

(10) The interested parties shall not take any action to obtain, and shall take reasonable action to avoid receiving, information with respect to the holdings and the sources of income of the trust, including a copy of any trust tax return filed by the trustee, or any information relating to that return, except for the reports and information specified in paragraphs (b)(6) and (b)(8) of this section;

(11) An independent trustee and any other designated fiduciary shall file, with the Director of the Office of Government Ethics by May 15th following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed in appendix B to this part. In addition, the independent trustee and such fiduciary shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust;

(12) Neither the trustee nor any other designated fiduciary shall knowingly and willfully, or negligently:

(i) Disclose to any interested party any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument;

(ii) Acquire any holding the ownership of which is prohibited by, or not in accordance with, the terms of the trust instrument;

(iii) Solicit advice from any interested party with respect to the trust, if such solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by title I of the Act or by this part;

(13) An interested party shall not knowingly and willfully, or negligently:

(i) Solicit or receive any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument; or

(ii) Fail to file any document required by title I of the Act or by this part;

(14) No person, including investment counsel, investment advisers, accountants, and tax preparers, may be employed or consulted by an independent trustee or any other designated fiduciary to assist in any capacity to administer the trust or to manage and control the trust assets, unless the following four conditions are met:

(i) When any interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director of the Office of Government Ethics;

(ii) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under 2634.406 of this subpart to be independent of any interested party with respect to the trust arrangement;

(iii) The person is instructed by the independent trustee or other designated fiduciary not to

disclose publicly or to any interested party information which might specifically identify current trust 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; and

(iv) The person is instructed by the trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party, and to make all indirect communications with respect to the trust only through the trustee, pursuant to paragraph (b)(9) of this section;

(15) The trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director of the Office of Government Ethics, securities, cash, or other property from any interested party;

(16) The existence of any banking or other client relationship between any interested party and an independent trustee or any other designated fiduciary shall be disclosed in schedules attached to the trust instrument, and no other such relationship shall be instituted unless that relationship is disclosed to the Director of the Office of Government Ethics; and

(17) The independent trustee and any other designated fiduciary shall be compensated in accordance with schedules annexed to the trust instrument.

[57 FR 11814, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

2634.404 Qualified diversified trusts.

(a) **Definition.** A qualified diversified trust is any 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, which has a portfolio as specified in paragraph (b) of this section, and which includes in the trust instrument the provisions required by paragraph (c) of this section and has an independent trustee as defined in 2634.406 of this subpart. See section 102(f)(4)(B) of the Act.

(b) **Required portfolio -- (1) Standards for initial assets.** It must be established, to the satisfaction of the Director of the Office of Government Ethics, that the initial assets of the trust proposed for certification comprise a widely diversified portfolio of readily marketable securities. The reporting individual or other interested party shall provide the Director with a detailed list of the securities proposed for inclusion in the portfolio, specifying their fair market values and demonstrating that these securities meet the requirements of this paragraph. The initial trust portfolio may not contain securities of issuers having substantial activities in the reporting individual's primary area of responsibility. If requested by the Director, the designated agency ethics official for the reporting individual's employing agency shall certify whether the proposed portfolio meets this standard.

(2) **Diversification standards.** For purposes of paragraph (b)(1) of this section, a portfolio will be widely diversified if:

(i) The value of the securities concentrated in any particular or limited industrial,

economic or geographic sector is no more than twenty percent of the total; and

(ii) The value of the securities of any single issuer (other than the United States Government) is no more than five percent of the total.

(3) Marketability standard. For purposes of paragraph (b)(1) of this section, a security will be readily marketable if:

(i) Daily price quotations for the security appear regularly in newspapers of general circulation; and

(ii) The trust holds the security in a quantity that does not unduly impair liquidity.

