

OFFICE OF GOVERNMENT ETHICS**5 CFR Part 2634**

RIN 3209-AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture**AGENCY:** Office of Government Ethics (OGE).**ACTION:** Final rule.

SUMMARY: The U.S. Office of Government Ethics is issuing a final rule amending the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture regulations. Pursuant to section 402(b) of the Ethics in Government Act, the U.S. Office of Government Ethics (OGE) is revising the regulations governing financial disclosure to incorporate the new reporting requirements imposed by the Stop Trading on Congressional Knowledge Act (STOCK Act), which was enacted on April 4, 2012. As a part of the revision, OGE also is modernizing language, making changes to the confidential filing requirements, adding and updating examples, and conforming the language of the regulation more closely to that of the Ethics in Government Act (EIGA). In addition, OGE is updating definition of “widely diversified” for Excepted Investment Fund purposes that brings the definition in line with the definition of “diversified” found in the exemptions to the conflicts of interest law governing personal financial interests.

DATES: The final rule is effective on January 1, 2019.**FOR FURTHER INFORMATION CONTACT:** Heather A. Jones, Senior Counsel for Financial Disclosure, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005-3917; Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.**SUPPLEMENTARY INFORMATION:****I. Background**

The U.S. Office of Government Ethics (OGE) published a proposed rule in the *Federal Register*, 81 FR 69204, October 5, 2016, proposing to amend 5 CFR part 2634, Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture. Part 2634 sets forth the rules governing public financial disclosure reporting for the Executive Branch set forth in the EIGA and the STOCK Act. It also establishes the rules governing confidential financial reporting authorized by the EIGA. Part 2634 institutes procedures

for the creation and approval of a qualified trust as required by the EIGA. Finally, it establishes rules for requesting and approval of a certificate of divestiture as set forth in 26 U.S.C. 1043.

The amendments to part 2634, which are described in the preamble to the proposed rule, were proposed following OGE’s retrospective review of the regulation and draw upon the collective experience of agency ethics officials across the executive branch. The amendments reflect extensive input from the executive branch ethics community, as well as OGE’s consultation with the Department of Justice (DOJ) and the Office of Personnel Management pursuant to 5 U.S.C. app. 402(b)(1).

The proposed rule provided a 60-day comment period, which ended on December 5, 2016. OGE received one set of timely and responsive comments, which were submitted by an individual. OGE also received a comment from Senator Ron Wyden on April 27, 2017. After carefully considering both comments and for the reasons set forth in the preamble to the proposed rule, OGE is publishing this final rule. The rationale for the proposed rule can be found in the preamble at: <https://www.gpo.gov/fdsys/pkg/FR-2016-10-05/pdf/2016-22958.pdf>.

II. Comments

As noted above, OGE received two sets of comments on the proposed rule. The individual who commented suggested that the President and the Vice President be subject to the financial disclosure regulations in part 2634, that the President report compensation other than his Federal salary, and that the President report any emolument received. The President and Vice President already are subject to all public financial disclosure rules under section 2634.202. Specifically, section 2634.302 requires disclosure investment and non-investment income (including emoluments, but excluding any federal salary) over \$200 and section 2634.304 captures any gift or emolument with a value of more than \$390 (this amount will increase in 2020). The commenter also suggests the disclosure of a number of other items that are not the subject of this regulation.

Senator Wyden commented that OGE had removed the requirement that the appropriate designated agency ethics official notify the Senate confirmation committee that the nominee has taken the steps necessary to comply with the nominee’s ethics agreement. Based on this comment, OGE has reinserted that requirement in section 2634.804(a).

OGE made three technical changes to the final rule. OGE deleted the inoperative reference to 5 CFR part 2638 in the note to section 2634.605(c)(2). OGE changed the gift threshold amounts and civil monetary penalty amounts, which had been updated by regulations since the publication of the proposed rule.

In all other respects, the final rule follows the proposed rule of October 5, 2016.

III. Matters of Regulatory Procedure*Regulatory Flexibility Act*

As Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

No review is needed under the Paperwork Reduction Act (44 U.S.C. chapter 35) for the final rule, because it adds no new or additional information collection requirements in the regulation, which are currently approved under OMB paperwork control numbers 3209-001, 3209-002, 3209-004, 3209-006, and 3209-0007.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Executive Order 12866, Executive Order 13563 and Executive Order 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule is not subject to the

requirements of E.O. 13771 because this rule results in no more than de minimis costs.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: July 10, 2018.

David Apol,

Acting Director and General Counsel, Office of Government Ethics.

■ Accordingly, the Office of Government Ethics revises 5 CFR part 2634 to read as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

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Authority: 5 U.S.C. app.; 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C.

2461 note, as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 and Sec. 701, Pub. L. 114–74; Pub. L. 112–105, 126 Stat. 291; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2634.101 Authority.

The regulation in this part is issued pursuant to the authority of the Ethics in Government Act of 1978, as amended; 26 U.S.C. 1043; the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015; the Stop Trading on Congressional Knowledge Act (STOCK Act), as amended; and Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

§ 2634.102 Purpose and overview.

(a) The regulation in this part supplements and implements title I of the Act, sections 8(a)–(b) and 11 of the STOCK Act, and section 201(d) of Executive Order 12674 (as modified by Executive Order 12731) with respect to executive branch employees, by setting forth more specifically the uniform procedures and requirements for financial disclosure and for the certification and use of qualified blind and diversified trusts. Additionally, this part implements section 502 of the Reform Act by establishing procedures for executive branch personnel to obtain Certificates of Divestiture, which permit deferred recognition of capital gain in certain instances.

(b) The rules in this part govern both public and confidential (nonpublic) financial disclosure systems. Subpart I of this part contains the rules applicable to the confidential disclosure system.

§ 2634.103 Executive agency supplemental regulations.

(a) The regulation in this part is intended to provide uniformity for executive branch financial disclosure systems. However, an agency may, subject to the prior written approval of the Office of Government Ethics (OGE), issue supplemental regulations implementing this part, if necessary to address special or unique agency circumstances. Such regulations:

(1) Must be consistent with the Act, the STOCK Act, Executive Orders 12674 and 12731, and this part; and

(2) Must not impose additional reporting requirements on either public or confidential filers, unless specifically authorized by the Office of Government

Ethics as supplemental confidential reporting.

Note to paragraph (a): Supplemental regulations will not be used to satisfy the separate requirement of 5 U.S.C. app. (Ethics in Government Act of 1978, section 402(d)(1)) that each agency have established written procedures on how to collect, review, evaluate, and, where appropriate, make publicly available, financial disclosure statements filed with it.

(b) Requests for approval of supplemental regulations under paragraph (a) of this section must be submitted in writing to the Office of Government Ethics, and must set forth the agency's need for any proposed supplemental reporting requirements. See § 2634.901(b) and (c).

(c) Agencies should review all of their existing financial disclosure regulations to determine which of those regulations must be modified or revoked in order to conform with the requirements of this part. Any amendatory agency regulations will be processed in accordance with paragraphs (a) and (b) of this section.

§ 2634.104 Policies.

(a) Title I of the Act requires that high-level Federal officials disclose publicly their personal financial interests, to ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust. Title I also authorizes the Office of Government Ethics to establish a confidential (nonpublic) financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict-of-interest review.

(b) Public and confidential financial disclosure serves to prevent conflicts of interest and to identify potential conflicts, by providing for a systematic review of the financial interests of both current and prospective officers and employees. These reports assist agencies in administering their ethics programs and providing counseling to employees.

(c) Financial disclosure reports are not net worth statements. Financial disclosure systems seek only the information that the President, Congress, or OGE as the supervising ethics office for the executive branch has deemed relevant to the administration and application of the criminal conflict of interest laws, other statutes on ethical conduct or financial interests, and Executive orders or regulations on standards of ethical conduct.

(d) Nothing in the Act, the STOCK Act, or this part requiring reporting of

information or the filing of any report will be deemed to authorize receipt of income, honoraria, gifts, or reimbursements; holding of assets, liabilities, or positions; or involvement in transactions that are prohibited by law, Executive order, or regulation.

(e) The provisions of title I of the Act, the STOCK Act, and this part requiring the reporting of information supersede any general requirement under any other provision of law or regulation on the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. However, the provisions of title I and this part do not supersede the requirements of 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act).

(f) This part is intended to be gender-neutral; therefore, use of the terms he, his, and him include she, hers, and her, and vice versa.

§ 2634.105 Definitions.

For purposes of this part:

(a) *Act* means the Ethics in Government Act of 1978 (Pub. L. 95–521), as amended, as modified by the Ethics Reform Act of 1989 (Pub. L. 101–194), as amended.

(b) *Agency* means any executive agency as defined in 5 U.S.C. 105 (any executive department, Government corporation, or independent establishment in the executive branch), any military department as defined in 5 U.S.C. 102, and the Postal Service and the Postal Regulatory Commission. It does not include the Government Accountability Office.

(c) *Confidential filer*. For the definition of “confidential filer,” see § 2634.904.

(d) *Dependent child* means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(1) Is unmarried, under age 21, and living in the household of the reporting individual; or

(2) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, see 26 U.S.C. 152.

(e) *Designated agency ethics official* means the primary officer or employee who is designated by the head of an agency to administer the provisions of title I of the Act and this part within an agency, and in the designated agency ethics official's absence the alternate who is designated by the head of the agency. The term also includes a delegate of such an official, unless otherwise indicated. See part 2638 of this chapter on the appointment and additional responsibilities of a

designated agency ethics official and alternate.

(f) *Executive branch* means any agency as defined in paragraph (b) of this section and any other entity or administrative unit in the executive branch.

(g) *Filer* is used interchangeably with “reporting individual,” and may refer to a “confidential filer” as defined in paragraph (c) of this section, a “public filer” as defined in paragraph (m) of this section, or a nominee or candidate as described in § 2634.201.

(h) *Gift* means a payment, advance, forbearance, rendering, free attendance at an event, deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include:

(1) Bequests and other forms of inheritance;

(2) Suitable mementos of a function honoring the reporting individual;

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(4) Food and beverages, unless they are consumed in connection with a gift of overnight lodging;

(5) Communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals;

(6) Consumable products provided by home-state businesses to the offices of the President or Vice President, if those products are intended for consumption by persons other than the President or Vice President; or

(7) Exclusions and exceptions as described at § 2634.304(c) and (d).

(i) *Honorarium* means a payment of money or anything of value for an appearance, speech, or article.

(j) *Income* means all income from whatever source derived. It includes but is not limited to the following items: Earned income such as compensation for services, fees, commissions, salaries, wages, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from the investment portion of life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust. The term includes all income items, regardless of whether they are taxable for Federal income tax purposes, such as interest on

municipal bonds. Generally, income means “gross income” as determined in conformity with the Internal Revenue Service principles at 26 CFR 1.61–1 through 1.61–15 and 1.61–21.

(k) *Personal hospitality of any individual* means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or the individual’s family.

(l) *Personal residence* means any property used exclusively as a private dwelling by the reporting individual or his spouse, which is not rented out during any portion of the reporting period. The term is not limited to one’s domicile; there may be more than one personal residence, including a vacation home.

(m) *Public filer*. For the definition of “public filer,” see § 2634.202.

(n) *Reimbursement* means any payment or other thing of value received by the reporting individual (other than gifts, as defined in paragraph (h) of this section) to cover travel-related expenses of such individual, other than those which are:

(1) Provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act); or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (52 U.S.C. 30104) (relating to reports of campaign contributions).

Note to paragraph (n): Payments which are not made to the individual are not reimbursements for purposes of this part. Thus, payments made to the filer’s employing agency to cover official travel-related expenses do not fit this definition of reimbursement. For example, payments being accepted by the agency pursuant to statutory authority such as 31 U.S.C. 1353, as implemented by 41 CFR part 304–1, are not considered reimbursements under this part, because they are not payments received by the reporting individual. On the other hand, travel payments made to the employee by an outside entity for private travel are considered reimbursements for purposes of this part. Likewise, travel payments received from certain nonprofit entities under authority of 5 U.S.C. 4111 are considered reimbursements, even though for official travel, since that statute specifies that such payments must be made to the individual directly (with prior approval from the individual’s agency).

(o) *Relative* means an individual who is related to the reporting individual, as

father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and will be deemed to include the fiancé or fiancée of the reporting individual.

(p) *Reporting individual* is used interchangeably with “filer,” and may refer to a “confidential filer” as defined in § 2634.904, a “public filer” as defined in § 2634.202, or a nominee or candidate as described in § 2634.201(c) and (d).

(q) *Reviewing official* means the designated agency ethics official or the delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics.

(r) *Secretary concerned* has the meaning set forth in 10 U.S.C. 101(a)(9) (relating to the Secretaries of the Army, Navy, Air Force, and for certain Coast Guard matters, the Secretary of Homeland Security); and, in addition, means:

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration;

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(3) The Secretary of State with respect to matters concerning the Foreign Service.

(s) *Special Government employee* has the meaning given to that term by the first sentence of 18 U.S.C. 202(a): An officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(t) *STOCK Act* means the Stop Trading on Congressional Knowledge Act (Pub. L. 112–105), as amended.

(u) *Value* means a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in § 2634.301(e). For gifts and reimbursements, see § 2634.304(e).

Subpart B—Persons Required To File Public Financial Disclosure Reports

§ 2634.201 General requirements, filing dates, and extensions.

(a) *Incumbents*. A public filer as defined in § 2634.202 who, during any calendar year, performs the duties of the position or office, as described in that section, for a period in excess of 60 days must file a public financial disclosure report containing the information prescribed in subpart C of this part, on or before May 15 of the succeeding year.

Example 1: An SES official commences performing the duties of his position on November 15. He will not be required to file an incumbent report for that calendar year.

Example 2: An employee, who is classified at GS–15, is formally detailed to fill an SES position or is temporarily promoted to fill an SES position in an acting capacity, from October 15 through December 31. Having performed the duties of a covered position for more than 60 days during the calendar year, he will be required to file an incumbent report. In addition, he must file a new entrant report the first time he serves more than 60 days in a calendar year in the position, in accordance with § 2634.201(b) and § 2634.204(c)(1).

Example 3: An SES employee terminates her employment with an agency on March 7, 2015. The employee will file a termination report by April 6, 2015, in accordance with § 2634.201(e), but will not file an incumbent report on May 15.

(b) *New entrants*. (1) Within 30 days of assuming a public filer position or office described in § 2634.202, an individual must file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, no report will be required if the individual:

(i) Has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(ii) Has already filed such a report as a nominee or candidate for the position.

Example: Y, an employee of the Treasury Department who has previously filed reports in accordance with the rules of this section, terminates employment with that Department on January 10, 2015, and begins employment with the Commerce Department on January 11, 2015, in a Senior Executive Service position. Y is not a new entrant because he has assumed a position described in § 2634.202 within thirty days of leaving another position so described. Accordingly, he need not file a new report with the Commerce Department.

Note to example: While Y did not have to file a new entrant report with the Commerce Department, that Department should request a copy of the last report which he filed with the Treasury Department, so that Commerce

could determine whether or not there would be any conflicts or potential conflicts in connection with Y's new employment. Additionally, Y will have to file an incumbent report covering the 2014 calendar year, in accordance with paragraph (a) of this section, due not later than May 15, 2015, with Commerce, which should provide a copy to Treasury so that both may review it.

(c) *Nominees.* (1) At any time after a public announcement by the President or President-elect of the intention to nominate an individual to an executive branch position, appointment to which requires the advice and consent of the Senate, such individual may, and in any event within five days after the transmittal of the nomination to the Senate must, file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) This requirement will not apply to any individual who is nominated to a position as:

- (i) An officer of the uniformed services; or
- (ii) A Foreign Service Officer.

Note to paragraph (c)(2): Although the statute, 5 U.S.C. app. (Ethics in Government Act of 1978, section 101(b)(1)), exempts uniformed service officers only if they are nominated for appointment to a grade or rank for which the pay grade is O-6 or below, the Senate confirmation committees have adopted a practice of exempting all uniformed service officers, unless otherwise specified by the committee assigned.

(3) Section 2634.605(c) provides expedited procedures in the case of individuals described in paragraph (c)(1) of this section. Those individuals referred to in paragraph (c)(2) of this section as being exempt from filing nominee reports must file new entrant reports, if required by paragraph (b) of this section.

(d) *Candidates.* A candidate (as defined in section 301 of the Federal Election Campaign Act of 1971, 52 U.S.C. 30101) for nomination or election to the office of President or Vice President (other than an incumbent) must file a public financial disclosure report containing the information prescribed in subpart C of this part, in accordance with the following:

(1) Within 30 days of becoming a candidate or on or before May 15 of the calendar year in which the individual becomes a candidate, whichever is later, but in no event later than 30 days before the election; and

(2) On or before May 15 of each successive year an individual continues to be a candidate. However, in any calendar year in which an individual continues to be a candidate but all elections relating to such candidacy

were held in prior calendar years, the individual need not file a report unless the individual becomes a candidate for a vacancy during that year.

Example: P became a candidate for President in January 2015. P will be required to file a public financial disclosure report on or before May 15, 2015. If P had become a candidate on June 1, 2015, P would have been required to file a disclosure report within 30 days of that date.

