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**Annual Report  
1979-1980  
Personnel Management**

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Tuesday  
October 21, 1980

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**Part IV**

**Office of Personnel  
Management**

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**Executive Personnel Financial Disclosure  
Requirements; Employees Responsibilities  
and Conduct; Final Rule**

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**Executive Personnel  
Financial Disclosure  
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**Part IV**

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**Executive Personnel Financial Disclosure  
Requirements; Employees Responsibilities  
and Conduct; Final Rule**

**OFFICE OF PERSONNEL  
MANAGEMENT****5 CFR Parts 734 and 735****Executive Personnel Financial  
Disclosure Requirements; Employees  
Responsibilities and Conduct****AGENCY:** Office of Personnel  
Management.**ACTION:** Final rule.

**SUMMARY:** Section 203(g) of the Ethics in Government Act of 1978, as amended (the "Act"), directs the Office of Government Ethics ("OGE") to develop and make available financial disclosure forms for reporting the information required of top-ranking personnel in the executive branch under Title II of the Act. The Office of Personnel Management is publishing final regulations establishing procedures for the filing, review and public availability of the reports filed by such officers and employees.

**EFFECTIVE DATE:** November 20, 1980.**FOR FURTHER INFORMATION CONTACT:**  
Norman B. Smith or Jane S. Ley at (202) 632-7642.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management ("OPM") is publishing final regulations to state in greater detail than the Act the information which must be contained in the financial disclosure report (SF 278). Typical situations are described by examples, where appropriate and practicable. The regulations cover, among other subjects, the persons required to file reports; the availability of the reports to the public; potential civil liability in the event the reports are used commercially, or for establishing credit rating or, directly or indirectly, in the solicitation of money for any political, charitable or other purpose; the requirements for qualifying a "blind" trust under the Act; limited waiver procedures; and remedial action which can be taken by agencies where the financial reports disclose conflicts of interest, actual or apparent. Proposed regulations were published in the *Federal Register* on March 25, 1980 (45 FR 19502-19518). Editorial revisions and other changes have been made in order to simplify and clarify the regulations.

**Comments Received:**

The notice of proposed rulemaking provided a 60-day period for public comment. OPM received comments from 27 agencies, law firms, and other organizations including labor organizations and public interest groups.

Several comments questioned various aspects of the statutory requirements of Title II of the Act. However, these

regulations merely implement the financial disclosure scheme of the Act and cannot alter its fundamental principles.

Most of the comments offered specific recommendations for clarifying or modifying specific provisions of the regulations as proposed. These recommendations were analyzed for compatibility with several goals for the final regulations including: the fulfillment of the legislative intent embodied in Title II; the development of an administrative system for disclosure report preparation, processing, and review which is efficient and effective; the ability to retain and recruit Federal executives who are both capable and forthright; and the furtherance of an awareness of conflict of interest and other standards of conduct issues among members of the Executive branch.

Among the significant comments and revisions, the following may be noted:

In § 734.105(h) the definition of income has been clarified. The net distributive share of partnership income must be reported.

Regarding exceptions from the general requirement that advice-and-consent nominees file public financial disclosure reports, the exception for foreign service officers, § 734.201(c)(3), has been expanded to include foreign service officers outside of the State Department. This is appropriate in view of the manner in which their appointments are processed.

The procedural rules on the exclusion of certain Schedule C employees from public financial disclosure requirements has been clarified. Section 734.203(c)(1) requires the requesting agency to make an annual filing.

A new *Example (3)* has been added to § 734.301(a) (on reporting of income) to demonstrate that income in-kind and certain discounts are required to be treated as reportable income.

There were several inquiries on the treatment under § 734.301(b) (on reporting of purchases, sales and exchanges) of transactions essentially treated by individuals as equivalent to withdrawals and deposits in "personal savings accounts." The regulations have been amplified to provide that these transactions with respect to Treasury bills, money market mutual funds, and certificates of deposit issued by banking institutions are not deemed purchases, sales, or exchanges.

*Example (1)* of § 734.301(d) (on gifts and reimbursements) has been revised to correct certain technical deficiencies.

Several comments focused on the rules contained in § 734.301(d) (on reporting interests in property). Proposed examples in that provision

were questioned on the grounds that it did not seem appropriate to require an entire collection of rare objects to be publicly disclosed on the basis of recurrent sales from that collection. However, section 202(a)(3) of the Act requires reporting of interests "in a trade or business, or for investment or the production of income." The test is not that there be primarily a commercial purpose for disclosure to be required, but that there is a nexus with the market. The fact that recurrent sales have occurred demonstrates that pecuniary factors are an aspect of the holdings to the individual. The sales trigger of the rule as demonstrated in revised *Example (3)* would not be activated by a collector who makes tax-free exchanges for like-kind objects, as such transactions are not considered sales.

Section 734.301(e)(1) (on reporting of liabilities) was modified to clarify that the greatest amount owed to a creditor during a reporting period is to be disclosed.

Pursuant to section 207(b) of the Act, a rule has been adopted in § 734.303(b)(3)(ii) to make the reporting of gifts received by dependent children co-extensive with the reporting otherwise required for gifts received by spouses.

In response to several comments, §§ 734.403(b)(6) and 734.404(c)(6) (on communications between interested parties and trustees) have been revised to conform to the formulation of section 202(f)(3)(c)(vi) of the Act. Accordingly, requests for distributions may be made orally. However, the interested parties may not specify whether any such distribution shall be made in cash or in kind.

The question of what should constitute a well-diversified portfolio of readily marketable securities for qualified diversified trusts was raised in connection with the formulation which appears in § 734.404(b). OPM feels that the current definition best reflects the Congressional intent and the portfolio distributions of typical appointees.

The general rules for qualified trusts have been clarified to specifically provide that the terms of such a trust are normally irrevocable. The terms may not be amended, except with prior written approval (§ 734.405(a)). A further revision clarifies that a trustee may not acquire any property from an interested party without the prior written approval of the Director of The Office of Government Ethics (§ 734.405(d)(2)). Accordingly, in addition to approval of a qualified trust's initial portfolio, the Director must give prior approval of any

subsequent additions to the portfolio by interested parties.

In § 734.406(b), the list of persons eligible to be the independent trustee of a qualified trust has been expanded to include an investment adviser who demonstrates to the satisfaction of the Director of the Office of Government Ethics general involvement in his or her role as such an adviser in the management or control of trusts.

The effective date rule for the qualified trust provisions (§ 734.408), was modified to provide that although such provisions would generally apply to trusts qualified after October 26, 1978, these trusts could be exempted by the Director of the Office of Government Ethics from specific provisions to avoid impracticality or undue hardship.

The rules on the limitations on outside earned income of advice-and-consent appointees have been revised by amending the definition in § 734.501(b). The modifications include specific exemption of amounts received during a period when not employed by the Federal government. This resolves computation difficulties arising when there have been periods of both private and Federal employment during a calendar year.

Several comments raised objections about the requirement that law enforcement agents and other officials must file a publicly available application in order to inspect a financial disclosure report (see *Example (2)* of § 734.603(e)). However, the only exception to this requirement which was adopted relates to Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations (see § 734.603(c)).

In response to several comments on the expedited procedure for review of the public financial disclosure reports of advice-and-consent Presidential appointees (§ 734.604(c)), a new rule was added to paragraph (c)(4), regarding failure to complete the required processing within the established time limits. The rule allows the Director of the Office of Government Ethics to modify the procedure in the case of a particular department or agency upon a determination that the modification is necessary and appropriate for a class of nominees.

It should be noted that guidance as to the requirements for financial disclosure report preparation by reporting individuals is contained in the instructions which accompany the report form (SF 278).

The Office of Personnel Management has determined that this is a significant regulation for the purposes of Executive Order 12044.

#### Office of Personnel Management.

Beverly M. Jones,  
*Issuance System Manager.*

Accordingly, the Office of Personnel Management is amending Title 5, Code of Federal Regulations, as follows:

(1) A new Part 734 is added, to read as follows:

### **PART 734—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS**

#### **Subpart A—General Provisions**

- Sec.
- 734.101 Authority.
  - 734.102 Purpose.
  - 734.103 Agency regulations.
  - 734.104 Policies.
  - 734.105 Definitions.

#### **Subpart B—Persons Required To File**

- 734.201 General requirements for filing.
- 734.202 Reporting individual; defined.
- 734.203 Certain individuals excluded from reporting requirements.
- 734.204 Employment of sixty days or less.
- 734.205 Special waiver of reporting requirements.

#### **Subpart C—Contents of Reports**

- 734.301 Reports of incumbents.
- 734.302 Reports of other reporting individuals.
- 734.303 Special rules.
- 734.304 Property categories.

#### **Subpart D—Trusts**

- 734.401 Qualified trusts, general considerations.
- 734.402 Special rules in the case of certain trusts.
- 734.403 Qualified blind trusts.
- 734.404 Qualified diversified trusts.
- 734.405 Certification of trusts proposed for qualification; other matters.
- 734.406 Independent trustee; defined.
- 734.407 Special filing requirements in the case of qualified trusts.
- 734.408 Effective date.

#### **Subpart E—Special Provisions**

- 734.501 Outside earned income.
- 734.502 Waivers.

#### **Subpart F—Procedure**

- 734.601 Report forms.
- 734.602 Filing of reports.
- 734.603 Custody of and public access to reports.
- 734.604 Review of reports.
- 734.605 Advice and opinions.

#### **Subpart G—Penalties and Remedial Action**

- 734.701 Failure to file or falsifying reports.
- 734.702 Certain actions in the case of qualified trusts.
- 734.703 Misuse of reports.
- Appendix A—Certificate of Independence.
- Appendix B—Certificate of Compliance.

Authority: Titles II and IV of Pub. L. 95-521 (October 26, 1978), as amended by Pub. L. 96-19 (June 13, 1979).

#### **Subpart A—General Provisions**

##### **§ 734.101 Authority.**

The regulations in this part are issued pursuant to the authority of Titles II and IV of the Ethics in Government Act of 1978, ("the Act") (Pub. L. 95-521, as amended).

##### **§ 734.102 Purpose.**

These regulations supplement and implement Title II of the Act, set forth more specifically certain procedures provided in that title and furnish examples, where appropriate.

##### **§ 734.103 Agency regulations.**

Each agency may, subject to the prior approval of the Office of Government Ethics, issue regulations implementing this part. These regulations—

(a) Shall be consistent with the Act and with this part, and

(b) Shall impose no additional reporting requirements on individuals subject to the Act, except as may be specifically authorized by statute or by approval of the Office of Government Ethics. Requests for this approval shall be submitted in writing to the Office, setting forth the need for any additional reporting requirements by the agency involved.

##### **§ 734.104 Policies.**

(a)(1) Title II of the Ethics in Government Act of 1978 requires high-level Federal executives to disclose their personal financial interests and thereby demonstrate that they are able to carry out their duties without compromising the public trust. Public confidence in Government goes hand in hand with an open Government. Title II extends the cleansing principle of "Sunshine" to consideration of conflicts of interest.

(2) Title II, as amplified and implemented by these regulations of this Part 734, will serve to deter conflicts of interest and to identify potential conflicts of interest in the case of newcomers to Government service by providing for a systematic review of the financial holdings of both current and prospective officers and employees.

(3) Statements of income, assets and liabilities must be reported by the President and Vice President of the United States, presidential appointees, those in the Senior Executive Service, those in confidential or policymaking positions (Schedule C), and civil service employees in grades GS-16 and above (and the equivalent), including comparable officers in the uniformed and foreign services. These reports are available to the public. If anyone uses them for commercial or credit rating reasons or in connection with the

solicitation of money for any political, charitable or similar purpose, the Attorney General may institute a civil action against such a person which may result in a penalty not to exceed \$5,000.

