DRAFT OF 03/2002

[Form Approved: OMB No. 3209-0007]

OFFICE OF GOVERNMENT ETHICS

Hybrid Version of Model Qualified Diversified Trust Provisions

The hybrid version of the model qualified diversified trust agreement contained in this memorandum is made available by the Office of Government Ethics to attorneys for their use in drafting proposed trust agreements to be submitted for certification pursuant to section 102(f)(3) and (4) of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) and 5 C.F.R. Part 2634(D). Under the statutory scheme, a trust agreement is not permitted to be recognized as creating an efficacious blind trust arrangement for any purpose under Federal law unless it had been certified by the Office <u>prior</u> to its execution. Proposed trust drafts submitted to the Office for consideration must adhere to the language of the model except to the extent, as agreed to by the Office of Government Ethics, that variations are required by the unusual circumstances of a particular case. The certificates of fiduciaries must be executed in the exact form indicated.

It is strongly recommended in any case in which the use of a blind trust is contemplated that the Office be consulted as early as possible. Prospective trustees or their representatives should schedule an appointment with the staff of the Office of Government Ethics for an orientation to the specialized procedures and requirements which have been established by law with respect to blind trust administration prior to the certification of the trust. As a condition of approval by the Office, prospective trustees must exhibit a familiarity with and commitment to the specialized nature of blind trust administration.

For further information, contact the Office of Government Ethics directly: telephone 202-208-8000, fax 202-208-8037.

TRUST AGREEMENT

THIS TRUST AGREEMENT is made and entered into this ______ day of __________, _____, between _____________________________ whose mailing address is _____________________________, hereinafter called the Settlor, and _________________________ [**financial institution**], whose business address is _______________________, hereinafter called the Trustee.

WITNESSETH

SETTLOR has been appointed by the _______________ to the position of _______________ of the __________________________ [**department or agency**], with respect to which appointment the ___________ has given its advice and consent. To avoid any conflict of interest, or appearance of any such conflict, which may arise from his duties and powers in such office and any other office to which he may subsequently be appointed to the extent provided for by section 102(f)(4) of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) [hereinafter referred to as the "Act"], Settlor hereby creates a trust which shall become effective on the date this agreement bears.

The Trustee is an eligible entity as specified in paragraph (a)(2) of 5 C.F.R. §2634.406, which meets the requirements of paragraph (a)(3) of that section. The existence of any other banking or client relationship between any interested party and the Trustee is disclosed in annexed Schedule A, and no other such relationship shall be instituted without the prior written approval of the Director of the Office of Government Ethics.

Settlor, therefore, hereby delivers to the Trustee, and the Trustee hereby acknowledges receipt of, the property listed in annexed Schedules B and C, subject to the provisions of this Trust and the Act, and regulations promulgated thereunder, and other applicable Federal laws, Executive orders, and regulations.

The primary purpose of this Trust is to confer on the Trustee 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. Accordingly, the Settlor and the Trustee agree as follows:

FIRST: (A) This Trust shall terminate upon the first to occur of the following -- (1) Settlor's ceasing for any reason to serve as _______________ and in any other position to which he may have been subsequently appointed in the Federal Government and Settlor thereafter giving Trustee written notice directing that this Trust be terminated; or (2) Settlor's death or incompetence. The period between the date of this agreement and the termination of the Trust shall be called the "Trust Term".

(B) Notwithstanding Paragraph (A) of this Article FIRST, this Trust agreement may in addition be terminated through revocation. However, such revocation or any amendment of the terms of this Trust agreement shall require the prior written approval of the Director of the Office of Government Ethics, upon a showing of necessity and appropriateness.

SECOND: The Trustee in the exercise of its authority and discretion to manage and control the assets of this Trust shall not consult or notify any interested party.

THIRD: (A) The assets initially placed in Trust hereunder, as listed in annexed Schedule B, shall consist of a widely-diversified portfolio of readily marketable securities. None of the assets is prohibited as a holding by any interested party by the Act and regulations promulgated thereunder, and other applicable Federal laws, Executive orders, and regulations, or consist of securities of entities having substantial activities in the area of the Settlor's primary responsibility within the Federal government.

(B) The portfolio shall be deemed to be widely-diversified if --

(1) the value of the securities concentrated in any particular or limited industrial, economic or geographic sector is no more than twenty percent, and

(2) the value of the securities of any issuer (other than the United States Government) is no more than five percent,

of the total value of such assets. For purposes of this paragraph (B), securities issued by the United States Government are obligations of the United States.