(e) *Termination of employment.* (1) On or before the thirtieth day after termination of employment from a public filer position or office described in § 2634.202 but no more than 15 days prior to termination, an individual must file a public financial disclosure report containing the information prescribed in subpart C of this part. If the individual files prior to the termination date and there are any changes between the filing date and the termination date, the individual must update the report.

(2) However, if within 30 days of such termination the individual assumes employment in another position or office for which a public report under the Act is required to be filed, no report will be required by the provisions of this paragraph. See the related *Example* in paragraph (b) of this section.

(f) *Transactions occurring throughout the calendar year.* (1) A public filer as defined in § 2634.202 who, during any calendar year, performs, or is reasonably expected to perform, the duties of his position or office, as described in that section, for a period in excess of 60 days must file a transaction report within 30 days of receiving notification of a covered transaction, but not later than 45 days after such transaction. The report must contain the information prescribed in subpart C of this part.

(2) A covered transaction is any purchase, sale, or exchange required to be reported according to the provisions of § 2634.309.

Example: A filer receives a statement on October 10 notifying her of all of the covered transactions executed by her broker on her behalf in September. Although each transaction may have a different due date, if the filer reports all the covered transactions from September on a report filed on or before October 15, the filer will ensure that all transactions have been timely reported.

(g) *Extensions generally.* The reviewing official may, for good cause shown, grant to any public filer or class thereof an extension of time for filing which must not exceed 45 days. The reviewing official may, for good cause shown, grant an additional extension of time which must not exceed 45 days. The employee must set forth in writing specific reasons why such additional extension of time is necessary. The

reviewing official must approve or deny such requests in writing. Such records must be maintained as part of the official report file. For extensions on confidential financial disclosure reports, see § 2634.903(d).

(h) *Exceptions for individuals in combat zones.* In the case of an individual who is serving in the Armed Forces, or serving in support of the Armed Forces, in an area while that area is designated by the President by Executive order as a combat zone for purposes of section 112 of the Internal Revenue Code of 1986:

(1) The date for the filing of any report will be extended so that the date is 180 days after the later of:

(i) The last day of the individual's service in such area during such designated period; or

(ii) The last day of the individual's hospitalization as a result of injury received or disease contracted while serving in such area; and

(2) The exception described in this paragraph will apply automatically to any individual who qualifies for the exception, unless the Secretary of Defense establishes written guidelines for determining eligibility or for requesting an extension under this paragraph.

§ 2634.202 Public filer defined.

The term *public filer* includes:

- (a) The President;
- (b) The Vice President;

(c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202(a), whose position is classified above GS-15 of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;

(e) Any employee not otherwise described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policy-making character, unless excluded by virtue of a determination under § 2634.203;

(f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Regulatory Commission whose basic rate of pay is equal to or greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule;

(g) The Director of the Office of Government Ethics and each agency's designated agency ethics official;

(h) Any civilian employee not otherwise described in paragraph (c) of this section who is employed in the Executive Office of the President (other than a special Government employee, as defined in 18 U.S.C. 202(a)) and holds a commission of appointment from the President; and

(i) Anyone whose employment in a position or office described in paragraphs (a) through (h) of this section has terminated, but who has not yet satisfied the filing requirements of § 2634.201(e).

§ 2634.203 Persons excluded by rule.

(a) *In general.* Any individual or group of individuals described in § 2634.202(e) (relating to positions of a confidential or policy-making character) may be excluded by rule from the public reporting requirements of this subpart when the Director of the Office of Government Ethics determines, in his sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) *Exclusion determination for employees at or below the GS-13 grade level.* (1) The determination required by paragraph (a) of this section has been made for any individual who, as a factual matter, serves in a position that meets the criteria set forth in this paragraph. The exclusion applies to a position upon a written determination by the designated agency ethics official that the position meets the following criteria:

(i) The position is paid at the GS-13 grade level or below or, in the case of a position not under the General Schedule, both the level of pay and the nature of responsibilities of the position are commensurate with the GS-13 grade level or below; and

(ii) The incumbent in the position does not have a substantial policy-making role with respect to agency programs.

(2) The designated agency ethics official must consider whether the position meets the standards for filing a

confidential financial disclosure report enumerated in § 2634.904(a)(4).

(c) *Exclusion determination for employees at or below the GS-15 grade level, but above the GS-13 grade level.* The exclusion determination required by paragraph (a) of this section may also be made on a case-by-case basis by the Office of Government Ethics. To receive an exclusion determination, an agency must follow the procedures set forth in paragraph (d) of this section and must demonstrate that the employee:

(1) Has a position that has been established at the GS-14 or GS-15 grade level or, in the case of a position not under the General Schedule, both the level of pay and the nature of responsibilities of the position are commensurate with the GS-14 or GS-15 grade level; and

(2) Has no policy-making role with respect to agency programs. In the event that the Office of Government Ethics permits the requested exclusion, the designated agency ethics official must consider whether the position meets the standards for filing a confidential financial disclosure report enumerated in § 2634.904(a)(4).

(d) *Procedure.* (1) The exclusion of any individual from reporting requirements pursuant to paragraph (c) of this section will be effective as of the time the employing agency files with the Office of Government Ethics the name of the employee, the name of any incumbent in the position, and a position description. Exclusions should be requested prior to due dates for the reports which such employees would otherwise have to file. If the position description changes in a substantive way, the employing agency must provide the Office of Government Ethics with a revised position description.

(2) If the Office of Government Ethics finds that one or more positions has been improperly excluded, it will advise the agency and set a date for the filing of any report that is due.

Example: An agency requests an exclusion for a special assistant, who is a Schedule C appointee whose position description is classified at the GS-14 level. The position description indicates that the employee's duties involve the analysis of policy options and the presentation of findings and recommendations to superiors. On the basis of this position description, the requested exception is denied.

§ 2634.204 Employment of sixty days or less.

(a) *In general.* Any public filer or nominee who, as determined by the official specified in this paragraph, is not reasonably expected to perform the duties of an office or position described

in § 2634.201(c) or § 2634.202 for more than 60 days in any calendar year will not be subject to the reporting requirements of § 2634.201(b), (c), or (e). This determination will be made by:

(1) The designated agency ethics official or Secretary concerned, in a case to which the provisions of § 2634.201(b) or (e) (relating to new entrant and termination reports) would otherwise apply; or

(2) The Director of the Office of Government Ethics, in a case to which the provisions of § 2634.201(c) (relating to nominee reports) would otherwise apply.

(b) *Alternative reporting.* Any new entrant who is exempted from filing a public financial report under paragraph (a) of this section and who is a special Government employee is subject to confidential reporting under § 2634.903(b). See § 2634.904(a)(2).

(c) *Exception.* If the public filer or nominee actually performs the duties of an office or position referred to in paragraph (a) of this section for more than 60 days in a calendar year, the public report otherwise required by:

(1) Section 2634.201(b) or (c) (relating to new entrant and nominee reports) must be filed within 15 calendar days after the sixtieth day of duty; and

(2) Section 2634.201(e) (relating to termination reports) must be filed as provided in that paragraph.

§ 2634.205 Special waiver of public reporting requirements.

(a) *General rule.* In unusual circumstances, the Director of the Office of Government Ethics may grant a request for a waiver of the public reporting requirements under this subpart for an individual who is reasonably expected to perform, or has performed, the duties of an office or position for fewer than 130 days in a calendar year, but only if the Director determines that:

(1) The individual is a special Government employee, as defined in 18 U.S.C. 202(a), who performs temporary duties either on a full-time or intermittent basis;

(2) The individual is able to provide services specially needed by the Government;

(3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest; and

(4) Public financial disclosure by the individual is not necessary under the circumstances.

(b) *Procedure.* (1) Requests for waivers must be submitted to the Office of Government Ethics, via the requester's agency, within 10 days after an

employee learns that the employee will hold a position which requires reporting and that the employee will serve in that position for more than 60 days in any calendar year, or upon serving in such a position for more than 60 days, whichever is earlier.

(2) The request must consist of:

(i) A cover letter which identifies the individual and the position, states the approximate number of days in a calendar year which the employee expects to serve in that position, and requests a waiver of public reporting requirements under this section;

(ii) An enclosure which states the reasons for the individual's belief that the conditions of paragraphs (a)(1) through (4) of this section are met in the particular case; and

(iii) The report otherwise required by this subpart, as a factual basis for the determination required by this section. The report must bear the legend: "CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR 2634.205."

(3) The agency in which the individual serves must advise the Office of Government Ethics as to the justification for a waiver.

(4) In the event a waiver is granted, the report will not be subject to the public disclosure requirements of § 2634.603; however, the waiver request cover letter will be subject to those requirements. In the event that a waiver is not granted, the confidential legend will be removed from the report, and the report will be subject to public disclosure; however, the waiver request cover letter will not then be subject to public disclosure.

Subpart C—Contents of Public Reports

§ 2634.301 Interests in property.

(a) *In general.* Except reports required under § 2634.201(f), each financial disclosure report filed pursuant to this subpart must include a brief description of any interest in property held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, having a fair market value in excess of \$1,000. The report must designate the category of value of the property in accordance with paragraph (d) of this section. Each item of real and personal property must be disclosed separately. Note that for Individual Retirement Accounts (IRAs), defined contribution plans, brokerage accounts, trusts, mutual or pooled investment funds and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under § 2634.312.

(b) *Types of property reportable.*

Subject to the exceptions in paragraph (c) of this section, examples of the types of property required to be reported include, but are not limited to:

- (1) Real estate;
- (2) Stocks, bonds, securities, and futures contracts;
- (3) Mutual funds, exchange-traded funds, and other pooled investment funds;
- (4) Pensions and annuities;
- (5) Vested beneficial interests in trusts;
- (6) Ownership interests in businesses or partnerships;
- (7) Deposits in banks or other financial institutions; and
- (8) Accounts receivable.

(c) *Exceptions.* The following property interests are exempt from the reporting requirements under paragraphs (a) and (b) of this section:

- (1) Any personal liability owed to the filer, spouse, or dependent child by a spouse, or by a parent, brother, sister, or child of the filer, spouse, or dependent child;
- (2) Personal savings accounts (defined as any form of deposit in a bank, savings and loan association, credit union, or similar financial institution) in a single financial institution or holdings in a single money market mutual fund, aggregating \$5,000 or less in that institution or fund;
- (3) A personal residence of the filer or spouse, as defined in § 2634.105(l); and
- (4) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act.

(d) *Valuation categories.* The valuation categories specified for property items are as follows:

- (1) None (or less than \$1,001);
- (2) \$1,001 but not more than \$15,000;
- (3) Greater than \$15,000 but not more than \$50,000;
- (4) Greater than \$50,000 but not more than \$100,000;
- (5) Greater than \$100,000 but not more than \$250,000;
- (6) Greater than \$250,000 but not more than \$500,000;
- (7) Greater than \$500,000 but not more than \$1,000,000; and
- (8) Greater than \$1,000,000;
- (9) Provided that, with respect to items held by the filer alone or held jointly by the filer with the filer's spouse and/or dependent children, the following additional categories over \$1,000,000 will apply:

- (i) Greater than \$1,000,000 but not more than \$5,000,000;
- (ii) Greater than \$5,000,000 but not more than \$25,000,000;
- (iii) Greater than \$25,000,000 but not more than \$50,000,000; and

(iv) Greater than \$50,000,000.

(e) *Valuation of interests in property.*

A good faith estimate of the fair market value of interests in property may be made in any case in which the exact value cannot be obtained without undue hardship or expense to the filer. If a filer is unable to make a good faith estimate of the value of an asset, the filer may indicate on the report that the "value is not readily ascertainable." Value may also be determined by:

- (1) The purchase price (in which case, the filer should indicate date of purchase);
- (2) Recent appraisal;
- (3) The assessed value for tax purposes (adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value);
- (4) The year-end book value of nonpublicly traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;
- (5) The net worth of a business partnership;
- (6) The equity value of an individually owned business; or
- (7) Any other recognized indication of value (such as the last sale on a stock exchange).

Example 1: An official has a \$4,000 savings account in Bank A. The filer's spouse has a \$2,500 certificate of deposit issued by Bank B and his dependent daughter has a \$200 savings account in Bank C. The official does not have to disclose the deposits, as the total value of the deposits in any one bank does not exceed \$5,000.

Example 2: Public filer R has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, R has made sales of both less desirable works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, R must report the value of all the paintings he retains as interests in property pursuant to this section, as well as income from the sales of paintings pursuant to § 2634.302(b). Recurrent sales from a collection indicate that the collection is being held for investment or the production of income.

Example 3: A reporting individual has investments which her broker holds as an IRA and invests in stocks, bonds, and mutual funds. Each such asset having a value in excess of \$1,000 at the close of the reporting period must be separately listed, and the value must be shown.

§ 2634.302 Income.

(a) *Noninvestment income.* Except reports required under § 2634.201(f), each financial disclosure report filed pursuant to this subpart must disclose the source, type, and the actual amount

or value, of earned or other noninvestment income in excess of \$200 from any one source which is received by the filer during the reporting period, including:

- (1) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);
- (2) Retirement benefits (other than from United States Government employment, including the Thrift Savings Plan, or from Social Security);
- (3) Any honoraria, and the date services were provided, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and
- (4) Any other noninvestment income, such as prizes, awards, or discharge of indebtedness.

Note to paragraph (a)(3): In calculating the amount of an honorarium, subtract any actual and necessary travel expenses incurred by the recipient and one relative. If such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment.

Example 1: An official is a participant in the defined benefit retirement plan of Coastal Airlines. Since his retirement from Coastal Airlines, the filer receives a \$5,000 pension payment each month. The pension income must be disclosed as employment-related income.

Example 2: An official serves on the board of directors at a bank, for which he receives a \$5,000 fee each calendar quarter. He also receives an annual fee of \$15,000 for service as trustee of a private trust. In both instances, such fees received or earned during the reporting period must be disclosed, and the actual amount must be shown.

(b) *Investment income.* Except as indicated in § 2634.309, each financial disclosure report filed pursuant to this subpart must disclose:

- (1) The source and type of investment income, characterized as dividends, rent, interest, capital gains, or income from qualified or excepted trusts or excepted investment funds (see § 2634.312), which is received by the filer during the reporting period, and which exceeds \$200 in amount or value from any one source. Examples include, but are not limited to, income derived from real estate, collectible items, stocks, bonds, notes, copyrights, pensions, mutual funds, the investment portion of life insurance contracts, loans, and personal savings accounts (as defined in § 2634.301(c)(2)). Note that for entities with portfolio holdings, such as brokerage accounts or trusts, each underlying source of income must be separately disclosed, unless the entity qualifies for special treatment under § 2634.312. The amount or value of

income from each reported source must also be disclosed and categorized in accordance with the following table:

- (i) None (or less than \$201);
- (ii) \$201 but not more than \$1,000;
- (iii) Greater than \$1,000 but not more than \$2,500;
- (iv) Greater than \$2,500 but not more than \$5,000;
- (v) Greater than \$5,000 but not more than \$15,000;
- (vi) Greater than \$15,000 but not more than \$50,000;
- (vii) Greater than \$50,000 but not more than \$100,000;
- (viii) Greater than \$100,000 but not more than \$1,000,000; and
- (ix) Greater than \$1,000,000;
- (x) Provided that, with respect to investment income of the filer alone or joint investment income of the filer with the filer's spouse and/or dependent children, the following additional categories over \$1,000,000 will apply:
 - (A) Greater than \$1,000,000 but not more than \$5,000,000; and
 - (B) Greater than \$5,000,000.
- (2) The source, type, and 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 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 \$6,000 from one individual for four months and \$12,000 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 indicate the category of the total amount of rent received. (He must also disclose the asset information required by § 2634.301.)

Example 2: An official has an ownership interest in a fast-food restaurant, from which she receives \$25,000 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 indicate the actual amount of such income. (Additionally, she must describe the business and categorize its asset value, pursuant to § 2634.301.)

Example 3: A reporting individual owned stock in XYZ, a publicly-traded corporation. During the reporting period, she received \$85 in dividends and, when she sold her shares, \$175 in capital gains. The individual must disclose XYZ Corporation because the stock generated more than \$200 in income. She also must specify the type of income (dividends and capital gains), and indicate the category of the total amount of income received. (She must also disclose the asset information required by § 2634.301.)

§ 2634.303 Purchases, sales, and exchanges.

(a) *In general.* Except for reports required under § 2634.201(f) and as indicated in § 2634.310(b), each financial disclosure report filed pursuant to this subpart must include a brief description, the date, and value (using the categories of value in § 2634.301(d)(2) through (9)) of any purchase, sale, or exchange by the filer during the reporting period, in which the amount involved in the transaction exceeds \$1,000. The acquisition of an asset through inheritance is not considered a transaction for purposes of this section. Reportable transactions include:

- (1) Of real property, other than a personal residence of the filer or spouse, as defined in § 2634.105(l); and
- (2) Of stocks, bonds, commodity futures, mutual fund shares, and other forms of securities.

(b) *Exceptions.* The following transactions need not be reported under paragraph (a) of this section:

- (1) Transactions solely by and between the reporting individual, the reporting individual's spouse, or the reporting individual's dependent children;
- (2) Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and bank accounts (as defined in § 2634.301(c)(2)), provided they occur at rates, terms, and conditions available generally to members of the public;
- (3) Transactions involving holdings of trusts and investment funds described in § 2634.312(b) and (c);
- (4) Transactions which occurred at a time when the reporting individual was not a public financial disclosure filer or was not a Federal Government officer or employee; and
- (5) Transactions fully disclosed in any public financial disclosure report filed during the calendar year pursuant to § 2634.309.

