

(2) The source, type, and in the case of public financial disclosure reports the actual amount or value, of gross income from a business, distributive share of a partnership, joint business venture income, payments from an estate or an annuity or endowment contract, or any other items of income not otherwise covered by paragraphs (a) or (b)(1) of this section which are received by the filer or accrued to his benefit during the reporting period and which exceed \$200 from any one source.

Example 1. An official rents out a portion of his residence. He receives rental income of \$600 from one individual for four months and \$1,200 from another individual for the remaining eight months of the year covered by his incumbent financial disclosure report. He must identify the property, specify the type of income (rent), and if he is a public filer indicate the category of the total amount of rent received. (He must also disclose the asset information required by 2634.301 of this subpart.)

Example 2. A reporting individual has three savings accounts with Bank A. One is in his name and earned \$85 in interest during the reporting period. One is in a joint account with his spouse and earned \$120 in interest. One is in his name and his dependent daughter's name and earned \$35 in interest. Since the aggregate interest income from this source exceeds \$200, the official must disclose the name of the bank, the type of income, and if he is a public filer, the category of the total amount of interest earned from all three accounts. (He must also disclose the accounts as assets under 2634.301 of this subpart if, in the aggregate, they total more than \$5,000 in that bank.)

Example 3. An official has an ownership interest in a fast-food restaurant, from which she receives \$10,000 in annual income. She must specify on her financial disclosure report the type of income, such as partnership distributive share or gross business income, and if she is a public filer indicate the actual amount of such income. (Additionally, she must describe the business and categorize its asset value, pursuant to 2634.301 of this subpart).

[57 FR 11808, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

#### 2634.303 Purchases, sales, and exchanges.

(a) In general. Except as indicated in 2634.308(b) of this subpart, each public financial disclosure report filed pursuant to subpart B of this part shall include a brief description, the date and value (using the categories of value in 2634.301(d) of this subpart) of any purchase, sale, or exchange by the filer during the reporting period, in which the amount involved in the transaction exceeds \$1,000:

(1) Of real property, other than a personal residence of the filer or spouse, as defined in 2634.105(1) of this part; and

(2) Of stocks, bonds, commodity futures, mutual fund shares, and other forms of securities.

(b) Exceptions. (1) Any transaction solely by and between the reporting individual, his spouse, and dependent children need not be reported under paragraph (a) of this section.

(2) Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and personal savings accounts (as defined in 2634.301(c)(2) of this subpart) need not be reported when occurring at rates, terms, and conditions available generally to members of the public. Likewise, transactions involving portfolio holdings of trusts and investment funds described in 2634.310 (b) and (c) of this subpart need not be reported.

(3) Any transaction which occurred at a time when the reporting individual was not a Federal Government officer or employee need not be reported under paragraph (a) of this section.

Example 1. An official sells her personal residence in Virginia for \$100,000 and purchases a personal residence in the District of Columbia for \$200,000. She need not report the sale of the Virginia residence or the purchase of the D.C. residence.

Example 2. An official sells his beach home in Maryland for \$50,000. Because he has rented it out for one month every summer, it does not qualify as a personal residence. He must disclose the sale under this section and any capital gain over \$200 realized on the sale under 2634.302 of this subpart.

Example 3. An official sells a ranch to his dependent daughter. The official need not report the sale because it is a transaction between the reporting individual and a dependent child; however, any capital gain, except for that portion attributable to a personal residence, is required to be reported under 2634.302 of this subpart.

Example 4. An official sells an apartment building and realizes a loss of \$100,000. He must report the sale of the building if the sale price of the property exceeds \$1,000; however, he need not report anything under 2634.302 of this subpart, as the sale did not result in a capital gain.

[57 FR 11808, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

#### 2634.304 Gifts and reimbursements.

(a) Gifts. Except as indicated in 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description, and in the case of public financial disclosure reports the value, of all gifts aggregating \$250 or more in value which are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include a travel itinerary, dates, and nature of expenses provided.

(b) Reimbursements. Except as indicated in 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and in the case of public financial disclosure reports the value, of any travel-related reimbursements aggregating \$250 or more in value, which are received by the filer during the reporting period from any one source.

Note: The \$250 threshold in paragraphs (a) and (b) of this section will increase if the definition of minimal value under the Foreign Gifts and Decorations Act ever exceeds \$250. Section 314(a) of Public Law 102 - 90 established the threshold for financial disclosure of gifts and reimbursements as ``more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or \$250, whichever is greater."