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

(1) The primary purpose of the diversified 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) The trust's initial assets shall comprise a widely diversified portfolio of readily marketable securities, in accordance with the principles of paragraph (b) of this section, and the trustee shall not acquire additional securities in excess of the diversification standards;

(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 under the trust;

(6) None of the assets initially placed in the trust's portfolio shall consist of securities of issuers having substantial activities in the reporting individual's primary area of Federal responsibility;

(7) The trustee or designee shall prepare the trust's income tax return and, on behalf of any interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust. Under no circumstances shall the trustee or any other designated fiduciary disclose publicly or to any interested party, any of the returns prepared by the trustee or his designee, any information relating to those returns, or any information which might specifically identify current trust assets, or those assets which have been sold or disposed of from trust holdings;

(8) An interested party shall not receive any report on trust holding 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; and

(ii) Report annually, for purposes of section 102(a)(1)(B) of the Act, the aggregate amount actually distributed from the trust to such interested party, or applied for the party's benefit;

(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 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; or

(C) To information, documents, and funds concerning income tax obligations arising from sources other than the property held in trust, which are required by the trustee to enable him to file, on behalf of an interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust;

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.

(10) The interested parties shall not seek to obtain, and shall take reasonable action to avoid receiving, information with respect to trust holdings and sources of trust income, including a copy of any tax return filed by the trustee, or any information relating to that return, except for the reports and information specified in paragraph (c)(8) of this section;

(11) An independent trustee and any other designated fiduciary shall file, with the Director

of the Office of Government Ethics, by May 15 following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed in appendix B to this part. In addition, the independent trustee and any other designated fiduciary shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust;

(12) Neither the trustee nor any other designated fiduciary shall knowingly and willfully, or negligently:

(i) Disclose to any interested party any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument;

(ii) Acquire any holding the ownership of which is prohibited by, or not in accordance with, the terms of the trust instrument;

(iii) Solicit advice from any interested party with respect to the trust, if such solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by title I of the Act or by this part;

(13) An interested party shall not knowingly and willfully, or negligently:

(i) Solicit or receive any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument; or

(ii) Fail to file any document required by title I of the Act or by this part;

(14) No person, including investment counsel, investment advisers, accountants, and tax preparers, may be employed or consulted by an independent trustee or any other designated fiduciary to assist in any capacity to administer the trust or to manage and control the trust assets, unless, the following four conditions are met:

(i) When an interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director of the Office of Government Ethics;

(ii) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under 2634.406 of this subpart to be independent of any interested party with respect to the trust arrangement;

(iii) The person is instructed by the independent trustee or other designated fiduciary not to disclose publicly or to any interested party information which might specifically identify current trust assets or those assets which have been sold or disposed of from trust holdings; and

(iv) The person is instructed by an independent trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party, and to make all indirect

communications with respect to the trust only through the trustee, pursuant to paragraph (c)(9) of this section;

(15) The trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director of the Office of Government Ethics, any securities, cash, or other property from any interested party;

(16) The existence of any banking or other client relationship between any interested party and an independent trustee or other designated fiduciary shall be disclosed in schedules attached to the trust instrument, and no other such relationship shall be instituted unless that relationship is disclosed to the Director of the Office of Government Ethics; and

(17) The independent trustee and any other designated fiduciary shall be compensated in accordance with schedules annexed to the trust instrument.

(d) Personal income tax returns. In the case of a trust to which this section applies, the trustee shall be given power of attorney to prepare, and shall file, on behalf of any interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose.

[57 FR 11814, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

2634.405 Certification of trusts.

(a) Standards. Before a trust may be classified as a qualified blind or a qualified diversified trust, under the provisions of 2634.403 or 2634.404 of this subpart, respectively, the trust must be certified by the Director of the Office of Government Ethics.

(1) A trust will be certified for purposes of this subpart only if:

(i) It is established to the Director's satisfaction that the requirements of section 102(f) of the Act and this subpart have been met;

(ii) Certification is in the public interest; and

(iii) Certification is consistent with the policies established by the Act, this subpart and other applicable laws and regulations.

(2) Certification will not be granted in any case in which, in the Director's sole judgment, such action would not be appropriate because of the ready availability of other remedies, the lack of any substantive ethical concern which would warrant the establishment of a qualified trust, or the nature or negligible value of the assets proposed for a trust's initial portfolio.