(4) The reports are not net worth statements. Only assets held as investments and certain other items must be recorded—not items for personal use, such as a residence or jewelry not held for sale. In most instances, specific values are not called for but rather items may be reported by six categories of value ranging from "\$1,001 to \$5,000" to "greater than \$250,000" as the highest category.

(5) The reports do not cover certain contributions under the Federal Election Campaign Act or certain gifts under the Foreign Gifts Act; see § 734.301(c).

(6) Nothing in the Act or this part requiring reporting of information or the filing of any report shall be deemed to authorize the receipt of income, gifts, or reimbursements, the holding of assets, liabilities, or positions, or involvement in transactions that are prohibited by law, Executive order or regulation.

(7) Personnel below the grade of GS-16 continue to remain subject to the financial reporting requirements contained in the Office of Personnel Management's regulations contained in Part 735 of this title. These statements, however, are confidential and are not available for public inspection.

(b) The provisions of Title II of the Act and this part requiring the reporting of information shall supersede any general requirement relating to individuals specified by § 734.202, under any other provision of law or regulation on the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of Title II and this part shall not supersede the requirements of 5 U.S.C. 7342 (relating to the Foreign Gifts Act).

#### § 734.105 Definitions.

For purposes of this part:

(a) *Act*. The term "Act" means the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended).

(b) *Agency*. The term "agency" means any executive department, military department, Government corporation or independent establishment or agency.

(c) *Dependent child*. The term "dependent child" means, when used with respect to any reporting individual, a son, daughter, stepson, or stepdaughter who—

(1) is unmarried and under age 21 and is living in the household of the reporting individual, or

(2) is a dependent of the reporting individual within the meaning of section

152 of the Internal Revenue Code of 1954.

(d) *Designated agency ethics official*. The term "designated agency ethics official" means an officer or employee who is designated by the head of the agency to administer the provisions of Title II of the Act and this part within an agency, or the delegate of such an official.

(e) *Executive branch*. The term "executive branch" includes each executive department, military department, Government corporation and independent establishment and any other entity or administrative unit in the executive branch unless such agency, entity or unit is specifically included in the coverage of Title I (relating to the legislative branch) or Title III (relating to the judicial branch) of the Act.

(f) *Gift*. The term "gift" means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include—

(1) Bequests and other forms of inheritance,

(2) Suitable mementos of a function honoring the reporting individual,

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government,

(4) Food and beverages consumed at banquets, receptions, or similar events, or

(5) Communications to the offices of a reporting individual including subscriptions to newspapers and periodicals.

(g) *Honoraria*. The term "honoraria" has the meaning given such term for purposes of the Federal Election Campaign Act of 1971. An honorarium is defined in the regulations of the Federal Election Commission as a payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration or an appearance, speech, or article. The term does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals of an officer or employee and spouse or an aide, and does not include amounts paid or incurred for any agent's fees or commissions. See also the definitions of "Gift" in paragraph (f) and "Reimbursement" in paragraph (k) of this section.

(h) *Income*. The term "income" means all income from whatever source derived, including but not limited to the following items: Compensation for services, including fees, commissions, and similar items; gross income derived

from business and net income if the individual elects to include it; gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; net distributive share of partnership income; and income from an interest in an estate or trust. The term includes items, whether or not taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means "gross income" as determined in conformity with the principles of 26 CFR 1.61-1 through 1.61-15.

(i) *Personal hospitality of any individual*. The term "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or the family of such individual or on property or facilities owned by that individual or the family of such individual.

(j) *Personal Residence*. The term "personal residence" means any real property used exclusively as a private dwelling by the reporting individual or his or her spouse, which is not rented for any period during a calendar year. There may be more than one personal residence, and the term may include a vacation home. The term is not limited to domicile.

(k) *Reimbursement*. The term "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(1) Provided by the United States Government,

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (relating to the Foreign Gifts Act), or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (relating to reports of campaign contributions).

(l) *Relative*. The term "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, halfbrother, halfsister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be

deemed to include the fiance or fiancée of the reporting individual.

(m) *Reporting individual.* For the definition of "reporting individual", see § 734.202.

(n) *Reviewing official.* The term "reviewing official" means the designated agency ethics official, the Secretary concerned, the head of the agency, or the Director, Office of Government Ethics, as the case may be.

(o) *Secretary concerned.* The term "Secretary concerned" has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy and Air Force, and certain other Secretaries), and, in addition, means—

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration, and

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.

(p) *Value.* The term "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual. In the case of any interest in property, such estimation shall be made in accordance with the principles of § 734.303(a).

#### Subpart B—Persons Required To File

##### § 734.201 General requirements for filing.

(a) *Incumbents.* A reporting individual who, during any calendar year, performs the duties of his or her position or office for a period in excess of 60 days shall file a report containing the information prescribed in Subpart C of this part on or before May 15 of the succeeding year.

(b) *New entrants.* Within 30 days of assuming a position or office described in § 734.202, a reporting individual shall file a report containing the information prescribed in subpart C of this part, unless such individual—

(1) Has left another position referred to in § 734.202 (with respect to which a report under this section has previously been filed) within the 30 days prior to his assumption of such new position, or

(2) Has already filed such a report—

(i) As a nominee for the new position, or

(ii) As a candidate for the position.

*Example (1).* Y, a GS-16 employee of the Treasury Department (who has previously filed reports in accordance with the rules of this section) terminates employment with that Department on January 12, 1980, and begins employment with the Commerce Department on February 10, 1980, in a Senior Executive Service position. Y is not a new entrant since she has assumed a position described in § 734.202 within thirty days of leaving another position so described.

Accordingly, she need not file a new report with the Commerce Department.

*Note.*—While Y did not have to file a new report with the Commerce Department, that Department should request a copy of the report she had filed with the Treasury Department so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with Y's new employment.

*Example (2):* If in *Example (1)*, Y, had left a position with the Legislative branch in which she had been compensated at a rate equal to or in excess of GS-16, Y would, nevertheless, be a new entrant as her former position would not have been one described in § 734.202. Y would have to file a report with the Commerce Department.

(c) *Nominees.* Within five days of the transmittal by the President to the Senate of the nomination of an individual to a position, appointment to which requires the advice and consent of the Senate, the individual shall file a report containing the information prescribed in Subpart C of this part. This requirement shall not apply to any individual who is nominated to a position as:

(1) A judicial officer or employee covered by section 301(b) of the Act,

(2) An officer of the uniformed services, or

(3) A foreign service officer in the State Department (or other department or agency).

See § 734.604(c), relating to expedited procedure in the case of individuals described in the first sentence of this paragraph (c); however, those individuals referred to in paragraph (c)(2) or (c)(3) of this section, shall file their reports in accordance with paragraph (b) of this section.

(d) *Candidates.* (1) Within 30 days of becoming a candidate in a calendar year for nomination or election to the office of President or Vice President, as determined by the Federal Election Commission, or

(2) On or before May 15 of that calendar year,

whichever is later, and on or before May 15 of each successive year an individual continues to be a candidate, he or she, except for an incumbent President or Vice President, shall file a report containing the information prescribed in Subpart C of this part. Notwithstanding this requirement in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, the individual need not file a report unless he or she becomes a candidate for another vacancy in that office or another office during that year.

*Example (1):* The Federal Election Commission determined that P became a candidate for President in January of 1979. P will be required to file a financial disclosure report on or before May 15, 1979. If P had become a candidate on June 1, 1979, she would be required to file a disclosure within 30 days of that date.

*Example (2):* If P withdraws from the race in March of 1980, she will not be required to file an annual disclosure report by May 15, 1980, as she has not continued to be a candidate until that date.

(e) *Termination of employment.* On or before that thirtieth day after termination of employment from a position or office described in § 734.202, a reporting individual shall file a report containing the information prescribed in Subpart C of this part for the period from the end of the calendar year with respect to which a report was last filed pursuant to paragraph (a) of this section to the date on which the individual left such office or position. Notwithstanding the preceding sentence, in a case in which the individual assumes employment in another position or office described in § 734.202 within 30 days of such termination, no report shall be required by the provisions of this paragraph. See *Example (1)* in paragraph (b) of this section.

(f) *Extensions.* The reviewing official may, for good cause shown, grant to any employee or class of employees an extension of up to 45 days. The Director, Office of Government Ethics, for good cause shown, may grant an additional extension of up to 45 days. The employee shall set forth specific reasons for an additional extension which shall be forwarded to the Director, through the reviewing official, who shall also submit his or her comments on the request.

##### § 734.202 Reporting individual; defined.

For purposes of this part the term "reporting individual" includes—

(a) The President;

(b) The Vice President;

(c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202, whose position is classified at GS-16 or above of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than the minimum rate of basic pay fixed for GS-16; each member of a uniformed service whose pay grade is at or in excess of O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

*Example (1):* Foreign service officers in the State Department rated as FSO 1 or 2 must file a report since they have a rate of basic pay equal to or greater than the basic rate of pay fixed for GS-16.

(d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;

(e) Any employee not described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character;

(f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS-16; and

(g) The Director of the Office of Government Ethics and each designated agency official.

Notwithstanding the provisions of paragraph (e) of this section, any employee excluded from the reporting requirements of this part by virtue of a determination under § 734.203 shall not be deemed to be a reporting individual. For purposes of § 734.201(e), status as a reporting individual shall continue for a period of 30 days after termination of employment from a position or office to which this section applies.

#### § 734.203 Certain individuals excluded from reporting requirements.

(a) *In general.* Any individual or group of individuals described in § 734.202(e) (on positions of a confidential or policymaking character) may be excluded from the reporting requirements of this part in cases in which the Director, Office of Government Ethics, determines, in his or her sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) *Exclusion determinations.* The determination described in paragraph (a) of this section has been made for the following individuals and groups of individuals and, therefore, they may be excluded from the reporting requirements of this part pursuant to the provisions of paragraph (c) of this section:

(1) Individuals in any position classified below GS-16, or the rate of basic pay for which is less than the minimum rate of basic pay fixed for GS-16, who have no role in advising or making policy determinations with respect to agency programs or policies.

For example, such individuals may include chauffeurs, private secretaries, stenographers and those who hold positions of similar nature where consistent with the basic criterion set forth in the preceding sentence.

(c) *Procedure.* (1) The exclusion of any individual from reporting requirements pursuant to this section will be effective as of the time the employing agency or other governmental entity files with the Office of Government Ethics a list and description of each position for which exclusion is sought, as well as the identity of its current occupant. Such a list showing any additions or deletions or a statement that there have been no changes must be filed annually with the Office of Government Ethics on or before May 15.

(2) In the event that the Office of Government Ethics finds that one or more positions has been improperly excluded, it will advise the agency or other governmental entity and set a date for the filing of the report.

#### § 734.204 Employment of sixty days or less.

(a) *In general.* Any reporting individual who—

(1) As determined by the designated agency ethics official or Secretary concerned, in a case to which the provisions of § 734.201(b) or (e) would otherwise apply, or

(2) As determined by the Director, Office of Government Ethics, in a case to which the provisions of § 734.201(c) (on nominees) would otherwise apply, is not reasonably expected to perform the duties of his or her office or position for more than 60 days in a calendar year, shall not be subject to the reporting requirements of § 734.201(b), (c), or (e), respectively.

(b) *Exception.* Notwithstanding the provisions of paragraph (a) of this section, if the reporting individual performs the duties of his or her office or position for more than 60 days in a calendar year, the report otherwise required by—

(1) Section 734.201(b) or (c) shall be filed within 15 calendar days after the sixty-first day of that performance unless the individual has filed a request for a waiver under § 734.205(b), and

(2) Section 734.201(e) (on termination reports) shall be filed as provided in that paragraph.

