

## § 50.23

### **§ 50.23 Policy against entering into final settlement agreements or consent decree that are subject to confidentiality provisions and against seeking or concurring in the sealing of such documents.**

(a) It is the policy of the Department of Justice that, in any civil matter in which the Department is representing the interests of the United States or its agencies, it will not enter into final settlement agreements or consent decrees that are subject to confidentiality provisions, nor will it seek or concur in the sealing of such documents. This policy flows from the principle of openness in government and is consistent with the Department's policies regarding openness in judicial proceedings (see 28 CFR 50.9) and the Freedom of Information Act (see Memorandum for Heads of Departments and Agencies from the Attorney General *Re: The Freedom of Information Act* (Oct. 4, 1993)).

(b) There may be rare circumstances that warrant an exception to this general rule. In determining whether an exception is appropriate, any such circumstances must be considered in the context of the public's strong interest in knowing about the conduct of its Government and expenditure of its resources. The existence of such circumstances must be documented as part of the approval process, and any confidentiality provision must be drawn as narrowly as possible. Non-delegable approval authority to determine that an exception justifies use of a confidentiality provision in, or seeking or concurring in the sealing of, a final settlement or consent decree resides with the relevant Assistant Attorney General or United States Attorney, unless authority to approve the settlement itself lies with a more senior Department official, in which case the more senior official will have such approval authority.

(c) Regardless of whether particular information is subject to a confidentiality provision or to seal, statutes and regulations may prohibit its disclosure from Department of Justice files. Thus, before releasing any information, Department attorneys should consult all appropriate statutes and regulations (e.g., 5 U.S.C. 552a (Privacy

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Act); 50 U.S.C. 403-3(c)(6) (concerning intelligence sources and methods), and Execution Order 12958 (concerning national security information). In particular, in matters involving individuals, the Privacy Act regulates disclosure of settlement agreements that have not been made part of the court record.

(d) The principles set forth in this section are intended to provide guidance to attorneys for the Government and are not intended to create or recognize any legally enforceable right in any person.

[Order No. 2270-99, 64 FR 59122, Nov. 2, 1999]

### **§ 50.24 Annuity broker minimum qualifications.**

(a) *Minimum standards.* The Civil Division, United States Department of Justice, shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. Those qualifications are as follows:

(1) The broker must have a current license issued by at least one State, the District of Columbia, or a Territory of the United States as a life insurance agent, producer, or broker;

(2) The broker must have a current license or appointment issued by at least one life insurance company to sell its structured settlement annuity contracts or to act as a structured settlement consultant or broker for the company;

(3) The broker must be currently covered by an Errors and Omissions insurance policy, or an equivalent form of insurance;

(4) The broker must never have had a license to be a life insurance agent, producer, or broker revoked, rescinded, or suspended for any reason or for any period of time;

(5) The broker must not have been convicted of a felony; and

(6) The broker must have had substantial experience in each of the past three years in providing structured settlement brokerage services to or on behalf of defendants or their counsel.

(b) *Procedures for inclusion on the list.* (1) An annuity broker who desires to be included on the list must submit a

“Declaration” that he or she has reviewed the list of minimum qualifications set forth in paragraph (a) of this section and that he or she meets those minimum qualifications. A sample of the Declaration for annuity brokers to submit is available from the Civil Division’s Web site (<http://www.usdoj.gov/civil/home.html>) or by written request to the address in this section. These minimum qualifications must be continually met for a broker who has been included on the list to remain included when the list is updated thereafter. The Declaration must be executed under penalty of perjury in a manner specified in 28 U.S.C. 1746.

(2) Each broker must submit a new Declaration annually to be included on updated lists. For a broker to be included on the initial list to be established by May 1, 2003, the Torts Branch, Civil Division, must receive the broker’s Declaration no later than April 24, 2003. If the broker wishes to be included on updated lists, the Torts Branch must receive a new Declaration from the broker between January 1 and April 10 of each successive calendar year. After the Declaration is completed and signed, the original must be mailed to the United States Department of Justice, Civil Division, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044. The Department of Justice will not accept a photocopy or facsimile of the Declaration.

(3) A Declaration will not be accepted by the Department of Justice unless it is complete and has been signed by the individual annuity broker requesting inclusion on the list. A Declaration that is incomplete or has been altered, amended, or changed in any respect from the Declaration at the Civil Division’s Web site will not be accepted by the Department of Justice. Such a Declaration will be returned to the annuity broker who submitted it, and the Department of Justice will take no further action on the request for inclusion on the list until the defect in the Declaration has been cured by the annuity broker.

(4) The Department of Justice will retain a complete Declaration signed and filed by an annuity broker requesting to be on the list. Because this rule does

not require the submission of any additional information, the Department retains discretion to dispose of additional information or documentation provided by an annuity broker.

(5) The Department of Justice will not accept a Declaration submitted by an annuity company or by someone on behalf of another individual or group of individuals. Each individual annuity broker who desires to be included on the list must submit his or her own Declaration.

(6) An annuity broker whose name appears on the list incorrectly may submit a written request that his or her name be corrected. An annuity broker whose name appears on the list may submit a written request that his or her name be removed from the list.

(7) To the extent practicable, a name correction or deletion will appear on the next revision of the list immediately after receipt of the written request for a name correction or deletion. A written request for a name correction or deletion must be mailed to the United States Department of Justice, Civil Division, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044. Facsimiles will not be accepted.

(8) The list of annuity brokers established pursuant to this section will be updated periodically, but not more often than twice every calendar year, beginning in calendar year 2004.

(c) *Disclaimers.* (1) The inclusion of an annuity broker on the list signifies only that the individual declared under penalty of perjury that he or she meets the minimum qualifications required by the Attorney General for providing annuity brokerage services in connection with structured settlements entered into by the United States. Because the decision to include an individual annuity broker on the list is based solely and exclusively on the Declaration submitted by the annuity broker, the appearance of an annuity broker’s name on the list does not signify that the annuity broker actually meets those minimum qualifications or is otherwise competent to provide structured settlement brokerage services to the United States. No preferential consideration will be given to an annuity broker appearing on the list

except to the extent that United States Attorneys utilize the list pursuant to section 11015(b) of Public Law 107–273.

(2) By submitting a Declaration to the Department of Justice, the individual annuity broker agrees that the Declaration and the list each may be made public in its entirety, and the annuity broker expressly consents to such release and disclosure of the Declaration and list.

[Order No. 2667–2003, 68 FR 18120, Apr. 15, 2003]

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