

**§ 2634.407**

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

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

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

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

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

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

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

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

**§ 2634.407 Restrictions on fiduciaries and interested parties.**

(a) *Restrictions applicable to trustees and other fiduciaries.* Any trustee or any

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other designated fiduciary of a qualified trust shall not knowingly or negligently:

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

(2) Acquire any holding:

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

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

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

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

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

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

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

**§ 2634.408 Special filing requirements for qualified trusts.**

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

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

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

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

(2) *Transfer of assets.* Within thirty days of transferring an asset, other than cash, to a qualified trust, file a report with the Director of the Office of Government Ethics, which identifies and briefly describes each asset, categorized as to value in accordance with § 2634.301(d).

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

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

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

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

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

(d) *Public access.* Any document filed under the requirements of paragraph (a) of this section by a public filer, nominee, or candidate shall be subject to the public disclosure requirements of § 2634.603. Any document (and the in-

formation contained therein) inspected under the requirements of paragraph (b) of this section (other than a Certificate of Compliance), or filed under the requirements of paragraph (c) of this section, shall be exempt from the public disclosure requirements of § 2634.603, and shall not be disclosed to any interested party.

#### § 2634.409 OMB control number.

The various model trust documents and Certificates of Independence and Compliance referenced in this subpart, together with the underlying regulatory provisions (and appendixes A, B and C to this part for the Certificates), are all approved by the Office of Management and Budget under control number 3209-0007.

[59 FR 34756, July 7, 1994]

### Subpart E—Revocation of Trust Certificates and Trustee Approvals

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

#### § 2634.501 Purpose and scope.

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

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

#### § 2634.502 Definitions.

For purposes of this subpart (unless otherwise indicated):

(a) *Senior Attorney* means the Office of Government Ethics employee designated as the manager of the qualified trust program.

(b) *Trust restrictions* means the applicable provisions of title I of the Ethics in Government Act of 1978, subpart D of this part, and the trust instrument.