



United States  
**Office of Government Ethics**  
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DO-10-002

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Don W. Fox  
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SUBJECT: Federal Travel Benefits and 18 U.S.C. § 208

Ethics officials and others occasionally ask how the financial conflict of interest statute, 18 U.S.C. § 208, applies to employees who receive travel benefits and reimbursements from the Government under the Federal Travel Regulation, 41 C.F.R., subtitle F. The United States Office of Government Ethics (OGE) is issuing this memorandum to highlight an OGE regulation, 5 C.F.R. § 2640.203(d), which authorizes an employee to participate in official travel matters, with certain limits, notwithstanding the financial interest that may arise from an agency's provision of travel benefits and cost reimbursement to the employee.

Section 208 generally prohibits an employee from participating in a particular matter in which he or she has a personal or imputed financial interest. However, section 208(b)(2) permits OGE to issue regulations exempting certain financial interests from this prohibition. One such regulatory exemption provides, in pertinent part: "An employee may participate in any particular matter where the disqualifying financial interest arises from Federal Government or Federal Reserve Bank salary or benefits." § 2640.203(d). The exemption is subject to two qualifications: (1) the employee cannot make a "determination"—i.e., an official Government decision, whether intermediate or final—that individually or specially affects his or her own salary or benefits; and (2) the employee cannot even make a recommendation or request, let alone a determination, that individually or specially relates to the Federal salary or employment benefits of another person whose interests are imputed to him or her under section 208, such as a spouse or general partner who is also a Federal employee. *See* 61 Federal Register 66830, 66837 (December 18, 1996)(preamble to final rule).

This exemption was intended to cover, among other things, interests arising from Federal travel benefits and reimbursements.<sup>1</sup> In fact, one of the examples in the OGE regulation deals specifically with a request for payment of travel expenses to attend a conference. § 2640.203(d)(Example 3). This example explains that an employee may request the payment of

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<sup>1</sup> *See* 60 Federal Register 44705, 44707 (August 28, 1995)(preamble to interim rule)(exemption "would permit employees, for example, to ask for reimbursement of travel expenses" and would cover items such as "housing allowances").

his or her own travel expenses but generally may not make a determination approving the payment.<sup>2</sup> For these purposes, a "determination" includes "the approval of an employee's travel voucher by both the 'approving official' and the 'certifying official.'" 61 Federal Register at 66837.

OGE wants to emphasize that this exemption plainly includes benefits and reimbursements provided under the Federal Travel Regulation (FTR), promulgated by the General Services Administration. For example, some provisions in the FTR recognize that the Government may realize certain economies by encouraging employees to use personal and family resources in connection with official travel. Thus, in some cases, the Government may find it "advantageous" to reimburse a traveling employee for using a "privately owned vehicle" (POV), which might be owned by the employee or the employee's spouse. 41 C.F.R. part 301-10, subpart D. Similarly, the FTR promotes lodging with family and friends, and traveling employees may receive reimbursement of certain costs incurred by family and friends in connection with the provision of such lodging. 41 C.F.R. § 301-11.12(c). In these and other instances, any disqualifying financial interest, under section 208, arises from the travel benefits and reimbursements provided by the Government to its employees. Therefore, the OGE exemption would permit employees to request such benefits and reimbursements for themselves, notwithstanding the effect on their financial interests or those of other persons (e.g., spouse) whose interests are imputed.

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<sup>2</sup> The example notes, however, that an employee could approve the payment of his or her own travel if "he has been delegated, in advance, authority to make such approvals in accordance with agency policy." § 2640.203(d)(Example 3). As described in the preamble to the final rule, "[f]or purposes of this exemption, an advance delegation of this type will be deemed to be a determination by the employee's agency rather than a determination by the employee." 61 Federal Register at 66837.