(c) Exclusions. Reports need not contain any information about gifts and reimbursements to which the provisions of this section would otherwise apply which are received from relatives (see 2634.105(o)) or during a period in which the filer was not an officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as ``personal hospitality of any individual," as defined in 2634.105(k), need not be reported. See also exclusions specified in the definitions of gift and reimbursement, at 2634.105(h) and (n).

(d) Aggregation exception. Any gift or reimbursement with a fair market value of \$100 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

Note: The aggregation exception for gifts or reimbursements with a fair market value of \$100 or less will increase if the definition of minimal value under the Foreign Gifts and Decorations Act ever exceeds \$250. Section 314(a) of Public Law 102 - 90 established the aggregation exception for ``any gift with a fair market value of \$100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted" above \$250 pursuant to 5 U.S.C. 7342(a)(5).

Example 1. An official accepts a print, a pen and pencil set, and a letter opener from a community service organization he has worked with solely in his private capacity. He determines, in accordance with paragraph

(e) of this section, that these gifts are valued as follows:

Gift 1 -- Print: \$150

Gift 2 -- Pen and pencil set: \$105

Gift 3 -- Letter opener: \$20

The official must disclose Gifts 1 and 2, since together they aggregate \$250 or more in value from the same source. Gift 3 need not be aggregated, because its value does not exceed \$100.

Example 2. An official receives the following gifts from a single source:

1. Dinner for two at a local restaurant -- \$120.

2. Round-trip taxi fare to meet donor at the restaurant -- \$25.
3. Dinner at donor's city residence -- (value uncertain).
4. Round-trip airline transportation and hotel accommodations to visit Epcot Center in Florida - \$400.
5. Weekend at donor's country home, including duck hunting and tennis match -- (value uncertain).

The official need only disclose Gift 4. Gift 1 falls within the exception in 2634.105(h) for food and beverages not consumed in connection with a gift of overnight lodging. Gifts 3 and 5 need not be disclosed because they fall within the exception for personal hospitality of an individual. Gift 2 need not be aggregated and reported, because its value does not exceed \$100.

Example 3. An official receives free tickets from an outside source for himself and his spouse to attend an awards banquet at a local club. The value of each ticket is \$130. Even though this is a gift which exceeds the \$250 threshold amount for disclosure, the official need not report it, because of the exception in 2634.105(h) for food and beverages not consumed in connection with a gift of overnight lodging.

Note: Prior to accepting this gift of tickets, the individual should consult ethics officials at his agency to determine whether standards of conduct rules will permit acceptance, depending on whether or not the donor is a prohibited source and the exact nature of the event.

Example 4. An official is asked to speak at an out-of-town meeting on a matter which is unrelated to her official duties and her agency. The round-trip airfare exceeds \$250. If the official pays for the ticket and is then reimbursed by the organization to which she spoke, she must disclose this reimbursement under paragraph (b) of this section. If the organization simply provided the ticket, that must be disclosed as a gift under paragraph (a) of this section.

(e) Valuation of gifts and reimbursements. The value to be assigned to a gift or reimbursement is its fair market value. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:

(1) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.

(2) If the item is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.

(3) The term readily available in the market means that an item generally is available for retail purchase in the metropolitan area nearest to the official's residence.

Example 1. Items such as a pen and pencil set, letter opener, leather case or engraved pen

are generally available in the market and can be determined by contacting stores which sell like items and ascertaining the retail price of each.

Example 2. The value of a dinner at a restaurant can either be the actual cost of the reported dinners or the approximate value, based on the posted fare of the restaurant. The filer need not ask to see the check.

Note: The market value of a ticket entitling the holder to attend an event which includes food, refreshments, entertainment or other benefits is the face value of the ticket, which may exceed the actual cost of the food and other benefits.

(f) Waiver rule in the case of certain gifts -- (1) In general. In unusual cases, a gift as defined in 2634.105(h) need not be aggregated under this section by public filers, if the Director of the Office of Government Ethics receives a written request for and issues a waiver, after determining that:

(i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are entirely personal; and

(ii) No countervailing public purpose requires public disclosure of the nature, source, and value of the gift.

(2) Public disclosure of waiver request. If approved, the cover letter requesting the waiver shall be subject to the public disclosure requirements in 2634.603 of this part.

(3) Procedure. A public filer seeking a waiver under this paragraph shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section. On an enclosure to the cover letter, the filer shall set forth:

(i) The identity and occupation of the donor;

(ii) A statement that the relationship between the donor and the filer is entirely personal in nature; and

(iii) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the preceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with a statement demonstrating that he plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative.