Example 1: An employee sells her personal residence in Virginia for \$650,000 and purchases a personal residence in the District of Columbia for \$800,000. She did not rent out any portion of the Virginia property and does not intend to rent out the property in DC. She need not report the sale of the Virginia residence or the purchase of the DC residence.

Example 2: An official sells his beach home in Maryland for \$350,000. 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.

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.

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, as the sale did not result in a capital gain.

Example 5: An official buys shares in an S&P 500 mutual fund worth \$12,000 in the 401(k) account that he has with a previous employer. He must disclose the purchase under this section. To make the purchase, he sold \$12,000 worth of shares in a money market fund also held in the 401(k). He does not need to disclose the sale of the money market fund shares.

Example 6: An official sells her interest in a private business for \$75,000. She must disclose the sale under this section, and she must disclose any capital gain over \$200 realized on the sale under § 2634.302.

§ 2634.304 Gifts and reimbursements.

(a) *Gifts.* Except reports required under § 2634.201(f) and as indicated in § 2634.310(b), each financial disclosure report filed pursuant to this subpart must contain the identity of the source, a brief description, and the value of all gifts aggregating more than \$390 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.

Note to paragraph (a): Under sections 102(a)(2)(A) and (B) of the Ethics in Government Act, the reporting thresholds for gifts, reimbursements, and travel expenses are tied to the dollar amount for the “minimal value” threshold for foreign gifts established by the Foreign Gifts and Decoration Act, 5 U.S.C. 7342(a)(5). The General Services Administration (GSA), in consultation with the Secretary of State, redefines the value every 3 years. In 2017, the amount was set at \$390. In subsection (d) the Office of Government Ethics sets the aggregation exception amount and redefines the value every 3 years. In 2017, the amount was set at \$156. The Office of Government Ethics will update this part in 2020 and every three years thereafter to reflect the new amounts.

(b) *Reimbursements.* Except as indicated in §§ 2634.309 and 2634.310(b), each financial disclosure report filed pursuant to this subpart must contain the identity of the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and the value of any travel-related reimbursements aggregating more than \$390 in value, which are received by the filer during the reporting period from any one source. The filer is not required to

report travel reimbursements received from the filer’s non-Federal employer.

(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 \$156 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.

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: \$220
Gift 2—Pen and pencil set: \$185
Gift 3—Letter opener: \$20

The official must disclose Gifts 1 and 2, since together they aggregate more than \$390 in value from the same source. Gift 3 need not be aggregated, because its value does not exceed \$156.

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

1. Dinner for two at a local restaurant—\$200.
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—\$600.
5. Weekend at donor’s country home, including duck hunting and tennis match—(value uncertain).

Based on the minimal value threshold established in 2017, the official need only disclose Gift 4. Gift 1 falls within the exclusion in § 2634.105(h)(4) 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 \$156.

Example 3: A non-Federal organization asks an official to speak at an out-of-town meeting on a matter that is unrelated to her official duties and her agency. She accepts the invitation and travels on her own time to

the event. The round-trip airfare costs \$500. Based on the minimal value threshold established in 2017, the official must disclose the value of the plane ticket whether the organization pays for the ticket directly or reimburses her for her purchase of the ticket.

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

(1) Except as provided in paragraph (e)(4) of this section, if the gift is readily available in the market, the value is 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.

(4) 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.

Example: 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 researching the retail price for each item online.

(f) *Waiver rule in the case of certain gifts.* In unusual cases, the value of a gift as defined in § 2634.105(h) need not be aggregated for reporting threshold purposes under this section, and therefore the gift need not be reported on a public financial disclosure report, if the Director of the Office of Government Ethics grants a publicly available waiver to a public filer.

(1) *Standard.* If the Director receives a written request for a waiver, the Director will issue a waiver upon determining that:

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

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

Example The Secretary of Education and her spouse receive the following two wedding gifts: (A) A crystal decanter valued at \$450 from the Secretary’s former college roommate and lifelong friend, who is a real estate broker in Wyoming; and (B) A gift of

a print valued at \$500 from a business partner of the spouse, who owns a catering company. Under these circumstances, the Director of OGE may grant a request for a waiver of the requirement to report on a public financial disclosure report each of these gifts.

(2) *Public disclosure of waiver request.* If approved in whole or in part, the cover letter requesting the waiver and the waiver will be subject to the public disclosure requirements in § 2634.603. Enclosures to the cover letter, required by paragraph (3)(ii) of this section, are not covered by § 2634.603.

(3) *Procedure.* (i) A public filer seeking a waiver under this section must submit a request to the designated agency ethics official for the employee's agency. The designated agency ethics official must sign a cover letter that identifies the filer and the filer's position and states that a waiver is requested under this section. To the extent practicable, the designated agency ethics official should avoid including other personal identifying information about the employee in the cover letter.

(ii) In an enclosure to the cover letter, the filer must set forth:

(A) The identity and occupation of the donor;

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

(C) An explanation of all relevant circumstances surrounding the gift, including whether any donor is a prohibited source, as defined in § 2635.203(d), or represents a prohibited source and whether the gift was given because of the employee's official position; and

(D) A brief description of the gift and the value of the gift.

(iii) With respect to the information required in paragraph (f)(3)(ii) of this section, if a gift has more than one donor, the filer shall provide the necessary information for each donor.

(iv) The Director will approve or disapprove any request for a waiver in writing. In the event that a waiver is granted, the Director will avoid including personal information about the filer to the extent practicable.

§ 2634.305 Liabilities.

(a) *In general.* Except reports required under § 2634.201(f), each financial disclosure report filed pursuant to this subpart must identify and include a brief description of the filer's liabilities exceeding \$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. The report

also must designate the category of value of the liabilities in accordance with § 2634.301(d) based on the greatest amount owed to the creditor during the period, except that the amount of a revolving charge account is based on the balance at the end of the reporting 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; and

(2) 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

(c) *Limited exception for mortgages on personal residences.* (1) The President, the Vice President, and a filer nominated for or appointed by the President to a position that requires the advice and consent of the Senate, other than those identified in paragraph (c)(2) of this section, must disclose a mortgage on a personal residence.

(2) Other public filers are not required to disclose a mortgage on a personal residence. Such filers include individuals who are nominated or appointed by the President to a Senate-confirmed position as a Foreign Service Officer below the rank of ambassador or a special Government employee.

Example 1: A career official in the Senior Executive Service has the following debts outstanding during the reporting period:

1. Mortgage on personal residence—\$200,000.
2. Mortgage on rental property—\$150,000.
3. VISA Card—\$1,000.
4. Loan balance of \$15,000, secured by family automobile purchased for \$16,200.
5. Loan balance of \$10,500, secured by antique furniture purchased for \$8,000.
6. Loan from parents—\$20,000.
7. A personal line of credit up to \$20,000 on which no draws have been made.

The loans indicated in items 2 and 5 must be disclosed in the official's annual financial disclosure report. Loan 1 is exempt from disclosure under paragraph (c) of this section because it is secured by the personal residence and the filer is not covered by the STOCK Act provision requiring reporting. Loan 3 need not be disclosed under paragraph (a) 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 4 need not be disclosed under paragraph (b)(2) of this section because it is secured by a personal motor vehicle which was purchased for more than the value of the loan. Loan 6 need not be disclosed because the creditors are persons specified in paragraph (b)(1) of this section. Loan 7 need not be disclosed because the filer has not drawn on the line of credit and, as a result,

had no outstanding liability associated with the line of credit during the reporting period.

Example 2: An incumbent official has \$15,000 of outstanding debt in an American Express account in July. On December 31, the outstanding liability is \$7,000. The liability does not need to be disclosed in the official's annual financial disclosure report because it does not exceed \$10,000 at the end of the reporting period.

Example 3: A Secretary of a Department has an outstanding home improvement loan in the amount of \$25,000, which is secured by her home. This liability must be disclosed on the annual financial disclosure report.

§ 2634.306 Agreements and arrangements.

Except reports required under § 2634.201(f), each financial disclosure report filed pursuant to this subpart must identify the parties to and the date of, and must 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, other than the United States Government.

§ 2634.307 Outside positions.

(a) *In general.* Except reports required under § 2634.201(f), each financial disclosure report filed pursuant to this subpart must 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.

(b) *Exceptions.* The following need not be reported under paragraph (a) 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.

Example 1: An official recently terminated her role as the managing member of a limited liability corporation upon appointment to a position in the executive branch. The managing member position must be disclosed in the official's new entrant financial disclosure report pursuant to this section.

Example 2: An official is a member of the board of his church. The official does not need to disclose the position in his financial disclosure report.

Example 3: An official is an officer in a fraternal organization that exists for the purpose of performing service work in the community. The official does not need to disclose this position in her financial disclosure report.

Example 4: An official is the ceremonial Parade Marshal for a local town's annual Founders' Day event and, in that capacity, leads a parade and serves as Master of Ceremonies for an awards ceremony at the town hall. The official does not need to disclose this position in her financial disclosure report.

Example 5: An official recently terminated his role as a campaign manager for a candidate for the Office of the President of the United States upon appointment to a noncareer position in the executive branch. The official does not need to disclose the campaign manager position in his financial disclosure report.

Example 6: Immediately prior to her recent appointment to a position in an agency, an official terminated her employment as a corporate officer. In connection with her employment, she served for several years as the corporation's representative to an association that represents members of the industry in which the corporation operates. She does not need to disclose her role as her employer's representative to the association because she performed her representative duties in her capacity as a corporate officer.

Example 7: An official holds a position on the board of directors of the local food bank. The official must disclose the position in his financial disclosure report.

§ 2634.308 Filer's sources of compensation exceeding \$5,000 in a year

(a) *In general.* A public filer required to file a report as a New Entrant or a Nominee, pursuant to § 2634.201(b) or (c), must identify the filer's sources of compensation which exceed \$5,000 in any one calendar year. This requirement includes compensation paid to another person, such as an employer, in exchange for the filer's services (e.g., payments to a law firm exceeding \$5,000 in any one calendar year in exchange for the services of a partner or associate attorney). The filer must also briefly describe the nature of the duties performed or services rendered (e.g., "legal services").

(b) *Exceptions.* (1) The name of a source of compensation may be excluded only if that information is specifically determined to be confidential as a result of a privileged relationship established by law and if the disclosure is specifically prohibited by law or regulation, by a rule of a professional licensing organization, or by a client agreement that at the time of engagement of the filer's services expressly provided that the client's name would not be disclosed publicly to any person. If the filer excludes the name of any source, the filer must indicate in the report that such

information has been excluded, the number of sources excluded, and, if applicable, a citation to the statute, regulation, rule of professional conduct, or other authority pursuant to which disclosure of the information is specifically prohibited.

(2) The report need not contain any information with respect to any person for whom services were provided by any firm or association of which the filer was a member, partner, or employee, unless the filer was directly involved in the provision of such services.

(3) The President, the Vice President, and a candidate referred to in § 2634.201(d) are not required to report this information.

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, unless the matter potentially involved an investigation or enforcement action involving the client by the government and the client's name has never been disclosed publicly in connection with the representation. As a result, the nominee must disclose the client's identity unless it is protected by statute, a court order, is under seal, or is considered confidential because: (1) The client is the subject of a non-public proceeding or investigation and the client has not been identified in a public filing, statement, appearance, or official report; (2) disclosure of the client's name is specifically prohibited by a rule of professional conduct that can be enforced by a professional licensing body; or (3) a privileged relationship was established by a written confidentiality agreement, entered into at the time that the filer's services were retained, that expressly prohibits disclosure of the client's identity.

§ 2634.309 Periodic reporting of transactions.

(a) *In general.* Each financial disclosure report filed pursuant to § 2634.201(f) must include a brief description, the date, and value (using the categories of value in § 2634.301(d)(2) through (9)) of any purchase, sale, or exchange of stocks, bonds, commodity futures, and other forms of securities by the filer during the reporting period, in which the amount involved in the transaction exceeds \$1,000.

(b) *Exceptions.* The following transactions need not be reported under paragraph (a) of this section:

(1) Transactions solely by and between the reporting individual, the reporting individual's spouse, or the reporting individual's dependent children;

(2) Transactions of excepted investment funds as defined in § 2634.312(c);

(3) Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and bank accounts (as defined in § 2634.301(c)(2)), provided they occur at rates, terms, and conditions available generally to members of the public;

(4) Transactions involving holdings of trusts and investment funds described in § 2634.312(b) and (c); and

(5) Transactions which occurred at a time when the reporting individual was not a public financial disclosure filer or was not a Federal Government officer or employee.

§ 2634.310 Reporting periods.

(a) *Incumbents.* Each financial disclosure report filed pursuant to § 2634.201(a) must include a full and complete statement of the information required to be reported under this subpart, for the preceding calendar year (except for §§ 2634.303 and 2634.304, relating to transactions and gifts/reimbursements, for which the reporting period does not include any portion of the previous calendar year during which the filer was not a Federal employee). In the case of §§ 2634.306 and 2634.307, the reporting period also includes the current calendar year up to the date of filing.

(b) *New entrants, nominees, and candidates.* Each financial disclosure report filed pursuant to § 2634.201(b) through (d) must include a full and complete statement of the information required to be reported under this subpart, 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, the report must include all interests in property specified by that section which are held on or after a date which is fewer than 31 days before the date on which the report is filed.

(2) *Income.* For purposes of § 2634.302, the report must include all income items specified by that section which are received 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, the report must 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 31

days before the date on which the report is filed.

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

(5) *Outside positions.* For purposes of § 2634.307, the report must 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.* For purposes of § 2634.308, the report must 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.

(c) *Termination reports.* Each financial disclosure report filed under § 2634.201(e) must include a full and complete statement of the information required to be reported under this subpart, covering the preceding calendar year if an incumbent report required by § 2634.201(a) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position.

(d) *Periodic reporting of transactions.* Each financial disclosure report filed under § 2634.201(f) must include a full and complete statement of the information required to be reported according to the provisions of § 2634.309. The report must be filed within 30 days of receiving notification of a covered transaction, but not later than 45 days after the date such transaction was executed.

Example: A filer receives a statement on October 10 notifying her of all of the covered transactions executed by her broker on her behalf in September. Although each transaction may have a different due date, if the filer reports all the covered transactions from September on a report filed on or before October 15, the filer will ensure that all transactions have been timely reported.

§ 2634.311 Spouses and dependent children.

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

(1) *Income.* For purposes of § 2634.302:

(i) With respect to a spouse, the source but not the amount of earned income (other than honoraria) which exceeds \$1,000 from any one source; and if earned income is 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 the actual amount or value of any honoraria received by 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 the amount or value (category or actual amount, in accordance with § 2634.302), 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).

Example 1: The spouse of a filer is employed as a teller at Bank X and earns \$50,000 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.

Example 2: The spouse of a reporting individual is self-employed as a pediatrician. The report must disclose her self-employment as a physician, but need not disclose the amount of income.

(2) *Gifts and reimbursements.* For purposes of § 2634.304, gifts and reimbursements received by a spouse or dependent child, unless the gift was given to the spouse or dependent child totally independent of their relationship to the filer.

(3) *Interests in property, transactions, and liabilities.* For purposes of §§ 2634.301, 2634.303, 2634.305, and 2634.309, all information concerning property interests, transactions, or liabilities referred to by those sections of a spouse or dependent child.

(b) *Exception.* For reports filed as a new entrant, nominee, or candidate under § 2634.201(b) through (d), 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.

(d) *Unusual circumstances.* In very rare cases, certain interests in property,

transactions, and liabilities of a spouse or a dependent child are excluded from reporting requirements, provided that each requirement of this paragraph is strictly met.

(1) The filer must certify without qualification that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no knowledge regarding that item;

(2) The item must not be in any way, past or present, derived from the income, assets or activities of the filer; and

(3) The filer must not derive, or expect to derive, any financial or economic benefit from the item.

Note to paragraph (d): The exception described in paragraph (d) is not available to most filers. A filer who files a joint tax return with a spouse will normally be deemed to derive a financial or economic benefit from every financial interest of the spouse, and the filer will not be able to rely on this exception. If a filer and the filer's spouse cohabitate, share any expenses, or are jointly responsible for the care of children, the filer will be deemed to derive an economic benefit from every financial interest of the spouse.

Example: The spouse of a filer shares in paying expenses or taxes of the marriage or family (for example, any such item as: A household item, food, clothing, vacation, automobile maintenance or fuel, any child-related expense, income tax, or real estate tax, etc.). The spouse of a filer has a brokerage account. The spouse does not share any information about the holdings and does not want the information disclosed on a financial disclosure statement. The filer must disclose the holdings in the spouse's brokerage account because the filer is deemed to derive a financial or economic benefit from any asset of the filer's spouse who shares in paying expenses or taxes of the marriage or family.

§ 2634.312 Trusts, estates, and investment funds.

(a) *In general.* (1) Except as otherwise provided in this section, each financial disclosure report must include the information required by this subpart 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, the filer's spouse, or dependent child.

(2) Information about the underlying holdings of a trust is required if the filer, filer's spouse, or dependent child currently is entitled to receive income from the trust or is entitled to access the principal of the trust. If a filer, filer's spouse, or dependent child has a beneficial interest in a trust that either will provide income or the ability to

access the principal in the future, the filer should determine whether there is a vested interest in the trust under controlling state law. However, no information about the underlying holdings of the trust is required for a nonvested beneficial interest in the principal or income of a trust.

