

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 to paragraph (a): 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 to paragraph (a): 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) *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) *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 5 CFR part 2640 need not be divested for a Certificate of Divestiture to be issued.

Example 1 to paragraph (b): 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 5 CFR 2640.202(a). 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.

(c) *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 of this part.

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5 CFR Ch. XVI (1-1-05 Edition)

APPENDIX A TO PART 2634—CERTIFICATE OF INDEPENDENCE (FORM APPROVED: OMB CONTROL NO. 3209-0007)

APPENDIX B TO PART 2634—CERTIFICATE OF COMPLIANCE (FORM APPROVED: OMB CONTROL NO. 3209-0007)

The Certificate of Independence required by § 2634.406(b) shall be executed as follows:

The Certificate of Compliance required by § 2634.408(b) shall be executed as follows:

CERTIFICATE OF INDEPENDENCE

CERTIFICATE OF COMPLIANCE

With respect to the trust of _____ (Settlor), which has been submitted to the Office of Government Ethics for certification pursuant to the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended), the undersigned proposed [Trustee] _____ of such trust is a financial institution which is eligible to serve in such fiduciary capacity in accordance with section 102(f)(3)(A) of such Act:

With respect to the qualified blind trust (qualified diversified trust) of _____ (Settlor), the undersigned, the approved [Trustee] _____ of such trust, pursuant to 5 CFR 2634.406, has served in such fiduciary capacity during the calendar year [or for the period beginning _____ and ending _____] and is eligible to continue in such capacity by virtue of the following:

FIRST: The undersigned is (check one)—
() a bank, as defined in 12 U.S.C. 1841(c),

FIRST: The undersigned (and any director, officer, or employee) has not knowingly or negligently, and will not—

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

(A) disclose any information to an interested party with respect to the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations (including 5 CFR 2634.403(b)(12)(i) for a qualified blind trust, and 5 CFR 2634.404(c)(12)(i) for a qualified diversified trust), or the trust instrument;

not more than 10 percent of which is owned or controlled by a single individual.

(B) acquire any holding the ownership of which is prohibited by, or not in accordance with, applicable statute, regulation, or the terms of the trust instrument;

SECOND: The undersigned—

(C) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by title I of the Act, the implementing regulations (including 5 CFR 2634.403(b)(12)(iii) for a qualified blind trust and 5 CFR 2634.404(c)(12)(iii), for a qualified diversified trust), or the trust instrument;

(1) Is independent of and unassociated with any interested party so that the undersigned cannot be controlled or influenced in the administration of the trust by any interested party; and

(D) fail to file any document required by title I of the Act, the implementing regulations (including 5 CFR 2634.408(b) and (c)), or the trust instrument; or

(2) 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.

(E) violate or fail to comply with any provision or requirement of title I of the Act, the implementing regulations, or the trust instrument.

THIRD: Any director, officer, or employee of the undersigned—

SECOND: The undersigned (and any director, officer, or employee) will not knowingly or negligently engage in the above-mentioned activities.

(1) 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;

THIRD: The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

(2) Is not and has not been employed by any interested party, nor 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 or business with, any interested party; and

Date _____
(firm) _____
By: _____
(title) _____

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

NOTE: See appendix C of this part for Privacy Act and Paperwork Reduction Act notices.

FOURTH: The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date _____
(firm) _____
By: _____
(title) _____

[57 FR 11829, Apr. 7, 1992, as amended at 63 FR 58620, Nov. 2, 1998]

[57 FR 11830, Apr. 7, 1992; 57 FR 21855, May 22, 1992]

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APPENDIX C TO PART 2634—PRIVACY ACT AND PAPERWORK REDUCTION ACT NO- TICES FOR APPENDIXES A AND B

PRIVACY ACT STATEMENT

Section 102(f) of the Ethics in Government Act of 1978 as amended (the "Ethics Act") (5 U.S.C. App.) and subpart D of 5 CFR part 2634 of the regulations of the Office of Government Ethics (OGE) require the reporting of this information for the administration of qualified trusts under the Ethics Act. The primary use of the information on this certificate is for review by Government officials of OGE and the agency of the Government employee for whom the trust is established to determine compliance with applicable Federal laws and regulations as regards qualified trusts. Additional disclosures of the information on this certificate may be made:

(1) to any requesting person in accordance with the access provisions of section 105 of the Ethics Act;

(2) to a Federal, State or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation;

(3) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena;

(4) to a source when necessary to obtain information relevant to a conflict of interest issue;

(5) to the National Archives and Records Administration or the General Services Administration in records management inspections;

(6) to the Office of Management and Budget during legislative coordination on private relief legislation; and

(7) in response to a discovery request or for the appearance of a witness in a pending judicial or administrative proceeding, if the information is relevant to the subject matter. Knowing or willful falsification of information on this certificate or failure to file or report information required to be reported under title I of the Ethics Act and 5 CFR part 2634 of the OGE regulations may lead to disqualification as a trustee or other fiduciary as well as possible disqualification of the underlying trust itself. Knowing and willful falsification of information required under the Ethics Act and the regulations may also subject you to criminal prosecution.

PUBLIC BURDEN INFORMATION AND PAPERWORK REDUCTION ACT STATEMENT

This collection of information is estimated to take an average of twenty minutes per response. You can send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Deputy

Director for Administration and Information Management, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. *Do not* send your completed certificate to that official; rather, send it to the Director of the Office of Government Ethics at that address as provided in the part 2634 regulation.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0007, is displayed here and in the headings of the OGE model qualified trust certificates of independence and compliance, appendixes A and B to this part 2634).

[57 FR 11830, Apr. 7, 1992, as amended at 63 FR 58620, Nov. 2, 1998; 67 FR 22349, May 3, 2002]

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Subpart A—General Provisions

Sec.

- 2635.101 Basic obligation of public service.
- 2635.102 Definitions.
- 2635.103 Applicability to members of the uniformed services.
- 2635.104 Applicability to employees on detail.
- 2635.105 Supplemental agency regulations.
- 2635.106 Disciplinary and corrective action.
- 2635.107 Ethics advice.

Subpart B—Gifts From Outside Sources

- 2635.201 Overview.
- 2635.202 General standards.
- 2635.203 Definitions.
- 2635.204 Exceptions.
- 2635.205 Proper disposition of prohibited gifts.

Subpart C—Gifts Between Employees

- 2635.301 Overview.
- 2635.302 General standards.
- 2635.303 Definitions.
- 2635.304 Exceptions.

Subpart D—Conflicting Financial Interests

- 2635.401 Overview.
- 2635.402 Disqualifying financial interests.
- 2635.403 Prohibited financial interests.

Subpart E—Impartiality in Performing Official Duties

- 2635.501 Overview.