[57 FR 11808, Apr. 7, 1992; 57 FR 62605, Dec. 31, 1992]

2634.305 Liabilities.

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify and include a brief description of the filer's liabilities over \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed. For public financial disclosure reports, the report shall designate the category of value of the liabilities in accordance with 2634.301(d) of this subpart, using the greatest amount owed to the creditor during the period.

(b) Exceptions. The following are not required to be reported under paragraph (a) of this section:

(1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Any mortgage secured by a personal residence of the filer or his spouse;

(3) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it; and

(4) Any revolving charge account with an outstanding liability which does not exceed \$10,000 at the close of the reporting period.

Example. An incumbent official has the following debts outstanding at the end of the calendar year:

1. Mortgage on personal residence -- \$80,000.
2. Mortgage on rental property -- \$50,000.
3. VISA Card -- \$1,000.
4. Master Card -- \$11,000.
5. Loan balance of \$15,000, secured by family automobile purchased for \$16,200.
6. Loan balance of \$10,500, secured by antique furniture purchased for \$8,000.
7. Loan from parents -- \$20,000.

The loans indicated in items 2, 4, and 6 must be disclosed. Loan 1 is exempt from disclosure under paragraph (b)(2) of this section because it is secured by the personal residence. Loan 3 need not be disclosed under paragraph (b)(4) of this section because it is considered to be a revolving charge account with an outstanding liability that does not exceed \$10,000 at the end of the reporting period. Loan 5 need not be disclosed under paragraph (b)(3) of this section because it is secured by a personal motor vehicle which was purchased for more than the value of the loan. Loan 7 need not be disclosed because the creditors are persons specified in paragraph (b)(1) of this section.

#### 2634.306 Agreements and arrangements.

Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify the parties to and the date of, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

- (a) Future employment;
- (b) A leave of absence from employment during the period of the reporting individual's Government service;
- (c) Continuation of payments by a former employer other than the United States Government; and
- (d) Continuing participation in an employee welfare or benefit plan maintained by a former employer.

#### 2634.307 Outside positions.

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify all positions held at any time by the filer during the reporting period, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States.

- (a) (b) Exceptions. The following need not be reported under paragraph of this section:
  - (1) Positions held in any religious, social, fraternal, or political entity; and
  - (2) Positions solely of an honorary nature, such as those with an emeritus designation.

[57 FR 11808, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

#### 2634.308 Reporting periods and contents of public financial disclosure reports.

(a) Incumbents. Each public financial disclosure report filed pursuant to 2634.201(a) shall include on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the preceding calendar year (or for any portion of that year not already covered by a new entrant or nominee report filed under paragraph (b) or (c) of 2634.201), and, in the case of 2634.306 and 2634.307, for the additional period up to the date of filing.

(b) New entrants, nominees, and candidates. Each public financial disclosure report

filed pursuant to 2634.201(b), (c), or (d) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, except for 2634.303 (relating to purchases, sales, and exchanges of certain property) and 2634.304 (relating to gifts and reimbursements). The following special rules apply:

(1) **Interests in property.** For purposes of 2634.301 of this subpart, the report shall include all interests in property specified by that section which are held on or after a date which is fewer than thirty-one days before the date on which the report is filed.

(2) **Income.** For purposes of 2634.302 of this subpart, the report shall include all income items specified by that section which are received or accrued during the period beginning on January 1 of the preceding calendar year and ending on the date on which the report is filed, except as otherwise provided by 2634.606 relating to updated disclosure for nominees.

(3) **Liabilities.** For purposes of 2634.305 of this subpart, the report shall include all liabilities specified by that section which are owed during the period beginning on January 1 of the preceding calendar year and ending fewer than thirty-one days before the date on which the report is filed.

(4) **Agreements and arrangements.** For purposes of 2634.306 of this subpart, the report shall include only those agreements and arrangements which still exist at the time of filing.

(5) **Outside positions.** For purposes of 2634.307 of this subpart, the report shall include all such positions held during the preceding two calendar years and the current calendar year up to the date of filing.

(6) **Certain sources of compensation.** Except in the case of the President, the Vice President, or a candidate referred to in 2634.201(d), the report shall also identify the filer's sources of compensation which exceed \$5,000 during either of the preceding two calendar years or during the current calendar year up to the date of filing, and shall briefly describe the nature of the duties performed or services rendered by the reporting individual for each such source of compensation. Information need not be reported, however, which is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person. The report also need not contain any information with respect to any person for whom services were provided by any firm or association of which the reporting individual was a member, partner, or employee, unless such individual was directly involved in the provision of such services.