Note to paragraph (a): Nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust (also known as a “living trust”) with respect to which the filer, the filer’s spouse, or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer’s spouse, nor the filer’s dependent child. Furthermore, nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust from which the filer, the filer’s spouse, or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer’s spouse, nor the filer’s dependent child.

(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 § 2634.402) or any qualified diversified trust (as defined in § 2634.402). For a qualified blind trust, a public financial disclosure report must disclose the category of the aggregate amount of the trust’s income attributable to the beneficial interest of the filer, the filer’s spouse, or dependent child in the trust. For a qualified diversified trust, a public financial disclosure report must disclose the category of the aggregate amount of income with respect to such a trust which is actually received by the filer, the filer’s 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 the filer, the filer’s spouse, or dependent child must 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 must be identified as an interest in property and/or a source of income. Filers must also disclose the category of value of the fund interest held; aggregate amount of income from the fund which is received by the filer, the filer’s 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 pooled 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 does not have a stated policy of concentrating its investments in any industry, business, or single country other than the United States or bonds of a single state within the United States.

Note to paragraph (c): The fact that an investment fund qualifies as an excepted investment fund is not relevant to a determination as to whether the investment qualifies for an exemption to the criminal conflict of interest statute at 18 U.S.C. 208(a), pursuant to part 2640 of this chapter. Some excepted investment funds qualify for exemptions pursuant to part 2640, while other excepted investment funds do not qualify for such exemptions. If an employee holds an excepted investment fund that is not exempt from 18 U.S.C. 208(a), the ethics official may need additional information from the filer to determine if the holdings of the fund create a conflict of interest and should advise the employee to monitor the fund’s holdings for potential conflicts of interest.

§ 2634.313 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) *Reporting standards.* (1) A filer may attach to the financial disclosure report, a copy of a statement which, in a clear and concise fashion, readily discloses all information that the filer would otherwise have been required to enter, but only if authorized by the designated agency ethics official or for reports that are reviewed by the Office of Government Ethics, the Director. The filer must annotate the report clearly to the extent necessary to identify information required by this part, including, when required, the identification of assets as excepted investment funds and the identification of income types. In addition, the statement must identify all income required to be disclosed for the entire reporting period. Any statement attached to a financial disclosure report and its contents may be subject to public release. A filer who attaches a statement to a reporting form is solely responsible for redacting personal information not otherwise subject to disclosure prior to filing the financial disclosure report (e.g., account numbers, addresses, etc.).

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

Subpart D—Qualified Trusts

§ 2634.401 Overview.

(a) *Purpose.* The Ethics in Government Act of 1978 created two types of qualified trusts, the qualified blind trust and the qualified diversified trust, that may be used by employees to reduce real or apparent conflicts of interest. The primary purpose of an executive branch qualified trust is to confer on an independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without participation by, or the knowledge of, any interested party or any representative of an interested party. This responsibility 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. Because the requirements set forth in the Ethics in Government Act and this part assure true “blindness,” employees who have a qualified trust cannot be influenced in the performance of their official duties by their financial interests in the trust assets. Their official actions, under these circumstances, should be free from collateral attack arising out of real or apparent conflicts of interest.

(b) *Scope*. Two characteristics of the qualified trust assure that true “blindness” exists: The independence of the trustee and the restriction on communications between the independent trustee and the interested parties. In order to serve as a trustee for an executive branch qualified trust, an entity must meet the strict requirements for independence set forth in the Ethics in Government Act and this part. Restrictions on communications also reinforce the independence of the trustee from the interested parties. During both the establishment of the trust and the administration of the trust, communications are limited to certain reports that are required by the Act and to written communications that are pre-screened by the Office of Government Ethics. No other communications, even about matters not connected to the trust, are permitted between the independent trustee and the interested parties.

§ 2634.402 Definitions.

As used in this subpart:

(a) *Director* means the Director of the Office of Government Ethics.

(b) *Employee* means an officer or employee of the executive branch of the United States.

(c) *Independent trustee* means a trustee who meets the requirements of § 2634.405 and who is approved by the Director under this subpart.

(d) *Interested party* means the President, the Vice President, an employee, a nominee or candidate as described in § 2634.201, and the spouse and any minor or dependent child of the President, Vice President, employee, or a nominee or candidate as described in § 2634.201, in any case in which the employee, spouse, or minor or dependent child has a beneficial interest in the principal or income of a trust proposed for certification under this subpart or certified under this subpart.

(e) *Qualified blind trust* means a trust in which the interested party has a beneficial interest and which:

(1) Is certified pursuant to § 2634.407 by the Director;

(2) Has a portfolio as specified in § 2634.406(a);

(3) Follows the model trust document prepared by the Office of Government Ethics; and

(4) Has an independent trustee as defined in § 2634.405.

(f) *Qualified diversified trust* means a trust in which the interested party has a beneficial interest and which:

(1) Is certified pursuant to § 2634.407 by the Director;

(2) Has a portfolio as specified in § 2634.406(b);

(3) Follows the model trust document prepared by the Office of Government Ethics; and

(4) Has an independent trustee as defined in § 2634.405.

(g) *Qualified trust* means a trust described in the Ethics in Government Act of 1978 and this part and certified by the Director under this subpart. There are two types of qualified trusts, the qualified blind trust and the qualified diversified trust.

§ 2634.403 General description of trusts.

(a) *Qualified blind trust*. (1) The qualified blind trust is the most universally adaptable qualified trust. An interested party may put most types of assets (such as cash, stocks, bonds, mutual funds, or real estate) into a qualified blind trust.

(2) In the case of a qualified blind trust, 18 U.S.C. 208 and other Federal conflict of interest statutes and regulations apply to the assets that an interested party transfers to the trust until such time as he or she is notified by the independent trustee that such asset has been disposed of or has a value of less than \$1,000. Because the interested party knows what assets he or she placed in the trust and there is no requirement that these assets be diversified, the possibility still exists that the interested party could be influenced in the performance of official duties by those interests.

(b) *Qualified diversified trust*. (1) An interested party may put only readily marketable securities into a qualified diversified trust. In addition, the portfolio must meet the diversification requirements of § 2634.406(b)(2).

(2) In the case of a qualified diversified trust, the conflict of interest laws do not apply to the assets that an interested party transfers to the trust. Because the assets that an interested party puts into this trust must meet the diversification requirements set forth in this part, the diversification achieves “blindness” with regard to the initial assets.

(3) *Special notice for Presidential appointees*—(i) *In general*. In any case in which the establishment of a qualified diversified trust is contemplated with respect to an individual whose nomination is being considered by a Senate committee, that individual must inform the committee of the intention to establish a qualified diversified trust at the time of filing a financial disclosure report with the committee.

(ii) *Applicability*. Paragraph (b)(3)(i) of this section is not applicable to members of the uniformed services or Foreign Service officers. The special

notice requirement of this section will 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.

(c) *Conflict of interest laws*. In the case of each type of trust, the conflict of interest laws do not apply to the assets that the independent trustee or any other designated fiduciary adds to the trust.

§ 2634.404 Summary of procedures for creation of a qualified trust.

(a) *Consultation with the Office of Government Ethics*. Any interested party (or that party’s representative) who is considering setting up a qualified blind or qualified diversified trust must contact the Office of Government Ethics prior to beginning the process of creating the trust. The Office of Government Ethics is the only entity that has the authority to certify a qualified trust. Because an interested party must propose, for the approval of the Office of Government Ethics, an entity to serve as the independent trustee, the Office of Government Ethics will explain the requirements that an entity must meet in order to qualify as an independent trustee. Such information is essential in order for the interested party to interview entities for the position of independent trustee. The Office of Government Ethics will also explain the restrictions on the communications between the interested parties and the proposed trustee.

(b) *Selecting an independent trustee*. After consulting with the Office of Government Ethics, the interested party may interview entities who meet the requirements of § 2634.405(a) in order to find one to serve as an independent trustee. At an interview, the interested party may ask general questions about the institution, such as how long it has been in business, its policies and philosophy in managing assets, the types of clients it serves, its prior performance record, and the qualifications of the personnel who would be handling the trust. Because the purpose of a qualified trust is to give an independent trustee the sole responsibility to manage the trust assets without the interested party having any knowledge of the identity of the assets in the trust, the interested party may communicate his or her general financial interests and needs to any institution which he or she interviews. For example, the interested party may communicate a preference for maximizing income or long-term capital gain or for balancing safety of capital with growth. The interested party may

not give more specific instructions to the proposed trustee, such as instructing it to maintain a specific allocation between stocks and bonds, or choosing stocks in a particular industry.

(c) *The proposed independent trustee.*

(1) The entity selected by an interested party as a possible trustee must contact the Office of Government Ethics to receive guidance on the qualified trust program. The Office of Government Ethics will ask the proposed trustee to submit a letter describing its past and current contacts, including banking and client relationships, with the interested party, spouse, and minor or dependent children. The extent of these contacts will determine whether the proposed trustee is independent under the Act and this part.

(2) In addition, an interested party may select an investment manager or other fiduciary. Other proposed fiduciaries selected by an interested party, such as an investment manager, must meet the independence requirements.

(d) *Approval of the independent trustee.* If the Director determines that the proposed trustee meets the requirements of independence, the Director will approve, in writing, that entity as the trustee for the qualified trust.

(e) *Confidentiality agreement.* If any person other than the independent trustee or designated fiduciary has access to information that may not be shared with an interested party or that party's representative, that person must file a Confidentiality Agreement with the Office of Government Ethics. Persons filing a Confidentiality Agreement must certify that they will not make prohibited contacts with an interested party or that party's representative.

(f) *Drafting the trust instrument.* The representative of the interested party will use the model documents provided by the Office of Government Ethics to draft the trust instrument. There are two annexes to the model trust document: An annex describing any current, permissible banking or client relationships between any interested parties and the independent trustee or other fiduciaries and an annex listing the initial assets that the interested party transfers to the trust. Any deviations from the model trust documents must be approved by the Director.

(g) *Certification of the trust.* The representative then presents the unexecuted trust instrument to the Office of Government Ethics for review. If the Director finds that the instrument conforms to one of the model

documents, the Director will certify the qualified trust. After certification, the interested party and the independent trustee will sign the trust instrument. They will submit a copy of the executed instrument to the Office of Government Ethics within 30 days of execution. The interested party will then transfer the assets to the trust.

Note to paragraph (g): Existing qualified trusts approved under any State law or by the legislative or judicial branches of the Federal Government of the United States will not be recertified by the Director. Individuals with existing qualified trusts who are required to file a financial disclosure report upon entering the executive branch, becoming a nominee for a position appointed by the President and subject to confirmation by the Senate, or becoming a candidate for President or Vice President must file a complete financial disclosure form that includes a full disclosure of items in the trust. After filing a complete form, the individual may establish a qualified trust under the policies and provisions of this rule.

§ 2634.405 Standards for becoming an independent trustee or other fiduciary.

(a) *Eligible entities.* An interested party must select an entity that meets the requirements of this part to serve as an independent trustee or other fiduciary. The type of entity that is allowed to serve as an independent trustee is a financial institution, not more than 10 percent of which is owned or controlled by a single individual, which is:

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

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

Note to paragraph (a): 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 or her sole discretion.

(b) *Orientation.* After the interested party selects a proposed trustee, that proposed trustee should contact the Office of Government Ethics for an orientation about the qualified trust program.

(c) *Independence requirements.* The Director will determine that a proposed trustee is independent if:

(1) The 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;

(2) The 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

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

(i) 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;

(ii) 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

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

(d) *Required documents.* In order to make this determination, the proposed trustee must submit the following documentation to the Director:

(1) A letter describing its past and current contacts, including banking and client relationships, with the interested party, spouse, or minor or dependent child; and

(2) A Certificate of Independence, which follows the model Certificate of Independence prepared by the Office of Government Ethics. Any variation from the model document must be approved by the Director.

(e) *Determination.* If the Director determines that the current relationships, if any, between the interested party and the independent trustee do not violate the independence requirements, these relationships will be disclosed in an annex to the trust instrument. No additional relationships with the independent trustee may be established unless they are approved by the Director.

(f) *Approval of the trustee.* If the Director determines that the proposed trustee meets applicable requirements, the Office of Government Ethics will send the interested parties and their representatives a letter indicating its approval of a proposed trustee.

(g) *Revocation.* The Director may revoke the approval of a trustee or any other designated fiduciary pursuant to the rules of subpart E of this part.

(h) *Adding fiduciaries.* An independent trustee may employ or consult other entities, such as investment counsel, investment advisers, accountants, and tax preparers, to assist in any capacity to administer the trust or to manage and control the trust assets, if all of the following conditions are met:

(1) When any interested party or any representative of 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;

(2) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under paragraphs (a) through (f) of this section to be independent of an interested party with respect to the trust arrangement;

(3) 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, other than information relating to the sale or disposition of original trust assets in the case of the blind trust; and

(4) The person is instructed by the independent trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party or any representative of an interested party, and to make all indirect communications with respect to the trust only through the independent trustee, pursuant to § 2634.408(a).

§ 2634.406 Initial portfolio.

(a) *Qualified blind trust.* (1) An interested party may not place any asset in the blind trust that any interested party would be prohibited from holding by the Act, by the implementing regulations, or by any other applicable Federal law, Executive order, or regulation.

(2) Except as described in paragraph (a)(1) of this section, an interested party may put most types of assets (such as cash, stocks, bonds, mutual funds, or real estate) into a qualified blind trust.

(b) *Qualified diversified trust.* (1) The initial portfolio may not contain securities of entities having substantial activities in an employee's primary area of Federal responsibility. If requested by the Director, the designated agency ethics official for the employee's agency must certify whether the proposed portfolio meets this standard.

(2) The initial assets of a diversified trust must comprise a well-diversified

portfolio of readily marketable securities.

(i) A portfolio will be well diversified if:

(A) The value of the securities concentrated in any particular or limited economic or geographic sector is no more than 20 percent of the total; and

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

(ii) A security will be readily marketable if:

(A) Daily price quotations for the security appear regularly in media, including websites, that publish the information; and

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

(iii) The interested party or the party's representative must provide the Director with a detailed list of the securities proposed for inclusion in the portfolio, specifying their fair market value and demonstrating that these securities meet the requirements of this paragraph. The Director will determine whether the initial assets of the trust proposed for certification comprise a widely diversified portfolio of readily marketable securities.

(c) *Hybrid qualified trust.* A qualified trust may contain both a blind portfolio of assets and a diversified portfolio of assets. The Office of Government Ethics refers to this arrangement as a hybrid qualified trust.

§ 2634.407 Certification of qualified trust by the Office of Government Ethics.

(a) *General.* After the Director approves the independent trustee, the interested party or a representative will prepare the trust instrument for review by the Director. The representative of the interested party will use the model documents provided by the Office of Government Ethics to draft the trust instrument. Any deviations from the model trust documents must be approved by the Director. No trust will be considered qualified for purposes of the Act until the Office of Government Ethics certifies the trust prior to execution.

(b) *Certification procedures.* (1) After the Director has approved the trustee, the interested party or the party's representative must submit the following documents to the Office of Government Ethics for review:

(i) A copy of the proposed, unexecuted trust instrument;

(ii) A list of the assets which the interested party proposes to place in the trust; and

(iii) In the case of a pre-existing trust as described in § 2634.409 which the interested party asks the Office of Government Ethics to certify, a copy of the pre-existing trust instrument and a list of that trust's assets categorized as to value in accordance with § 2634.301(d).

(2) In order to assure timely trust certification, the interested parties and their representatives will be responsible for the expeditious submission to the Office of Government Ethics of all required documents and responses to requests for information.

(3) The Director will indicate that he or she has certified the trust in a letter to the interested parties or their representatives. The interested party and the independent trustee may then execute the trust instrument.

(4) Within 30 days after the trust is certified under this section by the Director, the interested party or that party's representative must file with the Director a copy of the executed trust instrument and all annexed schedules (other than those provisions which relate to the testamentary disposition of the trust assets), including a list of the assets which were transferred to the trust, categorized as to value of each asset in accordance with § 2634.301(d).

(5) Once a trust is classified as a qualified blind or qualified diversified trust in the manner discussed in this section, § 2634.312(b) applies less inclusive financial disclosure requirements to the trust assets.

(c) *Certification standard.* A trust will be certified for purposes of this subpart only if:

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

(2) The Director determines that approval of the trust arrangement as a qualified trust is appropriate to assure compliance with applicable laws and regulations.

(d) *Revocation.* The Director may revoke certification of a trust pursuant to the rules of subpart E of this part.

§ 2634.408 Administration of a qualified trust.

(a) *General rules on communications between the independent fiduciaries and the interested parties.* (1) There must be no direct or indirect communications with respect to the qualified trust between an interested party or the party's representative and the independent trustee or any other designated fiduciary with respect to the trust unless:

(i) In the case of the blind trust, the proposed communication is approved in advance by the Director and it relates to:

(A) A distribution of cash or other unspecified assets of the trust;

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

(C) Notification to the independent trustee by the employee that the employee is prohibited by a subsequently applicable statute, Executive order, or regulation from holding an asset, and to direction to the independent trustee that the trust may not hold that asset; or

(D) Instructions to the independent 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 employee creates a real or apparent conflict due to duties the employee subsequently assumed (but nothing herein requires such instructions); or

(ii) In the case of the diversified trust, the proposed communication is approved in advance by the Director and it relates to:

(A) A distribution of cash or other unspecified assets of the trust;

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

(C) Information, documents, and funds concerning income tax obligations arising from sources other than the property held in trust that are required by the independent 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.

