The Qualified Trust Program

U.S. Office of Government Ethics
www.usoge.gov

This booklet provides an overview of the quali fied trust program. It contains answers to some questions frequently asked by employees who are consider-ing creating a trust because of potential conflicts of interest. This booklet does not cover every issue that may arise, and it is not a substitute for coun-seling. For specific advice about your situation, you should contact your agency's Designated Agency Ethics Official (DAEO).

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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 his financial interests or affiliations. There are a number of ways to resolve a potential conflict of interest. Usually, the conflicting interest can be divested or the employee can simply avoid becoming involved in the Government matter that would affect his financial interest. Sometimes, an employee can get a waiver of the conflict of interest.

Another way to address conflicts of interest is to put your assets in a special trust that is created according to guidelines established by Congress. 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 independent trustee, who makes investment decisions for your benefit without your knowledge. In this situation, any potential conflicts of interest are resolved because you are not involved in managing, or have any knowledge of, your assets.

What are the advantages of establishing a qualified trust?

A qualified trust allows you to avoid conflicts of interest while alleviating the responsibility of managing your assets during Government service. By turning over the management of your assets to an independent trustee, a qualified trust generally will allow you to be fully invested in the market without worrying about conflicts of interest.

In addition, a qualified trust may help you avoid undue public and media scrutiny. The qualified trust program has gained wide public acceptance since it was created almost 30 years ago.

Is establishing a qualified trust always the best option?

A qualified trust might not be appropriate when other less costly and less complicated solutions, like obtaining a waiver or divesting an asset, are available. Qualified trusts are generally not good alternatives for employees with only a few moderate holdings or whose Government duties are narrowly focused on a specific industry sector. For example, a Government employee who works for an agency that regulates banks might find it easier and more cost-effective to divest his holdings in bank stocks rather than create a qualified trust. Conversely, an employee whose duties may affect a wide variety of industry sectors, such as an employee of the Department of Defense, may find that a qualified trust is useful.

A person who is uncomfortable with turning over all investment decisions to someone else might not find a qualified trust a feasible solution.

Are all types of qualified trusts the same?

There are two different types of qualified trusts. One or the other may be more appropriate for your financial situation. A **blind trust** requires you to relinquish control of your assets to an independent trustee, who manages the assets in the trust without your knowledge. Any asset initially placed in the trust continues to pose a potential conflict of interest until it has been sold or reduced to a value less than $1,000. The new assets purchased by the trustee will not be disclosed to you, so they will not pose a conflict. This type of trust works well for an employee who does not have assets that pose an immediate conflict and has a portfolio that holds a relatively few, large holdings.

A **diversified trust** holds a portfolio of marketable securities that is so diversified that it does not pose a conflict of interest because no specific action can significantly impact the overall value of the portfolio. No single asset 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 geographic or industrial sector. An asset that poses a significant conflict with your duties also cannot be put in the initial trust portfolio. A diversified trust generally is suitable for employees who hold a large number of individual stocks and bonds.

In the case of either a blind or diversified trust, you may choose to place all or just some of your assets in the trust. Of course, assets not in the trust must be monitored for potential conflicts of interest.

In addition, in some cases an employee may create a “hybrid” trust –- a single qualified trust that has both a “blind” portfolio and a “diversified” portfolio.

Who can be the trustee of my qualified trust?

The trustee of your trust must be completely independent and must be approved by the Director of the Office of Government Ethics (OGE).

An independent trustee 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. The trustee cannot be a current or former investment advisor, partner, accountant, attorney, relative or any other individual. OGE regulations require that the 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 similar accounts.

Once you have decided to establish a trust, you will need to find an institution to serve as independent trustee. When interviewing a trustee, 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 certified by OGE, communication between you and the trustee is very limited. For example, you and the trustee are prohibited from discussing asset management, trust holdings or trust administration. Of course, you are permitted to request cash distributions, and you will receive periodic reports about the overall performance of your trust.

If my current investment advisor can't serve as my independent trustee, how can I find an appropriate trustee?

Any trust company or large financial institution with a trust department should be able to help you create a qualified trust. You may want to contact several of these organizations to compare portfolio management, costs and other pertinent information. Also, it is very important that the company you choose be considered independent. If you need further information about selecting an appropriate trustee, OGE will be glad to assist you.

How do I establish a blind or diversified trust?

First, you should talk to your DAEO to discuss the appropriate action to resolve any potential conflict of interest. If a qualified trust is your preferred method for resolving the conflict, you should then contact OGE. OGE will work with you or your representative to set up the trust.

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

OGE has detailed information about the qualified trust program on its website (www.usoge.gov). Included on the website are 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. § 2634, Subpart D, which can be reviewed on the OGE website. For further information, you may contact OGE at 202-482-9300.