(C) A security will be deemed readily marketable, for purposes of this Article THIRD, if --

(1) daily price quotations for such security appear regularly in newspapers of general circulation, and

(2) the Trust holds the security in a quantity that does not unduly impair liquidity.

FOURTH: None of the assets initially placed in Trust hereunder, as listed in annexed Schedule C, is prohibited as a holding by any interested party by the Act and regulations promulgated thereunder, and other applicable Federal laws, Executive orders, and regulations.

FIFTH: (A) Each asset listed in annexed Schedules B and C is free of any restriction with respect to its transfer or sale except as fully described in such Schedules.

(B) The Trustee shall not acquire any securities or other property in excess of the diversification standards of Paragraph (B)(1) and (2) of Article THIRD of this Trust.

(C) During the Trust Term, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held in trust hereunder.

(D) The Trustee shall not knowingly or negligently disclose to the public or to any interested party any information as to the acquisition, retention, or disposition of any particular securities or other Trust property; except that, the Trustee shall promptly notify the Settlor and the Director of the Office of Government Ethics when the holdings of any particular asset listed in annexed Schedule C have been completely disposed of or when the value of that asset becomes less than $1,000.

SIXTH: (A) The income tax return of the Trust shall be prepared by the Trustee or his delegate.

(B) During the Trust Term, the Trustee shall be responsible for the preparation and filing of such income (joint or separate) and other tax returns, with respect to the property held hereunder and the income therefrom and with respect to any other income of the Settlor, as shall be required by the laws of the United States of America and any State or other political subdivision thereof. The Settlor shall furnish to the Trustee such additional information as it shall, from time to time, need for the completion of such returns. The Settlor shall give to the Trustee powers of attorney (I.R.S. Form 2848) and any other instruments which it may need in order to prepare and file such returns and to represent the Settlor in connection with any audit of returns filed by it and to adjust, settle and pay any taxes due in respect of such returns. The Settlor shall deliver to the Trustee funds for the payment of any income tax obligation estimated to have arisen otherwise than with respect to the property held in Trust hereunder. The Trustee in its discretion shall be entitled to reserve an appropriate amount of Trust income for payment of any additional income tax obligation.

(C) Any tax return filed pursuant to this Article SIXTH and any information relating thereto shall not be disclosed publicly or to any interested party.

SEVENTH: An interested party shall not receive any report on the holdings and sources of income of the Trust; except that the Trustee shall --

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

(B) Provide an annual report for purposes of section 102(a)(1) of the Act of the aggregate amount actually paid from the Trust to such interested party (or applied for his benefit), categorized in accordance with the provisions of such section. For purposes of this Article SEVENTH, only amounts actually received in respect of this Trust by such interested party (or applied for his benefit) shall be deemed income derived from this Trust.

A copy of each written communication under this Article SEVENTH shall be filed by the Trustee with the Director, Office of Government Ethics, within five days of the date of the communication.

EIGHTH: There shall be no direct or indirect communication between an interested party and the Trustee with respect to the Trust unless the communication is in writing and has the prior written approval of the Director of the Office of Government Ethics, and unless it relates only --

(A) To a request for a distribution in cash or other unspecified assets of the trust,

(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 appreciation), or

(C) To information, documents, and funds provided by, or needed from, the Settlor, to effectuate the provisions of Paragraph (B) of Article SIXTH of this Trust, with respect to any income tax obligation arising otherwise than with respect to the property held in Trust hereunder.

A copy of each written communication under this Article EIGHTH shall be filed by the person initiating the communication with the Director, Office of Government Ethics, within five days of the date of the communication.

NINTH: The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information with respect to the holdings of, and the sources of income of, the Trust, including obtaining a copy of any Trust or individual tax return filed by the Trustee or any information relating thereto, except for the reports and information specified in Article SEVENTH of this Trust.

TENTH: The Trustee shall file with the Director, Office of Government Ethics, by the May 15th after any calendar year during which the Trust was in existence a properly executed Certificate of Compliance in the form prescribed in Appendix B to 5 C.F.R. Part 2634. In addition, the Trustee shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the Trust's books of account and other records and copies of the Trust's tax returns for each taxable year of the Trust.

ELEVENTH: The Trustee shall not knowingly or negligently --

(A) Disclose any information to any interested party with respect to this Trust that may not be disclosed pursuant to any provision or requirement of Title I of the Act (and the regulations thereunder) or this Trust,

(B) Acquire any holding the ownership of which is prohibited by, or not in accordance with the terms of, this Trust,

(C) Solicit advice from any interested party with respect to this Trust, which solicitation is prohibited by any provision or requirement of Title I of the Act (and the regulations thereunder) or this Trust, or

(D) Fail to file any document required by Title I of the Act (and the regulations thereunder).