**Example.** A nominee who is a partner or employee of a law firm and who has worked on a matter involving a client from which the firm received over \$5,000 in fees during a calendar year must report the name of the client only if the value of the services rendered by the nominee exceeded \$5,000. The name of the client would not normally be considered confidential.

(c) **Termination reports.** Each public financial disclosure report filed under

2634.201(e) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the period beginning on the last date covered by the most recent public financial disclosure report filed by the reporting individual under this part, or on January 1 of the preceding calendar year, whichever is later, and ending on the date on which the filer's employment terminates.

2634.309 Spouses and dependent children.

(a) Special disclosure rules. Each report required by the provisions of either subpart B or subpart I of this part shall also include the following information with respect to the spouse or dependent children of the reporting individual:

(1) Income. For purposes of 2634.302 of this subpart:

(i) With respect to a spouse, the source but not the amount of items of earned income (other than honoraria) which exceed \$1,000 from any one source; and if items of earned income are derived from a spouse's self-employment in a business or profession, the nature of the business or profession but not the amount of the earned income;

(ii) With respect to a spouse, the source, and for a public financial disclosure report the actual amount or value, of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria) which exceed \$200 from any one source, and the date on which the services were provided; and

(iii) With respect to a spouse or dependent child, the type and source, and for a public financial disclosure report the amount or value (category or actual amount, in accordance with 2634.302 of this subpart), of all other income exceeding \$200 from any one source, such as investment income from interests in property (if the property itself is reportable according to 2634.301 of this subpart).

Example 1. The spouse of a filer is employed as a teller at Bank X and earns \$23,000 per year. The report must disclose that the spouse is employed by Bank X. The amount of the spouse's earnings need not be disclosed, either on a public or confidential financial disclosure report.

Example 2. The spouse of a reporting individual is self-employed as a pediatrician. The report must disclose that he is a physician, but need not disclose the amount of income, either on a public or confidential financial disclosure report.

(2) Gifts and reimbursements. For purposes of 2634.304 of this subpart, gifts and reimbursements received by a spouse or dependent child which are not received totally independent of their relationship to the filer.

(3) Interests in property, transactions, and liabilities. For purposes of 2634.301, 2634.303 (applicable only to public filers), and 2634.305 of this subpart, all information

concerning property interests, transactions, or liabilities referred to by those sections of a spouse or dependent child, unless the following three conditions are satisfied:

- (i) The filer certifies that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no specific knowledge regarding that item;
- (ii) The item is not in any way, past or present, derived from the income, assets or activities of the filer; and
- (iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note: One who prepares a joint tax return with his spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items; therefore he could not avail himself of this exception. Likewise, a trust for the education of one's minor child normally will convey a financial benefit to the parent. If so, the assets of the trust would be reportable on a financial disclosure statement.

(b) Exception. For reports filed as a new entrant, nominee, or candidate under 2634.201(b), (c), or (d), or as a new entrant under 2634.908(b), no information regarding gifts and reimbursements or transactions is required for a spouse or dependent child.

(c) Divorce and separation. A reporting individual need not report any information about:

- (1) A spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation;
- (2) A former spouse or a spouse from whom the reporting individual is permanently separated; or
- (3) Any income or obligations of the reporting individual arising from dissolution of the reporting individual's marriage or permanent separation from a spouse.

2634.310 Trusts, estates, and investment funds.

(a) In general. (1) Except as otherwise provided in this section, each financial disclosure report shall include the information required by this subpart or subpart I of this part about the holdings of and income from the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, his spouse, or dependent child.

(2) No information, however, is required about a nonvested beneficial interest in the principal or income of an estate or trust. A vested interest is 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 the immediate possession or enjoyment of the property, upon the ceasing of another's interest. Accordingly, it is not the uncertainty of the time of enjoyment in the future, but the uncertainty of the right of enjoyment (title and alienation), which differentiates a "vested" and a "nonvested" interest.

(b) Qualified trusts and excepted trusts. (1) A filer should not report information about the holdings of or income from holdings of, any qualified blind trust (as defined in 2634.403) or any qualified diversified trust (as defined in 2634.404). For a qualified blind trust, a public financial disclosure report shall disclose the category of the aggregate amount of the trust's income attributable to the beneficial interest of the filer, his spouse, or dependent child in the trust. For a qualified diversified trust, a public financial disclosure report shall disclose the category of the aggregate amount of income with respect to such a trust which is actually received by the filer, his spouse, or dependent child, or applied for the benefit of any of them.

