

## APPENDIX A

This Appendix contains a summary of significant portions of the federal conflicts of financial interest regulations (5 CFR Parts 2635 and 2640), as modified for the Bank's use. It provides additional detail regarding (i) the conflict of interest rule in Section 5.2 of the Code, and (ii) the rule regarding seeking other employment in Section 6 of the Code. A copy of the complete regulations may be obtained from the Legal Department or the Ethics Officer.

### PART I. DISQUALIFYING FINANCIAL INTERESTS

1. **Statutory Prohibition.** An employee is prohibited by federal criminal law [18 U.S.C. § 208(a)] from participating personally and substantially in an official capacity in any particular matter in which, to the employee's knowledge, he or she, or any person whose interests are imputed to the employee under the statute, has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

2. **Definitions.** For purposes of this Part, the following definitions apply:

- (a) *Direct and predictable effect.* A particular matter<sup>1</sup> will have a *direct* effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. However, a particular matter will not have a direct effect on a financial interest if the chain of causation is attenuated or is contingent upon the occurrence of an event that is speculative or that is independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effect on the general economy does not have a direct effect within the meaning of this paragraph.

A particular matter will have a *predictable* effect if there is a real, as opposed to a speculative possibility, that the matter will affect the financial interest. However, it is not necessary that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

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<sup>1</sup> If a particular matter involves a specific party, generally the matter will only have a direct and predictable effect on the financial interest of the employee in or with the party, for example where the employee owns stock in the party. However, there may be some situations in which a particular matter will have a direct and predictable effect on an employee's financial interests in or with a non-party. For example, if the party is a corporation, a particular matter also may have a direct and predictable effect on an employee's financial interest through ownership of stock in an affiliate of the party. Similarly, the award of a contract to a particular company also may have a direct and predictable effect on an employee's financial interest in another company, such as a subcontractor or a competitor.

*Example 1*

An employee with procurement responsibilities has just been asked to serve on the evaluation panel to review proposals for a new Research Library computer search system. DEF Computer Corporation, a closely held company in which the employee and his wife own stock, has submitted a proposal. Because award of the systems contract to DEF or to any other offeror will have a direct and predictable effect on both his and his wife's financial interests, the employee may not participate on the evaluation panel unless he requests and receives a waiver or an exemption applies.

*Example 2*

Upon assignment to the evaluation panel, the employee in the preceding example finds that DEF Computer Corporation has not submitted a proposal. However, LMN Corp., a competitor of DEF, is one of the offerors. The employee is not disqualified from serving on the evaluation panel. Any effect on the employee's financial interests as a result of the decision to award or not award the contract to LMN at most would be indirect and speculative.

- (b) *Financial interest* means the potential for gain or loss to an employee or other person specified in paragraph 2(c) as a result of Bank action on a particular matter. The financial interest might arise from ownership of certain financial instruments or investments such as a stock, bond, mutual fund, or real estate. Additionally, a financial interest might derive from a salary, indebtedness, job offer, or any similar interest that may be affected by the matter.
- (c) *Imputed interests.* For purposes of the federal criminal law and this Part, the financial interests of any of the following persons will disqualify an employee to the same extent as if they were the employee's own interests:
  - (i) the employee's spouse;
  - (ii) the employee's minor child;
  - (iii) the employee's general partner;
  - (iv) an organization or entity in which the employee serves as officer, director, trustee, general partner or employee; and
  - (v) a person with whom the employee is negotiating for or has an arrangement concerning prospective employment. (An employee who is seeking other employment should comply with the standards in Part III of this Appendix regarding "Seeking Other Employment.")

*Example 1*

An employee of the Department of Education serves without compensation on the board of directors of Kinder World, Inc., a nonprofit corporation that engages in good works. Even though her personal financial interests will not be affected, the employee must disqualify herself from participating in the review of a grant application submitted by Kinder World. Award or denial of the grant will affect the

financial interests of Kinder World and its financial interests are imputed to her as a member of its board of directors.

*Example 2*

The spouse of an employee of the Food and Drug Administration is employed by a biomedical research company that is seeking FDA approval for a new product. The employee ordinarily would be asked to participate in the FDA's review and approval process. The employee's spouse is a salaried employee and has no direct ownership interest in the company. Moreover, she does not have an indirect ownership interest such as an interest in a pension plan that holds stock in the company. Her position with the company is such that the granting or withholding of FDA approval will not have a direct and predictable effect on her salary or on her continued employment with the company. Since the FDA approval process will not affect his spouse's financial interests, the employee may participate in that process.<sup>2</sup>

- (d) *Particular matter* means a matter that involves deliberation, decision or action that is focused upon the interests of a specific person, or a discrete and identifiable class of persons. Such a matter is covered by the federal conflict of interest regulations even if it does not involve formal parties, and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of a discrete and identifiable class of persons. However, the term particular matter does not extend to the consideration or adoption of a broad policy option that is directed to the interests of a large and diverse group of persons. The particular matters covered by the federal conflict of interest regulations include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

*Example 1*

An employee's evaluation of proposals received in response to a Request for Proposal is a particular matter. An employee's review of an application filed by a bank holding company also is a particular matter.