(2) The person initiating a communication approved under paragraphs (a)(1)(i) or (a)(1)(ii) of this section must file a copy of the communication with the Director within five days of the date of its transmission.

Note to paragraph (a): 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 that do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his or her sole discretion.

(b) *Required reports from the independent trustee to the interested parties—(1) Quarterly reports.* The independent trustee must, without identifying specifically an asset or holding, report quarterly to the interested parties and their representatives the aggregate market value of the assets representing the interested party's interest in the trust. The independent trustee must follow the model document for this report and must file a copy of the report, within five days of the date of its transmission, with the Director.

(2) *Annual report.* In the case of a qualified blind trust, the independent trustee must, without identifying specifically an asset or holding, report annually to the interested parties and their representatives 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) to enable the employee to complete the public financial disclosure form. In the case of a qualified diversified trust, the independent trustee must, without identifying specifically an asset or holding, report annually to the interested parties and their representatives the aggregate amount actually distributed from the trust to the interested party or applied for the party's benefit. Additionally, in the case of the blind trust, the independent trustee must report on Schedule K-1 the net income or loss of the trust and any other information necessary to enable the interested party to complete an individual tax return. The independent trustee must follow the model document for each report and must file a copy of the report, within five days of the date of its transmission, with the Director.

(3) *Report of sale of asset.* In the case of the qualified blind trust, the independent trustee must promptly notify the employee and the Director 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. The independent trustee must file a copy of the report, within five days of the date of its transmission, with the Director.

(c) *Communications regarding trust and beneficiary taxes.* The Act

establishes special tax filing procedures to be used by the independent trustee and the trust beneficiaries in order to maintain the substantive separation between trust beneficiaries and trust administrators.

(1) *Trust taxes.* Because a trust is a separate entity distinct from its beneficiaries, an independent trustee must file an annual fiduciary tax return for the trust (IRS Form 1041). The independent trustee is prohibited from providing the interested parties and their representatives with a copy of the trust tax return.

(2) *Beneficiary taxes.* The trust beneficiaries must report income received from the trust on their individual tax returns.

(i) For beneficiaries of qualified blind trusts, the independent trustee sends a modified K-1 summarizing trust income in appropriate categories to enable the beneficiaries to file individual tax returns. The independent trustee is prohibited from providing the interested parties or their representatives with the identity of the assets.

(ii) For beneficiaries of qualified diversified trusts, the Act requires the independent trustee to file the individual tax returns on behalf of the trust beneficiaries. The interested parties must give the independent trustee a power of attorney to prepare and file, on their behalf, 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 will be used for this purpose. 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. This communication must be approved in advance by the Director in accordance with paragraph (a) of this section.

(iii) Some qualified trust beneficiaries may pay estimated income taxes.

(A) In order to pay the proper amount of estimated taxes each quarter, the beneficiaries of a qualified blind trust will need to receive information about the amount of income, if any, generated by the trust each quarter. To assist the beneficiaries, the independent trustee is permitted to send, on a quarterly basis, information about the amount of income generated by the trust in that quarter. This communication must be approved in advance by the Director in accordance with paragraph (a) of this section.

(B) In order to pay the proper amount of estimated taxes each quarter, the

independent trustee of a qualified diversified trust will need to receive information about the amount of income, if any, earned by the beneficiaries on assets that are not in the trust. To assist the independent trustee, the beneficiaries are permitted to send, on a quarterly basis, information about the amount of income they earned in that quarter on assets that are outside of the trust. This communication must be approved in advance by the Director in accordance with paragraph (a) of this section.

(d) *Responsibilities of the independent trustee and other fiduciaries.* (1) Any independent trustee or any other designated fiduciary of a qualified trust may not knowingly and willfully, or negligently:

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

(ii) Acquire any holding:

(A) Directly from an interested party or that party's representative without the prior written approval of the Director; or

(B) 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;

(iii) Solicit advice from any interested party or any representative of that party with respect to such trust, which 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 the implementing regulations or the trust instrument.

(2) The independent trustee and any other designated fiduciary, in the exercise of their authority and discretion to manage and control the assets of the trust, may not consult or notify any interested party or that party's representative.

(3) The independent trustee may not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director, securities, cash, or other property from any interested party or any representative of an interested party.

(4) *Certificate of Compliance.* An independent trustee and any other designated fiduciary must file, with the Director by May 15 following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance that follows the model Certificate of Compliance prepared by the Office of Government

Ethics. Any variation from the model must be approved by the Director.

(5) In addition, the independent trustee and such fiduciary must 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.

(e) *Responsibilities of the interested parties and their representatives.* (1) Interested parties to a qualified trust and their representatives may not knowingly and willfully, or negligently:

(i) 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

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

(2) The interested parties and their representatives may not take any action to obtain, and must 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 independent trustee, or any information relating to that return, except for the reports and information specified in paragraphs (b) and (c) of this section.

(3) In the case of any qualified trust, the interested party must, within 30 days of transferring an asset, other than cash, to a previously established qualified trust, file a report with the Director, which identifies each asset, categorized as to value in accordance with § 2634.301(d).

(4) Any portfolio asset transferred to the trust by an interested party must be 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.

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

(f) *Amendment of the trust.* The independent trustee and the interested parties may amend the terms of a qualified trust only with the prior written approval of the Director and upon a showing of necessity and appropriateness.

§ 2634.409 Pre-existing trusts.

An interested party may place a pre-existing irrevocable trust into a qualified trust, which may then be certified by the Office of Government Ethics. This arrangement should be considered in

the case of a pre-existing trust whose terms do not permit amendments that are necessary to satisfy the rules of this subpart. All of the relevant parties (including the employee, any other interested parties, the trustee of the pre-existing trust, and all of the other parties and beneficiaries of the pre-existing trust) will be required pursuant to section 102(f)(7) of the Act to enter into an umbrella trust agreement. The umbrella trust agreement will specify that the pre-existing trust will be administered in accordance with the provisions of this subpart. A parent or guardian may execute the umbrella trust agreement on behalf of a required participant who is a minor child. The Office of Government Ethics has prepared model umbrella trust agreements that the interested party can use in this circumstance. The umbrella trust agreement will be certified as a qualified trust if all of the requirements of this subpart are fulfilled under conditions where required confidentiality with respect to the trust can be assured.

§ 2634.410 Dissolution.

Within 30 days of dissolution of a qualified trust, the interested party must file a report of the dissolution with the Director and a list of assets of the trust at the time of the dissolution, categorized as to value in accordance with § 2634.301(d).

§ 2634.411 Reporting on financial disclosure reports.

An employee who files a public or confidential financial disclosure report must report the trust on the financial disclosure report.

(a) *Public financial disclosure report.* If the employee files a public financial disclosure report, the employee must report the trust as an asset, including the overall category of value of the trust. Additionally, in the case of a qualified blind trust, the employee must disclose the category of value of income earned by the trust. In the case of a qualified diversified trust, the employee must report the category of value of income received from the trust by the employee, the employee's spouse, or dependent child, or applied for the benefit of any of them.

(b) *Confidential financial disclosure report.* In the case of a confidential financial disclosure report, the employee must report the trust as an asset.

§ 2634.412 Sanctions and enforcement.

Section 2634.702 sets forth civil sanctions, as provided by sections 102(f)(6)(C)(i) and (ii) of the Act and as

adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act, which apply to any interested party, independent trustee, or other trust fiduciary who violates the obligations under the Act, its implementing regulations, or the trust instrument. Subpart E of this part delineates the procedure which must be followed with respect to the revocation of trust certificates and trustee approvals.

§ 2634.413 Public access.

(a) *Documents subject to public disclosure requirements.* The following qualified trust documents filed by a public filer, nominee, or candidate are subject to the public disclosure requirements of § 2634.603:

(1) The executed trust instrument and any amendments (other than those provisions which relate to the testamentary disposition of the trust assets), and a list of the assets which were transferred to the trust, categorized as to the value of each asset;

(2) The identity of each additional asset (other than cash) transferred to a qualified trust by an interested party during the life of the trust, categorized as to the value of each asset;

(3) The report of the dissolution of the trust and a list of the assets of the trust at the time of the dissolution, categorized as to the value of each asset;

(4) In the case of a blind trust, the lists provided by the independent trustee of initial assets placed in the trust by an interested party which have been sold or whose value is reduced to less than \$1,000; and

(5) The Certificates of Independence and Compliance.

(b) *Documents exempt from public disclosure requirements.* The following documents are exempt from the public disclosure requirements of § 2634.603 and also may not be disclosed to any interested party:

(1) Any document (and the information contained therein) filed under the requirements of § 2634.408(a) and (c); and

(2) Any document (and the information contained therein) inspected under the requirements of § 2634.408(d)(4) (other than a Certificate of Compliance).

§ 2634.414 OMB control number.

The various model trust documents and Certificates of Independence and Compliance referenced in this subpart, together with the underlying regulatory provisions, are all approved by the Office of Management and Budget under control number 3209-0007.

Subpart E—Revocation of Trust Certificates and Trustee Approvals

§ 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 trustee approvals and trust certifications pursuant to §§ 2634.405 and 2634.407, respectively.

§ 2634.502 Definitions.

For purposes of this subpart (unless otherwise indicated), the term “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) *Violations.* If the Office of Government Ethics learns that violations or apparent violations of the trust restrictions exist that may warrant revocations of trust certification or trustee approval previously granted under § 2634.407 or § 2634.405, the Director may, pursuant to the procedure specified in paragraph (b) of this section, appoint an attorney on the staff of the Office of Government Ethics to review the matter. After completing the review, the attorney will submit findings and recommendations to the Director.

(b) *Review procedure.* (1) In the review of the matter, the attorney will perform such examination and analysis of violations or apparent violations as the attorney deems reasonable.

(2) The attorney will 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 that will 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 10 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 will consider the findings and recommendations submitted by the attorney, as well as any written statements submitted by the independent trustee or interested parties.

(2) The Director may take one of the following actions upon finding a violation or violations of the trust restrictions:

(i) Issue an order revoking trust certification or trustee 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 the Director issues an order of revocation, parties to the trust instrument will receive prompt written notification. The notice will state the basis for the revocation and will inform the parties of the consequence of the revocation, which will be either of the following:

(i) The trust is no longer a qualified blind or qualified diversified trust for any purpose under Federal law; or

(ii) 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.

Subpart F—Procedure

§ 2634.601 Report forms.

(a) This section prescribes the required forms for financial disclosure made pursuant to this part.

(1) *New entrant, annual, and termination public financial disclosure reports.* The Office of Government Ethics provides a form for publicly disclosing the information described in subpart B of this part in connection with new entrant, nominee, incumbent, and termination reports filed pursuant to § 2634.201(a) through (e). That form is the OGE Form 278e (Executive Branch Personnel Public Financial Disclosure Report) or any successor form.

(2) *Periodic transaction public financial disclosure reports.* The Office of Government Ethics provides a form for publicly disclosing the information described in subpart B of this part in connection with periodic transaction public financial disclosure reports filed pursuant to § 2634.201(f). That form is the OGE Form 278-T (Periodic Transaction Report), or any successor form.

(3) *Confidential financial disclosure reports.* The Office of Government Ethics also provides a form for confidentially disclosing information

described in subpart I of this part in connection with confidential financial disclosure reports filed pursuant to § 2634.903. That form is the OGE Form 450 (Confidential Financial Disclosure Report), or any successor form.

(b) Supplies of the OGE Form 278e, OGE Form 278-T, and OGE Form 450 are to be reproduced locally by each agency. The Office of Government Ethics has published copies on its official website.

(c) 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 the standard form referred to in paragraph (a)(3) 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.

(d) The information collection and recordkeeping requirements have been approved by the Office of Management and Budget under control number 3209-0001 for the OGE Form 278e, and control number 3209-0006 for OGE Form 450. OGE Form 278-T has been determined not to require an OMB paperwork control number, as the form is used exclusively by current Government employees.

§ 2634.602 Filing of reports.

(a) Except as otherwise provided in this section, the reporting individual will file financial disclosure reports required under this part with the designated agency ethics official or the delegate at the agency where the individual is employed, or was employed immediately prior to termination of employment, or in which the individual will serve, unless otherwise directed by the employee's home agency. Detailees will file with their home agency. Reports are due at the times indicated in § 2634.201 (public disclosure) or § 2634.903 (confidential disclosure), unless an extension is granted pursuant to the provisions of subparts B or I of this part. Filers must certify that the information contained in the report is true, correct, and complete to their best knowledge.

(b) The President, the Vice President, any independent counsel, and persons appointed by independent counsel under 28 U.S.C. chapter 40, will 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 must 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 the delegate must review that report in accordance with § 2634.605, except for the designated agency ethics official's own report, which must 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 must forward a copy to the Senate committee that is considering the nomination. See § 2634.605(c) for special procedures regarding the review of such reports.

(d) The Director of the Office of Government Ethics must file the Director's financial disclosure report with the Office of Government Ethics, which will 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, must file their financial disclosure reports with the Federal Election Commission, which will 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) must file their financial disclosure reports with the Secretary concerned, or the Secretary's delegate.

§ 2634.603 Custody of and access to public reports.

(a) Each agency must 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 Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-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 will, within 30 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 must 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 will 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 will 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 will be retained by the agency, and by the Office of Government Ethics when it receives a copy. The report will be made available to the public for a period of six years after receipt. After the six-year period, the report must 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, must 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 or on OGE's website, www.oge.gov), 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 will 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.

(Approved by the Office of Management and Budget under control numbers 3209-0001 and 3209-0002)

§ 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 will be retained by the agency for a period of six years after receipt. After the six-year period, the report must 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 or on OGE's website, www.oge.gov), 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 will 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).

§ 2634.605 Review of reports.

(a) *In general.* The designated agency ethics official will normally serve as the reviewing official for reports submitted to the official's 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). The designated agency ethics official will 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 must be reviewed within 60 days after the date of filing. Reports that are reviewed by the Director of the Office of Government Ethics must be forwarded promptly by the designated agency ethics official to the Director. The Director will review the reports within 60 days from the date on which they are received by the Office of Government Ethics. If additional information is needed, the Director will notify the agency. In the event that additional information must be obtained from the filer, the agency will require that the filer provide that information as promptly as is practical but not more than 30 days after the request. Final certification in accordance with paragraph (b)(3) of this section may, of necessity, occur later, when additional information is being sought or remedial action is being taken under this section.

(b) *Responsibilities of reviewing official—(1) Initial review.* As a part of the initial review, the reviewing official may request an intermediate review by the filer's supervisor or another reviewer. In the case of a filer who is detailed to another agency for more than 60 days during the reporting period, the reviewing official will coordinate with the ethics official at the agency at which the employee is serving the detail if the report reveals a potential conflict of interest.

(2) *Standards of Review.* The reviewing official must examine the report to determine, to the reviewing official's satisfaction, that:

- (i) Each required part of the report is completed; and
- (ii) No interest or position disclosed on the report 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;

(D) Any other applicable Executive Order in force at the time of the review; or

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

(3) *Signature by reviewing official.* If the reviewing official is of the opinion that the report meets the requirements of paragraph (b)(2) of this section, the reviewing official will certify it by signature and date. The reviewing official need not audit the report to ascertain whether the disclosures are correct. Disclosures will 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, that the reviewing official is of the opinion that each required part of the report 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)(2)(ii) of this section.

(4) *Requests for, and review based on, additional information.* If the reviewing official believes that additional information is required to be reported, the reviewing official will request that any additional information be submitted within 30 days from the date of the request, unless the reviewing official grants an extension in writing. This additional information will be incorporated into 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)(2) of this section, the reviewing official will sign and date the report.

(5) *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)(2)(ii) of this section, the official must:

(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)(2)(ii) of this section. If the reviewing official concludes that the report does fulfill the requirements, the reviewing official will sign and date the report. If the reviewing official determines that it does not and additional remedial actions are required, the reviewing official must:

(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)(6) of this section should be taken to bring the report into compliance with the requirements of paragraph (b)(2)(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.

(6) *Remedial action.* (i) Except in unusual circumstances, which must be fully documented to the satisfaction of the reviewing official, remedial action must 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) Recusal; or

(G) Voluntary request by the filer for transfer, reassignment, limitation of duties, or resignation.

(7) *Compliance or referral.* (i) If the filer complies with a written request for remedial action under paragraph (b)(6) of this section, the reviewing official will memorialize what remedial action has been taken. The official will 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)(6) of this section, the reviewing official must, 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) In most cases, the Executive Office of the President will furnish the applicable financial disclosure report form to the nominee. It will 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 will 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 unresolved conflict of interest under applicable laws and regulations, the official will:

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

(ii) 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;

(iii) Provide a copy of any commitment, agreement, or other undertaking which is reduced to writing in accordance with subpart H of this part; and

(iv) Transmit 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 to paragraph (c)(2): 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.

(3) The Director of the Office of Government Ethics will 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 will sign and date the report form. The Director will 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 must 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.

