

DEPARTMENT OF DEFENSE
PUBLICATION SYSTEM TRANSMITTAL

Change 1 to AD-A275132

OFFICE OF THE SECRETARY OF DEFENSE
General Counsel of the Department of Defense

CHANGE NO. 1
DoD-5500.7-R-CHG-1
November 2, 1994

JOINT ETHICS REGULATION (JER) . *Change 1*

The General Counsel of the Department of Defense has authorized the following page changes to DoD 5500.7-R, "Joint Ethics Regulation (JER)," August 1993:

PAGE CHANGES

Remove: Pages 9&10, 27 through 30, 33 through 46, 51&52, 65&66, 69 through 78, 80-1 through 82, 87&88, 93 through 96, 101 through 104, 107&108, 116-1 through 116-8, 121 through 132, 135&136, 140-5 through 140-8, 143&144, 150-1&150-2, 152-1&152-2, 163&164, and 182-1 through 182-4

Insert: Attached replacement pages

Changes that appear on these pages are indicated by marginal asterisks and change bars.

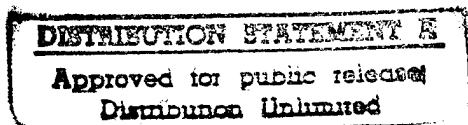
EFFECTIVE DATE

The above changes are effective immediately.

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Attachments
160 Pages

James L. Elmer
JAMES L. ELMER
Director
Correspondence and Directives



WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

f. Individual conduct, official programs and daily activities within DoD shall be accomplished lawfully and ethically;

g. DoD employees shall adhere strictly to DoD policy of equal opportunity, regardless of race, color, religion, gender, age, national origin, or handicap, in accordance with applicable laws and regulations.

SECTION 4. GENERAL RESPONSIBILITIES

1-400. The Head of each DoD Component shall:

* a. Exercise personal leadership and take personal responsibility through the DoD Component DAEO or designee for establishing and maintaining the DoD Component's ethics program and be personally accountable for the DoD Component's compliance with every requirement of this Regulation, including the ethics and procurement integrity training requirements; *

b. When authorized, appoint a DoD Component DAEO, through a formal written delegation of authority, who is qualified to oversee and supervise the DoD Component's ethics programs for DoD employees, both civilian and military. (The GC, DoD, may serve as the DAEO for several DoD Components);

c. When authorized, appoint a DoD Component Alternate DAEO who shall serve in the absence of the DoD Component DAEO;

* d. Provide sufficient resources (including funding and investigative, audit, legal, training and administrative staff) to enable the DoD Component DAEO or designee to implement and administer the DoD Component's ethics programs in a positive and effective manner. *

1-401. Each DoD Component Designated Agency Ethics Official (DAEO) shall:

a. Be responsible for the implementation and administration of all aspects of the DoD Component ethics program and manage and oversee local implementation and administration of all matters relating to ethics covered by this Regulation.

b. Appoint DoD Component Deputy DAEOs and Ethics Counselors and delegate to them written authority to act on behalf of the DoD Component DAEO;

c. Ensure that ethics advice (and facts relied upon for such advice) is in writing, when practicable;

d. Ensure that written opinions regarding the applicability of 10 U.S.C. 2397b (reference (c)) and 41 U.S.C. 423 (reference (b)) are provided within 30 days of request by any DoD employee provided that the request is accompanied by complete and full information necessary to render an opinion;

e. Ensure the proper collection, review, and handling of the DoD Component's financial and employment disclosure reports, including those submitted by Presidential appointees for confirmation purposes;

f. Be responsible for the implementation and administration of ethics and procurement integrity training and ensure that necessary resources are available to accomplish such training;

g. Provide periodic ethics and procurement integrity training for Ethics Counselors;

h. Certify Qualified Individuals to conduct ethics training;

i. Assist Agency Designees, through the chain of command or supervision, in initiating prompt, effective action to evaluate and process violations, potential violations, and appearances of violations of ethics laws or regulations, in accordance with applicable procedures as discussed in Chapter 10 of this Regulation;

j. Provide advice and assistance to DoD employees of the DoD Component not otherwise served by a local Ethics Counselor;

k. Oversee and coordinate local ethics programs through a system for periodic evaluation and ensure that the DoD Component provides and maintains sufficient funding, staff, space and resources to administer the DoD Component's ethics programs;

l. Maintain liaison with the DoD EOC, OGE, and the DoD Standards of Conduct Office (SOCO), and provide to SOCO and OGE all information required by law or regulation;

m. Represent the DoD Component to OGE, Congress, the Executive Branch and the public on matters relating to ethics and standards of conduct.

1-402. Each DoD Component Alternate Designated Agency Ethics Official (Alternate DAEO) shall serve in the absence of the DoD Component DAEO and, when so serving, is authorized to take any action this Regulation indicates may be taken only by the DoD Component DAEO.

Government. When such gifts exceed the \$100 limit, the recipient shall pursue one of the following alternatives:

- (a) Return the gift to the donor;
- (b) Retain the gift after reimbursing the donor the full value of the gift; or
- (c) Forward the gift to the appropriate DoD Component official for disposition as a gift to the Federal Government in accordance with statute. See 10 U.S.C. 2601 (reference (g)).

2-301. Use of Federal Government Telephone Systems. See GSA regulation 41 C.F.R. Subpart 201-21.6 (reference (h)), on management of Federal Government telecommunications resources.

a. The use of Federal Government telephone systems (including calls over commercial systems which will be paid for by the Federal Government), except as provided in subsection 2-301.b. of this Regulation, below, shall be limited to the conduct of official business. Such official business calls may include emergency calls and calls that the DoD Components determine are necessary in the interest of the Federal Government.

b. Personal calls (such as calls to speak to spouse/minor children or to arrange for emergency repairs to residence or automobile) that must be made during working hours over the commercial local/long distance network may properly be authorized as being in the best interest of the Federal Government if the call is consistent with the following criteria:

- (1) It does not adversely affect the performance of official duties by the DoD employee or the DoD employee's organization;
- (2) It is of reasonable duration and frequency; and
- (3) It could not reasonably have been made at another time;
- (4) And, in the case of long distance calls, is:

- (a) Charged to the employee's home telephone number or other non-Federal Government number (third number call);
- (b) Made to an 800 toll-free number;
- (c) Charged to the called party if a non-Federal Government number (collect call);
- (d) Charged to a personal telephone credit card; or
- (e) When traveling for more than one night on Federal Government business in the United States, a brief call to his residence to notify family of a schedule change.

2-302. Gambling

a. *A DoD employee shall not participate while on Federally-owned or leased property or while on duty (for military members, this means, in this context, present for duty) for the Federal Government in any gambling activity prohibited by 5 C.F.R. 735.201 (reference (i)) except:*

(1) *Activities necessitated by a DoD employee's law enforcement duties;*

(2) *Activities by organizations composed primarily of DoD employees or their dependents for the benefit of welfare funds for their own members or for the benefit of other DoD employees or their dependents, subject to the limitations of local law and subsections 3-210 and 3-211 of this Regulation, below, when approved by the Head of the DoD Component or designee; or*

(3) *Private wagers among DoD employees if based on a personal relationship and transacted entirely within assigned Federal Government living quarters and within the limitations of local laws.*

(4) *Purchases of lottery tickets authorized by any State from blind vendors licensed to operate vending facilities in accordance with 20 U.S.C. 107a(5) (reference (j)).*

b. Gambling with a subordinate may be a violation of Articles 133 and 134 of the Uniform Code of Military Justice (UCMJ) (reference (g)).

- * c. Gambling may be prohibited by Federal Government building and grounds regulations, such as 32 C.F.R. Part 40b (reference (k)) which prohibits gambling in the Pentagon. *

* 2-303. Outside Employment and Activity. In addition to subsection 2-206 of this Regulation, above, except to the extent that when procedures have been established by higher authority for any class of DoD employee (e.g., DoD Directive 6025.7 (reference (l))), Agency Designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity. See subsection 3-306 of this Regulation. *

a. The commander, head of the organization, or supervisor may prohibit the employment or activity if he believes that the proposed outside activity will detract from readiness or pose a security risk.

b. If action is not taken to prohibit the employment or activity, the DoD employee is free to engage in the employment or activity in keeping with other restrictions of this Regulation.

2-304. Use of Military Title by Retirees or Reserves. Retired military members and members of Reserve Components, not on active duty, may use military titles in connection with commercial enterprises, provided they clearly indicate their retired or inactive Reserve status. However, any use of military titles is prohibited if it in any way casts discredit on DoD or gives the appearance of sponsorship, sanction, endorsement, or approval by DoD. In addition, in overseas areas, commanders may further restrict the use of titles by retired military members and members of Reserve Components.

SECTION 4. REFERENCES

2-400. References

- (a) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (b) Title 26, United States Code, Section 501
- (c) Title 41, United States Code, Section 423
- (d) Federal Acquisition Regulation, Part 3.104, current edition
- (e) Title 5, United States Code, Sections 7301 and 7342

- (f) DoD Directive 1005.13, "Gifts from Foreign Governments," October 13, 1988
- (g) Title 10, United States Code, Sections 801 through 940 (Uniform Code of Military Justice), 2397a and 2601
- (h) Title 41, Code of Federal Regulations, 201-21.6, "Use of Government Telephone Systems," current edition
- (i) Title 5, Code of Federal Regulations, 735.208, "Gambling," current edition
- (j) Title 20, United States Code, Section 107a
- (k) Title 32, Code of Federal Regulations, Part 40b, "Conduct on the Pentagon Reservation," current edition
- (l) DoD Directive 6025.7, "Off-Duty Employment by DoD Health Care Providers," October 21, 1985

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SECTION 2. OFFICIAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-200. Attendance

a. Agency Designees may permit their DoD employees to attend meetings, conferences, seminars or similar events sponsored by non-Federal entities in their official DoD capacities at Federal Government expense if there is a legitimate Federal Government purpose in accordance with 5 U.S.C. 4101 et seq. (reference (b)) and 37 U.S.C. 412 (reference (c)), such as training a DoD employee beyond maintaining professional credentials or gathering information of value to the DoD.

b. DoD employees are prohibited from attending events in their official DoD capacities at Federal Government expense in order to acquire or maintain professional credentials that are a minimum requirement to hold the DoD position. See 5 U.S.C. 5946 (reference (b)) and 31 U.S.C. 1345 (reference (d)).

3-201. Membership. DoD employees may serve as DoD liaisons to
* non-Federal entities when appointed by the head of the DoD Component command or
* organization who determines there is a significant and continuing DoD interest to be served by
such representation. Liaisons serve as part of their official DoD duties and under DoD
Component memberships. DoD employees may not accept DoD Component membership in a
non-Federal entity on behalf of DoD except as provided by statute or regulation. DoD may pay
for DoD Component memberships in accordance with opinions of the Comptroller General, such
as 24 Comp. Gen. 814 (reference (e)). DoD is prohibited from paying for individual
memberships by 5 U.S.C. 5946 (reference (b)). See also 10 U.S.C. 2601 (reference (f)).

3-202. Management. DoD employees may not participate in their official DoD capacities in the management of non-Federal entities without authorization from the Head of the DoD Component. However, authorized DoD employees may officially represent DoD in discussions of matters of mutual interest with non-Federal entities, may participate in the determinations and conclusions of non-Federal entities, and may cast a vote on issues within the scope of the DoD employees' official responsibilities.

3-203. Impartiality of Agency Designee and Travel-Approving Authority.
When a DoD employee requests permission to travel to or participate in activities of a non-Federal entity and the Agency Designee or travel approving authority is an active participant in the non-Federal entity, that Agency Designee or travel approving authority may not act on the DoD employee's request but shall defer such action to the next higher superior or another independent DoD authority. See 5 C.F.R. 2635.402 and 2635.502 (reference (g)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (h)).

3-204. Impartiality of DoD Employees. DoD employees are generally prohibited from engaging in any official activities in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year. See 5 C.F.R. 2635.402 and 2635.502 (reference (g)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (h)).

3-205. Endorsement. *Endorsement of a non-Federal entity may be neither stated nor implied by DoD or DoD employees and DoD employees may not use their titles or positions to suggest official endorsement or preferential treatment of any non-Federal entity except those listed in subsection 3-210 of this Regulation, below.* Use of military grade as part of an individual's name in relationship to membership in private organizations is permissible. See 5 C.F.R. 2635.702(c) (reference (g)) in subsection 2-100 of this Regulation. *

3-206. Distributing Information. In accordance with public affairs regulations, official channels may be used to notify DoD employees of events sponsored by non-Federal entities.

3-207. Remuneration. DoD employees may not receive any salary or salary supplement from a non-Federal entity for performance of DoD duties.

3-208. Co-sponsorship. A DoD Component is a sponsor or co-sponsor of an event when that DoD Component is one of the organizations holding the event or in whose name the event is held. Co-sponsorship of events with a non-Federal entity is prohibited except as follows:

a. A DoD Component may co-sponsor a civic or community activity where the head of the DoD Component command or organization determines that the activity is unrelated to the purpose or business of the co-sponsoring, non-Federal entity or the purpose or business of any of its members. See DoD Instruction 5410.20 (reference (i));

b. A DoD Component may co-sponsor a conference, seminar, or similar event with a non-Federal entity when all of the following requirements are met:

(1) The head of the DoD Component command or organization finds that the subject matter of the conference (or co-sponsored portion) is scientific, technical or professional issues that are relevant to the DoD Component's mission;

(2) The head of the DoD Component command or organization finds that the purpose of co-sponsorship is to transfer federally developed technology or to stimulate wider interest and inquiry into the scientific, technical or professional issues identified above;

(3) The non-Federal entity is a recognized scientific,

technical or professional organization approved by the DoD Component DAEO for this purpose; and

(4) The DoD Component accomplishes the co-sponsorship through a contract, grant or cooperative agreement as identified in 31 U.S.C. 6303 through 6306 (reference (d)); or a Cooperative Research and Development Agreement (CRDA) as defined in 15 U.S.C. 3710a (reference (j)); or a cooperative agreement or other transaction identified in 10 U.S.C. 2371 (reference (f)).

c. If the DoD Component desires to sponsor an event, but requires assistance in making the arrangements, the DoD Component may arrange, through normal acquisition procedures, to have a non-Federal entity provide whatever assistance is necessary. If the event is open to individuals outside the Federal Government, attendance may not be limited to members of the supporting non-Federal entity. The supporting non-Federal entity may be permitted to mention its support in conference materials, but not in terms which imply that it is sponsoring or co-sponsoring the event.

3-209. Participation in Conferences and Similar Events. Subject to the provisions of subsection 3-211 of this Regulation, below, and in accordance with public affairs regulations and 31 U.S.C. 1345 (reference (d)), DoD employees may participate in their official DoD capacities as speakers or panel members at conferences, seminars, or similar events sponsored by non-Federal entities.

3-210. Fundraising and Membership Drives

a. *Except as provided in subsection 3-211 of this Regulation, below, DoD Components shall not officially support and DoD employees shall not officially endorse or officially participate in membership drives or fundraising for any non-Federal entity except the following organizations which are not subject to the provisions of subsection 3-211 of this Regulation, below:*

- (1) *The Combined Federal Campaign (CFC);*
- (2) *Emergency and disaster appeals approved by the Office of Personnel Management (OPM);*
- (3) *Army Emergency Relief;*
- (4) *Navy-Marine Corps Relief Society;*
- (5) *Air Force Assistance Fund, including:*

- (a) *Air Force Enlisted Men's Widows and Dependents Home Foundation, Inc.;*
- (b) *Air Force Village;*
- (c) *Air Force Aid Society;*
- (d) *General and Mrs. Curtis E. LeMay Foundation.*

(6) *Other organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members when approved by the head of the DoD Component command or organization.*

b. Fundraising by DoD employees is strictly regulated by E.O. 12353 (reference (k)), 5 C.F.R. 950 (reference (l)), DoD Directive 5035.1 (reference (m)), DoD Instruction 5035.5 (reference (n)), DoD Directive 5410.18 (reference (o)), 5 C.F.R. 2635.808 (reference (g)) in subsection 2-100 of this Regulation, and by the prohibition against preferential treatment established in subsection 3-205 of this Regulation, above.

3-211. Support of Non-Federal Entity Events

a. The head of a DoD Component command or organization may provide DoD employees in their official capacities as speakers, panel members or other participants, or, on a limited basis, the use of DoD facilities and equipment (and the services of DoD employees necessary to make proper use of the equipment), in support of an event sponsored by a non-Federal entity when the head of the DoD command or organization determines all of the following:

(1) The support does not interfere with the performance of official duties and would in no way detract from readiness;

(2) The sponsoring non-Federal entity is not affiliated with the CFC (including local CFC) or, if affiliated with the CFC, the Director, OPM or designee has no objection to DoD support of the event (OPM generally has no objection to support of events that do not specifically target Federal employees for fundraising);

(3) The community relations with the immediate community and/or other legitimate DoD interests are served by the support;

(4) It is appropriate to associate DoD, including the concerned Military Department, with the event;

(5) The event is of interest and benefit to the local civilian or military community as a whole;

(6) The DoD Component command or organization is able and willing to provide the same support to comparable events that meet the criteria of this subsection and are sponsored by other similar non-Federal entities;

(7) The use is not restricted by other statutes or regulations; and

(8) Except for a charitable fundraising event that meets all other criteria for DoD participation, no admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the event, no admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the portion of the event supported by DoD, or DoD support to the event is incidental to the entire event in accordance with public affairs guidance.

b. Involvement of DoD resources in air shows sponsored by non-Federal entities is approved or disapproved by the Office of the Assistant Secretary of Defense (Public Affairs).

c. Speeches by DoD employees at events sponsored by non-Federal entities are not precluded when the speech expresses an official DoD position in a public forum in accordance with public affairs guidance.

3-212. Relationships Governed by Other Authorities. In addition to the provisions of this Chapter, certain organizations have special relationships with DoD or its employees specifically recognized by law or by other directives. These organizations include:

- a. Certain banks and credit unions (DoD Directive 1000.11 (reference (p)));
- b. United Service Organization (DoD Directive 1330.12 (reference (q)));
- c. Labor organizations (5 U.S.C. Chapter 71 (reference (b))); DoD 1400.25-M, Chapter 711 (reference (r)));

- d. Combined Federal Campaign (E.O. 10927 (reference (s)), DoD Directive 5035.1 (reference (m)));
- e. Association of Management Officials and Supervisors (DoD Instruction 5010.30 (reference (t)));
- f. American Registry of Pathology (10 U.S.C. 177); Henry M. Jackson Foundation for the Advancement of Military Medicine (10 U.S.C. 178); American National Red Cross (10 U.S.C. 2542); Boy Scouts Jamborees (10 U.S.C. 2544); Girl Scouts International Events (10 U.S.C. 2545); Shelter for Homeless (10 U.S.C. 2546); National Military Associations; Assistance at National Conventions (10 U.S.C. 2548); Assistance from American National Red Cross (10 U.S.C. 2602); United Seaman's Service Organization (10 U.S.C. 2604); Scouting: Cooperation and Assistance in Foreign Areas (10 U.S.C. 2606); and Civil Air Patrol (10 U.S.C. 9441-9442) (reference (f)).

SECTION 3. PERSONAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-300. Participation

a. Fundraising and Other Activities. Subject to other provisions of this Regulation, DoD employees may voluntarily participate in activities of non-Federal entities as individuals in their personal capacities provided they act exclusively outside the scope of their official position. Purely personal, unofficial, volunteer efforts to support fundraising are not prohibited where the efforts do not imply DoD endorsement. The head of the DoD Component command or organization may authorize such activities outside the Federal Government workplace, such as at public entrances, in community support facilities and in personal quarters. See 5 C.F.R. 950 (reference (l)) and E.O. 12353 (reference (k)). These activities may be further limited by Federal Government building and grounds regulations.

b. Professional Associations and Learned Societies. Agency Designees may permit excused absences for reasonable periods of time for their DoD employees to voluntarily participate in the activities of non-profit professional associations and learned societies and may permit the limited use by their DoD employees of Federal Government equipment or administrative support services to prepare papers to be presented at such association or society events or to be published in professional journals when:

(1) The participation or paper is related to the DoD employee's official position or to DoD functions, management or mission; and

(2) The Agency can derive some benefit from the

* participation or preparation, such as expansion of professional expertise by DoD employees or
* improved public confidence derived from the professional recognition of the DoD employee's
* competence;

* (3) The participation or preparation of the paper does
not interfere with the performance of official DoD duties.

* c. Community Support Activities. Agency Designees may
* permit excused absences for reasonable periods if time for their DoD employees to voluntarily
* participate in community support activities that promote civic awareness and uncompensated
public service such as disaster relief events, blood donations, and voting and registering to vote.

d. Impartiality of Agency Designee and Travel Approving
Authority. When a DoD employee requests permission to travel to or participate in activities of
a non-Federal entity and the Agency Designee or travel approving authority is an active
participant in the non-Federal entity, that Agency Designee or travel approving authority may
not act on the DoD employee's request but shall defer such action to the next higher superior or
another independent DoD authority. See 5 C.F.R. 2635.402 and 2635.502 (reference (g)) in
subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (h)).

3-301. Membership and Management. DoD employees may become
members and may participate in the management of non-Federal entities as individuals in a
personal capacity provided they act exclusively outside the scope of their official position.
* Except for such service in the organizations listed in subsection 3-210.a. of this Regulation,
* above, a DoD employee may not serve in a personal capacity as an officer, member of the Board
of Directors, or in any other similar position in any non-Federal entity offered because of their
DoD assignment or position.

3-302. Impartiality of DoD Employees. DoD employees are generally
prohibited from engaging in any official activities in which a non-Federal entity is a party or has
a financial interest if the DoD employee is an active participant in the non-Federal entity or has
been an officer in the non-Federal entity within the last year. See 5 C.F.R. 2635.402 and
2635.502 (reference (g)) in subsection 2-100 of this Regulation and 18 U.S.C. 208
(reference (h)).

3-303. Interference with Employment of Local Civilians. Enlisted
members on active duty may not be ordered or authorized to leave their post to engage in a
civilian pursuit, business, or professional activity if it interferes with the customary or regular
employment of local civilians in their art, trade, or profession. See 10 U.S.C. 974 (reference (f)).

3-304 Competition with Civilian Musicians. Members of military bands

are very restricted in the degree to which they may compete off base with civilian musicians.
See 10 U.S.C. 3634, 6223 and 8634 (reference (f)).

3-305. Use of Federal Government Resources

a. Authorized Uses. Other than Federal Government time authorized in subsections 3-300.b. and 3-300.c. of this Regulation, above, Federal Government assets, employees, or property may not be used in support of personal participation in non-Federal entities, except as follows:

(1) Agency Designees may permit occasional use of Federal Government telephone systems in keeping with GSA rules on personal calls, provided that such use does not interfere with the performance of official duties. See subsection 2-301 of this Regulation and 41 C.F.R. 201-21.6 (reference (u));

(2) Because the cost to the Federal Government is minimal, the use of office telecommunications equipment for local calls, word processing equipment, libraries and similar resources and facilities whose use would not affect Federal Government costs significantly, may be permitted by the Agency Designee if:

- (a) The non-Federal entity is not a prohibited source;
- (b) The Agency Designee determines that:
 - 1 A legitimate public interest is served by the use; or
 - 2 The use would enhance the professional development or skills of the DoD employee in his current position.
- (c) The use of such resources is made only during personal time, such as excused absence, lunch period, or after duty hours; and
- (d) The use does not interfere with the performance of official duties.

b. Prohibited Uses

(1) *Because of the potential for significant cost to the Federal Government, and the potential for abuse, DoD employees, such as secretaries, clerks, and military aides, may not be used to support the unofficial activity of another DoD employee in support of non-Federal entities except as provided in subsection 3-300.b. of this Regulation, above.*

(2) *For the same reasons, copiers and other duplicating equipment may not be used for unofficial activity in support of non-Federal entities.*

3-306. Prior Approval of Outside Employment and Business Activities

a. A DoD employee, other than a special Government employee, who is required to file a financial disclosure report, SF 450 or SF 278, Appendix C of this Regulation, shall obtain written approval from the Agency Designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with subsection 3-306.b. of this Regulation, below. Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation.

(1) Business activity means any business, contractual or other financial relationship not involving the provision of personal services by the DoD employee. It does not include a routine commercial transaction or the purchase of an asset or interest, such as common stock, that is available to the general public.

(2) Employment means any form of non-Federal Government employment or business relationship involving the provision of personal services by the DoD employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.

(3) Prohibited source has the meaning set forth in 5 C.F.R. 2635.203(d) (reference (g)) in subsection 2-100 of this Regulation, as modified by the separate Agency designations in subsection 2-201 of this Regulation.

b. The DoD Component DAEO or designee may, by a written notice, exempt categories of business activities or employment from the requirement of subsection 3-306.a. of this Regulation, above, for prior approval based on a determination that business activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

c. A copy of the request for prior approval and the written approval shall be kept with the filed copy of the DoD employee's financial disclosure report, SF 450 or SF 278, Appendix C of this Regulation, or with the local Ethics Counselor.

d. Such DoD employees who have not obtained prior approval and who are, on the effective date of this supplemental rule, already engaged in an outside activity that requires prior approval shall have 90 days from that date to obtain such approval.

e. Except to the extent that when procedures have been established by higher authority for any class of DoD employee (e.g., DoD Directive 6025.7 (reference (v))), Agency Designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity.

(1) The commander, head of the organization, or supervisor may prohibit the employment or activity if he believes that the proposed outside activity will detract from readiness or pose a security risk.

(2) If action is not taken to prohibit the employment or activity, the DoD employee is free to engage in the employment or activity in keeping with other restrictions of this Regulation.

3-307. Teaching, Speaking and Writing

a. Disclaimer for Speeches and Writings Devoted to Agency Matters. *A DoD employee who uses or permits the use of his military grade or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 C.F.R. 2635.807(b)(1) (reference (g)) in subsection 2-100 of this Regulation, shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's Agency, as defined in subsection 2-201 of this Regulation, and the DoD employee has not been authorized by appropriate Agency authority to present that material as the Agency's position.*

(1) *The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its Components.*

(2) *Where a disclaimer is required for an article, book or other writing, the disclaimer shall be printed in a reasonably prominent position in the writing itself. Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.*

b. Security Clearance. A lecture, speech, or writing that pertains to military matters, national security issues, or subjects of significant concern to DoD shall be reviewed for clearance by appropriate security and public affairs offices prior to delivery or publication.

* c. Honoraria. Compensation for a lecture, speech or writing
* may be restricted by the honoraria prohibition of 5 U.S.C. App. 501 (reference (b)) and 5 C.F.R. 2636 (reference (a)) in subsection 3-100 of this Regulation, above, and by 5 C.F.R. 2635.807
* (reference (g)) in subsection 2-100 of this Regulation. However, the U.S. Office of Government
* Ethics, by memorandum dated February 2, 1994, (reference (w)), determined, in accordance with
* a Department of Justice letter to the Director, Office of Government Ethics, that the Department
* of Justice will not seek to impose penalties for violations of 5 U.S.C. App. 501 (reference (b))
* with respect to receipt of honoraria between September 28, 1993 and the date on which the
* Supreme Court issues its decision on this matter.

SECTION 4. REFERENCES

3-400. References

- (a) Title 5, Code of Federal Regulations, Part 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria," current edition
- (b) Title 5, United States Code, Chapter 71, App. 501, 4101 and 5946
- (c) Title 37, United States Code, Section 412
- (d) Title 31, United States Code, Sections 6303 through 6306 and 1345
- (e) Decisions of the Comptroller General, Volume 24, page 814, 1945
- (f) Title 10, United States Code, Sections 177, 178, 974, 2371, 2541, 2542, 2544, 2545, 2546, 2548, 2601, 2602, 2604, 2606, 3634, 6223, 8634, 9441 and 9442
- (g) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (h) Title 18, United States Code, Section 208
- (i) DoD Instruction 5410.20, "Public Affairs Relations with Business and Nongovernmental Organizations Representing Business", January 16, 1974
- (j) Title 15, United States Code, Section 3710a

- (k) Executive Order 12353, "Charitable Fund-Raising," March 23, 1982, as amended
- (l) Title 5, Code of Federal Regulations, Part 950, "Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations," current edition
- (m) DoD Directive 5035.1, "Fund-raising within the Department of Defense," August 28, 1990
- (n) DoD Instruction 5035.5, "DoD Combined Federal Campaign - Overseas Area," August 17, 1990
- (o) DoD Directive 5410.18, "Community Relations," July 3, 1974
- (p) DoD Directive 1000.11, "Financial Institutions on DoD Installations," July 26, 1989
- (q) DoD Directive 1330.12, "United Service Organizations, Inc.," November 9, 1987
- (r) DoD 1400.25-M, "DoD Civilian Personnel Manual," January 24, 1978, authorized by DoD Directive 1400.25, "Department of Defense Civilian Personnel Manual System," January 24, 1978
- (s) Executive Order 10927, "Abolishing the President's Committee on Fund-Raising Within the Federal Service and Providing for the Conduct of Fund-Raising Activities," March 18, 1961
- (t) DoD Instruction 5010.30, "Intramangement Communication and Construction," May 2, 1989
- (u) Title 41, Code of Federal Regulations, Part 201-21.6, "Management and Use of Federal Information Processing Resources," current edition
- (v) DoD Directive 6025.7, "Off Duty Employment by DoD Health Care Providers," October 21, 1985
- (w) Office of Government Ethics Memorandum, "Honoraria," February 2, 1994

CHAPTER 4

TRAVEL BENEFITS

SECTION 1. ACCEPTANCE OF OFFICIAL TRAVEL BENEFITS IN KIND OR PAYMENT FOR OFFICIAL TRAVEL EXPENSES

4-100. Acceptance from Non-Federal Sources

a. Official Travel. Official travel by DoD employees shall be funded by the Federal Government except that DoD Components may accept official travel benefits, including in kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources as provided in this Chapter of this Regulation.

b. Personal Travel. This Chapter does not apply to travel benefits provided to DoD employees in their personal capacities. However, DoD employees must report such travel expenses when appropriate in accordance with Chapter 7 of this Regulation. There may be limitations on acceptance of travel benefits in a personal capacity, including limitations on acceptance from prohibited sources, because of official position, and under 41 U.S.C. 423 (reference (a)).

c. Acceptance Procedures. Any official travel benefits from non-Federal sources accepted by the travel approving authority must be:

(1) Approved in writing by the travel approving authority with the advice of the DoD employee's Ethics Counselor;

(2) If accepted under the authority granted by 31 U.S.C. 1353 (reference (b)), approved in advance of travel.

d. Spousal Travel. The travel approving authorities for travel of a spouse accompanying a DoD employee on official travel that is paid for or provided in kind by a non-Federal source are as follows:

(1) For DoD employees of OSD, Defense Agencies and DoD Field Activities, the Executive Secretary, OSD;

(2) For DoD employees of Military Departments, the Secretaries concerned or their designees;

(3) For DoD employees of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified or Specified Commands, and the Combined Commands and Agencies, the Chairman, Joint Chiefs of Staff, or his designee.

4-101. Acceptance of Travel and Related Expenses by a DoD Component From Non-Federal Sources

a. Attendance at a Meeting or Similar Function (31 U.S.C. 1353 (reference (b)))

(1) In accordance with 31 U.S.C. 1353 (reference (b)) and GSA travel regulations, 41 C.F.R. 301-1.2 and 304 (reference (c)), Heads of DoD Components may accept travel benefits from a non-Federal source incurred by DoD employees in connection with their attendance in an official capacity at a meeting or similar function. The Joint Federal Travel Regulations (JFTR), Chapter 7, Part W, Paragraphs U7900-7908 (DoD Uniformed Services) (reference (d)) and Joint Travel Regulations (JTR), Chapter 4, Part Q, Paragraphs C4900-4908 (DoD Civilian Personnel) (reference (e)) implement 41 C.F.R. 301-1.2 and 304 (reference (c)). For detailed guidance as to the applicability and application of specific authority, these regulations should be consulted directly.

(2) Where the GSA travel regulations, 41 C.F.R. 301-1.2 and 304 (reference (c)), are inconsistent with the JFTR (reference (d)) and JTR (reference (e)), 41 C.F.R. 301-1.2 and 304 (reference (c)) are the controlling authorities.

(3) A DoD Component may not accept travel benefits from non-Federal sources under any other gift acceptance authority if 31 U.S.C. 1353 (reference (b)) applies.

(4) Payment Guidelines. DoD employees (or their spouses) shall not accept cash payments on behalf of the Federal Government.

(a) When travel benefits are paid for rather than provided in kind, payments from the non-Federal source will be by check or similar instrument made payable to the United States Treasury. Any such payment received by the DoD employee (or spouse) shall be submitted with his travel voucher as soon as practicable.

(b) The DoD employee shall exclude from his travel voucher any request for reimbursement for travel benefits furnished in kind by a non-Federal source on the travel voucher to ensure that appropriate deductions are made in the travel, per diem, or other allowances payable by the United States.

(5) Reporting. Each travel-approving authority designated by the DoD Component Head to accept travel benefits from non-Federal sources shall submit a report to the DoD Component DAEO or

DoD employees who have not met the usual requirements for membership, however, primarily because of the DoD employee's grade or position, neither the membership nor its benefits may be accepted.

c. Prizes in "Open" and "Closed" Contests. When travel companies and related organizations offer prizes in a competition that is open to the general public, so that no one must perform official travel to win, a DoD employee may keep any prize he wins, even if he happened to enter the contest only because of official travel (e.g., a DoD employee flying on official business receives the winning entry blank in an airline's contest while on the flight, but individuals not using the airline will be given the entry blank on request). Some travel companies and related organizations offer prizes in connection with official travel. The prize usually is given as a result of a drawing or some kind of contest. If competition for a prize is limited to individuals using a certain kind of travel accommodation, which in the case of the DoD employee is paid for by the Federal Government, any prize won belongs to the Federal Government (e.g., an airline provides contest entry blanks only to passengers on its planes, and the DoD employee receives the winning entry blank while flying on official travel).

d. Incentives for Voluntary Surrender of Flight Reservations. DoD employees may keep payments or free tickets received from a carrier for voluntarily giving up a seat on an overbooked flight. DoD employees on official travel may not voluntarily surrender their seats if the resulting delay would interfere with the performance of duties. The delay may not increase the cost to the Federal Government. Therefore, travel vouchers should disclose the voluntary surrender and resulting delays and leave must be taken as appropriate.

SECTION 3. PROCEDURES AND RESPONSIBILITIES

4-300. The travel-approving authority shall:

a. Approve or disapprove acceptance of travel benefits in kind or payments of travel expenses from non-Federal sources in accordance with subsections 4-102 and 4-103 of this Regulation, above;

b. Acquire the concurrence of the DoD Component DAEO or designee when approving travel benefits in accordance with the conflict of interest analysis required by 41 C.F.R. 304-1.5 (reference (c));

c. Prepare and submit a report to the DoD Component DAEO or designee reporting all travel benefits over \$250 accepted in accordance with the authority granted under 31 U.S.C. 1353 (reference (b)) as implemented in subsection 4-101 of this Regulation above;

d. Prepare and submit a report to the DoD Component DAEO or designee within 30 days after completion of travel during which travel benefits have been paid by non-Federal sources under 5 U.S.C. 4111 (reference (g)). See subsection 4-102.c. of this Regulation, above.

4-301. Each DoD Component DAEO or Designee shall:

a. Prepare and submit semiannual reports to OGE on acceptance of payments under 31 U.S.C. 1353 (reference (b)) due May 31 and November 30 each year. See subsection 4-101.a.(5) of this Regulation, above;

b. Retain reports from the travel approving authority under 5 U.S.C. 4111 (reference (g)) for two years. See subsection 4-102.c. of this Regulation, above; *

c. Provide written concurrence for the approval of travel benefits in accordance with the conflict of interest analysis required by 41 C.F.R. 304-1.5 (reference (c)).

4-302. Each traveling DoD employee shall:

a. Provide all necessary information to the travel approving authority for a semiannual report to the DoD Component DAEO;

b. Turn in any merchandise, frequent flyer miles or other benefits as required under subsection 4-200 of this Regulation, above.

SECTION 4. REFERENCES

4-400. References

- (a) Title 41, United States Code, Section 423
- (b) Title 31, United States Code, Section 1353
- (c) Title 41, Code of Federal Regulations, Parts 301 through 304, "Federal Travel Regulation System," current edition
- (d) Joint Federal Travel Regulations, Paragraphs U2010B and U7900 through 7908 (DoD Uniformed Services)
- (e) Joint Travel Regulations, Paragraphs C1200 and C4900 through 4908 (DoD Civilian Personnel)
- (f) Title 10, United States Code, Section 2601
- (g) Title 5, United States Code, Sections 4111 and 7342
- (h) Title 5, Code of Federal Regulations, Section 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (i) Title 26, United States Code, Section 501

benefit plan maintained by his former employer. See 18 U.S.C. 209(b) (reference (c)).

d. Reserve military officers and certain temporarily commissioned military officers who are ordered to active duty may continue to receive compensation from individuals who furnished compensation to them prior to being ordered to active duty. See 10 U.S.C. 1033 (reference (l)) and 50 U.S.C. App. 454(f) (reference (n)).

5-405. Additional Pay or Allowances. *DoD employees may not receive additional pay or allowances for disbursement of public money or for the performance of any other service or duty unless specifically authorized by law. See 5 U.S.C. 5536 (reference (k)).*

a. 5 U.S.C. 5536 (reference (k)) precludes extra pay from the Federal Government for the performance of official duties. Subject to certain limitations, civilian DoD employees may hold two distinctly different Federal Government positions and receive the salaries of both if the duties of each are performed. Absent specific authority, however, military members may not do so because any arrangement by a military member for rendering services to the Federal Government in another position is incompatible with the military member's actual or potential military duties. That a military member may have leisure hours during which no official duty is performed does not alter the result. See 52 Comp. Gen. 471 (reference (o)) and 22 Comp. Gen. 127, 149 (reference (p)).

b. 5 U.S.C. 5536 (reference (k)) applies to enlisted members and precludes enlisted members from supplementing their official salaries from outside sources for performing their official duties.

5-406. Interference with Military Duties. Military officers on active duty (except while on terminal leave) may not accept employment if it requires separation from their organization, branch, or unit, or interferes with the performance of military duties. See 10 U.S.C. 973(a) (reference (l)).

5-407. Civil Office Prohibition. Regular military officers on the active duty list and retired Regular military officers on active duty for more than 180 days may not hold civil office, unless expressly authorized by law. See 10 U.S.C. 973(b) (reference (l)).

5-408. Assignment of Reserves for Training

a. Personnel who assign Reserves for training shall not assign them to duties in which they will obtain information that they or their private employers may use to gain unfair advantage over competitors. Reservists must disclose to superiors and assignment personnel information necessary to ensure that no conflict exists between their duty assignment and their private interests.

b. Commanders, or their designees, shall screen Reservists performing training to ensure that no actual or apparent conflict exists between their private interests and their duty assignment. While Reservists have an affirmative obligation under this rule to disclose material facts in this regard, receiving commands cannot assume compliance and shall independently screen incoming personnel to avoid conflicts of interests.

5-409. Commercial Dealings Involving DoD Employees. *A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's non-commercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal Government building management policies does not constitute solicitation for purposes of this subsection.*

* a. *This prohibition includes the solicited sale of insurance, stocks, mutual funds, real estate, cosmetics, household supplies, vitamins, and other goods or services.* *

* b. *Both the act of soliciting and the act of selling as a result of soliciting are prohibited. In both cases, however, a solicitation is necessary for a violation to occur. While the standard prohibits a senior from making a solicited sale to a junior or to the junior's family, sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion or intimidation by the senior.* *

* c. Personal commercial solicitations by the spouse or other household member of a DoD employee to those who are junior in rank, grade, or position to the DoD employee, may give rise to the appearance that the DoD employee himself is using his public office for personal gain. When a spouse or household member of a DoD employee engages in such activity, the supervisor of the DoD employee must consult an Ethics Counselor, and counsel the DoD employee that such activity should be avoided where it may: *

CHAPTER 6

POLITICAL ACTIVITIES

SECTION 1. OFFICE OF PERSONNEL MANAGEMENT REGULATION

* 6-100. 5 C.F.R. 734, "Political Activities of Federal Employees" *

(reference (a)).

POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

5 CFR 734¹

Table of Contents

SUBPART A: GENERAL PROVISIONS	2
Sec. 734.101 Definitions	2
Sec. 734.102 Jurisdiction	5
Sec. 734.104 Restriction of political activity	6
SUBPART B: PERMITTED ACTIVITIES	6
Sec. 734.201 Exclusion from coverage	6
Sec. 734.202 Permitted activities	6
Sec. 734.203 Participation in nonpartisan activities	6
Sec. 734.204 Participation in political organizations	7
Sec. 734.205 Participation in political campaigns	8
Sec. 734.206 Participation in elections	9
Sec. 734.207 Candidacy for public office	9
Sec. 734.208 Participation in fundraising	9
SUBPART C: PROHIBITED ACTIVITIES	11
Sec. 734.301 Exclusion from coverage	11
Sec. 734.302 Use of official authority; prohibition	12
Sec. 734.303 Fundraising	12
Sec. 734.304 Candidacy for public office	12
Sec. 734.305 Soliciting or discouraging the political participation of certain persons	12
Sec. 734.306 Participation in political activities while on duty	13
Sec. 734.307 Campaigning for a spouse or family member	15
SUBPART D: EMPLOYEES IN CERTAIN AGENCIES AND POSITIONS	15
Sec. 734.401 Coverage	15
Sec. 734.402 Expression of an employee's individual opinion	16
Sec. 734.403 Participation in elections	17
Sec. 734.404 Participation in political organizations	18
Sec. 734.405 Campaigning for a spouse or family member	18
Sec. 734.406 Participation in political activities while on duty	19
Sec. 734.407 Use of official authority; prohibition	19
Sec. 734.408 Participation in political management and political campaigning; prohibitions	19
Sec. 734.409 Participation in political organizations; prohibitions	19
Sec. 734.410 Participation in political fundraising; prohibitions	20
Sec. 734.411 Participation in political campaigning; prohibitions	20
Sec. 734.412 Participation in elections; prohibitions	20
Sec. 734.413 Employees of the Federal Election Commission; prohibitions	21
SUBPART E: SPECIAL PROVISIONS FOR CERTAIN PRESIDENTIAL APPOINTEES AND EMPLOYEES PAID FROM THE APPROPRIATION FOR THE EXECUTIVE OFFICE OF THE PRESIDENT	21
Sec. 734.502 Participation in political activity while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle	21
Sec. 734.503 Allocation and reimbursement of costs associated with political activities	23
SUBPART F: EMPLOYEES WHO WORK ON AN IRREGULAR OR OCCASIONAL BASIS	25
Sec. 734.601 Employees who work on an irregular or occasional basis	25
SUBPART G: RELATED STATUTES AND EXECUTIVE ORDERS	25
Sec. 734.701 General	25
Sec. 734.702 Related statutes and Executive orders	25

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

SUBPART A: GENERAL PROVISIONS

Sec. 734.101 Definitions.

For the purposes of this part:

Accept means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group.

Candidate means an individual who seeks nomination or election to any elective office whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election.

Campaign means all acts done by a candidate and his or her adherents to obtain a majority or plurality of the votes to be cast toward a nomination or in an election.

Election includes a primary, special, runoff, or general election.

Employee means any individual (other than the President, Vice President, or a member of the uniformed services) employed or holding office in--

- (1) An Executive agency other than the General Accounting Office;
- (2) A position within the competitive service which is not in an Executive agency;
- (3) The Government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds; or
- (4) The United States Postal Service or the Postal Rate Commission.

Employing office shall have the meaning given by the head of each agency or instrumentality of the United States Government or District of Columbia Government covered by this part. Each agency or instrumentality shall provide notice identifying the appropriate employing offices within it through internal agency notice procedures.

Federal employee organization means any lawful nonprofit organization, association, society, or club composed of Federal employees.

Federal labor organization means an organization defined in 5 U.S.C. 7103(a)(4).

Multicandidate political committee means an organization defined in 2 U.S.C. 441a(a)(4).

Nonpartisan election means--

(1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or

(2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

Office means the U.S. Office of Personnel Management.

On Duty means the time period when an employee is:

(1) In a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or

(2) Representing any agency or instrumentality of the United States Government or any agency or instrumentality of the District of Columbia Government in an official capacity.

Partisan when used as an adjective means related to a political party.

POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES, 5 CFR 734

Partisan political group means any committee, club, or other organization which is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.

Partisan political office means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but does not include any office or position within a political party or affiliated organization.

Person means an individual; a State, local, or foreign government; or a corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity.

Political activity means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

Political contribution means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.

(a) A political contribution includes:

(1) Any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(2) Any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(3) The provision of personal services, paid or unpaid, for any political purpose.

(b) A political contribution does not include the value of services provided without compensation by any individual who volunteers on behalf of any candidate, campaign, political party, or partisan political group.

Political management means the direction or supervision of a partisan political group or campaign for partisan political office.

Political party means a national political party, a State political party, or an affiliated organization.

Political purpose means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.

Receive means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group.

Solicit means to request expressly of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan political group.

Subordinate refers to the relationship between two employees when one employee is under the supervisory authority, control or administrative direction of the other employee.

Uniformed services means uniformed services as defined in 5 U.S.C. 2101(3).

Sec. 734.102 Jurisdiction.

(a) The United States Office of Special Counsel is authorized to investigate allegations of political activity prohibited by 5 CFR part 734, prosecute alleged violations before the United States Merit Systems Protection Board, and render advisory opinions concerning the applicability of 5 CFR part 734 to the political activity of Federal employees and employees of the District of Columbia Government. Advice concerning the Hatch Act Reform Amendments may be requested from the Office of Special Counsel:

(1) By letter addressed to the Office of Special Counsel at 1730 M Street NW., Suite 300, Washington, DC 20036,
or

(2) By telephone on (202) 653-7188, or (1-800) 854-2824.

(b) The Merit Systems Protection Board is authorized to determine whether a violation has occurred and to impose a minimum penalty of suspension for 30 days and a maximum penalty of removal for violation of the political activity restrictions regulated by this part. (5 U.S.C. 1204, 1212, 1216, and 7326).

(c) The Office of Personnel Management is authorized to issue regulations describing the political activities which are permitted and prohibited under the Hatch Act Reform Amendments of 1993. (5 U.S.C. 1103, 1104, 7325; Reorganization Plan No. 2 of 1978, 92 Stat. 3783, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264.)

Sec. 734.103 Multicandidate political committees of Federal labor organizations and Federal employee organizations.

(a) In order to qualify under this part, each multicandidate political committee of a Federal labor organization must provide to the Office the following:

(1) Information verifying that the multicandidate political committee is a multicandidate political committee as defined by 2 U.S.C. 441a(a)(4);

(2) Information identifying the Federal labor organization to which the multicandidate political committee is connected; and

(3) Information that identifies the Federal labor organization as a labor organization defined at 5 U.S.C. 7103(4).

(b) In order to qualify under this part, each multicandidate political committee of a Federal employee organization must provide to the Office the following:

(1) Information verifying that the multicandidate political committee is a multicandidate political committee as defined in 2 U.S.C. 441a(a)(4);

(2) Information identifying the Federal employee organization to which the multicandidate political committee is connected; and

(3) Information indicating that the multicandidate political committee was in existence as of October 6, 1993.

Sec. 734.104 Restriction of political activity.

No further proscriptions or restrictions may be imposed upon employees covered under this regulation except:

(a) Employees who are appointed by the President by and with the advice and consent of the Senate;

(b) Employees who are appointed by the President;

(c) Non-career senior executive service members;

(d) Schedule C employees, 5 CFR 213.3301, 213.3302; and

(e) Any other employees who serve at the pleasure of the President.

SUBPART B: PERMITTED ACTIVITIES

Sec. 734.201 Exclusion from coverage.

This subpart does not apply to employees in the agencies and positions described in subpart D of this part.

Sec. 734.202 Permitted activities.

Employees may take an active part in political activities, including political management and political campaigns, to the extent not expressly prohibited by law and this part.

Sec. 734.203 Participation in nonpartisan activities.

An employee may:

(a) Express his or her opinion privately and publicly on political subjects;

(b) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(c) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar

organization; and

(d) Participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government or the District of Columbia Government in which he or she is employed.

Example 1: An employee may participate, including holding office, in any nonpartisan group. Such participation may include fundraising as long as the fundraising is not in any way connected with any partisan political issue, group, or candidate, and as long as the fundraising complies with part 2635 of this title as well as any other directives that may apply, e.g., the Federal Property Management Regulations in 41 CFR chapter 101.

Sec. 734.204 Participation in political organizations.

An employee may:

- (a) Be a member of a political party or other political group and participate in its activities;
- (b) Serve as an officer of a political party or other political group, a member of a national, State, or local committee of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions;
- (c) Attend and participate fully in the business of nominating caucuses of political parties;
- (d) Organize or reorganize a political party organization or political group; and
- (e) Participate in a political convention, rally, or other political gathering.

Example 1: An employee of the Department of Education may serve as a delegate, alternate, or proxy to a State or national party convention.

Example 2: An employee of the Department of Health and Human Services may serve as a vice-president of a partisan or non-partisan political action committee, as long as the duties of the office do not involve personal solicitation, acceptance, or receipt of political contributions. Sections 734.208 and 734.303 of this part describe in detail permitted and prohibited activities which are related to fundraising.

Example 3: An employee of the Federal Communications Commission may make motions or place a name in nomination at a nominating caucus.

Example 4: An employee of the Department of the Interior may serve as an officer of a candidate's campaign committee as long as he does not personally solicit, accept, or receive political contributions. Sections 734.208 and 734.303 of this part describe in detail permitted and prohibited activities which are related to fundraising.

Sec. 734.205 Participation in political campaigns.

Subject to the prohibitions in section 734.306, an employee may:

- (a) Display pictures, signs, stickers, badges, or buttons associated with political parties, candidates for partisan political office, or partisan political groups, as long as these items are displayed in accordance with the provisions of section 734.306 of subpart C of this part;
- (b) Initiate or circulate a nominating petition for a candidate for partisan political office;
- (c) Canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office;
- (d) Endorse or oppose a partisan political candidate or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material;
- (e) Address a convention, caucus, rally, or similar gathering of a political party or political group in support of or in opposition to a partisan political candidate or a candidate for political party office; and
- (f) Take an active part in managing the political campaign of a partisan political candidate or a candidate for political party office.

Example 1: An employee of the Environmental Protection Agency may broadcast endorsements for a partisan political candidate via a public address system attached to his or her private automobile.

* Example 2: An employee of the Department of Interior may canvass voters by telephone on behalf of a political party or partisan political candidate. *

Example 3: An employee of the Department of Agriculture may stand outside of polling places on election day and hand out brochures on behalf of a partisan political candidate or political party.

Example 4: An employee may appear in a television or radio broadcast which endorses a partisan political candidate and is sponsored by the candidate's campaign committee, a political party, or a partisan political group.

Example 5: An independent contractor is not covered by this part and may display a political button while performing the duties for which he or she is contracted.

Example 6: An employee of the Department of Commerce who is on official travel may take annual leave in the morning to give an address at a breakfast for a candidate for partisan political office.

Example 7: An employee may manage the political campaign of a candidate for public office including supervising paid and unpaid campaign workers.

Sec. 734.206 Participation in elections.

An employee may:

- (a) Register and vote in any election;
- (b) Act as recorder, watcher, challenger, or similar officer at polling places;
- (c) Serve as an election judge or clerk, or in a similar position; and
- (d) Drive voters to polling places for a partisan political candidate, partisan political group, or political party.

Example: An employee may drive voters to polling places in a privately owned vehicle, but not in a Government-owned or leased vehicle.

Sec. 734.207 Candidacy for public office.

An employee may:

- (a) Run as an independent candidate in a partisan election covered by 5 CFR part 733; and
- (b) Run as a candidate in a nonpartisan election.

Example 1: An employee who is a candidate for public office in a nonpartisan election is not barred by the Hatch Act from soliciting, accepting, or receiving political contributions for his or her own campaign; however, such solicitation, acceptance, or receipt must comply with part 2635 of this title as well as any other directives that may apply, e.g., The Federal Property Management Regulations in 41 CFR chapter 101.

Sec. 734.208 Participation in fundraising.

(a) An employee may make a political contribution to a political party, political group, campaign committee of a candidate for public office in a partisan election and multicandidate political committee of a Federal labor or Federal employee organization.

(b) Subject to the prohibitions stated in section 734.303, an employee may—

- (1) Attend a political fundraiser;
- (2) Accept and receive political contributions in a partisan election described in 5 CFR part 733;
- (3) Solicit, accept, or receive uncompensated volunteer services from any individual; and
- (4) Solicit, accept, or receive political contributions, as long as:

(i) The person who is solicited for a political contribution belongs to the same Federal labor organization, or Federal employee organization, as the employee who solicits, accepts, or receives the contribution;

* *

(ii) The person who is solicited for a political contribution is not a subordinate employee; and

(iii) The request is for a contribution to the multicandidate political committee of a Federal labor organization or to the multicandidate political committee of a Federal employee organization in existence on October 6, 1993.

Example 1: An GS-12 employee of the Department of Treasury who belongs to the same Federal employee organization as a GS-5 employee of the Department of Treasury may solicit a contribution for the multicandidate political committee when she is not on duty as long as the GS-5 employee is not under the supervisory authority of the GS-12 employee.

Example 2: An employee of the National Park Service may give a speech or keynote address at a political fundraiser when he is not on duty, as long as the employee does not solicit political contributions, as prohibited in s 734.303(b) of this part.

Example 3: An employee's name may appear on an invitation to a political fundraiser as a guest speaker as long as the reference in no way suggests that the employee solicits or encourages contributions, as prohibited in section 734.303 of this part and described in example 2 thereunder. However, the employee's official title may not appear on invitations to any political fundraiser, except that an employee who is ordinarily addressed using a general term of address, such as "The Honorable," may use or permit the use of that term of address for such purposes.

Example 4: When an employee of the Department of Transportation is not on duty, she may engage in activities which do not require personal solicitations of contributions, such as organizing mail or phone solicitations for political contributions. However, the employee may not sign the solicitation letter unless the solicitation is for the contribution of uncompensated services of individuals. Activities such as stuffing envelopes with requests for political contributions are permitted.

Example 5: An employee who is not on duty may participate in a phone bank soliciting the uncompensated services of individuals. However, an employee may not make phone solicitations for political contributions even anonymously.

Example 6: An employee of the Department of Agriculture who is on official travel and is not in a pay status nor officially representing the Department may write invitations in his hotel room to a meet-the-candidate reception which he plans to hold in his home.

Example 7: An employee may serve as an officer or chairperson of a political fundraising organization or committee as long as he or she does not personally solicit, accept, or receive political contributions. For example, the employee may organize or manage fundraising activities as long as he or she does not violate the above prohibition.

Example 8: The head of a cabinet-level department may contribute one of her worn-out cowboy boots to the campaign committee of a Senatorial candidate to be auctioned off in a fundraising raffle for the benefit of the candidate's campaign.

Example 9: An employee may help organize a fundraiser including supplying names for the invitation list as long as he or she does not personally solicit, accept, or receive contributions.

Example 10: An employee on travel may engage in political activity when he or she is not on duty without taking annual leave.

Example 11: A Federal employee may solicit, accept, or receive the uncompensated volunteer services of any individual, except a subordinate employee, to work on behalf of a partisan political candidate or organization. However, such solicitation, acceptance, or receipt must comply with part 2635 of this title as well as any other directives that may apply, e.g., the Federal Property Management Regulations in 41 CFR chapter 101. Further, Federal employees are subject to criminal anti-coercion provisions found at 18 U.S.C. 610.

SUBPART C: PROHIBITED ACTIVITIES

Sec. 734.301 Exclusion from coverage.

This subpart does not apply to employees in the agencies and positions described in subpart D of this part.

Sec. 734.302 Use of official authority; prohibition.

An employee may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

Sec. 734.303 Fundraising.

An employee may not knowingly:

- (a) Personally solicit, accept or receive a political contribution from another person, except under the circumstances specified in section 734.208(b);
- (b) Personally solicit political contributions in a speech or keynote address given at a fundraiser;
- (c) Allow his or her official title to be used in connection with fundraising activities; or
- (d) Solicit, accept, or receive uncompensated volunteer services from an individual who is a subordinate.

Example 1: An employee may not host a fundraiser at his or her home. However, a spouse who is not covered under this part may host such a fundraiser and the employee may attend. The employee may not personally solicit contributions to the fundraiser. Moreover, the employee may not accept, or receive political contributions, except under the circumstances stated in section 734.208(b).

Example 2: An employee's name may not appear on an invitation to a fundraiser as a sponsor of the fundraiser, or as a point of contact for the fundraiser.

Example 3: An employee may not ask a subordinate employee to volunteer on behalf of a partisan political campaign.

Example 4: An employee may not call the personnel office of a business or corporation and request that the corporation or business provide volunteers or services for a campaign. However, an employee may call an individual who works for a business or corporation and request that specific individual's services for a campaign.

Sec. 734.304 Candidacy for public office.

An employee may not run for the nomination or as a candidate for election to partisan political office, except as specified in section 734.207.

Sec. 734.305 Soliciting or discouraging the political participation of certain persons.

- (a) An employee may not knowingly solicit or discourage the participation in any political activity of any person who has an application for any compensation grant, contract, ruling, license, permit, or certificate pending before the employee's employing office.
- (b) An employee may not knowingly solicit or discourage the participation in any political activity of any person who is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by the employee's employing office.
- (c) Each agency or instrumentality of the United States or District of Columbia Government shall determine when a matter is pending and ongoing within employing offices of the agency or instrumentality for the purposes of this part.

Example 1: An employee with agency-wide responsibility may address a large, diverse group to seek support for a partisan political candidate as long as the group has not been specifically targeted as having matters before the employing office.

Example 2: An employee of the Federal Deposit Insurance Corporation (FDIC) may not solicit or discourage the participation of an insured financial institution or its employees if the institution is undergoing examination by the FDIC.

Example 3: An employee of the Food and Drug Administration may address a banquet for a partisan political candidate which is sponsored by the candidate's campaign committee, even though the audience includes three individuals who are employed by or are officials of a pharmaceutical company. However, she may not deliver the address if the banquet is sponsored by a lobbying group for pharmaceutical companies, or if she knows that the audience will be composed primarily of employees or officials of such companies.

Sec. 734.306 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

- (a) An employee may not participate in political activities subject to the provisions of subpart E of this part:

- (1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, insignia, or other similar item that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

(b) The prohibitions in paragraph (a) of this section do not apply to employees covered under subpart E of this part.

Example 1: While on leave without pay, an employee is not subject to the prohibition in section 734.306(a)(1) because he or she is not on duty. However, while on leave without pay, the employee remains subject to the other prohibitions in subpart C.

Example 2: A Postal Service employee who uses her private vehicle to deliver mail may place a political bumper sticker on the vehicle, as long as she covers the bumper sticker while she is on duty.

Example 3: An employee who is being compensated for mileage when driving a privately owned vehicle may place a bumper sticker on the vehicle, as long as he covers the bumper sticker while the vehicle is being used for official duties.

Example 4: An employee may place a bumper sticker on his privately owned vehicle and park his vehicle in a parking lot of an agency or instrumentality of the United States Government or in a non-Federal facility for which the employee receives a subsidy from his or her employing agency or instrumentality.

Example 5: If an employee is not on duty, he or she may engage in political activity in the office of his or her labor organization local even if the space is provided by an agency or instrumentality of the United States Government to the labor organization.

Example 6: An agency or instrumentality of the United States Government leases offices in a commercial building; the headquarters of a candidate for partisan political office are situated in the same building. An employee of that agency or instrumentality may do volunteer work at the candidate's headquarters when he is not on duty.

Example 7: An employee of the National Aeronautics and Space Administration (NASA) may not engage in political activities while wearing a NASA flight patch, NASA twenty-year pin or anything with an official NASA insignia.

Example 8: If a political event begins while an employee is on duty and continues into the time when he or she is not on duty, the employee must wait until he or she is not on duty to attend the event. Alternatively, an employee may request annual leave to attend the political event when it begins.

Example 9: Officials of labor organizations who have been given official time to perform representational duties are on duty.

Example 10: An employee may stuff envelopes for a mailing on behalf of a candidate for partisan political office while the employee is sitting in the park during his lunch period if he is not considered to be on duty during his lunch period.

Example 11: An employee may engage in political activity in the courtyard outside of a Federal building where no official duties are discharged as long as the employee is not on duty.

Example 12: An employee who works at home may engage in political activities at home when he or she is not in a pay status or representing the Government in an official capacity.

Example 13: An employee who is appointed by the President by and with the advice and consent of the Senate (PAS) may attend a political event with a non-PAS employee whose official duties do not require accompanying the PAS as long as the non-PAS employee is not on duty.

Sec. 734.307 Campaigning for a spouse or family member.

An employee covered under this subpart who is the spouse or family member of either a candidate for partisan political office, candidate for political party office, or candidate for public office in a nonpartisan election, is subject to the same prohibitions as other employees covered under this subpart.

Example 1: An employee who is married to a candidate for partisan political office may attend a fundraiser for his spouse, stand in the receiving line, sit at the head table, and urge others to vote for his spouse. However, the employee may not personally solicit, accept, or receive contributions of money or personal services, or sell or collect money for tickets

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to the fundraiser.

Example 2: An employee who is the daughter of a candidate for partisan political office may appear in a family photograph which is printed in a campaign flier. She may distribute fliers at a campaign rally as long as she does not personally solicit contributions.

Example 3: An employee who is married to a candidate for political partisan political office may appear with her spouse in a political advertisement or a broadcast, and urge others to vote for her spouse, as long as the employee does not personally solicit political contributions.

SUBPART D: EMPLOYEES IN CERTAIN AGENCIES AND POSITIONS

Sec. 734.401 Coverage.

(a) This subpart applies to employees in the following agencies and positions:

- (1) The Federal Election Commission;
- (2) The Federal Bureau of Investigation;
- (3) The Secret Service;
- (4) The Central Intelligence Agency;
- (5) The National Security Council;
- (6) The National Security Agency;
- (7) The Defense Intelligence Agency;
- (8) The Merit Systems Protection Board;
- (9) The Office of Special Counsel;
- (10) The Office of Criminal Investigation of the Internal Revenue Service.
- (11) The Office of Investigative Programs of the United States Customs Service;
- (12) The Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;
- (13) The Criminal Division of the Department of Justice;
- (14) Career Senior Executive Service positions described in 5 U.S.C. 3132(a)(4);
- (15) Administrative Law Judge positions described in 5 U.S.C. 5372;
- (16) Contract Appeals Board Member positions described in 5 U.S.C. 5372a.

(b) Employees appointed by the President by and with the advice and consent of the Senate in the agencies and positions described in paragraph (a) of this section are excluded from coverage under this subpart.

(c) All employees covered under this subpart are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this subpart.

Sec. 734.402 Expression of an employee's individual opinion.

Each employee covered under this subpart retains the right to participate in any of the following political activities, as long as such activity is not performed in concert with a political party, partisan political group, or a candidate for partisan political office:

(a) Express his or her opinion as an individual privately and publicly on political subjects and candidates;

(b) Display a political picture, sign, sticker, badge, or button, as long as these items are displayed in accordance with the provisions of section 734.408 of subpart D of this part;

* * *

(c) Sign a political petition as an individual;

(d) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of a similar character; and

(e) Otherwise participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government in which he or she is employed.

Example 1: An employee may purchase air time on a radio or television station to endorse a partisan political candidate. However, he or she may not endorse such a candidate in a commercial or program which is sponsored by the candidate's campaign committee, a political party, or a partisan political group.

Example 2: An employee may address a political convention or rally but not on behalf, or at the request of, a political party, partisan political group, or an individual who is running for the nomination or as a candidate for election to partisan political office.

Example 3: An employee may print at her own expense one thousand fliers which state her personal opinion that a partisan political candidate is the best suited for the job. She may distribute the fliers at a shopping mall on the weekend. However, she may not distribute fliers printed by the candidate's campaign committee, a political party, or a partisan political group.

Example 4: An employee may stand outside of a political party convention with a homemade sign which states her individual opinion that one of the candidates for nomination is the best qualified candidate.

Example 5: An employee may not wear a button with a partisan political theme while she is on duty.

Sec. 734.403 Participation in elections.

Each employee covered under this subpart retains the right to:

(a) Register and vote in any election;

(b) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election; and

(c) Serve as an election judge or clerk, or in a similar position, to perform nonpartisan duties as prescribed by State or local law.

Sec. 734.404 Participation in political organizations.

Each employee covered under this subpart retains the right to:

(a) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(b) Be a member of a political party or other partisan political group and participate in its activities to the extent consistent with other Federal law;

(c) Attend a political convention, rally, fund-raising function, or other political gathering; and

(d) Make a financial contribution to a political party, partisan political group, or to the campaign committee of a candidate for partisan political office.

Example 1: An employee may attend a political convention or rally. However, the employee may not participate in demonstrations or parades which are sponsored by a political party, a partisan political group, or an individual who is running for nomination to be a candidate for partisan political office.

Example 2: An employee may attend a political party's annual barbecue, but he or she may not organize, distribute invitations to, or sell tickets to the barbecue.

Sec. 734.405 Campaigning for a spouse or family member.

An employee covered under this subpart who is the spouse or family member of either a candidate for partisan political office, or a candidate for political party office, may appear in photographs of the candidate's family which might appear in a

political advertisement, a broadcast, campaign literature, or similar material. A spouse or a family member who is covered by the Hatch Act Reform Amendments also may attend political functions with the candidate. However, the spouse or family member may not distribute campaign literature or solicit, accept, or receive political contributions.

Example 1: An employee who is the spouse of a candidate for partisan political office may stand in the receiving line and sit at the head table during a political dinner honoring the spouse.

Example 2: An employee who is the daughter of a candidate for partisan political office may appear in a family photograph which is printed in a campaign flier, but she may not distribute the flier at a campaign rally.

Sec. 734.406 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle; prohibition.

(a) An employee covered under this subpart may not participate in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

(b) [Reserved]

Sec. 734.407 Use of official authority; prohibition.

An employee covered under this subpart may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

Sec. 734.408 Participation in political management and political campaigning; prohibitions.

An employee covered under this subpart may not take an active part in political management or in a political campaign, except as permitted by this part.

Sec. 734.409 Participation in political organizations; prohibitions.

An employee covered under this subpart may not:

(a) Serve as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions;

(b) Organize or reorganize a political party organization or partisan political group;

(c) Serve as a delegate, alternate, or proxy to a political party convention; and

(d) Address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group.

Sec. 734.410 Participation in political fundraising; prohibitions.

An employee covered under this subpart may not:

(a) Solicit, accept, or receive political contributions; or

(b) Organize, sell tickets to, promote, or actively participate in a fundraising activity of a candidate for partisan political office or of a political party, or partisan political group.

Sec. 734.411 Participation in political campaigning; prohibitions.

An employee covered under this subpart may not:

- (a) Take an active part in managing the political campaign of a candidate for partisan political office or a candidate for political party office;
- (b) Campaign for partisan political office;
- (c) Canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, or of a political party, or partisan political group;
- (d) Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;
- (e) Initiate or circulate a partisan nominating petition.

Sec. 734.412 Participation in elections; prohibitions.

An employee covered under this subpart may not:

- (a) Be a candidate for partisan political office except as described in s 734.403;
- (b) Act as recorder, watcher, challenger, or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office;
- (c) Drive voters to polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.

Sec. 734.413 Employees of the Federal Election Commission; prohibitions.

- (a) An employee of the Federal Election Commission may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.
- (b) This section does not cover employee of the Federal Election Commission who are appointed by the President by and with the advice and consent of the Senate.

SUBPART E: SPECIAL PROVISIONS FOR CERTAIN PRESIDENTIAL APPOINTEES AND EMPLOYEES PAID FROM THE APPROPRIATION FOR THE EXECUTIVE OFFICE OF THE PRESIDENT

Sec. 734.501 Permitted and prohibited activities.

Except as otherwise specified in this part 734, employees who are appointed by the President by and with the advice and consent of the Senate are subject to the provisions of subparts B and C of this part.

Sec. 734.502 Participation in political activity while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

- (a) This section applies to an employee:

- (1) The duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

- (2) Who is--

- (i) An employee paid from an appropriation for the Executive Office of President; or

- (ii) An employee appointed by the President by and with the advice and consent of the Senate whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws;

- (b) For the purposes of this subpart, normal duty hours and normal duty post will be determined by the head of each agency or instrumentality of the United States or District of Columbia Government.

- (c) An employee described in paragraph (a) of this section may participate, subject to any restrictions that may be imposed in accordance with section 734.104, in political activities:

- (1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the agency or instrumentality of the United States Government or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

(d) An employee, to whom subpart E of this part does not apply, who is not on duty may participate in political activities in rooms of the White House which are part of the private Residence area or which are not regularly used solely in the discharge of official duties.

Example 1: An Inspector General is appointed under the Inspector General Act of 1978, as amended. According to section 3(c) of that Act, he or she does not qualify as an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws. therefore, he or she may not participate in political activities while on duty, while wearing a uniform, badge, or insignia that identifies his or her office or position, while in any room or building occupied in the discharge of official duties, or while using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

Example 2: An employee who is covered by this subpart and wears a uniform as an incident of her office may wear the uniform while she is giving a speech at a political fundraiser.

Example 3: The head of an executive department may hold a partisan political meeting or host a reception which is not a fundraiser in his conference room during normal business hours.

Example 4: An employee accompanies the Secretary of Transportation to a political party convention as part of the Secretary's security or administrative detail. The employee is considered to be on duty while protecting or performing official duties for the Secretary regardless of the nature of the function that the Secretary is attending.

Example 5: An American Ambassador overseas obtains authorization from the Department of State to depart post in order to take a vacation away from post. During the period she is authorized to be on vacation away from post, she is not considered to be on duty for the purpose of the Hatch Act Reform Amendments and may engage in any political activity permitted under the Hatch Act Reform Amendments of 1993.

Sec. 734.503 Allocation and reimbursement of costs associated with political activities.

(a) The costs associated with the political activities described in s 733.502(c) of this chapter may not be paid for by money derived from the Treasury of the United States. Costs associated with a political activity are deemed not to be paid for by money derived from the Treasury of the United States if the Treasury is reimbursed for the costs within a reasonable period of time.

(b) For the purposes of this section, costs associated with a political activity do not include any costs that the Government would have or have incurred regardless of whether the activity was political. Examples of such costs are:

(1) The compensation of the employee described in section 734.502(a);

(2) The value of any office or other real property owned or leased by the Government;

(3) The compensation and expenses of any Government employee that is required in the performance of his or her duties to accompany or assist the person engaging in the political activity; and

(4) The cost of special security arrangements for the person engaging in the political activity, including special transportation vehicles or methods.

(c) (1) An employee covered under this subpart must apportion the costs of mixed travel based on the time spent on political activities and the time spent performing official duties. Prorating the cost of travel involves determining the "total activity time" which is the amount of time actually spent by the employee in meetings, receptions, rallies, and similar activities. Time spent in actual travel, private study, or rest and recreation is not included in the computation of the "total activity time". The proration of the cost then is determined based on how the "total activity time" was spent. The formula is as follows:

Time spent in official meetings, receptions, etc. + Time spent in political meetings, receptions, rallies = Total activity time

Time spent in official activity ÷ Total activity time = Percentage of trip that is official

Time spent in political activity ÷ Total activity time = Percentage of trip that is political

The percentage figure that represents the political portion of the trip is then multiplied by the amount that would be reimbursed to the Government if all of the travel was political. The product of that calculation represents the amount to be paid by the political entity or organization.

(2) The allocation method must be applied to all of the relevant costs of mixed travel.

(3) Expenses that are associated specifically with a political activity and not with any official activity must be treated as political, and expenses associated specifically with an official activity and not with any political activity must be treated as official.

(4) In allocating the costs of travel other than air travel, the allocation formula should be applied to any Government maximum for that type of expenditure.

(5) The determination of the proper amount of allocation must be based on the facts and circumstances involved.

(6) In the event that a minor, clearly incidental percentage of the activity of a mixed trip is devoted to either official or political activity, e.g. less than 3%, the entire trip should be treated as if it was wholly of the type represented by the substantial figure. The balance should be treated as de minimis and need not be reimbursed as political or charged as official.

(d) For any cost of a political activity of an employee that is required to be reported to the Federal Election Commission under the Federal Election Campaign Act (FECA) or the Presidential Election Campaign Fund Act (PECFA), the employee shall use the same method of allocation as used under the FECA or PECFA and regulations thereunder in lieu of the allocation method in paragraph (c) of this section.

Example 1: The Secretary, an employee described by section 7324(b)(2) of title 5 of the United States Code, holds a catered political activity (other than a fundraiser) in her office. Her security detail attends the reception as part of their duty to provide security for her. The Secretary will not be in violation of the Hatch Act Reform Amendments if the costs of her office, her compensation, and her security detail are not reimbursed to the Treasury. A violation of the Hatch Act Amendments occurs if Government funds, including reception or discretionary funds, are used to cater the political activity, unless the Treasury is reimbursed for the cost of the catering within a reasonable time.

Example 2: There should be no allocation between official and political funds for a sound system rented for a single event.

Example 3: If on a mixed trip a Government employee is only entitled to \$26 per diem for food on a wholly official trip and the trip is 50% political and 50% official, the Government share would be 50% of \$26, not 50% of the actual amount spent.

Example 4: The President is transported by special motorcade to and from the site of the political event. The expense of the motorcade is for special security arrangements. Thus, it would not be a violation of the Hatch Act Reform Amendments if the costs of the security arrangements, including the cost of the motorcade, are not reimbursed to the Treasury.

SUBPART F: EMPLOYEES WHO WORK ON AN IRREGULAR OR OCCASIONAL BASIS

Sec. 734.601 Employees who work on an irregular or occasional basis.

An employee who works on an irregular or occasional basis or is a special Government employee as defined in 18 U.S.C. 202(a) is subject to the provisions of the applicable subpart of this part when he or she is on duty.

Example: An employee appointed to a special commission or task force who does not have a regular tour of duty may run as a partisan political candidate, but may actively campaign only when he or she is not on duty.

SUBPART G: RELATED STATUTES AND EXECUTIVE ORDERS

Sec. 734.701 General.

In addition to the provisions regulating political activity set forth in subparts A through G of this part, there are a number of statutes and Executive orders that establish standards to which the political activity of an employee, a Federal labor organization, a Federal employee organization, and a multicandidate political committee must conform. The list set forth in s 734.702 references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability.

* **Sec. 734.702 Related statutes and Executive orders.** *

- (a) The prohibition against offering anything of value in consideration of the use or promise of use of influence to procure appointive office (18 U.S.C. 210).
 - (b) The prohibition against solicitation or acceptance of anything of value to obtain public office for another (18 U.S.C. 211).
 - (c) The prohibition against intimidating, threatening, or coercing voters in Federal elections (18 U.S.C. 594).
 - (d) The prohibition against use of official authority to interfere with a Federal election by a person employed in any administrative position by the United States in connection with any activity financed in whole or in part by Federal funds (18 U.S.C. 595).
 - (e) The prohibition against the promise of employment, compensation, or benefits from Federal funds in exchange for political activity (18 U.S.C. 600).
 - (f) The prohibition against the deprivation of or threat of deprivation of employment in exchange for political contributions (18 U.S.C. 601).
 - (g) The prohibition against soliciting political contributions (18 U.S.C. 602).
 - (h) The prohibition against making certain political contributions (18 U.S.C. 603).
 - (i) The prohibition against soliciting or receiving assessments, subscriptions, or contributions for political purposes from persons on Federal relief or work relief (18 U.S.C. 604).
 - (j) The prohibition against disclosing and receiving lists or names of persons on relief for political purposes (18 U.S.C. 605).
 - (k) The prohibition against intimidating employees to give or withhold a political contribution (18 U.S.C. 606).
 - (l) The prohibition against soliciting political contributions in navy yards, forts, or arsenals (18 U.S.C. 607).
 - (m) The prohibition against coercing employees of the Federal Government to engage in, or not to engage in, any political activity (18 U.S.C. 610).
 - (n) The prohibition against certain personnel practices (5 U.S.C. 2302).
 - (o) The prohibition against making, requesting, considering, or accepting political recommendations (5 U.S.C. 3303).
 - (p) The prohibitions against misuse of a Government vehicle (31 U.S.C. 1344).
 - (q) The requirements and prohibitions stated in the Federal Election Campaign Act (2 U.S.C. 431-455).
 - (r) The prohibitions against soliciting for gifts to superiors, giving donations for such gifts, and accepting gifts from employees who receive a lower rate of pay (5 U.S.C. 7351).
 - (s) The prohibitions against soliciting or accepting things of value from specified persons (5 U.S.C. 7353).
 - (t) The prohibitions and requirements stated in the Ethics in Government Act of 1978 (5 U.S.C. App.) and Executive Order 12674 (54 FR 15159-15162; 3 CFR 1989 Comp. 215-218) as modified by Executive Order 12731 (55 FR 42547-42550; 3 CFR 1990 Comp. 306-311).
- * *

Nov 2, 94
DoD 5500.7-R

POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES, 5 CFR 734

DoD 5500.7-R

SECTION 2. POLITICAL ACTIVITIES OF CIVILIAN DoD EMPLOYEES

6-200. Policy

* a. The policy governing the political activities of civilian DoD
* employees is derived from the Hatch Act Amendments, 5 U.S.C. 7321 through 7325
* (reference (b)). Guidance on the application of the Hatch Act Amendments is provided by the
* Hatch Act Hotline at the Office of Special Counsel at 1-(800) 854-2824.

* b. Primary enforcement responsibility under the Hatch Act
* Amendments (reference (b)) lies with the Office of Special Counsel under 5 U.S.C. 1216(c)
* (reference (b)); however, DoD Components have responsibility to investigate allegations of
* prohibited political activity by excepted service employees of the DoD Component.

c. It is DoD policy to encourage civilian DoD employees and
members of the Armed Forces to carry out the obligations of citizenship to the maximum extent
possible consistent with the restrictions imposed by law and by this Regulation.

* 6-201. Permissible Activities. Subject to subsections 6-202 and 6-203 of
* this Regulation, below, civilian DoD employees may, in their personal capacities:

- * a. Be candidates for public office in nonpartisan elections; *
- * b. Register and vote as they choose; *
- * c. Assist in voter registration drives; *
- * d. Express opinions about candidates and issues; *
- * e. Contribute money to political organizations; *
- * f. Attend political fundraising functions; *
- * g. Attend and be active at political rallies and meetings; *
- * h. Join and be an active member of a political party or club; *
- * i. Sign nominating petitions; *
- * j. Campaign for or against referendum questions,
* constitutional amendments, or municipal ordinances; *

- k. Campaign for or against candidates in partisan elections (see subsection 6-202.c. of this Regulation, below);
- l. Make campaign speeches for candidates in partisan elections (see subsection 6-202.c. of this Regulation, below);
- m. Distribute campaign literature in partisan elections (see subsection 6-202.c. of this Regulation, below);
- n. Hold office in political clubs or parties (see subsection 6-202.c. of this Regulation, below).

6-202. Limitations

a. Military members are not covered by the Hatch Act Amendments, 5 U.S.C. 7321 through 7327, (reference (b)). Political activities of Military members are covered in Section 3 of this Chapter, below.

b. Notwithstanding subsection 6-201 of this Regulation, above, as a matter of longstanding DoD policy, DoD employees who are appointed by the President, by and with the advice and consent of the Senate (e.g. the Secretary of Defense, the Secretaries of the Military Departments, etc.), and DoD employees who are appointed by the Secretary of Defense to non-career Senior Executive Service positions may not engage in activities that could be interpreted as associating the DoD with any partisan political cause or issue.

c. The following DoD employees (except for Presidential appointees who are confirmed by and with the consent of the Senate) are prohibited from engaging in the activities described in 6-201.k. through 6-201.n. of this Regulation, above:

- (1) Employees of the National Security Agency;
- (2) Employees of the Defense Intelligence Agency;
- (3) Career members of the senior executive service;
- (4) Administrative Law Judges; and
- (5) Contract appeals board members.

6-203. Prohibited Activities. Civilian DoD employees may not:

- a. Use official authority or influence for the purpose of interfering with or affecting the result of an election;

- b. Collect political contributions unless both the collector and the donor are members of the same Federal labor organization or employee organization and the donor is not a subordinate;
- c. Knowingly solicit or discourage the political activity of any person who has business with DoD;
- d. Engage in political activity while on duty;
- e. Engage in political activity while in any Federal workplace;
- f. Engage in political activity while wearing an official uniform or displaying official insignia identifying the office or position of the DoD employee;
- g. Engage in political activity while using a Government owned or leased vehicle;
- h. Solicit political contributions from the general public;
- i. Be a candidate for public office in partisan elections;
- j. Wear political buttons on duty;
- k. Contribute to the political campaign of another Federal Government employee who is in the DoD employee's chain of command or supervision or who is the employing authority, including the political campaign to re-elect the President or Vice President.