*Example 2*

Consideration by the Interstate Commerce Commission of regulations establishing safety standards for trucks on interstate highways involves a particular matter.

- (e) *Personal and substantial*. To participate *personally* means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To

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<sup>2</sup> Note that the Code of Conduct does not apply to FDA employees. If the example had involved a Bank employee, the employee should consult with the Bank's Ethics Officer before participating since the employee's participation in the review and approval process might result in the appearance of a conflict of interest, contrary to Section 5.1 of the Code.

participate *substantially* means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

**3. Disqualification.** Unless the employee is authorized to participate in the particular matter by virtue of a waiver described in paragraph (4) of this Part or because the interest has been divested in accordance with paragraph (5) of this Part, an employee must disqualify himself or herself from participating in a particular matter in which, to the employee's knowledge, he or she, or a person whose interests are imputed to the employee, has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

*A. Notification.* An employee who becomes aware of the need to disqualify himself or herself from participating in a particular matter should notify the person responsible for his or her assignment or the Bank's Ethics Officer. An employee who is responsible for his or her own assignment should take whatever steps are necessary to ensure that he or she does not participate in the matter from which he or she is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he or she is disqualified.

*B. Documentation.* An employee need not file a written disqualification statement unless asked to do so by the Bank's Ethics Officer or a supervisor. However, an employee may elect to create a record of his or her actions by providing written notice to a supervisor or other appropriate officer.

**4. Waiver of disqualification.** An employee who would otherwise be disqualified may be permitted to participate in a particular matter where the otherwise disqualifying financial interest is exempt (see Part II of this Appendix), is the subject of an individual waiver described in this paragraph, or results from certain Indian birthrights as described in 18 U.S.C. § 208(b)(4).

An individual waiver may be requested pursuant to 18 U.S.C. § 208(b)(1). In advance of the employee's participation, the employee must advise the officer responsible for the employee's appointment (or other officer to whom authority to issue such a waiver for the employee has been delegated) about the nature and circumstances of the particular matter and the employee's role in the matter; and make full disclosure to the officer of the nature and extent of the disqualifying financial interest. If the officer determines that the employee's financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Bank may expect from the employee, the officer may issue a written waiver to the employee.

5. **Divestiture of a disqualifying financial interest.** Upon sale or other disposal of the interest that causes his or her disqualification from participation in a particular matter, the employee may participate in the matter.

A. *Voluntary divestiture.* An employee who otherwise would be disqualified from participating in a particular matter may voluntarily sell or otherwise dispose of the interest that causes the disqualification.

B. *Directed divestiture.* An employee may be required to sell or otherwise dispose of the disqualifying financial interest if the continued holding of that interest is prohibited by Section 5 of the Code or substantially interferes with the ability of the employee to perform his or her job.

6. **Official duties that give rise to potential conflicts.** When an employee's duties create a substantial likelihood that the employee may be assigned to a particular matter from which he or she is disqualified, the employee should advise his or her supervisor or the Bank's Ethics Officer of that potential so that a conflicting assignment can be avoided.

## **PART II. EXEMPTIONS PURSUANT TO 18 U.S.C. § 208 (b)(2)**

1. **Definitions.** For purposes of this Part, the following definitions apply.

- (a) *Diversified* means that a fund, trust or 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. In the case of an employee benefit plan, *diversified* means that the plan's trustee has a written policy of varying plan investments.
- (b) *Long-term federal government security* means a bond or note, except for a U.S. Savings bond, with a maturity of more than one year, issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.
- (c) *Municipal security* means direct obligation of, or obligation guaranteed as to principal or interest by, a state (or any of its political subdivisions, or any municipal corporate instrumentality of one or more states), or the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.
- (d) *Mutual fund* means an entity which is registered as a management company under the Investment Company Act of 1940, as amended (15 U.S.C. §§ 80a-1 et seq.). Mutual fund includes open-end and closed-end mutual funds and registered money market funds.
- (e) *Sector mutual fund* means a mutual fund that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single state within the United States.
- (f) *Short-term federal government security* means a bill with a maturity of one year or less issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.

