The Qualified Trust Program

5 C.F.R. part 2634, subpart D

U.S. Office of
Government Ethics

This pamphlet provides an overview of the qualified trust program. It contains answers to some questions frequently asked by individuals who are considering creating a qualified trust to address potential conflicts of interest. However, it does not cover every issue that may arise, and it is not a substitute for counseling. For specific advice about your situation, you should contact your agency's Designated Agency Ethics Official (DAEO) or the U.S. Office of Government Ethics (OGE).

The Qualified Trust Program: An Introduction

Entering Government service may raise issues that you did not have to think about when you worked in the private sector. For example, certain financial holdings, like stocks, might create conflicts of interest. Potential conflicts of interest arise when a Government employee's official duties would affect the employee's financial interests or affiliations.

There are a number of ways to resolve a potential conflict of interest. In many cases, the conflicting interest can be divested or the employee can simply avoid becoming involved in the Government matter that would affect the financial interest. In other cases, the employee's agency may issue a waiver that would allow the employee to participate in a matter affecting insubstantial financial interests. Another way to address conflicts of interest is to put your assets in a type of trust that is created according to guidelines established by Congress and OGE's regulations. This type of trust is generally known as a **qualified trust**.

When you establish a qualified trust, you give up the management of your assets to an institution that serves as an **independent trustee** and makes investment decisions for your benefit without your knowledge. Any potential conflicts of interest are resolved for assets acquired by the trustee because you are neither involved in managing, nor have any knowledge of, your new assets.

Why should I consider establishing a qualified trust?

A qualified trust allows you to avoid conflicts of interest while alleviating the responsibility of managing your assets during your Government service. Ultimately, it may help you avoid undue public and media scrutiny. However, a qualified trust can be burdensome and expensive, you will have no knowledge of assets acquired by the trustee, and you will not be permitted to communicate specific investment preferences or impose restrictions. Consequently, most employees choose other options, and there have been very few qualified trusts in the executive branch.

Is establishing a qualified trust the best option for me?

A person who is uncomfortable with turning over all investment decisions to someone else might not find a qualified trust to be a desirable solution. In addition, a qualified trust might not be appropriate when other less costly and less complicated solutions are available, such as divesting an asset or shifting investments to diversified mutual funds. Qualified trusts are generally not good alternatives for individuals with moderate holdings or whose Government duties are narrowly focused on a few industry sectors. Conversely, an individual with significant holdings whose duties may affect a wide variety of industry sectors may find that a qualified trust is useful.

Who can be the trustee of my qualified trust?

Once you have decided to establish a qualified trust, you will need to find an institution to serve as independent trustee. The trustee of your trust must be completely independent and must be approved by the Director of OGE. It cannot be a current or former investment advisor.

OGE regulations require that the independent trustee be a financial institution, such as a bank or trust company. Generally, a financial institution will be considered independent if you or your family has no relationship with it other than savings, checking, or other types of deposit accounts. It cannot be affiliated with, associated with, related to, or subject to the control or influence of anyone who has a beneficial interest in the trust.

Before beginning the selection process, you or your representative will need to consult with OGE and receive specific guidance on communicating with prospective trustees. In general, you may communicate your overall investment objectives for the portfolio, but you may not communicate specific directions about how to construct or manage the portfolio.

Once the trust is established, communication between you and the independent trustee will remain very limited. All communication must be in writing and must be approved in advance by OGE. Further, the subject of the communications will be limited to the information expressly permitted by regulation. For example, you would be prohibited from discussing asset management, trust holdings, or trust administration. You are, however, permitted to request cash distributions, and you will receive periodic reports with limited information about the overall performance of your trust.

Types of Qualified Trusts

There are two different types of qualified trusts. One or the other may be more appropriate for your financial situation.

A **qualified blind trust** may hold most types of assets, such as cash, stocks, bonds, or mutual funds. It is important to note that any asset initially placed in the trust is not considered blind and continues to pose a potential conflict of interest until it has been divested or reduced to a value of less than $1,000. The new assets purchased by the trustee will not be disclosed to you, so they will be considered blind and will not pose conflicts of interest.

In contrast, a **qualified diversified trust** must hold a portfolio of readily marketable securities. No single asset placed in the trust may be more than 5% of the total portfolio, and no more than 20% of the portfolio may be concentrated in any particular economic or geographic sector. Additionally, unlike with the qualified blind trust, the securities of an entity that has substantial activities in your primary area of Federal responsibility cannot be put in the initial portfolio of a qualified diversified trust. By law, the assets of a qualified diversified trust certified by OGE do not pose conflicts of interest.

The following are features of both types of qualified trusts:

- You relinquish control of all trust assets to the trustee
- The trustee must be an institution
- The trustee must be independent and cannot have served as your investment advisor
- You have no knowledge of assets acquired by the trustee
- You may not communicate specific investment preferences or impose restrictions
- You will receive quarterly reports that disclose only the aggregate value of your interest in the trust
- You, your family, and your representatives may not communicate with the trustee, except for certain non-substantive written communications approved in advance by OGE

The following requirements apply only to qualified blind trusts:

- The trustee will prepare and file the trust's taxes
- The initial assets you place in the trust are not "blind" until they have been reduced to a value of less than $1,000; these initial assets have the potential to create conflicts of interest until they become "blind"
- You will receive annual reports that disclose only the aggregate amount of the trust's income attributable to your interest in the trust

The following requirements apply only to qualified diversified trusts:

- The trustee will prepare and file both the trust's taxes and your personal income taxes
- No single asset placed in the trust may be worth more than 5% of the portfolio's value
- No more than 20% of the portfolio may be concentrated in any particular economic or geographic sector
- You cannot place an asset that poses a significant conflict of interest with your duties in the initial trust portfolio
- You will receive annual reports that disclose only the aggregate amount actually distributed from the trust to you or applied for your benefit

How do I establish a qualified trust?

If you are a current or prospective employee, you should talk to your agency's DAEO to discuss appropriate actions to resolve any potential conflict of interest. If a qualified trust is your preferred method for resolving the conflict, OGE will provide you with the model trust documents and work with you or your representative to set up the trust. Please note that you must contact OGE prior to communicating with a prospective trustee.

Where can I find more information about the qualified trust program?

OGE has detailed information about the qualified trust program on its website, www.oge.gov, including the model trust agreements that will be used in the administration of the trust. You also may want to look at OGE's regulations on qualified trusts at 5 C.F.R. part 2634, subpart D.

For further information, you may contact OGE at 202-482-9300.

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Preventing Conflicts of Interest
in the Executive Branch

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