

U.S. Office of Government Ethics

OMB 83-I Supporting Statement (2016)

EXECUTIVE BRANCH QUALIFIED TRUST DOCUMENTS

A. Justification

1.- 2. The Office of Government Ethics (OGE) is the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978. Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for Ethics in Government Act qualified blind or diversified trusts to be used to avoid conflicts of interest.

OGE is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics in Government Act, 5 U.S.C. app. § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

There are two categories of information collection requirements each with its own related reporting model certificates or model trust documents. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified Trust Certifications -- 5 CFR §§ 2634.404(f) and (g), 2634.405(c) and (d), 2634.407, 2634.408(d)(4), 2634.410, 2634.414 and appendixes A and B to part 2634. The two implementing forms (as codified in appendixes A-C of part 2634) are the:

- (A) **Certificate of Independence;** and
- (B) **Certificate of Compliance.**

ii. Qualified Trust Communications and Model Provisions and Agreements
5 CFR §§ 2634.404(f), 2634.407(a), 2634.408(a)—(c), 2634.407 and 2634.414. The ten implementing forms are the:

- (A) **Model Qualified Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications)**
- (B) **Model Qualified Blind Trust Provisions;**
- (C) **Model Qualified Diversified Trust Provisions;**

(D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries);

(E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust);

(F) Model Qualified Diversified Trust Provisions (Hybrid Version);

(G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries);

(H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust);

(I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and

(J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities).

3. These information collections serve as model documents and are often redrafted and tailored by particular users. They are submitted to OGE in hardcopy, though often based on electronic word processing capabilities.

4. These documents are the source of information concerning Federal officials' qualified trust interests for the purpose of OGE's executive branch ethics review in this area.

5. These documents do not have a significant impact upon small businesses or other small entities.

6. All of the information required on the related trust certificates and model documents is mandated directly by law or in the OGE regulation and is necessary for proper reporting and review by OGE of qualified trust arrangements. See also item Nos. 1 - 2 above.

7. No special circumstances exist that would be inconsistent with the guidelines for this item.

8. OGE did not consult with persons outside the agency to obtain their views concerning the documents. However, OGE sought public comment on the documents in its first round *Federal Register* notice on March 4, 2016 of its intent to request paperwork clearance for the unmodified forms. See 81 FR 11566-11567 for which the public comment period closed on May 5, 2016. OGE did not receive any requests for copies of the documents or comments on the forms. OGE again sought public comment in the second round *Federal Register* notice. See 81 FR 35359-35360 (June 2, 2016). No comments were received by the Office of Management and Budget (OMB) or OGE in response to the second round *Federal Register* notice.

9. Not applicable.

10. Most of the various qualified trust certificates and model documents in use under the pertinent provisions of the Ethics in Government Act and the 5 CFR part 2634 regulation are publicly available pursuant to the special Ethics in Government Act access procedures (see § 2634.603 of OGE's regulation), with the exception of the model qualified blind trust communications and the model confidentiality agreement provisions. See items 1 - 2ii(A), (I) and (J) above. These three completed types of documents contain sensitive confidential information under the Ethics in Government Act and other pertinent laws including the Freedom of Information Act and the Privacy Act. Moreover, once a qualified trust is established, the underlying trust information itself (other than the initial portfolio as reported for the OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report if it concerns a reportable high-level executive branch official) is not available to the public on the same basis.

In 2003, OGE updated the OGE/GOVT-1 system of records notice (covering Public Financial Disclosure Reports and other name-retrieved ethics program records). See 68 FR 3097-3109 (January 22, 2003), as corrected at 68 FR 24744 (May 8, 2003). OGE made additional modifications to the routine uses in 2011 and 2012. See 76 FR 24489-24490 (May 2, 2011) and 77 FR 45353 (July 31, 2012). OGE modified the ten model trust documents to reflect these changes in its 2013 renewal submission to OMB. However, these Privacy Act updates have not been incorporated at this time into the current version of the Privacy Act Statement, codified at 5 CFR 2634 appendix C, covering the Certificate of Independence and Certificate of Compliance, 5 CFR part 2634 appendixes A and B. OGE will continue to inform users of the certificates of the updates to the Privacy Act Statement.

11. There are no sensitive questions on these documents. All of the information required in the regulation and on the related trust certificates and model documents is mandated directly by law or as determined in the OGE regulation to be necessary for proper reporting and review by OGE of qualified trust arrangements of covered executive branch officials.

