

airport extending from the 7.5-mile radius to 11.1 miles north of the airport.

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Issued in Fort Worth, TX, on April 7, 2003.

Robert N. Stevens,

*Acting Manager, Air Traffic Division,
Southwest Region.*

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DEPARTMENT OF JUSTICE

28 CFR Part 50

[Docket No. CIV 105; AG Order No. 2667-2003]

RIN 1105-AA82

Minimum Qualifications for Annuity Brokers in Connection With Structured Settlements Entered Into by the United States

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule sets forth the "minimum qualifications" an individual annuity broker must meet to be included on the list of annuity brokers established by the Department of Justice and transmitted to all United States Attorneys that will identify brokers who may provide services in connection with structured settlements entered by the United States. It also sets forth procedures to apply for inclusion on the list. Structured settlements allow the Department to resolve litigation by purchasing an annuity policy or making a series of payments rather than by paying a lump sum.

DATES: *Effective date:* This interim rule is effective April 15, 2003.

Comment date: Written comments must be submitted on or before July 14, 2003.

Declaration submission date: To be considered for inclusion on the initial list to be transmitted to all United States Attorneys, annuity brokers must submit the Declaration specified in this rule to the Department of Justice's Torts Branch at the address provided below by no later than April 24, 2003. Submissions received after April 24, 2003, will be considered for inclusion in any updates of the list. The list will be revised periodically, but not more often than twice every calendar year, beginning with calendar year 2004.

ADDRESSES: Comments on the interim rule should be submitted by telefax to 202-514-8071. Telefaxes should be limited to 15 pages. Comments may also be mailed to Kenneth L. Zwick,

Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW., Washington, DC 20530. Comments received are public records. The name and address of the commenter should be included with all submissions. Comments will also be available for public inspection at a reading room in Washington, DC. Arrangements to visit the reading room must be made in advance by calling 202-514-4552.

All requests for inclusion on the list of annuity brokers should be addressed to Roger D. Einerson, Assistant Director, Torts Branch, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW., Washington, DC 20530; telephone 202-514-4552.

SUPPLEMENTARY INFORMATION: This rule implements section 11015(a) of Public Law 107-273, the 21st Century Department of Justice Appropriations Authorization Act, which was enacted on November 2, 2002. Section 11015(a) provides: "Not later than 6 months after the date of enactment of this Act, the Attorney General 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. This list shall be updated upon request by any annuity broker that meets the minimum qualifications for inclusion on the list. The Attorney General shall transmit such list, and any updates to such list, to all United States Attorneys." The rule sets forth the minimum qualifications for an annuity broker to be included on the list and the procedures to be followed by individual annuity brokers who desire to be listed.

To be considered for inclusion on the initial list to be transmitted to all United States Attorneys, annuity brokers must submit the Declaration set forth on the Civil Division Web site (<http://www.usdoj.gov/civil/home.html>) to the Department of Justice's Torts Branch at the address provided below by no later than April 24, 2003. (A copy of the Declaration is also included as an appendix to this rule, but will not be included in the Code of Federal Regulations, as it may be revised later. The most current version of the Declaration will be available for download on the Civil Division's Web site.) Submissions received after April 24, 2003, will be considered for

inclusion in the next update of the list. The list will be revised periodically, but not more often than twice every calendar year, beginning with calendar year 2004.

An annuity broker submitting a Declaration is declaring under penalty of perjury that the information on the Declaration is true, correct, accurate, and complete. Among other things, the broker must declare: "I 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." This provision serves two purposes. First, it ensures that the broker has significant, relevant experience. Second, it militates against potential conflicts between the interests of listed brokers and the interests of the United States as a defendant. The remaining requirements set forth in the Declaration are self-explanatory. In determining whether an annuity broker meets the minimum qualifications for inclusion on the list, the Department of Justice will rely solely and exclusively on the Declaration submitted by the annuity broker. The Department of Justice will neither verify the information submitted to the Department prior to the listing of an annuity broker, nor vouch for its accuracy for purposes of establishing or updating the list.

Initial declarations should be mailed to the United States Department of Justice, Civil Division, Torts Branch, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044. Brokers should refer to the Civil Division's Web site (<http://www.usdoj.gov/civil/home.html>) to determine the current mailing address at the time they submit subsequent Declarations.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), The Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under section 3(f), Definitions, and accordingly this rule has been reviewed by the Office of Management and Budget.