(2) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but will not otherwise need to report information about the trust's holdings or income from holdings. The category of the aggregate amount of income from an excepted trust which is received by or accrued to the benefit of the filer, his spouse, or dependent child shall be reported on public financial disclosure reports. For purposes of this part, the term "excepted trust" means a trust:

(i) Which was not created directly by the filer, spouse, or dependent child; and

(ii) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(c) Excepted investment funds. (1) No information is required under paragraph (a) of this section about the underlying holdings of or income from underlying holdings of an excepted investment fund as defined in paragraph (c)(2) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income. Public financial disclosure reports must also disclose the category of value of the fund interest held; aggregate amount of income from the fund which is received by or accrued to the benefit of the filer, his spouse, or dependent child; and value of any transactions involving shares or units of the fund.

(2) For purposes of financial disclosure reports filed under the provisions of this part, an "excepted investment fund" means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

(i)(A) The fund is publicly traded or available; or

(B) The assets of the fund are widely diversified; and

(ii) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(3) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

[57 FR 11808, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

#### 2634.311 Special rules.

(a) Political campaign funds. Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this part. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(b) Certificates of Divestiture. Each public financial disclosure report required by the provisions of this part shall identify those sales which have occurred pursuant to a Certificate of Divestiture during the period covered by such report. See subpart J of this part for the rules relating to the issuance of such Certificates.

(c) Reporting standards. (1) In lieu of entering data on a schedule of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the schedule.

(2) In lieu of reporting the category of amount or value of any item listed in any public financial disclosure report filed pursuant to this part, a filer may report the actual dollar amount of such item.

#### Subpart D -- Qualified Trusts

Source: 57 FR 11814, Apr. 7, 1992, unless otherwise noted.

#### 2634.401 General considerations.

(a) Statutory standards governing qualified trusts -- (1) Types of qualified trusts and their relationship to conflict of interest laws. The Ethics in Government Act of 1978 created, and provided special public financial disclosure requirements for, two types of qualified trusts. It was envisioned that the use of those trusts by Government employees would reduce the real and apparent conflicts of interest which might arise between the financial interests held by those employees (or attributable to them) and their official responsibilities.

(i) Interested party means a Government employee, his spouse, any minor or dependent child, and their representatives in any case in which the employee, spouse, or child has a beneficial interest in the principal or income of a trust proposed for certification or certified.

(ii) Qualified blind trust. The most universally adaptable qualified trust is the qualified blind trust, defined in 2634.403 of this subpart. A trust is considered to be "blind" only with regard to those trust assets about which no interested party has knowledge. When an interested party originally places assets in trust, that party still possesses knowledge about those assets. Those original assets remain financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations, until the trustee notifies the official either that a particular original asset has been disposed of or that the asset's value is less than \$1000. If the trustee sells or disposes of original trust assets and then uses the proceeds to acquire new trust holdings, or if the trustee reinvests trust income to acquire new trust holdings, a "blind" trust exists for those new holdings because the interested parties possess no information about the newly acquired assets. The holdings of a "blind" trust are not classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

(iii) Qualified diversified trust. The second type of qualified trust established by the Act is the qualified diversified trust, defined in 2634.404 of this subpart. Among other requirements, a trust is considered to be "diversified" if it can be demonstrated, to the satisfaction of the Director of the Office of Government Ethics, pursuant to 2634.404(b), that the trust assets comprise a widely diversified portfolio of readily marketable securities, and do not initially include the securities of any entities having substantial activities in the same area as the Government official's primary area of responsibility. The trust holdings are never classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

(2) Independence of trustees and other fiduciaries. Under the Act and 2634.406 of this subpart, those entities that are authorized by the Act or by the trust instrument to manage the assets of, and to control and administer, either a qualified blind or a qualified diversified trust must be independent, in fact and in appearance, from those parties who hold beneficial interests in the trust.

(i) The independence of trustees is facilitated by limiting the entities which may serve in this capacity to certain financial institutions.

(ii) In addition to the trustee, the Act extends the independence requirement to other entities which manage trust assets or administer the trust, including officers and employees of the trustee, any other entity designated in the trust instrument to perform fiduciary duties on behalf of the trust, and the officers and employees of any other entity that is involved in the management or control of the trust, such as investment counsel, investment advisers, accountants, or tax preparers and their assistants.