#### § 734.205 Special waiver of reporting requirements.

(a) *General rule.* In unusual circumstances, the Director, Office of Government Ethics, may grant a request for a waiver of any reporting requirement otherwise applicable under

this part for an individual who is reasonably expected to perform, or has performed, the duties of his or her office or position for fewer than 130 days in a calendar year, but only if the Director determines that—

(1) The individual is a special Government employee (as defined in 18 U.S.C. § 202) who performs temporary duties either on a full-time or intermittent basis,

(2) The individual is able to provide services specially needed by the Government,

(3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) Public financial disclosure by the individual is not necessary in the circumstances.

(b) *Procedure.* (1) The individual must file a request for a waiver with the Office of Government Ethics within 10 days after—

(i) The individual knows that he or she will serve more than 60 days in any calendar year, or

(ii) The expiration of the 60 days, whichever is earlier. The request shall state the reasons the individual believes the conditions of paragraph (a)(1) through (4) of this section are met in the particular case, and the request shall be filed with the report otherwise required by this part. The report shall bear the legend at the top of page 1:

"CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR § 734.205."

(2) The Office of Government Ethics shall seek advice from the agency in which the individual serves as to its views on the justification for the waiver.

(3) In the event the waiver is granted, the report shall not be subject to the public disclosure requirements of § 734.602; however, the waiver request and grant of waiver shall be subject to those requirements. In the event that the waiver is not granted, all such legends shall be removed and the report shall be subject to the public disclosure requirements; however, the waiver request shall not be subject to those requirements.

#### Subpart C—Contents of Reports

##### § 734.301 Reports of incumbents.

Each report filed pursuant to § 734.201(a) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, on the following:

(a) *Income.*—(1) *In general.* The source and amount or value of—



(i) Income, including type of income, other than that referred to in paragraph (a)(2) of this section and other than that from current employment by the United States Government, and

(ii) Any honoraria, including the date, received during the preceding calendar year which from any source total \$100 or more in value.

For special rules on spouses and dependent children, see § 734.303(b).

*Example (1):* The types of income which should be disclosed do include: (i) Outside earned income,

(ii) Pensions, and

(iii) A partner's net distributive share of partnership income from a commercial venture.

*Example (2):* An official is asked to speak at a banquet in Washington about his hobby which is unrelated to his public duties. He is given \$200 for doing so. Whether or not acceptance of the payment is permitted by the regulations of his agency, the \$200 received must be reported as income pursuant to paragraph (a)(1)(ii) of this section, as it is an honorarium (as defined in § 734.105(g)). The value of the meal received at the banquet need not be disclosed. (See § 734.105 (f)(4) and (g)).

*Example (3):* An official is a participant in a bona fide retirement plan of Coastal Airlines. Pursuant to such plan, the official and his spouse receive passage on some Coastal flights without charge; they receive passage on other flights at a discount fare. The difference between what Coastal charges members of the public generally and what the official and his wife are charged for a particular flight (if charged at all) is deemed income in-kind. Such income in-kind is required to be reported separately under paragraph (a)(1) of this section.

(2) *Certain income.* The source and type of income which consists of dividends, rents, interest, and capital gains from any source, received during the preceding calendar year which exceeds \$100 in amount or value, which shall be categorized as to the total amount or value of each item in accordance with the following table:

- (i) Not more than \$1,000;
- (ii) Greater than \$1,000 but not more than \$2,500;
- (iii) Greater than \$2,500 but not more than \$5,000;
- (iv) Greater than \$5,000 but not more than \$15,000;
- (v) Greater than \$15,000 but not more than \$50,000;
- (vi) Greater than \$50,000 but not more than \$100,000; and
- (vii) Greater than \$100,000.

*Example (1):* An official rents out a portion of her residence. She receives rental income of \$600 from one individual for four months and \$1200 from another individual for the remaining eight months of the year covered by the report. She must identify the property,

and indicate the category of the amount of rent received pursuant to paragraph (a)(2) of this section.

*Example (2):* An official has three savings accounts with Bank A. One is in his name and earned \$85 in interest. One is in a joint account with his wife and earned \$120 in interest. One is in his name and his dependent daughter's name and earned \$35 in interest. The official must disclose the name of the bank and the category of the total amount of interest earned from all three accounts. He must also disclose the accounts under paragraph (d) of this section if in the aggregate they total more than \$5,000 in that bank.

(b) *Purchases, sales and exchanges of certain property.* A brief description (including the date) of any purchase, sale or exchange during the preceding calendar year:

- (1) Of real property, other than a personal residence of the reporting individual or spouse, and
- (2) Of stocks, bonds, commodities futures, and other forms of securities, which shall be categorized as to each transaction in accordance with § 734.304, in any case in which the fair market value of such property exceeds \$1,000.

Notwithstanding paragraphs (b)(1) and (2) of this section, any transaction solely by and between the reporting individual, the spouse, and dependent children need not be reported. For purposes of this paragraph, transactions involving Treasury bills, money market mutual funds, and certificates of deposit issued by banking institutions are not deemed purchases, sales, or exchanges when effected at rates, terms, and conditions available generally to members of the public.

*Example (1):* An official sells her personal residence in Virginia for \$100,000 and purchases a residence in the District of Columbia for \$200,000. She realized a gain on the sale of the Virginia home of \$30,000. She need not report the sale of the Virginia residence or the purchase of the D.C. residence under paragraph (b) of this section.

*Example (2):* An official sells his beach home in Maryland for \$50,000. Because he has rented it out for one month every summer, it does not qualify as a personal residence. He must disclose the sale under paragraph (b) of this section and any capital gain realized on the sale under paragraph (a)(2) of this section.

*Example (3):* An official sells a ranch to his dependent daughter. The official need not report the sale under paragraph (b) of this section because it is a transaction between the reporting individual and a dependent child. If the daughter were no longer a dependent child the sale and any capital gain, except for that portion attributable to a personal residence, would have to be disclosed.

*Example (4):* An official sells an apartment building and realizes a loss of \$100,000. He

must report the sale of the building under paragraph (b) of this section, but he need not disclose the sale under paragraph (a)(2) of this section, as it did not result in a capital gain.

(c) *Gifts and reimbursements.*—(1) *In general.* The identity of the source, a brief description, and the value of all gifts (other than gifts described in paragraph (c)(2) of this section) from any source other than a relative of the reporting individual, received during the preceding calendar year which total \$100 or more in value. Gifts received must be reported pursuant to the requirements of this paragraph. See § 734.104(a).

*Example (1):* An official accepts a print, a pen and pencil set, and a letter opener from a community service organization she has worked with solely in her private capacity. If any one of the gifts is valued at at least \$100, she must disclose that gift. If any one gift is valued at less than \$100 she need not report the gift unless the organization had during that same reporting year given her other item(s) whose value when aggregated would equal \$100 or more. For purposes of aggregation she need not count items valued at \$35 or less; see paragraph (c)(5) of this section. For method of valuation see paragraph (c)(4).

Gift 1—Print: Value \$75

Gift 2—Pen and pencil set: \$40

Gift 3—Letter opener: \$20

The official must disclose Gifts 1 and 2, but not Gift 3.

(2) *Certain gifts.* The identity of the source, a brief description, and the value of any gifts of transportation, lodging, food, or entertainment from any source other than a relative of the reporting individual, received during the preceding calendar year which total \$250 or more in value. Notwithstanding the preceding sentence, any food, lodging or entertainment received as the "personal hospitality of any individual" need not be reported. (See § 734.105(i).)

*Example (1):* An official receives the following items from a single source:

1. Dinner at a restaurant—\$50
2. Round-trip taxi fare to meet donor at the restaurant—\$15.
3. Dinner at donor's city residence—(value uncertain)
4. Round-trip airline transportation to donor's country home—\$200
5. Weekend at donor's country home including duck hunting and tennis match—(value uncertain)

The official need only disclose Gifts 1 and 4. Gifts 3 and 5 need not be disclosed because they fall within the exception for "personal hospitality of an individual." (See § 734.105(i).) Gift 2 while otherwise disclosable need not be aggregated with Gifts 1 and 4 because it is valued less than \$35. (See paragraph (c)(4) of this section.)

*Example (2):* An official accepts a number of invitations for dinner at restaurants in the

city. The dinners are valued at more than \$35 and in the aggregate are more than \$250. The invitations are for purely personal reasons and are from one individual. Nevertheless, the official must report these dinners because they do not fall within the definition of "personal hospitality of any individual." See § 734.105(i). The official can request a waiver of this reporting requirement pursuant to § 734.303(g). If granted, the waiver is public.

(3) *Reimbursements.* The identity of the source, a brief description, and the value of any reimbursements not otherwise reportable under the provisions of this subpart received during the preceding calendar year which from any source total \$250 or more in value from any source.

*Example (1):* An official is asked to speak at an out-of-town meeting on a matter which is unrelated to his official duties and his agency. The round trip air fare is more than \$250. If the official pays for the ticket and is then reimbursed by the organization to which he spoke, he must disclose this reimbursement under paragraph (c)(3) of this section. If the organization simply provided the ticket, this must be disclosed as a gift under paragraph (c)(2) of this section.

(4) *Valuation of gifts and reimbursements.* The value to be assigned to a gift or reimbursement is its fair market value. For most reimbursements this will be the amount actually received. For gifts and non-cash reimbursements the value should be determined in one of the following manners:

(i) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The reporting individual need not contact the donor but may and should contact a retail establishment selling similar items to determine the present cost in the market.

(ii) If the item is not readily available in the market, such as a piece of art, a hand-made item, or antique, the individual can, as in the case of property in § 734.303(a)(2), make a good faith estimate of the value of the item.

For purposes of this paragraph (c)(4), the term "readily available in the market" means that an item generally is available for retail purchase in the metropolitan area nearest to the official's residence.

#### Examples

Items such as a pen and pencil set, letter opener, leather case or engraved pen are generally available in the market and can be determined by contacting stores which sell like items and ascertaining the retail price of each.

The value of a dinner at a restaurant can either be the actual cost of the reported dinners or the approximate value of the dinner given the posted fare of the restaurant.

The reporting individual need not ask the donor to see the check.

(5) *De minimis exception.* Any gift with a fair market value of \$35 or less need not be aggregated for purposes of this paragraph (c). The acceptance of these gifts is subject to the restrictions imposed by Executive Order 11222 and regulations promulgated thereunder as is the acceptance of the gifts of \$35 or more.

(6) *Cross-reference.* For special waiver in the case of certain gifts see § 734.303(g).

(d) *Interests in property.*—(1) *In general.* A brief description of any interest in property held at the close of the preceding calendar year in a trade or business, or for investment or the production of income, having a fair market value in excess of \$1,000, which shall be categorized as to the fair market value of each item in accordance with § 734.304. Each item of real and personal property shall be disclosed separately.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (d)(1) of this section, the following shall not be reported:

- (i) Any personal liability owed to the reporting individual by a relative,
  - (ii) Personal savings accounts in a single financial institution or holdings in a single money market mutual fund, in the case of a reporting individual, spouse, and dependent children who have deposits or holdings, respectively, aggregating \$5,000 or less in that institution or fund, and
  - (iii) A personal residence of the reporting individual or spouse.
- For purposes of this paragraph (d), the term "personal savings account" means a certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

*Example (1):* The following items are examples of property required to be disclosed. This list is not inclusive but is presented to show typical items:

- (A) Real estate other than a personal residence of a reporting individual or spouse,
- (B) Stocks, bonds, securities, and commodities contracts,
- (C) Animals owned for commercial purposes,
- (D) Commercial crops, those growing and those held in storage,
- (E) Antiques owned for resale,
- (F) Beneficial interests in trusts and estates (see § 734.303(c)),
- (G) Art held for investment,
- (H) Pensions and annuities, and
- (I) Money market mutual funds.