6-204 DoD Employees Residing in Designated Localities

Notwithstanding the prohibitions of subsection 6-203 of this Regulations, above, a DoD employee (except those DoD employees listed in subsection 6-202.c. of this Regulation, above) who resides in a municipality or political subdivision, either in the immediate vicinity of the District of Columbia or in which the majority of voters are employed by the Federal Government, as designated by OPM under 5 C.F.R. 733.102(d) (reference (c)) may:

- a. Run as an independent candidate for election to a partisan political office in an election for local office of the municipality or political subdivision provided the candidacy for, and service in, the partisan political office shall not result in

* neglect of, or interference with, the performance of the duties of the DoD employee or create an actual or apparent conflict of interest; and *

b. Accept or receive political contributions in connection with a local election of the municipality or political subdivision provided the DoD employee does not solicit political contributions from the general public.

6-205. Political Recommendations

a. The restrictions of 5 U.S.C. 3303 (reference (b)) apply to all personnel actions described in 5 U.S.C. 2302(a)(2)(A)(i) through (x) (reference (b)) for individuals in or applicants to the following DoD positions:

(1) Competitive service employees;

(2) Career appointees in the Senior Executive Service;

and

(3) Excepted service employees other than one who is appointed by the President or whose position has been determined to be of confidential, policy-determining, policy-making, or policy-advocating character.

b. Each personnel action with respect to a DoD employee or applicant, as described in subsection 6-205.a. of this Regulation, above, shall be taken without regard to any recommendation or statement, oral or written, made by the following types of individuals:

(1) Members of Congress or Congressional employees;

(2) Elected officials of any State (including the District of Columbia and the Commonwealth of Puerto Rico), county, city, or other subdivision thereof;

(3) Officials of political parties; or

(4) Other individuals or organizations making such recommendations or statements on the basis of the party affiliations of the DoD employee or applicant recommended.

c. DoD employees may solicit, accept, and consider any statement with respect to a DoD employee or applicant described in subsection 6-205.a. of this Regulation, above, if the statement meets one of the following conditions:

(1) It is pursuant to a request or requirement of the *

* DoD Component and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of the DoD employee or applicant; *

(2) It relates solely to the character and residence of the DoD employee or applicant;

(3) It is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether the DoD employee or applicant meets suitability or security standards;

(4) It is furnished by a former employer of the DoD employee or applicant pursuant to a request of an agency, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such DoD employee or applicant during employment with such former employer; or

(5) It is furnished pursuant to a provision of law or regulation authorizing consideration of such statement with respect to a specific position or category of positions.

c. DoD Component Heads are required by 5 C.F.R. 300.801 (reference (d)) to ensure that DoD employees and applicants described in subsection 6-205.a. of this Regulation, above, are notified of the provisions of 5 U.S.C. 3303 (reference (b)).

SECTION 3. POLITICAL ACTIVITIES OF MILITARY MEMBERS

* 6-300. DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," June 15, 1990 (reference (e)) *



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DoD DIRECTIVE 1344.10¹

June 15, 1990
ASD(FM&P)

SUBJECT: Political Activities by Members of the Armed Forces on Active Duty

References:

- (a) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces," September 25, 1986 (hereby canceled)
- (b) Title 10, United States Code
- (c) DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979
- (d) DoD Directive 1325.6, "Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces," September 12, 1969
- (e) through (h), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a) to update DoD policies on political activities of members of the Armed Forces on active duty (AD).
2. Implements Section 973(b) of reference (b).

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; and the Coast Guard when it is not operating as a Service in the Navy, by agreement with the Department of Transportation.

C. DEFINITIONS

The terms used in this Directive are defined in enclosure 2.

D. POLICY

It is DoD policy that a member of the Armed Forces (hereafter referred to as "member") is encouraged to carry out the obligations of a citizen. While on AD, however, members are prohibited from engaging in certain political activities. Subject to the guidelines in enclosure 3, the following DoD policy shall apply:

1. General

a. A member on AD may:

- (1) Register, vote, and express his or her personal opinion on political candidates and issues, but not as a representative of the Armed Forces.
- (2) Make monetary contributions to a political organization.
- (3) Attend partisan and nonpartisan political meetings or rallies as a spectator when not in uniform.

b. A member on AD shall not:

- (1) Use his or her official authority or influence for interfering with an election; affecting the course or outcome of an election; soliciting votes for a particular candidate or issue; or requiring or soliciting political contributions from others.
- (2) Be a candidate for, or hold, civil office except as authorized in subsections D.2. and D.3., below.
- (3) Participate in partisan political management, campaigns, or conventions.
- (4) Make campaign contributions to another member of the Armed Forces or an employee of the Federal Government.

c. To assist in applying paragraphs D.1.a. and D.1.b., above, to particular situations, enclosure 3 provides guidelines and examples of permissible and prohibited political activities. The guidelines in enclosure 3 do not supersede other specific

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

DOD DIRECTIVE 1344.10, "POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES"

requirements and policies, such as those established in DoD Directives 5200.2 and 1325.6 (references (c) and (d)).

d. Enclosure 4 provides a summary of Federal statutes restricting certain types of political activities by members of the Armed Forces.

2. Candidacy for Elective Office. A member on AD may not:

a. Campaign as a nominee, or as a candidate for nomination, for civil office, except as authorized in paragraph D.3.c., below. When circumstances warrant, the Secretary concerned or the Secretary's designee may permit a member to file such evidence of nomination or candidacy for nomination, as may be required by law. Such permission shall not authorize activity while on AD that is otherwise prohibited in paragraph D.1.b., above, or enclosure 3 or 4.

b. Become a candidate for any civil office while serving an initial tour of extended active duty (EAD) or a tour of EAD that the member agreed to perform as a condition of receiving schooling or other training wholly or partly at U.S. Government expense.

3. Election or Appointment to Civil Office

a. Except as authorized by paragraph D.3.c., below, or otherwise provided for by law, no member on AD may hold or exercise the functions of civil office:

(1) In the U.S. Government that:

- (a) Is an elective office.
- (b) Requires an appointment by the President by and with the advice and consent of the Senate.
- (c) Is a position on the executive schedule under sections 5312 through 5317 of reference (e).

(2) In the government of a State; the District of Columbia; a territory, possession, or commonwealth of the United States; or in any political subdivision thereof.

b. A member may hold or exercise the functions of a civil office in the U.S. Government that is not described in subparagraph D.3.a.(1), above, when assigned or detailed to such office or to perform such functions.

c. As long as they are not serving on EAD, enlisted members and Reserve officers may hold partisan or nonpartisan civil office if such office is held in a private capacity and does not interfere with the performance of military duties. Additionally, enlisted members on EAD may seek and hold nonpartisan civil office as a notary public or member of a school board, neighborhood planning commission, or similar local agency, as long as such office is held in a private capacity and does not interfere with the performance of military duties. Officers on active duty may seek and hold nonpartisan civil office on an independent school board that is located exclusively on a military reservation.

d. Unless prohibited by Service regulations, a member on AD may serve as a regular or reserve civilian law enforcement officer or as a member of a civilian fire or rescue squad. Such service shall be in a private capacity, shall not involve the exercise of military authority, and shall not interfere with the performance of military duties.

e. A member elected or appointed to a prohibited civil office may request retirement and shall be retired if eligible for retirement. If such member does not request or is not eligible for retirement, the member shall be discharged or released from AD, as determined by the Secretary concerned.

f. The separation and retirement requirements of paragraph D.3.e., above, do not apply if the member declines to serve in the prohibited office; if the Secretary concerned determines that the member should not be released from active duty based on the needs of the Service; or if the member is:

- (1) Obligated to fulfill an AD Service commitment.
- (2) Serving or has been issued orders to serve afloat or in an area that is overseas, remote, a combat zone, or a hostile fire pay area.
- (3) Ordered to remain on AD while the subject of an investigation or inquiry.
- (4) Accused of an offense under the Uniform Code of Military Justice (UCMJ), 10 U.S.C., chapter 43 (reference (b)), or serving a sentence or punishment for such offense.

DOD DIRECTIVE 1344.10, "POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES"

(5) Pending administrative separation action or proceedings.

(6) Indebted to the United States.

(7) On AD during a period of declared war, a national emergency, or other period when a unit of the Reserves or National Guard has been called to AD.

* (8) In violation of an order or regulation prohibiting such member from assuming or exercising the functions of civil office. *

g. A member who refuses to decline to serve in a prohibited civil office after being denied separation or retirement in accordance with paragraph D.3.f., above, may be subject to disciplinary or adverse administrative action under Service regulations.

h. No actions undertaken by a member in carrying out assigned military duties shall be invalidated solely by virtue of such member having assumed or exercised the functions of a civil office in violation of subsection D.3., above.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel)(ASD(FM&P)) shall be responsible for the administration of this Directive.

2. The Secretaries of the Military Departments shall be responsible for issuance of appropriate implementing documents for their respective Departments.

F. PROCEDURES

All members of the Armed Forces on AD engaging in political activities shall follow the guidelines in enclosure 3.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. The Secretaries of the Military Departments shall forward one copy of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

Donald Atwood
Deputy Secretary of Defense

Enclosures - 4

1. References
2. Definitions
3. Guidelines on Political Activities
4. Statutory Restrictions Pertaining to Political Activities by Members of the Armed Forces

Enclosure 1 - REFERENCES CONTINUED

- (e) Title 5, United States Code
- (f) DoD Directive 1334.1, "Wearing of the Uniform," August 11, 1969
- (g) Title 2, United States Code, Sections 441a, 441f, and 441g
- (h) Title 18, United States Code, Sections 592 through 594, 596, 602 through 603, 606 through 607, and 609

Enclosure 2 - DEFINITIONS

1. Active Duty (AD). Full-time duty in the active military Service of the United States without regard to duration or purpose, including full-time training duty; annual training duty; attendance, while in the active Military Service, at a school designated as a Service school by law or by the Secretary of the Military Department concerned; and National Guard duty, as defined in 10 U.S.C. 101(42) (reference (b)).
2. Armed Forces. The U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard, including the Reserve components and the National Guard, as defined in 10 U.S.C. 101(9), 101(10), and 101(12) (reference (b)).
3. Civil Office. A nonmilitary office involving the exercise of the powers or authority of civil government, to include elective and appointive office in the U.S. Government, a U.S. territory or possession, State, county, municipality, or official subdivision thereof.
4. Extended Active Duty (EAD). AD under a call or order for a period in excess of 180 days.
5. Nonpartisan Political Activity supporting or relating to candidates not representing, or issues not specifically identified with, national or State political parties and associated or ancillary organizations. Issues relating to constitutional amendments, referendums, approval of municipal ordinances, and others of similar character are not considered under this Directive as specifically being identified with national or State political parties.
6. Partisan Political Activity. Activity supporting or relating to candidates representing, or issues specifically identified with, national or State political parties and associated or ancillary organizations.
7. Secretary Concerned. Defined in 10 U.S.C. 101(8)(reference (b)).

DOD DIRECTIVE 1344.10, "POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES"

Enclosure 3 - GUIDELINES ON POLITICAL ACTIVITIES

A. PURPOSE

This enclosure provides guidance for implementing this Directive-

B. EXAMPLES OF PERMISSIBLE POLITICAL ACTIVITIES

A member on active duty may:

1. Register, vote, and express a personal opinion on political candidates and issues, but not as a representative of the Armed Forces.
2. Promote and encourage other military members to exercise their voting franchise, if such promotion does not constitute an attempt to influence or interfere with the outcome of an election.
3. Join a political club and attend its meetings when not in uniform(See DoD Directive 1334.1, reference (f).)
4. Serve as an election official, if such service is not as a representative of a partisan political party, does not interfere with military duties, is performed while out of uniform, and has the prior approval of the Secretary concerned or the Secretary's designee-
5. Sign a petition for specific legislative action or a petition to place a candidate's name on an official election ballot, if the signing does not obligate the member to engage in partisan political activity and is done as a private citizen and not as a representative of the Armed Forces.
6. Write a letter to the editor of a newspaper expressing the member's personal views on public issues or political candidates, if such action is not part of an organized letter-writing campaign or concerted solicitation of votes for or against a political party or partisan political cause or candidate.
7. Make monetary contributions to a political organization, party, or committee favoring a particular candidate or slate of candidates, subject to the limitations under 2 U.S.C. 441a and 18 U.S.C. 609 (references (g) and (h)).
8. Display a political sticker on the member's private vehicle.

C. EXAMPLES OF PROHIBITED POLITICAL ACTIVITIES

In accordance with the statutory restrictions in 10 U.S.C. 973(b) (reference (b)) and references (g) and (h), and the policies established in section D., above, of this Directive, a member on AD shall not:

1. Use official authority or influence to interfere with an election, affect the course or outcome of an election, solicit votes for a particular candidate or issue, or require or solicit political contributions from others.
2. Be a candidate for civil office in Federal, State, or local government, except as authorized in section D., above, of this Directive, or engage in public or organized soliciting of others to become partisan candidates for nomination or election to civil office.
3. Participate in partisan political management or campaigns, or make public speeches in the course thereof.
4. Make a campaign contribution to another member of the Armed Forces or to a civilian officer or employee of the United States for promoting a political objective or cause.
5. Solicit or receive a campaign contribution from another member of the Armed Forces or from a civilian officer or employee of the United States for promoting a political objective or cause.
6. Allow or cause to be published partisan political articles signed or written by the member that solicit votes for or against a partisan political party or candidate.
7. Serve in any official capacity or be listed as a sponsor of a partisan political club.
8. Speak before a partisan political gathering of any kind for promoting a partisan political party or candidate.
9. Participate in any radio, television, or other program or group discussion as an advocate of a partisan political party or candidate.
10. Conduct a political opinion survey under the auspices of a partisan political group or distribute partisan political literature.
11. Use contemptuous words against the officeholders described in 10 U.S.C. 888 (reference (b)), or participate in activities proscribed by DOD Directives 5200.2 and 1325-6 (references (c) and (d)).
12. Perform clerical or other duties for a partisan political committee during a campaign or on an election day.
13. Solicit or otherwise engage in fundraising activities in Federal offices or facilities, including military reservations, for a partisan political cause or candidate.
14. March or ride in a partisan political parade.
15. Display a large political sign, banner, or poster (as distinguished from a bumper sticker) on the top or side of a private vehicle.
16. Participate in any organized effort to provide voters with transportation to the polls if the effort is organized by, or associated with, a partisan political party or candidate.
17. Sell tickets for, or otherwise actively promote, political dinners and similar fundraising events.
18. Attend partisan political events as an official representative of the Armed Forces.

D. POLITICAL ACTIVITIES NOT EXPRESSLY PERMITTED OR PROHIBITED

Some activities not expressly prohibited may be contrary to the spirit and intent of section D. of the Directive or section C. of this enclosure. In determining whether an activity violates the traditional concept that Service members should not engage in partisan political activity, rules of reason and common sense shall apply. Any activity that may be viewed as associating the Department of Defense or the Department of Transportation, in the case of the Coast Guard, or any components of such Departments directly or indirectly with a partisan political cause or candidate shall be avoided.

E. LOCAL NONPARTISAN POLITICAL ACTIVITIES

This Directive does not preclude participation in local nonpartisan political campaigns, initiatives, or referendums. A member taking part in local nonpartisan political activity, however, shall not:

1. Wear a uniform or use any Government property or facilities while participating.
2. Allow such participation to interfere with, or prejudice, the member's performance of military duties.
3. Engage in conduct that in any way may imply that the Department concerned or any component of such Department has taken an official position on, or is otherwise involved in, the local political campaign or issue.

F. ADDITIONAL REQUIREMENTS

Members of the Armed Forces on AD engaging in permissible political activities shall:

1. Give full time and attention to the performance of military duties during prescribed duty hours.
2. Avoid any outside activities that may be prejudicial to the performance of military duties or are likely to bring discredit upon the Armed Forces.
3. Refrain from participating in any political activity while in military uniform, as proscribed by DoD Directive 1334.1 (reference (f)), or using Government facilities or resources for furthering political activities.

DOD DIRECTIVE 1344.10, "POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES"

Enclosure 4 - STATUTORY RESTRICTIONS PERTAINING TO POLITICAL
ACTIVITIES BY MEMBERS OF THE ARMED FORCES

Members of the Armed Forces are prohibited by various provisions of titles 10, 2, and 18, United States Code (references (b), (g), and (h)), from engaging in certain types of political activities. The statutory provisions most directly applicable to members of the Armed Forces are as follows:

* "Title 10 U.S.C. 973. Duties: officers on active duty; performance of civil functions restricted *

"(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties-

"(b) (1) This subsection applies--

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 180 days; and

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 180 days.

(2) (A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States--

(i) that is an elective office;

(ii) that requires an appointment by the President by and with the advice and consent of the Senate;

or

(iii) that is a position in the Executive Schedule under sections 5312 through 5313 of title 5.

(B) An officer to whom this subsection applies may hold or exercise the function of a civil office in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.

(3) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State, the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government).

(4) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.

* (c) an officer to whom subsection (b) applies may seek and hold nonpartisan civil office on an independent school board that *
* is located exclusively on a military reservation. *

* (d) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section. *

"Title 2 U.S.C. 441a. Limitations on contributions and expenditures

"(a) Dollar limits on contributions

(1) No person shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate in any calendar year which, in the aggregate, exceed \$20,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

(2) No multi-candidate political committee shall make contributions--

DOD DIRECTIVE 1344.10, "POLITICAL ACTIVITIES BY MEMBERS OF THE ARMED FORCES"

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed \$15,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

(3) No individual shall make contributions aggregating more than \$25,000 in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made is considered to be made during the calendar year in which such election is held.

*

*

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

*

*

"Title 2 U.S.C. 441f. Contributions in the name of another prohibited

"No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such contribution, and no person shall knowingly accept a contribution made by one person in the name of another person."

"Title 2 U.S.C. 441g. Limitation on contribution of currency

"No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office."

"Title 18 U.S.C. 592. Troops at polls

"Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such forces be necessary to repel armed enemies of the United States, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

"This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote."

"Title 18 U.S.C. 593. Interference by armed forces

"Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

"Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

"Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

"Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

"Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties--

"Shall be fined not more than \$5,000 or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

"This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any

district to which he may belong, if otherwise qualified according to the laws of the State of such district."

"Title 18 U.S.C. 594. Intimidation of voters

"Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"Title 18 U.S.C. 596. Polling armed forces

"Whoever, within or without the Armed Forces of the United States, polls any member of such forces, either within or without the United States, either before or after he executes any ballot under any Federal or State law, with reference to his choice of or his vote for any candidate, or states, publishes, or releases any result of any purported poll taken from or among the members of the Armed Forces of the United States or including within it the statement of choice for such candidate or of such votes cast by any member of the Armed Forces of the United States, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

"The word 'poll' means any request for information, verbal or written, which by its language or form of expression requires or implies the necessity of an answer, where the request is made with the intent of compiling the result of the answers obtained, either for the personal use of the person making the request, or for the purpose of reporting the same to any other person, persons, political party, unincorporated association or corporation, or for the purpose of publishing the same orally, by radio, or in written or printed form."

"Title 18 U.S.C. 602. Solicitation of political contributions

"It shall be unlawful for--

- (1) a candidate for the Congress;
- (2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;
- (3) an officer or employee of the United States or Any department or agency thereof; or
- (4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both."

"Title 18 U.S.C. 603. Making political contributions

"(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for service from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

"(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee."

"Title 18 U.S.C. 606. Intimidation to secure political contributions

"Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than \$5,000 or imprisoned not more than three years, or both."

"Title 18 U.S.C. 607. Place of solicitation

"(a) It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in

section 603, or in any navy yard, fort, or arsenal. Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.1,"

"Title 18 U.S.C. 609. Use of military authority to influence vote of member of Armed Forces

"Whoever, being a commissioned, noncommissioned, warrant, or petty officer of an Armed Force, uses military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so, shall be fined in accordance with this title or imprisoned not more than five years, or both. Nothing in this section shall prohibit free discussion of political issues or candidates for public office.

SECTION 4. REFERENCES

6-400. References

- (a) Title 5, Code of Federal Regulations, Part 734, "Political Activities of Federal Employees," September 23, 1994
- (b) Title 5, United States Code, Sections 1216, 2302, 3303 and 7321 through 7325
- (c) Title 5, Code of Federal Regulations, Part 733, "Political Activity - Federal Employees Residing in Designated Localities," February 4, 1994
- (d) Title 5, Code of Federal Regulations, Part 300, "Notification Requirements Relating to the Statutory Prohibitions on Political Recommendations," February 22, 1994
- (e) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," June 15, 1990



EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF
DIVESTITURE

5 CFR 2634¹

Table of Contents

SUBPART A: GENERAL PROVISIONS	5	
Sec. 2634.101 Authority	5	
Sec. 2634.102 Purpose and overview	5	
Sec. 2634.103 Executive agency supplemental regulations	5	
Sec. 2634.104 Policies	5	
Sec. 2634.105 Definitions	6	
Act (6); Agency (6); Confidential filer (6); Dependent child (6); Designated agency ethics official (6);		
Executive branch (6); Filer (6); Gift (6); Honorarium (6); Income (6); Personal hospitality of any individual		
(7); Personal residence (7); Public filer (7); Reimbursement (7); Relative (7); Reporting individual (7);		
Reviewing official (7); Secretary concerned (7); Special Government employee (7); Value (7)		
SUBPART B: PERSONS REQUIRED TO FILE PUBLIC FINANCIAL DISCLOSURE REPORTS	8	
Sec. 2634.201 General requirements, filing dates, and extensions	8	
Incumbents (8); New entrants (8); Nominees (8); Candidates (8); Termination of employment (9);		
Extensions (9)		
Sec. 2634.202 Public filer defined	9	
The President (9); The Vice President (9); Each officer or employee (9); administrative law judge (9); Any		
employee not otherwise described in paragraph (c) (9); The Postmaster General (9); The Director of the		
Office of Government Ethics (9); Any civilian employee not otherwise described in paragraph (c) (9);		
Anyone whose employment in a position or office described in paragraphs (a) through (h) (9)		
Sec. 2634.203 Persons excluded by rule	9	
In general (9); Exclusion determination (10); Procedure (10)		
Sec. 2634.204 Employment of sixty days or less	10	
In general (10); Alternative reporting (10); Exception (10)		
Sec. 2634.205 Special waiver of public reporting requirements	10	
General rule (10); Procedure (11)		
SUBPART C: CONTENTS OF REPORTS	11	
Sec. 2634.301 Interests in property	11	
In general (11); Types of property reportable (11); Exceptions (12); Valuation categories (12); Valuation of		
interests in property (12)		
Sec. 2634.302 Income	13	
Noninvestment income (13); Investment income (13)		
Sec. 2634.303 Purchases, sales, and exchanges	14	
In general (14)		
Sec. 2634.304 Gifts and reimbursements	15	
Gifts (15); Reimbursements (15); Exclusions (15); Aggregation exception (15); Valuation of gifts and		
reimbursements (16); Waiver rule in the case of certain gifts (16)		
Sec. 2634.305 Liabilities	16	
In general (16); Exceptions (16)		
Sec. 2634.306 Agreements and arrangements	17	
Sec. 2634.307 Outside positions	17	
In general (17); Exceptions (17)		
Sec. 2634.308 Reporting periods and contents of public financial disclosure reports	17	
Incumbent (17); New entrants, nominees, and candidates (17); Termination reports (18)		
Sec. 2634.309 Spouses and dependent children	18	
Special disclosure rules (18); Exception (19); Divorce and separation (19)		
Sec. 2634.310 Trusts, estates, and investment funds	19	
In general (19); Qualified trusts and excepted trusts (19); Excepted investment funds (20)		
Sec. 2634.311 Special rules	20	
Political campaign funds (20); Certificates of Divestiture (20); Reporting standards (20)		
* SUBPART D: QUALIFIED TRUSTS	20	*
* Sec. 2634.401 General considerations	20	*
Statutory standards governing qualified trusts (20); Policy considerations and objectives underlying the		
qualified trust program (21); Qualified trust provisions of the regulation (22); Drafting and implementation		
of the qualified trust instrument (22)		
* Sec. 2634.402 Special notice for advice-and-consent nominees	23	*
* Sec. 2634.403 Qualified blind trusts	23	*
* Sec. 2634.404 Qualified diversified trusts	25	*

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . 5 CFR 2634

Definition (25); Required portfolio (25); Required provisions (26); Personal income tax returns (28)	
Sec. 2634.405 Certification of trusts	28
Standards (28); Certification procedures (28); Certification of pre-existing trusts (28); Review of certification (28); Revocation of certification and modification of trust investment (28)	
Sec. 2634.406 Independent trustees	28
Standards (28); Approval procedures (29); Review of approval (29); Revocation of approval (29)	
Sec. 2634.407 Restrictions on fiduciaries and interested parties	29
Restrictions applicable to trustees and other fiduciaries (29); Restrictions applicable to interested parties (30)	
Sec. 2634.408 Special filing requirement for qualified trusts	30
The interested party (30); Trustees and other designated fiduciaries (30); Written communications (30); Public access (30)	
SUBPART E: REVOCATION OF TRUST	
CERTIFICATES AND TRUSTEE APPROVALS	30
Sec. 2634.501 Purpose and scope	30
Purpose (30); Scope (30)	
Sec. 2634.502 Definitions	30
Senior Attorney (30); Trust restrictions (31)	
Sec. 2634.503 Determinations	31
Where the Senior Attorney concludes that violations (31); Review procedure (31); Determination (31)	
SUBPART F: PROCEDURE	
Sec. 2634.601 Report forms	31
The Office of Government Ethics provides (31); Subject to the prior written approval of the Director of the Office of Government Ethics (31); Reports concerning payments made to charitable organizations in lieu of honoraria (32)	
Sec. 2634.602 Filing of reports	32
Except as otherwise provided (32); The President, the Vice President, any independent counsel, and persons appointed by independent counsel under 28 U.S.C. chapter 40 (32); The Director of the Office of Government Ethics (32); Candidates for President and Vice President identified in 2634.201(d), other than an incumbent President or Vice President (32); Members of the uniformed services identified in 2634.202(c) (32)	
Sec. 2634.603 Custody of and access to public reports	32
Each agency shall make available to the public (32); This section does not require public availability of those reports filed by: (32); Each agency shall, within thirty days after any public report is received by the agency, permit inspection (33); Applications for the inspection of or copies of public reports (33); The agency may require a reasonable fee (33); It is unlawful for any person to obtain or use (33)	
Sec. 2634.604 Custody of and denial of public access to confidential reports	33
Any report filed with an agency (34); The reports filed pursuant to subpart (34)	
Sec. 2634.605 Review of reports	34
In general (34); Responsibilities of reviewing officials (34); Expedited procedure (35)	
Sec. 2634.606 Updated disclosure of advice-and-consent nominees	36
General rule (36); Additional certification (36)	
Sec. 2634.607 Advice and opinions	36
SUBPART G: PENALTIES	
Sec. 2634.701 Failure to file or falsifying reports	36
Referral of cases (36); Civil action (36); Criminal action (37); Administrative remedies (37)	
Sec. 2634.702 Breaches by trust fiduciaries and interested parties	37
Sec. 2634.703 Misuse of public reports	37
Sec. 2634.704 Late filing fee	37
In general (37); Exceptions (37); Procedure (37); Late filing fee not exclusive remedy (38); Confidential filers (38)	
SUBPART H: ETHICS AGREEMENTS	
Sec. 2634.801 Scope	38
Sec. 2634.802 Requirements	38
Ethics agreement defined (38); Time limit (38)	
Sec. 2634.803 Notification of ethics agreements	38
Nominees to positions require the advice and consent of the Senate (38); Incumbents in positions requiring the advice and consent of the Senate (38); Designated agency ethics official not holding advice-and-consent positions (39); Other reporting individuals (39)	
Sec. 2634.804 Evidence of compliance	39
Requisite evidence of action taken (39)	
Sec. 2634.805 Retention	39
SUBPART I: CONFIDENTIAL FINANCIAL DISCLOSURE REPORTS	
Sec. 2634.901 Policies of confidential financial disclosure reporting	40

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . , 5 CFR 2634

Sec. 2634.902 Transition to the new confidential financial disclosure reporting system.	40
Sec. 2634.903 General requirements, filing dates, and extensions.	41
Incumbents (41); New entrants (41); Advisory committee definition (41); Extensions (41)	
Sec. 2634.904 Confidential filer defined.	41
Sec. 2634.905 Exclusions from filing requirements.	42
Sec. 2634.906 Review of confidential filer status.	43
Sec. 2634.907 Report contents.	43
Sec. 2634.908 Reporting periods.	43
Incumbents (43); New entrants (44)	
Sec. 2634.909 Procedures, penalties, and ethics agreements.	44
SUBPART J: CERTIFICATES OF DIVESTITURE	44
Sec. 2634.1001 Nonrecognition for sales to comply with conflict of interest requirements	44
Purpose (44); Scope (44); Policy (44)	
Sec. 2634.1002 Issuance of Certificates of Divestiture.	44
General rule (44); Procedural requirements (44); Eligible person (45)	
Sec. 2634.1003 Permitted property.	45
In general (45); Definition of "permitted property" (45); Diversified investment fund (45)	
Sec. 2634.1004 Special rule.	46

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . , 5 CFR 2634

SUBPART A: GENERAL PROVISIONS

Sec. 2634.101 Authority.

The regulation in this part is issued pursuant to the authority of title I of the Ethics in Government Act of 1978, (Pub. L. 95-521, as amended) ("the Act") as modified by the Ethics Reform Act of 1989 (Pub. L. 101-194, as amended by Pub. L. 101-280) ("the Reform Act"); section 502 of the Reform Act; and section 201(d) of Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

Sec. 2634.102 Purpose and overview.

(a) This regulation supplements and implements title I of the Act and section 201(d) of Executive Order 12674 (as modified by Executive Order 12731) with respect to executive branch employees, by setting forth more specifically the uniform procedures and requirements for financial disclosure and for the certification and use of qualified blind and diversified trusts. Additionally, this regulation implements section 502 of the Reform Act by establishing procedures for executive branch personnel to obtain Certificates of Divestiture, which permit deferred recognition of capital gain in certain instances.

(b) The rules in this part govern both the public and confidential (nonpublic) financial disclosure systems, except as otherwise indicated. Subpart I of this part contains special rules unique to the confidential disclosure system.

Sec. 2634.103 Executive agency supplemental regulations.

(a) This regulation is intended to provide uniformity for executive branch financial disclosure systems. However, an agency may, subject to the prior written approval of the Office of Government Ethics, issue supplemental regulations implementing this part, if necessary to address special or unique agency circumstances. Such regulations:

(1) Shall be consistent with the Act, Executive Orders 12674 and 12731, and this part; and

(2) Shall impose no additional reporting requirements on either public or confidential filers, unless specifically authorized by the Office of Government Ethics as supplemental confidential reporting.

Note: Supplemental regulations will not be used to satisfy the separate requirement of 5 U.S.C. App. (Ethics in Government Act of 1978, Section 402(d)(1)) that each agency have established written procedures on how to collect, review, evaluate, and, where appropriate, make publicly available, financial disclosure statements filed with it.

(b) Requests for approval of supplemental regulations under paragraph (a) of this section shall be submitted in writing to the Office of Government Ethics, and shall set forth the agency's need for any proposed supplemental reporting requirements. See 2634.901 (b) and (c).

(c) Agencies should review all of their existing financial disclosure regulations to determine which of those regulations must be modified or revoked in order to conform with the requirements of this part. Any amendatory agency regulations shall be processed in accordance with paragraphs (a) and (b) of this section.

Sec. 2634.104 Policies.

(a) Title I of the Act requires that high-level Federal officials disclose publicly their personal financial interests, to ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust. Title I also authorizes the Office of Government Ethics to establish a confidential (nonpublic) financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict-of-interest review.

(b) Public and confidential financial disclosure serves to prevent conflicts of interest and to identify potential conflicts, by providing for a systematic review of the financial interests of both current and prospective officers and employees. These reports assist agencies in administering their ethics programs and providing counseling to employees.

(c) Financial disclosure reports are not net worth statements. Financial disclosure systems seek only the information that the President, Congress, or OGE as the supervising ethics office for the executive branch has deemed relevant to the administration and application of the criminal conflict of interest laws, other statutes on ethical conduct or financial interests, and Executive orders or regulations on standards of ethical conduct.

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

(e) The provisions of title I of the Act and this part requiring the reporting of information shall supersede any general requirement 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. However, the provisions of title I and this part shall not supersede the requirements of 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act).

(f) This regulation is intended to be gender-neutral; therefore, use of the terms he, his, and him include she, hers, and her, and vice versa.

Sec. 2634.105 Definitions.

For purposes of this part:

(a) Act means the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended), as modified by the Ethics Reform Act of 1989 (Pub. L. 101-194, as amended).

(b) Agency means any executive agency as defined in 5 U.S.C. 105 (any executive department, Government corporation, or independent establishment in the executive branch), any military department as defined in 5 U.S.C. 102, and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office.

(c) Confidential filer. For the definition of "confidential filer," see 2634.904.

(d) Dependent child means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(1) Is unmarried, under age 21, and 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 1986, 26 U.S.C. 152.

(e) Designated agency ethics official means the primary officer or employee who is designated by the head of an agency to administer the provisions of title I of the Act and this part within an agency, and in his absence the alternate who is designated by the head of the agency. The term also includes a delegate of such an official, unless otherwise indicated. See subpart B of part 2638 of this chapter on the appointment and additional responsibilities of a designated agency ethics official and alternate.

(f) Executive branch means any agency as defined in paragraph (b) of this section and any other entity or administrative unit in the executive branch.

(g) Filer is used interchangeably with "reporting individual," and may refer to a "confidential filer" as defined in paragraph (c) of this section, a "public filer" as defined in paragraph (m) of this section, or a nominee or candidate as described in 2634.201.

(h) 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, the District of Columbia, or a State or local government or political subdivision thereof;

(4) Food and beverages which are not consumed in connection with a gift of overnight lodging;

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

(6) Consumable products provided by home-State businesses to the offices of the President or Vice President, if those products are intended for consumption by persons other than the President or Vice President.

(i) Honorarium means a payment of money or anything of value for an appearance, speech, or article. For guidance on the propriety of receiving honoraria, see part 2636 of this subchapter.

(j) Income means all income from whatever source derived. It includes but is not limited to the following items: earned income such as compensation for services, fees, commissions, salaries, wages 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 the investment portion of life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust. The term includes all income items, regardless of whether they are taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means "gross income" as determined in conformity with the Internal Revenue Service principles at 26 CFR 1.61-1 through 1.61-15 and 1.61-21.

(k) 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 or on property or facilities owned by that individual or his family.

(l) Personal residence means any real property used exclusively as a private dwelling by the reporting individual or his spouse, which is not rented out during any portion of the reporting period. The term is not limited to one's domicile; there may be more than one personal residence, including a vacation home.

(m) Public filer. For the definition of "public filer," see 2634.202.

(n) Reimbursement means any payment or other thing of value received by the reporting individual (other than gifts, as defined in paragraph (h) of this section) to cover travel-related expenses of such individual, other than those which are:

(1) Provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (the Foreign Gifts and Decorations 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).

Note: Payments which are not made to the individual are not reimbursements for purposes of this part. Thus, payments made to the filer's employing agency to cover official travel-related expenses do not fit this definition of reimbursement. For example, payments being accepted by the agency pursuant to statutory authority such as 31 U.S.C. 1353, as implemented by 41 CFR part 304-1, are not considered reimbursements under this part 2634, because they are not payments received by the reporting individual. On the other hand, travel payments made to the employee by an outside entity for private travel are considered reimbursements for purposes of this part. Likewise, travel payments received from certain nonprofit entities under authority of 5 U.S.C. 4111 are considered reimbursements, even though for official travel, since that statute specifies that such payments must be made to the individual directly (with prior approval from the individual's agency).

(o) Relative means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, 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, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiancé or fiancée of the reporting individual.

(p) Reporting individual is used interchangeably with "filer," and may refer to a "confidential filer" as defined in 2634.904, a "public filer" as defined in 2634.202, or a nominee or candidate as described in 2634.201.

(q) Reviewing official means the designated agency ethics official or his delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics.

(r) Secretary concerned has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy, Air Force, and for certain Coast Guard matters, the Secretary of Transportation); and, in addition, means:

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

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

(3) The Secretary of State with respect to matters concerning the Foreign Service.

(s) Special Government employee has the meaning given to that term by the first sentence of 18 U.S.C. 202(a): an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(t) Value means a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in 2634.301(e). For gifts and reimbursements; see 2634.304(e).

SUBPART B: PERSONS REQUIRED TO FILE PUBLIC FINANCIAL DISCLOSURE REPORTS

Sec. 2634.201 General requirements, filing dates, and extensions.

(a) Incumbents. A public filer as defined in 2634.202 of this subpart who, during any calendar year, performs the duties of his position or office, as described in that section, for a period in excess of 60 days shall file a public financial disclosure report containing the information prescribed in subpart C of this part, on or before May 15 of the succeeding year.

Example 1. An SES official commences performing the duties of his position on November 15. He will not be required to file an incumbent report for that calendar year.

Example 2. An employee, who is classified at GS-15, is assigned to fill an SES position in an acting capacity, from October 15 through December 31. Having performed the duties of a covered position for more than 60 days during the calendar year, he will be required to file an incumbent report.

(b) New entrants.

(1) Within 30 days of assuming a public filer position or office described in 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(ii) Has already filed such a report as a nominee or candidate for the position.

Example: Y, an 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, 1991, and begins employment with the Commerce Department on February 10, 1991, in a Senior Executive Service position. Y is not a new entrant since he has assumed a position described in 2634.202 of this subpart within thirty days of leaving another position so described. Accordingly, he need not file a new report with the Commerce Department.

Note: While Y did not have to file a new entrant report with the Commerce Department, that Department should request a copy of the last report which he 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. Additionally, Y will have to file an incumbent report covering the 1990 calendar year, in accordance with paragraph (a) of this section, due not later than May 15, 1991, with Commerce, which should provide a copy to Treasury so that both may review it.

(c) Nominees.

(1) At any time after a public announcement by the President or President-elect of his intention to nominate an individual to an executive branch position, appointment to which requires the advice and consent of the Senate, such individual may, and in any event within five days after the transmittal of the nomination to the Senate shall, file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) This requirement shall not apply to any individual who is nominated to a position as:

(i) An officer of the uniformed services; or

(ii) A Foreign Service Officer.

* Note: Although the statute, 5 U.S.C. app. (Ethics in Government Act of 1978, section 101(b)(1)), exempts uniformed service
* officers only if they are nominated for appointment to a grade or rank for which the pay grade is 0-6 or below, the Senate
* confirmation committees have adopted a practice of exempting all uniformed service officers, unless otherwise specified by
* the committee assigned.

(3) Section 2634.605(c) provides expedited procedures in the case of individuals described in paragraph (c)(1) of this section. Those individuals referred to in paragraph (c)(2) of this section as being exempt from filing nominee reports shall file new entrant reports, if required by paragraph (b) of this section.

(d) Candidates. A Candidate (as defined in section 301 of the Federal Election Campaign Act of 1971, 2 U.S.C. 431) for nomination or election to the office of President or Vice President (other than an incumbent) shall file a public financial disclosure report containing the information prescribed in subpart C of this part, in accordance with the following:

(1) Within 30 days of becoming a candidate on or before May 15 of the calendar year in which the individual becomes a candidate, or whichever is later, but in no event later than 30 days before the election; and

(2) On or before May 15 of each successive year an individual continues to be a candidate. However, in any calendar year in which an individual continues to be a candidate but all elections relating to such candidacy were held in prior calendar years, the individual need not file a report unless he becomes a candidate for a vacancy during that year.

Example. P became a candidate for President in January 1991. P will be required to file a public financial disclosure report on or before May 15, 1991. If P had become a candidate on June 1, 1991, he would have been required to file a disclosure report within 30 days of that date.

(e) Termination of employment.

(1) On or before the thirtieth day after termination of employment from a public filer position or office described in 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, if within 30 days of such termination the individual assumes employment in another position or office for which a public report under the Act is required to be filed, no report shall be required by the provisions of this paragraph. See the related Example in paragraph (b) of this section.

(f) Extensions. The reviewing official may, for good cause shown, grant to any public filer or class thereof an extension of time for filing which shall not exceed 45 days. The Director of the Office of Government Ethics, for good cause shown, may grant an additional extension of time which shall not exceed 45 days. The employee shall set forth specific reasons for such additional extension, which shall be forwarded to the Director through the reviewing official. The reviewing official shall also submit his comments on the request. (For extensions on confidential financial disclosure reports, see 2634.903(d).)

Sec. 2634.202 Public filer defined.