(b) Certification procedures. The interested parties or their representatives should first consult the staff of the Office of Government Ethics concerning the appropriateness of, and requirements for, certification in the particular case. In order to assure timely trust certification, the

interested parties shall be responsible for the expeditious submission to the Office of all required documents and responses to requests for information, including a statement that any interested party who will be a party to a certified trust instrument has read and understands the overview of executive branch qualified trusts in 2634.401(a) of this subpart. Certification shall be indicated by a letter from the Director to the interested parties or their representatives.

(c) Certification of pre-existing trusts. In addition to the normally applicable rules of this subpart D, other considerations apply to pre-existing trusts. Generally, in the case of a pre-existing trust whose terms do not permit amendments satisfying the rules of this subpart, all of the relevant parties (including the reporting individual, any other interested parties, the trustee of the pre-existing trust, and all of its other parties and beneficiaries) will be required pursuant to section 102(f)(7) of the Act to enter into an umbrella agreement specifying that the pre-existing (underlying) trust will be administered in accordance with the provisions of this subpart. A parent or guardian may execute the umbrella agreement on behalf of a required participant who is a dependent child. The umbrella agreement will be certified as a qualified trust if all requirements of this subpart are fulfilled under conditions where required confidentiality with respect to the trust can be assured. A copy of the underlying trust instrument, and a list of its assets at the time the umbrella agreement is certified as a qualified trust (categorized as to value in accordance with 2634.301(d)), shall be filed with the executed umbrella trust instrument as specified by 2634.408(a)(1)(i) of this subpart.

(d) Review of certification. The Office of Government Ethics shall maintain a program to assess, on a frequent basis, the appropriateness of any trust certification which has been granted.

(e) Revocation of certification and modification of trust instrument. Certification of a trust may be revoked pursuant to the rules of subpart E of this part. The terms of a qualified trust may not be revoked or amended, except with the prior written approval of the Director, and upon a showing of necessity and appropriateness.

2634.406 Independent trustees.

(a) Standards. (1) The term independent trustee means any entity referred to in paragraph (a)(2) of this section which, under all the facts and circumstances, is determined by the Director of the Office of Government Ethics and in the Director's sole discretion, to be independent of any interested party with respect to a trust proposed for certification under this subpart. The term includes, unless the context indicates otherwise, in addition to the party to a trust instrument who is designated to serve as trustee, those parties who are designated to perform fiduciary duties. Approval of a proposed trustee or other designated fiduciary shall be granted only if it is established to the Director's satisfaction that the requirements of section 102 of the Act and this subpart have been met, and that approval in the case is in the public interest and consistent with the policies established by those provisions and other applicable laws and regulations.

(2) Eligible entities. Eligibility to serve as a trustee or other fiduciary under this section is limited to a financial institution (not a person), not more than 10 percent of which is owned or controlled by a single individual, which is:

(i) A bank, as defined in 12 U.S.C. 1841(c); or

(ii) An investment adviser, as defined in 15 U.S.C. 80b - 2(a)(11).

Note: By the terms of paragraph (3)(A)(i) of section 102(f) of the Act, an individual who is an attorney, a certified public accountant, a broker, or an investment advisor is also eligible to serve as an independent trustee. However, experience of the Office of Government Ethics over the years dictates the necessity of limiting service as a trustee or other fiduciary to the financial institutions referred to in this paragraph, to maintain effective administration of trust arrangements 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 trustees or other fiduciaries who are not financial institutions, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(3) Requirements. No eligible entity shall be determined to be an independent trustee under this section unless:

(i) That entity is independent of and unassociated with any interested party so that it cannot be controlled or influenced in the administration of the trust by any interested party; and

(ii) That entity is not and has not been affiliated with any interested party, and is not a partner of, or involved in any joint venture or other investment or business with, any interested party; and

(iii) Any director, officer, or employee of such entity:

(A) Is independent of and unassociated with any interested party so that such director, officer, or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(B) Is not and has not been employed by any interested party, not served as a director, officer, or employee of any organization affiliated with any interested party, and is not and has not been a partner of, or involved in any joint venture or other investment with, any interested party; and

(C) Is not a relative of any interested party.

