

§ 2634.311

5 CFR Ch. XVI (1–1–01 Edition)

(b) *Qualified trusts and excepted trusts.*

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

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

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

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

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

transactions involving shares or units of the fund.

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

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

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

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

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

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

§ 2634.311 Special rules.

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

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

(c) *Reporting standards.* (1) In lieu of entering data on a schedule of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and

concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the schedule.

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

Subpart D—Qualified Trusts

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

§ 2634.401 General considerations.

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

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

(ii) *Qualified blind trust.* The most universally adaptable qualified trust is the qualified blind trust, defined in § 2634.403 of this subpart. A trust is considered to be “blind” only with regard to those trust assets about which no interested party has knowledge. When an interested party originally places assets in trust, that party still possesses knowledge about those assets. Those original assets remain financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations, until the trustee notifies the official either that a particular original asset has been disposed of or that the asset’s value is less than \$1000. If the trustee sells or disposes of origi-

nal trust assets and then uses the proceeds to acquire new trust holdings, or if the trustee reinvests trust income to acquire new trust holdings, a “blind” trust exists for those new holdings because the interested parties possess no information about the newly acquired assets. The holdings of a “blind” trust are not classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

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

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

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

(ii) In addition to the trustee, the Act extends the independence requirement to other entities which manage trust assets or administer the trust, including officers and employees of the trustee, any other entity designated in the trust instrument to perform fiduciary duties on behalf of the trust, and the officers and employees of any other