## **2. Exemption for Interest in Mutual Fund, Unit Investment Trust, and Employee Benefit Plan.**

A. *Diversified mutual fund and unit investment trust.* An employee may participate in a particular matter affecting holdings of a diversified mutual fund or a diversified unit investment trust where the disqualifying financial interest in the matter arises because of the ownership of an interest in the fund or trust.

### *Example*

An employee owns shares worth \$60,000 in several mutual funds whose portfolios contain stock in a nationally known computer company. Each fund prospectus describes the fund as a "management company," but does not characterize the fund as having a policy of concentrating its investments in any particular industry, business, single country (other than the U.S.) or bonds of a single state. The employee may participate in a matter affecting the computer company.

B. *Sector mutual fund.* An employee may participate in a particular matter affecting holdings of a sector mutual fund where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund and:

- (1) the affected holding is not invested in the sector in which the fund concentrates; or
- (2) the aggregate market value of interests in any sector fund or funds does not exceed \$50,000.

For purposes of calculating the \$50,000 de minimis amount, an employee must aggregate the market value of all sector mutual funds in which the employee has a disqualifying interest and that concentrate in the same sector and have one or more holdings that may be affected by the particular matter.

### *Example 1*

A Bank employee owns shares in a mutual fund that expressly concentrates its holdings in the stock of utility companies. In addition to holdings in utility companies, the fund contains stock in certain regional banks and bank holding companies whose financial interests would be affected by a matter in which the employee would participate. The employee is not disqualified from participating in the matter because the banks and bank holding companies that would be affected are not part of the sector in which the fund concentrates.

### *Example 2*

An analyst is assigned at the Federal Reserve Board's request to help draft standards for approving loan guarantee applications for the Air Transportation Stabilization Board. The analyst owns \$35,000 worth of shares in XYZ Global Transportation Fund, a sector mutual fund invested primarily in shipping firms and airlines. The analyst may participate in the recommendations. If the analyst's spouse also owns \$40,000 worth of shares in ABC

Specialized Portfolios: Transport, a sector mutual fund that focuses on the same sector, and if both funds contain holdings that may be affected by the particular matter, the analyst may not rely on the \$50,000 *de minimis* exemption.

C. *Employee benefit plan*. An employee may participate in --

(1) A particular matter affecting holdings of an employee benefit plan where the disqualifying financial interest in the matter arises from membership in:

- (a) the Thrift Savings Plan for Federal Employees described in 5 U.S.C. § 8437;
- (b) a pension plan established or maintained by a state government or any political subdivision of a state government for its employees; or
- (c) a diversified employee benefit plan, provided:
  - (i) the investments of the plan are administered by an independent trustee, and the employee, or other person specified in section 208(a), does not participate in the selection of the plan's investments or designate 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
  - (ii) the plan is not a profit-sharing or stock bonus plan.

(2) A particular matter of general applicability, such as rulemaking, affecting the state or local government sponsor of a state or local government pension plan described in paragraph 2(C)(1)(b) where the disqualifying financial interest in the matter arises because of participation in the plan.

### 3. **Exemption for Interest in Securities.**

A. *De minimis exemption for a matter involving parties*. An employee may participate in a particular matter involving specific parties where the disqualifying financial interest arises from ownership by the employee, his or her spouse or minor children of securities issued by one or more entities affected by the matter, if:

- (1) the securities are publicly traded,<sup>3</sup> or are long-term federal government securities or municipal securities; and,
- (2) the aggregate market value of the holdings of the employee, his spouse and minor children in the securities of all entities does not exceed \$15,000.

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<sup>3</sup> Securities issued by Government Sponsored Enterprises, such as Freddie Mac, are not eligible for the exemptions in paragraphs 3(A)-(C) since they are not “publicly traded.”

*Example*

A Bank employee owns \$10,000 worth of publicly traded stock in a major office equipment manufacturer, EQP Corp. The employee may evaluate the proposals submitted by EQP Corp. and others in response to an RFP. If the employee's spouse also owns \$6,000 worth of EQP Corp. stock, the employee may not evaluate the proposals unless the employee requests and is granted a waiver.

*B. De minimis exemption for matters affecting nonparties.*<sup>4</sup> An employee may participate in a particular matter involving specific parties in which the disqualifying interest arises from the ownership by the employee, his spouse, or minor children of securities issued by one or more entities that are not parties to the matter but that are affected by the matter if:

- (1) the securities are publicly traded, or are long-term federal government or municipal securities; and
- (2) the aggregate market value of the holdings of the employee, his spouse and minor children in the securities of all affected entities (including securities exempted under subparagraph (A) of this section) does not exceed \$25,000.