TWELFTH: The Settlor shall not knowingly or negligently --

(A) Solicit or receive any information with respect to this Trust that may not be disclosed pursuant to any provision or requirement of Title I of the Act (and the regulations thereunder) or this Trust, or

(B) Fail to file any document required by Title I of the Act (and the regulations thereunder).

THIRTEENTH [**Optional provision**]: Subject to such amounts as the Trustee may from time to time reserve for the payment of such income taxes as may be due and payable by the Trust, and for payment of expenses and compensation as provided for in this Trust, during the Trust Term the Trustee shall pay to the Settlor $___________ at the beginning of each month.

FOURTEENTH: In addition to the rights, duties, and powers conferred upon the Trustee by law, the Trustee shall have the following powers, rights, and discretion with respect to any Trust property held by it:

(A) To sell, exchange, or otherwise dispose of the property in such manner and upon such terms as the Trustee in its sole discretion shall deem appropriate;

(B) Except as limited by specific enumeration in this Trust agreement, to invest and reinvest the principal and any undistributed income, in property of any kind;

(C) Except as limited by specific enumeration in this Trust agreement, to participate in any reorganization, consolidation, merger, or dissolution of any corporation having stocks, bonds or other securities which may be held at any time, to receive and hold any property which may be allocated or distributed to it by reason of participation in any such reorganization, consolidation, merger, or dissolution;

(D) To exercise all conversion, subscription, voting, and other rights of whatsoever nature pertaining to any such property and to grant proxies, discretionary, or otherwise, with respect thereto;

(E) To elect, appoint, and remove directors of any corporation, the stock of which shall constitute Trust property, and to act through its nominee as a director or officer of any such corporation;

(F) Except as limited by specific enumeration in this Trust agreement, to manage, control, operate, convert, reconvert, invest, reinvest, sell, exchange, lease, mortgage, grant a security interest in, pledge, pool, or otherwise encumber and deal with the property of this Trust, for Trust purposes and in behalf of the Trust to the same extent and with the same powers that any individual would have with respect to his own property and funds;

(G) Except as limited by specific enumeration in this Trust agreement, to borrow money from any person or corporation (including the Trustee hereunder) and for the purpose of securing the payment thereof, to pledge, mortgage, or otherwise encumber any and all such property for Trust purposes upon such terms, covenants, and conditions as it may deem proper and also to extend the time of payment of any loans or encumbrances which at any time may be encumbrances on any such property irrespective of by whom the same were made or where the obligations may or should ultimately be borne on such terms, covenants, and conditions as it may deem proper;

(H) To register any property belonging to the Trust in the name of its nominee, or to hold the same unregistered, or in such form that title shall pass by delivery;

(I) To abandon, settle, compromise, extend, renew, modify, adjust, or submit to arbitration in whole or in part and without the order or decree of any court any and all claims whether such claims shall increase or decrease the assets held under this Trust agreement;

(J) To determine whether or to what extent receipts should be deemed income or principal, whether or to what extent expenditures should be charged against principal or income, and what other adjustments should be made between principal and income, provided that such adjustments shall not conflict with well-settled rules for the determination of principal and income adjustments, or the Uniform Principal and Income Act, if in effect in the State of __________________;

(K) To determine whether or not to amortize bonds purchased at a premium;

(L) Except to the extent otherwise expressly provided in this Trust agreement, to make distributions in kind or in cash or partly in each and for such purposes to fix, insofar as legally permissible, the value of any property;

(M) To pay such persons employed by the Trustee to assist it in the administration of the Trust, including investment counsel, accountants, and those engaged for assistance in preparation of tax returns, such sums as the Trustee deems to be reasonable compensation for the services rendered by such persons. Such persons may rely upon and execute the written instructions of the Trustee, and shall not be obliged to inquire into the propriety thereof;

(N) No person may be employed or consulted by the Trustee to assist it in any capacity in the administration of the Trust or the management and control of Trust assets, including investment counsel, investment advisers, accountants, and those engaged for assistance in preparation of tax returns, unless the following four conditions are met --

(1) 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,

(2) under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under 5 C.F.R. §2634.406(a)(3) to be independent of any interested party with respect to the trust arrangement,

(3) the person is instructed by the Trustee to make no disclosure publicly or to any interested party which might specifically identify current Trust assets or those assets which have been sold or disposed of from Trust holdings, and

(4) the person is instructed by the Trustee to have no direct communication with any interested party, and that any indirect communication with an interested party shall be made only through the Trustee pursuant to Article EIGHTH of this Trust;

(O) Except as specifically limited in this Trust agreement, to do all such acts, take all such proceedings, and exercise all such rights and privileges, although not otherwise specifically mentioned in this Article FOURTEENTH, with relation to any such property, as if the Trustee were the absolute owner thereof, and in connection therewith to make, execute, and deliver any instruments and to enter into any covenants or agreements binding the Trust.

