, who is a trustee, may have a personal financial interest in a particular matter that affects the trust's holdings).

²³ See Exec. Order No. 12,674, § 102; 5 C.F.R. § 2635.804(a).

²⁴ See 5 U.S.C. § 13143(a)(1); 5 C.F.R. § 2636.304; OGE Legal Advisory LA-24-01 (2024).

analyzing mutual funds is available in this document under “Mutual Funds, Exchange-Traded Funds (ETFs), and Unit Investment Trusts (UITs).” Information on analyzing other assets that are typically held in an UGMA or UTMA account is generally available in Conflicts of Interest Considerations: Assets.

5 C.F.R. § 2635.502 (Impartiality)

When an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of the employee’s household (e.g., the employee’s minor or dependent child), the employee should not participate in the matter without informing the agency designee and receiving authorization. However, when a minor child’s financial interest would be affected, 18 U.S.C. § 208 would also apply.

Will or Estate

18 U.S.C. § 208

Distributed assets of a will or estate are analyzed in the same way that any of the employee’s other assets would be analyzed. With regard to an undistributed interest in an estate, OGE has advised ethics officials and employees that there could be a disqualifying financial interest under 18 U.S.C. § 208 if the beneficiary has sufficient knowledge of an identified asset in a decedent’s estate and there is sufficient certainty that the employee will receive a distribution affected by the value or income of that asset.²⁵ Employees do not have potential conflicts of interest with respect to wills of living persons.

Executors or administrators sometimes receive fees. If an employee, spouse, or minor child receives fixed fees, the receipt of these fees would create potential conflicts only in the unusual case when a particular matter would affect the ability or willingness of the estate to make the payments. An employee who is an executor and receives fees directly tied to the value of the estate would have a personal financial interest in any particular matter that the employee knows would directly and predictably affect the value of any property in the estate.

Unlike trustees, however, executors do not have an imputed interest in particular matters affecting the financial interests of an estate. Therefore, an employee who is an executor and who does not receive fees or have a personal financial interest in the estate would not have any potential conflicts of interest with the estate’s assets under 18 U.S.C. § 208.²⁶

Outside Earned Income Restrictions

Presidential appointees to full-time noncareer positions are subject to the ban on receiving any outside earned income for activities performed during Government service.²⁷ Covered noncareer employees, as defined by 5 C.F.R. § 2636.303(a), are subject to a ban on receiving, in a calendar

²⁵ See OGE Inf. Adv. Op. 02 x 2 (2002).

²⁶ See OGE DAEOgram DO-02-008 (2002); OGE Inf. Adv. Op. 02 x 2 (2002).

²⁷ See Exec. Order No. 12,674, § 102; 5 C.F.R. § 2635.804(a).

year, outside earned income – including honoraria – that exceeds 15% of the annual rate of basic pay for level II of the Executive Schedule (\$31,815 for calendar year 2024).²⁸

²⁸ See 5 U.S.C. § 13143(a)(1); 5 C.F.R. § 2636.304; OGE Legal Advisory LA-24-01 (2024).