§ 2634.606 Updated disclosure of advice-and-consent nominees.

(a) *General rule.* Each individual described in § 2634.201(c) who is nominated by the President for appointment to a position that requires advice and consent of the Senate must submit a letter updating the information in the report previously filed under § 2634.201(c) through the period ending no more than five days prior to the commencement of the first hearing of a Senate Committee considering the nomination to all Senate Committees considering the nomination. The letter must update the information required with respect to receipt of:

- (1) Outside earned income; and
- (2) Honoraria, as defined in § 2634.105(i).

(b) *Timing.* The nominee's letter must be submitted to the Senate committees considering the nomination by the agency at or before the commencement of the first committee hearing to consider the nomination. The agency must also transmit copies of the nominee's letter to the designated agency ethics official referred to in § 2634.605(c)(1) and to the Office of Government Ethics.

(c) *Additional certification.* In each case to which this section applies, the Director of the Office of Government Ethics will, at the request of the committee considering the nomination, submit to the committee an opinion letter of the nature described in § 2634.605(c)(3) concerning the updated disclosure. If the committee requests such a letter, the expedited procedure provided by § 2634.605(c) will govern review of the updated disclosure, which will be deemed a report filed for purposes of that paragraph.

§ 2634.607 Advice and opinions.

To assist employees in avoiding situations in which they might violate applicable financial disclosure laws and regulations:

(a) The Director of the Office of Government Ethics will render formal advisory opinions and informal advisory letters on generally applicable matters, or on important matters of first impression. See also part 2638 of this chapter. The Director will ensure that these advisory opinions and letters are compiled, published, and made available to agency ethics officials and the public.

(b) Designated agency ethics officials will offer advice and guidance to

employees as needed, to assist them in complying with the requirements of the Act and this part on financial disclosure.

(c) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code.

Subpart G—Penalties

§ 2634.701 Failure to file or falsifying reports.

(a) *Referral of cases.* The head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as appropriate, must refer to the Attorney General the name of any individual when there is reasonable cause to believe that such individual has willfully failed to file a public report or information required on such report, or has willfully falsified any information (public or confidential) required to be reported under this part.

(b) *Civil action.* The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 104(a) of the Act, as amended, and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties

Inflation Adjustment Act of 1990, as amended:

TABLE 1 TO § 2634.701

| Date of violation or assessment | Penalty |
|---|----------|
| Violation occurring between Sept. 14, 2007 and Nov. 2, 2015 | \$50,000 |
| Violation occurring after Nov. 2, 2015 | 59,028 |

(c) *Criminal action.* An individual may also be prosecuted under criminal statutes for supplying false information on any financial disclosure report.

(d) *Administrative remedies.* The President, the Vice President, the Director of the Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management may take appropriate personnel or other action in accordance with applicable law or regulation against any individual for failing to file public or confidential reports required by this part, for filing such reports late, or for falsifying or failing to report required information. This may include adverse action under 5 CFR part 752, if applicable.

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.407. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 102(f)(6)(C)(i) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.702

| Date of violation or assessment | Penalty |
|---|----------|
| Violation occurring between Sept. 29, 1999 and Nov. 2, 2015 | \$11,000 |
| Violation occurring after Nov. 2, 2015 | 19,639 |

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.407. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed

the amounts set forth in Table 2 to this section, as provided by section 102(f)(6)(C)(ii) of the Act and as adjusted in accordance with the inflation adjustment procedures of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 2 TO § 2634.702

| Date of violation or assessment | Penalty |
|--|---------|
| Violation occurring between Sept. 29, 1999 and Nov. 2, 2015 | \$5,500 |
| Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016 | 9,819 |

§ 2634.703 Misuse of public reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 105(c)(2) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.703

| Date of violation or assessment | Penalty |
|---|----------|
| Violation occurring between Sept. 29, 1999 and Nov. 2, 2015 | \$11,000 |
| Violation occurring after Nov. 2, 2015 | 19,639 |

(b) This remedy will be in addition to any other remedy available under statutory or common law.

§ 2634.704 Late filing fee.

(a) *In general.* In accordance with section 104(d) of the Act, any reporting individual who is required to file a public financial disclosure report by the provisions of this part must remit a late filing fee of \$200 to the appropriate agency, payable to the U.S. Treasury, if such report is filed more than 30 days after the later of:

(1) The date such report is required to be filed pursuant to the provisions of this part; or

(2) The last day of any filing extension period granted pursuant to § 2634.201(g).

(b) *Exceptions.* (1) The designated agency ethics official may waive the late

filing fee if the designated agency ethics official determines that the delay in filing was caused by extraordinary circumstances. These circumstances include, but are not limited to, the agency's failure to notify a filer of the requirement to file the public financial disclosure report, which made the delay reasonably necessary.

(2) Employees requesting a waiver of the late filing fee from the designated agency ethics official must request the waiver in writing. The designated agency ethics official's determination must be made in writing to the employee with a copy maintained by the agency. The designated agency ethics official may consult with the Office of Government Ethics prior to approving any waiver of the late filing fee.

(c) *Procedure.* (1) Each report received by the agency must be marked with the date of receipt. For any report which has not been received by the end of the period specified in paragraph (a) of this section, the agency will advise the delinquent filer, in writing, that:

(i) Because the financial disclosure report is more than 30 days overdue, a \$200 late filing fee will become due at the time of filing, by reason of section 104(d) of the Act and § 2634.704;

(ii) The filer is directed to remit to the agency, with the completed report, the \$200 fee, payable to the United States Treasury;

(iii) If the filer fails to remit the \$200 fee when filing a late report, it will be subject to agency debt collection procedures; and

(iv) If extraordinary circumstances exist that would justify a request for a fee waiver, pursuant to paragraph (b) of this section, such request and any supporting documentation must be submitted immediately.

(2) Upon receipt from the reporting individual of the \$200 late filing fee, the collecting agency will note the payment in its records, and will then forward the money to the U.S. Treasury for deposit as miscellaneous receipts, in accordance with 31 U.S.C. 3302 and Part 5 of Volume 1 of the Treasury Financial Manual. If payment is not forthcoming, agency debt collection procedures may be utilized, which may include salary or administrative offset, initiation of a tax refund offset, or other authorized action.

(d) *Late filing fee not exclusive remedy.* The late filing fee is in addition to other sanctions which may be imposed for late filing. See § 2634.701.

(e) *Confidential filers.* The late filing fee does not apply to confidential filers. Late filing of confidential reports will be handled administratively under § 2634.701(d).

(f) *Date of filing.* The date of filing for purposes of determining whether a public financial disclosure report is filed more than 30 days late under this section will be the date of receipt by the agency, which should be noted on the report in accordance with § 2634.605(a). The 30-day grace period on imposing a late filing fee is adequate allowance for administrative delays in the receipt of reports by an agency.

Subpart H—Ethics Agreements

§ 2634.801 Scope.

This subpart applies to ethics agreements made by any reporting individual under either subpart B or I of this part, to resolve potential or actual conflicts of interest.

§ 2634.802 Requirements.

(a) *Ethics agreement defined.* The term *ethics agreement* will include, for the purposes of this subpart, any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest, such as:

- (1) Recusal;
- (2) Divestiture of a financial interest;
- (3) Resignation from a position with a non-Federal business or other entity;
- (4) Procurement of a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or
- (5) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part.

(b) *Time limit.* The ethics agreement will specify that the individual must complete the action which he or she has agreed to undertake within a period not to exceed three months from the date of the agreement (or of Senate confirmation, if applicable). Exceptions to the three-month deadline can be made in cases of unusual hardship, as determined by the Office of Government Ethics, for those ethics agreements which are submitted to it (see § 2634.803), or by the designated agency ethics official for all other ethics agreements.

Example: An official of the ABC Aircraft Company is nominated to a Department of Defense position requiring the advice and consent of the Senate. As a condition of assuming the position, the individual has agreed to divest himself of his ABC Aircraft stock which he recently acquired while he was an officer with the company. However, the Securities and Exchange Commission prohibits officers of public corporations from deriving a profit from the sale of stock in the corporation in which they hold office within six months of acquiring the stock, and directs that any such profit must be returned to the issuing corporation or its stock holders. Since meeting the usual three-month time limit specified in this subpart for satisfying an ethics agreement might entail losing any

profit that could be realized on the sale of this stock, the nominee requests that the limit be extended beyond the six-month period imposed by the Commission. Written approval must be obtained from the Office of Government Ethics to extend the three-month period.

§ 2634.803 Notification of ethics agreements.

(a) *Nominees to positions requiring the advice and consent of the Senate.* (1) In the case of a nominee referred to in § 2634.201(c), the designated agency ethics official will include with the report submitted to the Office of Government Ethics any ethics agreement which the nominee has made.

(2) A designated agency ethics official must immediately notify the Office of Government Ethics of any ethics agreement of a nominee which is made or becomes known to the designated agency ethics official after the submission of the nominee's report to the Office of Government Ethics. This requirement includes an ethics agreement made between a nominee and the Senate confirmation committee. The nominee must immediately report to the designated agency ethics official any ethics agreement made with the committee.

(3) The Office of Government Ethics must immediately apprise the designated agency ethics official and the Senate confirmation committee of any ethics agreements made directly between the nominee and the Office of Government Ethics.

(4) Any ethics agreement approved by the Office of Government Ethics during its review of a nominee's financial disclosure report may not be modified without prior approval from the Office of Government Ethics.

(b) *Incumbents and other reporting individuals.* Incumbents and other reporting individuals may be required to enter into an ethics agreement with the designated agency ethics official for the employee's agency. Where an ethics agreement has been made with someone other than the designated agency ethics official, the officer or employee involved must promptly apprise the designated agency ethics official of the agreement.

§ 2634.804 Evidence of compliance.

(a) *Requisite evidence of action taken.* (1) For ethics agreements of nominees to positions requiring the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements must be submitted to the designated agency ethics official. The designated agency ethics official will promptly notify the

Office of Government Ethics and the Senate confirmation committee of actions taken to comply with the ethics agreement.

(2) In the case of incumbents and all other reporting individuals, evidence of any action taken to comply with the terms of an ethics agreement must be sent promptly to the designated agency ethics official.

(b) The following materials and any other appropriate information constitute evidence of the action taken:

(1) *Recusal.* A copy of a recusal statement listing and describing the specific matters or subjects to which the recusal applies, a statement of the method by which the agency will enforce the recusal. A recusal statement is not required for a general affirmation that the filer will comply with ethics laws.

Example: A new employee of a Federal safety board owns stock in Nationwide Airlines. She has entered into an ethics agreement to recuse herself from participating in any accident investigations involving that company's aircraft until such time as she can complete a divestiture of the asset. She sends an email to the designated agency ethics official recusing herself from Nationwide Airline matters. She sends an email to her supervisor and subordinates to notify them of the recusal and to request that they do not refer matters involving Nationwide Airlines to her. She also sends a copy of that email to the designated agency ethics official.

(2) *Divestiture or resignation.* Written notification that the divestiture or resignation has occurred.

(3) *Waivers.* A copy of any waivers issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) and signed by the appropriate supervisory official.

(4) *Blind or diversified trusts.* Information required by subpart D of this part to be submitted to the Office of Government Ethics for its certification of any qualified trust instrument. If the Office of Government Ethics does not certify the trust, the designated agency ethics official and, as appropriate, the Senate confirmation committee should be informed immediately.

§ 2634.805 Retention.

Records of ethics agreements and actions described in this subpart will be maintained by the agency. In addition, copies of such record will be maintained by the Office of Government Ethics with respect to filers whose reports are certified by the Office of Government Ethics.

Subpart I—Confidential Financial Disclosure Reports

§ 2634.901 Policies of confidential financial disclosure reporting.

(a) The confidential financial reporting system set forth in this subpart is designed to complement the public reporting system established by title I of the Act. High-level officials in the executive branch are required to report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. It is equally important in order to guarantee the efficient and honest operation of the Government that other, less senior, executive branch employees, whose Government duties involve the exercise of significant discretion in certain sensitive areas, report their financial interests and outside business activities to their employing agencies, to facilitate the review of possible conflicts of interest. These reports assist an agency in administering its ethics program and counseling its employees. Such reports are filed on a confidential basis.

(b) The confidential reporting system seeks from employees only that information which is relevant to the administration and application of criminal conflict of interest laws, administrative standards of conduct, and agency-specific statutory and program-related restrictions. The basic content of the reports required by § 2634.907 reflects that certain information is generally relevant to all agencies. However, depending upon an agency's authorized activities and any special or unique circumstances, additional information may be necessary. In these situations, and subject to the prior written approval of the Director of the Office of Government Ethics, agencies may formulate supplemental reporting requirements by following the procedures of §§ 2634.103 and 2634.601(b).

(c) This subpart also allows an agency to request, on a confidential basis, additional information from persons who are already subject to the public reporting requirements of this part. The public reporting requirements of the Act address Governmentwide concerns. The reporting requirements of this subpart allow agencies to confront special or unique agency concerns. If those concerns prompt an agency to seek more extensive reporting from employees who file public reports, it may proceed on a confidential, nonpublic basis, with prior written approval from the Director of the Office of Government Ethics, under the procedures of §§ 2634.103 and 2634.601(b).

(d) The reports filed pursuant to this subpart are specifically characterized as “confidential,” and are required to be withheld from the public, pursuant to section 107(a) of the Act. Section 107(a) leaves no discretion on this issue with the agencies. See also § 2634.604. Further, Executive Order 12674 as modified by Executive Order 12731 provides, in section 201(d), for a system of nonpublic (confidential) executive branch financial disclosure to complement the Act’s system of public disclosure. The confidential reports provided for by this subpart contain sensitive commercial and financial information, as well as personal privacy-protected information. These reports and the information which they contain are, accordingly, exempt from being released to the public, under exemptions 3(A) and (B), 4, and 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(3)(A) and (B), (b)(4), and (b)(6). Additional FOIA exemptions may apply to particular reports or portions of reports. Agency personnel will not publicly release the reports or the information which these reports contain, except pursuant to an order issued by a Federal court, or as otherwise provided under applicable provisions of the Privacy Act (5 U.S.C. 552a), and in the OGE/GOVT–2 Governmentwide executive branch Privacy Act system of records, as well as any applicable agency records system. If an agency statute requires the public reporting of certain information and, for purposes of convenience, an agency chooses to collect that information on the confidential report form filed under this subpart, only the special statutory information may be released to the public, pursuant to the terms of the statute under which it was collected.

(e) Executive branch agencies hire or use the paid and unpaid services of many individuals on an advisory or other less than full-time basis as special Government employees. These employees may include experts and consultants to the Government, as well as members of Government advisory committees. It is important for those agencies that utilize such services, and for the individuals who provide the services, to anticipate and avoid real or apparent conflicts of interest. The confidential financial disclosure system promotes that goal, with special Government employees among those required to file confidential reports.

(f) For additional policies and definitions of terms applicable to both the public and confidential reporting systems, see §§ 2634.104 and 2634.105.

§ 2634.902 [Reserved]

§ 2634.903 General requirements, filing dates, and extensions.

(a) *Incumbents.* A confidential filer who holds a position or office described in § 2634.904(a) and who performs the duties of that position or office for a period in excess of 60 days during the calendar year (including more than 60 days in an acting capacity) must file a confidential report as an incumbent, containing the information prescribed in §§ 2634.907 and 2634.908 on or before February 15 of the following year. This requirement does not apply if the employee has left Government service or has left a covered position prior to the due date for the report. No incumbent reports are required of special Government employees described in § 2634.904(a)(2), but who must file new entrant reports under paragraph (b) of this section upon each appointment or reappointment. For confidential filers under § 2634.904(a)(3), consult agency supplemental regulations.

(b) *New entrants.* (1) Not later than 30 days after assuming a new position or office described in § 2634.904(a) (which also encompasses the reappointment or redesignation of a special Government employee, including one who is serving on an advisory committee), a confidential filer must file a confidential report containing the information prescribed in §§ 2634.907 and 2634.908. For confidential filers under § 2634.904(a)(3), consult agency supplemental regulations.

(2) However, no report will be required if the individual:

(i) Has, within 30 days prior to assuming the position, left another position or office referred to in § 2634.904(a) or in § 2634.202, and has previously satisfied the reporting requirements applicable to that former position, but a copy of the report filed by the individual while in that position should be made available to the appointing agency, and the individual must comply with any agency requirement for a supplementary report for the new position;

(ii) Has already filed such a report in connection with consideration for appointment to the position. The agency may request that the individual update such a report if more than six months has expired since it was filed; or

(iii) Is not reasonably expected to perform the duties of an office or position referred to in § 2634.904(a) for more than 60 days in the following 12-month period, as determined by the designated agency ethics official or delegate. That may occur most

commonly in the case of an employee who temporarily serves in an acting capacity in a position described by § 2634.904(a)(1). If the individual actually performs the duties of such position for more than 60 days in the 12-month period, then a confidential financial disclosure report must be filed within 15 calendar days after the sixtieth day of such service in the position. Paragraph (b)(2)(iii) of this section does not apply to new entrants filing as special Government employees under § 2634.904(a)(2).

(3) Notwithstanding the filing deadline prescribed in paragraph (b)(1) of this section, agencies may at their discretion, require that prospective entrants into positions described in § 2634.904(a) file their new entrant confidential financial disclosure reports prior to serving in such positions, to ensure that there are no insurmountable ethics concerns. Additionally, a special Government employee who has been appointed to serve on an advisory committee must file the required report before any advice is rendered by the employee to the agency, or in no event, later than the first committee meeting.