*Example (2):* An official has a \$4,000 savings account in Bank A. His wife has a \$2,500 certificate of deposit issued by Bank B and his daughter has a \$200 savings account in Bank C. The official does not have to

disclose the deposits as the total value of the deposits in any one bank do not exceed \$5,000. Nevertheless, the source and amount of interest income would have to be disclosed under paragraph (a)(2) if it exceeds \$100.

*Example (3):* Reporting individual R has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, R has made recurrent sales of both less desirable post-impressionist works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, R would report income from sales of any paintings pursuant to paragraph (a)(2) of this section, and all the paintings he retains as interests in property pursuant to paragraph (d) of this section. The Office of Government Ethics deems recurrent sales from a collection or related holdings to remove the collection and such holdings from the exemption for purely personal items from public financial disclosure under section 202 of the Act.

*Example (4):* Reporting individual R has several commodity transactions in calendar year 1979, as follows:

*Positions, date of purchase and date of sale (includes short sales)*

- No. (1)—3 contracts April 1980 Gold (Comex), 4/18/79, open position [carried over to 1980]
- No. (2)—2 contracts June 1980 Gold (Comex), 12/13/79, 8/19/79
- No. (3)—1 contract February 1980 Gold (Comex), open position [carried over to 1980] 8/17/79
- No. (4)—3 contracts August 1980 Gold (Comex), 5/13/79, 9/19/79.

(i) *Position No. (1)* is an interest in property which, since it was held as of the close of calendar year 1979, is reported under paragraph (d) of this section as an interest in property (if the \$1,000 fair market value criterion of paragraph (d) is met). In accordance with standard accounting practices with respect to such interests, the fair market value of a commodity contract, for purposes of this section, is determined by the amount of the net unrealized gain or loss. This item is also reported under paragraph (b) of this section as a purchase, if the \$1,000 fair market value criterion of paragraph (b) is met.

(ii) The gain or loss realized with respect to the transactions relating to *Position No. (2)* (a short sale) is reported under paragraph (b) of this section as a completed purchase and sale (if the \$1,000 threshold criterion of paragraph (b) is met). With respect to a completed purchase and sale such as *Position No. (2)*, the threshold criterion is applied against the net realized gain or loss. The completed purchase and sale is also reported under paragraph (a)(2) of this section (relating to income items), if the \$100 threshold criterion of paragraph (a)(2) is met. Accordingly, if the completed purchase and sale had resulted in a loss, it would not have been reportable under paragraph (a)(2).

(iii) *Position No. (3)* (notwithstanding that it is a short sale) is an interest in property which, since it was held as of the close of calendar year 1979, is reported under

paragraph (d) of this section as an interest in property (if the \$1,000 threshold criterion of paragraph (d) is met). This item is also reported under paragraph (b) of this section as a sale, if the \$1,000 threshold criterion of paragraph (b) is met.

(iv) The gain or loss realized with respect to the transactions relating to *Position No. (4)* is reported under paragraph (b) of this section as a completed purchase and sale (if the \$1,000 threshold criterion of paragraph (b) is met). The completed purchase and sale is also reported under paragraph (a)(2) of this section (relating to income items), if the \$100 threshold criterion of paragraph (a)(2) is met.

(v) It should be noted that the principles of this example are applicable with respect to the purchase and sale of options contracts.

(e) *Liabilities—(1) In general.* A brief description of the total liabilities owed to any creditor, other than a relative, to whom, at any time during the preceding calendar year, over \$10,000 is owed, which shall be categorized as to the amount of any such liability in accordance with § 734.304. The greatest amount owed to any such creditor during such period shall be reported.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (e)(1) of this section, the following shall not be reported:

(i) Any mortgage secured by a personal residence of the reporting individual or spouse,

(ii) Any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it, and

(iii) Any revolving charge account with an outstanding liability which does not exceed \$10,000 as of the close of that preceding calendar year.

*Example (1):* An official has the following loans outstanding at the end of the calendar year:

1. Mortgage on personal residence—\$80,000
2. Mortgage on rental property—\$50,000
3. VISA Card—\$1,500
4. Master Card—\$11,000
5. Loan secured by family automobile purchased for \$8,200—\$5,000
6. Loan secured by antique furniture purchased for \$8,000—\$10,000
7. Loan from parents—\$20,000

Loans indicated in items 2, 4, and 6 must be disclosed. Loan 1 is exempt from disclosure because it is secured by the personal residence. Loan 3 need not be disclosed because it is considered a revolving charge account and it is less than \$10,000. Loan 5 need not be disclosed because it is secured by a personal motor vehicle and is for less than the purchase price. Loan 7 need not be disclosed because the creditor is a relative.

(f) *Other positions—(1) In general.* Identification of all positions held, at any time during the period beginning on January 1 of the preceding calendar year and ending on the date of filing as an

officer, director, trustee, partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any non-profit organization, any labor organization, or any educational or other institution other than the United States. Notwithstanding the preceding sentence, the following need not be reported:

(i) Positions held without compensation in any religious, social, fraternal, or political entity, and

(ii) Positions solely of an honorary nature, such as those with an *emeritus* designation.

(2) *Initial reports; special rules.* In the case of a reporting individual who has not filed a report under § 734.201 during the preceding calendar year—

(i) For purposes of paragraph (f)(1) of this section, all such positions held during the preceding two calendar years shall also be reported, and

(ii) Except in the case of the President and the Vice President, identification and a brief description of the nature of the duties performed or services rendered with respect to each source of compensation which exceeded \$5,000 in either of the preceding two calendar years.

Notwithstanding the provisions of paragraph (f)(2)(ii) of this section, information need not be reported which is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person, or with respect to any person for whom services were provided by any firm or association of which the reporting individual was a member, partner, or employee, unless the individual was directly involved in the provision of such services.

*Example (1):* A partner or employee of a law firm who has worked on a matter involving a client from which the firm received over \$5,000 in fees during a calendar year must report the name of the client only if the value of the services rendered by the partner or employee was more than \$5,000. The name of the client, except in unusual situations, would not be considered confidential.

(g) *Certain agreements and arrangements.* Identification of the parties to, and a brief description including the date of any agreement or arrangement, in existence at any time during the period beginning on January 1 of the preceding calendar year and ending on the date of filing, with respect to—

(1) Future employment,

(2) A leave of absence during the period of the reporting individual's Government service.

(3) Continuation of payments by a former employer other than the United States Government, and

(4) Continuing participation in an employee welfare or benefit plan maintained by a former employer. (See 18 U.S.C. 209(b)).

#### § 734.302 Reports of other reporting individuals.

(a) *New entrants, nominees, and candidates.* Each report filed under § 734.201(b), (c), or (d) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with

instructions issued by the Office, under the provisions of § 734.301, except for paragraphs (b) (relating to purchases, sales and exchanges of certain property) and (c) (relating to gifts and reimbursements) of that section; however, the following shall also be reported:

(1) *Income.* For purposes of paragraph (a) of § 734.301, relating to income, all the income items specified in that paragraph received during a period which begins on January 1 of the preceding calendar year and ends on the date on which the report is filed.

(2) *Interests in property.* For purposes of paragraph (d) of § 734.301, relating to interests in property, all the interests specified in that paragraph held during a period which begins on January 1 of the preceding calendar year and ends fewer than thirty-one days before the date on which such report is filed, and

(3) *Liabilities.* For purposes of paragraph (e) of § 734.301, relating to liabilities, all the liabilities specified in that paragraph owed during a period which begins on January 1 of the preceding calendar year and ends fewer than thirty-one days before the date on which the report is filed.

(b) *Termination reports.* Each report filed under § 734.201(e) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, under the provisions of § 734.301; except that in any case in which information is required by that section to be reported for the preceding calendar year with respect to any item, transaction, or occurrence, all such information for a period which begins on January 1 of the current calendar year and ends on the date on which the report is filed, shall also be reported.

#### § 734.303 Special rules.

(a) *Valuation of interests in property.* This paragraph (a) sets forth detailed rules for determining the value of interests in property for purposes of

§ 734.301(d). A good faith estimate of value may be made in lieu of a determination under paragraph (a)(1) or (a)(2) of this section, in any case in which such a determination cannot be obtained without undue hardship or expense to the reporting individual.

(1) *Real property.* If the current value of an interest in real property or an interest in a real estate partnership is not ascertainable without an appraisal, a reporting individual may report:

(i) The date of purchase and the purchase price of the interest in the real property, or

(ii) The assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value.

(2) *Other property.* If the current value of any item, other than real property referred to in paragraph (a)(1) of this section, is not ascertainable without an appraisal, a reporting individual may report (as appropriate)—

(i) The book value of a corporation whose stock is not publicly traded,

(ii) The net worth of a business partnership other than a real estate partnership,

(iii) The equity value of an individually owned business,

(iv) With respect to entities not referred to in paragraph (a)(2)(i) through (iii) of this section, any recognized indication of value accompanied by a full and complete description of the method used in determining such value, or

(v) In lieu of any indication of value referred to in this paragraph (a)(2), the assessed value of any such item for tax purposes, adjusted in the manner prescribed in paragraph (a)(1)(ii) of this section.

In any case in which the assessed value for tax purposes of any item is reported under paragraph (a)(1)(ii) or (a)(2)(v) of this section, in lieu of a categorization of the fair market value of that item in accordance with § 734.304, a full and complete description of the method used in determining the assessed value shall be reported.

(b) *Spouses and dependent children.* Each report required by the provisions of this subpart shall include:

(1) *Income.* For purposes of § 734.301(a), relating to income:

(i) With respect to a spouse, only the source of items of outside earned income (as defined in § 734.501(b)) which exceed \$1,000; and in the case of such items derived from a spouse's self-employment in a business or profession, only the nature of the business or profession need be reported, and

(ii) With respect to interests in property of a spouse or dependent child, only income derived from such interests which are reported or reportable pursuant to § 734.301(d).

*Example (1):* The spouse of a reporting individual is employed as a teller at Bank X and earns \$15,000 per year. The reporting individual must disclose that the spouse is employed by Bank X; however, the individual need not report the \$15,000 earnings.

*Example (2):* The spouse of a reporting individual is self-employed as a pediatrician. The reporting individual need only disclose that the spouse is a physician.

(2) *Purchases, sales and exchanges of certain property.* For purposes of § 734.301(b), on purchases, sales and exchanges, with respect to interests in property of a spouse or dependent child reported or reportable under § 734.301(d), any purchase, sale, or exchange specified in § 734.301(b) with respect to any such interest:

(3) *Gifts and reimbursements.* For purposes of § 734.301(c), on gifts and reimbursements, with respect to—

(i) A spouse, only gifts and reimbursements, or

(ii) A dependent child, only gifts, specified in that section received by the spouse or dependent child (to any extent) by reason of such spouse's or dependent child's relationship to the reporting individual;

*Example (1):* A reporting official and her spouse were taken to dinner by an individual the official dealt with as a Federal employee. The value of the spouse's dinner must be reported as a gift.

*Example (2):* The employer of the spouse of a reporting individual takes the spouse and such individual to dinner. The employer does not do business with the reporting individual's agency. The reporting individual is invited because of the marriage relationship. The reporting individual need not report the spouse's dinner as a gift under § 734.301(c). Only the reporting individual's dinner is reportable, if the threshold limitations of that section are satisfied.