The term public filer 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(a), whose position is classified above GS-15 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 120% of the minimum rate of basic pay for GS-15 of the General Schedule; 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;

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

(e) Any employee not otherwise 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, unless excluded by virtue of a determination under 2634.203 of this subpart;

(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 120% of the minimum rate of basic pay for GS-15 of the General Schedule;

(g) The Director of the Office of Government Ethics and each agency's primary designated agency ethics official;

(h) Any civilian employee not otherwise described in paragraph (c) of this section who is employed in the Executive Office of the President (other than a special Government employee, as defined in 18 U.S.C. 202(a)) and holds a commission of appointment from the President; and

(i) Anyone whose employment in a position or office described in paragraphs (a) through (h) of this section has terminated, but who has not yet satisfied the filing requirements of 2634.201(e) of this subpart.

Note: References in this section and in 2634.203 and 2634.904 to position classifications have been adjusted to reflect elimination of General Schedule classifications GS-16, GS-17, and GS-18 by the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101-509.

Sec. 2634.203 Persons excluded by rule.

(a) In general. Any individual or group of individuals described in 2634.202(e) of this subpart (relating to positions of a confidential or policy-making character) may be excluded by rule from the public reporting requirements of this subpart

when the Director of the Office of Government Ethics determines, in his 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 determination. The determination required by paragraph (a) of this section has been made for the following group of individuals who, therefore, may be excluded from the public reporting requirements of this subpart, pursuant to the procedures in paragraph (c) of this section: Individuals in any position classified at GS-15 of the General Schedule or below, or the rate of basic pay for which is less than 120% of the minimum rate of basic pay fixed for GS-15, who have no policy-making role with respect to agency programs. Such individuals may include chauffeurs, private secretaries, stenographers, and others holding positions of a similar nature whose exclusion would be consistent with the basic criterion set forth in paragraph (a) of this section. See 2634.904(d) for possible coverage by confidential disclosure rules.

(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 files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of any incumbent employees in those positions. Exclusions should be requested prior to due dates for the reports which such employees would otherwise have to file. A subsequent list or description showing any additions to or deletions from the original submissions, or a statement that no changes have been made, must be filed annually with the Office of Government Ethics on or before May 15.

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

Sec. 2634.204 Employment of sixty days or less.

(a) In general. Any public filer or nominee who, as determined by the official specified in this paragraph, is not reasonably expected to perform the duties of an office or position described in 2634.201(c) or 2634.202 of this subpart for more than 60 days in any calendar year shall not be subject to the reporting requirements of 2634.201 (b), (c), or (e) of this subpart. This determination will be made by:

(1) The designated agency ethics official or Secretary concerned, in a case to which the provisions of 2634.201 (b) or (e) of this subpart (relating to new entrant and termination reports) would otherwise apply; or

(2) The Director of the Office of Government Ethics, in a case to which the provisions of 2634.201(c) of this subpart (relating to nominee reports) would otherwise apply.

(b) Alternative reporting. Any new entrant who is exempted from filing a public financial report under paragraph (a) of this section and who is a special Government employee is subject to confidential reporting under 2634.903(b). See 2634.904(b).

(c) Exception. If the public filer or nominee actually performs the duties of an office or position referred to in paragraph (a) of this section for more than 60 days in a calendar year, the public report otherwise required by:

(1) Section 2634.201 (b) or (c) of this subpart (relating to new entrant and nominee reports) shall be filed within 15 calendar days after the sixtieth day of duty; and

(2) Section 2634.201(e) of this subpart (relating to termination reports) shall be filed as provided in that paragraph.

Sec. 2634.205 Special waiver of public reporting requirements.

(a) General rule. In unusual circumstances, the Director of the Office of Government Ethics may grant a request for a waiver of the public reporting requirements under this subpart for an individual who is reasonably expected to perform, or has performed, the duties of an 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(a), 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 under the circumstances.

(b) Procedure.

(1) Requests for waivers must be submitted to the Office of Government Ethics, via the requester's agency, within 10 days after an employee learns that he will hold a position which requires reporting and that he will serve in that position for more than 60 days in any calendar year, or upon serving in such a position for more than 60 days, whichever is earlier.

(2) The request shall consist of:

(i) A cover letter which identifies the individual and his position, states the approximate number of days in a calendar year which he expects to serve in that position, and requests a waiver of public reporting requirements under this section;

(ii) An enclosure which states the reasons for the individual's belief that the conditions of paragraphs (a) (1) through (4) of this section are met in the particular case; and

(iii) The report otherwise required by this subpart B, as a factual basis for the determination required by this section. The report shall bear the legend at the top of page 1: "CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR 2634.205."

(3) The agency in which the individual serves shall advise the Office of Government Ethics as to the justification for a waiver.

(4) In the event a waiver is granted, the report shall not be subject to the public disclosure requirements of 2634.603; however, the waiver request cover letter shall be subject to those requirements. In the event that a waiver is not granted, the confidential legend shall be removed from the report, and the report shall be subject to public disclosure; however, the waiver request cover letter shall not then be subject to public disclosure.

SUBPART C: CONTENTS OF REPORTS**Sec. 2634.301 Interests in property.**

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall include a brief description of any interest in property held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, having a fair market value in excess of \$1,000. In the case of public financial disclosure reports, the report shall designate the category of value of the property in accordance with paragraph (d) of this section. Each item of real and personal property shall be disclosed separately. Note that for Individual Retirement Accounts (IRA's), brokerage accounts, trusts, mutual or pension funds and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under 2634.310 of this subpart.

(b) Types of property reportable. Subject to the exceptions in paragraph (c) of this section, examples of the types of property required to be reported include, but are not limited to:

- (1) Real estate;
- (2) Stocks, bonds, securities, and futures contracts;
- (3) Livestock owned for commercial purposes;
- (4) Commercial crops, either standing or held in storage;
- (5) Antiques or art held for resale or investment;
- (6) Beneficial interests in trusts and estates;
- (7) Deposits in banks or other financial institutions;
- (8) Pensions and annuities;
- (9) Mutual funds;
- (10) Accounts or other funds receivable; and
- (11) Capital accounts or other asset ownership in a business.

(c) Exceptions. The following property interests are exempt from the reporting requirements under paragraphs (a) and (b) of this section:

(1) Any personal liability owed to the filer, spouse, or dependent child by a spouse, or by a parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Personal savings accounts (defined as any form of deposit in a bank, savings and loan association, credit union, or similar financial institution) in a single financial institution or holdings in a single money market mutual fund, aggregating \$5,000 or less in that institution or fund;

(3) A personal residence of the filer or spouse, as defined in 2634.105(l); and

(4) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act.

(d) Valuation categories. The valuation categories specified for property items on public financial disclosure reports are as follows:

(1) Not more than \$15,000;

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

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

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

(5) Greater than \$250,000 but not more than \$500,000;

(6) Greater than \$500,000 but not more than \$1,00,000; and

(7) Greater than \$1,000,000.

(e) Valuation of interests in property. A good faith estimate of the fair market value of interests in property may be made in any case in which the exact value cannot be obtained without undue hardship or expense to the filer. Fair market value may also be determined by:

(1) The purchase price (in which case, the filer should indicate date of purchase);

(2) Recent appraisal;

(3) The assessed value 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);

(4) The year-end book value of nonpublicly traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;

(5) The net worth of a business partnership;

(6) The equity value of an individually owned business; or

(7) Any other recognized indication of value (such as the last sale on a stock exchange).

Example 1. An official has a \$4,000 savings account in Bank A. His spouse has a \$2,500 certificate of deposit issued by Bank B and his dependent 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 does not exceed \$5,000. Note, however, that the source, and if he is a public filer the amount, of interest income from any bank is required to be reported under 2634.302(b) of this subpart if it exceeds the reporting threshold for income. See 2634.309 of this subpart for disclosure coverage of spouses and dependent children.

Example 2. Public filer 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 sales of both less desirable works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, R must report the value of all the paintings he retains as interests in property pursuant to this section, as well as income from the sales of paintings pursuant to 2634.302(b) of this subpart. Recurrent sales from a collection indicate that the collection is being held for investment or the production of income.

Example 3. A reporting individual has investments which her broker holds as an IRA and invests in stocks, bonds, and mutual funds. Each such asset having a fair market value in excess of \$1,000 at the close of the reporting period must be separately listed, and also the value must be shown if she is a public filer. See 2634.311(c) of this subpart for attachment of

brokerage statements in lieu of listing, in the event of extensive holdings. Note that for a mutual fund held in this IRA investment account, its underlying assets must also be separately detailed, unless it qualifies as an excepted investment fund, pursuant to 2634.310 of this subpart.

Sec. 2634.302 Income.

(a) Noninvestment income.

(1) Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose the source, type, and in the case of public financial disclosure reports the actual amount or value, of earned or other noninvestment income in excess of \$200 from any one source which is received by the filer or has accrued to his benefit during the reporting period, including:

(i) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);

(ii) Retirement benefits (other than from United States Government employment, including the Thrift Savings Plan, or from Social Security);

(iii) Any honoraria, and the date services were provided, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

(iv) Any other noninvestment income, such as prizes, awards, or discharge of indebtedness.

Note: In calculating the amount of an honorarium, subtract any actual and necessary travel expenses incurred by the recipient and one relative. For example, if such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment; if the expenses are paid or reimbursed by the individual receiving the honorarium, the amount of honorarium shall be reduced by the amount of such expenses.

Example 1. An official is a participant in a retirement plan of Coastal Airlines. Pursuant to such plan, the official and his spouse receive passage on some Coastal flights without charge, and they receive passage on other flights at a discounted fare. The difference between what Coastal charges members of the public generally and what the official and his spouse are charged for a particular flight is deemed income in-kind and must be disclosed by this reporting individual if it exceeds the \$200 threshold.

Example 2. An official serves on the board of directors at a bank, for which he receives a \$500 fee each calendar quarter. He also receives an annual fee of \$1,500 for service as trustee of a private trust. In both instances, such fees received or earned during the reporting period must be disclosed, and if he is a public filer the actual amount must be shown.

(2) In the case of payments in lieu of honoraria made on or after January 1, 1991, the individual shall also file a separate confidential report of charitable recipients, in accordance with part 2636 of this chapter.

(b) Investment income. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose:

(1) The source and type of investment income, characterized as dividends, rents, interest, capital gains, or income from qualified or excepted trusts or excepted investment funds (see 2634.310 of this subpart), which is received by the filer or accrued to his benefit during the reporting period, and which exceeds \$200 in amount or value from any one source. Examples include, but are not limited to, income derived from real estate, collectible items, stocks, bonds, notes, copyrights, pensions, mutual funds, the investment portion of life insurance contracts, loans, and personal savings accounts (as defined in 2634.301(c)(2) of this subpart). Note that for entities with portfolio holdings, such as Individual Retirement Accounts (IRA's), brokerage accounts, trusts, and mutual or pension funds, each underlying source of income must be separately disclosed, unless the entity qualifies for special treatment under 2634.310 of this subpart. For public financial disclosure reports, the amount or value of income from each reported source shall also be disclosed and categorized 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;

(vii) Greater than \$100,000 but not more than \$1,000,000; and

(viii) Greater than \$1,000,000.

(2) The source, type, and in the case of public financial disclosure reports the actual amount or value, of gross income from a business, distributive share of a partnership, joint business venture income, payments from an estate or an annuity or endowment contract, or any other items of income not otherwise covered by paragraphs (a) or (b)(1) of this section which are received by the filer or accrued to his benefit during the reporting period and which exceed \$200 from any one source.

Example 1. An official rents out a portion of his residence. He receives rental income of \$600 from one individual for four months and \$1,200 from another individual for the remaining eight months of the year covered by his incumbent financial disclosure report. He must identify the property, specify the type of income (rent), and if he is a public filer indicate the category of the total amount of rent received. (He must also disclose the asset information required by 2634.301 of this subpart.)

Example 2. A reporting individual has three savings accounts with Bank A. One is in his name and earned \$85 in interest during the reporting period. One is in a joint account with his spouse and earned \$120 in interest. One is in his name and his dependent daughter's name and earned \$35 in interest. Since the aggregate interest income from this source exceeds \$200, the official must disclose the name of the bank, the type of income, and if he is a public filer, the category of the total amount of interest earned from all three accounts. (He must also disclose the accounts as assets under 2634.301 of this subpart if, in the aggregate, they total more than \$5,000 in that bank.)

Example 3. An official has an ownership interest in a fast-food restaurant, from which she receives \$10,000 in annual income. She must specify on her financial disclosure report the type of income, such as partnership distributive share or gross business income, and if she is a public filer indicate the actual amount of such income. (Additionally, she must describe the business and categorize its asset value, pursuant to 2634.301 of this subpart.)

Sec. 2634.303 Purchases, sales, and exchanges.

(a) In general. Except as indicated in 2634.308(b) of this subpart, each public financial disclosure report filed pursuant to subpart B of this part shall include a brief description, the date and value (using the categories of value in 2634.301(d) of this subpart) of any purchase, sale, or exchange by the filer during the reporting period, in which the amount involved in the transaction exceeds \$1,000:

(1) Of real property, other than a personal residence of the filer or spouse, as defined in 2634.105(l) of this part; and

(2) Of stocks, bonds, commodity futures, mutual fund shares, and other forms of securities.

(b) Exceptions.

(1) Any transaction solely by and between the reporting individual, his spouse, and dependent children need not be reported under paragraph (a) of this section.

(2) Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and personal savings accounts (as defined in 2634.301(c)(2) of this subpart) need not be reported when occurring at rates, terms, and conditions available generally to members of the public. Likewise, transactions involving portfolio holdings of trusts and investment funds described in 2634.310 (b) and (c) of this subpart need not be reported.

(3) Any transaction which occurred at a time when the reporting individual was not a Federal Government officer or employee need not be reported under paragraph (a) of this section.

Example 1. An official sells her personal residence in Virginia for \$100,000 and purchases a personal residence in the District of Columbia for \$200,000. She need not report the sale of the Virginia residence or the purchase of the D.C. residence.

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 this section and any capital gain over \$200 realized on the sale under 2634.302 of this subpart.

Example 3. An official sells a ranch to his dependent daughter. The official need not report the sale because it is a transaction between the reporting individual and a dependent child; however, any capital gain, except for that portion attributable to a personal residence, is required to be reported under 2634.302 of this subpart.

Example 4. An official sells an apartment building and realizes a loss of \$100,000. He must report the sale of the building if the sale price of the property exceeds \$1,000; however, he need not report anything under 2634.302 of this subpart, as the sale did not result in a capital gain.

Sec. 2634.304 Gifts and reimbursements.

(a) Gifts. Except as indicated in 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description, and in the case of public financial disclosure reports the value, of all gifts aggregating \$250 or more in value which are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include a travel itinerary, dates, and nature of expenses provided.

(b) Reimbursements. Except as indicated in 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and in the case of public financial disclosure reports the value, of any travel-related reimbursements aggregating \$250 or more in value, which are received by the filer during the reporting period from any one source.

Note: The \$250 threshold in paragraphs (a) and (b) of this section will increase if the definition of minimal value under the Foreign Gifts and Decorations Act ever exceeds \$250. Section 314(a) of Public Law 102-90 established the threshold for financial disclosure of gifts and reimbursements as "more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or \$250, whichever is greater."

(c) Exclusions. Reports need not contain any information about gifts and reimbursements to which the provisions of this section would otherwise apply which are received from relatives (see 2634.205(o)) or during a period in which the filer was not an officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as "personal hospitality of any individual," as defined in 2634.105(k), need not be reported. See also exclusions specified in the definitions of gift and reimbursement, at 2634.105(h) and (n).

(d) Aggregation exception. Any gift or reimbursement with a fair market value of \$100 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

Note: The aggregation exception for gifts or reimbursements with a fair market value of \$100 or less will increase if the definition of minimal value under the Foreign Gifts and Decorations Act ever exceeds \$250. Section 314(a) of Public Law 102-90 established the aggregation exception for "any gift with a fair market value of \$100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted" above \$250 pursuant to 5 U.S.C. 7342(a)(5).

Example 1. An official accepts a print, a pen and pencil set, and a letter opener from a community service organization he has worked with solely in his private capacity. He determines, in accordance with paragraph (e) of this section, that these gifts are valued as follows:

Gift 1—Print: \$150

Gift 2—Pen and pencil set: \$105

Gift 3—Letter opener: \$20

The official must disclose Gifts 1 and 2, since together they aggregate \$250 or more in value from the same source. Gift 3 need not be aggregated, because its value does not exceed \$100.

Example 2. An official receives the following gifts from a single source:

1. Dinner for two at a local restaurant—\$120.

2. Round-trip taxi fare to meet donor at the restaurant—\$25.

3. Dinner at donor's city residence—(value uncertain).

4. Round-trip airline transportation and hotel accommodations to visit Epcot Center in Florida—\$400.

5. Weekend at donor's country home, including duck hunting and tennis match—(value uncertain).

The official need only disclose Gift 4. Gift 1 falls within the exception in 2634.105(h) for food and beverages not consumed in connection with a gift of overnight lodging. Gifts 3 and 5 need not be disclosed because they fall within the exception for personal hospitality of an individual. Gift 2 need not be aggregated and reported, because its value does not exceed \$100.

Example 3. An official receives free tickets from an outside source for himself and his spouse to attend an awards banquet at a local club. The value of each ticket is \$130. Even though this is a gift which exceeds the \$250 threshold amount for disclosure, the official need not report it, because of the exception in 2634.105(h) for food and beverages not consumed in connection with a gift of overnight lodging.

Note: Prior to accepting this gift of tickets, the individual should consult ethics officials at his agency to determine whether standards of conduct rules will permit acceptance, depending on whether or not the donor is a prohibited source and the exact nature of the event.

Example 4. An official is asked to speak at an out-of-town meeting on a matter which is unrelated to her official duties and her agency. The round-trip airfare exceeds \$250. If the official pays for the ticket and is then reimbursed by the organization to which she spoke, she must disclose this reimbursement under paragraph (b) of this section. If the organization simply provided the ticket, that must be disclosed as a gift under paragraph (a) of this section.

(e) 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, the value should be determined in one of the following manners:

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

(2) If the item is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.

(3) 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.

Example 1. 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.

Example 2. The value of a dinner at a restaurant can either be the actual cost of the reported dinners or the approximate value, based on the posted fare of the restaurant. The filer need not ask to see the check.

Note: The market value of a ticket entitling the holder to attend an event which includes food, refreshments, entertainment or other benefits is the face value of the ticket, which may exceed the actual cost of the food and other benefits.

(f) Waiver rule in the case of certain gifts--

(1) In general. In unusual cases, a gift as defined in 2634.105(h) need not be aggregated under this section by public filers, if the Director of the Office of Government Ethics receives a written request for and issues a waiver, after determining that:

(i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are entirely personal; and

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

(2) Public disclosure of waiver request. If approved, the cover letter requesting the waiver shall be subject to the public disclosure requirements in 2634.603 of this part.

(3) Procedure. A public filer seeking a waiver under this paragraph shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section. On an enclosure to the cover letter, the filer shall set forth:

(i) The identity and occupation of the donor;

(ii) A statement that the relationship between the donor and the filer is entirely personal in nature; and

(iii) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the preceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with a statement demonstrating that he 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.

Sec. 2634.305 Liabilities.

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify and include a brief description of the filer's liabilities over \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed. For public financial disclosure reports, the report shall designate the category of value of the liabilities in accordance with 2634.301(d) of this subpart, using the greatest amount owed to the creditor during the period.

(b) Exceptions. The following are not required to be reported under paragraph (a) of this section:

(1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Any mortgage secured by a personal residence of the filer or his spouse;

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

(4) Any revolving charge account with an outstanding liability which does not exceed \$10,000 at the close of the reporting period.

Example. An incumbent official has the following debts 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—\$1,000.
4. Master Card—\$11,000.
5. Loan balance of \$15,000, secured by family automobile purchased for \$16,200.
6. Loan balance of \$10,500, secured by antique furniture purchased for \$8,000.
7. Loan from parents—\$20,000.

The loans indicated in items 2, 4, and 6 must be disclosed. Loan 1 is exempt from disclosure under paragraph (b)(2) of this section because it is secured by the personal residence. Loan 3 need not be disclosed under paragraph (b)(4) of this section because it is considered to be a revolving charge account with an outstanding liability that does not exceed \$10,000 at the end of the reporting period. Loan 5 need not be disclosed under paragraph (b)(3) of this section because it is secured by a personal motor vehicle which was purchased for more than the value of the loan. Loan 7 need not be disclosed because the creditors are persons specified in paragraph (b)(1) of this section.

Sec. 2634.306 Agreements and arrangements.

Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify the parties to and the date of, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

- (a) Future employment;
- (b) A leave of absence from employment during the period of the reporting individual's Government service;
- (c) Continuation of payments by a former employer other than the United States Government; and
- (d) Continuing participation in an employee welfare or benefit plan maintained by a former employer.

Sec. 2634.307 Outside positions.

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify all positions held at any time by the filer during the reporting period, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States.

(b) Exceptions. The following need not be reported under paragraph (a) of this section:

- (1) Positions held in any religious, social, fraternal, or political entity; and
- (2) Positions solely of an honorary nature, such as those with an emeritus designation.

Sec. 2634.308 Reporting periods and contents of public financial disclosure reports.

(a) Incumbents. Each public financial disclosure report filed pursuant to 2634.201(a) shall include on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the preceding calendar year (or for any portion of that year not already covered by a new entrant or nominee report filed under paragraph (b) or (c) of 2634.201), and, in the case of 2634.306 and 2634.307, for the additional period up to the date of filing.

(b) New entrants, nominees, and candidates. Each public financial disclosure report filed pursuant to 2634.201(b), (c), or (d) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, except for 2634.303 (relating to purchases, sales, and exchanges of certain property) and 2634.304 (relating to gifts and reimbursements). The following special rules apply:

(1) Interests in property. For purposes of 2634.301 of this subpart, the report shall include all interests in property specified by that section which are held on or after a date which is fewer than thirty-one days before the date on which the report is filed.

(2) **Income.** For purposes of 2634.302 of this subpart, the report shall include all income items specified by that section which are received or accrued during the period beginning on January 1 of the preceding calendar year and ending on the date on which the report is filed, except as otherwise provided by 2634.606 relating to updated disclosure for nominees.

(3) **Liabilities.** For purposes of 2634.305 of this subpart, the report shall include all liabilities specified by that section which are owed during the period beginning on January 1 of the preceding calendar year and ending fewer than thirty-one days before the date on which the report is filed.

(4) **Agreements and arrangements.** For purposes of 2634.306 of this subpart, the report shall include only those agreements and arrangements which still exist at the time of filing.

(5) **Outside positions.** For purposes of 2634.307 of this subpart, the report shall include all such positions held during the preceding two calendar years and the current calendar year up to the date of filing.

(6) **Certain sources of compensation.** Except in the case of the President, the Vice President, or a candidate referred to in 2634.201(d), the report shall also identify the filer's sources of compensation which exceed \$5,000 during either of the preceding two calendar years or during the current calendar year up to the date of filing, and shall briefly describe the nature of the duties performed or services rendered by the reporting individual for each such source of compensation. Information need not be reported, however, which is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person. The report also need not contain any information 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 such individual was directly involved in the provision of such services.

Example. A nominee who is a partner or employee of a law firm and 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 nominee exceeded \$5,000. The name of the client would not normally be considered confidential.

(c) **Termination reports.** Each public financial disclosure report filed under 2634.201(e) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the period beginning on the last date covered by the most recent public financial disclosure report filed by the reporting individual under this part, or on January 1 of the preceding calendar year, whichever is later, and ending on the date on which the filer's employment terminates.

Sec. 2634.309 Spouses and dependent children.

(a) **Special disclosure rules.** Each report required by the provisions of either subpart B or subpart I of this part shall also include the following information with respect to the spouse or dependent children of the reporting individual:

(1) **Income.** For purposes of 2634.302 of this subpart:

(i) With respect to a spouse, the source but not the amount of items of earned income (other than honoraria) which exceed \$1,000 from any one source; and if items of earned income are derived from a spouse's self-employment in a business or profession, the nature of the business or profession but not the amount of the earned income;

(ii) With respect to a spouse, the source, and for a public financial disclosure report the actual amount or value, of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria) which exceed \$200 from any one source, and the date on which the services were provided; and

(iii) With respect to a spouse or dependent child, the type and source, and for a public financial disclosure report the amount or value (category or actual amount, in accordance with 2634.302 of this subpart), of all other income exceeding \$200 from any one source, such as investment income from interests in property (if the property itself is reportable according to 2634.301 of this subpart).

Example 1. The spouse of a filer is employed as a teller at Bank X and earns \$23,000 per year. The report must disclose that the spouse is employed by Bank X. The amount of the spouse's earnings need not be disclosed, either on a public or confidential financial disclosure report.

Example 2. The spouse of a reporting individual is self-employed as a pediatrician. The report must disclose that he is a physician, but need not disclose the amount of income, either on a public or confidential financial disclosure report.

(2) **Gifts and reimbursements.** For purposes of 2634.304 of this subpart, gifts and reimbursements received by a spouse or dependent child which are not received totally independent of their relationship to the filer.

(3) Interests in property, transactions, and liabilities. For purposes of 2634.301, 2634.303 (applicable only to public filers), and 2634.305 of this subpart, all information concerning property interests, transactions, or liabilities referred to by those sections of a spouse or dependent child, unless the following three conditions are satisfied:

- (i) The filer certifies that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no specific knowledge regarding that item;
- (ii) The item is not in any way, past or present, derived from the income, assets or activities of the filer; and
- (iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note: One who prepares a joint tax return with his spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items; therefore he could not avail himself of this exception. Likewise, a trust for the education of one's minor child normally will convey a financial benefit to the parent. If so, the assets of the trust would be reportable on a financial disclosure statement.

(b) Exception. For reports filed as a new entrant, nominee, or candidate under 2634.201(b), (c), or (d), or as a new entrant under 2634.908(b), no information regarding gifts and reimbursements or transactions is required for a spouse or dependent child.

(c) Divorce and separation. A reporting individual need not report any information about:

- (1) A spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation;
- (2) A former spouse or a spouse from whom the reporting individual is permanently separated; or
- (3) Any income or obligations of the reporting individual arising from dissolution of the reporting individual's marriage or permanent separation from a spouse.

Sec. 2634.310 Trusts, estates, and investment funds.

(a) In general.

(1) Except as otherwise provided in this section, each financial disclosure report shall include the information required by this subpart or subpart I of this part about the holdings of and income from the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, his spouse, or dependent child.

(2) No information, however, is required about a nonvested beneficial interest in the principal or income of an estate or trust. A vested interest is a present right or title to property, which carries with it an existing right of alienation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future. This includes a future interest when one has a right, defeasible or indefeasible, to the immediate possession or enjoyment of the property, upon the ceasing of another's interest. Accordingly, it is not the uncertainty of the time of enjoyment in the future, but the uncertainty of the right of enjoyment (title and alienation), which differentiates a "vested" and a "nonvested" interest.

(b) Qualified trusts and excepted trusts.

(1) A filer should not report information about the holdings of or income from holdings of, any qualified blind trust (as defined in 2634.403) or any qualified diversified trust (as defined in 2634.404). For a qualified blind trust, a public financial disclosure report shall disclose the category of the aggregate amount of the trust's income attributable to the beneficial interest of the filer, his spouse, or dependent child in the trust. For a qualified diversified trust, a public financial disclosure report shall disclose the category of the aggregate amount of income with respect to such a trust which is actually received by the filer, his spouse, or dependent child, or applied for the benefit of any of them.

(2) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but will not otherwise need to report information about the trust's holdings or income from holdings. The category of the aggregate amount of income from an excepted trust which is received by or accrued to the benefit of the filer, his spouse, or dependent child shall be reported on public financial disclosure reports. For purposes of this part, the term "excepted trust" means a trust:

- (i) Which was not created directly by the filer, spouse, or dependent child; and
- (ii) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . 5 CFR 2634

(c) Excepted investment funds.

(1) No information is required under paragraph (a) of this section about the underlying holdings of or income from underlying holdings of an excepted investment fund as defined in paragraph (c)(2) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income. Public financial disclosure reports must also disclose the category of value of the fund interest held; aggregate amount of income from the fund which is received by or accrued to the benefit of the filer, his spouse, or dependent child; and value of any transactions involving shares or units of the fund.

(2) For purposes of financial disclosure reports filed under the provisions of this part, an "excepted investment fund" means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

- (i) (A) The fund is publicly traded or available; or
(B) The assets of the fund are widely diversified; and

(ii) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(3) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

Sec. 2634.311 Special rules.

(a) Political campaign funds. Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this part. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(b) Certificates of Divestiture. Each public financial disclosure report required by the provisions of this part shall identify those sales which have occurred pursuant to a Certificate of Divestiture during the period covered by such report. See subpart J of this part for the rules relating to the issuance of such Certificates.

(c) Reporting standards.

(1) In lieu of entering data on a schedule of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the schedule.

(2) In lieu of reporting the category of amount or value of any item listed in any public financial disclosure report filed pursuant to this part, a filer may report the actual dollar amount of such item.

SUBPART D: QUALIFIED TRUSTS

Sec. 2634.401 General considerations.

(a) Statutory standards governing qualified trusts-

(1) Types of qualified trusts and their relationship to conflict of interest laws. The Ethics in Government Act of 1978 created, and provided special public financial disclosure requirements for, two types of qualified trusts. It was envisioned that the use of those trusts by Government employees would reduce the real and apparent conflicts of interest which might arise between the financial interests held by those employees (or attributable to them) and their official responsibilities.

(i) Interested party means a Government employee, his spouse, any minor or dependent child, and their representatives in any case in which the employee, spouse, or child has a beneficial interest in the principal or income of a trust proposed for certification or certified.

(ii) Qualified blind trust. The most universally adaptable qualified trust is the qualified blind trust, defined in 2634.403 of this subpart. A trust is considered to be "blind" only with regard to those trust assets about which no interested party has knowledge. When an interested party originally places assets in trust, that party still possesses knowledge about those assets. Those original assets remain financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations, until the trustee notifies the official either that a particular original asset has been disposed of or that the asset's value is less than \$1000. If the trustee sells or disposes of original trust assets and then uses the proceeds to acquire new trust holdings, or if the trustee reinvests trust income to acquire new trust holdings, a "blind" trust exists for those new holdings because the interested parties possess no information

about the newly acquired assets. The holdings of a "blind" trust are not classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

(iii) Qualified diversified trust. The second type of qualified trust established by the Act is the qualified diversified trust, defined in 2634.404 of this subpart. Among other requirements, a trust is considered to be "diversified" if it can be demonstrated, to the satisfaction of the Director of the Office of Government Ethics, pursuant to 2634.404(b), that the trust assets comprise a widely diversified portfolio of readily marketable securities, and do not initially include the securities of any entities having substantial activities in the same area as the Government official's primary area of responsibility. The trust holdings are never classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

(2) Independence of trustees and other fiduciaries. Under the Act and 2634.406 of this subpart, those entities that are authorized by the Act or by the trust instrument to manage the assets of, and to control and administer, either a qualified blind or a qualified diversified trust must be independent, in fact and in appearance, from those parties who hold beneficial interests in the trust.

(i) The independence of trustees is facilitated by limiting the entities which may serve in this capacity to certain financial institutions.

(ii) In addition to the trustee, the Act extends the independence requirement to other entities which manage trust assets or administer the trust, including officers and employees of the trustee, any other entity designated in the trust instrument to perform fiduciary duties on behalf of the trust, and the officers and employees of any other entity that is involved in the management or control of the trust, such as investment counsel, investment advisers, accountants, or tax preparers and their assistants.

(iii) Those entities governed by the Act will be considered "independent" for purposes of this subpart if, among other requirements, the entities are not affiliated with, associated with, related to, or subject to the control or influence of, any of the parties that hold a beneficial interest in the trust.

(3) Communications between trust administrators and interested parties. For purposes of Federal ethics laws, the most important feature of those qualified trusts that are recognized under the Act is the separation which those trusts foster between parties with beneficial interests in the trust and entities which manage trust assets and administer the trust instrument. Once a qualified trust has been certified, the beneficiaries and their representatives are expressly prohibited from commenting directly to the trustee about matters relating to asset management and trust holdings, or to trust administration and activities. Likewise, the trustee must make investment decisions for the trust without consulting, or being controlled by, interested parties, and the trustee is prohibited from informing interested parties directly about trust activities, except to the limited extent required under the Act. The Act requires the trustee to provide trust beneficiaries with certain standard periodic reports. Beyond receipt of these standard reports, trust beneficiaries are prohibited from actively attempting to obtain and from passively but knowingly obtaining, directly or indirectly, any additional information which the Act prohibits beneficiaries from obtaining, including information about trust holdings and activities. Finally, instruments creating qualified trusts must require interested parties and trustees to make all permissible communications relating to the trust and to its assets in writing, with the prior written approval of the Director of the Office of Government Ethics. Sections 2634.403-2634.405 and 2634.407 of this subpart contain standards implementing these restrictions.

(4) Trust and beneficiary taxes. For tax purposes, because a trust is a separate entity distinct from its beneficiaries, a trustee must file an annual fiduciary tax return for the trust (IRS Form 1041). In addition, the trust beneficiaries must report income received from the trust on their individual tax returns. The Act establishes special filing procedures to be used by the trustee and trust beneficiaries in order to maintain the substantive separation between trust beneficiaries and trust administration. For beneficiaries of qualified blind trusts, the trustee sends a Schedule K-1 form summarizing trust income in appropriate categories to enable the beneficiaries to file individual tax returns. For beneficiaries of qualified diversified trusts, the statute requires the trustee to file the individual tax returns on behalf of the trust beneficiaries. The beneficiaries must transmit to the trustee materials concerning taxable transactions and occurrences outside of the trust, pursuant to the requirements in each trust instrument which detail this procedure.

(b) Policy considerations and objectives underlying the qualified trust program.

(1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind or diversified trust. However, there was general agreement that the use of blind or diversified trusts often reduced the potential for conflicts of interest. If Government employees do not know the exact identity, nature, and extent of their financial interests, then the employees cannot be influenced in the performance of their official duties by those interests. Their official actions, under these circumstances, should be free from collateral attack arising out of real or apparent conflicts of interest. Therefore, the most significant objective to be achieved through the use of a blind trust is the lack of knowledge, or actual "blindness," by a Government official with respect to the holdings in his trust. The same goal may be achieved through the use of a diversified trust, if that trust holds securities from different issuers in different economic sectors, and if the trust's interest in any one issuer is limited. Under these conditions, it is unlikely that official actions taken by the Government employee who holds a beneficial interest in the trust would affect individual securities to such a degree that the overall value of the trust's portfolio would be materially enhanced. Thus, wide diversification is tantamount to actual "blindness."

(2) Because, for the trusts certified under the provisions of this subpart D, the Government official is or will become blind to the identity and nature of his actual trust holdings, the reporting requirements of section 102(f)(1) of the Act and subparts C or I of this part, which generally require Government filers to disclose the contents of a trust's portfolio, do not apply. See 2634.310 of this part. Further, as discussed in paragraphs (a)(1) (ii) and (iii) of this section, 18 U.S.C. 208 and other Federal conflict of interest laws do not generally apply to the holdings of qualified trusts, except in the case of the original assets transferred to a qualified blind trust until notice that a particular original asset has been disposed of or that the asset's value is below \$1,000.

(c) Qualified trust provisions of the regulation. This subpart D prescribes standards which implement the statutory requirements and policy objectives underlying the Act's qualified blind and diversified trust provisions. The Office of Government Ethics will apply the standards of this subpart to specific cases.

(1) Classification as a qualified trust. In order to be classified as a qualified trust for purposes of the Act, blind and diversified trusts must satisfy the following three requirements:

(i) The trust document must conform to announced standards. As provided under 2634.403(b) for blind trusts and 2634.404(c) for diversified trusts, the trust document must conform to the model trust instruments which are drafted and distributed by the Office of Government Ethics for use by interested parties when drafting their trust arrangements. Prior to certifying a trust under 2634.405 of this subpart, as discussed in paragraph (c)(1)(iii) of this section, the Office of Government Ethics must approve every proposed trust document. In addition to other required provisions, the trust instrument must contain language which implements the communications restrictions discussed in paragraph (a)(3) of this section. By requiring interested parties, trustees, and other signatories to the trust instrument to include communications provisions, these regulations compel the signatories diligently to safeguard against inadvertent disclosures of precluded information to the interested parties.

(ii) Truly independent fiduciaries. As discussed in paragraph (a)(2) of this section, the fiduciaries in charge of administering and managing the assets of a qualified trust must be actually and apparently independent of the parties who hold beneficial interests in the trust, and of their representatives. To ensure such independence, 2634.406 of this subpart limits the range of permissible fiduciaries. Before a trust may be classified as a qualified blind or diversified trust, the Director of the Office of Government Ethics must conclude, in his judgment, that the trust fiduciaries named in the trust instrument satisfy the standards for independence contained in 2634.406 of this subpart.

(iii) Certification by the Office of Government Ethics. Before a trust may be classified as a qualified blind or diversified trust, the Director of the Office of Government Ethics must certify, in accordance with the standards and procedures established in 2634.405 of this subpart, that the trust meets the requirements of section 102(f) of the Act and of this subpart, that certification is in the public interest, and that certification is consistent with the policies established by these provisions and by other applicable laws and regulations. This certification is essential so that the Office can ensure, in advance that the proposed trust arrangement satisfies the established standards.

(2) Certification of pre-existing trusts. Normally, those trusts certified as qualified trusts by the Director of the Office of Government Ethics under 2634.405 of this subpart are newly created trust arrangements, formulated in accordance with established standards by representatives of the interested parties in consultation with the Office of Government Ethics. However, the Director may certify a pre-existing trust as a qualified blind or qualified diversified trust under 2634.403 (blind) or 2634.404 (diversified) if he determines that such action is appropriate and is sufficient to ensure compliance with applicable laws and regulations. The pre-existing trust proposed for certification must meet both the generally applicable trust requirements, and several special requirements contained in 2634.405(c) of this subpart, including that all of the parties to the original trust agree to administer the trust in accordance with the requirements of this subpart. The pre-existing trust may be certified only if all of the conditions of this subpart are fulfilled, and if the requisite confidentiality can be assured with respect to the trust.

(3) Reporting requirements. Once a trust is classified as a qualified blind or qualified diversified trust in the manner discussed under paragraph (c)(1) of this section, 2634.310(b) applies less inclusive financial disclosure requirements to the trust assets.

(4) Sanctions and enforcement. Section 2634.702 provides civil sanctions which apply to any Government official or trust fiduciary who violates his obligations under the Act, its implementing regulations, or the trust instrument. In addition, the Office of Government Ethics has authority under the Act to impose appropriate administrative or other sanctions. Subpart E of this part delineates the procedure which must be followed with respect to the revocation of trust certificates and trustee approvals.

(d) Drafting and implementation of the qualified trust instrument.

(1) The overview of the qualified trust program contained in this section cannot anticipate every concern or question or discuss every scenario which might arise in the course of formulating and implementing a qualified trust instrument. The Office of Government Ethics should be contacted by an interested party or by his professional representatives if the Act, the implementing regulations, and the trust instrument itself do not provide guidance in a particular instance.

(2) No trust will be considered "qualified" for purposes of the Act until the Office of Government Ethics certifies the trust prior to execution. The Office of Government Ethics makes available to attorneys model trust agreements for use in drafting proposed trust agreements which are to be submitted to the Office for certification. Attorneys are cautioned to consider each model provision in light of the circumstances presented by the particular case, and to modify provisions to the extent that such modifications are necessary or appropriate. Attorneys should not rely uncritically upon the language of the model agreements. However, many of the model provisions implement the minimum requirements which must be contained in any trust instrument certified by the Office. Certificates of Independence for fiduciaries must be executed in the form indicated in appendix A of this part.

(3) The Office of Government Ethics does not draft trust instruments for use in individual cases. However, its staff is always willing to cooperate with attorneys and to make its experience available to them in developing appropriate trust instruments which satisfy applicable Federal laws, Executive orders and regulations. If the use of a qualified trust is contemplated in a particular case, it is strongly recommended that the interested parties or their representatives contact the Office of Government Ethics as early as possible.

(4) Prior to trust certification, prospective trustees or their representatives should schedule with the staff of the Office of Government Ethics an appointment for an orientation to the specialized requirements and procedures which have been established by the Act and the regulations with respect to qualified trust administration.

Sec. 2634.402 Special notice for advice-and-consent nominees.

(a) In general. In any case in which the establishment of a qualified diversified trust is contemplated with respect to a reporting individual whose nomination is being considered by a Senate committee, that individual shall inform the committee of the intention to establish a qualified diversified trust at the time of filing a financial disclosure report with the committee.

(b) Applicability. The rule of this section is not applicable to members of the uniformed services or Foreign Service officers. The special notice requirement of this section shall not preclude an individual from seeking the certification of a qualified blind trust or qualified diversified trust after the Senate has given its advice and consent to a nomination.

