

Office of Government Ethics

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Letter to a Designated Agency Ethics Official dated March 4, 1993

Your letter of January 29, 1993, requested our advice on whether, under the new standards of conduct regulation (5 C.F.R. part 2635), [your agency] could continue allowing new employees to retain certain conflicting financial interests with a former employer during their probationary period of Federal employment, so long as they recuse themselves from participating in matters affecting that former employer. We believe that this practice would not be precluded by the new regulation, but it would remain subject to any [agency] rules on prohibited holdings.

We understand that [an individual] has recently agreed to join the [agency] staff as an investigator. His current employer is potentially the subject of investigations by the [agency]. [The individual] would begin Federal employment while on a leave of absence from [his current employer], and he also owns stock [in the employer] 401(k) plan. In accordance with past practice at [the agency], you would like to permit [the individual] to maintain his leave of absence status with [his employer] and to retain stock [in the employer] during his one-year probationary period as a Federal employee. During that period, he would formally recuse himself from any investigations or other matters involving [his current employer]. If he were to remain an [agency] employee after the one-year probationary period, you would require that he divest himself of all interests [in his current employer].

We see nothing in the new standards of conduct regulation which would prevent you from continuing this practice. As noted in your letter, however, an [agency] regulation and order prohibit conflicting employee holdings, including pecuniary interests in any [regulated] enterprise. The order affords new employees a reasonable time in which to dispose of such interests, as determined by the General Counsel, who has in the past deemed the one-year probationary period of Federal employment to be a reasonable time for such divestiture. In order to continue that practice beyond the limited period during which agency rules on prohibited holdings have been preserved by the new standards of conduct, you will need to propose a supplemental regulation to

OGE which contains a similar provision. So long as your current prohibited holdings order and the replacement supplementary regulation authorize the practice which you have described, we see no impediment in 5 C.F.R. part 2635.

Sincerely,

Stephen D. Potts
Director