

CHAPTER LXXXIV—BUREAU OF CONSUMER FINANCIAL PROTECTION

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PART 9401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

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AUTHORITY: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159 (April 12, 1989); 3 CFR, 1898 Comp., p.215, as modified by E.O. 12731, 55 FR 42547 (October 17, 1990); 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502 and 2635.803.

SOURCE: 77 FR 25019, Apr. 27, 2012, unless otherwise noted.

§ 9401.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635 (OGE Standards) and prescribe the standards of ethical conduct applicable to employees of the Bureau of Consumer Financial Protection (Bureau).

(b) *Other regulations, guidance and procedures.* Employees are required to comply with the OGE Standards and the CFPB Ethics Regulations, as well as with guidance and procedures issued by the Bureau pursuant to 5 CFR 2635.105(c). Employees also are subject

to all other government-wide regulations concerning executive branch ethics including without limitation, financial disclosure regulations contained in 5 CFR part 2634, regulations concerning financial interests contained in 5 CFR part 2640, post-employment conflict of interest restrictions contained in 5 CFR part 2641, outside earned income limitations and employment and affiliation restrictions applicable to certain noncareer employees contained in 5 CFR part 2636, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735.

§ 9401.102 Definitions.

For purposes of this part:

CFPB Ethics Regulations means the supplemental ethics standards set forth in this part.

Control means the possession, direct or indirect, of the power or authority to manage, direct, or oversee.

Credit has the meaning set forth in 12 U.S.C. 5481(7) and as further defined in regulations promulgated by the Bureau to implement that statute. A person may have credit without any outstanding balance owed.

Dependent child has the meaning set forth in 5 CFR 2634.105(d). It includes an employee's son, daughter, stepson, or stepdaughter if:

(1) Unmarried, under the age of 21, and living in the employee's household; or

(2) Claimed as a "dependent" on the employee's income tax return.

Designated Agency Ethics Official (DAEO) means the official within the Bureau that the Director has appointed to coordinate and manage the ethics program at the Bureau, under 5 CFR 2638.104(a). For purposes of this part, the term "DAEO" also includes the Alternate DAEO appointed under 5 CFR 2638.104(d), and a designee of the DAEO or Alternate DAEO unless a particular provision says an authority is reserved to the DAEO.

Director means the Director of the Bureau.

Domestic partner means a person with whom a Bureau employee:

(1) Has a close and committed personal relationship and both parties are

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at least 18 years of age, are each other's sole domestic partner and intend to remain in the relationship indefinitely, and neither is married to, in a civil union with, or partnered with any other spouse or domestic partner;

(2) Is not related by blood in a manner that would bar marriage under the laws of the jurisdiction in which the employee resides;

(3) Is in a financially interdependent relationship in which both agree to be responsible for each other's common welfare and share in financial obligations; and

(4) Has shared for at least six months the same regular and permanent residence in a committed relationship and both parties intend to do so indefinitely, or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle.

Employee means an employee of the Bureau, other than a special Government employee.

Entity supervised by the Bureau means a person that is subject to the Bureau's supervision authority pursuant to 12 U.S.C. 5514(a)(1) or 5515(a) and in regulations promulgated thereunder, as identified on a list to be maintained by the Bureau.

Indebted or indebtedness means a legal obligation under which an individual or borrower received money or assets on credit, and currently owes payment.

Indebted to an entity means an obligation to make payments to an entity as a result of an indebtedness, whether originally made with that entity or with another entity. This includes without limitation, a servicer to whom payments are made.

OGE Standards mean the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

Participate means personal and substantial participation and has the meaning set forth in 5 CFR 2635.402(b)(4). An employee participates when, for example, the employee makes a decision, gives approval or disapproval, renders advice, provides a recommendation, conducts an investigation or examination, or takes an official action in a particular matter, and such involvement is of significance

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to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

Particular matter has the meaning set forth in 5 CFR 2635.402(b)(3). The term includes a matter that involves deliberation, decision, or action and is focused upon the interests of specific persons or a discrete and identifiable class of persons. It may include governmental action such as legislation, regulations, or policy-making that is narrowly focused on the interests of a discrete and identifiable class of persons.

Particular matter involving specific parties has the meaning set forth in 5 CFR 2641.201(h). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties. The term includes without limitation, a contract, audit, enforcement action, examination, investigation, litigation proceeding, or request for a ruling.

Person has the same meaning set forth in 5 CFR 2635.102(k). It includes without limitation, an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution.