Sec. 2634.403 Qualified blind trusts.

(a) Definition. A qualified blind trust is a trust in which the filer, his spouse, or his minor or dependent child has a beneficial interest, which is certified pursuant to 2634.405 of this subpart by the Director of the Office of Government Ethics, and which includes in the trust instrument in the provisions required by paragraph (b) of this section, and has an independent trustee as defined in g 2634.406 of this subpart. See section 102(f)(3) of the Act.

(b) Required provisions. The instrument which establishes a blind trust must adhere substantively to model drafts circulated by the Office of Government Ethics, and must provide that:

(1) The primary purpose of the blind trust is to confer on the independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without the participation by, or the knowledge of, any interested party. This includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of and in what investments the proceeds of sale are to be reinvested;

(2) The trustee and any other designated fiduciary in the exercise of their authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party

(3) None of the assets initially placed in the trust's portfolio shall include assets the holding of which by any interested party would be prohibited by the Act, by the implementing regulations, or by any other applicable Federal law, Executive order, or regulation;

(4) Any portfolio asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale, except as fully described in schedules attached to the trust instrument, and as approved by the Director of the Office of Government Ethics

(5) During the term of the trust, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held by the trust;

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

(7) The trustee or his designee shall prepare the trust's income tax return. Under no circumstances shall the trustee or any other designated fiduciary disclose publicly, or to any interested party, the trust's tax return, any information relating to that return except for a summary of trust income in categories necessary for an interested party to complete his individual tax return, or any information which might specifically identify current trust assets, or those assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets under paragraph (b)(6) of this section;

(8) An interested party shall not receive any report on trust holdings and sources of trust income, except that the trustee shall, without identifying specifically any asset or holding:

(i) Report quarterly 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 any other information necessary to enable the interested party to complete his individual income tax return; and

(iii) Report annually, for purposes of section 102(a)(1)(B) of the Act, the aggregate amount of the trust's income attributable to the interested party's beneficial interest in the trust, categorized in accordance with 5 2634.302(b);

(9) There shall be no direct or indirect communication with respect to the trust between an interested party and the independent trustee or any other designated fiduciary with respect to the trust unless:

(i) Such communication is in writing with the prior written approval of the Director of the Office of Government Ethics and is filed with the Director in accordance with 5 2634.408(c) of this subpart; and

(ii) It relates only:

(A) To the request for a distribution from the trust, which does not specify whether the distribution shall be made in cash or in kind

(B) To the general financial interest and needs of the interested party including, but not limited to, a preference for maximizing current income or long-term capital appreciation

(C) To notification of the trustee by the interested party that the interested party is prohibited by subsequently applicable statute, Executive order, or regulation from holding an asset, and to directions to the trustee that the trust shall not hold that asset; or

(D) To instructions to the trustee to sell all of an asset which was initially placed in the trust by an interested party, and which, in the determination of the filer creates a real or apparent conflict due to duties subsequently assumed by the filer (but the filer is not required to give such directions);

NOTE: By the terms of paragraph (3)(C)(vi) of section 102(f) of the Act, communications which solely consist of requests for distributions of cash or other unspecified assets of the trust are not required to be in writing. Further, there is no statutory mechanism for pre-screening of proposed communications. However, experience of the Office Of Government Ethics over the years dictates the necessity of prohibiting any oral communications between the trustee and an interested party with respect to the trust and pre-screening all proposed written communications. to prevent inadvertent prohibited communications and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trust instruments which do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(10) The interested parties shall not take any action to obtain, and shall take reasonable action to avoid receiving, information with respect to the holdings and the sources of income of the trust, including a copy of any trust tax return filed by the trustee, or any information relating to that return except for the reports and information specified in paragraphs (b)(6) and (b)(8) of this section;

(11) An independent trustee and any other designated fiduciary shall file with the Director of the Office of Government Ethics by May 15th following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed in appendix B to this part. In addition, the independent trustee and such fiduciary 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;

(12) Neither the trustee nor any other designated fiduciary shall knowingly and willfully, or negligently:

(i) Disclose to any interested party any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument;

(ii) Acquire any holding the ownership of which is prohibited by, or not in accordance with, the terms of the trust instrument;

(iii) Solicit advice from any interested party with respect to the trust, if such solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by title I of the Act or by this part:

(13) An interested party shall not knowingly and willfully, or negligently:

(i) Solicit or receive any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument; or

(ii) Fail to file any document required by title I of the Act or by this part;

(14) No person, including investment counsel, investment advisers, accountants, and tax preparers, may be employed or consulted by an independent trustee or any other designated fiduciary to assist in any capacity to administer the trust or to manage and control the trust assets, unless the following four conditions are met:

(i) When any interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director of the Office of Government Ethics;

(ii) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under 2634.406 of this subpart to be independent of any interested party with respect to the trust arrangement;

(iii) The person is instructed by the independent trustee or other designated fiduciary not to disclose publicly or to any interested party information which might specifically identify current trust assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets under paragraph (b)(6) of this section; and

(iv) The person is instructed by the trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party, and to make all indirect communications with respect to the trust only through the trustee, pursuant to paragraph (b)(9) of this section;

(15) The trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director of the Office of Government Ethics, securities, cash, or other property from any interested party;

(16) The existence of any banking or other client relationship between any interested party and an independent trustee or any other designated fiduciary shall be disclosed in schedules attached to the trust instrument, and no other such relationship shall be instituted unless that relationship is disclosed to the Director of the Office of Government Ethics; and

(17) The independent trustee and any other designated fiduciary shall be compensated in accordance with schedules annexed to the trust instrument.

Sec. 2634.404 Qualified diversified trusts.

(a) Definition. A qualified diversified trust is any trust in which the filer, his spouse, or his minor or dependent child has a beneficial interest, which is certified pursuant to 2634.405 of this subpart by the Director of the Office of Government Ethics, which has a portfolio as specified in paragraph (b) of this section, and which includes in the trust instrument the provisions required by paragraph (c) of this section and has an independent trustee as defined in 2634.406 of this subpart. See section 102(f)(4)(B) of the Act.

(b) Required portfolio

(1) Standards for initial assets. It must be established, to the satisfaction of the Director of the Office of Government Ethics, that the initial assets of the trust proposed for certification comprise a widely diversified portfolio of readily marketable securities. The reporting individual or other interested party shall provide the Director with a detailed list of the securities proposed for inclusion in the portfolio, specifying their fair market values and demonstrating that these securities meet the requirements of this paragraph. The initial trust portfolio may not contain securities of issuers having substantial activities in the reporting individual's primary area of responsibility. If requested by the Director, the designated agency ethics official for the reporting individual's employing agency shall certify whether the proposed portfolio meets this standard.

(2) Diversification standards. For purposes of paragraph (b)(1) of this section, a portfolio will be widely diversified if:

(i) The value of the securities concentrated in any particular or limited industrial, economic or geographic sector is no more than twenty percent of the total; and

(ii) The value of the securities of any single issuer (other than the United States Government) is no more than five percent of the total.

(3) Marketability standard. For purposes of paragraph (b)(1) of this section, a security will be readily marketable if:

(i) Daily price quotations for the security appear regularly in newspapers of general circulation; and

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

(c) Required provisions. The instrument which establishes a diversified trust must adhere substantively to model drafts circulated by the Office of Government Ethics, and must provide that:

(1) The primary purpose of the diversified trust is to confer on the independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without the participation by, or the knowledge of, any interested party. This includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of and in what investments the proceeds of sale are to be reinvested;

(2) The trustee and any other designated fiduciary in the exercise of their authority and discretion to arrange and control the assets of the trust shall not consult or notify any interested party;

(3) The trust's initial assets shall comprise a widely diversified portfolio of readily marketable securities, in accordance with the principles of paragraph (b) of this section, and the trustee shall not acquire additional securities in excess of the diversification standards;

(4) Any portfolio asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale, except as fully described in schedules attached to the trust instrument, and as approved by the Director of the Office of Government Ethics;

(5) During the term of the trust, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held under the trust;

(6) None of the assets initially placed in the trust's portfolio shall consist of securities of issuers having substantial activities in the reporting individual's primary area of Federal responsibility;

(7) The trustee or designee shall prepare the trust's income tax return and, on behalf of any interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust. Under no circumstances shall the trustee or any other designated fiduciary disclose publicly or to any interested party, any of the returns prepared by the trustee or his designee, any information relating to those returns, or any information which might specifically identify current trust assets, or those assets which have been sold or disposed of from trust holdings;

(8) An interested party shall not receive any report on trust holding and sources of trust income, except that the trustee shall, without identifying specifically any asset or holding:

(i) Report quarterly the aggregate market value of the assets representing the interested party's interest in the trust; and

(ii) Report annually, for purposes of section 102(a)(1)(B) of the Act, the aggregate amount actually distributed from the trust to such interested party, or applied for the party's benefit;

(9) There shall be no direct or indirect communication with respect to the trust between an interested party and the independent trustee or any other designated fiduciary unless:

(i) Such communication is in writing, with the prior written approval of the Director of the Office of Government Ethics and is filed with the Director in accordance with 2634.408(c) of this subpart; and,

(ii) It relates only:

(A) To the request for a distribution from the trust, which does not specify whether the distribution shall be made in cash or in kind;

(B) To the general financial interest and needs of the interested party including, but not limited to, a preference for maximizing current income or long-term capital appreciation; or

(C) To information, documents, and funds concerning income tax obligations arising from sources other than the property held in trust, which are required by the trustee to enable him to file, on behalf of an interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust;

NOTE: By the terms of paragraph (3)(C)(vi) of section 102(f) of the Act, communications which solely consist of requests for distributions of cash or other unspecified assets of the trust are not required to be in writing. Further, there is no statutory

* mechanism for pre-screening of proposed communications. However, experience of the Office of Government Ethics over the years dictates the necessity of prohibiting any oral communications between the trustee and an interested party with respect to the trust and pre-screening all proposed written communications, to prevent inadvertent prohibited communications and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) Or section 102(f) of the Act, the Office of Government Ethics will not approve proposed trust instruments which do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(10) The interested parties shall not seek to obtain, and shall take reasonable action to avoid receiving, information with respect to trust holdings and sources of trust income, including a copy of any tax return filed by the trustee, or any information relating to that return, except for the reports and information specified in paragraph (c)(8) of this section;

(11) An independent trustee and any other designated fiduciary shall file, with the Director of the Office of Government Ethics, by May 15 following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed in appendix B to this part. In addition, the independent trustee and any other designated fiduciary 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

(12) Neither the trustee nor any other designated fiduciary shall knowingly and willfully, or negligently:

(i) Disclose to any interested party any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument;

(ii) Acquire any holding the ownership of which is prohibited by, or not in accordance with, the terms of the trust instrument;

(iii) Solicit advice from any interested party with respect to the trust if such solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by title I of the Act or by this part;

(13) An interested party shall not knowingly and willfully, or negligently:

(i) Solicit or receive any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument; or

(ii) Fail to file any document required by title I of the Act or by this part;

(14) No person, including investment counsel, investment advisers, accountants, and tax preparers, may be employed or consulted by an independent trustee or any other designated fiduciary to assist in any capacity to administer the trust or to manage and control the trust assets, unless, the following four conditions are met;

(i) When an interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director of the Office of Government Ethics;

(ii) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under 2634.406 of this subpart to be independent of any interested party with respect to the trust arrangement;

(iii) The person is instructed by the independent trustee or other designated fiduciary not to disclose publicly or to any interested party information which might specifically identify current trust assets or those assets which have been sold or disposed of from trust holdings; and

(iv) The person is instructed by an independent trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party, and to make all indirect communications with respect to the trust only through the trustee, pursuant to paragraph (c)(9) of this section;

(15) The trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director of the Office of Government Ethics, any securities, cash, or other property from any interested party;

(16) The existence of any banking or other client relationship between any interested party and an independent trustee or other designated fiduciary shall be disclosed in schedules attached to the trust instrument, and no other such relationship shall be instituted unless that relationship is disclosed to the Director of the Office of Government Ethics; and

(17) The independent trustee and any other designated fiduciary shall be compensated in accordance with schedules annexed to the trust instrument.

* * *

(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 tax documents which may contain information relating to the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose.

Sec. 2634.405 Certification of trusts.

(a) Standards. Before a trust may be classified as a qualified blind or a qualified diversified trust, under the provisions of 2634.403 or 2634.404 of this subpart, respectively, the trust must be certified by the Director of the Office of Government Ethics.

(1) A trust will be certified for purposes of this subpart only if:

(i) It is established to the Director's satisfaction that the requirements of section 102(f) of the Act and this subpart have been met;

(ii) Certification is in the public interest; and

(iii) Certification is consistent with the policies established by the Act, this subpart and other applicable laws and regulations.

(2) Certification will not be granted in any case in which, in the Director's sole judgment, such action would not be appropriate because of the ready availability of other remedies, the lack of any substantive ethical concern which would warrant the establishment of a qualified trust, or the nature or negligible value of the assets proposed for a trust's initial portfolio.

(b) Certification procedures. The interested parties or their representatives should first consult the staff of the Office of Government Ethics concerning the appropriateness of, and requirements for, certification in the particular case. In order to assure timely trust certification, the interested parties shall be responsible for the expeditious submission to the Office of all required documents and responses to requests for information, including a statement that any interested party who will be a party to a certified trust instrument has read and understands the overview of executive branch qualified trusts in 2634.401(a) of this subpart. Certification shall be indicated by a letter from the Director to the interested parties or their representatives.

(c) Certification of pre-existing trusts. In addition to the normally applicable rules of this subpart D, other considerations apply to pre-existing trusts. Generally, in the case of a preexisting trust whose terms do not permit amendments satisfying the rules of this subpart, all of the relevant parties (including the reporting individual, any other interested parties, the trustee of the pre-existing trust, and all of its other parties and beneficiaries) will be required pursuant to section 102(f)(7) of the Act to enter into an umbrella agreement specifying that the pre-existing (underlying) trust will be administered in accordance with the provisions of this subpart. A parent or guardian may execute the umbrella agreement on behalf of a required participant who is a dependent child. The umbrella agreement will be certified as a qualified trust if all requirements of this subpart are fulfilled under conditions where required confidentiality with respect to the trust can be assured. A copy of the underlying trust instrument, and a list of its assets at the time the umbrella agreement is certified as a qualified trust (categorized as to value in accordance with 2634.301(d)), shall be filed with the executed umbrella trust instrument as specified by g 2634.408(a)(1)(i) of this subpart.

(d) Review of certification. The Office of Government Ethics shall maintain a program to assess, on a frequent basis, the appropriateness of any trust certification which has been granted.

(e) Revocation of certification and modification of trust investment. Certification of a trust may be revoked pursuant to the rules of subpart E of this part. The terms of a qualified trust may not be revoked or amended, except with the prior written approval of the Director, and upon a showing of necessity and appropriateness.

Sec. 2634.406 Independent trustees.

(a) Standards.

(1) The term independent trustee means any entity referred to in paragraph (a)(2) of this section which, under all the facts and circumstances, is determined by the Director of the Office of Government Ethics and in the Director's sole discretion, to be independent of any interested party with respect to a trust proposed for certification under this subpart. The term includes, unless the context indicates otherwise, in addition to the party to a trust instrument who is designated to serve as trustee, those parties who are designated to perform fiduciary duties. Approval of a proposed trustee or other designated fiduciary shall be granted only if it is established to the Director's satisfaction that the requirements of section 102 of the Act and this subpart have been met, and that approval in the case is in the public interest and consistent with the policies established by those provisions and other applicable laws and regulations.

(2) Eligible entities. Eligibility to serve as a trustee or other fiduciary under this section is limited to a financial institution (not a person), not more than 10 percent of which is owned or controlled by a single individual, which is:

(i) A bank, as defined in 12 U.S.C. 1841(c), or

- (ii) An investment adviser, as defined in 15 U.S.C. 80b-2(a)(11).

Note: By the terms of paragraph (3)(A)(t) of section 102(f) of the Act, an individual who is an attorney, a certified public accountant, a broker, or an investment advisor is also eligible to serve as an independent trustee. However, experience of the Office of Government Ethics over the years dictates the necessity of limiting service as a trustee or other fiduciary to the financial institutions referred to in this paragraph, to maintain effective administration of trust arrangements and preserve confidence in the Federal qualified trust program. accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trustees or other fiduciaries who are not financial institutions, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(3) Requirements. No eligible entity shall be determined to be an independent trustee under this section unless:

(i) That entity is independent of and unassociated with any interested party so that it cannot be controlled or influenced in the administration of the trust by any interested party; and

(ii) That entity is not and has not been affiliated with any interested party, and is not a partner of, or involved in any joint venture or other investment or business with, any interested party; and

(iii) Any director, officer, or employee of such entity:

(A) Is independent of and unassociated with any interested party so that such director, officer, or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(B) Is not and has not been employed by any interested party, not served as a director, officer, or employee of any organization affiliated with any interested party, and is not and has not been a partner of, or involved in any joint venture or other investment with, any interested party; and

(C) Is not a relative of any interested party.

(b) Approval procedures.

(1) Appropriate documentation to establish, pursuant to the requirements of paragraph (a)(3) of this section, the independence of a proposed trustee or any other person to be designated in a trust instrument to perform fiduciary duties shall be submitted to the Office of Government Ethics in writing, including the Certificate of Independence in the form prescribed in appendix A of this part. The existence of any other banking or client relationship between an interested party and a proposed trustee or other designated fiduciary must be disclosed in such documentation, and may be subject to discontinuance as a condition of approval.

(2) The Director shall indicate approval of a proposed trustee, and of any other person designated in the trust instrument to perform fiduciary duties, including those of an investment adviser, by reporting such approval in writing to the interested parties or to their representatives.

(c) Review of approval. The Office of Government Ethics shall maintain a program to assess, on a frequent basis, the appropriateness of any approval which has been granted under this section.

(d) Revocation of approval. Approval of a trustee or any other designated fiduciary may be revoked pursuant to the rules of subpart E of this part.

Sec. 2634.407 Restrictions on fiduciaries and interested parties.

(a) Restrictions applicable to trustees and other fiduciaries. Any trustee or any other designated fiduciary of a qualified 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 title I of the Act, the implementing regulations or the trust instrument;

(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, title I of the Act, the implementing regulations, the trust instrument, or with other applicable statutes and regulations;

(3) Solicit advice from any interested party with respect to such trust, which solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(4) Fail to file any document required by the implementing regulations or the trust instrument.

(b) Restrictions applicable to interested parties. An interested party to a qualified trust shall not knowingly or negligently:

(1) Solicit or receive any information about the trust that may not be disclosed under title I of the Act, the implementing regulations or the trust instrument; or

(2) Fail to file any document required by this subpart or the trust instrument.

Sec. 2634.408 Special filing requirement for qualified trusts.

(a) The interested party. In the case of any qualified trust, the Government employee or other interested party shall:

(1) Execution of the trust. Within thirty days after the trust is certified under 2634.405 of this subpart by the Director of the Office of Government Ethics, file with the Director a copy of:

(i) The executed trust instrument of the trust (other than those provisions which relate to the testamentary disposition of the trust assets); and

(ii) A list of the assets which were transferred to the trust, categorized as to value of each asset in accordance with 2634.301(d).

(2) Transfer of assets. Within thirty days of transferring an asset, other than cash, to a qualified trust, file a report with the Director of the Office of Government Ethics, which identifies and briefly describes each asset, categorized as to value in accordance with 2634.301(d).

(3) Dissolution of the trust. Within thirty days of the dissolution of a qualified trust:

(i) File a report of the dissolution with the Director of the 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 2634.301(d).

(b) Trustees and other designated fiduciaries. An independent trustee of a qualified trust, and any other person designated in the trust instrument to perform fiduciary duties, shall file with the Director of the Office of Government Ethics by May 15th 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, an independent trustee and other fiduciaries 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.

(c) Written communications. All communications between an interested party and the trustee of a qualified trust must, under this subpart, have the prior written approval of the Director of the Office of Government Ethics. After such an approved written communication (including those communications described in 2634.403(b)(9) or 2634.404(c)(9) of this subpart) has been transmitted, the person initiating the communication shall file a copy of the communication within five days of its date, with the Director of the Office of Government Ethics.

(d) Public access. Any document filed under the requirements of paragraph (a) of this section by a public filer, nominee, or candidate shall be subject to the public disclosure requirements of 2634.603. Any document (and the information contained therein) inspected under the requirements of paragraph (b) of this section (other than a Certificate of Compliance), or filed under the requirements of paragraph (c) of this section, shall be exempt from the public disclosure requirements of 2634.603, and shall not be disclosed to any interested party.

**SUBPART E: REVOCATION OF TRUST
CERTIFICATES AND TRUSTEE APPROVALS**

Sec. 2634.501 Purpose and scope.

(a) Purpose. This subpart establishes the procedures of the Office of Government Ethics for enforcement of the qualified blind trust, qualified diversified trust, and independent trustee provisions of title I of the Ethics in Government Act of 1978, as amended, and the regulation issued thereunder (subpart D of this part).

(b) Scope. This subpart applies to all trust certifications and trustee approvals pursuant to §2634.405(a) and 2634.406(a), respectively.

Sec. 2634.502 Definitions.

For purposes of this subpart (unless otherwise indicated):

(a) Senior Attorney means the Office of Government Ethics employee designated as the manager of the qualified trust program

(b) Trust restrictions means the applicable provisions of title I of the Ethics in Government Act of 1978, subpart D of this part, and the trust instrument.

Sec. 2634.503 Determinations.

(a) Where the Senior Attorney concludes that violations or apparent violations of the trust restrictions exist and may warrant revocation of trust certification or trustee approval previously granted under 2634.405 or 2634.406 of this subpart, the Senior Attorney may, pursuant to the procedure specified in paragraph (b) of this section, conduct a review of the matter, and may submit findings and a recommendation concerning final action to the Director of the Office of Government Ethics.

(b) Review procedure.

(1) In his review of the matter, the Senior Attorney shall perform such examination and analysis of violations or apparent violations as he deems reasonable.

(2) The Senior Attorney shall provide an independent trustee and, if appropriate, the interested parties, with:

(i) Notice that revocation of trust certification or trustee approval is under consideration pursuant to the procedures in this subpart;

(ii) A summary of the violation or apparent violations which shall state the preliminary facts and circumstances of the transactions or occurrences involved with sufficient Particularity to permit the recipients to determine the nature of the allegations; and

(iii) Notice that the recipients may present evidence and submit statements on any matter in issue within ten business days of the recipient's actual receipt of the notice and summary.

(c) Determination.

(1) In making determinations with respect to the violations or apparent violations under this section, the Director of the Office of Government Ethics shall consider the findings and recommendations of final action submitted by the Senior Attorney under paragraph (a) of this section, as well as the written record of review compiled under paragraph (b) of this section.

(2) If the Director finds a violation or violations of the trust restrictions he may, as he deems appropriate:

(i) Issue an order revoking trust certification or trust approval;

(ii) Resolve the matter through any other remedial action within the Director's authority;

(iii) Order further examination and analysis of the violation or apparent violation; or

(iv) Decline to take further action.

(3) If an order of revocation is issued, the parties to the trust instrument shall be expeditiously notified in writing. The notice shall state the basis for the revocation, and shall inform the parties - either that the trust is no longer a qualified blind or qualified diversified trust for any purpose under Federal law; or that the independent trustee may no longer serve the trust in any capacity, and must be replaced by a successor, who is subject to the prior written approval of the Director; or both where appropriate.

SUBPART F: PROCEDURE

Sec. 2634.601 Report forms.

(a) The Office of Government Ethics provides, through the Federal Supply Service of the General Services Administration, two standard forms for financial disclosure reporting: the SF 278 (Public Financial Disclosure Report) for reporting the information described in subpart B of this part on executive branch public disclosure; and the SF 450 (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure.

(b) Subject to the prior written approval of the Director of the Office of Government Ethics, an agency may require employees to file additional confidential financial disclosure forms which supplement either or both of the standard forms referred to in paragraph (a) of this section, if necessary because of special or unique agency circumstances. The Director may approve such agency forms when, in his opinion, the supplementation is shown to be necessary for a comprehensive and effective agency ethics program to identify and resolve conflicts of interest. See §2634.103 and 2634.901.

(c) Reports concerning payments made to charitable organizations in lieu of honoraria shall also be filed on the separate standard form provided in conjunction with part 2636 of this chapter, and in accordance with the procedures specified therein.

Sec. 2634.602 Filing of reports.

(a) Except as otherwise provided in this section, the reporting individual shall file financial disclosure reports required under this part with the designated agency ethics official or his delegate at the agency where the individual is employed, or was employed immediately prior to termination of employment, or in which he will serve. Detailees shall file with their primary agency. Reports are due at the times indicated in 2634.201 of subpart B (public disclosure) or 2634.903 of subpart I (confidential disclosure) of this part, unless an extension is granted pursuant to the provisions of subparts B or I of this part.

(b) The President, the Vice President, any independent counsel, and persons appointed by independent counsel under 28 U.S.C. chapter 40, shall file the public financial disclosure reports required under this part with the Director of the Office of Government Ethics.

(c) (1) Each agency receiving the public financial disclosure reports required to be filed under this part by the following individuals shall transmit copies to the Director of the Office of Government Ethics:

(i) The Postmaster General;

(ii) The Deputy Postmaster General;

(iii) The Governors of the Board of Governors of the United States Postal Service;

(iv) The designated agency ethics official;

(v) Employees of the Executive Office of the President who are appointed under 3 U.S.C. 105(a)(2)(A) or (B) or 3 U.S.C. 107(a)(1)(A) or (b)(1)(A)(i), and employees of the Office of Vice President who are appointed under 3 U.S.C. 106(a)(1)(A) or (B); and

(vi) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate, other than members of the uniformed services.

(2) Prior to transmitting a copy of a report to the Director of the Office of Government Ethics, the designated agency ethics official or his delegate shall review that report in accordance with 2634.605 of this subpart except for his own report, which shall be reviewed by the agency head or by a delegate of the agency head.

(3) For nominee reports, the Director of the Office of Government Ethics shall forward a copy to the Senate committee that is considering the nomination. (See 2634.605(c) of this subpart for special procedures regarding the review of such reports.)

(d) The Director of the Office of Government Ethics shall file his financial disclosure report with his Office, which shall make it immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in 2634.201(d), other than an incumbent President or Vice President, shall file their financial disclosure reports with the Federal Election Commission, which shall review and send copies of such reports to the Director of the Office of Government Ethics.

(f) Members of the uniformed services identified in 2634.202(c) shall file their financial disclosure reports with the Secretary concerned, or his delegate.

Sec. 2634.603 Custody of and access to public reports.

(a) Each agency shall make available to the public in accordance with the provisions of this section those public reports filed with the agency by reporting individuals described under subpart B of this part.

(b) This section does not require public availability of those reports filed by:

(1) Any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by that 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. Individuals referred to in this paragraph who are exempt from the public availability requirement may also be authorized, notwithstanding 2634.701, to file any additional reports necessary to protect their identity from public disclosure, if the President finds or has found that such filings are necessary in the national interest; or

(2) An independent counsel whose identity has not been disclosed by the Court under 28 U.S.C chapter 40, or any person appointed by that independent counsel under such chapter.

(c) Each agency shall, within thirty days after any public report is received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes written application as provided by agency procedure. Agency 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 an application. The agency may utilize Office of Government Ethics Form 201 for such applications. An application shall state:

(1) The requesting 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 requesting person is aware of the prohibitions on obtaining or using the report set forth in paragraph (f) of this section.

(d) Applications for the inspection of or copies of public reports shall also be made available to the public throughout the period during which the report itself is made available, utilizing the procedures in paragraph (c) of this section.

(e) The agency may require a reasonable fee, established by agency regulation, to recover the direct cost of reproduction or mailing of a public report, excluding the salary of any employee involved. 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 regulation. Agency regulations contemplated by paragraph (e) of this section do not require approval pursuant to 2634.103.

(f) It is unlawful for any person to obtain or use a public report:

(1) For any unlawful 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 Agency x is responsible for reviewing the public financial disclosure reports filed by persons within that agency. The agency personnel director, who does not exercise functions within the ethics program, wishes to review the disclosure report of an individual within the agency. The personnel director must file an application to review the report. However, the supervisor of an official with whom the deputy general counsel consults concerning 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 X individual who has filed a public financial disclosure report. The agent must complete a written application in order to inspect or obtain a copy.

Example 3. A financial institution has received an application for a loan from an official which indicates her present financial status. The official has filed a public financial disclosure statement with her agency. The financial institution cannot be given access to the disclosure form for purposes of verifying the information contained on the application.

(g) (1) Any public report filed with an agency or transmitted to the Director of the Office of Government Ethics under this section shall be retained by the agency, and by the Office of Government Ethics when it receives a copy. The report shall be made available to the public for a period of six years after receipt. 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 pursuant to 2634.201(c) as a nominee and was not subsequently confirmed by the Senate, or who filed the report pursuant to 2634.201(d) as a candidate and was not subsequently elected the report, unless needed in an ongoing investigation, 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. See also the OGE/GOVT-1 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(2) For purposes of paragraph (g)(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 and made available to the public until the periods for retention of all other reports of the individual have lapsed under paragraph (g)(1) of this section.

Sec. 2634.604 Custody of and denial of public access to confidential reports.

(a) Any report filed with an agency under subpart I of this part shall be retained by the agency for a period of six years after receipt. After the six year period, the report shall be destroyed unless needed in an ongoing investigation. See also the OGE/GOVT-2 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(b) The reports filed pursuant to subpart I of this part are confidential. No member of the public shall have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a and the OGE/GOVT-2 Privacy Act system of records (and any applicable agency system); 5 U.S.C. app (Ethics in Government Act of 1978, section 107(a)); sections 201(d) and 502(b) of Executive Order 12674, as modified by Executive Order 12731; and 2634.901(d).

Sec. 2634.605 Review of reports.

(a) In general. The designated agency ethics official shall normally serve as the reviewing official for reports submitted to his agency. That responsibility may be delegated, except in the case of certification of nominee reports required by paragraph (c) of this section. See also 2634.105(q). He shall note on any report or supplemental report the date on which it is received. Except as indicated in paragraph (c) of this section all reports shall be reviewed within 60 days after the date of filing. Reports reviewed by the Director of the Office of Government Ethics shall be reviewed within 60 days from the date on which they are received by that Office. Final certification in accordance with paragraph (b)(2) of this section may, of necessity, occur later where additional information is being sought or remedial action is being taken under this section.

(b) Responsibilities of reviewing officials-

(1) Initial review. The reviewing official may request an intermediate review by the filer's supervisor. In the case of a filer who is detailed to another agency for more than 60 days during the reporting period, the reviewing official shall obtain an intermediate review by the agency where the filer served as a detailee. After obtaining any intermediate review or determining that such review is not required, the reviewing official shall examine the report to determine, to his satisfaction that:

(i) Each required 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 title 18, United States Code;

(B) The Act, as amended, and the implementing regulations;

(C) Executive Order 12674 as modified by Executive Order 12731, and the implementing regulations; or

(D) Any other agency-specific statute or regulation which governs the filer.

(2) Signature by reviewing official. If the reviewing official determines that the report meets the requirements of paragraph (b)(1) of this section, he shall certify it by signature and date. The reviewing official need not audit the report to ascertain whether the disclosures are correct. Disclosures shall be taken at "face value" as correct, unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, a report which is signed by a reviewing official certifies that the filer's agency has reviewed the report, and that the reviewing official has concluded that each required item has been completed and that on the basis of information contained in such report the filer is in compliance with applicable laws and regulations noted in paragraph (b)(1)(ii) of this section.

(3) Requests for, and reviews based on, additional information. If the reviewing official believes that additional information is required, he shall request that it be submitted by a specified date. This additional information shall be made a part of the report. If the reviewing official concludes, on the basis of the information disclosed in the report and any additional information submitted, that the report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report.

(4) Compliance with applicable laws and regulations. If the reviewing official concludes that information disclosed in the report may reveal a violation of applicable laws and regulations as specified in paragraph (b)(1)(ii) of this section, the official shall:

(i) Notify the filer of that conclusion;

(ii) Afford the filer a reasonable opportunity for an oral or written response; and

(iii) Determine, after considering any response, whether or not the filer is then in compliance with applicable laws and regulations specified in paragraph (b)(1)(ii) of this section. If the reviewing official concludes that the report does fulfill the requirements, he shall sign and date the report. If he determines that it does not, he shall:

(A) Notify the filer of the conclusion;

(B) Afford the filer an opportunity for personal consultation if practicable;

(C) Determine what remedial action under paragraph (b)(5) of this section should be taken to bring the report into compliance with the requirements of paragraph (b)(1)(ii) of this section; and

(D) Notify the filer in writing of the remedial action which is needed, and the date by which such action should be taken.

(5) Remedial action.

(i) Except in unusual circumstances, which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed not later than three months from the date on which the filer received notice that the action is required.

(ii) Remedial action may include, as appropriate:

(A) Divestiture of a conflicting interest (see subpart J of this part);

(B) Resignation from a position with a non-Federal business or other entity;

(C) Restitution;

(D) Establishment of a qualified blind or diversified trust under the A and subpart D of this part;

(E) Procurement of a waiver under 18 U.S.C. 208(b)(1) or (b)(3);

(F) Preparation of a written instrument of recusal (disqualification); or

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

(6) Compliance or referral.

(i) If the filer complies with a written request for remedial action under paragraph (b)(4) of this section, the reviewing official shall indicate, in the comment section of the report, what remedial action has been taken. The official shall also sign and date the report.

(ii) If the filer does not comply by the designated date with the written request for remedial action transmitted under paragraph (b)(4) of this section, the reviewing official shall, in the case of a public filer under subpart I of this part, notify the head of the agency and the Office of Government Ethics, for appropriate action. Where the filer is in a position in the executive branch (other than in the uniformed services or the Foreign Service), appointment to which requires the advice and consent of the Senate the Director of the Office of Government Ethics shall refer the matter to the President. 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. For confidential filers, the reviewing official will follow agency procedures.

(c) Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate. In the case of a report filed by an individual described in 2634.201(c) who is nominated by the President for appointment to a position that requires the advice and consent of the Senate:

(1) The Executive Office of the President shall furnish the applicable financial disclosure report form to the nominee. It shall forward the completed report to the designated agency ethics official at the agency where the nominee is serving or will serve, or it may direct the nominee to file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official shall complete an accelerated review of the report, in accordance with the standards and procedures in paragraph (b) of this section. If that official concludes that the report reveals no conflict of interest under applicable laws and regulations, the official shall:

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

(ii) Personally certify the report by signature, and date the certification;

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

(A) Any actual or apparent conflicts of interest that were detected during the review process; and

(B) The resolution of those real or apparent conflicts, including any specific commitment, ethics agreement entered under the provisions of subpart H of this part, or other undertaking by the nominee to resolve any such conflicts. A copy of any commitment, agreement, or other undertaking which is reduced to writing shall be sent to the Director, in accordance with subpart H of this part; and

(iv) Deliver the letter and the report to the Director of the Office of Government Ethics, within three working days after the designated agency ethics official receives the report.

Note: The designated agency ethics official's certification responsibilities in 2634.605(e) are nondelegable and must be accomplished by him personally, or by the agency's alternate designated agency ethics official, in his absence. See 2638.203 of this chapter.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency ethics official. If the Director is satisfied that no unresolved conflicts of interest exist, then the Director shall sign and date the report form. The Director shall then submit the report with a letter to the appropriate Senate committee, expressing the Director's opinion whether, on the basis of information contained in the report, the nominee has complied with all applicable conflict laws and regulations.

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

Sec. 2634.606 Updated disclosure of advice-and-consent nominees.

(a) General rule. Each individual described in 2634.201(c) who is nominated by the President for appointment to a position that requires advice and consent of the Senate, shall at or before the commencement of the first Senate committee hearing to consider the nomination, submit to the committee an amendment to the report previously filed under 2634.201(c) and transmit copies of the amendment to the designated agency ethics official referred to in 2634.605(c)(1) of this subpart and to the Office of Government Ethics, which shall update, through the period ending no more than five days prior to the commencement of the hearing, the disclosure of information required with respect to receipt of:

(1) Outside earned income; and

(2) Honoraria, as defined in 2634.105(i).

(b) Additional certification. In each case to which this section applies, the Director of the Office of Government Ethics shall, at the request of the committee considering the nomination, submit to the committee an opinion letter of the nature described in 2634.605(c)(3) of this subpart concerning the updated disclosure. If the committee requests such a letter, the expedited procedure provided by 2634.605(c) of this subpart shall govern review of the updated disclosure, which shall be deemed a report filed for purposes of that paragraph.

Sec. 2634.607 Advice and opinions.

To assist employees in avoiding situations in which they might violate applicable financial disclosure laws and regulations:

(a) The Director of the Office of Government Ethics shall render formal advisory opinions and informal advisory letters on generally applicable matters, or on important matters of first impression. See also subpart C of part 2638 of this chapter. The Director shall insure that these advisory opinions and letters are compiled, published, and made available to agency ethics officials and the public. Good faith reliance on such opinions shall provide a defense to any penalty or sanction provided by this part for fact situations indistinguishable in all material aspects from those in the opinion.

(b) Designated agency ethics officials will offer advice and guidance to employees as needed, to assist them in complying with the requirements of the Act and this part on financial disclosure.

SUBPART G: PENALTIES

Sec. 2634.701 Failure to file or falsifying reports.

(a) Referral of cases. The head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as appropriate, shall refer to the Attorney General the name of any individual when there is reasonable cause to believe that such individual has willfully failed to file a public report or information required on such report, or has willfully falsified any information (public or confidential) required to be reported under this part.

(b) 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 and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil penalty in any amount not to exceed \$10,000, as provided by section 104 of the Act.

(c) Criminal action. An individual may also be prosecuted under Criminal statutes for supplying false information on any financial disclosure report.

(d) Administrative remedies. The President, the Vice President, the Director of the Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management may take appropriate personnel or other action in accordance with applicable law or regulation against any individual for failing to file public or confidential reports required by this part, for filing such reports late, or for falsifying or failing to report required information. This may include adverse action under 5 CFR part 752, if applicable.

Sec. 2634.702 Breaches by trust fiduciaries and interested parties.

(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 2634.407 of this part. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed \$10,000, as provided by section 102(f)(6)(C)(i) of the Act.

(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 2634.407. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed \$5,000, as provided by section 102(f)(6)(C)(ii) of the Act.

Sec. 2634.703 Misuse of public 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 105(c)(1) of the Act, as incorporated in 2634.603(f). The court in which the action is brought may assess against the person a penalty in any amount, not to exceed \$10,000, as provided by section 105 of the Act. This remedy shall be in addition to any other remedy available under statutory or common law.

Sec. 2634.704 Late filing fee.

(a) In general. In accordance with section 104(d) of the Act, any reporting individual who is required to file a public financial disclosure report by the provisions of this part shall remit a late filing fee of \$200 to the appropriate agency, payable to the U.S. Treasury, if such report is filed more than thirty days after the later of:

- (1) The date such report is required to be filed pursuant to the provisions of this part; or
- (2) The last day of any filing extension period granted pursuant to 2634.201(f).

(b) Exceptions.

(1) The Director of the Office of Government Ethics may waive the late filing fee if he determines that the delay in filing was caused by extraordinary circumstances which made the delay reasonably necessary.

(2) Any request for a waiver of this filing fee provision must be made in writing and submitted with supporting documentation to the designated agency ethics official. That official shall review the request, and then forward it, with an opinion on the merits, to the Office of Government Ethics.

(c) Procedure.

(1) The designated agency ethics official shall maintain a record of the due dates for all public reports which the employees of that agency must file, along with the new filing dates under extensions which have been granted. Each report received by the agency shall be marked with the date of receipt. For any report which has not been received by the end of the period specified in paragraph (a) of this section, the agency shall advise the delinquent filer, in writing, that:

(i) Because his financial disclosure report is more than thirty days overdue, a \$200 late filing fee will become due at the time of filing, by reason of section 104(d) of the Act and 2634.704;

(ii) The filer is directed to remit to the agency, with the completed report, the \$200 fee, payable to the United States Treasury;

(iii) If the filer fails to remit the \$200 fee when filing his late report, it shall be subject to agency debt collection procedures; and

(iv) If extraordinary circumstances exist that would justify a request for a fee waiver, pursuant to paragraph (b) of this section, such request and supporting documentation must be submitted immediately.