(c) *Advisory committee definition.* For purposes of this subpart, the term *advisory committee* will have the meaning given to that term under section 3 of the Federal Advisory Committee Act (5 U.S.C. app). Specifically, it means any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute or reorganization plan, or established or utilized by the President or one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. Such term includes any subcommittee or other subgroup of any advisory committee, but does not include the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, or any committee composed wholly of full-time officers or employees of the Federal Government.

(d) *Extensions—(1) Agency extensions.* The agency reviewing official may, for good cause shown, grant to any employee or class of employees a filing extension or several extensions totaling not more than 90 days.

(2) *Certain service during period of national emergency.* In the case of an active duty military officer or enlisted member of the Armed Forces, a Reserve or National Guard member on active duty under orders issued pursuant to title 10 or title 32 of the United States

Code, a commissioned officer of the Uniformed Services (as defined in 10 U.S.C. 101), or any other employee, who is deployed or sent to a combat zone or required to perform services away from the employee's permanent duty station in support of the Armed Forces or other governmental entities following a declaration by the President of a national emergency, the date of filing will be extended to 90 days after the last day of:

(i) The employee's service in the combat zone or away from the employee's permanent duty station; or
 (ii) The employee's hospitalization as a result of injury received or disease contracted while serving during the national emergency.

(3) *Agency procedures.* Each agency may prescribe procedures to provide for the implementation of the extensions provided for by this paragraph.

(e) *Termination reports not required.* An employee who is required to file a confidential financial disclosure report is not required to file a termination report upon leaving the filing position.

§ 2634.904 Confidential filer defined.

(a) The term *confidential filer* includes:

(1) Each officer or employee in the executive branch whose position is classified at GS-15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is less than 0-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(i) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially (as defined in §§ 2635.402(b)(4) and 2640.103(a)(2) of this chapter) through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a Government action regarding:

(A) Contracting or procurement;
 (B) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(C) Regulating or auditing any non-Federal entity; or

(D) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(ii) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, or to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1: A contracting officer develops the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action and exercises significant judgment in developing the requests. By engaging in this activity, he is participating personally and substantially in the contracting process. The contracting officer should be required to file a confidential financial disclosure report.

Example 2: An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with permits to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

Example 3: A GS-13 employee at an independent grant making agency conducts the initial agency review of grant applications from nonprofit organizations and advises the Deputy Assistant Chairman for Grants and Awards about the merits of each application. Although the process of reviewing the grant applications entails significant judgment, the employee's analysis and recommendations are reviewed by the Deputy Assistant Chairman, and the Assistant Chairman, before the Chairman decides what grants to award. Because his work is subject to "substantial supervision and review," the employee is not required to file a confidential financial disclosure report unless the agency determines that filing is necessary under § 2634.904(a)(1)(ii).

Example 4: As a senior investigator for a criminal law enforcement agency, an employee often leads investigations, with

substantial independence, of suspected felonies. The investigator usually decides what information will be contained in the agency's report of the suspected misconduct. Because he participates personally and substantially through the exercise of significant judgment in investigating violations of criminal law, the investigator should be required to file a confidential financial disclosure report.

(2) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees who:

(i) Have a substantial role in the formulation of agency policy;

(ii) Serve on a Federal Advisory Committee; or

(iii) Meet the requirements of paragraph (a)(1) of this section.

Example 1: A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2: A special Government employee serving as a member of an advisory committee (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report because she is a special Government employee.

(3) Each public filer referred to in § 2634.202 on public disclosure who is required by agency regulations and forms issued in accordance with §§ 2634.103 and 2634.601(b) to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(4) Any employee who, notwithstanding the employee's exclusion from the public financial reporting requirements of this part by virtue of a determination under § 2634.203, is covered by the criteria of paragraph (a)(1) of this section.

(b) Any individual or class of individuals described in paragraph (a) of this section, including special Government employees unless otherwise noted, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that the duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest.

Example 1: A special Government employee who is a draftsman prepares the drawings to be used by an agency in

soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that this action will create a conflict of interest is remote. As a result, the special Government employee is not required to file a confidential financial disclosure report.

Example 2: An agency has just hired a GS-5 Procurement Assistant who is responsible for typing and processing procurement documents, answering status inquiries from the public, performing office support duties such as filing and copying, and maintaining an on-line contract database. The Assistant is not involved in contracting and has no other actual procurement responsibilities. Thus, the possibility that the Assistant will be involved in a real or apparent conflict of interest is remote, and the Assistant is not required to file.

§ 2634.905 Use of alternative procedures.

Agencies are encouraged to consider whether an alternative procedure would allow the agency to more effectively assess possible conflicts of interest. With the prior written approval of OGE, an agency may use an alternative procedure in lieu of filing the OGE Form 450. The alternative procedure may be an agency-specific form to be filed in place thereof. An agency must submit for approval a description of its proposed alternative procedure to OGE.

Example 1: A nonsupervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she has a conflict of interest. After determining that she has no conflict of interest, she signs and dates a certification which verifies that she has reviewed the file and has made such a determination. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate. This alternative procedure, if approved by the Office of Government Ethics in writing, may be used in lieu of requiring the auditor to file a confidential financial disclosure report.

Example 2: To reduce its workload, an agency proposes that employees may file a statement certifying there has been no change in reportable information and no change in the filer's position and duties and attaching the most recent OGE Form 450. This alternative procedure, if approved by the Office of Government Ethics in writing, may be used in lieu of requiring the filer to complete an OGE Form 450.

§ 2634.906 Review of confidential filer status.

The head of each agency, or an officer designated by the head of the agency for that purpose, will review any complaint by an individual that the individual's

position has been improperly determined by the agency to be one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint will be final.

§ 2634.907 Report contents.

(a) Other than the reports described in § 2634.904(a)(3), each confidential financial disclosure report must comply with instructions issued by the Office of Government Ethics and include on the standardized form prescribed by OGE (see § 2634.601) the information described in paragraphs (b) through (g) of this section for the filer. Each report must also include the information described in paragraph (h) of this section for the filer's spouse and dependent children.

(b) *Noninvestment income.* Each financial disclosure report must disclose the source of earned or other noninvestment income in excess of \$1,000 received by the filer from any one source during the reporting period, including:

(1) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);

(2) Any honoraria, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

Note to paragraph (b)(2): In determining whether an honorarium exceeds the \$1,000 threshold, subtract any actual and necessary travel expenses incurred by the filer and one relative, if the expenses are paid or reimbursed by the filer. If such expenses are paid or reimbursed by the honorarium source, they will not be counted as part of the honorarium payment.

(3) Any other noninvestment income, such as prizes, scholarships, awards, gambling income or discharge of indebtedness.

Example to paragraphs (b)(1) and (b)(3): A filer teaches a course at a local community college, for which she receives a salary of \$3,000 per year. She also received, during the previous reporting period, a \$1,250 award for outstanding local community service. She must disclose both.

(c) *Assets and investment income.* Each financial disclosure report must disclose separately:

(1) Each item of real and personal property having a fair market value in excess of \$1,000 held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, including but not limited to:

(i) Real estate;

(ii) Stocks, bonds, securities, and futures contracts;

(iii) Sector mutual funds, sector exchange-traded funds, and other pooled investment funds;

(iv) Pensions and annuities;

(v) Vested beneficial interests in trusts;

(vi) Ownership interest in businesses and partnerships; and

(vii) Accounts receivable.

(2) The source of investment income (dividends, rents, interest, capital gains, or the income from qualified or excepted trusts or excepted investment funds (see paragraph (i) of this section)), which is received by the filer during the reporting period, and which exceeds \$1,000 in amount or value from any one source, including but not limited to income derived from:

(i) Real estate;

(ii) Collectible items;

(iii) Stocks, bonds, and notes;

(iv) Copyrights;

(v) Vested beneficial interests in trusts and estates;

(vi) Pensions;

(vii) Sector mutual funds (see definition at § 2640.102(q) of this chapter);

(viii) The investment portion of life insurance contracts;

(ix) Loans;

(x) Gross income from a business;

(xi) Distributive share of a partnership;

(xii) Joint business venture income; and

(xiii) Payments from an estate or an annuity or endowment contract.

Note to paragraphs (c)(1) and (c)(2): For Individual Retirement Accounts (IRAs), brokerage accounts, trusts, mutual or pension funds, and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under paragraph (i) of this section.

(3) *Exceptions.* The following assets and investment income are excepted from the reporting requirements of paragraphs (c)(1) and (c)(2) of this section:

(i) A personal residence, as defined in § 2634.105(l);

(ii) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(iii) Money market mutual funds and accounts;

(iv) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds;

(v) Government securities issued by U.S. Government agencies;

(vi) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act;

(vii) Financial interest in any diversified fund held in any pension plan established or maintained by State government or any political subdivision of a State government for its employees;

(viii) A diversified fund in an employee benefit plan; and

(ix) Diversified mutual funds and unit investment trusts.

Note to paragraphs (c)(3)(vii) through (ix):

For purposes of this section, “diversified” means that the fund does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of an employee benefit plan, means that the plan’s independent trustee has a written policy of varying plan investments. Whether a fund meets this standard may be determined by checking the fund’s prospectus or by calling a broker or the manager of the fund.

Example 1: A filer owns a beach house which he rents out for several weeks each summer, receiving annual rental income of approximately \$5,000. He must report the rental property, as well as the city and state in which it is located.

Example 2: A filer’s investment portfolio consists of several stocks, U.S. Treasury bonds, several cash bank deposit accounts, an account in the Government’s Thrift Savings Plan, and shares in sector mutual funds and diversified mutual funds. He must report the name of each sector mutual fund in which he owns shares, and the name of each company in which he owns stock, valued at over \$1,000 at the end of the reporting period or from which he received income of more than \$1,000 during the reporting period. He need not report his diversified mutual funds, U.S. Treasury bonds, bank deposit accounts, or Thrift Savings Plan holdings.

(d) **Liabilities.** Each financial disclosure report filed pursuant to this subpart must identify liabilities in excess of \$10,000 owed by the filer at any time during the reporting period, and the name and location of the creditors to whom such liabilities are owed, except:

(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 the filer’s 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;

(4) Any revolving charge account;

(5) Any student loan; and

(6) Any loan from a bank or other financial institution on terms generally available to the public.

Example: A filer owes \$2,500 to his mother-in-law and \$12,000 to his best friend. He also has a \$15,000 balance on his credit card, a \$200,000 mortgage on his personal residence, and a car loan. Under the financial disclosure reporting requirements, he need not report the debt to his mother-in-law, his credit card balance, his mortgage, or his car loan. He must, however, report the debt of over \$10,000 to his best friend.

(e) **Positions with non-Federal organizations—(1) In general.** Each financial disclosure report filed pursuant to this subpart must identify all positions held at any time by the filer during the reporting period, other than with the United States, 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.

(2) **Exceptions.** The following positions are excepted from the reporting requirements of paragraph (e)(1) of this section:

(i) Positions held in religious, social, fraternal, or political entities; and

(ii) Positions solely of an honorary nature, such as those with an emeritus designation.

Example 1: A filer holds outside positions as the trustee of his family trust, the secretary of a local political party committee, and the “Chairman” of his town’s Lions Club. He also is a principal of a tutoring school on weekends. The individual must report his outside positions as trustee of the family trust and as principal of the school. He does not need to report his positions as secretary of the local political party committee or “Chairman” because each of these positions is excepted from disclosure.

Example 2: An official recently terminated her role as the managing member of a limited liability corporation upon appointment to a position in the executive branch. The managing member position must be disclosed in the official’s new entrant financial disclosure report pursuant to this section.

Example 3: An official is a member of the board of his church. The official does not need to disclose the position in his financial disclosure report.

Example 4: An official is an officer in a fraternal organization that exists for the purpose of performing service work in the community. The official does not need to disclose this position in her financial disclosure report.

Example 5: An official is the ceremonial Parade Marshal for a local town’s annual Founders’ Day event and, in that capacity, leads a parade and serves as Master of Ceremonies for an awards ceremony at the town hall. The official does not need to

disclose this position in her financial disclosure report.

Example 6: An official recently terminated his role as a campaign manager for a candidate for the Office of the President of the United States upon appointment to a noncareer position in the executive branch. The official does not need to disclose the campaign manager position in his financial disclosure report.

Example 7: Immediately prior to her recent appointment to a position in an agency, an official terminated her employment as a corporate officer. In connection with her employment, she served for several years as the corporation’s representative to an incorporated association that represents members of the industry in which the corporation operates. She does not need to disclose her role as her employer’s representative to the association because she performed her representative duties in her capacity as a corporate officer.

Example 8: An official holds a position on the board of directors of a local food bank. The official must disclose the position in his financial disclosure report.

(f) **Agreements and arrangements.** Each financial disclosure report filed pursuant to this subpart must identify the parties to, and must briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

(1) Future employment (including the date on which the filer entered into the agreement for future employment);

(2) A leave of absence from employment during the period of the filer’s Government service;

(3) Continuation of payments by a current or former employer other than the United States Government; and

(4) Continuing participation in an employee welfare or benefit plan maintained by a current or former employer other than the United States Government. Confidential filers are not required to disclose continuing participation in a defined contribution plan, such as a 401(k) plan, to which a former employer is no longer making contributions.

Note to paragraph (f)(4): Even if the agreement is not reportable, the filer must disclose any reportable asset, such as a sector fund or a stock, held in the account.

Example 1: A filer plans to retire from Government service in eight months. She has negotiated an arrangement for part-time employment with a private-sector company, to commence upon her retirement. On her financial disclosure report, she must identify the future employer, and briefly describe the terms of, this agreement and disclose the date on which she entered into the agreement.

Example 2: A new employee has entered a position which requires the filing of a confidential form. During his Government tenure, he will continue to receive deferred

compensation from his former employer and will continue to participate in its pension plan. He must report the receipt of deferred compensation and the participation in the defined benefit plan.

Example 3: An employee has a defined contribution plan with a former employer. The employer no longer makes contributions to the plan. In the account, the employee holds shares worth \$15,000 in an S&P 500 Index fund and shares worth \$7,000 in an U.S. Financial Services fund. The employee does not need to disclose either the agreement to continue to participate in the plan or the S&P 500 Index Fund. The employee must disclose the U.S. Financial Services Fund sector fund.

(g) *Gifts and travel reimbursements.*

(1) Each annual financial disclosure report filed pursuant to this subpart must contain a brief description of all gifts and travel reimbursements aggregating more than \$390 in value which are received by the filer during the reporting period from any one source, as well as the identity of the source. For travel-related items, the report must include a travel itinerary, the dates, and the nature of expenses provided. Special government employees are not required to report the travel reimbursements received from their non-Federal employers.

(2) *Aggregation exception.* Any gift or travel reimbursement with a fair market value of \$156 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 to paragraph (g)(2): The Office of Government Ethics sets these amounts every 3 years using the same disclosure thresholds as those for public financial disclosure filers. In 2017, the reporting threshold was set at \$390 and the aggregation threshold was set at \$156. The Office of Government Ethics will update this part in 2020 and every three years thereafter to reflect the new amount.

(3) *Valuation of gifts and travel reimbursements.* The value to be assigned to a gift or travel 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:

(i) If the gift is readily available in the market, the value will 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.

(ii) If the item is not readily available in the market, such as a piece of art, the

filer may make a good faith estimate of the value of the item.

(iii) The term “readily available in the market” means that an item generally is available for retail purchase.

(4) New entrants, as described in § 2634.903(b), need not report any information on gifts and travel reimbursements.

(5) *Exceptions.* Reports need not contain any information about gifts and travel reimbursements 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).

Example: A filer accepts a laptop bag, a t-shirt, and a cell phone from a community service organization he has worked with solely in his private capacity. He determines that the value of these gifts is:

Gift 1—Laptop bag: \$200

Gift 2—T-shirt: \$20

Gift 3—Cell phone: \$275

The filer must disclose Gift 1 and Gift 3 because, together, they aggregate more than \$390 in value from the same source. He need not aggregate or report Gift 2 because the gift’s value does not exceed \$156.

(h) *Disclosure rules for spouses and dependent children—*(1) *Noninvestment income.* (i) Each financial disclosure report required by the provisions of this subpart must disclose the source of earned income in excess of \$1,000 from any one source, which is received by the filer’s spouse during the reporting period. If earned income is derived from a spouse’s self-employment in a business or profession, the report must disclose the nature of the business or profession. The filer is not required to report other noninvestment income received by the spouse such as prizes, scholarships, awards, gambling income, or a discharge of indebtedness.

(ii) Each report must disclose the source of any honoraria received by the spouse (or payments made or to be made to charity on the spouse’s behalf in lieu of honoraria) in excess of \$1,000 from any one source during the reporting period.

Example to paragraph (h)(1): A filer’s husband has a seasonal part-time job as a sales clerk at a department store, for which he receives a salary of \$1,000 per year, and an honorarium of \$1,250 from the state university. The filer need not report her husband’s outside earned income because it

did not exceed \$1,000. She must, however, report the source of the honorarium because it exceeded \$1,000.

(2) *Assets and investment income.* Each confidential financial disclosure report must disclose the assets and investment income described in paragraph (c) of this section and held by the spouse or dependent child of the filer.