(4) *Interests in property and liabilities.* For purposes of § 734.301 (d) and (e), on interests in property and liabilities, respectively, all information on any such interests or liabilities specified in those paragraphs of a spouse or dependent child, other than with respect to items—

(i) Which the reporting individual certifies,

(A) Represent the spouse's or dependent child's sole financial interest or responsibility, and

(B) That the reporting individual has no specific knowledge of,

(ii) Which are not in any way, past or present, derived from or related to the income, assets or activities of the reporting individual, and

(iii) From which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

*Example (1):* The spouse of a reporting individual has acquired some securities from money earned in a part-time job. The securities have been set aside to provide funds to contribute to the cost of a grandchild's education. The reporting individual is not familiar with the holdings. Therefore, because the grandchild's education is not a legal obligation of the reporting individual, the securities are not reportable under the rules of this paragraph (b)(4).

(c) *Trusts and estates.* Each report required by the provisions of this subpart shall include the information otherwise required by these provisions, about the holdings of and the income from any trust or other financial arrangement—

(1) From which income is received by, or

(2) With respect to which a beneficial interest in principal or income is held by,

the reporting individual, spouse, or any dependent child. Notwithstanding the preceding sentence, no information is required about a non-vested beneficial interest in the principal of an estate and, in the case of a trust referred to in § 734.402(a), only the information described in § 734.402(b) shall be reported. Since the proper application of the rules of section 202(f)(1) of the Act and paragraph (c)(2) of this section depends on all the facts and circumstances of the particular case, reporting individuals or their representatives should consult with Office of Government Ethics staff to determine the proper treatment of any non-vested beneficial interest in the principal of a trust or other financial arrangement.

(d) *Divorce and separation.*

Notwithstanding any other provision of this subpart, a reporting individual shall not be required to report any information about:

(1) A spouse living separate and apart from the individual with the intention of terminating the marriage or providing for permanent separation,

(2) A former spouse or a spouse from whom the individual is permanently separated, or

(3) Any income or obligations of the individual arising from the dissolution of his or her marriage or the permanent separation from his or her spouse.

(e) *Political campaign funds.* Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this part.

(f) *Gifts received when not in Government employment.* In the case of a reporting individual to whom the provisions of § 734.201(a) or (c) apply, the report need not contain any information about gifts and reimbursements to which the provisions of § 734.301(c) would otherwise apply, which are received during a period in which the reporting individual was not an officer or employee of the Federal Government.

(g) *Special rule in the case of certain gifts.*—(1) *In general.* In unusual cases, a gift as defined in § 734.105(f) need not be aggregated under § 734.301(c), if the Director, Office of Government Ethics, determines:

(i) That the basis of the relationship between the grantor and grantee and the motivation for the gift are purely personal, and

(ii) That no countervailing public purpose requires public disclosure of the nature, source, and value.

In the event of any such determination, the waiver request and the grant of waiver shall be subject to the public disclosure requirements of § 734.603.

(2) *Procedure.* An individual seeking an exemption under this section shall file a request with the Office of Government Ethics which sets forth:

(i) The identity and occupation of the donor;

(ii) A statement that the relationship between the donor and the reporting individual is purely personal in nature; and

(iii) A statement that neither the donor nor any person or organization for whom the donor actually works or serves as a representative conducts business with, or is subject to regulation by, or is directly affected by action taken by, the agency which employs the reporting individual.

In the event that the immediately preceding statement cannot be made without qualification, the reporting individual may indicate those qualifications along with a statement demonstrating that he or she plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative.

#### § 734.304 Property categories.

(a) The valuation categories specified for property items are as follows:

(1) Not more than \$5,000;

(2) Greater than \$5,000 but not more than \$15,000;

(3) Greater than \$15,000 but not more than \$50,000;

(4) Greater than \$50,000 but not more than \$100,000;

(5) Greater than \$100,000 but not more than \$250,000; and

(6) Greater than \$250,000.

#### Subpart D—Trusts

##### § 734.401 Qualified trusts; general considerations.

(a) *In general.* (1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind trust. However, there was general agreement that the use of blind trusts frequently could ameliorate potential conflict of interest situations. An underlying concept is that if a Government official does not know the identity of his or her financial interests, his or her official actions should not be subject to collateral attack by questions of conflict of interest of the appearance of such a conflict. In other words, if the Government official does not know what he or she owns, it is impossible for him or her intentionally to take actions to benefit specifically his or her own personal interests. Therefore, the general public policy goal to be achieved through the use of blind trusts is an actual "blindness" or lack of knowledge by the Government official with respect to the holdings held in trust. In unusual cases, this goal may be deemed to have been achieved with respect to an official appointed to a position by the President, by and with the advice and consent of the Senate, where there is a general dispersion of securities held in trust among individual entities and economic sectors under circumstances in which it is unlikely that official actions taken by him will affect individual holdings to such a degree that the overall value of the entire portfolio will be materially enhanced. The result of wide diversification under the conditions prescribed is considered tantamount to actual blindness.

(2) Trusts certified under the provisions of this Subpart D are not subject to the general rules of Subpart C of this part, which normally require the public financial disclosure report of a reporting individual to indicate the contents of a trust's portfolio. Further, as described in paragraph (b)(3) of this section, in the case of trusts which are certified, the normal application of 18 U.S.C. 208 and other Federal conflict of interest laws is ameliorated by the Act in accordance with the concepts discussed in paragraph (a)(1) of this section.

(b) *Nature of qualified trusts.* The public policy concerns and objectives indicated in paragraph (a) of this section are fulfilled by the major requirements

of this subpart as described in this paragraph (b). The Office of Government Ethics will apply the standards of this subpart to specific cases.

(1) *A truly independent trustee.* Under § 734.406, the individual or institution in charge of a qualified trust, and therefore of investing the assets of the trust, must be independent of the Government official in reality and appearance. The trustee must not be subject to control or influence in the administration of the trust by any interested party: the official, his or her spouse, or dependent children. Permissible trustees are limited to members of professional groups with standards of conduct governing their actions as fiduciaries (financial institutions, attorneys, accountants, investment advisers and brokers). The trustee cannot be a relative, employee, or business partner of the official, spouse, or dependent children.

(2) *A trust document meeting certain minimum standards.* Under § 734.403, regarding qualified blind trusts, and § 734.404, regarding qualified diversified trust, the trust document must, except for limited exceptions, expressly prohibit communications between the trustee and the Government official, and other interested parties, regarding the trust's holdings and activities. The trustee must be empowered to make investment decisions independent of any consultation with or control by the interested parties. Generally, communications about the trust between the interested parties and the trustee must be in writing. Copies of all written communications must be filed with the Office of Government Ethics. The trust document must also provide that the interested parties will not attempt to obtain information about the trust holdings and activities except as specifically provided therein.

(3) *Relationship to conflict of interest laws.*—(i) *Qualified blind trusts.* In the case of a qualified blind trust (§ 734.403), an asset placed in trust by an interested party is considered a financial interest of the Government official for the purposes of 18 U.S.C. 208 and any other conflict of interest statutes or regulations of the Federal Government until the party is notified by the trustee that the asset has been disposed of, or has a value of less than \$1,000. Thus, the trust is considered blind only as to assets subsequently purchased by the trustee. The interested parties will have no knowledge of the trustee's acquisitions, and thus the Government official and the other interested parties will be truly blind with respect to these holdings.

(ii) *Qualified diversified trusts.* In the case of a qualified diversified trust (§ 734.404), the trust's holdings are not deemed financial interests of the Government official for purposes of 18 U.S.C. 208 or any other Federal conflict of interest law. This type of trust may only be utilized by an official appointed by the President, by and with the advice and consent of the Senate. It must be established to the satisfaction of the Director, Office of Government Ethics, under § 734.404(b), that the assets of a diversified trust proposed for qualification consist of a well-diversified portfolio of readily marketable securities. None of the assets initially placed in the trust may consist of securities of issuers having substantial activities related to the reporting individual's primary area of responsibility.

(4) *Relationship to Subpart C.* reporting requirements. Qualified trusts are not subject to the normally applicable reporting requirements of Subpart C of this part. The less-inclusive rules of § 734.402(b) are applied with respect to qualified trusts pursuant to the Act.

(5) *Prior approval of trust document and assets placed in the trust.* Before a trust can be certified, every proposed trust document (see § 734.405) and proposed trustee (see § 734.406) must be approved by the Office of Government Ethics. This is essential so that the Office can ensure in advance that the proposed trust arrangement satisfies the letter and spirit of the established standards. Model qualified trust instruments are available from the Office to attorneys for their use in drafting trust agreements to be proposed for qualification.

(6) *Effective sanctions and enforcement.* Under the provisions of Subpart C of this part, civil and criminal sanctions are provided for any Government official or trustee who violates his or her obligation under a qualified trust. In addition, the Office of Government Ethics has authority under the Act to impose appropriate administrative or other sanctions.

#### § 734.402 Special rules in the case of certain trusts.

(a) *In general.* Notwithstanding the provisions of Subpart C of this part, a reporting individual need not, except as otherwise provided in this subpart, report the holdings of or the source of income from any of the holdings of:

- (1) Any qualified blind trust, as defined in § 734.403,
- (2) Any qualified diversified trust, as defined in § 734.404, or
- (3) Any "excepted trust," one:

(i) Which was not created directly by the individual, his or her spouse, or any dependent child, and

(ii) The holdings or sources of income of which the individual, his or her spouse, and any dependent child have no knowledge.

#### (b) Subpart C reporting

*requirements—(1) Income.* In the case of a trust referred to in paragraph (a) of this section except for a qualified diversified trust, a reporting individual shall report the category of the aggregate amount of the trust's income attributable to the beneficial interest in the trust of the individual, his or her spouse, or any dependent child under the rules of Subpart C of this part. In the case of a qualified diversified trust, only amounts actually received in respect of such a trust by the individual, his or her spouse, or any dependent child, or applied for the benefit of any such interested party, shall be deemed income derived from the trust for purposes of this part.

(2) *Holdings and sources of income.* In the case of a trust referred to in:

(i) Paragraph (a)(1) or (a)(2) of this section, no report under Subpart C of this part on holdings and sources of income is required, or

(ii) Paragraph (a)(3) of this section, holdings and sources of income shall be reported under the rules of Subpart C of this part only to the extent that the reporting individual has reasonably specific knowledge of the holdings and sources of income.

*Example (1):* A reporting individual, R, is the beneficiary of a family trust created by his grandfather. R—(i) has never seen the trust instrument, (ii) receives a monthly payment of \$500 from the trustee, and (iii) has been told by his grandfather that the trust assets include large holdings of Canadian mining stock. R does not have any further specific knowledge about the trust and its holdings, and the grandfather and trustee have declined to provide further information. This trust would be considered by the Office of Government Ethics to be an excepted trust described in paragraph (a)(3) of this section. R is obligated to report \$6,000 as income from the trust in his annual financial disclosure report filed under Subpart C, and under § 734.301(d) he would report that he is a beneficiary of an excepted trust which he believes to have Canadian mining stock among its holdings.

*Example (2):* During 1979, the trustee of reporting individual M's qualified diversified trust makes payments as follows:

- (i) A monthly distribution of \$1,000 to M as specified in the trust instrument.
  - (ii) \$4,000 to M's wife for medical expenses pursuant to the trustee's discretion under the terms of the trust instrument, and
  - (iii) \$2,500 to M's son for educational expenses pursuant to the trust instrument.
- For 1979, \$18,500 is deemed to be the income derived from the trust and should be reported

under Subpart C of this part; notwithstanding that the actual income attributable to the interests of M, his spouse, and dependent children in the qualified diversified trust might be a greater amount. The actual amount must be kept confidential by the trustee and, under § 734.404, not revealed to the interested parties.

*Example (3):* Note that \$18,500 would be the income deemed to have been derived from the qualified diversified trust in *Example (2)*, even if the actual income attributable to the interests of the interested parties was less than \$18,500 or even if the trust had a net loss for the year.

