



OFFICIAL POLICY			OOE-004-20
Financial Conflicts of Interest Policy			
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Title:	Senior Vice President and Chief Ethics Officer	Review:	July 2024

## 1 POLICY

### 1.1 Purpose

The purpose of this document is to set forth the policy of the Export-Import Bank of the United States (EXIM) with respect to procedures for addressing and resolving personal financial conflicts of interest in official matters.

### 1.2 Background

Pursuant to criminal conflict of interest statute, 18 U.S.C. § 208, EXIM employees, to include members of the Board of Directors, are prohibited from participating **personally and substantially** in an official capacity in any **particular matter** in which, to their knowledge, they or persons whose interests are imputed to them, have a financial interest, if the matter will have a **direct and predictable effect** on that interest. 5 C.F.R. §§ 2635.402 & 2640.103. The interests of the following persons are imputed and therefore serve to disqualify an employee or Board member to the same extent as the employee's or Board member's own interest: (1) the employee's spouse; (2) the employee's minor child; (3) the employee's general partner; (4) an entity for which the employee serves as officer, director, trustee, general partner, or employee; and (5) a person with whom the employee is negotiating for or has an arrangement concerning future employment. 5 C.F.R. § 2640.103(c).

### 1.3 Policy Statement

It is the policy of the EXIM to prevent its employees from allowing personal financial interests to affect official actions and to protect internal decision-making and processes from actual or apparent conflicts of interests.

In accordance with guidance from the Office of Government Ethics (OGE), all employees and members of the Board of Directors shall disqualify themselves from participation in a particular matter in which they, or persons whose interests are imputed to them, have a financial interest, if the particular matter will have a direct and predictable effect on that interest unless authorized by waiver or exemption. 5 C.F.R. § 2635.402(c). Failure to do so could amount to violation of the criminal conflict of interest statute, 18 U.S.C. § 208.

## 2 AUTHORITY

**2.1 Authority** for this policy derives from the criminal conflict of interest statute, Title 18 U.S.C. § 208, Acts Affecting a Personal Financial Interest. Additional authority is provided in 5 C.F.R. Chapter XVI – Office of Government Ethics (OGE), Subchapter B-Government Ethics: Part 2635, section 2635, Standards of Ethical Conduct for Employees of the Executive Branch; Part 2640, section 2640, Interpretation, Exemptions and Waiver Guidance concerning

## Financial Conflicts of Interest

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18 U.S.C. § 208; and Part 2638, Subpart A – Mission and Responsibilities, section 2638.104, Government Ethics Responsibilities of Agency Ethics Officials.

2.2 **Review Cycle** for this policy will be every two (2) years, or as needed.

2.3 **Review History**

Date	Ver	Changes
4/2020	1	Replaces Conflicts of Interest-Policy Change dated December 6, 2011
6/2022	2	Review with minor updates

### 3 DEFINITIONS

- 3.1 **Personally and Substantially:** For the purpose of this policy, this term has the same meaning given under 5 C.F.R. § 2635.402(b)(4). To participate personally means to participate directly in a matter, which includes the direct and active supervision of a subordinate. To participate substantially means that the employee's involvement is of significance in a matter.
- 3.2 **Particular Matter:** For the purpose of this policy, this term has the same meaning given under 5 C.F.R. § 2635.402(b)(3). A particular matter encompasses only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons. It does not include the consideration of broad policy options that are directed to large and diverse groups of persons.
- 3.3 **Direct and Predictable Effect:** For the purpose of this policy, this term has the same meaning given under 5 C.F.R. § 2635.402(b)(1). A particular matter has a direct effect if there is a close causal link between any action taken and any expected effect on a financial interest. A predictable effect is a real, as opposed to a speculative possibility of effect on a financial interest.
- 3.4 **Disqualifying Financial Interest:** For purposes of this policy, this term has the same meaning given under 5 C.F.R. § 2640.103(b). The term financial interest means the potential for gain or loss to the employee, or other person whose interests are imputed to him or her, as a result of governmental action on the particular matter.

### 4 SCOPE AND APPLICATION

- 4.1 **This Policy applies** to all EXIM employees, including members of the Board of Directors.
- 4.2 It does not apply to contractors unless specifically designated in work statements or other contract provisions.

### 5 RESPONSIBILITY

- 5.1 **The Office of the Chairman** is responsible for establishing the ethical climate of EXIM and demonstrating the highest standards in dealings on behalf of EXIM.
- 5.2 **The Office of Ethics** is responsible for the oversight and administration of EXIM's ethics program, including implementation of this policy.

- 5.2.1 All reported or approved disqualifications, waivers, recusals, and divestitures will be documented by the Office of Ethics and disclosed on a periodic basis to the Office of the Chairman.
- 5.2.2 Questions regarding real or apparent conflicts, and recusal requirements, will be decided under the applicable OGE guidance by the Designated Agency Ethics Official (DAEO) or the Alternate DAEO. The Office of Ethics will take appropriate steps to enforce provisions of applicable statutes, including seeking the assistance of the Office of Inspector General and/or the Department of Justice when necessary.
- 5.3 **All EXIM employees and supervisors** are responsible for adhering to the procedures outlined in this policy. It is highly recommended that employees consult with the Office of Ethics staff, in advance, should questions arise as to the need to disqualify themselves from particular matters or the application of this policy.
- 5.4 **The Office of the Inspector General** is responsible for investigating alleged violations of this policy.