(3) *Liabilities.* Each confidential financial disclosure report must disclose all information concerning liabilities described in paragraph (d) of this section and owed by a spouse or dependent child.

(4) *Gifts and travel reimbursements.* (i) Each annual confidential financial disclosure report must disclose gifts and reimbursements described in paragraph (g) of this section and received by a spouse or dependent child which are not received totally independently of their relationship to the filer.

(ii) A filer who is a new entrant as described in § 2634.903(b) is not required to report information regarding gifts and reimbursements received by a spouse or dependent child.

(5) *Divorce and separation.* A filer need not report any information about:

(i) A spouse living separate and apart from the filer with the intention of terminating the marriage or providing for permanent separation;

(ii) A former spouse or a spouse from whom the filer is permanently separated; or

(iii) Any income or obligations of the filer arising from dissolution of the filer’s marriage or permanent separation from a spouse.

Example: A filer and her husband are living apart in anticipation of divorcing. The filer need not report any information about her spouse’s sole assets and liabilities, but she must continue to report their joint assets and liabilities.

(6) *Unusual circumstances.* In very rare cases, certain interests in property, transactions, and liabilities of a spouse or a dependent child are excluded from reporting requirements, provided that each requirement of this paragraph is strictly met.

(i) The filer must certify without qualification that the item represents the spouse’s or dependent child’s sole financial interest or responsibility, and that the filer has no knowledge regarding that item;

(ii) The item must not be in any way, past or present, derived from the income, assets or activities of the filer; and

(iii) The filer must not derive, or expect to derive, any financial or economic benefit from the item.

Note to paragraph (h)(6): The exception described in paragraph (6) of this section is not available to most filers. One who prepares or files a joint tax return with a spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be presumed to have knowledge of such items; therefore one could not avail oneself of this exception after preparing or filing a joint tax return. If the filer and the spouse cohabitate and share household expenses, the filer will be deemed to derive an economic benefit from the item, unless the item is beyond the filer's control.

Example: The spouse of a filer has a managed account with a brokerage firm. The filer knows the account exists but the spouse does not share any information about the holdings and does not want the information disclosed on a financial disclosure statement. The filer must disclose the holdings in the spouse's managed account because the spouse shares in paying expenses (for example, household, vacation, or child related).

(i) *Trusts, estates, and investment funds—(1) In general.* (i) Except as otherwise provided in this section, each confidential financial disclosure report must include the information required by this subpart about 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, the filer's spouse, or dependent child.

(ii) Information about the underlying holdings of a trust is required if the filer, filer's spouse, or dependent child currently is entitled to receive income from the trust or is entitled to access the principal of the trust. If a filer, filer's spouse, or dependent child has a beneficial interest in a trust that either will provide income or the ability to access the principal in the future, the filer should determine whether there is a vested interest in the trust under controlling state law. However, no information about the underlying holdings of the trust is required for a nonvested beneficial interest in the principal or income of a trust.

Note to paragraph (i)(1): Nothing in this section requires the reporting of the holdings of a revocable inter vivos trust (also known as a "living trust") with respect to which the filer, the filer's spouse or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child. Furthermore, nothing in this section requires the reporting of the holdings of a revocable inter vivos trust from which the filer, the filer's spouse or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child.

(2) *Qualified trusts and excepted trusts.* (i) A filer should not report

information about the holdings of any qualified blind trust (as defined in § 2634.402) or any qualified diversified trust (as defined in § 2634.402).

(ii) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but does not otherwise need to report information about the trust's holdings. For purposes of this part, the term "excepted trust" means a trust:

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

(B) 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.

(3) *Excepted investment funds.* (i) No information is required under paragraph (i)(1) of this section about the underlying holdings of an excepted investment fund as defined in paragraph (i)(3)(ii) of this section, except that the fund itself must be identified as an interest in property and/or a source of income.

(ii) For purposes of financial disclosure reports filed under the provisions of this subpart, 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:

(A)(1) The fund is publicly traded or available; or

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

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

(iii) A fund is widely diversified if it does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States.

Note to paragraph (i)(3): The fact that an investment fund qualifies as an excepted investment fund is not relevant to a determination as to whether the investment qualifies for an exemption to the criminal conflict of interest statute at 18 U.S.C. 208(a), pursuant to part 2640 of this chapter. Some excepted investment funds qualify for exemptions pursuant to part 2640, while other excepted investment funds do not qualify for such exemptions. If an employee holds an excepted investment fund that is not exempt from 18 U.S.C. 208(a), the ethics official may need additional information from the filer to determine if the holdings of the fund create a conflict of interest and should advise the employee to monitor the

fund's holdings for potential conflicts of interest.

(j) *Special rules.* (1) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this subpart. 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.

(2) With permission of the designated agency ethics official, a filer may attach to the reporting form a copy of a statement which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the concerned part of the report form.

(k) For reports of confidential filers described in § 2634.904(a)(3), each supplemental confidential financial disclosure report will include only the supplemental information:

(1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and

(2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under §§ 2634.103 and 2634.601(b) (see § 2634.901(b) and (c)).

§ 2634.908 Reporting periods.

(a) *Incumbents.* Each confidential financial disclosure report filed under § 2634.903(a) must include the information required to be reported under this subpart for the preceding calendar year, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) *New entrants.* Each confidential financial disclosure report filed under § 2634.903(b) must include the information required to be reported under this subpart for the following reporting periods:

(1) Noninvestment income for the preceding 12 months;

(2) Assets held on the date of filing. New entrant filers are not required to report assets no longer held at the time of appointment, even if the assets previously produced income before the filers were appointed to their confidential positions;

(3) Liabilities owed on the date of filing;

(4) Positions with non-Federal organizations for the preceding 12 months; and

(5) Agreements and arrangements held on the date of filing.

§ 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

Subpart J—Certificates of Divestiture

§ 2634.1001 Overview.

(a) *Scope.* 26 U.S.C. 1043 and the rules of this subpart allow an eligible person to defer paying capital gains tax on property sold to comply with conflict of interest requirements. To defer the gains, an eligible person must obtain a Certificate of Divestiture from the Director of the Office of Government Ethics before selling the property. This subpart describes the circumstances when an eligible person may obtain a Certificate of Divestiture and establishes the procedure that the Office of Government Ethics uses to issue Certificates of Divestiture.

(b) *Purpose.* The purpose of section 1043 and this subpart is to minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements. Minimizing this burden aids in attracting and retaining highly qualified personnel in the executive branch and ensures the confidence of the public in the integrity of Government officials and decision-making processes.

§ 2634.1002 Role of the Internal Revenue Service.

The Internal Revenue Service (IRS) has jurisdiction over the tax aspects of a divestiture made pursuant to a Certificate of Divestiture. Eligible persons seeking to defer capital gains:

(a) Must follow IRS requirements for reporting dispositions of property and electing under section 1043 not to recognize capital gains; and

(b) Should consult a personal tax advisor or the IRS for guidance on these matters.

§ 2634.1003 Definitions.

For purposes of this subpart:

(a) *Eligible person* means:

(1) Any officer or employee of the executive branch of the Federal Government, except a person who is a special Government employee as defined in 18 U.S.C. 202;

(2) The spouse or any minor or dependent child of the individual referred to in paragraph (1) of this definition; and

(3) Any trustee holding property in a trust in which an individual referred to in paragraph (1) or (2) of this definition has a beneficial interest in principal or income.

(b) *Permitted property* means:

(1) An obligation of the United States; or

(2) *A diversified investment fund.* A diversified investment fund is a diversified mutual fund (including diversified exchange-traded funds) or a diversified unit investment trust, as defined in 5 CFR 2640.102(a), (k) and (u);

(3) Provided, however, a permitted property cannot be any holding prohibited by statute, regulation, rule, or Executive order. As a result, requirements applicable to specific agencies and positions may limit an eligible person's choices of permitted property. An employee seeking a Certificate of Divestiture should consult the appropriate designated agency ethics official to determine whether a statute, regulation, rule, or Executive order may limit choices of permitted property.

§ 2634.1004 General rule.

(a) The Director of the Office of Government Ethics may issue a Certificate of Divestiture for specific property in accordance with the procedures of § 2634.1005 if:

(1) The Director determines that divestiture of the property by an eligible person is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or Executive order; or

(2) A congressional committee requires divestiture as a condition of confirmation.

(b) The Director of the Office of Government Ethics cannot issue a Certificate of Divestiture for property that already has been sold.

Example 1: An employee is directed to divest shares of stock, a limited partnership interest, and foreign currencies. If the sale of these assets will result in capital gains under the Internal Revenue Code, the employee may request and receive a Certificate of Divestiture.

Example 2: An employee of the Department of Commerce is directed to divest his shares of XYZ stock acquired through the exercise of options held in an employee benefit plan. The employee

explains that the gain from the sale of the stock will be treated as ordinary income. Because only capital gains realized under Federal tax law are eligible for deferral under section 1043, a Certificate of Divestiture cannot be issued for the sale of the XYZ stock.

Example 3: During her Senate confirmation hearing, a nominee to a Department of Defense (DOD) position is directed to divest stock in a DOD contractor as a condition of her confirmation. Eager to comply with the order to divest, the nominee sells her stock immediately after the hearing and prior to being confirmed by the Senate. Once she is a DOD employee, she requests a Certificate of Divestiture for the stock. Because the Office of Government Ethics cannot issue a Certificate of Divestiture for property that has already been divested, the employee's request for a Certificate of Divestiture must be denied.

§ 2634.1005 How to obtain a Certificate of Divestiture.

(a) *Employee's request to the designated agency ethics official.* An employee seeking a Certificate of Divestiture must submit a written request to the designated agency ethics official at his or her agency. The request must contain:

(1) A full and specific description of the property that will be divested. For example, if the property is corporate stock, the request must include the number of shares for which the eligible person seeks a Certificate of Divestiture;

(2) A brief description of how the eligible person acquired the property;

(3) A statement that the eligible person holding the property has agreed to divest the property; and

(4)(i) The date that the requirement to divest first applied; or

(ii) The date the employee first agreed that the eligible person would divest the property in order to comply with conflict of interest requirements.

(b) *Designated agency ethics official's submission to the Office of Government Ethics.* The designated agency ethics official must forward to the Director of the Office of Government Ethics the employee's written request described in paragraph (a) of this section. In addition, the designated agency ethics official must submit:

(1) A copy of the employee's most recent Incumbent financial disclosure report, or New Entrant report, if an Incumbent report has not been filed, and any subsequent Periodic Transaction reports, as required by this part. If the employee is not required to file a financial disclosure report, the designated agency ethics official must obtain from the employee, and submit to the Office of Government Ethics, a listing of the employee's interests that would be required to be disclosed on a

confidential financial disclosure report excluding gifts and travel reimbursements. For purposes of this listing, the reporting period is the preceding 12 months from the date the requirement to divest first applied or the date the employee first agreed that the eligible person would divest the property;

(2) An opinion that describes why divestiture of the property is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or Executive order;

(3) If applicable, a statement identifying any factors that, in the opinion of the designated agency ethics official, weigh against the issuance of a certificate of divestiture; and

(4) A brief description of the employee's position or a citation to a statute that sets forth the duties of the position.

(c) *Divestitures required by a congressional committee.* In the case of a divestiture required by a congressional committee as a condition of confirmation, the designated agency ethics official must submit appropriate evidence that the committee requires the divestiture. A transcript of congressional testimony or a written statement from the designated agency ethics official concerning the committee's custom regarding divestiture are examples of evidence of the committee's requirements.

(d) *Divestitures for property held in a trust.* In the case of divestiture of property held in a trust, the employee must submit a copy of the trust instrument, as well as a list of the trust's current holdings, unless the holdings are listed on the employee's most recent financial disclosure report. In certain cases involving divestiture of property held in a trust, the Director may not issue a Certificate of Divestiture unless the parties take actions which, in the opinion of the Director, are appropriate to exclude, to the extent practicable, parties other than eligible persons from benefitting from the deferral of capital gains. Such actions may include, as permitted by applicable State law, division of the trust into separate portfolios, special distributions, dissolution of the trust, or anything else deemed feasible by the Director, in his or her sole discretion.

Example: An employee has a 90% beneficial interest in an irrevocable trust created by his grandfather. His four adult children have the remaining 10% beneficial interest in the trust. A number of the assets held in the trust must be sold to comply with conflicts of interest requirements. Due to State law, no action can be taken to separate

the trust assets. Because the adult children have a small interest in the trust and the assets cannot be separated, the Director may consider issuing a Certificate of Divestiture to the trustee for the sale of all of the conflicting assets.

(e) *Time requirements.* A request for a Certificate of Divestiture does not extend the time in which an employee otherwise must divest property required to be divested pursuant to an ethics agreement, or prohibited by statute, regulation, rule, or Executive order. Therefore, an employee must submit his or her request for a Certificate of Divestiture as soon as possible once the requirement to divest becomes applicable. The Office of Government Ethics will consider requests submitted beyond the applicable time period for divestiture. If the designated agency ethics official submits a request to the Office of Government Ethics beyond the applicable time period for divestiture, he must explain the reason for the delay. See §§ 2634.802 and 2635.403 for rules relating to the time requirements for divestiture.

(f) *Response by the Office of Government Ethics.* After reviewing the materials submitted by the employee and the designated agency ethics official, and making a determination that all requirements have been met, the Director will issue a Certificate of Divestiture. The certificate will be sent to the designated agency ethics official who will then forward it to the employee.

§ 2634.1006 Rollover into permitted property.

(a) *Reinvestment of proceeds.* In order to qualify for deferral of capital gains, an eligible person must reinvest the proceeds from the sale of the property divested pursuant to a Certificate of Divestiture into permitted property during the 60-day period beginning on the date of the sale. The proceeds may be reinvested into one or more types of permitted property.

Example 1: A recently hired employee of the Department of Transportation receives a Certificate of Divestiture for the sale of a large block of stock in an airline. He may split the proceeds of the sale and reinvest them in an S&P Index Fund, a diversified Growth Stock Fund, and U.S. Treasury bonds.

Example 2: The Secretary of Treasury sells certain stock after receiving a Certificate of Divestiture and is considering reinvesting the proceeds from the sale into U.S. Treasury securities. However, because the Secretary of the Treasury is prohibited by 31 U.S.C. 329 from being involved in buying obligations of the United States Government, the Secretary cannot reinvest the proceeds in such securities. However, she may invest the proceeds in a diversified mutual fund. See

the definition of *permitted property* at § 2634.1003(b).

(b) *Internal Revenue Service reporting requirements.* An eligible person who elects to defer the recognition of capital gains from the sale of property pursuant to a Certificate of Divestiture must follow Internal Revenue Service rules for reporting the sale of the property and the reinvestment transaction.

§ 2634.1007 Cases in which Certificates of Divestiture will not be issued.

The Director of the Office of Government Ethics, in his or her sole discretion, may deny a request for a Certificate of Divestiture in cases where an unfair or unintended benefit would result. Examples of such cases include:

(a) *Employee benefit plans.* The Director will not issue a Certificate of Divestiture if the property is held in a pension, profit-sharing, stock bonus, or other employee benefit plan and can otherwise be rolled over into an eligible tax-deferred retirement plan within the 60-day reinvestment period.

(b) *Tax-Deferred and Tax-Advantaged Accounts.* The Director will not issue a Certificate of Divestiture if the property is held in an Individual Retirement Account, college savings plan (529 plan), or other tax-deferred or tax-advantaged account (e.g., 401(k), 403(b), 457 plans, etc.), which allow the account holder to exchange the property for permissible property without incurring a capital gain.

(c) *Complete divestiture.* The Director will not issue a Certificate of Divestiture unless the employee agrees to divest all of the property that presents a conflict of interest, as well as other similar or related property that presents a conflict of interest under a Federal conflict of interest statute, regulation, rule, or Executive order. However, any property that qualifies for a regulatory exemption at part 2640 of this chapter need not be divested for a Certificate of Divestiture to be issued.

Example: A Department of Agriculture employee owns shares of stock in Better Workspace, Inc. valued at \$25,000. As part of his official duties, the employee is assigned to evaluate bids for a contract to renovate office space at his agency. The Department's designated agency ethics official discovers that Better Workspace is one of the companies that has submitted a bid and directs the employee to sell his stock in the company. Because Better Workspace is a publicly traded security, the employee could retain up to \$15,000 of the stock under the regulatory exemption for interests in securities at § 2640.202(a) of this chapter. He would be able to request a Certificate of Divestiture for the \$10,000 of Better Workspace stock that is not covered by the exemption. Alternatively, he could request a

Certificate of Divestiture for the entire \$25,000 worth of stock. If he chooses to sell his stock down to an amount permitted under the regulatory exemption, the Office of Government Ethics will not issue additional Certificates of Divestiture if the value of the stock goes above \$15,000 again.

(d) *Property acquired under improper circumstances.* The Director will not issue a Certificate of Divestiture:

(1) If the eligible person acquired the property at a time when its acquisition was prohibited by statute, regulation, rule, or Executive order; or

(2) If circumstances would otherwise create the appearance of a conflict with the conscientious performance of Government responsibilities.

§ 2634.1008 Public access to a Certificate of Divestiture.

A Certificate of Divestiture issued pursuant to the provisions of this subpart is available to the public in accordance with the rules of § 2634.603.

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