(b) Approval procedures. (1) Appropriate documentation to establish, pursuant to the requirements of paragraph (a)(3) of this section, the independence of a proposed trustee or any other person to be designated in a trust instrument to perform fiduciary duties shall be submitted to the Office of Government Ethics in writing, including the Certificate of Independence in the form prescribed in appendix A of this part. The existence of any other banking or client relationship between an interested party and a proposed trustee or other designated fiduciary must be disclosed in such documentation, and may be subject to discontinuance as a condition of approval.

(2) The Director shall indicate approval of a proposed trustee, and of any other person designated in the trust instrument to perform fiduciary duties, including those of an investment adviser, by reporting such approval in writing to the interested parties or to their representatives.

(c) Review of approval. The Office of Government Ethics shall maintain a program to assess, on a frequent basis, the appropriateness of any approval which has been granted under this section.

(d) Revocation of approval. Approval of a trustee or any other designated fiduciary may be revoked pursuant to the rules of subpart E of this part.

2634.407 Restrictions on fiduciaries and interested parties.

(a) Restrictions applicable to trustees and other fiduciaries. Any trustee or any other designated fiduciary of a qualified trust shall not knowingly or negligently:

(1) Disclose any information to an interested party with respect to the trust that may not be disclosed under title I of the Act, the implementing regulations or the trust instrument;

(2) Acquire any holding:

(i) Directly from an interested party without the prior written approval of the Director; or

(ii) The ownership of which is prohibited by, or not in accordance with, title I of the Act, the implementing regulations, the trust instrument, or with other applicable statutes and regulations;

(3) Solicit advice from any interested party with respect to such trust, which solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(4) Fail to file any document required by the implementing regulations or the trust instrument.

(b) Restrictions applicable to interested parties. An interested party to a qualified trust shall not knowingly or negligently:

(1) Solicit or receive any information about the trust that may not be disclosed under title I of the Act, the implementing regulations or the trust instrument; or

(2) Fail to file any document required by this subpart or the trust instrument.

2634.408 Special filing requirements for qualified trusts.

(a) The interested party. In the case of any qualified trust, the Government employee or other interested party shall:

(1) Execution of the trust. Within thirty days after the trust is certified under 2634.405 of this subpart by the Director of the Office of Government Ethics, file with the Director a copy of:

(i) The executed trust instrument of the trust (other than those provisions which relate to the testamentary disposition of the trust assets); and

(ii) A list of the assets which were transferred to the trust, categorized as to value of each asset in accordance with 2634.301(d).

(2) Transfer of assets. Within thirty days of transferring an asset, other than cash, to a

qualified trust, file a report with the Director of the Office of Government Ethics, which identifies and briefly describes each asset, categorized as to value in accordance with 2634.301(d).

(3) Dissolution of the trust. Within thirty days of the dissolution of a qualified trust:

(i) File a report of the dissolution with the Director of the Office of Government Ethics;

and

(ii) File with the Director a list of assets of the trust at the time of the dissolution, categorized as to value in accordance with 2634.301(d).

(b) Trustees and other designated fiduciaries. An independent trustee of a qualified trust, and any other person designated in the trust instrument to perform fiduciary duties, shall file, with the Director of the Office of Government Ethics by May 15th following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed by appendix B of this part. In addition, an independent trustee and other fiduciaries shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust.

(c) Written communications. All communications between an interested party and the trustee of a qualified trust must, under this subpart, have the prior written approval of the Director of the Office of Government Ethics. After such an approved written communication (including those communications described in 2634.403(b)(9) or 2634.404(c)(9) of this subpart) has been transmitted, the person initiating the communication shall file a copy of the communication within five days of its date, with the Director of the Office of Government Ethics.

(d) Public access. Any document filed under the requirements of paragraph (a) of this section by a public filer, nominee, or candidate shall be subject to the public disclosure requirements of 2634.603. Any document (and the information contained therein) inspected under the requirements of paragraph (b) of this section (other than a Certificate of Compliance), or filed under the requirements of paragraph (c) of this section, shall be exempt from the public disclosure requirements of 2634.603, and shall not be disclosed to any interested party.

Subpart E -- Revocation of Trust Certificates and Trustee Approvals

Source: 57 FR 11821, Apr. 7, 1992, unless otherwise noted.