FIFTEENTH: Notwithstanding the provisions of Article FOURTEENTH of this Trust, 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 in addition to that listed in the annexed Schedules B and C, from any interested party.

SIXTEENTH: The Trustee shall not at any time be held liable for any action taken or not taken or for any loss or depreciation of the value of any property held in the Trust whether due to an error of judgment or otherwise where the Trustee has exercised good faith and ordinary diligence in the exercise of its duties such as would have been exercised by a prudent man.

SEVENTEENTH: No Trustee hereunder shall be required, in any jurisdiction, to furnish any bond or other security, or to obtain the approval of any court before applying, distributing, selling, or otherwise dealing with property.

EIGHTEENTH: Except as provided in Article SEVENTH of this Trust, the Trustee shall make no accounting to the Settlor until the date of termination of this Trust, and, at such time, it shall be required to make full and proper accounting and turn over to the Settlor all assets of the Trust then held by it the said Trustee.

NINETEENTH: The Trustee shall be compensated in accordance with the table in the annexed Schedule D, or as provided for by the laws of the State of ________________.

TWENTIETH: The Trustee (and any substitute or successor) shall have the right, by a duly acknowledged instrument delivered to the Settlor to resign as Trustee in which event the Settlor shall designate and appoint a substitute or successor Trustee (subject to the prior written approval of the Director of the Office of Government Ethics) in its place and stead, which shall have all of the rights, powers, discretions, and duties conferred or imposed hereunder upon the original Trustee.

TWENTY-FIRST: Any amendment of the terms of this Trust Agreement, including the appointment of a substitute or successor Trustee, shall require the prior written approval of the Director of the Office of Government Ethics, upon a showing of necessity and appropriateness. Any such substitute or successor Trustee shall have all of the rights, powers, discretions, and duties conferred or imposed hereunder upon the original Trustee.

The term "interested party" as used in this Trust means the Settlor, his spouse, any minor or dependent child, and their representatives.

The validity, construction, and administration of this Trust shall be governed by the Act (and regulations thereunder) and the laws of the State of _______________.

Dated this ________ day of_________________, _____.

NOTARIZATION REQUIRED

Settlor

The above Trust is accepted this ________ day of ______________, _____.

NOTARIZATION REQUIRED

Trustee

By:

(title)

Privacy Act Statement

Section 102(f) of the Ethics in Government Act of 1978 as amended (the "Ethics Act"), 5 U.S.C. Appendix, § 102(f), and subpart D of 5 CFR part 2634 of the regulations of the Office of Government Ethics (OGE) require the reporting of this information for the administration of qualified trusts under the Ethics Act. The primary use of the information on the trust instrument prepared based in part upon this model draft document is for review by Government officials of OGE and the agency of the Government employee for whom the trust is being established to determine compliance with applicable Federal laws and regulations as regards qualified trusts. Additional disclosures of the information in the trust document itself may be made: (1) to any requesting person in accordance with the access provisions of section 105 of the Ethics Act (underlying trust information is not generally available under this routine use, except for the list of assets initially placed in trust and statutorily mandated notifications by the trustee of divestitures of initially transferred assets to below $1,000 in value in the case of a qualified blind trust); (2) to a Federal, State or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation; (3) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest issue; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; and (7) in response to a discovery request or for the appearance of a witness in a pending judicial or administrative proceeding, if the information is relevant to the subject matter. Knowing or willful falsification of information on the trust document prepared from this model draft or failure to file or report information required to be reported under title I of the Ethics Act and 5 CFR part 2634 of the OGE regulations may lead to disqualification as a trustee or other fiduciary as well as possible disqualification of the underlying trust itself. Knowing and willful falsification of information required under the Ethics Act and the regulations may also subject you to criminal prosecution.

Public Burden Information and Paperwork Reduction Act Statement

This collection of information is estimated to take an average of one hundred hours per response, given the estimated amount of time deemed necessary to structure an actual trust arrangement based in part on this model draft. You can send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Deputy Director for Office of Administration and Information Management, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Do not send your completed trust document to this address; rather, see the remainder of the instructions to this model draft.

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