



NATIONAL GOVERNMENT ETHICS
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Certificates of Divestiture

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What is a Certificate of Divestiture (CD)

WHAT IS A CD?

A CD is a mechanism that allows federal government employees to defer paying capital gains taxes on the sale of assets to comply with conflict of interest requirements.

WHAT IS THE AUTHORITY FOR A CD?

- 26 U.S.C. § 1043 – Sale of property to comply with conflict of interest requirements
- 5 C.F.R. 2634, subpart J

(1) federal government employees

Who is eligible for a CD?

- Executive branch employee, but not an SGE
- Spouse
- Minor or dependent child
- Trustee holding property in trust in which an executive branch employee, their spouse, or their minor or dependent child has an interest

(1) federal government employees

(2) defer paying capital gains taxes

- CDs may be issued for capital gains taxes, not ordinary income

- CD does not eliminate the capital gains tax

(1) federal government employees

(2) defer paying capital gain taxes

(3) **sale of assets to comply with a conflict of interest requirement**

- 18 U.S.C. § 208, 5 C.F.R. § 2635.502, agency supplemental regulation, agency organic statute, etc.

- A CD is not a remedy for a conflict

- If the employee is required to sell an asset to avoid or eliminate a conflict of interest, the employee must agree to sell the asset even if he/she does not receive a CD

Timeliness of Request

Generally, the employee must divest within 90 days of the date that the property became a conflict.

Once the conflict is identified the employee should be recused until the prohibited holding is sold, but the employee should not divest until the CD is received.

How Do You Request a CD

5 C.F.R. 2634.1005

- (1) Letter from the employee to DAEO requesting CD
- (2) Letter from DAEO to OGE Director requesting CD (or OGE Format in OGE DAEOgram DO-07-035)
- (3) Certified copy of employee's latest financial disclosure report
- (4) Brief description of the employee's position or a citation to a statute that sets forth the duties of the position
- (5) If applicable, copy of trust instrument

Permitted Property

- (1) An obligation of the United States (e.g., Treasury note)
- (2) A diversified investment fund or diversified mutual fund
- (3) Diversified unit investment trust

NOTE: Permitted property cannot be any holding prohibited by statute, regulation, rule, or Executive Order.

Reinvest proceeds within 60 days of sale – 5 CFR 2634.1006

SCENARIO

On January 1, 2016, the employee is told to divest his/her Pfizer stock, which is valued at \$5,000

(The employee seeks and receives a CD prior to divestiture)

On March 1, 2016, the employee divest her Pfizer stock for \$7,500

On March 1, 2016, the employee reinvest the \$7,500 in the Vanguard Long-Term Bond Fund

On March 1, 2017, the employee sells the Vanguard Fund for \$8,000

On April 15, 2017, the employee files his/her income tax return, including IRS Form 8824, Section 1043 conflict-of-interest sales

When will a CD be denied

- (1) Property has already been divested
- (2) CD request is not timely
- (3) Request is for a holding that is not required to be divested

Special Issues

(1) Similar or Related Property:

OGE looks for similar or related property on the financial disclosure report. If the employee is not divesting all similar or related property, please explain why in the CD request

(2) Tax-Deferred Account:

Property held in a Tax-Deferred Account, like an IRA or 401(k), does not need a CD because the capital gains taxes are already deferred

(3) Trusts:

If the property is held in a trust, please talk to OGE as soon as possible

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THANK YOU
