

U.S. Office of Government Ethics
Supporting Statement for the Executive Branch Qualified Trust Model
Certificates and Model Trust Documents
November 2019

A. Justification

1.-2. Explain the circumstances that make the collection of information necessary. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The U.S. Office of Government Ethics (OGE) is the supervising ethics office for the executive branch under the Ethics in Government Act of 1978 (EIGA). Accordingly, OGE administers the qualified trust program for the executive branch. Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for EIGA-qualified blind or diversified trusts as one means to be used to avoid conflicts of interest. The requirements for EIGA-qualified blind and diversified trusts are set forth in 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.

In order to ensure that all applicable requirements are met, OGE is the sponsoring agency for 12 model certificates and model trust documents for qualified blind and diversified trusts. See 5 CFR §§ 2634.402(e)(3), 2634.402(f)(3), 2634.404(e)-(g), 2634.405(d)(2), 2634.407(a); 2634.408(b)(1)-(3), 2634.408(d)(4), 2634.409, and 2634.414. The various model certificates and model trust documents are utilized by settlors, trustees, and other fiduciaries in establishing and administering these qualified trusts.

The 12 model documents, along with their burden estimates, are as follows:

Model Qualified Trust Documents	Estimated Burden
(A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications)	20 minutes per communication
(B) Model Qualified Blind Trust Provisions	100 hours per model
(C) Model Qualified Diversified Trust Provisions	100 hours per model
(D) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries)	100 hours per model

(E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust)	100 hours per model
(F) Hybrid Version of the Model Qualified Diversified Trust Provisions	100 hours per model
(G) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries)	100 hours per model
(H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust)	100 hours per model
(I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business)	2 hours per agreement
(J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities)	2 hours per agreement
Model Trust Certificates	Estimated Burden
(K) Certificate of Independence	20 minutes per certificate
(L) Certificate of Compliance	20 minutes per certificate

OGE is submitting all 12 qualified trust model certificates and model documents described above (all of which are included under OMB paperwork control number 3209-0007) for a three-year extension of approval. OGE proposes several minor modifications to the documents.

First, OGE proposes removing all references to Appendices A and B of 5 CFR part 2634 because these references are no longer applicable. The appendices, which contained the model Certificate of Independence and model Certificate of Compliance (items (K) and (L), respectively, on the table above), were eliminated as part of recent changes made by OGE to the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture regulation at 5 CFR part 2634. The changes went into effect on January 1, 2019. The information previously found in Appendix B is available on www.oge.gov.

Second, OGE proposes removing all references to facsimile as the best means of communication and replacing it with email.

Third, with regard to the model communications (item (A) in the table above), OGE proposes to update the dates in the sample documents to make them more contemporary.

Fourth, OGE proposes to add one sentence to the Privacy Act statements to better notify users of the consequences of not providing the requested information.

Fifth, OGE proposes to make a few minor formatting corrections and to fix a typographical error in the Privacy Act statements.

Sixth, OGE proposes to update the Privacy Act statement in accordance with recent changes made to the OGE/GOVT-1 system of records, covering Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records. The changes were effective on November 8, 2019.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

These documents serve as models and are redrafted and tailored by particular users. They are submitted to OGE in hardcopy or portable document format (PDF).

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2 above.

As the supervising ethics office for the executive branch, OGE would be aware of any duplication regarding these model documents. They are the only source of information concerning executive branch officials' qualified trust interests for the purpose of the reviewing and approving EIGA-qualified blind or diversified trusts.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

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

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing the burden.

All of the information is mandated by law or by OGE regulation and is necessary for proper reporting and review of qualified trust arrangements. See also items 1-2, above.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than 3 years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or that unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secrets or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

No such special circumstances exist.

8. If applicable, provide a copy and identify the date and page number of publication in the *Federal Register* of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB.

OGE sought public comment on the documents on September 25, 2019, in its first round *Federal Register* notice of its intent to request paperwork clearance for the unmodified forms.

