

trust as a qualified blind or qualified diversified trust under § 2634.403 (blind) or § 2634.404 (diversified) if he determines that such action is appropriate and is sufficient to ensure compliance with applicable laws and regulations. The pre-existing trust proposed for certification must meet both the generally applicable trust requirements, and several special requirements contained in § 2634.405(c) of this subpart, including that all of the parties to the original trust agree to administer the trust in accordance with the requirements of this subpart. The pre-existing trust may be certified only if all of the conditions of this subpart are fulfilled, and if the requisite confidentially can be assured with respect to the trust.

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

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

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

(2) No trust will be considered "qualified" for purposes of the Act until the Office of Government Ethics certifies the trust prior to execution. The Office

of Government Ethics makes available to attorneys model trust agreements for use in drafting proposed trust agreements which are to be submitted to the Office for certification. Attorneys are cautioned to consider each model provision in light of the circumstances presented by the particular case, and to modify provisions to the extent that such modifications are necessary or appropriate. Attorneys should not rely uncritically upon the language of the model agreements. However, many of the model provisions implement the minimum requirements which must be contained in any trust instrument certified by the Office. Certificates of Independence for fiduciaries must be executed in the form indicated in appendix A of this part.

(3) The Office of Government Ethics does not draft trust instruments for use in individual cases. However, its staff is always willing to cooperate with attorneys and to make its experience available to them in developing appropriate trust instruments which satisfy applicable Federal laws, Executive orders and regulations. If the use of a qualified trust is contemplated in a particular case, it is strongly recommended that the interested parties or their representatives contact the Office of Government Ethics as early as possible.

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

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

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

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

§ 2634.403 Qualified blind trusts.

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

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

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

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

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

(4) Any portfolio asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale, except as fully described in schedules attached to the

trust instrument, and as approved by the Director of the Office of Government Ethics;

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

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

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

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

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

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

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

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