2634.501 Purpose and scope.

(a) Purpose. This subpart establishes the procedures of the Office of Government Ethics for enforcement of the qualified blind trust, qualified diversified trust, and independent trustee provisions of title I of the Ethics in Government Act of 1978, as amended, and the regulation issued thereunder (subpart D of this part).

(b) Scope. This subpart applies to all trust certifications and trustee approvals pursuant to 2634.405(a) and 2634.406(a), respectively.

2634.502 Definitions.

For purposes of this subpart (unless otherwise indicated):

- (a) Senior Attorney means the Office of Government Ethics employee designated as the manager of the qualified trust program.
- (b) Trust restrictions means the applicable provisions of title I of the Ethics in Government Act of 1978, subpart D of this part, and the trust instrument.

2634.503 Determinations.

(a) Where the Senior Attorney concludes that violations or apparent violations of the trust restrictions exist and may warrant revocation of trust certification or trustee approval previously granted under 2634.405 or 2634.406 of this subpart, the Senior Attorney may, pursuant to the procedure specified in paragraph (b) of this section, conduct a review of the matter, and may submit findings and a recommendation concerning final action to the Director of the Office of Government Ethics.

(b) Review procedure. (1) In his review of the matter, the Senior Attorney shall perform such examination and analysis of violations or apparent violations as he deems reasonable.

(2) The Senior Attorney shall provide an independent trustee and, if appropriate, the interested parties, with:

(i) Notice that revocation of trust certification or trustee approval is under consideration pursuant to the procedures in this subpart;

(ii) A summary of the violation or apparent violations which shall state the preliminary facts and circumstances of the transactions or occurrences involved with sufficient particularity to permit the recipients to determine the nature of the allegations; and

(iii) Notice that the recipients may present evidence and submit statements on any matter in issue within ten business days of the recipient's actual receipt of the notice and summary.

(c) Determination. (1) In making determinations with respect to the violations or apparent violations under this section, the Director of the Office of Government Ethics shall consider the findings and recommendations of final action submitted by the Senior Attorney under paragraph (a) of this section, as well as the written record of review compiled under paragraph (b) of this section.

(2) If the Director finds a violation or violations of the trust restrictions he may, as he deems appropriate:

(i) Issue an order revoking trust certification or trust approval;

(ii) Resolve the matter through any other remedial action within the Director's authority;

(iii) Order further examination and analysis of the violation or apparent violation; or

(iv) Decline to take further action.

(3) If an order of revocation is issued, the parties to the trust instrument shall be expeditiously notified in writing. The notice shall state the basis for the revocation, and shall inform the parties either that the trust is no longer a qualified blind or qualified diversified trust for any purpose under Federal law; or that the independent trustee may no longer serve the trust in any capacity, and must be replaced by a successor, who is subject to the prior written approval of the Director; or both where appropriate.

Subpart F -- Procedure

Source: 57 FR 11821, Apr. 7, 1992, unless otherwise noted.

2634.601 Report forms.

(a) The Office of Government Ethics provides, through the Federal Supply Service of the General Services Administration, two standard forms for financial disclosure reporting: the SF 278 (Public Financial Disclosure Report) for reporting the information described in subpart B of this part on executive branch public disclosure; and the SFXXX (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure.

(b) Subject to the prior written approval of the Director of the Office of Government Ethics, an agency may require employees to file additional confidential financial disclosure forms which supplement either or both of the standard forms referred to in paragraph (a) of this section, if necessary because of special or unique agency circumstances. The Director may approve such agency forms when, in his opinion, the supplementation is shown to be necessary for a comprehensive and effective agency ethics program to identify and resolve conflicts of interest. See 2634.103 and 2634.901.

(c) Reports concerning payments made to charitable organizations in lieu of honoraria shall also be filed on the separate standard form provided in conjunction with part 2636 of this chapter, and in accordance with the procedures specified therein.

2634.602 Filing of reports.

(a) Except as otherwise provided in this section, the reporting individual shall file financial disclosure reports required under this part with the designated agency ethics official or his delegate at the agency where the individual is employed, or was employed immediately prior to termination of employment, or in which he will serve. Detailees shall file with their primary agency. Reports are due at the times indicated in 2634.201 of subpart B (public disclosure) or 2634.903 of subpart I (confidential disclosure) of this part, unless an extension is granted pursuant to the provisions of subparts B or I of this part.