12. At the present time, there are no active filers using the trust model certificates and documents. However, OGE is submitting to OMB a request for extension of approval for two reasons. First, under OMB's implementing regulations for the Paperwork Reduction Act, at 5 CFR 1320.3(c)(4)(i), any recordkeeping, reporting or disclosure requirement contained in a sponsoring agency rule of general applicability is deemed to meet the minimum threshold of ten or more persons. Second, OGE does anticipate possible limited use of these forms during the forthcoming three-year period 2016-2018. Therefore, the estimated burden figures, representing branchwide implementation of the forms, will remain the same as previously reported by OGE in its prior first and second round paperwork renewal notice for the trust forms in 2012-2013 (77 FR 76293-76294 (December 27, 2012) and 78 FR 40144-40146 (July 3, 2013)). The estimate is based on the amount of time imposed on a trust administrator or private representative. OGE is reporting zero for the total annual burden hours. After consultation with OMB, OGE has reexamined its estimating methodology and modified the hour burden to reflect the fact that all respondents hire private trust administrators or other private

representatives to set up and maintain the qualified blind and diversified trusts. Respondents initially setting up such trusts are typically incoming private citizen Presidential nominees. The nominee respondents themselves incur no hour burden in using the model trust documents even after they take office, but they do incur costs (see #13 below). The time burden listed directly below is based on the amount of time imposed on the trust administrators or other private representatives. The detailed paperwork estimates below for the various trust certificates and model documents are based primarily on OGE's experience with administration of the qualified trust program:

i. Trust Certificates:

A. Certificate of Independence:

Total Filers (Executive Branch): 5

Private Citizens (100%): 5

OGE-processed Certificates (Private Citizens): 5

Private Citizen Burden Hours (20 minutes/certificate): 2

B. Certificate of Compliance:

Total Filers (Executive Branch): 10

Private Citizens (100%): 10

OGE-processed Certificates (Private Citizens): 10

Private Citizen Burden Hours (20 minutes/certificate): 3

ii. Model Qualified Trust Documents:

A. Blind Trust Communications:

Total Users (Executive Branch): 5

Private Citizens (100%): 5

OGE-processed Drafts (Private Citizens): 25 (based on 5 communications per user, per year)

Private Citizen Burden Hours (20 minutes/communication): 8

B. Model Qualified Blind Trust:

Total Users (Executive Branch): 2

Private Citizens (100%): 2

OGE-processed Drafts (Private citizens): 2

Private Citizen Burden Hours (100 hours/model): 200

C. Model Qualified Diversified Trust:

Total Users (Executive Branch): 1

Private Citizens (100%): 1

OGE-processed Drafts (Private Citizens): 1

Private Citizen Burden Hours (100 hours/model): 100

D.-H. Of the five remaining model qualified trust documents:

Total Users (Executive Branch): 2

Private Citizens (100%): 2

OGE-processed Models (Private Citizens): 2

Private Citizen Burden Hours (100 hours/model): 200

I.-J. Of the two model confidentiality agreements:

Total Users (Executive Branch): 1

Private Citizens (100%): 1

OGE-processed Agreements (Private Citizens): 1

Private Citizen Burden Hours (50 hours/agreement): 50

13. OGE is reporting \$1,000,000 for the estimate of the annual cost burden to respondents. After consultation with OMB, OGE reexamined its estimating methodology to reflect that all of the respondents, or those who use the model documents for guidance, are private trust administrators or other private representatives. Respondents, typically incoming private citizen Presidential nominees who then assume their Government positions, hire private trust administrators to set up and maintain their qualified blind and diversified trusts. Typically, the fee structure of trust administrators or other private representatives is based on a percentage of assets. The \$1,000,000 figure is based on OGE's estimate of five trusts with combined total assets of \$100,000,000. OGE estimates that the average percentage fee would be one percent; therefore, one percent of \$100,000,000 equals \$1,000,000.

However, OGE notes that the \$1,000,000 figure is a cost estimate for the overall administration of the trusts, only a portion of which relates to information collection and reporting. For want of a precise way to break out the costs directly associated with information collection, OGE is reporting to OMB the full \$1,000,000 estimate for paperwork clearance purposes.

14. The estimate of annualized costs to the executive branch of the Federal Government is \$32,000. Virtually all costs are labor costs associated with OGE employees reviewing the various documents.

15. Not applicable.

16. Not applicable.

17. OGE requests renewed permission not to display the expiration date on the model qualified trust certificates and documents to allow their continued use beyond the three additional years being requested, if needed and further cleared by the Office of Information and Regulatory Affairs.

18. Certification items (c), (f) and (i) are not applicable to this information collection.

B. Collection of Information Employing Statistical Methods

Not applicable. This collection does not employ statistical methods.