*C. De minimis exemption for a matter of general applicability.* An employee may participate in a particular matter of general applicability, such as rulemaking, where the disqualifying financial interest arises from ownership by the employee, his or her spouse or minor children of securities issued by one or more entities affected by the matter, if:

- (1) the securities are publicly traded, or are municipal securities, the market value of which does not exceed:
  - (a) \$25,000 in any one such entity; and
  - (b) \$50,000 in all affected entities; or
- (2) the securities are long-term federal government securities, the market value of which does not exceed \$50,000.

For purposes of this subparagraph (C), the value of securities owned by the employee, his or her spouse and minor children must be aggregated.

*D. Exemption for certain federal government securities.* An employee may participate in a particular matter where the disqualifying financial interest arises from ownership of short-term federal government securities or from U.S. Savings Bonds.

*E. Exemption for interests of tax-exempt organization.* An employee may participate in a particular matter where the disqualifying financial interest arises from the ownership of publicly

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<sup>4</sup> See footnote 1 of this Appendix for examples of particular matters that may affect nonparties, such as affiliates or competitors of parties.

traded or municipal securities or long-term federal government securities by an organization which is tax-exempt pursuant to 26 U.S.C. § 501(c)(3) or (4), and of which the employee is an unpaid officer, director, trustee or employee, if:

- (1) the matter affects only the organization's investments, not the organization directly;
- (2) the employee plays no role in making investment decisions for the organization, except for participating in the decision to invest in several different categories of investments such as stocks, bonds, or mutual funds; and
- (3) the organization's only relationship to the issuer, other than that which arises from routine commercial transactions, is that of an investor.

*Example*

An employee is a director of the National Association to Save Trees (NAST), an environmental organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. The employee knows that NAST has an endowment fund that is partially invested in the publicly traded stock of Computer, Inc. The employee's position at the Bank involves the procurement of computer software, including software sold by Computer, Inc. The employee may participate in the procurement of software from Computer, Inc. provided he is not involved in selecting NAST's investments, and provided NAST has no relationship to Computer, Inc. other than as an investor in the company and routine purchaser of Computer, Inc. software.

F. *Exemption for certain interests of general partner.* An employee may participate in any particular matter where the disqualifying financial interest arises from:

- (1) the ownership of publicly traded securities, long-term federal government securities, or municipal securities by the employee's general partner, if:
  - (a) ownership of the securities is not related to the partnership between the employee and the general partner, and
  - (b) the value of the securities does not exceed \$200,000; or
- (2) an interest of the employee's general partner, if the employee's relationship to the general partner is as a limited partner in a partnership that has at least 100 limited partners.

**4. Exemption for financial interest arising from federal government or Bank employment or from Social Security or veteran's benefits.** An employee may participate in any particular matter where the disqualifying financial interest arises from federal government or Federal Reserve Bank salary or benefits, or from Social Security or veterans' benefits, except an employee may not:

- (a) Make a determination that individually or specially affects the employee's own salary and benefits; or

- (b) Make a determination, request, or recommendation that individually or specially relates to, or affects, the salary or benefits of any other person specified in 18 U.S.C. § 208.

### **PART III. SEEKING OTHER EMPLOYMENT**

#### **1. Overview**

An employee who seeks other employment or has an arrangement for prospective employment must comply with the applicable disqualification requirements of this Part if his or her Bank duties would affect the financial interests of the prospective employer or the person with whom he or she has an arrangement concerning prospective employment.

#### **2. Definitions**

- (a) *Direct and predictable effect* and *particular matter* have the respective meanings set forth in Part I of this Appendix regarding "Disqualifying Financial Interests."
- (b) *Employment* means any form of non-Bank employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Bank employment, even if the employee is not compensated for the services. It includes but is not limited to personal services provided as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.
- (c) *Prospective employer* means any person with whom the employee is seeking employment. Where a contact that constitutes seeking employment is made by or with an agent or other intermediary, the term prospective employer includes:
  - (1) the person using the agent or other intermediary for the purpose of trying to hire the employee, provided the agent identifies the prospective employer to the employee; and
  - (2) a person contacted by the employee's agent or other intermediary for the purpose of seeking a job offer for the employee if the agent identifies the prospective employer to the employee.

#### *Example*

An examiner has retained an employment search firm to help her find another job. The search firm has just reported to her that it has given her resume to and had promising discussions with two bank holding companies in the District. Even though the employee has not personally had employment discussions with either, each bank holding company is her prospective employer. She began seeking employment with each upon learning its identity and that it has been given her resume.