(b) The President, the Vice President, any independent counsel, and persons appointed by

independent counsel under 28 U.S.C. chapter 40, shall file the public financial disclosure reports required under this part with the Director of the Office of Government Ethics.

(c) (1) Each agency receiving the public financial disclosure reports required to be filed under this part by the following individuals shall transmit copies to the Director of the Office of Government Ethics:

(i) The Postmaster General;

(ii) The Deputy Postmaster General;

(iii) The Governors of the Board of Governors of the United States Postal Service;

(iv) The designated agency ethics official;

(v) Employees of the Executive Office of the President who are appointed under 3 U.S.C. 105(a)(2)(A) or (B) or 3 U.S.C. 107(a)(1)(A) or (b)(1)(A)(i), and employees of the Office of Vice President who are appointed under 3 U.S.C. 106(a)(1)(A) or (B); and

(vi) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate, other than members of the uniformed services.

(2) Prior to transmitting a copy of a report to the Director of the Office of Government Ethics, the designated agency ethics official or his delegate shall review that report in accordance with 2634.605 of this subpart, except for his own report, which shall be reviewed by the agency head or by a delegate of the agency head.

(3) For nominee reports, the Director of the Office of Government Ethics shall forward a copy to the Senate committee that is considering the nomination. (See 2634.605(c) of this subpart for special procedures regarding the review of such reports.)

(d) The Director of the Office of Government Ethics shall file his financial disclosure report with his Office, which shall make it immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in 2634.201(d), other than an incumbent President or Vice President, shall file their financial disclosure reports with the Federal Election Commission, which shall review and send copies of such reports to the Director of the Office of Government Ethics.

(f) Members of the uniformed services identified in 2634.202(c) shall file their financial disclosure reports with the Secretary concerned, or his delegate.

2634.603 Custody of and access to public reports.

(a) Each agency shall make available to the public in accordance with the provisions of this section those public reports filed with the agency by reporting individuals described under

subpart B of this part.

(b) This section does not require public availability of those reports filed by:

(1) Any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by that individual, public disclosure of the report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States.

Individuals referred to in this paragraph who are exempt from the public availability requirement may also be authorized, notwithstanding 2634.701, to file any additional reports necessary to protect their identity from public disclosure, if the President finds or has found that such filings are necessary in the national interest; or

(2) An independent counsel whose identity has not been disclosed by the Court under 28 U.S.C chapter 40, or any person appointed by that independent counsel under such chapter.

(c) Each agency shall, within thirty days after any public report is received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes written application as provided by agency procedure. Agency reviewing officials and the support staffs who maintain the files, the staff of the Office of Government Ethics, and Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations need not submit an application. The agency may utilize Office of Government Ethics Form 201 for such applications. An application shall state:

(1) The requesting person's name, occupation, and address;

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(3) That the requesting person is aware of the prohibitions on obtaining or using the report set forth in paragraph (f) of this section.

(d) Applications for the inspection of or copies of public reports shall also be made available to the public throughout the period during which the report itself is made available, utilizing the procedures in paragraph

(c) of this section.

(e) The agency may require a reasonable fee, established by agency regulation, to recover the direct cost of reproduction or mailing of a public report, excluding the salary of any employee involved. A copy of the report may be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fee is in the public interest. The criteria used by an agency to determine when a fee will be reduced or waived shall be established by regulation. Agency regulations contemplated by paragraph (e) of this section do not require approval pursuant to 2634.103.

(f) It is unlawful for any person to obtain or use a public report:

- (1) For any unlawful purpose;
- (2) For any commercial purpose, other than by news and communications media for dissemination to the general public;
- (3) For determining or establishing the credit rating of any individual; or
- (4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Example 1. The deputy general counsel of Agency X is responsible for reviewing the public financial disclosure reports filed by persons within that agency. The agency personnel director, who does not exercise functions within the ethics program, wishes to review the disclosure report of an individual within the agency. The personnel director must file an application to review the report. However, the supervisor of an official with whom the deputy general counsel consults concerning matters arising in the review process need not file such an application.

