



August 31, 1995
DO-95-032

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Stephen D. Potts, Director

SUBJECT: Exemption from 18 U.S.C. 208 for Interests Arising from Federal Government Employment or from Social Security or Veterans' Benefits

The Office of Government Ethics (OGE) published an interim rule, Certain Miscellaneous Exemptions Under 18 U.S.C. § 208(b)(2) (Acts Affecting a Personal Financial Interest), in Part IX of the Federal Register for August 28, 1995. See 60 Federal Register 44706 (August 28, 1995). This interim rule establishes an exemption under 18 U.S.C. § 208(b)(2) for financial interests that arise from employment in the executive branch of the Federal Government. With certain exceptions, the regulation specifically exempts an employee's interest in his Government salary and benefits, and his interest in Social Security and veterans' benefits. It also exempts the disqualifying financial interests that arise from the Federal Government employment interests of an employee's spouse, minor child, general partner, or anyone with whom he is negotiating or has an arrangement for prospective employment. The 60-day period for submission of comments on the interim rule will end on October 27, 1995.

As the Preamble to the interim rule indicates, the question of whether an executive branch employee has a disqualifying financial interest in his Government salary and benefits has never been definitively resolved. Uncertainty in this area has created problems for agencies engaged in downsizing and privatization activities that would result in the elimination of employee positions. Because downsizing and privatization plans typically would be developed and implemented by agency employees whose positions would be affected, section 208 could be a significant impediment to executing these plans. To resolve this problem, and after consultation with the Department of Justice, OGE has decided to treat an employee's interest in Government salary and benefits as disqualifying under section 208, but to exempt most such interests.¹

The provision contained in the interim rule will be recodified as part of the more comprehensive section 208 waiver regulation that is expected to be published as a proposed rule shortly. That regulation will contain a listing of miscellaneous exemptions under section 208(b)(2) to which this exemption will be added.

¹ This determination may differ from guidance OGE has issued in the past concerning the applicability of section 208. In particular, an article in the most recent Government Ethics

Newsgram published by OGE states that "[p]articipation in particular matters that affect only an employee's Federal 'salary' is not barred under section 208 because salary is not a disqualifying financial interest within the meaning of section 208." Privatization Issues Affect Federal Employees, [1995] 12 Government Ethics Newsgram 1, 3n.1. The endnote in that article was written prior to OGE's decision to reconsider the question of whether Federal salary and benefits constitute a disqualifying financial interest.