(2) Upon receipt from the reporting individual of the \$200 late filing fee, the collecting agency shall note the payment in its records, and shall then forward the money to the U.S. Treasury for deposit as miscellaneous receipts, in accordance with 31 U.S.C. 3302 and section 8030.30 of Volume 1 of the Treasury Financial Manual. If payment is not

forthcoming, agency debt collection procedures shall be utilized, which may include salary or administrative offset, initiation of a tax refund offset, or other authorized action.

(d) Late filing fee not exclusive remedy. The late filing fee is in addition to other sanctions which may be imposed for late filing. See 2634.701 of this subpart.

(e) Confidential filers. The late filing fee does not apply to confidential filers. Late filing of confidential reports will be handled administratively under 2634.701(d) of this subpart.

SUBPART H: ETHICS AGREEMENTS

Sec. 2634.801 Scope.

This subpart applies to ethics agreements made by any reporting individual under either subpart B or I of this part, to resolve potential or actual conflicts of interest.

Sec. 2634.802 Requirements.

(a) Ethics agreement defined. The term ethics agreement shall include, for the purposes of this subpart, any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest, such as:

(1) Preparation of a written instrument for recusing (disqualifying) the individual from one or more particular matters or categories of official action;

(2) Divestiture of a financial interest;

(3) Resignation from a position with a non-Federal business or other entity;

(4) Procurement of a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(5) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part.

(b) Time limit. The ethics agreement shall specify that the individual must complete the action which he or she has agreed to undertake within a period not to exceed three months from the date of the agreement (or of Senate confirmation, if applicable). Exceptions to the three-month deadline can be made in cases of unusual hardship, as determined by the Office of Government Ethics, for those ethics agreements which are submitted to it (see 2634.803 (a), (b), or (c) of this subpart), or by the designated agency ethics official for all other ethics agreements.

Example. An official of the ABC Aircraft Company is nominated to a Department of Defense position requiring the advice and consent of the Senate. As a condition of assuming the position, the individual has agreed to divest himself of his ABC Aircraft stock which he recently acquired while he was an officer with the company. However, the Securities and Exchange Commission prohibits officers of public corporations from deriving a profit from the sale of stock in the corporation in which they hold office within six months of acquiring the stock, and directs that any such profit must be returned to the issuing corporation or its stock holders. Since meeting the usual three-month time limit specified in this subpart for satisfying an ethics agreement might entail losing any profit that could be realized on the sale of this stock, the nominee requests that the limit be extended beyond the six-month period imposed by the Commission. Written approval would have to be obtained from the Office of Government Ethics to extend the customary three-month period.

Sec. 2634 803 Notification of ethics agreements.

(a) Nominees to positions require the advice and consent of the Senate.

(1) In the case of a nominee referred to in 2634.201(c), the designated agency ethics official shall include with the report submitted to the Office of Government Ethics any ethics agreement which the nominee has made.

(2) A designated agency ethics official shall immediately notify the Office of Government Ethics of any ethics agreement of a nominee which is made or becomes known to the designated agency ethics official after the submission of the nominee's report to the Office of Government Ethics. This requirement includes an ethics agreement made between a nominee and the Senate confirmation committee. The nominee shall immediately report to the designated agency ethics official any ethics agreement made with the committee.

(3) The Office of Government Ethics shall immediately apprise the designated agency ethics official and the Senate confirmation committee of any ethics agreements made directly between the nominee and the Office of Government Ethics.

(b) Incumbents in positions requiring the advice and consent of the Senate. In the case of a position which required the advice and consent of the Senate, the designated agency ethics official shall keep the Office of Government Ethics

apprised of any ethics agreements which the incumbent makes, or which become known to the designated agency ethics official during the incumbent's term in his position.

(c) Designated agency ethics official not holding advice-and-consent positions, and employees of the Offices referred to in 2634.602(c)(1)(v). A designated agency ethics official who has entered into an ethics agreement, and who is neither a nominee to, nor an incumbent in, a position which requires the advice and consent of the Senate as well as each employee of the Executive Office of the President or the Office of the Vice President who is referred to in 2634.602(c)(1)(v), shall include with his initial financial disclosure report submitted to the Office of Government Ethics any ethics agreement undertaken by such official or employee. He shall also apprise the Office of Government Ethics promptly of any subsequent ethics agreement.

(d) Other reporting individuals. Other reporting individuals desiring to enter into ethics agreement may do so with the designated agency ethics official for the employee's agency. Where an ethics agreement has been made with someone other than the designated agency ethics official, the officer or employee involved shall promptly apprise the designated agency ethics official of the agreement.

Sec. 2634.804 Evidence of compliance.

(a) Requisite evidence of action taken.

(1) For ethics agreements Of nominees to positions requiring the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements shall be submitted by the designated agency ethics official, upon receipt of the evidence, to the Office of Government Ethics and to the Senate confirmation committee.

(2) For ethics agreements of incumbents in positions Which required the advice and consent of the Senate, evidence of any action taken to comply With the terms of such ethics agreements shall be submitted promptly by the designated agency ethics official to the Office Of Government Ethics. A designated agency ethics official or an employee referred to in 2634.803(c) of this subpart who is neither a nominee to, nor an incumbent in, an advice-and-consent position, must also promptly send evidence of any action taken to comply With the terms of an ethics agreement to the Office Of Government Ethics.

(3) In the Case of all other reporting individuals, evidence of any action taken to comply With the terms of an ethics agreement must be sent promptly to the designated agency ethics official.

(b) The following materials and any other appropriate information constitute evidence of the action taken:

(1) Recusal. A copy of any recusal instrument listing and describing the specific matters or subjects to which the recusal applies, a statement of the method by which the agency will enforce the recusal, and a list of the positions of those agency employees involved in the enforcement (i.e., the individual's immediate subordinates and supervisors).

Example. A new employee of a Federal safety board owns stock in Nation wide Airlines. She has entered into an ethics agreement to recuse herself from participating in any accident investigations involving that company's aircraft until such time as she can complete a divestiture of the asset. She must give a copy of the recusal instrument to her immediate subordinates and supervisors, and to the designated agency ethics official. The employee has also agreed to recuse herself from any particular matter (as that term is used in 18 U.S.C. 208) that might arise with respect to any of her present or future holdings. There is no requirement to execute a recusal instrument for this type of general recusal, because it is simply a promise to abide by the terms of the statute.

(2) Divestiture or resignation. Written notification that the divestiture or resignation has occurred.

(3) Waivers. A copy Of any waivers issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) and signed by the appropriate supervisory official.

(4) Blind or diversified trusts. Information required by subpart D Of this part to be submitted to the Office Of Government Ethics for its certification of any qualified trust instrument. If the Office Of Government Ethics does not certify the trust, the designated agency ethics official and, as appropriate, the Senate confirmation committee should be informed immediately.

Sec. 2634.805 Retention.

Records of ethics agreements and actions described in this subpart shall be maintained with the individual's financial disclosure report at the agency and additionally, in the case Of filers described in paragraphs (a), (b), and (c) of 2634.803 of this subpart, at the Office of Government Ethics.

SUBPART I: CONFIDENTIAL FINANCIAL DISCLOSURE REPORTS**Sec. 2634.901 Policies of confidential financial disclosure reporting.**

(a) The confidential financial reporting system set forth in this subpart is designed to complement the public reporting system established by title I of the Act. High-level officials in the executive branch are required to report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. It is equally important in order to guarantee the efficient and honest operation of the Government that other, less senior, executive branch employees, whose Government duties involve the exercise of significant discretion in certain sensitive areas, report their financial interests and outside business activities to their employing agencies, to facilitate the review of possible conflicts of interest. These reports assist an agency in administering its ethics program and counseling its employees. Such reports are filed on a confidential basis.

(b) The confidential reporting system seeks from employees only that information which is relevant to the administration and application of criminal conflict of interest laws, administrative standards of conduct, and agency-specific statutory and program-related restrictions. The basic content of the reports required by 2634.907 of this subpart reflects that certain information is generally relevant to all agencies. However, depending upon an agency's authorized activities and any special or unique circumstances, additional information may be necessary. In these situations, and subject to the prior written approval of the Director of the Office of Government Ethics, agencies may formulate supplemental reporting requirements by following the procedures of 2634.103 and 2634.601(b).

(c) This subpart also allows an agency to request, on a confidential basis, additional information from persons who are already subject to the public reporting requirements of this part. The public reporting requirements of the Act address Governmentwide concerns. The reporting requirements of this subpart allow agencies to confront special or unique agency concerns. If those concerns prompt an agency to seek more extensive reporting from employees who file public reports, it may proceed on a confidential, nonpublic basis, with prior written approval from the Director of the Office of Government Ethics, under the procedures of 2634.103 and 2634.601(b).

(d) The reports filed pursuant to this subpart are specifically characterized as "confidential," and are required to be withheld from the public, pursuant to section 107(a) of the Act. Section 107(a) leaves no discretion on this issue with the agencies. See also 2634.604. Further, Executive Order 12674 as modified by Executive Order 12731 provides, in section 201(d), for a system of nonpublic (confidential) executive branch financial disclosure to complement the Act's system of public disclosure. The confidential reports provided for by this subpart contain sensitive commercial and financial information, as well as personal privacy-protected information. These reports and the information which they contain are, accordingly, exempt from being released to the public, under exemptions 3 (A) and (B), 4, and 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(3) (A) and (B), (b)(4), and (b)(6). Additional FOIA exemptions may apply to particular reports or portions of reports. Agency personnel shall not publicly release the reports or the information which these reports contain, except pursuant to an order issued by a Federal court, or as otherwise provided under applicable provisions of the Privacy Act (5 U.S.C. 552a), and in the OGE/GOVT-2 Governmentwide executive branch Privacy Act system of records, as well as any applicable agency records system. If an agency statute requires the public reporting of certain information and, for purposes of convenience, an agency chooses to collect that information on the confidential report form filed under this subpart, only the special statutory information may be released to the public, pursuant to the terms of the statute under which it was collected.

(e) Executive branch agencies hire or use the paid and unpaid services of many individuals on an advisory or other less than full-time basis as special Government employees. These employees may include experts and consultants to the Government, as well as members of Government advisory committees. It is important for those agencies that utilize such services, and for the individuals who provide the services, to anticipate and avoid real or apparent conflicts of interest. The confidential financial disclosure system promotes that goal, with special Government employees among those required to file confidential reports.

(f) For additional policies and definitions of terms applicable to both the public and confidential reporting systems, see 2634.104 and 2634.105.

Sec. 2634.902 Transition to the new confidential financial disclosure reporting system.

(a) The new confidential financial disclosure reporting system for executive branch departments and agencies established by this subpart will become effective on October 5, 1992. Until this subpart becomes effective, each executive agency shall continue to comply with its current regulations governing confidential statements regarding employment and financial interests, as promulgated under prior Executive Order 11222, and 5 CFR part 735, s 735.106 and subpart D, and as preserved by the savings clause of section 502(a) of Executive Order 12674 as modified by Executive Order 12731.

(b) To the extent feasible, agencies should strive to eliminate overlaps between, or gaps in, reporting periods as the transition to the new confidential reporting system takes place. However, the reporting periods prescribed under the new system, once effective, must be followed.

(c) Once effective, this new subpart and any other portions of this part applicable to confidential reports will supersede 5 CFR 735.106, all of subpart D of part 735 of 5 CFR, and any implementing agency regulations thereunder. See also 2634.103 and 2634.601 and 2634.901 of this subpart concerning requests for new special supplemental agency regulations and forms, where necessary.

(d) As required by applicable law and Executive order, the confidential statements regarding employment and financial interests which were collected and retained under existing confidential financial disclosure reporting systems shall continue to be held in confidence. See section 107(a)(2) of the Act, as effective January 1, 1991 (as well as former section 207(a)(2) thereof, which was effective through December 31, 1990), section 502(b) of Executive Order 12674 as modified by Executive Order 12731 (and the prior ethics Executive Orders 11222 and 12565), and 2634.901(d) of this subpart.

Sec. 2634.903 General requirements, filing dates, and extensions.

(a) Incumbents. A confidential filer who holds a position or office described in 2634.904 of this subpart and who performs the duties of that position or office for a period in excess of 60 days during the twelve-month period ending September 30 (including more than 60 days in an acting capacity) shall file a confidential report containing the information prescribed in 2634.907 and 2634.908 of this subpart on or before October 31 immediately following that period. For confidential filers under 2634.904(c) of this subpart, consult agency supplemental regulations.

(b) New entrants.

(1) No later than 30 days after assuming a new position or office described in 2634.904 of this subpart (which also encompasses the reappointment or redesignation of a special Government employee, including one who is serving on an advisory committee), a confidential filer shall file a confidential report containing the information prescribed in 2634.907 and 2634.908 of this subpart. For confidential filers under 2634.904(c) of this subpart, consult agency supplemental regulations.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming his position, left another position or office referred to in 2634.904 of this subpart or in 2634.202, and has previously satisfied the reporting requirements applicable to that former position, but a copy of the report filed by the individual while in that position should be made available to the appointing agency, and the individual must comply with any agency requirement for a supplementary report for the new position;

(ii) Has already filed such a report in connection with consideration for appointment to the position. The agency may request that the individual update such a report if more than six months has expired since it was filed.

(3) Notwithstanding the filing deadline prescribed in paragraph (b)(1) of this section, agencies may at their discretion, require that prospective entrants into positions described in 2634.904 of this subpart file their new entrant confidential financial disclosure reports prior to serving in such positions, to insure that there are no insurmountable ethics concerns. Additionally, a special Government employee who has been appointed to serve on an advisory committee shall file the required report before any advice is rendered by the employee to the agency, or in no event, later than the first committee meeting.

(c) Advisory committee definition. For purposes of this subpart, the term advisory committee shall have the meaning given to that term under section 3 of the Federal Advisory Committee Act (5 U.S.C. app). Specifically, it means any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute or reorganization plan, or established or utilized by the President or one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. Such term includes any subcommittee or other subgroup of any advisory committee, but does not include the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, or any committee composed wholly of full-time officers or employees of the Federal Government.

(d) Extensions. The agency reviewing official may, for good cause shown, grant to any employee or class of employees a filing extension or several extensions totaling not more than 90 days.

Sec. 2634.904 Confidential filer defined.

The term confidential filer includes:

(a) Each officer or employee in the executive branch whose position is classified at GS-15 or below 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 which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is less than O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(1) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially through decision or the exercise of significant judgment, in taking a Government action regarding:

- (i) Contracting or procurement;
- (ii) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;
- (iii) Regulating or auditing any non-Federal entity; or
- (iv) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(2) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by that employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1. A contracting officer drafts the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action. The contracting officer should be required to file a confidential financial disclosure report.

Example 2. An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with a permit to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

(b) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees as defined in 18 U.S.C 202(a) and 2634.105(s), including those who serve on advisory committees. The term special Government employees does not include an advisory committee member who serves only as a representative of an industry of other outside entity or who is already a Federal employee.

Example 1. A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2. An advisory committee member (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report, since she is a special Government employee.

(c) Each public filer referred to in 2634.202 on public disclosure who is required by agency regulations issued in accordance with 2634.907(b) of this subpart to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(d) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under 2634.203, is covered by the criteria of paragraph (a) of this section.

Sec. 2634.905 Exclusions from filing requirements.

Any individual or class of individuals, including special Government employees, described in 2634.904 of this subpart, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that:

- (a) The duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest;
- (b) The duties of a position involve such a low level of responsibility that the submission of a confidential financial disclosure report is unnecessary because of:
 - (1) The substantial degree of supervision and review over the position; or
 - (2) The inconsequential effect of any potential conflict on the integrity of the Government; or

EXECUTIVE BRANCH FINANCIAL DISCLOSURE . . . , 5 CFR 2634

(c) The use of an alternative procedure approved in writing by the Office of Government Ethics is adequate to prevent possible conflicts of interest.

Example 1. An agency special Government employee who is a draftsman prepares the drawings to be used by an agency in soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that his actions will create a conflict of interest is remote. The draftsman need not be required by the agency to file a confidential financial disclosure report.

Example 2. An investigator is principally assigned as the field agent to investigate alleged violations of conflict of interest laws. The investigator works under the direct supervision of an agent-in-charge. The agent-in-charge reviews all of the investigator's work product and then uses those materials to prepare the agency's report which is submitted under his own name. The agency may decide not to require the investigator to file a confidential disclosure report.

Example 3. A nonsupervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she, her spouse, minor or dependent child, or any general partner, organization in which she serves as an officer, director, trustee, employee, or general partner, or organization with which she is negotiating or has an agreement or an arrangement for future employment, or a close friend or relative is a subject of the investigation, or will be in any way affected by the investigation. Once she determines that there is no such relationship, she signs and dates a certification which verifies that she has reviewed the file and has determined that no conflict of interest exists. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate. This alternate procedure, if approved by the Office of Government Ethics in writing, will suffice for a conflict of interest review. Therefore, the agency may exclude the auditor from filing a confidential disclosure report under this subpart.

Sec. 2634.906 Review of confidential filer status.

The head of each agency, or an officer designated by the head of the agency for that purpose, shall review any complaint by an individual that his position has been improperly determined by the agency to be one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint shall be final.

Sec. 2634.907 Report contents.

(a) Other than the reports of confidential filers described in 2634.904(c), each confidential financial disclosure report filed pursuant to 2634.903 of this subpart shall include on the standard form prescribed by the Office of Government Ethics (see 2634.601 of subpart F of this part) and in accordance with instructions issued by the Office, a full and complete statement of information required to be reported according to the provisions of subpart C of this part, (except for those provisions in subpart C requiring the reporting of the amounts or values of any item), with respect to the following:

- (1) Interests in property. All the interests in property specified by 2634.301;
- (2) Income. All the income items specified by 2634.302;
- (3) Gifts and reimbursements. All gifts and reimbursements specified by 2634.304 (except that new entrants, as described in 2634.903(b) of this subpart, need not report any information on gifts and reimbursements);
- (4) Liabilities. All liabilities specified by 2634.305;
- (5) Agreements and arrangements. All agreements and arrangements specified by 2634.306; and
- (6) Outside positions. All outside positions specified by 2634.307.

(b) For reports of confidential filers described in 2634.904(c) of this subpart, each supplemental confidential financial disclosure report shall include only the supplemental information:

- (1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and
- (2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under 2634.103 and 2634.601(b)(see 2634.901 (b) and (c) of this subpart).

Sec. 2634.908 Reporting periods.

(a) Incumbents. Each confidential financial disclosure report filed under 2634.903(a) of this subpart shall include on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the

preceding twelve months ending September 30, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) New entrants. Each confidential financial disclosure report filed under 2634.903(b) of this subpart shall include, on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months from the date of filing.

Sec. 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

SUBPART J: CERTIFICATES OF DIVESTITURE

Sec. 2634.1001 Nonrecognition for sales to comply with conflict of interest requirements; general considerations.

(a) Purpose. This subpart establishes the procedures and policies of the Office of Government Ethics with respect to the issuance of Certificates of Divestiture pursuant to section 1043 of the Internal Revenue Code of 1986 (hereinafter in this subpart referred to as "section 1043").

(b) Scope. Section 1043 and the rules of this subpart provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of this subpart relate to the issuance of Certificates of Divestiture and the permitted property into which a rollover (as such reinvestment are called) must be made in order for nonrecognition to be permitted. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service. Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 must be followed by eligible persons wishing to make such an election.

(c) Policy. The Federal purpose reflected in section 1043 of the Internal Revenue Code and these rules is to minimize the burden of Government service resulting from gain on the sale of assets for which divestiture is reasonably necessary because of the conflict of interest laws, in order to attract and retain highly qualified personnel in the executive branch and to ensure the confidence of the public in the integrity of Government officials and decision-making processes.

Sec. 2634.1002 Issuance of Certificates of Divestiture.

(a) General rule. Pursuant to section 1043, a Certificate of Divestiture with respect to specific property shall be issued by the Director of the Office of Government Ethics pursuant to the procedures of paragraph (b) of this section upon a determination that such divestiture by an eligible person as defined in paragraph (c) of this section is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order, or pursuant to the request of a congressional committee as a condition of confirmation.

(b) Procedural requirements

(1) Required submissions. A determination to issue a Certificate of Divestiture may be made by the Director of the Office of Government Ethics only upon the submission by the designated agency ethics official of the agency of employment or proposed employment of the individual referred to in paragraph (c)(1) of this section of full and complete case materials to the Office of Government Ethics. Such case materials shall include:

(i) A copy of the written request from such individual to the designated agency ethics official to pursue certification in the case of the property to be divested;

(ii) In the case of an individual referred to in paragraph (c)(1) of this section who is required by the rules of this part, or part 735 (subpart D) or part 2633 or this title, to file a financial disclosure report, a copy of the latest report which has been filed;

(iii) A detailed description of the specific property as to which divestiture is contemplated;

(iv) Complete statements of:

(A) The facts and circumstances relevant to whether there is a reasonable necessity for divestiture (including a description of the position or applicable statutory citation setting forth the duties of the subject position); and

(B) Analysis and opinion from such designated agency ethics official concerning the application of the rules of this subpart in the case of the proposed certification; and

(v) In lieu of the materials described in paragraph (b)(1)(iv) of this section, in the case of the contemplated divestiture of specific property pursuant to the request of a congressional committee as a condition of confirmation, such materials shall include the written acknowledgement of the Chairman of such committee of such request.

(2) Standards for issuance. Certification pursuant to the rules of this subpart relates to the reasonable necessity for the divestiture of specific property pursuant to section 1043. Divestiture is one of the standard remedial actions available to comply with conflict of interest statutes, regulations, rules, and executive orders (see 2634.604(b)(5)), and certification ameliorates the impact of a divestiture. In cases in which the contemplated divestiture is not pursuant to the request of a congressional committee as a condition of confirmation, a Certificate of Divestiture will be issued by the Director of the Office of Government Ethics only if he concurs with the opinion of the designated agency ethics official referred to in paragraph (b)(1)(iv)(B) of this section that such divestiture is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order. Issues relating to whether the terms of a contemplated divestiture constitute a sale or other disposition of the property under Internal Revenue Service Rules and other tax matters are under the jurisdiction of the Internal Revenue Service. See 2634.1001(b).

(3) Documentation of the certification. Certification shall be indicated by a letter from the Director to the eligible party or his representative.

(c) Eligible person. For purposes of section 1043 and this subpart, the term "eligible person" includes:

(1) Any officer or employee of the Executive branch of the Federal government, except a person who is a special Government employee as defined in 18 U.S.C. 202; and

(2) The spouse and any minor or dependent child of an individual referred to in paragraph (c)(1) of this section whose ownership of property required to be divested is attributable to such person by 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order.

Sec. 2634.1003 Permitted property.

(a) In general. The categories of permitted property into which rollovers are permitted to be made have been drawn through the rules of this section so as to be neutral in respect of the vast majority of Federal programs and responsibilities. The Internal Revenue Service has jurisdiction with respect to determinations concerning the application of the rules of this section in specific cases (see 2634.1001(b)). However, the ethics program rules applicable to specific agencies and positions may further limit an eligible person's choices. The advice of the designated agency ethics official should be sought in this regard. For example, there are restrictions on the purchases of shares in regulated investment companies by some Securities and Exchange Commission personnel and on purchases of obligations of the United States by some officials of the Department of the Treasury. Additionally, it may not be appropriate for some officials of agencies having international responsibilities to invest in mutual funds which exclusively invest in securities outside of the United States.

(b) Definition of "permitted property". For purposes of section 1043 and this subpart, the term "permitted property" means:

(1) Any obligation of the United States; and

(2) Any "diversified investment fund", as defined in paragraph (c) of this section.

(c) Diversified investment fund

(1) Definition. The term "diversified investment fund" means any open-end mutual fund (which is a "regulated investment company", as defined by section 851 of the Internal Revenue Code of 1986), which by its prospectus, or any common trust fund maintained by a bank (which is a "common trust fund", as defined by section 584(a) of the Internal Revenue Code of 1986), which by the literature it distributes to prospective and current investors describing its objectives and practices, does not indicate the objective or practice of devoting its investments to particular or limited industrial, economic, or geographic sectors.

(2) Ownership limitation. Notwithstanding any other rule of this paragraph (c), a fund may not be considered to be a diversified investment fund in any case in which the ownership of more than one percent of the market value of the fund would be attributable to an individual referred to in 2634.1002(c)(1) immediately after a rollover.

Example 1: The Alpha Group is a family of funds which markets numerous open-end mutual funds which are typical of those generally available to the general public:

(i) The following funds of the Alpha Group would be presumed to be diversified investment funds for purposes of paragraph (c)(1) of this section, unless their prospectuses indicated an objective or practice of devoting their investments to particular or limited industrial, economic, or geographic sectors: the Common Stock Fund, the Growth Stock Fund, the S&P Index Fund, the Global Fund (investing in common stocks world-wide), the Blue Chip Fund, the Corporate Bond Fund, the Municipal Bond Fund, and the Government Bond Fund (which invests exclusively in obligations of the United States).

(ii) The following funds of the Alpha Group would not be presumed to qualify as diversified investment funds, unless their prospectuses indicated that they do not have an objective or practice of devoting their investments to particular or limited industrial, economic, or geographic sectors for purposes of paragraph (c)(1) of this section: The Pacific fund, the Mexico Fund, the New England Fund, the Gold Fund, the Commodity Futures Fund, the Venture Capital Fund, and the Drug Industry Sector Fund.

Example 2: The Omega Fund is a closed-end mutual fund which is listed on the New York Stock Exchange. The Omega Fund is not a diversified investment fund, as only open-end mutual funds are within the definition of that term pursuant to paragraph (c)(1) of this section.

Sec. 2634.1004 Special rule.

Public access to Certificates of Divestiture. The Certificates of Divestiture issued pursuant to the provisions of this part shall be available to the public in accordance with the rules of 2634.603 of this part.

SECTION 2. PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278)

7-200. Individuals Required to File

a. Covered Positions. For purposes of this section, the following individuals are in "covered positions" and are required by the Ethics in Government Act of 1978, Pub. L. 95-521 (reference (b)) to file an SF 278, Appendix C of this Regulation, with their DoD Component DAEO or designee as set out in subsection 7-205 of this Regulation, below:

- (1) Civilian Presidential appointees;
- (2) Regular and Reserve military officers whose pay grade is 0-7 or above;
- (3) Members of the Senior Executive Service;
- (4) Other civilian DoD employees, including special
* Government employees, whose positions are classified above GS/GM-15 prescribed by 5 U.S.C. 5332 (reference (c)) or civilian DoD employees under other pay systems whose rate of basic pay is fixed at or above 120% of the minimum rate of basic pay for a GS/GM-15; *
- (5) DoD employees in the excepted service in positions that are of a confidential or policy-making character unless they have been excluded by the Director, OGE. See subsection 7-200.d. of this Regulation, below;
- (6) Individuals serving by appointment under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376 (reference (c));
- (7) Civilian individuals who are detailed to positions described in subsection 7-200.a.(3) through 7-200.a.(5) of this Regulation, above;
- (8) DoD Component DAEOs.

b. Waiver. An individual otherwise required to file an SF 278, Appendix C of this Regulation, but who now is expected to perform the duties of a covered position for less than 130 days in a calendar year, may request a waiver of any or all reporting requirements from the Director, OGE, in accordance with 5 C.F.R. 2634 (reference (a)) in subsection 7-100 of this Regulation, above.

c. Exception. An individual who is nominated to or assumes a covered position is not required to file an SF 278, Appendix C of this Regulation, if the Secretary concerned or the DoD Component DAEO determines that the individual is not reasonably expected to perform the duties of the position for more than 60 days in a calendar year. If such individual performs the duties of the position for more than 60 days in a calendar year, an SF 278, Appendix C of this Regulation, shall be filed within 15 days after the 61st day of duty.

d. Exclusion. The Director, OGE, may exclude an individual who is in a covered position under subsection 7-200.a.(5) of this Regulation, above, from the requirement to file an SF 278, Appendix C of this Regulation, in accordance with 5 C.F.R. 2634.203 (reference (a)) in subsection 7-100 of this Regulation, above.

7-201. Information on Covered Positions. The directors of DoD Component personnel offices are responsible for providing the following information to their DoD Component DAEOs or designees:

a. The name, position, grade, organization and entrance-on-duty or termination date of each individual assigned to the DoD Component who is required to file a new entrant or termination SF 278, Appendix C of this Regulation, immediately upon the appointment of the individual to a position requiring filing, or upon receipt of an SF 52, "Request for Personnel Action," August 1988, Appendix C of this Regulation, requesting approval of the retirement, resignation, or removal of the individual from such a position;

b. By January 10 of each year, the name, position, grade, and organization of each individual assigned to the DoD Component who is required to file an annual SF 278, Appendix C of this Regulation.

7-202. Notification of Requirement to File. Each DoD Component DAEO or designee shall provide appropriate notices and instructions to all reporting individuals to ensure the timely preparation of the reports and submission to supervisors and Ethics Counselors for review and filing.

7-203. Time of Filing

a. Nomination Reports

(1) Any time after public announcement but within five days after transmittal by the President to the Senate of the nomination of an individual to a civilian DoD position that requires the advice and consent of the Senate, the DoD Component DAEO shall ensure the nominee's SF 278, Appendix C of this Regulation, is filed with appropriate authorities.

(2) The report shall contain the information prescribed in the "Instructions for Completing SF 278" attached to the SF 278,

(3) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(a) When the Ethics Counselor amends or revises a report based on additional information obtained from the reporting individual, he shall initial the amendment or revision and make a note of the source of the information in the comment section of the report. For example, if the Ethics Counselor adds to a report that a certain fund is an excepted investment fund based on a telephone conversation with the reporting individual, he shall number and initial the change on Schedule A and add a notation in the comment section of the report, such as "1. per telecon with Mr. Doe on June 16, 1992" and initial the comment.

(b) When a substantial amount of information is missing from the report, it shall be returned to the supervisor for evaluation in accordance with the standards set forth in subsection 7-206.b.(1) of this Regulation, above, with instructions to return it to the Ethics Counselor with any additional comments or supplementary information.

(4) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, then:

(a) The Ethics Counselor shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or regulations exist, and forward it to the appropriate DoD Component DAEO or designee; and

(b) If there are financial interests in non-Federal entities doing or seeking business with DoD reported on the SF 278, the Ethics Counselor may issue a memorandum of caution to the reporting individual and forward a copy of the memorandum with the SF 278 to the appropriate DoD Component DAEO or designee.

(5) If the Ethics Counselor disagrees with the supervisor's evaluation, and concludes that the report does not comply with applicable laws and regulations, he shall do the following:

(a) Notify the reporting individual in writing of the preliminary determination;

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

(c) Determine, after considering any response, whether or not the reporting individual is in compliance with applicable laws and regulations. If the Ethics Counselor concludes that the report does fulfill the requirements, he shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or

regulations exist and dispose of the report in accordance with subsection 7-206.b.(4) of this Regulation, above. If the Ethics Counselor determines that it does not, he shall:

1 Notify the reporting individual of the conclusion;

2 Afford the reporting individual an opportunity for personal consultation, if practicable;

3 Determine what remedial action should be taken to bring the reporting individual into compliance;

4 Notify the reporting individual, in writing, of the remedial action required, indicating a date by which that action must be taken; and

5 Ensure that the supervisor of the reporting individual is notified of the required remedial action and date by which that action must be taken.

(6) Except in unusual situations, which must be documented fully to the satisfaction of the Ethics Counselor, remedial action shall be completed within three months from the date the reporting individual was notified that the action is required.

(7) Remedial steps, in accordance with 5 C.F.R. 2634.605 et seq. (reference (a)) in subsection 7-100 of this Regulation, above, may include the following measures:

(a) Divestiture:

1 Any reporting individual or the spouse, minor or dependent child of a reporting individual, may be issued a Certificate of Divestiture by the Director, OGE, upon a determination that such divestiture is reasonably necessary to comply with 18 U.S.C. 208 (reference (d)), or any other Federal Government conflict of interest statute, regulation, rule, or Executive Order, or pursuant to the request of the Senate as a condition of confirmation;

2 If obtained before the sale, the Certificate of Divestiture allows for the non-recognition of capital gains that result upon the sale of property to comply with conflict of interest requirements if the property is rolled over into property permitted by OGE. See 5 C.F.R. 2634.1001 (reference (a)) in subsection 7-100 of this Regulation, above;

3 The following items must be submitted to the Director, OGE, by the DoD Component DAEO:

(a) Navy shore installations with 500 or more military and civilian DoD employees (including foreign nationals and indirect hire personnel regularly attached but excluding personnel attached for temporary duty); and

(b) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(2) Special Government employees, except the following categories of DoD employees who are required to file reports only when specifically requested to do so by their supervisor:

(a) Physicians, dentists, and allied medical specialists engaged only in providing services to patients;

(b) Veterinarians providing only veterinary services;

(c) Lecturers participating only in educational activities;

(d) Chaplains performing only religious services;

(e) Individuals in the motion picture or television fields who are utilized only as narrators or actors in DoD productions;

(f) Reservists on active duty for less than 30 consecutive days during a calendar year; and

(g) Members of selection panels for ROTC candidates.

(3) DoD employees classified at GS/GM-15 or below under 5 U.S.C. 5332 (reference (c)) or a comparable pay level under other authority, and members of the military below the grade of O-7 as follows:

(a) When the official responsibilities of such DoD employees require them to participate personally and substantially through decision or exercise of significant judgment in taking an official action for contracting or procurement, administering or monitoring grants, subsidies, licenses or other Federally conferred financial or operational benefits, regulating or auditing any non-Federal entity, or other activities in which the final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity;

(b) Any DoD employees serving in a position in which his supervisor determines that the duties and responsibilities of the position require the DoD employee to file such a report to avoid an actual or apparent conflict of interest and to carry out the purpose of any statute, Executive Order, or regulation applicable to or administered by that reporting individual;

(4) Individuals who are detailed to positions described in subsection 7-300.a.(3) of this Regulation, above.

(5) Individuals serving on detail under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376 (reference (c)).

b. Exclusion

(1) Any DoD employee or group of DoD employees may be excluded from all or a portion of the reporting requirements when the DoD Component Head or designee determines that a report is unnecessary because of the remoteness of any impairment to the integrity of the Federal Government, because of the degree of supervision and review of the DoD employee's work, or because the use of an alternative procedure is adequate to prevent possible conflicts of interest. Any alternative procedure must be approved in writing by OGE.

(2) DoD employees who are not employed in contracting or procurement and who have decisionmaking responsibilities regarding expenditures of less than \$2,500 per purchase and less than \$25,000 cumulatively per year are excluded from the requirement to file the SF 450, Appendix C of this Regulation. However, Agency Designees may require such DoD employees, in individual cases, to file the SF 450, Appendix C of this Regulation. Such DoD employees remain subject to conflict of interest statutes and regulations.

7-301. Information on Covered Positions

a. The directors of personnel offices are responsible for providing the following information to their DoD Component DAEs or designees they service:

(1) Immediately upon the appointment of covered DoD employees, the name, position, organization and entrance-on-duty date of DoD employees required by their supervisor to file a new entrant SF 450, Appendix C of this Regulation;

(2) By October 3 of each year, a list of the names, positions and organizations, when applicable, of DoD employees who are required to file an annual SF 450, Appendix C of this Regulation.

b. Coordination is required as follows:

(1) Administrative Officers (or equivalent) of each organization shall coordinate with the supervisors within their organization, in consultation with the DoD Component DAEO or designee, to update the list of annual reporting individuals in their organization and report any additions or deletions to the concerned Ethics Counselor by October 31 of each year. In addition, it is the Administrative Officers' responsibility to ensure that any new positions are evaluated to determine whether such reports are required; or

(2) The directors of personnel offices shall coordinate with Ethics Counselors and supervisors to ensure that position or billet descriptions of reporting individuals described in subsection 7-300 of this Regulation, above, contain a statement that an SF 450, Appendix C of this Regulation must be filed. All new or revised position or billet descriptions shall be reviewed to determine whether such reports are required.

7-302. Notification of Requirement to File. DoD Component DAEOs or designees shall provide appropriate notices and instructions to ensure the timely preparation of the reports and submission to their supervisors and their Ethics Counselors for review and filing.

7-303. Time of Filing

a. New Entrant Reports

(1) Except for a special Government employee, a reporting individual shall submit an SF 450, Appendix C of this Regulation, with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor not later than 30 days after assuming duties in a covered position. Upon transfer or reassignment from one covered position to another, a reporting individual shall submit a copy of his previous report to the appropriate supervisor of the new position.

(2) A special Government employee shall submit an SF 450, Appendix C of this Regulation, with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor before assuming duties in a covered position. A special Government employee whose appointment is renewed shall file a new entrant report for the preceding 12 months prior to his reappointment. A special Government employee whose appointment exceeds one year shall file a new entrant report on the anniversary of his appointment.

b. Annual Reports. A reporting individual (except a special Government employee) who was employed at least 61 days during the preceding reporting period must submit an SF 450, Appendix C of this Regulation, to his Ethics Counselor by November 30 of each year covering the preceding 12 months (or any portion thereof not covered by a new entrant report), with information current as of September 30 of that year. A reporting individual who is reassigned or transferred from one covered position to another during the reporting period shall file an annual report whether or not he was employed in that position for

61 days.

c. Extension of Filing Deadline

(1) When required by reason of duty assignment, infirmity, or other good cause affecting a reporting individual, the DoD Component DAEO or designee may grant an extension of the filing deadline, not to exceed 60 days for annual reports or 90 days for new entrant reports.

(2) Requests for extensions shall be submitted in writing.

(3) Each annual reporting individual is automatically granted a 30 day extension by this Regulation to make the reporting deadline November 30 as stated in subsection 7-303.b. of this Regulation, above. This automatic extension need not be annotated on an individual report. Any other extension shall be noted.

7-304. Content of Report

a. Instructions for completing the SF 450, Appendix C of this Regulation, are included on the report. See instructions at 5 C.F.R. 2634.907 and 908 (reference (a)) in subsection 7-100 of this Regulation, above, for additional guidance or contact the local Ethics Counselor.

b. A complete report is required even though no changes have occurred since the last submission.

c. A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate, even if it limits disclosure to the reporting individual.

7-305. Chain of Submission. A reporting individual shall submit his SF 450, Appendix C of this Regulation, through his supervisor to his Ethics Counselor. It is the responsibility of the reporting individual to ensure that an annual report is filed by November 30.

7-306. Review

a. Upon receipt of an SF 450, Appendix C of this Regulation, the supervisor of the reporting individual shall provide an initial review of the report using the criteria set forth in subsection 7-306.b. of this Regulation, below, and forward it with any comments to the local Ethics Counselor for further review.

7-309. Status Reports

a. Not later than December 15 of each year, Ethics Counselors shall prepare a consolidated status report concerning the annual filing of the SF 450, Appendix C of this Regulation. The status report shall be sent through the head of the DoD Component command or organization to the respective DoD Component DAEO or designee and shall contain the following information:

(1) The number of individuals required to file an annual SF 450, Appendix C of this Regulation; and

(2) The number of individuals who have not filed an SF 450 as of November 30.

b. Subsequent to December 15, monthly reports may be required by the DoD Component DAEO to be filed for those organizations which have not received an SF 450, Appendix C of this Regulation, from all reporting individuals required to file, until 100% compliance has been achieved. These monthly reports shall be forwarded as described in subsection 7-309.a., above.

7-310. Penalties

a. Administrative Penalties. Anyone failing to file a report, or falsifying or failing to file required information, may be subject to disciplinary action by the employing organization, including such measures as suspension of consideration for appointment, reassignment of duties and termination of employment.

b. Criminal Liability. Anyone who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (d)).

SECTION 4. REPORT OF DoD AND DEFENSE RELATED EMPLOYMENT (DD FORM 1787)

* 7-400. Individuals Required to File. Each civilian DoD employee of a DoD Component who meets the statutory criteria is required by 10 U.S.C. 2397 (reference (f)) to file a DD Form 1787, "Report of DoD and Defense Related Employment," Appendix C of this Regulation, with his Ethics Counselors. A DoD employee meets the criteria if he: *

a. Is employed at a pay rate equal to or greater than the minimum rate for a GS/GM-13;

b. Within the two-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during the preceding one-year period, was awarded \$10 million or more in defense contracts; and

c. Was employed by or performed services for the defense contractor and at any time during that year received compensation of or was salaried at a rate of \$25,000 per year or more at any time during employment.

(1) Compensation is received by an individual if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that individual.

(2) A rate of \$25,000 per year equates to \$12 per hour.

7-401. Time of Filing. DoD employees shall file a DD Form 1787, Appendix C of this Regulation, with their local Ethics Counselors within 30 days of entering on duty with the DoD Component.

