

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 U.S. Office of Government Ethics prior to its execution. Proposed confidentiality agreement drafts submitted to the U.S. Office of Government Ethics 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 U.S. Office of Government Ethics 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 U.S. Office of Government Ethics, 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, email ContactOGE@oge.gov.

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 “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 consequences of failing to provide the requested information are as follows: for proposed qualified trusts, OGE may be unable to review or approve the trust under the Act; for existing qualified trusts, OGE may revoke the trust certification or trustee approval previously granted. 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 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 any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.
- 3) To disclose information to 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.
- 4) 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.
- 5) To disclose information when the disclosing agency determines that that the records are arguably relevant to a proceeding before a court, grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.
- 6) 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.
- 7) To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.
- 8) 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.

- 1 9) To disclose information to appropriate agencies, entities, and persons when: (1) the
2 agency maintaining the records suspects or has confirmed that there has been a breach of
3 the system of records; (2) the agency maintaining the records has determined that as a
4 result of the suspected or confirmed breach there is a risk of harm to individuals, the
5 agency (including its information systems, programs, and operations), the Federal
6 Government, or national security; and (3) the disclosure made to such agencies, entities,
7 and persons is reasonably necessary to assist in connection with the agency's efforts to
8 respond to the suspected or confirmed breach or to prevent, minimize, or remedy such
9 harm.
- 10 10) To disclose information to another Federal agency or Federal entity, when the agency
11 maintaining the record determines that information from this system of records is
12 reasonably necessary to assist the recipient agency or entity in (1) responding to a
13 suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of
14 harm to individuals, the recipient agency or entity (including its information systems,
15 programs, and operations), the Federal Government, or national security, resulting from a
16 suspected or confirmed breach.

17
18 For additional information please see the OGE/GOVT-1 Governmentwide Privacy Act System
19 of Records.

20 21 22 **Penalties**

23
24 Knowing or willful falsification of information on the trust document prepared from this
25 model draft or failure to file or report information required to be reported under Title I of the Act
26 and 5 C.F.R. part 2634 of the OGE regulations may lead to disqualification as a trustee or other
27 fiduciary as well as possible disqualification of the underlying trust itself. Knowing and willful
28 falsification of information required under the Act and the regulations may also subject you to
29 criminal prosecution.

30 31 32 **Public Burden Information and Paperwork Reduction Statement**

33
34 This collection of information is estimated to take an average of two hours per response,
35 given the estimated amount of time deemed necessary to prepare a confidentiality agreement.
36 You can send comments regarding the burden estimate or any other aspect of this collection of
37 information, including suggestions for reducing this burden, to: Program Counsel, U.S. Office of
38 Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC 20005-3917. Do
39 not send your completed communication letter to this address; rather, see the remainder of the
40 instructions to this model set of drafts.

1 Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or
2 sponsor, and no person is required to respond to, a collection of information unless it displays a
3 currently valid OMB control number (that number, 3209-0007, is displayed here and in the upper
4 right-hand corner of the first page of this OGE model qualified trust draft document).