#### § 734.403 Qualified blind trusts.

(a) *Definition.* For purposes of § 734.402, the term "qualified blind trust" means a trust certified by the Director, Office of Government Ethics, under § 734.405 which includes the provisions described in paragraph (b) of this section and has an independent trustee (as defined in § 734.406). See section 202(f)(3) of the Act.

(b) *Required provisions.* The trust instrument which establishes a trust to which this section applies must provide that—

(1) The trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(2) The trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(3) The trustee shall notify promptly the reporting individual and the Director, Office of Government Ethics, when any particular asset transferred to the trust by any interested party has been completely disposed of or when the value of that asset becomes less than \$1,000;

(4) The trust tax return shall be prepared by the trustee or his or her designee, and the return and any information relating thereto, other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return, shall not be disclosed publicly or to any interested party;

(5) An interested party shall not receive any report on the holdings and sources of income of the trust, except that the trustee shall—

(i) Make quarterly reports of the aggregate market value of the assets representing the interested party's interest in the trust,

(ii) Report the net income or loss of the trust and make any other reports necessary to enable the interested party to complete an individual tax return required by law, and

(iii) Provide the information described in § 734.402(b) (relating to reporting of income);

(6) Except for communications which consist solely of requests for distributions from the trust, which shall not specify whether any such distribution shall be made in cash or in kind, there shall be no direct or indirect communication between the trustee and an interested party about the trust unless the communication is in writing and unless it relates only:

(i) To the general financial interest and needs of the interested party including, but not limited to, an interest in maximizing income or long-term capital gain,

(ii) To the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or

(iii) To directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual but nothing in the trust instrument shall require any such direction;

(7) The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information about the holdings of, and the sources of income of, the trust, including obtaining a copy of any trust tax return filed by the trustee or any information relating thereto, except for the reports and information specified in paragraph (b)(5) of this section; and

(8) The trustee and any other person designated in the trust instrument as an investment adviser shall fulfill the filing requirements of § 734.407(b) and (c).

*Example (1)*

(A) Professionals employed by the trustee to prepare the trust tax return should be cautioned against sending informational copies to any interested party, and

(B) An interested party who inadvertently receives in the mail a broker's confirmation of a transaction for the trust should send the confirmation to the trustee with an accompanying letter instructing the trustee to take steps to assure that the party will not receive such confirmations in the future (a copy of such a letter must be sent to the Office of Government Ethics pursuant to § 734.407(c)).

Paragraph (b)(7) of this section prohibits any activity by interested parties to obtain, directly or indirectly, any information which under the rules of this section is precluded from interested parties. The paragraph also specifically prohibits the passive receipt of

precluded information by interested parties. Accordingly, interested parties and trustees, their staffs, and professionals who may be employed by them are required to exercise a high degree of diligence to safeguard against inadvertent disclosure of precluded information to the interested parties.

(c) *Transitional rule.* In the case of a trust established prior to October 28, 1978, if there is a good faith attempt to create a qualified blind trust, the trust may, under the rules of section 202(f)(7) of the Act, be certified under the provisions of § 734.405, as a qualified blind trust notwithstanding any provision of this section to the contrary.

**§ 734.404 Qualified diversified trusts.**

(a) *Definition.* For purposes of § 734.402, the term "qualified diversified trust" means a trust certified by the Director, Office of Government Ethics, under § 734.405 which has a portfolio as specified in paragraph (b) of this section, includes the provisions described in paragraph (c) of this section, and has an independent trustee (as defined in § 734.406). This certification may be granted only in the case of individuals described in paragraph (e) of this section. See section 202(f)(4)(B) of the Act.

(b) *Required portfolio.*—(1) *In general.* It must be established to the satisfaction of the Director, Office of Government Ethics, that the assets of the trust proposed for qualification consist of a well-diversified portfolio of readily marketable securities. Accordingly, the reporting individual, or a representative of the individual, shall provide the Director with a detailed listing of the securities proposed for inclusion in the portfolio, specifying their market values and demonstrating that the requirements of this paragraph (b) have been met. None of the assets initially placed in the trust may consist of securities of issuers having substantial activities related to the reporting individual's primary area of responsibility. No limitations are established under this paragraph with respect to—

(i) Cash, or

(ii) Debt instruments issued by the United States or its non-corporate instrumentalities.

(2) *Well-diversified.*—(i) *Portfolios which exceed \$250,000.* In the case of a trust which has assets with a total market value which exceeds \$250,000, the portfolio will be deemed well-diversified, for purposes of this section, unless the trust holds—

(A) Securities of any issuer which have a market value which exceeds twenty percent of the total market value of the portfolio, or

(B) Securities substantially related to any industry or economic sector which have a market value which exceeds thirty percent of the total market value of the portfolio.

Notwithstanding the preceding sentence, the Office of Government Ethics may authorize limited deviations from the standards of this paragraph (b)(2)(i) with respect to the holdings initially transferred to the trust in cases where, under all the facts and circumstances, the Office determines that overall portfolio balance has been achieved.

*Example (1):* In unusual circumstances involving a divorce settlement, the proposed initial portfolio of a trust with a total market value of \$350,000 is determined by the Office of Government Ethics to have overall balance and is deemed well-diversified even though securities of three utilities represent 32 percent of the portfolio's total market value and the securities of one bank represent 23 percent. However, the trustee may not purchase additional utility or bank securities while the percentages of portfolio market value they represent continue to exceed the standards of paragraph (b)(2)(i) of this section.

(ii) *Portfolios which do not exceed \$250,000.* The Office of Government Ethics recognizes that it is impractical in the case of smaller trusts to expect the same quantitative diversification with respect to initial holdings that is required in the case of larger trusts. Consequently, in the case of a trust which has assets with a total market value which does not exceed \$250,000, the Office may authorize a lesser degree of diversification than the standards of paragraph (b)(2)(i) of this section with respect to the holdings initially transferred to the trust in cases where, under all the facts and circumstances, the Office determines that overall portfolio balance has been achieved.

*Example (1):* A proposed initial portfolio with a total market value of \$100,000 contains four listed securities, each representing a different industry or economic sector. Two of the securities each have a market value of \$24,000, and the other two securities each have a market value of \$26,000. The portfolio will be deemed to be well-diversified.

(iii) *Consultation.* Interested parties and their representatives are invited to consult with the Office of Government Ethics on the question of whether overall portfolio balance has been achieved in particular cases.

(3) *Readily marketable.* A security will be deemed readily marketable, for purposes of this section, if:

(i) Daily price quotations for the security appear regularly in newspapers of general circulation, such as the Wall Street Journal, New York Times, and Washington Post, and

(ii) The trust holds the security in a quantity which does not unduly impair liquidity.

(c) *Required provisions.* The trust instrument which establishes a trust to which this section applies must provide that:

(1) The trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(2) The trustee shall not acquire any securities in excess of the diversification standards of paragraph (b)(2)(i) of this section;

(3) The trustee shall not disclose publicly or to any interested party information as to the acquisition, retention, or disposition of any particular securities;

(4) The trust tax return shall be prepared by the trustee or his delegate, and such return and any information relating thereto shall not be disclosed to the public or to any interested party;

(5) An interested party shall not receive any report on the holdings and sources of income of the trust; except that the trustee shall:

(i) Make quarterly reports of the aggregate market value of the assets representing such interested party's interest in the trust, and

(ii) Provide the information described in § 734.402(b) (relating to reporting of income);

(6) Except for communications which consist solely of requests for distributions from the trust, which shall not specify whether any such distribution shall be made in cash or in kind, there shall be no direct or indirect communication between the trustee and an interested party about the trust unless the communication is in writing and unless it relates only—

(i) To the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), or

(ii) To information, documents, and funds provided by, or needed from, the interested party to effectuate the provisions of paragraph (d) of this section;

(7) The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information about the holdings of, and the sources and amounts of income of the trust including obtaining a copy of any trust or personal tax return filed by the trustee or any information relating thereto, except for the reports and information specified in paragraph (c)(5) of this section; and

(8) The trustee and any other person designated in the trust instrument as an investment adviser shall fulfill the filing requirements of § 734.407(b) and (c). With respect to paragraph (c)(7) of this section, see *Example (1)* following § 734.403(b).

(d) *Personal income tax returns.* In the case of a trust to which this section applies, the trustee shall be given power of attorney to prepare, and shall file, on behalf of any interested party the personal income tax returns and similar returns which may contain information about the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose. Communications regarding decisions such as whether to file joint or separate returns, the portions of a tax obligation to be borne by each spouse, the amounts and timing of tax payments, and the sources of funds therefor, shall be subject to paragraph (c)(6)(iii) of this section.

(e) *Applicability.* The provisions of this section shall be applicable only in the case of a trust created for the benefit of a reporting individual appointed to his or her office by the President, by and with the consent of the Senate, or the spouse or dependent child of such a person. In the case of a reporting individual whose nomination is before a Senate committee, the individual must inform the Committee of his or her intention to establish a qualified diversified trust at the time his or her financial disclosure report is filed with the Committee. This notification is not required of a reporting individual who is already in office. This section is not applicable in the case of members of the uniformed services or foreign service officers in the State Department.

(f) *Transitional rule.* In the case of a trust established prior to October 26, 1978, if there is a good faith attempt to create a qualified blind trust, the trust may, under the rules of section 202(f)(7) of the Act, be certified under the provisions of § 734.405, as a qualified diversified trust, notwithstanding any provision of this section to the contrary.

**§ 734.405 Certification of trusts proposed for qualification; other matters.**

(a) *General rule.* In any case in which an interested party desires to have a trust certified as a qualified blind trust or qualified diversified trust under the provisions of § 734.403 or § 734.404, respectively, the party or his or her representative should consult with the Director, Office of Government Ethics (or his or her delegate), as to the appropriateness of and requirements for certification in the particular case. In order to assure timely trust certification,

the interested party shall be responsible for the expeditious submission to the Office of all required documents and responses to requests for information. A trust will be certified by:

(1) The Director in the case of a qualified blind trust, or

(2) The Director in concurrence with the Attorney General in the case of a qualified diversified trust,

only if it is established to the Director's satisfaction that the requirements of section 202 of the Act and this subpart have been met and that certification in the case is consistent with the policies established by those provisions and other applicable laws and regulations. Certification shall be indicated by a letter from the Director to the interested party or his or her representative.

Certification of a trust may be revoked by the Director at any time, if in his or her sole discretion, he or she determines that continued certification is no longer justified. The terms of a qualified trust are normally irrevocable. The terms may not be amended, except with the prior written approval of the Director upon a showing of necessity and appropriateness.

(b) *Absence of control by interested party.* Except as expressly approved by the Director, Office of Government Ethics, in the case of a trust proposed for certification under the provisions of § 734.403, any asset transferred to a trust under this subpart shall be free of any restriction on its transfer or sale. Accordingly, in the case of interest in tax shelters, partnerships, and close corporations, the interested party shall demonstrate to the satisfaction of the Director that, under all the facts and circumstances, the interests are free of any restriction with respect to their transfer or sale.

(c) *Interested party, defined.* For purposes of this subpart, the term "interested party" means a reporting individual, the spouse, and any dependent child in a case in which the individual, spouse, or dependent child has a beneficial interest in the principal or income of a trust proposed for certification.

(d) *Restrictions applicable to trustees.* The trustee of a qualified blind trust or qualified diversified 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 any provision or requirement of this subpart.

(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 the terms of, the trust instrument.

(3) Solicit advice from any interested party with respect to such trust, which solicitation is prohibited by any provision or requirement of this subpart or the trust instrument, or

(4) Fail to file any document required by this subpart.