7-402. Review

a. When a report is filed, the Ethics Counselor shall review the DD Form 1787 to determine whether:

(1) Each item is completed and sufficient information is provided; and

(2) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, or related laws and regulations.

b. The Ethics Counselor need not audit the report. 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. However, it is expected that the Ethics Counselor will resolve any apparent violations to ensure there are no actual violations.

c. If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

d. When the Ethics Counselor has completed the review and accomplished any necessary remedial action, the Ethics Counselor shall sign and date the report and dispose of it in accordance with subsection 7-403 of this Regulation, below.

e. If the Ethics Counselor concludes that the reporting individual is not in compliance with applicable laws or regulations, the Ethics Counselor shall:

- (1) Notify the reporting individual, in writing, of the preliminary determination;
- (2) Afford the reporting individual an opportunity for personal consultation, if practicable;
- (3) Determine what remedial action should be taken to bring the reporting individual into compliance; and
- (4) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

f. When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. The Ethics Counselor shall sign and date the report as the reviewing official and dispose of it in accordance with subsection 7-403 of this Regulation, below.

7-403. Disposition

a. After the Ethics Counselor signs and dates the report, the Ethics Counselor shall send the original to the entire DoD Component DAEO or designee, who shall forward it, together with all other such reports that were received during the previous calendar year, to SOCO not later than March 15.

b. The DoD Component DAEO or designee shall ensure that appropriate data from each DD Form 1787, Appendix C of this Regulation, is extracted and sent, together with all other such data from other such reports that were received during the previous calendar year for the entire DoD Component, by March 15 to the Defense Manpower Data Center (DMDC) where a consolidated report to Congress is compiled. DMDC will accept data only on computer disk using any common wordprocessing software or ASCII.

c. If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the DoD Component DAEO and take whatever other action might be required in accordance with Chapter 10 of this Regulation.

d. DD Forms 1787, Appendix C of this Regulation, shall be retained by SOCO for six years from the date of filing with SOCO.

7-404. Public Availability of Reports. DD Forms 1787, Appendix C of this Regulation, must be made available for public examination upon request after the report is filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

7-405. Penalties

a. Administrative Penalties. Anyone failing to file a report, or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to \$10,000 may be imposed in accordance with 10 U.S.C. 2397 (reference (f)).

b. Criminal Liability. Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (d)).

SECTION 5. REFERENCES

7-500. References

- (a) Title 5, Code of Federal Regulations, Part 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees," current edition
- (b) Public Law 95-521, "Ethics in Government Act of 1979," October 26, 1978, as amended
- (c) Title 5, United States Code, Sections 552, 552a, 3371-3376, and 5332
- (d) Title 18, United States Code, Chapter 11, Sections 208 and 1001
- (e) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," April 12, 1989, as amended
- (f) Title 10, United States Code, Section 2397

(1) The request must provide the DoD Component DAEO or designee with sufficient information to make a determination.

(2) The DoD Component DAEO shall make his determination, in writing, within 30 days, or as soon thereafter as practicable.

(3) A copy of the request and the ethics advisory opinion shall be retained for six years, in accordance with DoD Component procedures.

8-301. Penalties. Violation of the provisions of 41 U.S.C. 423 (reference (c)) is punishable by the full range of sanctions, including the following:

a. Civil Penalties. Individual violators may be subject to a civil fine not to exceed \$100,000. Violators, other than individuals, may be subject to a civil fine not to exceed \$1 million.

b. Administrative Sanctions. See subsection 10-300 through 10-304 of this Regulation.

SECTION 4. REPORTING EMPLOYMENT CONTACTS (10 U.S.C. 2397a)
(reference (e))

8-400. Individuals Required to File. The following DoD employees are required by this Regulation and by 10 U.S.C. 2397a (reference (e)) to report, in writing, their employment contacts to their supervisor and DoD Component DAEO or designee:

a. Any military officer in grade O-4 or above, or any civilian DoD employee serving in a position for which the rate of pay is equal to or greater than the minimum rate of pay for GS/GM-11 who;

b. At any time during his DoD service, performed a "procurement function" involving a defense contractor which received at least \$25,000 a year in DoD business; and

c. Who contacts or is contacted by that defense contractor regarding future employment.

8-401. Content of Report. Reports of employment contacts shall include:

- a. The name, title, agency address, and telephone number of the reporting individual;
- b. The name of the defense contractor concerned;
- c. The date of each contact covered by the report; and
- d. A brief description of the substance of each contact.

8-402. Disqualification Statement

a. Individuals Required to File Disqualification

(1) Any DoD employee required to submit a report of an employment contact shall submit to his supervisor a written statement disqualifying himself from participating in any "procurement function" involving the defense contractor until such time as the possibility of future employment with that defense contractor has been rejected by either party.

(2) Procurement officials may be required to request recusal through formal procedures requiring written approval by the head of the contracting agency. See subsection 8-300 of this Regulation, above.

b. Distribution of Disqualification. The disqualification statement shall be given to the DoD employee's supervisor and the Ethics Counselor. It also should be provided to others who might contact the DoD employee regarding the defense contractor which is the subject of the disqualification.

c. Contents of Disqualification. The disqualification statement shall contain:

(1) The name, title, agency address, and telephone number of the DoD employee submitting the report;

(2) The extent of disqualification (i.e., a description of duties affecting the defense contractor the DoD employee may not perform as a result of the disqualification);

(3) Identification of the DoD employee or office that will handle duties during the disqualification period; and

(4) An explanation of any other steps required to avoid potential conflicts of interests;

OFFICE OF GOVERNMENT ETHICS MEMORANDUM

November 5, 1992

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIALS
 GENERAL COUNSELS
 INSPECTORS GENERAL

FROM: STEPHEN D. POTTS
 DIRECTOR

SUBJECT: Revised Materials Relating to 18 U.S.C. § 207¹

Anticipating an increased demand for post-employment counseling during the Presidential transition, we are providing some revised written materials that should facilitate advice and training concerning 18 U.S.C. § 207.

Statute. We have in the past distributed copies of the statutory language of 18 U.S.C. § 207, most recently in January 1991. The revised handout incorporates all amendments made to the statute since its revision by the Ethics Reform Act of 1989, including the addition of new section 207(k) and the amendment of section 207(f) as applied to the United States Trade Representative.

Revised Summary. Shortly before the effective date of the Ethics Reform Act amendments, we distributed a 14-page summary of 18 U.S.C. § 207 as amended by that Act. We have revised that summary's introductory material to reflect the passage of time and the publication of 5 CFR Part 2641. We have also incorporated post-Ethics Reform Act amendments by including the Executive Level V threshold relating to the definition of "senior employee," by adding a brief description of the Presidential waiver authority in new section 207(k), and by revising the discussion of section 207(f) in relation to the United States Trade Representative. Also, in order to ensure consistency with Part 2641, we have changed certain language in the summary concerning the application of section 207(c) to special Government employees and the designation of components for purposes of that section. (As before, the summary does not discuss 18 U.S.C. § 208 or other provisions applicable when an employee seeks or negotiates for employment in the private sector.)

We hope these materials prove useful.

Attachments

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

November 4, 1992

SUMMARY OF POST-EMPLOYMENT RESTRICTIONS OF 18 U.S.C. § 207

I. INTRODUCTION

* Since its enactment in 1962, 18 U.S.C. 207 has remained the primary source of post-employment restrictions applicable to officers and employees of the executive branch. Unlike certain other post-employment laws, the provisions of section 207 apply to individuals regardless of the executive department or agency in which they served while employed by the Government and regardless of the particular duties they performed. *

Section 207 has been amended several times over the years. Recently, for example, section 207 was substantially revised by the Ethics Reform Act of 1989. As a consequence of these amendments, former employees are subject to varying post-employment restrictions depending upon the date of their termination from Government service or from certain high-level positions.

* Individuals who terminated service prior to January 1, 1991, should continue to consult the regulations published at Part 2637 of title 5, Code of Federal Regulations, for guidance concerning applicable provisions of section 207. Individuals terminating service on or after January 1, 1991, should consult this summary pending completion of revised regulatory guidance at 5 C.F.R. Part 2641. As of this date, Part 2641 contains guidance concerning 18 U.S.C. 207(c) only. (Except where the underlying statutory provision has changed, Part 2637 remains persuasive concerning the interpretation of the newer version of 18 U.S.C. 207.) *

This summary was prepared by the U.S. Office of Government Ethics. While it has been coordinated with the Department of Justice, employees are cautioned that it reflects only a preliminary interpretation of the amendments to 18 U.S.C. 207 enacted by the Ethics Reform Act of 1989 and thereafter.

II. SUMMARY OF RESTRICTIONS

Effective January 1, 1991, section 207 of title 18 sets forth six substantive prohibitions restricting the activities of individuals who leave Government service or who leave certain highlevel positions in the executive branch. Each of these restrictions is discussed separately below, followed by a discussion of several statutory exceptions.

None of the provisions bar any individual, regardless of rank or position, from accepting employment with any private or public employer after Government service. Section 207 only prohibits individuals from engaging in certain activities on behalf of persons or entities other than the United States, whether or not done for compensation. None of the restrictions bar self representation.

A. APPLICABILITY

The first three restrictions [207(a)(1), (a)(2), and (b)] are applicable to former officers or employees of the executive branch. They also apply to former senior or very senior employees as those terms are described below, and to former special Government employees. According to 18 U.S.C. 202, a "special Government employee" includes an individual who is "retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis" (Enlisted personnel of the uniformed services are not "officers" or "employees" for purposes of section 207.)

The fourth restriction [207(c)] is applicable only to former senior personnel, (hereinafter referred to as "senior employees"). A senior employee is any employee (other than an individual covered by the fifth restriction) who was employed in a position for which the rate of pay is specified in or fixed according to the Executive Schedule, in a position for which the rate of basic pay is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule, or in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade is O-7 or above. The term includes those individuals appointed by the President to a position under 3 U.S.C. 105(a)(2)(B) or by the Vice President to a position under 3 U.S.C. 106(a)(1)(B). An individual is subject to section 207(c) as a result of service as a special Government employee only if the individual served 60 or more days as a special Government employee during the one-year period before terminating service as a senior employee.

The fifth restriction [207(d)] applies only to former very senior personnel (hereinafter referred to as "very senior employees"). A very senior employee is any employee who was employed in a position at the rate of pay payable for level I of the Executive Schedule, or in a position in the Executive office of the President at a rate of pay equal to or greater than the rate of pay payable for level II of the Executive Schedule. The term includes the Vice President and those individuals appointed by the President to a position under 3 U.S.C. 105 (a)(2)(A) or by the Vice President to a position under 3 U.S.C. 106(a)(1)(A).

The sixth restriction [207(f)] applies to individuals who formerly served in either a senior or very senior position.

B. SUBSTANTIVE RESTRICTIONS

* 1. Basic Prohibition of 18 U.S.C. 207(a)(1). No former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which he participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest. *

Discussion. This is a lifetime restriction that commences upon an employee's termination from Government service. The target of this provision is the former employee who participates in a matter while employed by the Government and who later 'switches sides'

by representing another person on the same matter before the United States. The restriction is measured by the duration of the matter in which the former employee participated.

The restriction does not apply unless a former employee communicates to or makes an appearance before the United States on behalf of some other person. For these purposes, the "United States" refers to any employee of any department, agency, court, or court-martial of the United States (but not of the District of Columbia). The term does not include the Congress, and therefore communications to or appearances before Members of Congress and legislative staff are not prohibited by this provision.

A former employee is not prohibited by this restriction from providing "behind-the-scenes" assistance in connection with the representation of another person. moreover, the restriction prohibits only those communications and appearances that are made with the intent to influence. A "communication" can be made orally, in writing, or through electronic transmission. An "appearance" extends to a former employee's mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States. An "intent to influence" the United States may be found if the communication or appearance is made for the purpose of seeking a discretionary Government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which the former employee knows involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

A communication to or appearance before the United States is not prohibited unless it concerns the same particular matter involving a specific party or parties in which the former employee participated personally and substantially while employed by the Government. An employee can participate "personally" in a matter even though he merely directs a subordinate's participation. He participates "substantially" if his involvement is of significance to the matter. Thus, while a series of peripheral involvements may be insubstantial, participation in a single critical step may be substantial. The term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. In determining whether two situations are part of the same particular matter, one should consider all relevant factors, including the amount of time elapsed and the extent to which the matters involve the same basic facts or issues and the same or related parties. Even if a post-employment communication or appearance would concern the same particular matter, however, the representational bar will not apply unless the United States is a party or has a direct and substantial interest in that matter at the time of the post-employment representation.

The provision requires that an employee's official participation in a particular matter have taken place at a time when the matter involved a specific party (or parties). It also requires that the matter involve some specific party or parties at the time of the post-employment communication or appearance (although these can be different parties than were involved with the matter at the time of the employee's participation). General rulemakings do not usually involve specific parties. Consequently, it is quite possible that an employee who participated in a rulemaking while employed by the Government will, after leaving Government service, be able to appear before his former agency concerning the application of that rule to his new private sector employer without violating the lifetime restriction. Contracts, on the other hand, are always particular matters involving specific parties. A Government procurement has specific parties identified to it when a bid or proposal is received in response to a solicitation, if not before.

The provision does not prohibit a former employee from representing himself before the United States (as distinguished from a corporation or consulting firm). Moreover, a former employee is not prohibited from acting on behalf of the United States (or the Congress). Thus, even though an individual may once have worked on a matter while employed by the Government, he will not, while subsequently reemployed by the Government, be barred from communicating with any employee of the United States concerning that matter if he does so as part of his official duties. A former employee does not act on behalf of the United States, however, merely because the United States may share the same objective as the person whom the former employee is representing.

- * 2. Basic Prohibition of 18 U.S.C. 207(a)(2). For two years after his Government service terminates, no former employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which such person knows or reasonably should know was actually pending under his official responsibility within the one year period prior to the termination of his employment with the United States.

Discussion. This is a two-year restriction that commences upon an employee's termination from Government service.

This provision is identical to the lifetime restriction discussed above except that it is of shorter duration and requires only that an individual have had official responsibility for a matter while employed by the Government, not that he have participated personally and substantially in that matter. Like the lifetime restriction, it prohibits certain communications and appearances made on behalf of any other person or entity except the United States (or the Congress). The communications and appearances prohibited are those made, with the intent to influence, to or before any employee of a department, agency, court, or court-martial of the United States. The representational bar applies with respect to any particular matter involving a specific party or parties that was actually pending under the former employee's official responsibility at some time during his last year of Government service.

"Official responsibility" is defined in 18 U.S.C. 202 as "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action." The scope of an employee's official responsibility is usually determined by those areas assigned by statute, regulation, executive order, or job description. All particular matters under consideration in an agency are under the official responsibility of the agency head, and each is under that of any intermediate supervisor having responsibility for the activities of a subordinate employee who actually participates in the matter. An employee's recusal from or other non-participation in a matter does not remove it from his official responsibility.

A matter was "actually pending" under a former employee's official responsibility if the matter was in fact referred to or under consideration by persons within the employee's area of responsibility. A former employee is not subject to the restriction, however, unless

at the time of the proposed representation of another he knows or reasonably should know that the matter had been under his responsibility during his last year of Government service.

- * 3. Basic Prohibition of 18 U.S.C. 207(b). For one year after his Government service terminates, no former employee may knowingly represent, aid, or advise on the basis of covered information, any other person (except the United States) concerning any ongoing trade or treaty negotiation in which, during his last year of Government service, he participated personally and substantially as an employee. *

Discussion. This is a one-year restriction that commences upon an employee's termination from Government service. Extending to certain "behind-the-scenes" assistance, this provision can serve to augment the representational bar provided for in the lifetime restriction discussed above.

The restriction set forth in section 207(b) does not apply unless, during the one-year period before he left Government, an employee participated personally and substantially in an "ongoing" trade or treaty negotiation that is covered by the statute. It is not necessary that a former employee have had actual contact with foreign parties in order to have participated personally and substantially in a trade or treaty negotiation. An employee is covered by this restriction even though his participation in an ongoing negotiation may have occurred prior to January 1, 1991, the effective date of section 207(b).

Trade negotiations covered by the statute are those that the President determines to undertake pursuant to section 1102 of the omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902). Unless there is an earlier public announcement of a determination by the President, a trade negotiation commences to be "ongoing" when, at least 90 days before entering into a trade agreement, the President notifies both the House of Representatives and the Senate of his intention to enter into an agreement. 19 U.S.C. 2903(a)(1)(A). Whether an employee participated personally and substantially in an "ongoing" trade negotiation is determined by reviewing an employee's participation after trade negotiations commenced. A treaty is an international agreement made by the President that requires the advice and consent of the Senate. A negotiation on a treaty commences to be "ongoing" at the point when both (1) the determination has been made by a competent authority that the outcome of a negotiation will be a treaty, and (2) discussions with a foreign government have begun on a text. Trade and treaty negotiations both cease to be ongoing when an agreement or treaty enters into force or when all parties to the negotiation cease discussion based on a mutual understanding that the agreement or treaty will not be consummated.

Once he has participated in an ongoing negotiation, section 207(b) prohibits a former employee from representing, aiding, or advising any other person concerning a trade or treaty negotiation (that is still ongoing) on the basis of certain "covered" information. "Covered" information refers to agency records which were accessible to the employee, which he knew or should have known were designated as exempt from disclosure under the Freedom of Information Act (e.g., documents that were marked as subject to a national security classification or those otherwise designated in a manner that made it clear they were exempt from release under FOIA), and which concern a negotiation in which the employee participated personally and substantially during his last year of Government service. A former employee is not prohibited from utilizing information from an agency record which, at the time of his post-employment activity, is no longer exempt from disclosure under the Freedom of Information Act.

Only activities that are undertaken on behalf of "any other person" are prohibited by this restriction. Action taken on behalf of the United States (or the Congress) or on behalf of the former employee himself are not prohibited. A former employee "represents" another person when he acts as an agent or attorney for or otherwise communicates or makes an appearance on behalf of that person to or before any third party. For this purpose, a third party includes any employee of the executive, legislative, or judicial branch of the Federal Government, including a Member of Congress. A former employee "aids or advises" another person when he assists that person other than by communicating to or appearing before a third party. A former employee represents, aids, or advises another person "on the basis of" covered information if the former employee's representation, aid, or advice either involves a disclosure of covered information to any person, or could not have been made or rendered had the former employee not had actual knowledge of covered information.

It is important to note that although a post-employment activity may not be prohibited by section 207(b), a former employee must still be careful to comply with other statutory restrictions. For example, even though a trade or treaty negotiation may not yet have become "ongoing" at the time of an employee's official participation, the negotiation may nevertheless have had specific parties identified to it, thus triggering the lifetime restriction set forth in section 207(a)(1).

- * 4. Basic Prohibition of 18 U.S.C. 207(c). For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one-year period prior to termination from "senior service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee. *

Discussion. This is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. The purpose of this one-year "cooling off" period is to allow for a period of adjustment to new roles for the former senior employee and the agency he served, and to diminish any appearance that Government decisions might be affected by the improper use by an individual of his former senior position. As already noted, this provision is applicable to "senior" employees, but not to "very senior,, employees.

Like the lifetime restriction discussed above, this provision prohibits communications to and appearances before the Government and does not prohibit "behind-the-scenes" assistance. Unlike the lifetime restriction, however, this one-year restriction applies only to a "senior,, employee, does not require that the former employee have ever been in any way involved in the matter that is the subject of the communication or appearance, and only prohibits communications to or appearances before employees of any department or agency in which he formerly served in any capacity during the one-year period prior to his termination from senior service. The representational bar applies with respect to any matter, whether or not involving a specific party, concerning which the former senior employee is seeking official action by a current employee of such department or agency on behalf of any other person except the United States (or the Congress).

As described below, section 207 provides for two methods by which the restrictions of section 207(c) can be narrowed or eliminated. The first is through the designation of separate departmental or agency components and the second is through the exemption of a position or category of positions from coverage. Not all senior employees are eligible to benefit from either or both of these procedures. A former senior employee is ineligible to benefit from these procedures if he is subject to section 207(c) by virtue of having served in a position for which the rate of pay is specified in or fixed according to the Executive Schedule or by virtue of having been appointed by the President to a position under 3 U. S.C. 105(a)(2)(B) or by the Vice President to a position under 3 U.S.C. 106(a)(1)(B).

As has been noted, the representational bar usually extends to any department or agency in which the former senior employee served in any capacity during the year prior to his termination from senior service. However, certain senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE. For example, although it may not by statute be a separate component, OGE could designate the Defense Logistics Agency as an agency that exercises functions which are separate and distinct from its "parent" department, the Department of Defense. An individual formerly serving in a parent department or agency would be barred by section 207(c) from making communications to or appearances before any employee of that parent, but would not be barred as to employees of any designated component of that parent. An individual formerly serving in a designated component of a parent department or agency would be barred from communicating to or making an appearance before any employee of that component, but would not be barred as to any employee of the parent or of any other component. The statute now provides that no agency within the Executive Office of the President may be designated as a separate component.

The restrictions of section 207(c) can be waived altogether as to certain senior employee positions or categories of positions. As a consequence of such exemption, the one-year restriction of section 207(c) will not begin to run upon an employee's termination from such a position. In order to grant an exemption, OGE must receive a request to do so from a department or agency. After review of the request, OGE can grant an exemption or exemptions based upon its determination that as to a particular position or category of positions, the imposition of section 207(c) would create an undue hardship on the department or agency in obtaining qualified personnel and that the granting of the exemption would not create the potential for use of undue influence or advantage.

* 5. Basic Prohibition of 18 U.S.C. 207(d). For one year after service in a "very senior" position terminates, no former "very senior" employee may knowingly make, with the intent to influence, any communication to or appearance before any individual appointed to an Executive Schedule position or before any employee of a department or agency in which he served as a "very senior" employee during the one-year period prior to termination from Government service, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that individual or employee. *

Discussion. This is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a very senior employee, not from the termination of Government service, unless the two occur simultaneously.

This provision, applicable only to "very" senior employees, is very similar to the one-year restriction of section 207(c) discussed above. It too prohibits communications to or appearances before employees of certain governmental departments and agencies, unless on behalf of the United States (or the Congress). A former very senior employee is prohibited by section 207(d) from representing another before any current employee of any department or agency in which he served as a very senior employee during the one-year period prior to his termination from Government service. (Compare section 207(c) which prohibits communications and appearances to current employees of any department or agency in which a former "senior" employee served in any capacity during the one-year period prior to termination from senior service.) A former very senior employee is also prohibited by section 207(d), however, from representing another person before any individual currently appointed to an Executive Schedule position listed in 5 U.S.C. 5312-5216, whether or not that individual is serving in the very senior employee's former department or agency. The representational bar applies to any matter, whether or not involving a specific party, concerning which the former very senior employee is seeking official action by any current officer or employee of the executive branch.

Section 207 does not authorize OGE to designate separate and distinct components within a department or agency as a means of narrowing the scope of section 207(d). Moreover, no very senior employee's position is eligible for exemption from the application of section 207(d).

* 6. Basic Prohibition of 18 U.S.C. 207(f). For one year after his service in a "senior" or "very senior" position terminates, no former "senior" employee or former "very senior" employee may knowingly, with the intent to influence a decision of an employee of a department or agency of the United States in carrying out his official duties, represent a foreign entity before any department or agency of the United States or aid or advise a foreign entity. *

Discussion. This is a one-year restriction, except that it lasts for three years as applied to any individual who becomes the United States Trade Representative after October 6, 1992. The restriction is measured from the date when an employee ceases to be a senior employee or a very senior employee, not from the termination of Government service, unless the two occur simultaneously.

The restriction prohibits a former senior or very senior employee from representing, aiding, or advising a foreign entity with the intent to influence certain governmental officials. A "foreign entity," means the "government of a foreign country" as defined in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611), as amended, or a "foreign political party" as defined in section 1(f) of that Act. The government of a foreign country includes --

any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or any part of such country, and includes, any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

A foreign political party includes --

REVISED MATERIALS RELATING TO 18 U.S.C. 207

any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, - having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof.

A foreign commercial corporation will not generally be considered a "foreign entity" for purposes of section 207(f) unless it exercises the functions of a sovereign.

A former senior or very senior employee "represents" a foreign entity when he acts as an agent or attorney for or otherwise communicates or makes an appearance on behalf of that entity to or before any employee of a department or agency. He "aids or advises" a foreign entity when he assists the entity other than by making such a communication or appearance. Such "behind the scenes" assistance to a foreign entity could, for example, include drafting a proposed communication to an agency, advising on an appearance before a department, or consulting on other strategies designed to persuade departmental or agency decision makers to take certain action. A former senior or very senior employee's representation, aid, or advice is only prohibited if made or rendered with the intent to influence an official discretionary decision of a current departmental or agency employee.

C. EXCEPTIONS

Sections 207(j) and (k) set forth several exceptions to the statute's substantive prohibitions. As noted below, some exceptions do not avoid application of all of the six substantive restrictions of 18 U.S.C. 207.

Performing official Government Duties. A former employee is not restricted by any of the substantive provisions of section 207 from engaging in post-employment activities performed in carrying out official duties on behalf of the United States. This exception also extends to activities undertaken in carrying out official duties as an elected official of a state or local Government.

Representing Certain entities. A former senior or very senior employee will not violate section 207(c) or (d) if his communication or appearance is made in carrying out official duties as an employee of and is made on behalf of (1) an agency or instrumentality of a State or local Government, (2) an accredited degree-granting institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141 (a)), or (3) a hospital or medical research organization exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

Representing or Assisting International organizations. A former employee is not restricted by any of the substantive provisions of section 207 from representing, aiding, or advising an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States.

Imparting Special Knowledge. A former senior or very senior employee will not violate section 207(c) or (d) if he makes a statement that is based on his own special knowledge in the particular area that is the subject of the statement, provided that he receives no compensation for making the statement.

Scientific or Technological Information or Expertise. A former employee will not violate section 207(a)(1), (a)(2), (c), or (d) if he makes a communication solely for the purpose of furnishing scientific or technological information in accordance with procedures acceptable to the agency involved. Alternatively, a former employee may make a communication if the head of the agency concerned publishes a certification in the Federal Register stating that the former employee has outstanding qualifications in a scientific, technological, or other technical discipline, that he is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the former employee's participation.

Testimony. A former employee is not restricted by any of the substantive restrictions of section 207 from giving testimony under oath or from making statements required to be made under penalty of perjury, subject to a special rule with respect to expert opinion testimony. Unless expert opinion testimony is given pursuant to court order, a former employee may not provide such testimony on a matter on behalf of any other person except the United States (or the Congress) if he is subject to the lifetime prohibition contained in section 207(a)(1) relating to that matter.

Employment with certain Prior Employers. A former employee is not restricted by any of the substantive restrictions of section 207 if granted one of 25 Presidential waivers in connection with his reemployment at a Government-owned, contractor operated entity.

9-601. 41 U.S.C. 423 (reference (f))

a. Restrictions. This statute restricts a former DoD employee who was a procurement official with respect to a particular procurement from knowingly:

(1) Participating in any manner on behalf of a competing contractor in any negotiations leading to the award or modification of a defense contract for such procurement; or

(2) Participating personally and substantially on behalf of the competing contractor in the performance of such defense contract.

b. Period of Restrictions. Both restrictions apply for a period of two years from the date of the former DoD employee's last personal and substantial participation in the procurement on behalf of the Federal Government. Neither applies unless the individual was a DoD employee of the Federal Government at the time he served as a procurement official.

c. Written Opinion

(1) A DoD employee or former DoD employee who is or was a procurement official is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such an opinion shall be submitted in writing to the Ethics Counselor serving the DoD Component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request. See FAR 3.104-8(e) (reference (g)) in Appendix B of this Regulation.

(2) Ethics Counselors who have not been delegated specific authority in writing to issue 41 U.S.C. 423 (reference (f)) written opinions shall promptly forward the request to the DoD Component DAEO or designee who has such authority.

(3) Written opinions shall be issued within 30 days of receiving the request, together with all necessary information.

(4) Where the DoD employee or former DoD employee relies in good faith on a written opinion that this statute is not applicable to a specific situation, the DoD employee or former DoD employee shall not be found to have knowingly violated the restrictions of the statute.

(5) A copy of each 41 U.S.C. 423 (reference (f)) opinion shall be retained by the DoD Component DAEO or designee for three years.

SECTION 7. RESTRICTIONS ON RETIRED MILITARY MEMBERS

9-700. 18 U.S.C. 281(a) (reference (c)). This statute restricts the selling activities of retired military officers. The provisions of this statute were suspended by the Federal Acquisition Streamlining Act of 1994 (reference (h)) through December 31, 1996.

a. Restrictions. A criminal statute, 18 U.S.C. 281(a) (reference (c)), provides that for a period of two years after retiring, no retired military officer may receive compensation for representing any other individual in the sale of anything to the Federal Government through the department in which he holds a retired status.

(1) The term "department" refers to individual DoD Components, not DoD as a whole, insofar as it concerns retired military officers. For example, this statute does not prohibit retired Navy and Marine Corps officers from selling to the Departments of the Army or Air Force.

(2) The term "anything" in the phrase "sale of anything" has been construed by DoJ to encompass both goods and services.

(3) DoJ has determined that this statute does not prohibit the sale of personal services when the retiree is only representing himself. However, sale of personal services may not include the work product of a closely held corporation where individuals other than the retiree contribute to the services provided.

b. Definition of "Selling"

(1) For the purpose of this statute, "selling" means:

- (a) Signing a bid, proposal, or contract;
- (b) Negotiating a contract;
- (c) Contacting a DoD employee to obtain or negotiate defense contracts, negotiate or discuss changes in specifications, price, cost allowances, or other terms of a defense contract, or settle disputes concerning performance of a defense contract; or

(d) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual defense contract is negotiated subsequently by another person.

(2) Activities which are not considered "selling" include:

(a) Purely social contacts, as long as there is an independent basis for the social relationship and no promotion of a product or attempt to influence a procurement;

(b) Technical contacts for the purpose of conferring with non-contracting technical specialists to acquire information that is available to all prospective defense contractors, provided that these contacts do not otherwise involve "selling" as discussed in subsection 9-700.b.(1) of this Regulation, above. See 42 Comp. Gen. 236, 241 (reference (i));

(c) Contacts subsequent to the execution of a defense contract relating to performance or progress, if they do not include modification of the defense contract or "selling" as discussed in subsection 9-700.b.(1) of this Regulation, above.

9-701. 18 U.S.C. 281(b) (reference (c)). For a period of two years after terminating service with the Federal Government, a retired military officer may not act as an agent or attorney for the prosecution or assist in the prosecution of any claim against the United States involving the department in which he holds a retired status or which concerns a subject with which the military officer was directly connected while on active duty. A violation of this statute is punishable by a \$10,000 fine and one year imprisonment.

9-702. Restrictions on Federal Government Employment

a. Dual Compensation Laws. A retired member of any uniformed service who holds a civilian position with the Federal Government is subject to reduction of retired pay while receiving pay from a Federal Government civilian position. The term "retired member" means anyone, officer or enlisted, entitled to receive retired pay. The term "retired pay" includes both retired and retainer pay. The current law generally applies to retired Regular officers, retired at any time, and to all former members of the uniformed services who left active duty after January 11, 1979. See 5 U.S.C. 5532 (reference (j)) for exceptions to

this general rule.

(1) The Dual Compensation Reduction Formulas.

There are two provisions in the current dual compensation law which may operate to reduce the retired pay of retired members of the uniformed services who hold Federal Government civilian positions.

(a) The First Reduction Provision. The first reduction provision applies only to retired Regular officers who retired at any time. This provision operates to reduce the retired pay of a retired Regular military officer receiving pay from a Federal Government civilian position regardless of the amount of salary from that civilian position. It provides that such retired military officer is entitled to receive the full pay of the civilian position, but retired pay will be reduced to an annual rate equal to a base amount plus one-half of the remainder of the retired pay, if any. The base amount is increased periodically to reflect changes in the Consumer Price Index. See 5 U.S.C. 5532(b) (reference (j)).

(b) The Second Reduction Provision. The second reduction provision applies, in general, to all retired military members who first received retired pay after January 11, 1979. The reduction depends upon the amount of pay received from the Federal Government civilian position. This provision operates to reduce the retired pay of a retired member when the annual rate of pay for the civilian position combined with the annual rate of retired pay (reduced in the case of retired Regular officers as discussed in subsection 9-702.a.(1)(a) of this Regulation, above) exceeds the annual rate of basic pay for level V of the Executive Schedule. Reductions are computed as follows:

1 If the combination of pay from the civilian position and retired pay exceeds the amount currently paid for level V of the Executive Schedule, the retired pay will be reduced to keep the total at the level V limit.

2 Reductions to retired pay are made per pay period whenever the combination of the two salaries for the pay period exceeds the pay for a level V position for that pay period. Reductions made in such pay periods are not refundable even when the combined pay amounts for the total year is less than the annual rate for level V of the Executive Schedule;

3 The amount of retired pay may not be reduced to an amount less than the amount deducted from the retired pay as a result of participation in any survivor's benefits in connection with retired pay or veterans insurance programs and no reductions shall be made to retired pay based, in whole or in part, upon disability incurred in the line of duty as a direct result of armed conflict or during a period of war.

(2) Waivers

(a) A retired member may, in certain limited circumstances, obtain a waiver so that his retired pay would not be reduced while holding a Federal Government civilian position. See 5 U.S.C. 5532(g) (reference (j)). The circumstances under which a waiver may be granted are:

1 On a case-by-case basis for a retired member holding a Federal Government civilian position for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

2 For temporary employment that is necessary due to an emergency involving a direct threat to life or property, or under other unusual circumstances.

(b) The Director, OPM, may grant a waiver at the request of the Head of an Executive Agency. Additionally, the Director, OPM, may delegate to an agency the authority to grant waivers for the temporary employment of retired members during emergencies or other unusual circumstances, but not for employment necessitated by exceptional difficulties in recruiting or retaining qualified individuals. The Director, OPM, has delegated to DoD authority to approve dual compensation restriction waivers in certain circumstances at installations scheduled for closure.

(c) Waivers are to be the exception, not the rule. If appropriate, however, a waiver may be obtained for either or both of the dual compensation reductions. See 5 C.F.R. 553 (reference (k)) for procedures for obtaining a waiver.

b. Post-Military Service Employment in DoD under 5 U.S.C. 3326 (reference (j)). As of November 6, 1992, the suspension of this provision ended. See DoD Directive 1402.1 (reference (l)). To avoid appearances of favoritism or preferential treatment, retired military members may not be selected to fill civil service positions in DoD (including non-appropriated fund instrumentalities) within 180 days following retirement unless:

(1) The appointment is authorized by the Secretary of a Military Department or designee, or by OPM if the position is in the competitive service;

(2) The minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305 (reference (j)); or

- (3) A state of national emergency exists.

9-703. Foreign Employment Restrictions

* a. Article I, Section 9, Clause 8, of the Constitution of the United States (reference (m)), prohibits any person holding any office of profit or trust under the Federal Government from accepting any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state without the consent of Congress. *

* (1) This provision prohibits employment of all retired military members, both officer and enlisted and both Regular and Reserve, by a foreign government unless Congressional consent is first granted. See 44 Comp. Gen. 130 (reference (n)). *

(2) Employment by educational or commercial institutions owned, operated, or controlled by a foreign government is included within the scope of this restriction.

* (3) The penalty for violation is withholding the retired military member's retired pay in an amount equal to the foreign salary illegally received. See 61 Comp. Gen. 306 (reference (o)). *

b. Congress has consented to the acceptance of civil employment with a foreign government by, among others, retired Regular military members and Reserve military members, if both the Secretary of the Military Department and the Secretary of State approve the employment. See 37 U.S.C. 908 (reference (p)). Because approval is prospective only, foreign civil employment should not be accepted until approval has been obtained. Retired military members who wish to accept such employment should submit a written request for approval to the Secretary of their Military Department through appropriate channels. The request must fully describe the contemplated employment and the nature and extent of the involvement with the foreign government. *

c. A former military member desiring employment with a foreign government or any foreign business interest may be required to register as an agent of a foreign principal under the Foreign Agents Registration Act of 1938, 22 U.S.C. 611 et. seq. (reference (q)). Any person who acts as an agent of a foreign principal must file a registration statement with the U.S. Attorney General. *

SECTION 8. RESTRICTIONS ON FORMER SENIOR APPOINTEES

9-800. Executive Order 12834. E.O. 12834 (reference (r)), in subsection 12-200 of this Regulation, requires contractual ethics commitments regarding post-Government service employment from full-time, non-career Presidential, Vice-Presidential or Agency Head appointees in an Executive Agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule, except for those appointed as members of the senior foreign service or solely as uniformed service commissioned officers. See E.O. 12834 (reference (r)) in subsection 12-200 of this Regulation and OGE Form 203, "Senior Appointee Pledge," January 1993, and OGE Form 204, "Trade Negotiation Pledge," January 1993, Appendix C of this Regulation.

SECTION 9. RESTRICTIONS ON DEALING WITH CURRENT OR FORMER DoD EMPLOYEES

9-900. General Rule. Current DoD employees shall not knowingly deal, on behalf of the Federal Government, with current or former DoD employees whose participation in the transaction violates any statute or DoD directive, regulation or policy.

9-901. Terminal Leave

a. Military members on terminal leave may accept civilian employment with the Federal Government and are entitled to the pay of that civilian position in addition to the pay and allowances to which entitled while on terminal leave. See 5 U.S.C. 5534a (reference (j)).

b. A military officer on active duty may not accept a civil office with a State or local government, nor may he perform the duties of such an office. See 10 U.S.C. 973(b)(3) (reference (e)). This applies while the military officer is on terminal leave. See 56 Comp. Gen. 855 (reference (s)).

SECTION 10. REPORT OF DoD AND DEFENSE RELATED EMPLOYMENT (DD FORM 1787)

9-1000. Individuals Required to File. The following former DoD employees are required by 10 U.S.C. 2397 (reference (e)) to file DD Form 1787, Appendix C of this Regulation, with their former DoD Component:

a. Each former DoD employee of a DoD Component who:

(1) Served at a pay rate equal to or greater than the minimum rate for a GS/GM-13, or served on active duty at least ten years and held the grade of 0-4 or above at any time during his service;

(2) Within the two-year period immediately following termination of service or employment with the DoD Component, is employed by a defense contractor who, during the preceding one-year period, was awarded \$10 million or more in defense contracts; and

(3) Is employed by or performs services for the defense contractor and receives compensation of or is salaried at a rate of \$25,000 per year or more from the defense contractor.

b. Compensation is received by a reporting individual if it is paid to a business entity with which the reporting individual is affiliated in exchange for services rendered by that reporting individual;

c. A rate of \$25,000 per year equates to \$12 per hour.

9-1001. Time of Filing. A former DoD employee shall file a report with his former DoD Component DAEO or designee within 90 days of entering on duty with the defense contractor.

9-1002. Review

a. When the report is filed, the DoD Component DAEO or designee shall review the report to determine whether:

(1) Each item is completed and sufficient information is provided; and

(2) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, and related laws and regulations.

b. The DoD Component DAEO or designee need not audit the report. 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. However, it is expected that the DoD Component DAEO or designee will resolve any apparent violations to ensure there are no actual violations.

c. If the DoD Component DAEO or designee believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the DoD Component DAEO or designee.

d. When the DoD Component DAEO or designee has completed the review and accomplished any necessary remedial action, he shall sign and date the report and dispose of it in accordance with subsection 9-1003.b. of this Regulation, below.

e. If the DoD Component DAEO or designee concludes that the reporting individual is not in compliance with applicable laws or regulations, the DoD Component DAEO or designee shall:

(1) Notify the reporting individual of the preliminary determination;

(2) Afford the reporting individual an opportunity for personal consultation, if practicable;

(3) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(4) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

f. When the DoD Component DAEO or designee determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. Then the DoD Component DAEO or designee shall sign and date the report as the reviewing official and dispose of it in accordance with subsection 9-1003.b. of this Regulation, below.

9-1003. Disposition

* a. After the Ethics Counselor signs and dates the report, the
* Ethics Counselor shall send the original to the entire DoD Component DAEO or designee, who
* shall forward it, together with all other such reports that were received during the previous
* calendar year, to SOCO not later than March 15.

* b. The DoD Component DAEO or designee shall ensure that *

* appropriate data from each DD Form 1787, Appendix C of this Regulation, is extracted and sent,
* together with all other such data from other such reports that were received during the previous
* calendar year for the entire DoD Component, by March 15 to the Defense Manpower Data
* Center (DMDC) where a consolidated report to Congress is compiled. DMDC will accept data
* only on computer disk using any common wordprocessing software or ASCII.

* c. If steps ensuring compliance with applicable laws and
* regulations are not taken by the date established, the Ethics Counselor shall report the matter to
* the DoD Component DAEO and take whatever other action might be required in accordance with
* Chapter 10 of this Regulation.

d. DD Forms 1787, Appendix C of this Regulation, shall be retained by SOCO for six years from the date of filing with SOCO.