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this connection included the costs of submission of declarations required if an annuity broker desires to make services available to United States

Attorneys in connection with structured settlements entered by the United States. Costs considered also included the cost of establishing and maintaining a list of brokers and transmitting the lists, including updated lists, to United States Attorneys. The benefits of the rule clearly outweigh the costs because the costs are the lowest costs feasible to comply with the requirement that a list be established as required pursuant to section 11015(a) of Public Law 107-273.

Executive Order 13132

This rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirement contained in this interim rule was approved by the Office of Management and Budget on March 24, 2003 under 5 CFR 1320.13. The information collection requirement contained in this rule will be used by brokers to certify they meet the minimum qualifications to be listed as an annuity broker pursuant to section 11015(a) of Public Law 107-273. The estimated total number of respondents is 400 and the amount of time estimated for an average respondent to respond is one hour for a total public burden of 400 hours per year.

The emergency approval is only valid for 180 days. Comments and suggestions concerning the Declaration that is the Appendix to this interim rule are encouraged and will be accepted until 60 days after the rule is published.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), certifies that this rule will not have a significant economic impact on a substantial number of small entities. The cost of completing the declaration that this rule requires will be minimal, and the Department does not believe that there will be a significant economic impact on any brokers who do not qualify by meeting the minimum qualifications set forth in this rule and in the declaration because any such brokers would not provide brokerage services to United States Attorneys to a significant extent at the present time. The listing of a broker

might have a marginal economic impact on the broker to the extent that the broker is not currently soliciting use of brokerage services on the part of United States Attorneys. That impact is not expected to be significant for purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Administrative Procedure Act, 5 U.S.C. 553

This rule provides that brokers desiring to be included on a list of annuity brokers who meet minimum qualifications shall submit a specified declaration.

The Department has determined that taking the time to draft and publish a proposed rule for notice and comment before this rule took effect would have been impracticable in light of the short time between the enactment of the statute and the deadline for implementation, and also would have been contrary to the public interest, which strongly favors prompt implementation of the statute. Accordingly, the Department has determined that there is "good cause" for exempting this rule from the provision of the Administrative Procedure Act that requires a notice of proposed rulemaking and the opportunity for public comment. 5 U.S.C. 553(b)(B). For the same reasons, the Department also finds "good cause" for exempting this rule from the provision of the Administrative Procedure Act providing for a delayed

effective date. 5 U.S.C. 553(d). Delaying the opportunity for brokers to seek to be included in the list would be contrary to the public interest.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure, Annuities, and Brokers.

■ Accordingly, for the reasons set forth in the preamble, part 50 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 50—[AMENDED]

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 1921 *et seq.*, 1973c; and Public Law 107-273, 116 Stat. 1758, 1824.

■ 2. A new § 50.24 is added to read as follows:

§ 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.

Dated: April 8, 2003.

John Ashcroft,
Attorney General.

Appendix

Declaration

[This Appendix will not appear in the Code of Federal Regulations]

I, _____, have carefully reviewed the Department of Justice regulation contained in 28 CFR 50.24 and published in the **Federal Register** on April 15, 2003, and I understand the minimum qualifications set forth in 28 CFR 50.24. I declare that I meet the minimum qualifications for inclusion on the Department of Justice's list of annuity brokers. Specifically, I declare each of the following to be true, accurate, correct, and complete as of the date this Declaration is signed:

a. I am currently licensed by at least one State, the District of Columbia, or a Territory of the United States as a life insurance agent, producer, or broker;

b. I am currently licensed or appointed by at least one life insurance company to sell its structured settlement annuity contracts or to act as a structured settlement consultant or broker;

c. I am currently covered by an Errors and Omissions insurance policy, or an equivalent form of insurance;

d. I have never 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;

e. I have never been convicted of a felony; and

f. I 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.

By submitting this Declaration to the Department of Justice, I am agreeing that this Declaration and the list of brokers each may be made public in its entirety, and I expressly consent to the release and disclosure of the Declaration and the list.

I declare under penalty of perjury that the foregoing is true, accurate, complete, and correct. 28 U.S.C. 1746.

Executed on this _____ day of _____, 2 _____.

(Signature of Individual Broker Making Declaration)

(Print Full Name of Individual Broker Making Declaration)

(Street or Post Office Box)

(City, State, and Zip Code)

After completing and signing this Declaration, mail the Declaration to the United States Department of Justice, Civil Division, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044.

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