Practice of law means the provision of legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

(1) Preparing any legal document, including any deeds, mortgages, assignments, discharges, leases, trust instruments, or any other instruments intended to affect interests in real or personal property, wills, codicils, instruments intended to affect the disposition of property of decedents' estates, other instruments intended to affect or secure legal rights, and contracts except routine agreements incidental to a regular course of business;

(2) Preparing or expressing legal opinions;

(3) Appearing or acting as an attorney in any tribunal;

(4) Preparing any claims, demands or pleadings of any kind, or any written

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documents containing legal argument or interpretation of law, for filing in any court, administrative agency, or other tribunal;

(5) Providing advice or counsel as to how any of the activities described in paragraphs (1) through (4) of this definition might be done, or whether they were done, in accordance with applicable law; or

(6) Furnishing an attorney or attorneys, or other persons, to render the services described in paragraphs (1) through (5) of this definition.

Security means an interest in debt or equity instruments. The term includes without limitation, secured and unsecured bonds, debentures, notes, securitized assets, commercial papers, and preferred and common stock. The term encompasses both current and contingent ownership interests; a beneficial or legal interest derived from a trust; a right to acquire or dispose of any long or short position in debt or equity interests; interests convertible into debt or equity interests; and options, rights, warrants, puts, calls, straddles, derivatives, and other similar interests. It does not include deposits; credit union shares; a future interest created by someone other than the employee or the employee's spouse or dependent child; or a right as a beneficiary of an estate that has not been settled.

Special Government employee has the meaning set forth in 5 CFR 2635.102(1).

Spouse means an employee's husband or wife by lawful marriage, but does not include an employee's spouse if:

(1) The employee and the employee's spouse are separated;

(2) The employee and the employee's spouse live apart;

(3) There is an intention to end the marriage or separate permanently; and

(4) The employee has no control over the separated spouse's securities.

Vested legal or beneficial interest means a present right or title to property, which carries with it an existing right of alienation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future. This includes a future interest when one has a right, defeasible or indefeasible, to immediate possession

or enjoyment of the property, upon the ceasing of another's interest.

[82 FR 35883, Aug. 2, 2017]

§ 9401.103 Prior approval for outside employment.

(a) *General requirement.* Before engaging in outside employment, an employee must obtain written approval from the employee's supervisor and the concurrence of the DAEO, except to the extent that the Bureau has issued an instruction or internal directive pursuant to paragraph (e) of this section exempting an activity or class of activities from this requirement.

(b) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment, business relationship, or activity involving the provision of personal services by the employee, regardless of whether the services are compensated. It includes without limitation, personal services as an officer, director, employee, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, speaker, or writer.

NOTE TO § 9401.103(b): Both 18 U.S.C. 203(d) and 205(e) require special approval for certain representational activities in claims against and other matters affecting the interests of the Government. Thus, an employee who wishes to act as agent or attorney for or otherwise represent his or her parents, spouse, child, or a person for whom or for an estate for which he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters as described in those statutes shall obtain the approval of the Government official responsible for the employee's appointment in addition to the regulatory approval required in this section.

(c) *Standard for approval.* Approval will be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute, the OGE Standards, or the CFPB Ethics Regulations in this part.

(d) *Renewed request for approval.* Upon a significant change in either the nature, scope, or duties of the employee's outside employment or in the employee's official Bureau position, the employee shall submit a new request for approval.

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(e) *DAEO responsibilities.* The DAEO may issue instructions or internal directives governing the submission of requests for approval of outside employment and designating appropriate officials to act on such requests. The instructions or internal directives may exempt categories of employment from the prior approval requirement of this section based on a determination that employment within those categories generally would be approved and is not likely to involve prohibited conduct or create an appearance of lack of impartiality.

§ 9401.104 Additional rules concerning outside employment for covered employees.

(a) *Prohibited outside employment with an entity supervised by the Bureau.* A covered employee shall not engage in compensated outside employment for an entity supervised by the Bureau or for an officer, director, or employee of such entity. For purposes of this section, “employment” has the same meaning as set forth in § 9401.103(b).

(b) *Use of professional licenses related to real estate.* A covered employee who holds a license related to real estate, mortgage brokerage, property appraisals, or real property insurance is prohibited from using such license for the production of income. The DAEO, in consultation with senior management in the Division in which the employee works, may grant a limited waiver to this prohibition based on a written finding that the specific transaction which requires use of the license will not create an appearance of loss of impartiality or use of public office for private gain.