9-1004. Public Availability of Reports. DD Forms 1787, Appendix C of this Regulation, must be made available for public examination upon request after the reports are filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

9-1005. Penalties

a. Administrative Penalties. Anyone failing to file a report or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to \$10,000 may be imposed in accordance with 10 U.S.C. 2397 (reference (e)).

b. Criminal Liability. Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (c)).

SECTION 11. REFERENCES

9-1100. References

- (a) Title 5, Code of Federal Regulations, Part 2637, "Regulations Concerning Post-Employment Conflict of Interest," current edition
- (b) Title 5, Code of Federal Regulations, Part 2641, "Post-Employment Conflict of Interest Restrictions," current edition

- (c) Title 18, United States Code, Sections 207, 281, and 1001
- (d) Office of Government Ethics Memorandum, "Revised Materials Relating to 18 U.S.C. 207," November 5, 1992
- (e) Title 10, United States Code, Sections 973, 2397, and 2397b
- (f) Title 41, United States Code, Section 423
- (g) Federal Acquisition Regulation, Part 3.104, current edition
- (h) Public Law 103-335, "Federal Acquisition Streamlining Act of 1994," October 13, 1994
- (i) Decision of the Comptroller General, Volume 42, page 236 (1962)
- (j) Title 5, United States Code, Sections 3326, 5305, 5532, and 5534
- (k) Title 5, Code of Federal Regulations, Part 553, "Reemployment of Military and Civilian Retirees to Meet Exceptional Employment Needs," current edition
- (l) DoD Directive 1402.1, "Employment of Retired Members of the Armed Forces (NOTAL)," January 21, 1982
- (m) United States Constitution, Article I, Section 9, Clause 8
- (n) Decision of the Comptroller General, Volume 44, page 130 (1964)
- (o) Decision of the Comptroller General, Volume 61, page 306 (1982)
- (p) Title 37, United States Code, Section 908
- (q) Title 22, United States Code, Section 611 et seq
- (r) Executive Order 12834, "Ethics Commitments by Executive Branch Appointees," January 20, 1993
- (s) Decision of the Comptroller General, Volume 56, page 855 (1977)

DoD Component DAEO for
forwarding to OGE.

(2) If a violation of 18 U.S.C. 201 or 281 (reference (c)) is suspected, it shall be handled in the same manner as subsection 10-201.c.(1)(a) of this Regulation, above, except that OGE Form 202, Appendix C of this Regulation, is not used for referrals;

(3) If a violation of 10 U.S.C. 2397 (reference (a)) is suspected, the Ethics Counselor shall inquire into the matter and, if substantiated, attempt to obtain compliance. If these efforts fail, the Ethics Counselor shall forward a written report to the GC, DoD through the DoD Component DAEO with a recommendation for action by the Secretary of Defense pursuant to 10 U.S.C. 2397(f) (reference (a));

(a) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(b) The report shall include all relevant facts, a summary of witness statements, and a justification for the recommendation to refer or not to refer the violation for enforcement action.

(4) If a violation of 10 U.S.C. 2397a (reference (a)) is suspected, the Ethics Counselor shall report the matter to the DoD Component DAEO in the same manner as in subsection 10-201.c.(1)(a) of this Regulation, above. If the Ethics Counselor believes that the Secretary of Defense should take action pursuant to 10 U.S.C. 2397a(d) (reference (a)), the Ethics Counselor shall forward a written report to the GC, DoD through the DoD Component DAEO with a recommendation for action;

(a) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(b) The report shall include all relevant facts, a summary of witness statements, and a justification for the recommendation to refer or not to refer the violation for enforcement action.

(5) If a violation of 10 U.S.C. 2397b (reference (a)) is suspected, the Ethics Counselor shall report the matter to the DoD Component DAEO in the same manner as in subsection 10-201.c.(1)(a) of this Regulation, above;

(6) If it is suspected that an individual is receiving retired pay contrary to 37 U.S.C. 801 (reference (e)), a report of the matter shall be made to the Defense Finance and Accounting Service. A copy of that report shall be sent to the DoD Component DAEO;

(7) If a violation of 5 C.F.R. 2635 (reference (f)) in subsection 2-100 of this Regulation involving a loss to the Federal Government of \$5,000 or more is suspected, the Ethics Counselor shall report the matter to the DoD Component DAEO in the same manner as in subsection 10-201.c.(1)(a) of this Regulation, above.

d. In addition, if any of the above violations fall within a DoD Component's procurement fraud program, the Ethics Counselor shall ensure that referrals, coordinations, and reports required by that program are accomplished. If the matter includes a suspected violation of the Gratuities Clause in a defense contract, the Ethics Counselor shall report the matter in accordance with DoD Component procedures issued pursuant to FAR 3.203 (reference (g)) in Appendix B of this Regulation. See subsection 10-202 of this Regulation, below.

e. For matters not handled within the DoD Component's procurement fraud program, any civil or criminal referrals to DoJ or the local U.S. Attorney of violations of this Regulation shall be coordinated with the DoD Component DAEO. The DoD Component DAEO shall be informed of referrals of violations of this Regulation handled within the DoD Component's procurement fraud program.

10-202. Violations of 41 U.S.C. 423 (reference (b))

a. Administrative Sanctions. Suspected violations of 41 U.S.C. 423 (reference (b)) shall be processed in accordance with FAR 3.104-11 (reference (g)) in Appendix B of this Regulation. See 41 U.S.C. 423(h)(2) (reference (b)).

* b. Civil Sanctions. Suspected civil violations may be referred through the DoD Component DAEO to DoJ. See 41 U.S.C. 423(i) (reference (b)). *

c. Criminal Sanctions. Suspected violations that involve the improper release of source selection information should be referred to the appropriate criminal investigative organization. See 41 U.S.C. 423(j) (reference (b)).

d. Reporting. Any suspected violation of the provisions of 41 U.S.C. 423 (reference (b)) shall be reported as soon as practicable to the appropriate contracting officer. See 41 U.S.C. 423(h)(1) (reference (b)). Any actions taken as the result of the above referrals shall be reported to the DoD

(iv) Potential or actual violations of other laws governing the conduct or financial holdings of officers or employees of that agency, and that a follow-up is made to ensure that actions ordered, including divestiture and disqualification, have been taken;

(10) The agency's standards of conduct regulations, financial disclosure systems, and post employment enforcement systems are evaluated periodically to determine their adequacy and effectiveness in relation to current agency responsibilities;

(11) Information developed by internal audit and review staff, the Office of the Inspector General, if any, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations;

(12) The services of the agency's Office of Inspector General, if any, are utilized when appropriate, including referral of matters to and acceptance of matters from that Office;

(13) A list of those persons to whom delegations of authority are made pursuant to 2638.204(a) is maintained and made available to the Office of Government Ethics, upon request; and

(14) Information required by the Act or requested by the Office of Government Ethics in the performance of its responsibilities is provided in a complete and timely manner.

Sec. 2638.204 Deputy ethics official.

(a) Functions. A designated agency ethics official may, if necessary, delegate to one or more deputy ethics officials any of the duties referred to in 2638.203, except for those functions set forth in 2634.604(c)(2) of Part 2634 and referred to in 2638.203(b)(3)(certification of nominee statements). A deputy ethics official shall work under the supervision of the designated agency ethics official in carrying out such delegated functions.

(b) Dual status. A deputy ethics official may also be designated pursuant to 2638.202 to serve as the alternate agency ethics official. During the absence of the designated agency ethics official a deputy ethics official who has been designated as the alternate ethics official shall perform the functions set forth in 2634.604(c)(2) of Part 2634 and referred to in 2638.203(b)(3).

SUBPART G: EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS

Sec. 2638.701 Executive agency ethics training programs; generally

Each executive branch agency shall maintain a program of ethics training designed to ensure that all of its employees are aware of the Federal conflict of interest statutes and principles of ethical conduct. As a minimum, each agency program shall consist of initial ethics orientation required by Sec. 2638.703 of this subpart and annual ethics training required by Sec. 2638.704 of this subpart. For purposes of this subpart, the term "employee" shall include special Government employees (as defined in 18 U.S.C. 202(a)) and officers of the uniformed services.

Sec. 2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics

(a) It shall be the responsibility of the designated agency ethics official of each executive agency or his or her designee to make any written determinations provided for in this subpart and to:

(1) Direct the agency ethics training program to ensure that it meets the requirements of E.O. 12674 (as modified by E.O. 12731) and of this subpart and that the course content is legally correct;

(2) Ensure the availability of qualified individuals to provide the annual training required by Sec. 2638.704 of this subpart. For the purposes of this subpart, the following shall be considered qualified individuals:

(i) The designated agency ethics official described in Sec. 2638.201;

(ii) The alternate agency ethics official described in Sec. 2638.202(b);

(iii) A deputy ethics official described in Sec. 2638.204;

(iv) Any employee of the Office of Government Ethics whose services are made available by the Office of Government Ethics; and

(v) An individual determined by the designated agency ethics official or his or her designee to possess sufficient familiarity with the conflict of interest statutes and standards of ethical conduct regulations applicable to agency employees to respond to routine questions raised during training; and

OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS. . . 5 CFR 2638

(3) Furnish to the Office of Government Ethics by August 31 of each year a written plan for annual ethics training by the agency for the following calendar year. The first written plan for annual ethics training for calendar year 1993 shall be submitted by August 31, 1992. Each training plan shall include:

- (i) An estimate of the total number of agency employees described in Sec. 2638.704(b) of this subpart who must be provided annual ethics training;
- (ii) An estimate of the number of agency employees to whom the annual ethics training course will be presented without the presence of a qualified individual under the exception provided at Sec. 2638.704(d)(2)(i) of this subpart, together with a written description of the basis for allowing an exception;
- (iii) Estimates of the number of special Government employees and the number of officers in the uniformed services to whom the annual ethics training course will be presented without the presence of a qualified individual under the exceptions provided at Sec. 2638.704 (d)(2) (ii) and (iii) of this subpart;
- (iv) An estimate of the number of training classes to be provided during the calendar year;
- (v) An estimate of the average class size; and
- (vi) Any other information that the designated agency ethics official believes will facilitate OGE's review of the agency's planned program of ethics training.

(b) Each agency's annual ethics training plan will be reviewed by the Office of Government Ethics and any deficiencies shall be communicated in writing to the designated agency ethics official concerned by November 15 of each year, or 75 days after receipt of the agency plan, whichever occurs later.

Sec. 2638.703 Initial agency ethics orientation

(a) Each agency employee shall, on or before January 2, 1993, be provided:

- (1) A copy of part I of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees, dated April 12, 1989, as amended by E.O. 12731, 3 CFR, 1990 Comp., p. 306;
- (2) The names, titles, office addresses, and telephone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employee's ethical responsibilities; and
- (3) A minimum of one hour of official duty time for the purpose of permitting the employee to review the written materials furnished pursuant to this section. Where, within the period specified, the agency provides an ethics training course during official duty time, including annual ethics training provided in accordance with Sec. 2638.704 of this subpart, or a new entrant receives ethics training provided by the Office of Government Ethics or the White House Office, the period of official duty time set aside for individual review may be reduced by the time spent in such training.

(b) Each new agency employee who enters on duty after May 7, 1992, shall, within 90 days of the date of his or her entrance on duty, or on or before January 2, 1993, whichever is later, be provided with the materials and time specified in paragraph (a) of this section.

(c) When copies of the material described in paragraph (a)(1) of this section are retained and readily accessible in the employee's immediate office for use by several employees, the requirement of paragraph (a)(1) of this section may be met by furnishing each employee a copy for the purpose of review.

Sec. 2638.704 Annual agency ethics training

(a) Annual ethics training. Executive branch agencies must provide each employee identified in paragraph (b) of this section with ethics training every calendar year. This training must meet the content requirements contained in paragraph (c) of this section and the presentation requirements contained in paragraph (d) of this section. Except as provided in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, employees must be provided a minimum of one hour of official duty time for this training.

(b) Employees covered. Executive branch agency employees to whom this section applies include all of the following:

- (1) Employees appointed by the President;
- (2) Employees employed within the Executive Office of the President;
- (3) Employees required to file public financial disclosure reports under part 2634 of this chapter;

(4) Employees required to file confidential (nonpublic) financial disclosure reports under subpart I of part 2634 of this chapter or any supplemental regulation or addendum of the concerned agency (agency employees who are excluded from the confidential financial disclosure requirements through the use of an alternative procedure approved by the Office of Government Ethics pursuant to Sec. 2634.905(c) of this chapter must also receive annual ethics training from their agency pursuant to the paragraph);

(5) Contracting officers within the meaning of 41 U.S.C. 423(p)(4);

(6) Procurement officials within the meaning of 41 U.S.C. 423(p)(3); and (7) Other agency employees designated by the head of the agency or his or her designee based on a determination that such training is desirable in view of their particular official duties.

(c) Course content. Agencies are encouraged to vary the emphasis and course content of annual agency ethics training courses from year to year as necessary within the context of their ethics programs. However, each training course must include, as a minimum:

(1) A reminder of the employees' responsibilities under part I of Executive Order 12674, as modified, the Standards of Ethical Conduct for Employees of the Executive Branch, part 2635 of this chapter, and any supplemental regulation thereto by the concerned agency;

(2) A reminder of the employees' responsibilities under the conflict of interest statutes contained in 18 U.S.C. chapter 11; and

(3) The names, titles, office addresses, and telephone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employees' ethical responsibilities.

(d) Course presentation. The training course shall be presented in accordance with the following requirements:

(1) Except as provided in paragraph (d)(2) of this section, annual ethics training shall be presented verbally, either in person or by telecommunications, computer-based methods, or recorded means. A qualified individual, as defined in Sec. 2638.702(a)(2) of this subpart, shall:

(i) Present the training, if the training is presented in person; or

(ii) Prepare the recorded materials or presentation, if the training is presented by telecommunication, computer-based methods or recorded means.

(2) An agency may provide annual ethics training by means other than those specified in paragraph (d)(1) of this section under the following circumstances:

(i) Where the designated agency ethics official, or his or her designee, has made a written determination that circumstances make it impractical to provide training to a particular employee or group of employees in accordance with paragraph (d)(1) of this section. In such cases, annual ethics training may be presented by means of written materials, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review written materials;

(ii) In the case of special Government employees covered by paragraph (b) of this section, an agency may meet the annual training requirement by distribution of written materials, or by other means at the agency's discretion. For special Government employees who are expected to work fewer than 60 days in a calendar year, the requirement that the employee be provided with one hour of official duty time for annual ethics training is waived; and

(iii) In the case of officers in the uniformed services who serve on active duty for 30 or fewer consecutive days and who are covered by paragraph (b) of this section, an agency may meet the annual training requirement by distribution of written materials, or by other means at the agency's discretion. For these officers, the requirement that the officers be provided with one hour of official duty time for annual ethics training is waived.

(3) If the DoD Component DAEO makes, with the approval of OGE, a written determination that it is impractical to accomplish CIAET training in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

c. The term "immediate office" as used in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above, shall mean the local Ethics Counselor's.

d. CIAET shall be a minimum of one hour.

e. Those DoD employees who are required to receive AET will satisfy their 1993 annual ethics training obligation if they attended CIAET in 1992 or 1993.

*

11-301. Initial Ethics Training (IET) for New DoD Employees

*

a. Within 90 days of entering on duty, all DoD employees who did not receive CIAET, including those required to receive AET and enlisted members, shall receive IET for new DoD employees.

b. IET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, and such IET shall qualify as AET for the year the new DoD employees entered on duty, subject to the following exceptions:

(1) If the DoD Component DAEO determines it is impractical to accomplish IET in the presence of a Qualified Individual, DoD employees who are not required to receive AET may be trained by other means within the minimum training requirements set out by OGE in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above;

(2) If the DoD Component DAEO determines that it is impractical to accomplish IET in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, provided that such DoD employees receive additional annual ethics training, either CIAET, IET or AET, if more than three months remain of the calendar year in which those DoD

employees entered on duty.

c. The term "immediate office" as used in 5 C.F.R. 2638.703 (reference (a)) in subsection 11-100 of this Regulation, above, shall mean the local Ethics Counselor's office.

d. IET shall be a minimum of one hour.

11-302. Annual Ethics Training (AET)

a. Beginning in calendar year 1994, all DoD employees who file an SF 278 or SF 450, Appendix C of this Regulation, contracting officers and procurement officials, shall receive ethics training annually.

b. AET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, subject to the following exceptions:

(1) If the DoD Component DAEO determines it is impractical to accomplish AET in the presence of a Qualified Individual, then special Government employees and military officers serving fewer than 30 consecutive days annually, may be trained by other means within the minimum training requirements set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above;

(2) If the DoD Component DAEO makes a written determination that it is impractical to accomplish AET in the presence of a Qualified Individual, then DoD employees other than special Government employees and military members serving fewer than 30 days annually may be trained by other means within the minimum training requirement set out by OGE in 5 C.F.R. 2638.704 (reference (a)) in subsection 11-100 of this Regulation, above. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

c. AET shall be a minimum of one hour.

11-303. Annual Ethics Training Plans. DoD Agency (see definition of "Agency") ethics training plans for 1994 and subsequent ethics training plans in accordance with subsections 11-301 and 11-302 of this Regulation, above, shall be submitted by DoD Component DAEOs or designees directly to OGE. DoD Components that are not Agencies shall submit annual ethics training plans to SOCO for approval and inclusion in the ethics training plan SOCO submits to OGE.

EXECUTIVE ORDER 12674¹

April, 12, 1989

As amended by

EXECUTIVE ORDER 12731
55 Federal Register 42547
October 19, 1990

Principles of Ethical Conduct for Government Officers and Employees

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered that Executive Order 12674 of April 12, 1989, is henceforth modified to read as follows:

Part I-Principles of Ethical Conduct

Section 101. Principles of Ethical Conduct. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

- (a) Public service is a public trust requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- (b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- (d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- (e) Employees shall put forth honest effort in the performance of their duties.
- (f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- (g) Employees shall not use public office for private gain.
- (h) Employees shall act impartially and not give preferential treatment to any private organization or individual.
- (i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- (j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- (k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- (l) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law.
- (m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- (n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this Order.

Sec. 102. Limitations on Outside Earned Income.

- (a) No employee who is appointed by the President to a full-time noncareer position in the executive branch (including full-time noncareer employees in the White House Office, the Office of Policy Development, and the Office of Cabinet Affairs), shall receive any earned income for any outside employment or activity

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

performed during that Presidential appointment.

(b) The prohibition set forth in subsection (a) shall not apply to any fulltime noncareer employees employed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a) at salaries below the minimum rate of basic pay then paid for GS-9 of the General Schedule. Any outside employment must comply with relevant agency standards of conduct, including any requirements for approval of outside employment.

Part II-Office of Government Ethics Authority

Sec- 201. The Office of Government Ethics. The Office of Government Ethics shall be responsible for administering this order by:

(a) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations that establish a single, comprehensive, and clear set of executive branch standards of conduct that shall be objective, reasonable, and enforceable.

(b) Developing, disseminating, and periodically updating an ethics manual for employees of the executive branch describing the applicable statutes, rules, decisions, and policies.

(c) Promulgating, with the concurrence of the Attorney General, regulations interpreting the provisions of the post-employment statute, section 207 of title 18, United States Code; the general conflict-of-interest statute, section 208 of title 18, United States Code; and the statute prohibiting supplementation of salaries, section 209 of title 18, United States Code.

(d) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations establishing a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978. Such regulations shall include criteria to guide agencies in determining which employees shall submit these reports.

(e) Ensuring that any implementing regulation issued by agencies under this order are consistent with and promulgated in accordance with this order.

Sec. 202. Executive office of the President. In that the agencies within the executive Office of the President (EOP) currently exercise functions that are not distinct and separate, from each other within the meaning and for the purposes of section 207(e) of title 18, United States Code, those agencies shall be treated as one agency under section 207(c) of title 18, United States Code.

Part III-Agency Responsibilities

Sec. 301. Agency Responsibilities. Each agency head is directed to:

(a) Supplement, as necessary and appropriate, the comprehensive executive branch-wide regulations of the Office of Government Ethics, with regulations of special applicability to the particular functions and activities of that agency. Any supplementary agency regulations shall be prepared as addenda to the branch-wide regulations and promulgated jointly with the Office of Government Ethics, at the agency's expense, for inclusion in Title 5 of the Code of Federal Regulations.

(b) Ensure the review by all employees of this order and regulations promulgated pursuant to the order.

(c) Coordinate with the Office of Government Ethics in developing annual agency ethics training plans. Such training shall include mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or nonpublic financial disclosure reports, all employees who are contracting officers and procurement officials, and any other employees designated by the agency head.

(d) Where practicable, consult formally or informally with the Office of Government Ethics prior to granting any exemption under section 208 of title 18, United States Code, and provide the Director of the Office of Government Ethics a copy of any exemption granted.

(e) Ensure that the rank, responsibilities, authority, staffing, and resources of the Designated Agency Ethics Official are sufficient to ensure the effectiveness of the agency ethics program.

EXECUTIVE ORDER 12834¹

58 Federal Register 5911
January 22, 1993

Ethics Commitments by Executive Branch Appointees

By the authority vested in me as President of the United States by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledges.

(a) Every senior appointee in every executive agency appointed on or after January 20, 1993, shall sign, and upon signing shall be contractually committed to, the following pledge ("senior appointee pledge") upon becoming a senior appointee:

"As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.

"2. In the event that I serve as a senior appointee in the Executive Office of the President (EOP), I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.

"3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

"4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties. "5. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

(b) Every trade negotiator who is not a senior appointee and is appointed to a position in an executive agency on or after January 20, 1993, shall (prior to personally and substantially participating in a trade negotiation) sign, and upon signing be contractually committed to, the following pledge ("trade negotiator pledge"):

"As a condition, and in consideration, of my employment in the United States Government as a trade negotiator, which is a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

"2. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. As used herein and in the pledges:

(a) "Senior appointee" means every full-time, non-career Presidential, Vice-presidential or agency head appointee in an executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule (5 U.S.C. 5316) but does not include any person appointed as a member of the senior foreign service or solely as a uniformed service commissioned officer.

(b) "Trade negotiator" means a full-time, non-career Presidential, Vice-presidential or agency head appointee (whether or not a senior appointee) who personally and substantially participates in a trade negotiation as an employee of an executive agency.

(c) "Lobby" means to knowingly communicate to or appear before any officer or employee of any executive agency on behalf of another (except the United States) with the intent to influence official action, except that the term "lobby" does not include:

(1) communicating or appearing on behalf of and as an officer or employee of a State or local government or the government of the District of Columbia, a Native American tribe or a United States territory or possession;

(2) communicating or appearing with regard to a judicial proceeding, or a criminal or civil law enforcement inquiry, investigation or proceeding (but not with regard to an administrative proceeding) or with regard to an administrative proceeding to the extent that such communications or appearances are made after the commencement of and in connection with the conduct or disposition of a judicial proceeding;

(3) communicating or appearing with regard to any government grant, contract or similar benefit on behalf of and as an officer or employee of:

(A) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of title 20, United States Code; or

(B) a hospital; a medical, scientific or environmental research institution; or a charitable or educational institution; provided that such entity is a not-for-profit organization exempted from Federal income taxes under sections 501(a) and 501(c)(3) of title 26, United States Code;

(4) communicating or appearing on behalf of an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States;

(5) communicating or appearing solely for the purpose of furnishing scientific or technological information, subject to the procedures and conditions applicable under section 207(j)(5) of title 18, United States Code; or

(6) giving testimony under oath, subject to the conditions applicable under section 207(j)(6) of title 18, United States Code.

(d) "On behalf of another" means on behalf of a person or entity other than the individual signing the pledge or his or her spouse, child or parent.

(e) "Administrative proceeding" means any agency process for rulemaking, adjudication or licensing, as defined in and governed by the Administrative Procedure Act, as amended (5 U.S.C. 551, et. seq.).

(f) "Executive agency" and "agency" mean "Executive agency" as defined in section 105 of title 5, United States Code, except that the term includes the Executive Office of the President, the United States Postal Service and the Postal Rate Commission and excludes the General Accounting Office. As used in paragraph 1 of the senior appointee pledge, "executive agency" means the entire agency in which the senior appointee is appointed to serve, except that:

* SECTION 2. OTHER LAWS RELATED TO STANDARDS OF ETHICAL CONDUCT *

A-200. OGE Digest. Other ethics statutes are summarized in 5 C.F.R. 2635.801(d) and 902 in subsection 2-100 of this Regulation.

A-201. Related Statutes. Engaging in the following activities may subject current and former DoD employees to criminal and/or other penalties:

- a. Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 2);
- b. Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if the individual knew of the actual commission of the crime (18 U.S.C. 4);
- c. Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to further the object of the conspiracy (18 U.S.C. 371);
- d. Misuse of a Federal Government vehicle (31 U.S.C. 1344 and 1349(b));
- e. Interference in an examination or personnel action in connection with Federal Government employment (18 U.S.C. 1917);
- f. Conversion of Federal Government property (18 U.S.C. 641);
- g. Private use of public money (18 U.S.C. 653), embezzlement of the money or property of another individual in the possession of a DoD employee by reason of his Federal Government employment (18 U.S.C. 654);
- h. Certain political activities (5 U.S.C. 7321-7327, 18 U.S.C. 600-603 and 606-607 apply to civilian DoD employees, and DoD Directive 1344.10 applies to military members);
- i. Failing to register under the Foreign Agents Registration Act of 1983 and acting as an agent of a foreign principal when required to register (18 U.S.C. 219);
- j. Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (5 U.S.C. 7351) applies to civilians; regulations

set out in 5 C.F.R. 2635.301 through 304 in subsection 2-100 of this Regulation, and subsection 2-203 of this Regulation, apply to both military and civilian DoD employees;

k. Accepting, without statutory authority, any present, emolument, office or title, or employment of any kind, from any king, prince, or foreign state without the consent of the Congress; this restriction applies to any person holding any office or profit in or trust of the Federal Government, including all retired military members and Regular enlisted members (Article I, Section 9, Clause 8, of the Constitution of the United States; exceptions to this restriction are at 37 U.S.C. 908);

l. Union activities of military members (10 U.S.C. 976);

m. Violating merit system principles (5 U.S.C. 2301).

**REPORT OF DOD AND DEFENSE RELATED EMPLOYMENT
AS REQUIRED BY 10 U.S.C. §2397**

REPORT CONTROL SYMBOL

 Form Approved
OMB No. 0704-0047
Expires Dec 31, 1996

(If additional space is required, use blank sheets of paper referencing item numbers below.)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0047), Washington, DC 20503.

Privacy Act Statement

AUTHORITY: 10 U.S.C. §2397; 10 U.S.C. §2397b; Executive Order 9397, November 1943 (SSN).

PRINCIPAL PURPOSES: Each report will be reviewed by Department of Defense officials to determine compliance with the intent of the Act. The purpose of requesting the SSN is for positive identification and retrieving the record.

ROUTINE USE: Information derived from the reports, including names of reporting individuals and their current and former employers, shall be provided annually to the Congress. The reports themselves shall be available for review by members of the public and may otherwise be made available as authorized by law.

DISCLOSURE: Mandatory. Knowing or willful failure to file or report information required to be reported by this law, or falsification of information, may subject you to administrative penalty of up to \$10,000 pursuant to regulations promulgated by the Secretary of Defense. Knowing or willful falsification of information required to be filed may also subject you to criminal prosecution under 18 U.S.C. §1001, leading to a fine of not more than \$10,000 or imprisonment for not more than five years or both.

(Please read Instructions before completing this form.)

1. NAME (Last, First, Middle Initial)		2. SOCIAL SECURITY NO.		3. HOME TELEPHONE NO.	
4. HOME ADDRESS					
a. STREET		b. CITY		c. STATE	
5. IS THIS AN INITIAL REPORT? (X a. or b.)		6.a. STATUS (X as many as applicable)		6.b. Rank/Grade	
a. YES (If "Yes," go to Item 6.)					
b. NO (If "No," go to Item 5.c.)					
c. If this is NOT an initial report, reason for subsequent report is: (X one)					
(1) change in employer		(1) RETIRED MILITARY - O4 OR ABOVE			
(2) change in duties		(2) FORMER MILITARY - O4 OR ABOVE			
		(3) RETIRED CIVILIAN - PAID EQUAL TO GS-13 OR ABOVE			
		(4) FORMER CIVILIAN - PAID EQUAL TO GS-13 OR ABOVE			
		(5) PRESENT DOD EMPLOYEE			

SECTION I

To be completed only by former officers or employees of DoD who are now employed by contractor. (Category I)

7.a. DATE OF TERMINATION OF MOST RECENT DOD SERVICE OR EMPLOYMENT (YYMMDD)		7.b. NAME OF MOST RECENT MILITARY DEPARTMENT OR DOD AGENCY	
8. DATE OF EMPLOYMENT WITH DEFENSE CONTRACTOR (YYMMDD)		9. IS YOUR ANNUAL COMPENSATION FROM OR SALARY RATE WITH THE DEFENSE CONTRACTOR \$25,000 OR MORE?	
		a. YES b. NO	
10. NAME OF DEFENSE CONTRACTOR EMPLOYER		11. WORK TELEPHONE NO.	
12. WORK ADDRESS			
a. STREET		b. CITY	
c. STATE		d. ZIP CODE	
13. YOUR POSITION WITH CONTRACTOR			
a. (X one that best describes position.)		b. SPECIFIC TITLE(S)	
(1) Administrator		(4) Manager	
(2) Researcher		(5) Consultant	
(3) Contract Officer		(6) Other	
c. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Include specifics on contracts or actions related to duties held in ALL former DoD positions that are reported in Item 14 below. See Instructions.			
14. YOUR FORMER DOD POSITION			
a. (X one that best describes position.)		b. SPECIFIC TITLE	
(1) Administrator		(4) Manager	
(2) Researcher		(5) Consultant	
(3) Contract Officer		(6) Other	
c. SPECIFIC DOD ORGANIZATION			
d. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Report information requested in 14.a., b., c., and d. for each former DoD position held within 2 years prior to contractor position. See Instructions.			
15. DOD DISQUALIFICATION ACTIONS (IF ANY) (Within two years prior to contractor employment.)		c. DESCRIBE DISQUALIFICATION ACTIONS	
a. YES (If "Yes," go to Item 15.c.)			
b. NO (If "No," go to Item 16.)			

SECTION II

To be completed only by former employees of contractors who are now DoD officers or employees. (Category II)

16.a. DATE OF TERMINATION WITH DEFENSE CONTRACTOR (YYMMDD)		16.b. NAME OF FORMER DEFENSE CONTRACTOR EMPLOYER (Most recent)												
17. DATE OF EMPLOYMENT OR SERVICE WITH DOD (YYMMDD)		18. IS YOUR ANNUAL SALARY WITH DOD AT A RATE EQUAL TO OR ABOVE GS-13?		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">a. YES</td> <td rowspan="2" style="width:50%; vertical-align: middle;">c. SPECIFY AMOUNT \$</td> </tr> <tr> <td>b. NO</td> </tr> </table>	a. YES	c. SPECIFY AMOUNT \$	b. NO							
a. YES	c. SPECIFY AMOUNT \$													
b. NO														
19. NAME OF SPECIFIC DOD ORGANIZATION(S) BY WHICH EMPLOYED (Within the last 2 years)			20. WORK TELEPHONE NO. <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%; height: 20px;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> </tr> </table>											
21. WORK ADDRESS														
a. STREET		b. CITY		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">c. STATE</td> <td style="width:50%;">d. ZIP CODE</td> </tr> <tr> <td style="height: 20px;"></td> <td style="height: 20px;"></td> </tr> </table>	c. STATE	d. ZIP CODE								
c. STATE	d. ZIP CODE													
22. CURRENT DOD POSITION														
a. (X one that best describes position.)		b. SPECIFIC TITLE(S)												
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">(1) Administrator</td> <td style="width:50%;">(4) Manager</td> </tr> <tr> <td>(2) Researcher</td> <td>(5) Consultant</td> </tr> <tr> <td>(3) Contract Officer</td> <td>(6) Other</td> </tr> </table>		(1) Administrator	(4) Manager	(2) Researcher	(5) Consultant	(3) Contract Officer	(6) Other							
(1) Administrator	(4) Manager													
(2) Researcher	(5) Consultant													
(3) Contract Officer	(6) Other													
c. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Include specifics on contracts or actions related to duties held in ALL contractor positions that are reported in Item 23 below. See Instructions.														
23. CONTRACTOR POSITION														
a. (X one that best describes position.)		b. SPECIFIC TITLE												
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">(1) Administrator</td> <td style="width:50%;">(4) Manager</td> </tr> <tr> <td>(2) Researcher</td> <td>(5) Consultant</td> </tr> <tr> <td>(3) Contract Officer</td> <td>(6) Other</td> </tr> </table>		(1) Administrator	(4) Manager	(2) Researcher	(5) Consultant	(3) Contract Officer	(6) Other	c. SPECIFIC DEFENSE CONTRACTOR NAME AND BRANCH						
(1) Administrator	(4) Manager													
(2) Researcher	(5) Consultant													
(3) Contract Officer	(6) Other													
d. YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Report information requested in 23.a., b., c., and d. for each contractor position held within two years prior to current position. See Instructions.														

CERTIFICATION

To be completed by all filers.

24. I certify that the above information is true, complete, and correct to the best of my knowledge. I understand that I must file a new report of DoD and defense related employment within 30 days if, within the two years immediately following the termination of my most recent DoD service or employment, the information in this report ceases to be accurate. I understand subsequent reports are not required after such two year period.

a. SIGNATURE	b. DATE SIGNED (YYMMDD)
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REVIEW

To be completed by reviewing official.

25. I certify that I have reviewed this Report of DoD and Defense Related Employment (DD Form 1787) in accordance with the guidance set out in DoD Directive 5500.7, enclosure 8.

a. SIGNATURE	b. OFFICE	c. DATE SIGNED (YYMMDD)
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26. COMMENTS

DD FORM 1787
REPORT OF DOD AND DEFENSE - RELATED EMPLOYMENT
AS REQUIRED BY 10 U.S.C. §2397

WHO MUST FILE

CATEGORY I (Complete Section I)

a. Each person who has left service or employment with a DoD Component, who:

(1) is a retired military officer or former military officer who served on active duty at least 10 years and who held, for any period during that service, the grade of O-4 or above, or is a former civilian officer or employee whose pay at any time during the three year period prior to the end of DoD service or employment was equal to or greater than the minimum rate for a GS-13 at that time;

(2) within the two-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year preceding employment, was awarded \$10,000,000 or more in DoD contracts; and

(3) is employed by the defense contractor and at any time during a year receives compensation of or is salaried at a rate of \$25,000 per year or more from the defense contractor. "Employed" includes the rendering of services as a consultant, lawyer, agent or other kind of assistant.

b. For a two year period following the termination of your last position with a DoD Component, you are required to file a new DD Form 1787 each time your duties with the defense contractor change significantly and each time you become employed with a new defense contractor.

CATEGORY II (Complete Section II)

Each civilian officer and employee (whether or not full-time) of a DoD Component, who:

(1) is employed at a pay rate equal to or greater than the minimum rate for GS-13;

(2) within the two-year period prior to the beginning of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded \$10,000,000 or more in DoD contracts; and

(3) was employed by the defense contractor and at any time during that year received compensation of or was salaried at a rate of \$25,000 per year or more from the defense contractor. "Employed" includes the rendering of services as a consultant, lawyer, agent or other kind of assistant.

WHEN AND WHERE TO FILE

a. Civilians shall submit their reports to the Designated Agency Ethics Official of the individual's present or former DoD Component in accordance with DoD Component procedures. Retired or former military officers shall submit their reports to the Designated Agency Ethics Official of the DoD Component to which they were last assigned.

b. Current DoD officers and employees shall file a report within 30 days after entering employment or service with any DoD Component.

c. Former DoD officers and employees shall file an initial report within 90 days after the date on which the individual began employment with the defense contractor.

d. Former DoD officers and employees shall file subsequent reports each time, during the two-year period after service or employment with the DoD Component ended, that the person's duties with the defense contractor significantly change or the person begins employment with another defense contractor. Such reports shall be filed within 30 days after the date of the change.

INSTRUCTIONS FOR COMPLETION

Items 1 through 6 apply to all individuals completing this form.

Items 1 through 4. Provide the appropriate information.

Item 5. Mark "Yes" if this is the first DD Form 1787 you have ever filed and go to Item 6. Mark "No" if you have filed a DD Form 1787 in the past and answer 5.c.

Item 6. Mark the box(es) which indicates your status and include the highest grade or rank that you held prior to leaving that DoD position. If you hold more than one status, mark one box to show which status was most recently acquired. Keep in mind that the requirement to file DD Form 1787 is imposed on former and retired civilian employees who have been paid at a rate equal to or greater than the minimum rate at the time for a GS-13 at any time during the three year period prior to termination from the last DoD position.

SECTION I

This part only applies to individuals in Category I.

Item 7. Provide the requested date and name your most recent Military Department or DoD agency.

Item 8. Provide the date your employment with the defense contractor began. If you are no longer employed by the defense contractor, provide the date of termination on a separate sheet referencing this item number. Provide the information requested in the following items for your most recent defense contractor employer even if no longer employed.

INSTRUCTIONS FOR COMPLETION OF DD FORM 1787 (Continued)

SECTION I (Continued)

Item 9. Indicate whether your annual compensation from or salary rate with the defense contractor is above \$25,000 by marking "Yes" or "No."

Items 10 through 12. Provide the appropriate information for your present or most recent defense contractor employer.

Item 13. Indicate your position with the defense contractor by marking the box(es) next to the title that best describes your position. Also provide your specific title(s). You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must provide the names of all contracts and details of all duties you have performed on behalf of the defense contractor that relate in any way to your duties in all former DoD positions held within the two years prior to the beginning of your employment with the defense contractor. You must also identify each major defense system on which you have performed work on behalf of the defense contractor, regardless of whether that work relates to your former DoD position. All these former DoD positions must be reported in Item 14.

"Major Defense System" means: A combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major system if (a) DoD is responsible for the system and the total expenditures, and research, development, test, and evaluation for the system are estimated to be more than \$75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than \$300,000,000 (based on fiscal year 1980 constant dollars); (b) a civilian agency is responsible for the system and total expenditures of the system are estimated to exceed \$750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to OMB circular A-109, entitled "Major Systems Acquisitions," whichever is greater; or (c) the system is designated a "major system" by the head of the agency responsible for the system.

Item 14. Indicate your former DoD position by marking the box(es) next to the title that best describes your position. Also provide your specific title(s) and include your organization code letters. You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must provide the names of all contracts and details of all duties you performed while in your former DoD position that relate in any way to your position with the defense contractor reported in Item 13. You must also identify each major defense system you performed any work on while in your former DoD position, regardless of whether that work relates to your position with the defense contractor reported in Item 13. If you held more than one DoD position during the two years prior to the beginning of your employment with the defense contractor, provide all the information requested in Item 14.a., b., and c. for each DoD position on a separate sheet of paper referencing this item number.

Item 15. Indicate whether there were any DoD disqualification actions related to you during the two years prior to your defense contractor employment. If there were, describe the actions in detail. A "disqualification action" is a formal exclusion of a person from taking part in a particular matter, usually to prevent a conflict of interest.

SECTION II

This part only applies to individuals in Category II.

Item 16. Provide the requested date and name your most recent former defense contractor employer.

Item 17. Provide the requested date.

Item 18. Indicate whether your annual salary with the DoD Component is equal to or above the minimum rate for a GS-13 by marking "Yes" or "No." Various pay schedules, levels and steps can be confusing. Provision of your annual salary will ensure your compliance with applicable law and is required to process your report.

Items 19 through 21. Provide the appropriate information for your DoD Component organization.

Item 22. Indicate your DoD position by marking the box(es) next to the title that best describes your position. Also provide your specific title(s) and include your organization code letters. You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must provide the names and details for all contracts and actions that relate in any way to your duties in all former defense contractor positions held within the two years prior to the beginning of your service or employment with the DoD Component. All these former defense contractor positions must be reported in Item 23.

Item 23. Indicate your former position with the defense contractor by marking the box(es) next to the title that best describes your position. Also provide your specific title(s). You are required to provide a detailed description of your specific duties on a separate sheet of paper referencing this item number. You must include names and details for all contracts and actions that relate in any way to your position with your DoD Component reported in Item 22. If you have been employed by more than one defense contractor during the two years prior to the beginning of your service or employment with the DoD Component, provide all information requested in Item 23.a., b., and c. for each defense contractor position on a separate sheet of paper referencing this item number.

CERTIFICATION

All filers must certify this report
by signing and dating.

Item 24. You must sign and date this report.

REVIEW

Item 25. Reviewing official must sign and date after reviewing the report in accordance with DoD Directive 5500.7, enclosure 8.