(e) *Restrictions applicable to reporting individuals.* In the case of a qualified blind trust or qualified diversified trust, a reporting individual shall not knowingly or negligently:

(1) Solicit or receive any information about the trust that may not be disclosed under any provision or requirement of this subpart, or

(2) Fail to file any document required by this subpart.

**§ 734.406 Independent trustee, defined.**

(a) *General rule.* For purposes of this subpart, the term "independent trustee" shall include any person referred to in paragraph (b) of this section who, under all the facts and circumstances, is determined by the Director, Office of Government Ethics, in his or her sole discretion, to be independent of any interested party with respect to a trust proposed for qualification under this subpart. The Director shall indicate his or her approval of a proposed trustee, and of any person in addition to a party to the trust designated in the trust instrument as an investment adviser, by his or her signature on properly executed Certificates of Independence submitted to the Office of Government Ethics in the form prescribed by Appendix A of this part. Approval of a trustee may be revoked by the Director at any time, if, in his or her sole discretion, he or she determines that continued approval is no longer justified.

(b) *Eligible person.* A person, to be eligible to serve as a trustee under this section, must be:

(1) A financial institution, which is a "bank" as defined in 15 U.S.C. 80b-2(a)(2);

(2) An attorney, who is admitted to practice before the highest court of any jurisdiction;

(3) A certified public accountant;

(4) A "broker", as defined in 15 U.S.C. 78c(a)(4); or

(5) An "investment adviser", who is a person as defined in 15 U.S.C. 80b-2(a)(11) or who demonstrates to the satisfaction of the Director general involvement in his or her role as such an adviser in the management or control of trusts.

(c) *Requirements.* No eligible person shall be determined to be independent

under this section unless that person, or any officer or employee thereof, involved or to be involved in the management or control of the trust:

(1) Is independent of and unassociated with any interested party so that that person cannot be controlled or influenced in the administration of the trust by any interested party.

(2) Is not or has not been an employee of an interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(3) Is not a relative or any interested party.

Accordingly, an otherwise eligible person who shares in a business enterprise or other undertaking with any interested party shall not be deemed to be independent under the rules of this paragraph (c).

*Example (1).* Reporting individual *R* terminates his partnership in a law firm upon nomination to a full-time government position. *R* wishes to have *T*, a partner in *R*'s former firm, serve as his trustee. *T* may serve as *R*'s trustee.

*Example (2).* In *Example (1)*, *T* would have been precluded from serving as *R*'s trustee if additionally:

(i) They both serve on the board of a local bank,

(ii) They are each limited partners in a tax shelter or operating business venture, or

(iii) Their spouses jointly operate a commercial venture.

*Example (3).* In *Example (1)*, *T* would not have been precluded from serving as *R*'s trustee if additionally:

(i) They both serve on a committee of their country club.

(ii) They each bought XYZ Corp. listed stock, after it was discussed by them during a golf weekend several months ago, or

(iii) *R* had purchased an office building from *T*.

**§ 734.407 Special filing requirement in the case of qualified trusts.**

(a) *Reporting individuals.* In the case of any qualified blind trust or qualified diversified trust, the reporting individual shall:

(1) *Execution.* Within thirty days after the trust is certified under § 734.405(a) by the Director, Office of Government Ethics, file with the Director a copy of:

(i) The executed trust instrument of the trust, and

(ii) A list of the assets which were transferred to the trust, categorized as to value in accordance with § 734.504.

The provisions of any trust filed with the Director under this paragraph which

relate to the testamentary disposition of the trust assets need not be reported. If reported, the provisions shall not be subject to public disclosure.

(2) *Transfer of assets.* Within thirty days of transferring an asset, other than cash, to the trust, file a report with the Director, Office of Government Ethics, which shall briefly describe each asset, categorized as to value in accordance with § 734.304.

(3) *Dissolution.* Within thirty days of the dissolution of the trust—

(i) File a report of the dissolution with the Director, 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 § 734.304.

Any document filed under the requirements of this paragraph shall be subject to the public disclosure requirements of § 734.602.

(b) *Trustees.* The trustee of a qualified blind trust or qualified diversified trust, and any person in addition to a party to the trust designated in the trust instrument as an investment adviser, shall file with the Director, Office of Government Ethics, by the May 15 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, the trustee 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. Any document (and the information contained therein) inspected under the requirements of this paragraph (other than a Certificate of Compliance) shall not be subject to the public disclosure requirements of § 734.602, and shall not be disclosed to any interested party.

(c) *Written communications.* In the case of any written communication with respect to a qualified blind trust or qualified diversified trust, which is described in § 734.403(b)(6) or § 734.404(c)(6), respectively, a copy of the communication shall, within five days of its date, be filed by the person initiating the communication with the Director, Office of Government Ethics. In the case of a qualified diversified trust, notwithstanding the preceding sentence, written communications not described in the third sentence of § 734.404(d) which consist entirely of reports from interested parties of their transactions and occurrences unrelated to the trust made to the trustee to

effectuate the provisions of that section shall (in lieu of being filed with the Director) be retained by the trustee and are subject to inspection under paragraph (b) of this section.

**§ 734.408 Effective date.**

The provisions of this subpart shall be applicable to trusts certified as approved qualified blind trusts or qualified diversified trusts after October 26, 1978. In the case of a trust certified prior to November 1, 1980,

notwithstanding the preceding sentence, the Director of the Office of Government Ethics may exempt the trust from specific provisions of this part if he or she determines, upon application of the trustee or any interested party, that exemption is necessary and appropriate to avoid impracticality or undue hardship.

**Subpart E—Special Provisions**

**§ 734.501 Outside earned income.**

(a) *Limitation.* Any reporting individual:

(1) Who occupies a full-time position in the Executive branch, appointment to which is made by the President by and with the advice and consent of the Senate, and

(2) Who is compensated at a rate of pay which equals or exceeds the lowest rate of pay specified for GS-16 of the General Schedule prescribed by 5 U.S.C. 5332,

may not have in any calendar year outside earned income attributable to that calendar year which is in excess of 15 percent of that compensation.

(b) *Defined.* For the purposes of this section, the term "outside earned income" means wages, salaries, commissions, professional fees and other compensation received for personal services actually rendered, other than for services for the United States Government described in paragraph (a) of this section. Income received

(1) By an inactive partner, or

(2) From investments with respect to which the personal services of the reporting individual are not a material factor,

shall not be deemed outside earned income for purposes of this section. The term does not include amounts received during a period in which the reporting individual was not employed as specified by paragraph (a) of this section for personal services actually rendered during the period.

(c) *Other employment limitations.* The provisions of this section shall not preclude the application of limitations on outside employment which may be

imposed on employees of a particular agency.

**§ 734.502 Waivers.**

(a) With respect to reporting requirements: Section 201(i) of the Act authorizes the Director to grant a waiver for officers and employees if they have served fewer than 130 days in a calendar year. For the rules relating to this waiver, see § 734.205.

(b) With respect to gifts: Section 202(a)(2)(D) of the Act authorizes the Director to grant a waiver in an unusual case with respect to the necessity for aggregating gifts. For the rules relating to this waiver, see § 734.303(g).

**Subpart F—Procedure**

**§ 734.601 Report forms.**

The Office of Government Ethics makes available standard forms for reporting the information required by this part.

**§ 734.602 Filing of reports.**

(a) Except as otherwise provided in this section, a reporting individual shall file the report required under this part with the designated agency ethics official at the agency in which the individual:

- (1) Is serving,
- (2) Served prior to termination of employment, or
- (3) Will serve.

The designated agency ethics official shall note on any report or supplemental report the date it is received.

(b) The President and Vice President shall file their reports with the Director of the Office of Government Ethics.

(c) Each agency shall transmit to the Director, Office of Government Ethics, copies of the reports required to be filed by:

- (1) The Postmaster General,
- (2) The Deputy Postmaster General,
- (3) The governors of the Board of Governors of the United States Postal Service,
- (4) Designated agency ethics officials,
- (5) Candidates for the office of President or Vice President, and
- (6) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate other than those required of members of the uniformed services.

Prior to transmitting a copy of the report to the Director, the agency shall, except in the case of the designated agency ethics official's report, which shall be reviewed by the head of the agency (or his or her delegate), review the report in accordance with § 734.604(b). The Director shall forward a copy of the report of each nominee to the Senate

committee considering the nomination. (See § 734.604(c) for procedures regarding the review of such reports.)

(d) The Director shall file his or her report in the Office of Government Ethics. Upon receipt, the report will be made immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in § 734.201(d), other than an incumbent President or Vice President, shall file their reports with the Federal Election Commission which in turn shall send copies of such reports to the Office of Government Ethics pursuant to paragraph (c) of this section.

(f) Members of the uniformed services identified in § 734.202(c), shall file their reports with the Secretary concerned.

**§ 734.603 Custody of and public access to reports.**

(a) Each agency shall make each report filed with it under this part available to the public in accordance with the provisions of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved, if available.

(b) This section does not require public availability of the report filed by any individual in:

- (1) The Central Intelligence Agency,
- (2) The Defense Intelligence Agency,
- (3) The National Security Agency, or
- (4) Any individual engaged in intelligence activities in any agency of the United States.

if the President finds that, due to the nature of the office or position occupied by the individual, public disclosure of the report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. These individuals may be authorized, notwithstanding § 734.701(a), to file any additional reports necessary to protect their identity from public disclosure if the President first finds that such filings are necessary in the national interest.

(c) Each agency shall, within fifteen days after any report is actually received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes a written application stating:

(1) The person's name, occupation and address,

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested, and

(3) That the person is aware of the prohibitions on the obtaining or use of the report, as set forth in paragraph (e) of this section.

The application shall be made available to the public throughout the period

during which the report itself is made available to the public. The reviewing officials and the support staffs who maintain the files, the staff of the Office of Government Ethics, and Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations need not submit the application provided for by this paragraph.

(d) The agency may require a reasonable fee, established by appropriate agency regulation, to recover the direct cost of reproduction or mailing of such report, excluding any salary of any employee involved in such process. A copy of the report may be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fee is in the public interest. The criteria used by an agency to determine when a fee will be reduced or waived shall be established by an appropriate regulation.

(e) It is unlawful for any person to obtain or use a report—

- (1) For any uniaul purpose;
- (2) For any commercial purpose, other than by news and communications media for dissemination to the general public;
- (3) For determining or establishing the credit rating of any individual; or
- (4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

*Example (1):* The deputy general counsel of an agency as its reviewing official (see § 734.105(n)) is responsible for reviewing the public financial disclosures filed by officials within that agency. The personnel director for that agency, not exercising functions within the ethics program, wishes to review the disclosure of an individual within the agency. The personnel director must file an application to review the disclosure. However, the supervisor of an official with whom the deputy general counsel consults with respect to matters arising in the review process need not file such an application.

*Example (2):* A state law enforcement agent is conducting an investigation which involves the private financial dealings of an individual who has filed a public disclosure. The agent must complete a written application in order to review or obtain a copy of the statement.

*Example (3):* A copy of a report is obtained by a reporter for use in a general newspaper article. This copy is seen on the reporter's desk by an editor who is in charge of a local charity drive. The editor observes that the reporting individual owns a business in his community and sends a personal note to the individual referring to the business and soliciting a contribution for the charity. This use is prohibited.

*Example (4):* A financial institution has received an application for a loan from an official indicating her present financial status. The official has filed a public financial

disclosure with her agency. The financial institution cannot review the disclosure for purposes of checking the information contained on the report against that which appears on the application.

(f)(1) Any report filed with an agency, or transmitted to the Director, Office of Government Ethics, under this section, shall be retained by the agency or the Office of Government Ethics, or both, as the case may be. The report shall be made available to the public for a period of six years after receipt of the report. After the six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report under § 734.201(c) and was not subsequently confirmed by the Senate, or who filed the report under § 734.201(d) and was not subsequently elected, the report shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President.