(c) *Definition of covered employee.* For purposes of this section, “covered employee” means:

- (1) An employee in the Division of Supervision, Enforcement, and Fair Lending;
- (2) An employee serving in an attorney position;
- (3) An employee in the Office of Research, serving as a section chief at Bureau pay band 71 or above or as a senior economist in the Compliance Analytics and Policy Section;

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(4) An employee serving in the Office of Consumer Response in an investigations position;

(5) An employee required to file a Public Financial Disclosure Report (OGE Form 278e) under 5 CFR part 2634; or

(6) Any other Bureau employee specified in a Bureau order or directive whose duties and responsibilities, as determined by the DAEO, require application of the prohibition on outside employment contained in this section to ensure public confidence that the Bureau’s programs are conducted impartially and objectively.

[82 FR 35885, Aug. 2, 2017]

§ 9401.105 Additional rules concerning outside employment for Bureau attorneys.

(a) *Prohibited outside practice of law.* In addition to the prior approval requirements under § 9401.103 and the outside employment restrictions under § 9401.104, an employee serving in an attorney position shall not engage in the practice of law outside the employee’s official Bureau duties that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Bureau; or

(2) Interpret any statute, regulation, or rule administered or issued by the Bureau.

(b) *Exemption for self representation.* Nothing in this section prevents a Bureau attorney from acting as an agent or attorney for or otherwise representing himself or herself in the outside practice of law, except:

(1) In those matters in which the attorney has participated personally and substantially as a Government employee; or

(2) In those matters which are the subject of the attorney’s official responsibility.

[77 FR 25019, Apr. 27, 2012, as amended at 82 FR 35885, Aug. 2, 2017]

§ 9401.106 Prohibited financial interests.

(a) *Prohibited interests.* Except as permitted by this section, an employee or an employee’s spouse or minor child shall not own or control a security in:

(1) An entity supervised by the Bureau; or

(2) A collective investment fund that has a stated policy of concentrating its investments in the financial services or banking industry. A collective investment fund includes, without limitation, mutual funds, unit investment trusts (UITs), exchange traded funds (ETFs), real estate investment trusts (REITs), and limited partnerships.

(b) *Exceptions.* Interests prohibited in paragraph (a) of this section do not include the ownership or control of a security in:

(1) *Collective investment funds.* A publicly traded or publicly available collective investment fund if:

(i) The fund does not have a stated policy of concentrating its investments in the financial services or banking industry; and

(ii) Neither the employee nor the employee's spouse or minor child exercises or has the ability to exercise control over or selection of the financial interests held by the fund.

(2) *Diversified employee benefit plans.* A pension or other retirement fund, trust, or plan established or maintained by an employer or an employee organization, or both, to provide its participants with medical, disability, death, unemployment, or vacation benefits, training programs, day care centers, scholarship funds, prepaid legal services, deferred income, or retirement income (employee plan), provided:

(i) The employee plan does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States;

(ii) The investments of the employee plan are administered by an independent trustee;

(iii) The employee plan's trustee has a written policy of varying the plan investments;

(iv) Neither the employee nor the employee's spouse or minor child participates in the selection of the employee plan's investments or designates specific plan investments (except for directing that contributions be divided among several different categories of investments, such as stocks, bonds, or

mutual funds, which are available to plan participants); and

(v) The employee plan is not a profit-sharing or stock bonus plan.

(3) *Federal retirement and thrift savings plans.* Funds administered by the Thrift Plan for Employees of the Federal Reserve System, the Retirement Plan for Employees of the Federal Reserve System, the Thrift Savings Plan, or a Federal government agency.

(4) *State pension plans.* A pension plan established or maintained by a State government or any political subdivision of a State government for its employees.

(c) *Reporting and divestiture of prohibited interests—*(1) *New employees.* Within 30 calendar days from the start of employment with the Bureau, an employee must notify the DAEO in writing of a financial interest prohibited under paragraph (a) of this section that the employee or the employee's spouse or minor child acquired prior to the start of the employee's employment with the Bureau. The employee or the employee's spouse or minor child shall divest prohibited securities within 90 days after the start of the employee's employment at the Bureau.

(2) *Newly prohibited interest.* Within 30 days after the Bureau updates and internally publishes a new list of entities supervised by the Bureau, an employee who owns or controls, or whose spouse or minor child owns or controls, a security in an entity newly added to that list must notify the DAEO in writing. The employee or the employee's spouse or minor child shall divest prohibited securities within 90 days after internal publication of the new list.

(3) *Interests acquired without specific intent.* If an employee or an employee's spouse or minor child acquires a financial interest prohibited under paragraph (a) of this section as a result of marriage, inheritance, or otherwise without specific intent to acquire, the employee must notify the DAEO in writing within 30 days of the acquisition. The employee or the employee's spouse or minor child shall divest prohibited securities within 90 days of the acquisition.