(iii) Those entities governed by the Act will be considered "independent" for purposes of this subpart if, among other requirements, the entities are not affiliated with, associated with, related to, or subject to the control or influence of, any of the parties that hold a beneficial interest in the trust.

(3) Communications between trust administrators and interested parties. For purposes of Federal ethics laws, the most important feature of those qualified trusts that are

recognized under the Act is the separation which those trusts foster between parties with beneficial interests in the trust and entities which manage trust assets and administer the trust instrument. Once a qualified trust has been certified, the beneficiaries and their representatives are expressly prohibited from commenting directly to the trustee about matters relating to asset management and trust holdings, or to trust administration and activities. Likewise, the trustee must make investment decisions for the trust without consulting, or being controlled by, interested parties, and the trustee is prohibited from informing interested parties directly about trust activities, except to the limited extent required under the Act. The Act requires the trustee to provide trust beneficiaries with certain standard periodic reports. Beyond receipt of these standard reports, trust beneficiaries are prohibited from actively attempting to obtain, and from passively but knowingly obtaining, directly or indirectly, any additional information which the Act prohibits beneficiaries from obtaining, including information about trust holdings and activities. Finally, instruments creating qualified trusts must require interested parties and trustees to make all permissible communications relating to the trust and to its assets in writing, with the prior written approval of the Director of the Office of Government Ethics. Sections 2634.403 - 2634.405 and 2634.407 of this subpart contain standards implementing these restrictions.

(4) Trust and beneficiary taxes. For tax purposes, because a trust is a separate entity distinct from its beneficiaries, a trustee must file an annual fiduciary tax return for the trust (IRS Form 1041). In addition, the trust beneficiaries must report income received from the trust on their individual tax returns. The Act establishes special filing procedures to be used by the trustee and trust beneficiaries in order to maintain the substantive separation between trust beneficiaries and trust administration. For beneficiaries of qualified blind trusts, the trustee sends a Schedule K

- 1 form summarizing trust income in appropriate categories to enable the beneficiaries to file individual tax returns. For beneficiaries of qualified diversified trusts, the statute requires the trustee to file the individual tax returns on behalf of the trust beneficiaries. The beneficiaries must transmit to the trustee materials concerning taxable transactions and occurrences outside of the trust, pursuant to the requirements in each trust instrument which detail this procedure.

(b) Policy considerations and objectives underlying the qualified trust program. (1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind or diversified trust. However, there was general agreement that the use of blind or diversified trusts often reduced the potential for conflicts of interest. If Government employees do not know the exact identity, nature, and extent of their financial interests, then the employees cannot be influenced in the performance of their official duties by those interests. Their official actions, under these circumstances, should be free from collateral attack arising out of real or apparent conflicts of interest. Therefore, the most significant objective to be achieved through the use of a blind trust is the lack of knowledge, or actual "blindness," by a Government official with respect to the holdings in his trust. The same goal may be achieved through the use of a diversified trust, if that trust holds securities from different issuers in different economic sectors, and if the trust's interest in any one issuer is limited. Under these conditions, it is unlikely that official actions taken by the Government employee who holds a beneficial interest in the trust would affect individual securities to such a degree that the overall value of the trust's portfolio would be materially enhanced. Thus, wide diversification is tantamount to actual "blindness."

(2) Because, for the trusts certified under the provisions of this subpart D, the Government official is or will become blind to the identity and nature of his actual trust holdings, the reporting requirements of section 102(f)(1) of the Act and subparts C or I of this part, which generally require Government filers to disclose the contents of a trust's portfolio, do not apply. See 2634.310 of this part. Further, as discussed in paragraphs (a)(1) (ii) and (iii) of this section, 18 U.S.C. 208 and other Federal conflict of interest laws do not generally apply to the holdings of qualified trusts, except in the case of the original assets transferred to a qualified blind trust until notice that a particular original asset has been disposed of or that the asset's value is below \$1,000.

(c) Qualified trust provisions of the regulation. This subpart D prescribes standards which implement the statutory requirements and policy objectives underlying the Act's qualified blind and diversified trust provisions. The Office of Government Ethics will apply the standards of this subpart to specific cases.

