



May 1, 2020
LA-20-03

LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III
Director

SUBJECT: Conflict of Interest Analysis for Stocks under 18 U.S.C. § 208

Under 18 U.S.C. § 208 (“Section 208”), executive branch employees are prohibited from participating personally and substantially in any particular matter that they know would have a direct and predictable effect on their own financial interest or financial interests imputed to them. The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to remind agency ethics officials of the appropriate Section 208 analysis for stock interests.

Stock constitutes ownership rights in a company; as such, OGE has consistently treated financial interests of the company and the financial interests of the shareholders as one and the same.¹ Under Section 208, therefore, an employee may not participate in any particular matter that would have a direct and predictable effect on the financial interests of a company in which the employee (or any imputed person) owns stock, not merely those particular matters that would affect the stock price.²

Employees who own stock in a company should be counseled that they may not participate in a particular matter affecting the company even if there is not a probable effect on the company’s stock price. As explained in the preamble to the proposed rule implementing Section 208, because a stockholder has an ownership interest in the entity itself, “Government matters that affect the financial interest of the entity have a concomitant effect on the financial interest of the person who owns stock in the entity.”³ Therefore, for Section 208 purposes, “the

¹ See, e.g., U.S. OFFICE OF GOV’T ETHICS, CONFLICT OF INTEREST CONSIDERATIONS: ASSETS 13-14 (2018), [https://www.oge.gov/web/OGE.nsf/0/E4B0AAE5BC3A3FDF852582B40061FDA6/\\$FILE/Assets.pdf](https://www.oge.gov/web/OGE.nsf/0/E4B0AAE5BC3A3FDF852582B40061FDA6/$FILE/Assets.pdf); OGE DAEOgram DO-07-006, Waivers Under 18 U.S.C. § 208, at 15 (Feb. 23, 2007); U.S. OFFICE OF GOV’T ETHICS, PUBLIC FINANCIAL DISCLOSURE GUIDE: A REVIEWER’S REFERENCE 8-13 (2004).

² This analysis is longstanding, and has been consistently and explicitly stated by OGE. See *supra* note 1. This analysis also is evident in the examples in 5 C.F.R. part 2640, the implementing regulation for Section 208. See, e.g., 5 C.F.R. § 2640.202 exs. (demonstrating that the relevant analysis for stock interests under Section 208 is the potential impact on the company’s financial interests).

³ Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest), 60 Fed. Reg. 47,208, 47,216 (Sept. 11, 1995).



effect of the matter on the entity need not be reflected in a change in the price of the entity's stock."⁴ The relevant consideration for analyzing a potential conflict of interest under Section 208 is *whether the particular matter would have a direct and predictable effect on the financial interest of the company whose stock the employee owns.*⁵

If you have questions about this guidance, please contact your OGE Desk Officer.

⁴ *Id.* ("Section 208 is implicated if the matter affects the entity's financial interest in any measurable way, such as when a contract for computer maintenance services is awarded to a large corporation that develops, manufactures and maintains computers. Even if the contract amount is not significant enough to result in an increase in the value of the company's stock, the mere award of the contract has affected the company's finances, and an employee who owns stock in the company has a disqualifying financial interest in the award of the contract to the company.").

⁵ Of course, the potential effect (or lack thereof) of the particular matter on the stock value may be a relevant consideration for other purposes; specifically, such an effect could be relevant when considering whether a Section 208(b)(1) waiver would be appropriate in a given situation. *See* DO-07-006 (suggesting various factors to be considered in a waiver for stock interests, including the potential effect of the particular matter on the value of the stock).