(d) *Disqualification and divestiture—*(1) *Securities in entities supervised by the*

Bureau. If an employee or an employee's spouse or minor child owns or controls a security in an entity that is prohibited under paragraph (a)(1) of this section, the employee shall immediately disqualify himself or herself from participating in all particular matters affecting that entity, unless and until the security is divested or the employee is granted a waiver pursuant to paragraph (e) of this section and the waiver includes an authorization allowing the employee to participate in such matters.

(2) *Securities in collective investment funds.* If an employee or an employee's spouse or minor child owns or controls a security in a collective investment fund that is prohibited under paragraph (a)(2) of this section, the employee shall immediately disqualify himself or herself from participating in all particular matters affecting one or more holdings of the collective investment fund if the affected holding is invested in the financial services or banking industry, unless and until the collective investment fund is divested or the employee is granted a waiver pursuant to paragraph (e) of this section and the waiver includes an authorization allowing the employee to participate in such matters.

(e) *Waivers.* Upon request by the employee, the DAEO in the DAEO's sole discretion has the authority to grant an individual waiver under this paragraph. The DAEO's authority to grant an individual waiver under this paragraph may not be delegated to any person except the Alternate DAEO. The DAEO, in consultation with senior management in the Division in which the employee works, may issue a written waiver permitting the employee or the employee's spouse or minor child to own or control a particular security that otherwise would be prohibited by this section, after considering all relevant factors. Relevant factors include, without limitation, whether:

(1) Mitigating circumstances exist due to the way the employee or the employee's spouse or minor child acquired ownership or control of the security. Mitigating circumstances may include without limitation:

(i) The employee or the employee's spouse or minor child acquired the se-

curity through inheritance, merger, acquisition, or other change in corporate structure, or otherwise without specific intent on the part of the employee or the employee's spouse or minor child; or

(ii) The employee's spouse received the security as part of a compensation package in connection with employment or prior to marriage to the employee;

(2) The employee makes a prompt and complete written disclosure of the security to the DAEO;

(3) The disqualification of the employee from participating in particular matters pursuant to paragraph (d) of this section, as specified in the written waiver, would not unduly interfere with the full performance of the employee's duties; and

(4) The granting of the waiver would not unduly undermine the public's confidence in the impartiality and objectivity with which:

(i) The employee performs the employee's official Bureau duties; and

(ii) The Division in which the employee works executes its programs and functions.

(f) *Covered third party entities.* Immediately after becoming aware that a covered third party entity owns or controls a security that an employee would be prohibited from owning or controlling under paragraph (a) of this section, the employee shall report the interest in writing to the DAEO. The DAEO may require the employee to terminate the relationship with the covered third party entity, disqualify himself or herself from certain particular matters, or take other action as necessary to avoid a statutory violation, a violation of the OGE Standards, or the CFPB Ethics Regulations, including an appearance of misuse of position or loss of impartiality. For purposes of this paragraph, "covered third party entity" includes:

(1) A partnership in which the employee or the employee's spouse or minor child is a general partner;

(2) A partnership or closely held corporation in which the employee or the employee's spouse or minor child individually or jointly holds more than a 10 percent equity interest;

(3) A trust in which the employee or the employee's spouse or minor child has a vested legal or beneficial interest;

(4) An investment club or similar informal investment arrangement between the employee or the employee's spouse or minor child, and others;

(5) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse or minor child has an interest; or

(6) An entity in which the employee or the employee's spouse or minor child individually or jointly holds more than a 25 percent equity interest.

[82 FR 35885, Aug. 2, 2017]

§ 9401.107 Prohibition on acceptance of credit or indebtedness on preferential terms from an entity supervised by the Bureau.

An employee or the employee's spouse or minor child may not accept credit from, become indebted to, or enter into a financial relationship with an entity supervised by the Bureau, unless the credit, indebtedness, or other financial relationship:

(a) Is offered on terms and conditions no more favorable than those offered to the general public; and

(b) Is not otherwise prohibited by law or inconsistent with the OGE Standards or the CFPB Ethics Regulations.

[82 FR 35886, Aug. 2, 2017]

§ 9401.108 Restrictions on seeking, obtaining, or renegotiating credit or indebtedness from an entity that is a party or represents a party to a matter to which an employee is assigned or may be assigned.

