

Office of Government Ethics

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**Letter to an Alternate Designated Agency
Ethics Official dated April 11, 2003**

This letter responds to your questions regarding whether certain investments qualify as (1) diversified mutual funds pursuant to the regulatory exemption at 5 C.F.R. § 2640.201(a) and (2) "permitted property" pursuant to the Certificate-of-Divestiture regulation at 5 C.F.R. § 2634.1003. These investments include Goldman Sachs Municipal Income Fund, Fidelity Spartan Intermediate Municipal Income Fund, Fidelity Spartan Short-Intermediate Municipal Income Fund, and Fidelity Spartan Municipal Income Fund.

For purposes of part 2640, a mutual fund is "diversified" if it "does not have a stated policy of concentrating its investments in any industry, business, country other than the United States, or single State within the United States." See 5 C.F.R. § 2640.102(a). All four mutual funds appear to meet the definition of "diversified," as set out in 5 C.F.R. § 2640.102(a). Accordingly, a Government employee may rely on the regulatory exemption at 5 C.F.R. § 2640.201(a) in connection with these investments.

For purposes of the Certificate-of-Divestiture regulations, an open-end mutual fund is "diversified" and qualifies as "permitted property" if the fund does not have an "objective" or practice of devoting its investments to particular or limited industrial, economic, or geographic sectors." See 5 C.F.R. § 2634.1003. All four mutual funds appear to qualify as "diversified" and "permitted property" under the Certificate-of-Divestiture regulations.

Please note that the Certificate-of-Divestiture regulation states that a fund will not be considered to be "diversified" (or "permitted property") if "ownership of more than one percent of the market value of the fund would be attributable to [the Government employee] immediately after a rollover." 5 C.F.R. § 2634.1003(c)(2). If a Government employee plans to invest substantially in a particular investment, the employee needs to ensure that he does not cross this one-percent ownership threshold in any one fund.

Please do not hesitate to contact us if you would like additional assistance.

Sincerely,

Marilyn L. Glynn
General Counsel