Example 2. A state law enforcement agent is conducting an investigation which involves the private financial dealings of an individual who has filed a public financial disclosure report. The agent must complete a written application in order to inspect or obtain a copy.

Example 3. A financial institution has received an application for a loan from an official which indicates her present financial status. The official has filed a public financial disclosure statement with her agency. The financial institution cannot be given access to the disclosure form for purposes of verifying the information contained on the application.

(g) (1) Any public report filed with an agency or transmitted to the Director of the Office of Government Ethics under this section shall be retained by the agency, and by the Office of Government Ethics when it receives a copy. The report shall be made available to the public for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to 2634.201(c) as a nominee and was not subsequently confirmed by the Senate, or who filed the report pursuant to 2634.201(d) as a candidate and was not subsequently elected, the report, unless needed in an ongoing investigation, shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President. See also the OGE/GOVT

- 1 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(2) For purposes of paragraph (g)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust shall be retained and made available to the public until the periods for retention of all other reports of the individual have lapsed under paragraph (g)(1) of this section.

[57 FR 11821, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

2634.604 Custody of and denial of public access to confidential reports.

(a) Any report filed with an agency under subpart I of this part shall be retained by the agency for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation. See also the OGE/GOVT - 2 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(b) The reports filed pursuant to subpart I of this part are confidential. No member of the public shall have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a and the OGE/GOVT - 2 Privacy Act system of records (and any applicable agency system); 5 U.S.C. app. (Ethics in Government Act of 1978, section 107(a)); sections 201(d) and 502(b) of Executive Order 12674, as modified by Executive Order 12731; and 2634.901(d).

[57 FR 11821, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

2634.605 Review of reports.

(a) In general. The designated agency ethics official shall normally serve as the reviewing official for reports submitted to his agency. That responsibility may be delegated, except in the case of certification of nominee reports required by paragraph (c) of this section. See also 2634.105(q). He shall note on any report or supplemental report the date on which it is received. Except as indicated in paragraph (c) of this section, all reports shall be reviewed within 60 days after the date of filing. Reports reviewed by the Director of the Office of Government Ethics shall be reviewed within 60 days from the date on which they are received by that Office. Final certification in accordance with paragraph (b)(2) of this section may, of necessity, occur later, where additional information is being sought or remedial action is being taken under this section.

(b) Responsibilities of reviewing officials -- (1) Initial review. The reviewing official may request an intermediate review by the filer's supervisor. In the case of a filer who is detailed to another agency for more than 60 days during the reporting period, the reviewing official shall obtain an intermediate review by the agency where the filer served as a detailee. After obtaining any intermediate review or determining that such review is not required, the reviewing official shall examine the report to determine, to his satisfaction that:

(i) Each required item is completed; and

(ii) No interest or position disclosed on the form violates or appears to violate:

(A) Any applicable provision of chapter 11 of title 18, United States Code;

(B) The Act, as amended, and the implementing regulations;

(C) Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations; or

(D) Any other agency-specific statute or regulation which governs the filer.

(2) Signature by reviewing official. If the reviewing official determines that the report meets the requirements of paragraph (b)(1) of this section, he shall certify it by signature and date. The reviewing official need not audit the report to ascertain whether the disclosures are correct. Disclosures shall be taken at "face value" as correct, unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, a report which is signed by a reviewing official certifies that the filer's agency has reviewed the report, and that the reviewing official has concluded that each required item has been completed and that on the basis of information contained in such report the filer is in compliance with applicable laws and regulations noted in paragraph (b)(1)(ii) of this section.

(3) Requests for, and review based on, additional information. If the reviewing official believes that additional information is required, he shall request that it be submitted by a specified date. This additional information shall be made a part of the report. If the reviewing official concludes, on the basis of the information disclosed in the report and any additional information submitted, that the report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report.