(a) *General rules regarding seeking, obtaining, or renegotiating credit or indebtedness*—(1) *Prohibition*. While an employee is assigned to participate in a particular matter involving specific parties, the employee or the employee's spouse or minor child shall not seek, obtain, or renegotiate credit or indebtedness with an entity that is a party or represents a party to the matter. This prohibition also applies to a particular matter involving specific parties pending at the Bureau in which the employee is not currently participating but of which the employee is

aware and believes it is likely that the employee will participate.

(2) *Cooling off period*. The prohibition in paragraph (a)(1) of this section continues for two years after the employee's participation in the particular matter has ended.

(b) *Rules regarding credit or indebtedness secured by principal residence*. Notwithstanding paragraph (a) of this section, an employee or an employee's spouse or minor child may seek, obtain, or renegotiate credit or indebtedness secured by residential real property with an entity, subject to the following conditions:

(1) The residential real property is or will be the principal residence of the employee or the employee's spouse or minor child;

(2) A minimum of three months have passed since the end of the employee's participation in each particular matter involving specific parties in which that entity was a party or represented a party;

(3) The employee is disqualified from participating in particular matters involving specific parties in which that entity is a party or represents a party while the employee or the employee's spouse or minor child is seeking, obtaining, or renegotiating the credit or indebtedness;

(4) The employee or the employee's spouse or minor child seeking, obtaining, or negotiating the credit or indebtedness must satisfy all financial requirements generally applicable to all applicants for the same type of credit or indebtedness for residential real property; and

(5) The credit or indebtedness is obtained on terms and conditions no more favorable than those offered to the general public.

(c) *Specific rules for employee's spouse and minor child*. The prohibitions in paragraphs (a) and (b) of this section do not apply when the employee's spouse or minor child is seeking, obtaining, or renegotiating credit or indebtedness and:

(1) The credit or indebtedness is supported only by the income or independent means of the spouse or minor child;

(2) The credit or indebtedness is obtained on terms and conditions no

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more favorable than those offered to the general public; and

(3) The employee does not participate in the negotiating for the credit or indebtedness or serve as co-maker, endorser or guarantor of the credit or indebtedness.

(d) *Disqualification requirement for credit or indebtedness sought by person related to an employee.* An employee shall disqualify himself or herself from participating in a particular matter involving specific parties as soon as the employee learns that any of the following persons are seeking, obtaining, or renegotiating credit or indebtedness with an entity that is a party or represents a party to the matter:

(1) The employee's spouse, domestic partner, or dependent child;

(2) A partnership in which the employee or the employee's spouse, domestic partner, or dependent child is a general partner;

(3) A partnership or closely held corporation in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly owns or controls more than a 10 percent equity interest;

(4) A trust in which the employee or the employee's spouse, domestic partner, or dependent child has a vested legal or beneficial interest;

(5) An investment club or similar informal investment arrangement between the employee or the employee's spouse, domestic partner, or dependent child, and others;

(6) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse, domestic partner, or dependent child has an interest; or

(7) An entity in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly holds more than a 25 percent equity interest.

(e) *Exemptions.* The following forms of credit are exempted from the prohibitions in paragraphs (a) and (b) of this section and the disqualification requirement in paragraph (d) of this section, provided the credit is offered on terms and conditions no more favorable than those offered to the general public:

(1) Revolving consumer credit or charge cards;

(2) Overdraft protection on checking accounts and similar accounts; and

(3) The provision of telephone, cable, gas, electricity, water, or other similar utility services provided on credit (*i.e.*, the service is provided before payment is due such that consumers incur debt as they use the service and receive periodic bills for the services used).

(f) *Waivers.* The DAEO, after consultation with senior management in the Division in which the employee works, may grant a written waiver from the prohibition in paragraphs (a) or (b) of this section or the disqualification requirement in paragraph (d) of this section, based on a determination that participation in matters otherwise prohibited by this section would not be prohibited by law (18 U.S.C. 208) or create an appearance of loss of impartiality or use of public office for private gain, and would not otherwise be inconsistent with the OGE Standards or the CFPB Ethics Regulations.

[82 FR 35886, Aug. 2, 2017]

§ 9401.109 Disqualification of employees from particular matters involving existing creditors or lenders.

(a) *Disqualification required.* Absent an authorization pursuant to paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties if the employee is aware that any of the following have credit with or are indebted to an entity that is a party or represents a party to the matter:

(1) The employee;

(2) The employee's spouse, domestic partner, or dependent child;

(3) A partnership in which the employee or the employee's spouse, domestic partner, or dependent child is a general partner;

(4) A partnership or closely held corporation in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly owns or controls more than 10 percent of its equity;

(5) A trust in which the employee or the employee's spouse, domestic partner, or dependent child has a vested legal or beneficial interest;