(1) Classification as a qualified trust. In order to be classified as a qualified trust for purposes of the Act, blind and diversified trusts must satisfy the following three requirements:

(i) The trust document must conform to announced standards. As provided under 2634.403(b) for blind trusts and 2634.404(c) for diversified trusts, the trust document must conform to the model trust instruments which are drafted and distributed by the Office of Government Ethics for use by interested parties when drafting their trust arrangements. Prior to certifying a trust under 2634.405 of this subpart, as discussed in paragraph (c)(1)(iii) of this section, the Office of Government Ethics must approve every proposed trust document. In addition to other required provisions, the trust instrument must contain language which implements the communications restrictions discussed in paragraph (a)(3) of this section. By requiring interested parties, trustees, and other signatories to the trust instrument to include communications provisions, these regulations compel the signatories diligently to safeguard against inadvertent disclosures of precluded information to the interested parties.

(ii) Truly independent fiduciaries. As discussed in paragraph (a)(2) of this section, the fiduciaries in charge of administering and managing the assets of a qualified trust must be actually and apparently independent of the parties who hold beneficial interests in the trust, and of their representatives. To ensure such independence, 2634.406 of this subpart limits the range of permissible fiduciaries. Before a trust may be classified as a qualified blind or diversified trust, the Director of the Office of Government Ethics must conclude, in his judgment, that the trust fiduciaries named in the trust instrument satisfy the standards for independence contained in 2634.406 of this subpart.

(iii) Certification by the Office of Government Ethics. Before a trust may be classified as a qualified blind or diversified trust, the Director of the Office of Government Ethics must certify, in accordance with the standards and procedures established in 2634.405 of this subpart, that the trust meets the requirements of section 102(f) of the Act and of this subpart, that certification is in the public interest, and that certification is consistent with the policies established by these provisions and by other applicable laws and regulations. This certification is essential so that the Office can ensure, in advance that the proposed trust arrangement satisfies

the established standards.

(2) Certification of pre-existing trusts. Normally, those trusts certified as qualified trusts by the Director of the Office of Government Ethics under 2634.405 of this subpart are newly created trust arrangements, formulated in accordance with established standards by representatives of the interested parties in consultation with the Office of Government Ethics. However, the Director may certify a pre-existing trust as a qualified blind or qualified diversified trust under 2634.403 (blind) or 2634.404 (diversified) if he determines that such action is appropriate and is sufficient to ensure compliance with applicable laws and regulations. The pre-existing trust proposed for certification must meet both the generally applicable trust requirements, and several special requirements contained in 2634.405(c) of this subpart, including that all of the parties to the original trust agree to administer the trust in accordance with the requirements of this subpart. The pre-existing trust may be certified only if all of the conditions of this subpart are fulfilled, and if the requisite confidentiality can be assured with respect to the trust.

(3) Reporting requirements. Once a trust is classified as a qualified blind or qualified diversified trust in the manner discussed under paragraph (c)(1) of this section, 2634.310(b) applies less inclusive financial disclosure requirements to the trust assets.

(4) Sanctions and enforcement. Section 2634.702 provides civil sanctions which apply to any Government official or trust fiduciary who violates his obligations under the Act, its implementing regulations, or the trust instrument. In addition, the Office of Government Ethics has authority under the Act to impose appropriate administrative or other sanctions. Subpart E of this part delineates the procedure which must be followed with respect to the revocation of trust certificates and trustee approvals.

(d) Drafting and implementation of the qualified trust instrument.

(1) The overview of the qualified trust program contained in this section cannot anticipate every concern or question, or discuss every scenario which might arise in the course of formulating and implementing a qualified trust instrument. The Office of Government Ethics should be contacted by an interested party or by his professional representatives if the Act, the implementing regulations, and the trust instrument itself do not provide guidance in a particular instance.

(2) No trust will be considered "qualified" for purposes of the Act until the Office of Government Ethics certifies the trust prior to execution. The Office of Government Ethics makes available to attorneys model trust agreements for use in drafting proposed trust agreements which are to be submitted to the Office for certification. Attorneys are cautioned to consider each model provision in light of the circumstances presented by the particular case, and to modify provisions to the extent that such modifications are necessary or appropriate. Attorneys should not rely uncritically upon the language of the model agreements. However, many of the model provisions implement the minimum requirements which must be contained in any trust instrument certified by the Office. Certificates of Independence for fiduciaries must be executed in the form indicated in appendix A of this part.

(3) The Office of Government Ethics does not draft trust instruments for use in individual cases. However, its staff is always willing to cooperate with attorneys and to make its experience

available to them in developing appropriate trust instruments which satisfy applicable Federal laws, Executive orders and regulations. If the use of a qualified trust is contemplated in a particular case, it is strongly recommended that the interested parties or their representatives contact the Office of Government Ethics as early as possible.

(4) Prior to trust certification, prospective trustees or their representatives should schedule with the staff of the Office of Government Ethics an appointment for an orientation to the specialized requirements and procedures which have been established by the Act and the regulations with respect to qualified trust administration.