(4) Compliance with applicable laws and regulations. If the reviewing official concludes that information disclosed in the report may reveal a violation of applicable laws and regulations as specified in paragraph (b)(1)(ii) of this section, the official shall:

(i) Notify the filer of that conclusion;

(ii) Afford the filer a reasonable opportunity for an oral or written response; and

(iii) Determine, after considering any response, whether or not the filer is then in compliance with applicable laws and regulations specified in paragraph (b)(1)(ii) of this section. If the reviewing official concludes that the report does fulfill the requirements, he shall sign and date the report. If he determines that it does not, he shall:

(A) Notify the filer of the conclusion;

(B) Afford the filer an opportunity for personal consultation if practicable;

(C) Determine what remedial action under paragraph (b)(5) of this section should be taken to bring the report into compliance with the requirements of paragraph (b)(1)(ii) of this section; and

(D) Notify the filer in writing of the remedial action which is needed, and the date by which such action should be taken.

(5) Remedial action. (i) Except in unusual circumstances, which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed not later than three months from the date on which the filer received notice that the action is required.

(ii) Remedial action may include, as appropriate:

- (A) Divestiture of a conflicting interest (see subpart J of this part);
- (B) Resignation from a position with a non-Federal business or other entity;
- (C) Restitution;
- (D) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part;
- (E) Procurement of a waiver under 18 U.S.C. 208(b)(1) or (b)(3);
- (F) Preparation of a written instrument of recusal (disqualification); or
- (G) Voluntary request by the filer for transfer, reassignment, limitation of duties, or resignation.

(6) Compliance or referral. (i) If the filer complies with a written request for remedial action under paragraph (b)(4) of this section, the reviewing official shall indicate, in the comment section of the report, what remedial action has been taken. The official shall also sign and date the report.

(ii) If the filer does not comply by the designated date with the written request for remedial action transmitted under paragraph (b)(4) of this section, the reviewing official shall, in the case of a public filer under subpart B of this part, notify the head of the agency and the Office of Government Ethics, for appropriate action. Where the filer is in a position in the executive branch (other than in the uniformed services or the Foreign Service), appointment to which requires the advice and consent of the Senate, the Director of the Office of Government Ethics shall refer the matter to the President. In the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. For confidential filers, the reviewing official will follow agency procedures.

(c) Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate. In the case of a report filed by an individual described in 2634.201(c) who is nominated by the President for appointment to a position that requires the advice and consent of the Senate:

(1) The Executive Office of the President shall furnish the applicable financial disclosure report form to the nominee. It shall forward the completed report to the designated agency ethics official at the agency where the nominee is serving or will serve, or it may direct the nominee to file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official shall complete an accelerated review of the report, in accordance with the standards and procedures in paragraph (b) of this section. If that official concludes that the report reveals no conflict of interest under applicable laws and regulations,

the official shall:

(i) Attach to the report a description (when available) of the position to be filled by the nominee;

(ii) Personally certify the report by signature, and date the certification;

(iii) Write an opinion letter to the Director of the Office of Government Ethics, personally certifying that there is no unresolved conflict of interest under applicable laws and regulations, and discussing:

(A) Any actual or apparent conflicts of interest that were detected during the review process; and

(B) The resolution of those real or apparent conflicts, including any specific commitment, ethics agreement entered under the provisions of subpart H of this part, or other undertaking by the nominee to resolve any such conflicts. A copy of any commitment, agreement, or other undertaking which is reduced to writing shall be sent to the Director, in accordance with subpart H of this part; and

(iv) Deliver the letter and the report to the Director of the Office of Government Ethics, within three working days after the designated agency ethics official receives the report.

Note: The designated agency ethics official's certification responsibilities in 2634.605(c) are nondelegable and must be accomplished by him personally, or by the agency's alternate designated agency ethics official, in his absence. See 2638.203 of this chapter.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency ethics official. If the Director is satisfied that no unresolved conflicts of interest exist, then the Director shall sign and date the report form. The Director shall then submit the report with a letter to the appropriate Senate committee, expressing the Director's opinion whether, on the basis of information contained in the report, the nominee has complied with all applicable conflict laws and regulations.

(4) If, in the case of any nominee or class of nominees, the expedited procedure specified in this paragraph cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency ethics official shall inform the Director. When necessary and appropriate, the Director may modify the rule of that paragraph for a nominee or a class of nominees with respect to a particular department or agency.