(2) For purposes of paragraph (f)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under Subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust shall be retained until the periods for retention of all other reports on the individual have lapsed under paragraph (f)(1) of this section.

#### § 734.604 Review of reports.

(a) *In general.* Reports shall be reviewed by the appropriate reviewing official within 60 days after the date of filing. Reports reviewed by the Director, Office of Government Ethics, shall be reviewed within 60 days from the date each report was transmitted by the agency to OGE.

(b) *Responsibilities of reviewing officials.—(1) Initial review.* The reviewing official shall review each report to determine to his or her satisfaction that:

- (i) Each item is completed, and
- (ii) No interest or position disclosed on the form violates or appears to violate:

- (A) Any applicable provision of Chapter 11 of 18 U.S.C. Part 1,
- (B) The Ethics in Government Act of 1978, as amended, and the regulations promulgated thereunder,
- (C) Executive Order 11222 and applicable regulations promulgated thereunder, or
- (D) Any other statute or regulation applicable to the employees of the reviewing official's agency.

The reviewing official shall not sign and date the report until that determination is made. A reviewing official need not audit the report to ascertain whether the disclosures are correct; disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. A report which is signed by a reviewing official, however, shall signify that the agency in which the reporting individual serves has found that the information contained in the report discloses no conflict of interest under applicable laws and regulations and that the report fulfills the requirements of this paragraph (b)(1).

(2) *Requests for additional information.* If the reviewing official believes that additional information is required, the official shall request this information indicating a date by which the information must be submitted. This additional information shall be made a part of the report.

(3) *Review on basis of additional information.* If the reviewing official concludes on the basis of the information disclosed in the report and any additional information required under paragraph (b)(2) of this section that:

(i) The report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report, or

(ii) The report does not fulfill the requirements of paragraph (b)(1) of this section, the official shall:

(A) Notify the reporting individual of this opinion,

(B) Afford the reporting individual a reasonable opportunity for an oral or written response, and

(C) Determine on the basis of the response whether or not the report fulfills the requirements.

(4) *Review to determine remedial action.* If the reviewing official concludes, after following the procedure set forth in paragraph (b)(3)(ii) of this section, that:

(i) The report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report and notify the reporting individual in writing that this action was taken; or

(ii) The report does not fulfill the requirements of paragraph (b)(1) of this section, the reviewing official shall:

(A) Notify the individual of that opinion,

(B) Afford the individual an opportunity for personal consultation, if practicable,

(C) Determine what remedial action should be taken to bring the report into compliance, and

(D) Notify the individual in writing of the remedial action required, indicating a date by which that action must be taken.

Except in unusual situations which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed within 90 days from the date the individual was notified that the action would be required.

(5) *Remedial steps.* Remedial steps may include, as appropriate:

(i) Divestiture of the conflicting interest.

(ii) Restitution.

(iii) The establishment of a qualified trust under section 202(f) of the Act,

(iv) Request for an exemption under 18 U.S.C. 208(b),

(v) Recusal, or

(vi) Voluntary request by the individual for transfer, reassignment, limitation of duties or resignation.

(6) *Compliance or referral.* (i) If the reporting individual complies with a written request for remedial action required under paragraph (b)(4)(ii), the reviewing official shall indicate in the comment section of the report that this action has been taken and shall sign and date the report. The reviewing official shall send to the reporting individual written notification of the signing and of the addition of the comment to the form.

(ii) If the reporting individual does not comply with a written request for remedial action transmitted under paragraph (b)(4)(ii) of this section, the reviewing official shall notify the Office of Government Ethics and refer the matter for appropriate action to:

(A) The President, where the reporting individual is in a position, other than in the uniformed services, appointment to which requires the advice and consent of the Senate,

(B) The Secretary concerned, for a member of the uniformed services, or

(C) The head of the agency, for any other officer or employee, except in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. In unusual circumstances, the Office of Government Ethics may order corrective action as authorized by section 402(b)(9) of the Act.

(7) *Appropriate action.* Appropriate action includes changes in assigned duties or adverse action in accordance with the procedures set forth in 5 CFR Part 752.

(8) *Scope of this paragraph.* The provisions of this paragraph (b) shall not apply in the case of the President or Vice President, or a candidate or nominee for such office.

(c) *Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate.* Notwithstanding paragraph (a) of this section, in the case of a report filed by an individual described in § 734.201(c) who is nominated to a position, by the President, by and with the advice and consent of the Senate:

(1) The Executive Office of the President shall furnish the financial disclosure reporting forms to the nominee and shall forward the completed report to the designated agency ethics official at the agency in which the nominee will serve or is serving; or when appropriate, the nominee shall file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official shall review the report and, only after the official completes a review in accordance with paragraph (b)(1) of this section and concludes that there is no conflict of interest under applicable laws and regulations, the official shall:

(i) Attach to the report a copy of the official position description (when available) of the position to be filled by the nominee;

(ii) Personally certify the report and date the certification;

(iii) Write an opinion letter to the Director, Office of Government Ethics, certifying that there is no conflict of interest under applicable laws and regulations, and discussing:

(A) Any problems which the official encountered in reaching the conclusions upon which that certification is based and describing the resolution of the problems, and

(B) Any specific commitment, agreement, recusal, or other undertaking by the nominee to resolve any such problem through recusal, divestiture or similar action (with a copy of any such commitment, agreement, recusal, or other undertaking which has been reduced to writing to be sent to the Director as soon as it is available); and

(iv) Deliver the letter and report to the Director, Office of Government Ethics, within three days after the receipt of the report by the agency in which the nominee will serve or is serving.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency official and, if satisfied that there is no unresolved conflict, the Director shall sign the report and date the approval. The Director shall submit

the report with a letter to the Senate Committee involved expressing the Director's opinion that on the basis of information contained in the report the nominee is in compliance with applicable laws and regulations.

(4) If in the case of any nominee or class of nominees for any reason the expedited procedure specified in this paragraph (c) cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency official shall inform the Director. When necessary and appropriate in the case of a class of nominees, the Director may modify the rule of that paragraph with respect to a particular department or agency.

#### § 734.605 Advice and opinions.

For purposes of assisting both current and former employees in avoiding situations in which they would not be in compliance with applicable laws and regulations and to inform members of the public—

(a) The Director, Office of Government Ethics, will render advisory opinions on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments on the request for the advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public; and

(b) Each Secretary concerned and designated agency official, including the President in the case of individuals employed in the Executive Office of the President, shall maintain a list of those circumstances or situations which have resulted or may result in non-compliance with such laws or regulations; such list shall be periodically published, and shall be furnished to those individuals employed within the agency who are required to file reports under this part, however, the absence of any situation or circumstance from such a list shall not be construed as an indication that an individual in such circumstance or situation would be in compliance with such laws or regulations.

#### Subpart G—Penalties and Remedial Action

##### § 734.701 Failure to file or falsifying reports.

(a) *Civil action.* The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly

or willfully fails to file or report any information required under this part. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed \$5,000.

(b) Referral of cases. The head of each agency, each Secretary concerned, or the Director, Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual he or she has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file required information.

(c) Administrative remedies. The President, the Vice President, the Director, Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to file required information. This action includes adverse action under 5 CFR Part 752.

**§ 734.702 Certain actions in the case of qualified trusts.**

(a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of § 734.407(a) (1) and (2). The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed \$5,000.

(b) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of § 734.407(a)(1) and (a)(2). The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed \$1,000.

**§ 734.703 Misuse of reports.**

The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 205(c)(1) of the Act and § 734.603(e). The court in which the action is brought may assess against the person a penalty in any amount, not to exceed \$5,000. This remedy shall be in addition to any other remedy available under statutory or common law.

**Appendix A**

The Certificate of Independence required by § 734.406(a) shall be executed as follows:

**CERTIFICATE OF INDEPENDENCE**

With respect to the trust of \_\_\_\_\_ (Settlor), which has been submitted to the Office of Government Ethics for certification pursuant to the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended), the undersigned proposed Trustee of such trust, or person in addition to a party to the trust designated in the trust instrument as an investment adviser, is eligible to serve in such fiduciary capacity in accordance with section 202(f)(3)(A) of such Act:

- FIRST: The undersigned is (check one)—
- a financial institution, which is a "bank" as defined in 15 U.S.C. 80b-2(a)(2);
  - an attorney, who is admitted to practice before the highest court of \_\_\_\_\_;
  - a certified public accountant;
  - a "broker", as defined in 15 U.S.C. 78c(a)(4);
  - an investment adviser, who is a person defined in 15 U.S.C. 80b-2(a)(11) or who demonstrates to the satisfaction of the Director general involvement in his or her role as such an adviser in the management or control of trusts; or
  - a person in addition to a party to the trust designated in the trust instrument as an investment adviser.

SECOND: The undersigned (and any officer or employee of the undersigned, involved or to be involved in the management or control of the trust)—

- (A) is independent of and unassociated with any interested party so that the undersigned (and any such officer and employee) cannot be controlled or influenced in the administration of the trust by any interested party;
- (B) is not or has not been an employee of an interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party;
- (C) is not a relative of any interested party; and
- (D) Does not share actively in a business enterprise or other undertaking with any interested party.

The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date \_\_\_\_\_  
 (firm) \_\_\_\_\_  
 By: \_\_\_\_\_  
 (title) \_\_\_\_\_  
 Approved by \_\_\_\_\_  
 Director, Office of Government Ethics  
 Date \_\_\_\_\_

**Appendix B**

The Certificate of Compliance required by § 734.407(b) shall be executed as follows:

**CERTIFICATE OF COMPLIANCE**

With respect to the qualified blind trust (qualified diversified trust) of \_\_\_\_\_ (Settlor), the undersigned, the approved Trustee of such trust or approved person in addition to a party to the trust designated in the trust instrument as an investment adviser

pursuant to 5 CFR 734.408, has served in such fiduciary capacity during the calendar year \_\_\_\_\_ (or for the period beginning \_\_\_\_\_ and ending \_\_\_\_\_) and is eligible to continue in such capacity by virtue of the following:

- The undersigned (and any officer or employee involved in the management or control of the trust) has not knowingly or negligently, and will not—
  - (A) disclose any information to an interested party with respect to such trust that may not be disclosed pursuant to 5 CFR 734.403(b)(5) (5 CFR 734.404(c)(5), in the case of a qualified diversified trust) or any other provision or requirement of Subpart D of 5 CFR Part 734.
  - (B) acquire any holding the ownership of which is prohibited by, or not in accordance with, 5 CFR 734.403(b)(2) (5 CFR 734.404(c)(2), in the case of a qualified diversified trust) or the terms of the trust instrument.
  - (C) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by 5 CFR 734.403(b)(1) (5 CFR 734.404(c)(1), in the case of a qualified diversified trust) or any other provision or requirement of Subpart D of 5 CFR Part 734 or the trust instrument.
  - (D) fail to file any document required by 5 CFR 734.407(b) and (c) or any other provision of Subpart D of 5 CFR Part 734, or
  - (E) violate or fail to comply with any provision or requirement of Subpart D of 5 CFR Part 734 or the trust instrument.

The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date \_\_\_\_\_  
 (firm) \_\_\_\_\_  
 By: \_\_\_\_\_  
 (title) \_\_\_\_\_

**PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT**

§§ 735.501-735.508 (Subpart E)—  
{Removed}

(2) Subpart E of 5 CFR Part 735 is revoked.

(Titles II and IV of Pub. L. 95-521 (October 26, 1978), as amended by Pub. L. 96-19 (June 13, 1979))

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