#### 2634.402 Special notice for advice-and-consent nominees.

(a) In general. In any case in which the establishment of a qualified diversified trust is contemplated with respect to a reporting individual whose nomination is being considered by a Senate committee, that individual shall inform the committee of the intention to establish a qualified diversified trust at the time of filing a financial disclosure report with the committee.

(b) Applicability. The rule of this section is not applicable to members of the uniformed services or Foreign Service officers. The special notice requirement of this section shall not preclude an individual from seeking the certification of a qualified blind trust or qualified diversified trust after the Senate has given its advice and consent to a nomination.

#### 2634.403 Qualified blind trusts.

(a) Definition. A qualified blind trust is a trust in which the filer, his spouse, or his minor or dependent child has a beneficial interest, which is certified pursuant to 2634.405 of this subpart by the Director of the Office of Government Ethics, and which includes in the trust instrument in the provisions required by paragraph (b) of this section, and has an independent trustee as defined in 2634.406 of this subpart. See section 102(f)(3) of the Act.

(b) Required provisions. The instrument which establishes a blind trust must adhere substantively to model drafts circulated by the Office of Government Ethics, and must provide that:

(1) The primary purpose of the blind trust is to confer on the independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without the participation by, or the knowledge of, any interested party. This includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of and in what investments the proceeds of sale are to be reinvested;

(2) The trustee and any other designated fiduciary in the exercise of their authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(3) None of the assets initially placed in the trust's portfolio shall include assets the holding of which by any interested party would be prohibited by the Act, by the implementing regulations, or by any other applicable Federal law, Executive order, or regulation;

(4) Any portfolio asset transferred to the trust by an interested party is free of any

restriction with respect to its transfer or sale, except as fully described in schedules attached to the trust instrument, and as approved by the Director of the Office of Government Ethics;

(5) During the term of the trust, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held by the trust;

(6) The trustee shall promptly notify the filer and the Director of the Office of Government Ethics when any particular asset transferred to the trust by an interested party has been completely disposed of or when the value of that asset is reduced to less than \$1,000;

(7) The trustee or his designee shall prepare the trust's income tax return. Under no circumstances shall the trustee or any other designated fiduciary disclose publicly, or to any interested party, the trust's tax return, any information relating to that return except for a summary of trust income in categories necessary for an interested party to complete his individual tax return, or any information which might specifically identify current trust assets, or those assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets under paragraph (b)(6) of this section;

(8) An interested party shall not receive any report on trust holdings and sources of trust income, except that the trustee shall, without identifying specifically any asset or holding:

(i) Report quarterly the aggregate market value of the assets representing the interested party's interest in the trust;

(ii) Report the net income or loss of the trust, and any other information necessary to enable the interested party to complete his individual income tax return; and

(iii) Report annually, for purposes of section 102(a)(1)(B) of the Act, the aggregate amount of the trust's income attributable to the interested party's beneficial interest in the trust, categorized in accordance with 2634.302(b);

(9) There shall be no direct or indirect communication with respect to the trust between an interested party and the independent trustee or any other designated fiduciary with respect to the trust unless:

(i) Such communication is in writing, with the prior written approval of the Director of the Office of Government Ethics and is filed with the Director in accordance with 2634.408(c) of this subpart; and

(ii) It relates only:

(A) To the request for a distribution from the trust, which does not specify whether the distribution shall be made in cash or in kind;

(B) To the general financial interest and needs of the interested party including, but not limited to, a preference for maximizing current income or long-term capital appreciation;

(C) To notification of the trustee by the interested party that the interested party is prohibited by subsequently applicable statute, Executive order, or regulation from holding an asset, and to directions to the trustee that the trust shall not hold that asset; or

(D) To instructions to the trustee to sell all of an asset which was initially placed in the trust by an interested party, and which, in the determination of the filer creates a real or apparent conflict due to duties subsequently assumed by the filer (but the filer is not required to give such directions);

Note: By the terms of paragraph (3)(C)(vi) of section 102(f) of the Act, communications which solely consist of requests for distributions of cash or other unspecified assets of the trust are not required to be in writing. Further, there is no statutory mechanism for pre-screening of proposed communications. However, experience of the Office of Government Ethics over the years dictates the necessity of prohibiting any oral communications between the trustee and an interested party with respect to the trust and pre-screening all proposed written communications, to prevent inadvertent prohibited communications and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trust instruments which do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.