

Legal Sidebar

Conflicts of Interest and the Presidency

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Does federal law require the President to relinquish control of his or her business interests? Federal [regulation of financial conflicts of interest](#) is aimed at preventing opportunities for officials to personally benefit from influence they may have in their official capacity. As a [general rule](#), public officials in the executive branch are subject to criminal penalties if they personally and substantially participate in matters in which they (or their immediate families, business partners or associated organizations) hold financial interests. However, because of concerns regarding interference with the exercise of constitutional duties, Congress [has not applied these restrictions](#) to the President. Consequently, there is no current legal requirement that would compel the President to relinquish financial interests because of a conflict of interest.

Disqualification Based on Conflicts of Interest: Federal ethics law [generally prohibits](#) officers and employees in the executive branch from personally and substantially participating in matters in which the official, the official's family, the official's "general partner," or an organization in which the official serves has a financial interest. To comply with this [disqualification](#) requirement, covered individuals may recuse themselves from participation in the matter.

For the purposes of the disqualification requirement, though, officers and employees are [defined](#) to exclude the President and Vice President, meaning that these individuals are not required to recuse themselves in potential conflicts, though they may take measures to avoid the *appearance* of such conflicts, as discussed below. Before the statutory exemption was adopted, the U.S. Department of Justice [had advised](#) the Senate of its interpretation that a statutory disqualification requirement might interfere with the President's and Vice President's constitutional duties. Congress subsequently limited the scope of the prohibition in accordance with that view.

Divestiture of Assets to Avoid Conflicts: Officials may avoid the need for recusal if they [divest](#) themselves of the financial interest that poses the conflict. Under one option for such divestiture, an official may establish a [qualified blind trust](#). By placing assets in a qualified blind trust, officials transfer control and management of their private assets to an independent trustee who cannot communicate information about the holdings in the trust to the official. The trust is considered "blind" because the trustee will eventually sell the original assets and acquire new ones that are unknown to the official. Without knowledge of the composition of the trust's assets, the official arguably avoids the appearance of a conflict because no known interest could influence his or her exercise of official duties. Nevertheless, questions about these arrangements remain: Could officials really forget what went into the trust? Even if the original assets were sold, would the substituted assets or management thereof really be a mystery to an official with extensive knowledge of the general portfolio?

Disclosure Requirements: The principal method of regulation of potential conflicts of interests for elected officials such as the President has been [disclosure](#) of such interests and the associated publicity that may result. In other words, the current regulatory scheme suggests that any potential conflicts will be addressed by the electorate at the ballot box.

To that end, presidential candidates are [required to disclose certain potential conflicts](#) under federal ethics law. To provide transparency for potential conflicts, the [Ethics in Government Act](#) requires high-level elected and appointed officials in each branch of government – including candidates for President, Vice President, and Congress – to disclose personal assets, investments, interests, and income upon entering office and on an annual basis thereafter. Furthermore, federal campaign finance law requires disclosure of campaign contributions received and spent. Under the [Federal](#)

[Election Campaign Act \(FECA\)](#), candidate campaign committees must [register](#) with the [Federal Election Commission \(FEC\)](#) and comply with periodic [disclosure requirements](#). Thus, candidates must file reports that show the total amount of all [contributions](#) received, including those from individuals, political action committees (PACs), and parties, and the identity of any person who contributes more than \$200 during a calendar year.

The Supreme Court has let stand a [lower court decision](#) recognizing the constitutionality of financial disclosures by elected officials under ethics laws. The Court also has generally [upheld](#) the constitutionality of campaign finance disclosure requirements as substantially related to the governmental interest of safeguarding the integrity of the electoral process by promoting transparency and accountability. Imposing any more formal restrictions on the President may require a constitutional amendment, given the [concern](#) that statutory limitations such as disqualification could impede constitutional duties and raise separation of powers concerns.

History of Presidential Practices: Historical practice illustrates a [relatively longstanding precedent](#) of Presidents – including Lyndon Johnson, Jimmy Carter, Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush – who have voluntarily “divested” their assets. President Barack Obama [reportedly](#) did not use a blind trust, asserting that it would be unnecessary because the composition of his financial portfolio included assets over which he has little influence (e.g., mutual funds, Treasury notes). In 2012, presidential nominee Mitt Romney, who was a founder of a private equity firm in which he still held an interest, [reportedly](#) relied on a blind trust for his personal assets.

Issues in the 2016 Election: In the 2016 election cycle, attention has focused on several points relevant to the analysis of potential conflicts of interest as a result of the roles of the presidential candidates and their families in their respective business or charitable organizations. First, the structure of the organization involved (e.g., for profit versus [nonprofit](#)) might be relevant to the analysis. Second, an official’s decision to disassociate from an organization may not resolve a potential appearance of a conflict of interest if his or her family remains connected to the organization. Under the statutory [prohibition](#) that applies to executive branch government officials generally, (but again, not to the President), the continued involvement of family members (including spouses and minor children) in an organization could constitute a conflict of interest even if the official disassociated from the organization. Finally, questions have arisen regarding how a blind trust might be managed to avoid the alleged appearance of financial conflicts of interest, considering that a qualifying trustee must be independent, must not have been previously employed by or affiliated with any interested party, and must not be a relative of any interested party.

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