(d) *Seeking employment* means that an employee has, directly or indirectly:

(1) engaged in negotiations for employment with any person. Negotiations mean discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position; or

(2) made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was:

(a) for the sole purpose of requesting a job application; or

(b) for the purpose of submitting a resume or other employment proposal to a person affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class. The employee is considered to have begun seeking employment upon receipt of any response indicating an interest in employment discussions; or

(3) made a response other than rejection to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person.

*Example*

An employee in the Check Collection Department has mailed his resume to 25 commercial banks. He has not begun seeking employment with any of the twenty-five. If he receives a response from one of the commercial banks indicating an interest in employment discussions, the employee will have begun seeking employment with that bank at that time.

(e) *Not seeking employment.* An employee is no longer seeking employment when:

(1) the employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or

(2) two months have transpired after the employee sent an unsolicited resume or employment proposal, and the employee has received no indication of interest in employment discussions from the prospective employer. A response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment proposal, nor rejection of a prospective employment possibility.

*Example 1*

An employee with procurement responsibilities is complimented by a vendor's representative who asks her to call if she is interested in leaving the Bank. The

employee explains to the vendor that she is very happy with her job at the Bank and is not interested in another job. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Bank. The employee has rejected the unsolicited employment overture and has not begun seeking employment.

*Example 2*

The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on a project affecting the vendor's relationship with the Bank but would like to discuss employment when the project is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has begun seeking employment.

*Example 3*

An economist responsible for reviewing certain bank holding company applications sends her resume to a bank holding company in the District. The employee has begun seeking employment with that company and will be seeking employment for two months from the date the resume was mailed. However, if she withdraws her application or is notified within the two-month period that her resume has been rejected, she will no longer be seeking employment with the company as of the date she makes such withdrawal or receives such notification.

**3. Disqualification While Seeking Employment**

*A. Obligation to disqualify.* Unless the employee's participation is authorized in accordance with paragraph 4 of this Part, the employee must not participate in a particular matter that, to the employee's knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he or she is seeking employment. Disqualification is accomplished by not participating in the particular matter.

*B. Notification.* An employee who becomes aware of the need to disqualify himself or herself from participation in a particular matter should notify the person responsible for his or her assignment or the Bank's Ethics Officer. An employee who is responsible for his or her own assignment should take whatever steps are necessary to ensure that he or she does not participate in the matter from which he or she is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he or she is disqualified.

*C. Documentation.* An employee need not file a written disqualification statement unless he or she is specifically asked to do so by the Bank's Ethics Officer or a supervisor. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate officer.

D. *Bank determination of substantial conflict.* When the Bank determines that the employee's action in seeking employment with a particular person requires disqualification from a matter so central or critical to the performance of the employee's duties that the employee's ability to perform the duties of his or her position will be materially impaired, the Bank may take appropriate action, including termination of employment.

#### **4. Waiver or Authorization Permitting Participation While Seeking Employment**

A. *Waiver.* When an employee is engaged in discussions that constitute seeking employment, the employee may participate in a particular matter that has a direct and predictable effect on the financial interest of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. § 208(b)(1). The requirements for a waiver are described in paragraph 4 of Part I.

B. *Authorization by Bank.* Where an employee is seeking employment and a reasonable person would be likely to question the employee's impartiality if the employee were to participate in a particular matter that has a direct and predictable effect on the financial interests of the prospective employer, the employee may participate in such matters only where the Bank has authorized his or her participation after consideration of all relevant factors, including:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

#### **5. Disqualification Based on an Arrangement Concerning Prospective Employment or Otherwise After Negotiations**

A. *Employment or arrangement concerning employment.* An employee must not take any official action in a particular matter that will have a direct and predictable effect on the financial interests of the person by whom he or she is employed or with whom he or she has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. § 208(b)(1). The requirements for a waiver are described in paragraph 4 of Part I of this Appendix.

B. *Offer rejected or not made.* The Bank may, in an appropriate case, determine that an employee who has sought but is no longer seeking employment nevertheless shall be subject to a period of disqualification upon the conclusion of employment negotiations. Any such determination shall be based on a consideration of all the relevant factors and a determination that the concern that a reasonable person may question the integrity of the Bank's decision making process outweighs the Bank's interest in the employee's participation in the particular matter. Relevant factors are listed in paragraph 4(B) of this Part.

*Example*

An employee with purchasing responsibilities was relieved of responsibility for handing the evaluation of responses to an RFP while seeking employment with a bidder. The firm did not offer her employment. Even though she is no longer seeking employment with the firm, she may continue to be disqualified from evaluating the RFP responses based on a determination that the concern that a reasonable person might question whether, in view of the history of the employment negotiations, she could act impartially in the matter outweighs the Bank's interest in her participation.