See 84 FR 50449.¹ The public comment period closed on November 25, 2019. OGE did not receive any comments.

OGE again sought public comment in the second round *Federal Register* notice on December 11, 2019. See 84 FR 67743. Commenters were directed to send comments directly to OMB.

OGE continually seeks comments from persons outside the agency concerning the impact of its information collection instruments upon filers and agency ethics programs. OGE provides opportunities for comment at ethics symposia and other events. OGE routinely alerts professionals in the ethics community to recently published OGE *Federal Register* notices via its listserv, various social media applications, and Advisory Memoranda. Visitors to the OGE website are provided the opportunity to contact OGE with comments or suggestions. Any future comments received by OGE as a result of these various means will be considered for a future modification.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Not applicable.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Not applicable.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no sensitive questions on these documents. All of the information is mandated by law or by OGE regulation and is necessary for proper reporting and review of qualified trust arrangements.

12.-13. Provide estimates of the hour burden of the collection of information. Provide an estimate for the total annual cost burden to respondents or record-keepers resulting from the collection of information.

¹ OGE's first notice did not mention OGE's intention to update the Privacy Act statement in accordance with recent changes to the OGE/GOVT-1 system of records, covering Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records. However, the second notice did include this information. OMB has generally taken the position that such a change is nonsubstantive and does not require public notice and comment.

The estimated burden for each document is provided in the table above, in response to items 1-2. These estimates are based on the amount of time imposed on professional trust administrators or private representatives. OGE notes that only one set of the various model trust provisions (items (B) through (H)) will be prepared for a single qualified trust, and only prior to the establishment of that qualified trust. Likewise, other model documents listed above are used in connection with establishing the qualified trust (items (I), (J), and (K)). The remaining model documents are used after the trust's creation (items (A) and (L)). Accordingly, OGE notes that the majority of the time burden for any given trust is imposed during the creation of the trust.

At the present time, there are no active qualified trusts in the executive branch. However, OGE anticipates possible limited use of these model documents during the forthcoming three-year period. OGE estimates that there may be an average of one individual per year who initiates a qualified trust using these model documents during calendar years 2020 through 2022. OGE has accordingly estimated the average annual number of respondents to be two, which represents one respondent establishing a qualified trust and one respondent maintaining a previously established qualified trust. Based on the above, OGE estimates an average annual time burden during the next three years of 120 hours. Using an estimated rate of \$300 per hour for the services of a professional trust administrator or private representative, the estimated annual cost burden is \$36,000.

Under OMB's implementing regulations for the Paperwork Reduction Act, any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons. See 5 CFR § 1320.3(c)(4)(i). The model documents are required by OGE's regulation at 5 CFR part 2634, subpart D.

There is a large discrepancy between the estimated annual cost burden reported here and that reported in previous years. The discrepancy is primarily due to a change in how OGE estimated the average annual cost burden. In prior years, OGE based this estimate on the costs of the overall administration of a qualified trust, only a portion of which relates to information collection and reporting. After consulting with OMB, OGE concluded that it is more accurate to base the annual cost burden directly on (1) an estimate of how many of each type of document is expected to be completed during the upcoming three year renewal period; (2) the estimated hour burdens for each of those anticipated documents; and (3) the estimated hourly rate for the services of a professional trust administrator or private representative to prepare the anticipated documents.

14.-15. Provide estimates of annualized costs to the Federal Government. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

The estimate of annualized costs to the Federal Government is \$18,000. The primary cost to the government are labor costs associated with OGE employees reviewing the documents.

Although this estimate has decreased since the last submission three years ago, it is not based on any program changes. It is based on the fact that OGE has lowered its estimate of how many respondents will avail themselves of the program and on differences in how the cost to government was calculated.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Not applicable.

17. If you are seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable.

18. Explain each exception to the topics of the certification statement identified in Certification for Paperwork Reduction Act Submissions.

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.