## 6 PROCEDURES

### 6.1 Disqualifying Financial Interests

- 6.1.1 **Exemptions.** 18 U.S.C. § 208(b)(2) authorizes the Director of OGE to exempt financial interests which are too remote or too inconsequential to affect the integrity of an employee's service to the government. All EXIM employees may participate in any particular matter affecting a disqualifying financial interest if covered by an exemption under 5 C.F.R. § 2640, Subpart B (e.g., interests in diversified mutual funds and *de minimis* amounts for interests in securities).
- 6.1.2 **Waivers.** 18 U.S.C. § 208(b)(1) authorizes EXIM to determine in individual cases that a disqualifying financial interest in a particular matter is not so substantial as to be deemed likely to affect the integrity of the employee's action notwithstanding the conflicting financial interest. Approved waivers must be in writing and issued prior taking any action in the matter.
  - 6.1.2.1. Employees may request a waiver, orally or in writing, from the Office of Ethics. The request should provide a full description of the financial interest, the particular matter which applies, the employee's role in the matter, and any limitations on the employee's ability to act in the matter.
  - 6.1.2.2. The DAEO will determine if the disqualifying financial interest is not so substantial to be deemed likely to affect the integrity of the employee's action. Factors to be considered are provided in OGE regulation and include but are not limited to:
    - 6.1.2.2.1. The type of interest (e.g., stock, bonds, other securities, job offer);

- 6.1.2.2.2. The identity of person whose financial interest is involved (e.g. self, spouse, company);
  - 6.1.2.2.3. The value of the financial interest and its value in relationship to the employee's assets;
  - 6.1.2.2.4. The nature, sensitivity, and importance of the employee's role in the matter; and
  - 6.1.2.2.5. EXIM's need for the employee's service in the particular matter.
- 6.1.3 **Recusal.** Unless covered by an exemption or approved waiver, employees must recuse themselves from participating personally and substantially in a particular matter that will have a direct and predictable effect on their financial interests or those imputed to them. Recusal is accomplished by not participating personally and substantially in the particular matter. This does not require an employee to leave a room where discussions are taking place on a particular matter in which he/she has a financial interest, *if that employee is not otherwise participating personally and substantially in the discussion*. Nevertheless, it may be appropriate in order to avoid an appearance of impropriety or otherwise to mitigate the risk of a violation that an employee not attend a meeting even though he/she is not participating in the meeting.
- 6.1.3.1. For instance, if there is reason to believe that an employee having a disqualifying financial interest may participate substantially at a later date, he/she may be advised not to attend and should seek guidance.
  - 6.1.3.2. Additionally, an employee should consider the size of his/her holding in the financial instrument causing the conflict relative to the size of his/her investment portfolio in considering whether he/she should abstain from attending a meeting. A more substantial holding may suggest not attending, notwithstanding the fact that he/she is not planning to participate in the meeting.
- 6.1.4 **Notification.** Once an employee becomes aware of a disqualifying financial interest, he/she must notify his/her supervisor or other individual responsible for the particular matter at issue. Employees who are responsible for their own assignments should take appropriate steps to ensure they do not participate in the matter. Employees must notify OOE in writing if he/she is recused from a matter. Notification must be sent to [ethicsadvice@exim.gov](mailto:ethicsadvice@exim.gov). No specific format is required. If the conflict has arisen due to negotiation or arrangement concerning future employment, an employee need not notify his/her supervisor but must notify OOE.
- 6.1.5 **Divestiture.** Upon sale or divestiture of a financial interest that causes a disqualification from participation in a particular

### **Financial Conflicts of Interest**

matter, an employee is no longer prohibited from acting in the matter.

**6.1.5.1. Voluntary Divestiture.** An employee may voluntarily sell or otherwise divest the financial interest that causes the disqualification.

**6.1.5.2. Directed Divestiture.** An employee may be required to sell or otherwise divest of the disqualifying financial interest if the continued holding of that interest is prohibited by statute or if the DAEO determines that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of EXIM's mission under 5 C.F.R. 2635.403(b). Employees who are directed to divest a financial interest may be eligible to defer the tax consequences of divestiture under 5 C.F.R. Part 2634.

**6.1.6 Referrals to Department of Justice.** When OOE, OIG, or other authorized agency official refers a potential violation of conflict-of-interest law to the Department of Justice, authorized under 28 U.S.C. § 535, the reporting office will also notify OGE, using OGE Form 202, unless such notification would be prohibited by law.

**6.1.7** It is highly recommended that employees consult with the Office of Ethics staff, in advance, should questions arise as to the need to disqualify themselves from particular matters or the application of this policy.