

U.S. OFFICE OF GOVERNMENT ETHICS

Model Confidentiality Agreement Provisions
[For use in the case of investment management activities]

The model confidentiality agreement contained in this memorandum is made available by the U.S. Office of Government Ethics to attorneys for their use in drafting proposed confidentiality agreements in those cases where such an instrument is an appropriate component of a qualified trust arrangement submitted for certification pursuant to section 102(f)(3) or (4)(B) of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) and subpart D of 5 C.F.R. Part 2634. Under the statutory scheme, a trust agreement is not permitted to be recognized as creating an efficacious blind trust arrangement for any purpose under Federal law unless it had been certified by the Office prior to its execution. Proposed confidentiality agreement drafts submitted to the Office for consideration must adhere to the language of the model except to the extent, as agreed to by the U.S. Office of Government Ethics, that variations are required by the unusual circumstances of a particular case. The fiduciaries' certificates of independence must be executed in the exact form indicated.

It is strongly recommended in any case in which the use of a blind trust is contemplated that the Office be consulted as early as possible. Prospective trustees or their representatives should schedule an appointment with the staff of the U.S. Office of Government Ethics for an orientation to the specialized procedures and requirements which have been established by law with respect to blind trust administration prior to the certification of the trust. As a condition of approval by the Office, prospective trustees must exhibit a familiarity with and commitment to the specialized nature of blind trust administration.

For further information, contact the U.S. Office of Government Ethics directly:
telephone 202-482-9300, fax 202-482-9237.

CONFIDENTIALITY AGREEMENT

[INSERT DATE]

General Counsel and
Legal Policy Division
U.S. Office of Government Ethics
1201 New York Avenue NW.
Washington DC 20005-3917

To Whom It May Concern:

I understand that _____ **[appointee]** will be appointed to the position of _____ of the _____ **[department or agency]**. I further understand that, to avoid any conflict of interest, or appearance of any such conflict, that may arise from his duties and powers in such office and any other office to which he may subsequently be appointed, _____ **[appointee]** has submitted a proposed blind trust arrangement to the U.S. Office of Government Ethics, and that _____ **[financial institution]** will serve as the Independent Trustee of the blind trust.

Under the provisions of applicable law and the blind trust instrument, _____ **[appointee]**, as well as his spouse, any minor or dependent child, and any of their personal and professional representatives, is precluded from learning any information with respect to any investment management activities conducted by the Independent Trustee. Such information is called “prohibited communications” in this agreement. I am considered to be in possession of such information because of my financial interests in investments as to which _____ **[financial institution]** has responsibilities.

Accordingly, in order to assist _____ **[appointee]** in complying with applicable law, I agree not to have any prohibited communications with _____ **[appointee]**, or his spouse and children or any of their personal and professional representatives, while the blind trust arrangement is in existence. Specifically, I will not knowingly and willfully, or negligently, disclose or make available to any person referred to in the preceding sentence, or the media or

1 general public, any information as to the acquisition, retention, or disposition of any particular
 2 securities in any portfolio for which _____ **[financial institution]** has responsibilities.
 3 Also, I will not consult with nor advise _____ **[appointee]**, his spouse, any minor or
 4 dependent child, or any of their personal and professional representatives, with respect to any
 5 matter related to _____ **[financial institution]** or any such portfolio. Further, I will
 6 instruct my spouse, any minor or dependent child, and our representatives to restrict their
 7 communications in the manner described in this paragraph.

8
9 Sincerely,

10 _____

11 NOTARIZATION

12 REQUIRED

13
14 ACKNOWLEDGMENT:

15 The above Confidentiality Agreement is acknowledged this _____ day of _____,
16 ____.

17 _____

18 **[appointee]**

19 NOTARIZATION

20 REQUIRED

21
22 The above Confidentiality Agreement is acknowledged this _____ day of _____,
23 ____.

24 _____

25 **[financial institution]**

26
27 By: _____

28 (title)

29 NOTARIZATION

30 REQUIRED

Privacy Act Statement

Section 102(f) of the Ethics in Government Act of 1978 as amended (the “Ethics Act”), 5 U.S.C. Appendix, § 102(f), and subpart D of 5 C.F.R. part 2634 of the regulations of the U.S. Office of Government Ethics (OGE) require the reporting of this information for the administration of qualified trusts under the Act. The primary use of the information on the trust instrument prepared based in part upon this model draft document is for review by Government officials of OGE and the agency of the Government employee for whom the trust is being established to determine compliance with applicable Federal laws and regulations as regards qualified trusts. Additional disclosures of the information in the trust document itself may be made:

- 1) To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.
- 2) To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.
- 3) To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.
- 4) By the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.
- 5) To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.
- 6) To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.
- 7) To disclose the public financial disclosure report and any accompanying documents to reviewing officials in a new office, department or agency when an employee transfers or is detailed from a covered position in one office, department or agency to a covered position in another office, department or agency.

- 8) To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.
- 9) To disclose the information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

For additional information please see OGE/GOVT-1 Governmentwide Privacy System of Records.

Penalties

Knowing or willful falsification of information on the trust document prepared from this model draft or failure to file or report information required to be reported under Title I of the Ethics Act and 5 C.F.R. 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 Statement

This collection of information is estimated to take an average of 20 minutes per communication letter, given the estimated amount of time deemed necessary to prepare a communication. You can send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Program Counsel, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Do not send your completed communication letter to this address; rather, see the remainder of the instructions to this model set of drafts.

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 upper right-hand corner of the first page of this OGE model qualified trust draft document).