

§ 5501.104 Prohibited financial interests applicable to employees of the Food and Drug Administration.

(a) *General prohibition.* Except as permitted by paragraph (b) of this section, no employee or spouse or minor child of an employee, other than a special Government employee or the spouse or minor child of a special Government employee, of the Food and Drug Administration shall have a financial interest in a significantly regulated organization.

(b) *Exceptions.* Notwithstanding the prohibition in paragraph (a) of this section:

(1) An employee or spouse or minor child of an employee may have a financial interest, such as a pension or other employee benefit, arising from employment with a significantly regulated organization.

NOTE TO PARAGRAPH (b)(1): FDA employees who file public or confidential financial disclosure reports pursuant to 5 CFR part 2634, as opposed to spouses and minor children of such employees, are generally prohibited under § 5501.106(c)(3) from engaging in current employment with a significantly regulated organization.

(2) An employee who is not required to file a public or confidential financial disclosure report pursuant to 5 CFR part 2634, or the spouse or minor child of such employee, may hold a financial interest in a significantly regulated organization if:

(i) The total cost or value, measured at the time of acquisition, of the combined interests of the employee and the employee's spouse and minor children in the regulated organization is equal to or less than the *de minimis* exemption limit for matters involving parties established by 5 CFR 2640.202(a) or \$15,000, whichever is greater (the phrase "time of acquisition" shall mean the date on which the employee actually acquired the financial interest—or on which the financial interest became imputed to the employee under 18 U.S.C. 208—whether by purchase, gift, bequest, marriage, or otherwise, except that with respect to a financial interest that was acquired prior to the employee's entrance on duty as an employee of the Food and Drug Administration, the "time of acquisition" shall

be deemed to be the date on which the employee entered on duty);

(ii) The holding, if it represents an equity interest, constitutes less than 1 percent of the total outstanding equity of the organization; and

(iii) The total holdings in significantly regulated organizations account for less than 50 percent of the total value of the combined investment portfolios of the employee and the employee's spouse and minor children.

(3) An employee or spouse or minor child of an employee may have an interest in a significantly regulated organization that constitutes any interest in a publicly traded or publicly available investment fund (e.g., a mutual fund), or a widely held pension or similar fund, which, in the literature it distributes to prospective and current investors or participants, does not indicate the objective or practice of concentrating its investments in significantly regulated organizations, if the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(4) In cases involving exceptional circumstances, the Commissioner or the Commissioner's designee may grant a written exception to permit an employee, or the spouse or minor child of an employee, to hold a financial interest in a significantly regulated organization based upon a determination that the application of the prohibition in paragraph (a) of this section is not necessary to ensure public confidence in the impartiality or objectivity with which HHS programs are administered or to avoid a violation of part 2635 of this title.

NOTE TO PARAGRAPH (b): With respect to any excepted financial interest, employees are reminded of their obligations under 5 CFR part 2635, and specifically their obligation under subpart D of part 5501 to disqualify themselves from participating in any particular matter in which they, their spouses or minor children have a financial interest arising from publicly traded securities that exceeds the *de minimis* thresholds specified in the regulatory exemption at 5 CFR 2640.202 or from non-publicly traded securities that are not covered by the regulatory exemption. Furthermore, the agency may prohibit or restrict an individual employee from acquiring or holding any financial interest or a class of financial interests based on the agency's determination that

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the interest creates a substantial conflict with the employee's duties, within the meaning of 5 CFR 2635.403.

(c) *Reporting and divestiture.* For purposes of determining the divestiture period specified in 5 CFR 2635.403(d), as applied to financial interests prohibited under paragraph (a) of this section, the "date divestiture is first directed" means the date on which the new entrant public or confidential financial disclosure report required by part 2634 of this title or any report required by § 5502.106(c) of this chapter is due.

[61 FR 39763, July 30, 1996, as amended at 70 FR 5558, Feb. 3, 2005]

§ 5501.105 Exemption for otherwise disqualifying financial interests derived from Indian or Alaska Native birthrights.

(a) Under 18 U.S.C. 208(b)(4), an employee who otherwise would be disqualified may participate in a particular matter where the otherwise disqualifying financial interest that would be affected results solely from the interest of the employee, or the employee's spouse or minor child, in birthrights:

(1) In an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(2) In an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States; or

(3) In an Indian claims fund held in trust or administered by the United States.

(b) The exemption described in paragraph (a) of this section applies only if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.

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§ 5501.106 Outside employment and other outside activities.

(a) *Applicability.* This section does not apply to special Government employees.

(b) *Definitions.* For purposes of this section:

(1) *Compensation* has the meaning set forth in 5 CFR 2635.807(a)(2)(iii).

(2) *Consultative services* means the provision of personal services by an employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or other similar facility.

(3) *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves the skills of a profession as defined in 5 CFR 2636.305(b)(1).

(c) *Prohibited outside employment and activities*—(1) *Prohibited assistance in the preparation of grant applications or contract proposals.* An employee shall not provide consultative or professional services, for compensation, to or on behalf of any other person to prepare, or assist in the preparation of, any grant application, contract proposal, program report, or other document intended for submission to HHS.

(2) *Prohibited employment in HHS-funded activities.* An employee shall not, for compensation, engage in employment, as defined in 5 CFR 2635.603(a), with respect to a particular activity funded by an HHS grant, contract, cooperative agreement, cooperative research and development agreement, or other funding mechanism authorized by statute.

(3) *Prohibited outside activities applicable to employees of the Food and Drug Administration.* An employee of the Food and Drug Administration who is required to file a public or confidential financial disclosure report pursuant to 5 CFR part 2634 shall not:

(i) Engage in any self-employed business activity for which the sale or promotion of FDA-regulated products is expected to constitute ten percent or more of annual gross sales or revenues; or