

the decision in summary form based on one or more of the factors listed above.

(f) *Requests for opinion or expert testimony.* (1) Pursuant to 5 CFR 2635.805, an employee shall not provide, with or without compensation, opinion or expert testimony in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, except on behalf of the United States or a party represented by the Department of Justice, without written approval of agency counsel.

(2) Upon a showing by the requestor of exceptional need or unique circumstances, the General Counsel may, in writing, grant authorization for an employee, or former employee, to appear and testify.

(3) Any expert or opinion testimony by a former employee of SIGAR shall be excepted from the restriction under 5 CFR 2635.805 where the testimony involves only general expertise gained while employed at SIGAR.

(g) *Procedures when agency counsel directs an employee not to testify or provide documents.* (1) If agency counsel determines that an employee or former employee should not comply with a subpoena or other request for testimony or the production of documents, agency counsel will so inform the employee and the requesting party who submitted the demand.

(2) If, despite the determination of the agency counsel that testimony should not be given or documents not be produced, a court of competent jurisdiction or other tribunal orders the employee or former employee to testify and/or produce documents, the employee shall promptly notify the General Counsel of such Order.

(i) If agency counsel determines that no further legal review of, appeal from, or challenge to, the Order will be sought, agency counsel shall promptly inform the employee or former employee of said determination.

(ii) If SIGAR determines to challenge an Order directing testimony or the production of documents in litigation in which the United States is not a party, the employee should not comply with the Order. The employee should appear at the time and place as commanded in the order or subpoena. If

legal counsel cannot appear on behalf of the employee, the employee should produce a copy of this section and respectfully inform the Court or other legal tribunal that he/she has been advised by the General Counsel not to provide the requested testimony or documents pursuant to the decision of the United States Supreme Court in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and this section. Agency counsel will coordinate with the DOJ to file such motions or other pleadings that may be deemed appropriate in the circumstances, such as, for example, a notice to remove the case from state court to Federal court, or a motion to quash or modify the subpoena, or a motion for a protective order.

(h) *Fees.* In the event that a Touhy Request is granted, SIGAR may charge reasonable fees to parties seeking official information or records. Such fees are calculated to reimburse the Government for the expense of providing such information or records, and may include the costs of time expended by SIGAR employees to process and respond to the request; attorney time for reviewing the request and any responsive records and for related legal work in connection with the request; and reasonable expenses generated by materials and equipment used to search for, produce, and copy the responsive information or records.

PART 9303—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

Sec.

9303.101 General.

9303.102 Prior approval for certain outside activities.

AUTHORITY: 5 U.S.C. Section 7301; 5 U.S.C. App. (Ethics in Government Act of 1978, as amended), E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.702, 2635.703, 2635.801, 2635.802, 2635.803, and 2635.805.

SOURCE: 77 FR 20699, Apr. 6, 2012, unless otherwise noted.

§ 9303.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, SIGAR employees are subject to the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634; the executive branch regulations regarding outside employment at 5 CFR part 2636; and the regulations concerning executive branch financial interests contained in 5 CFR part 2640.

§ 9303.102 Prior approval for certain outside activities.

(a) *Prior approval requirement.* An employee, other than a special Government employee, shall obtain written approval before engaging—with or without compensation—in the following outside activities:

(1) Providing professional services involving the application of the same specialized skills or the same educational background as performance of the employee's official duties;

(2) Teaching, speaking, or writing that relates to the employee's official duties;

(3) Serving as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or active participant for a prohibited source, except that prior approval is not required by this paragraph (a)(3) to provide such service without compensation (other than reimbursement of expenses) for a prohibited source that is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless prior approval for the activity is required by paragraph (a)(1), (a)(2), or (a)(4) of this section; or

(4) Providing services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter:

(i) In which the United States is a party;

(ii) In which the United States has a direct and substantial interest; or

(iii) If the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency.

(b) *Submission of requests for approval.*

(1) Requests for approval shall be submitted in writing to SIGAR's Inspector General or Inspector General's designee through normal supervisory channels. Such requests shall include, at a minimum, the following:

(i) The employee's name and position title;

(ii) The name and address of the person or organization for whom or for which the outside activity is to be performed;

(iii) A description of the proposed outside activity, including the duties and services to be performed while engaged in the activity; and

(iv) The proposed hours that the employee will engage in the outside activity, and the approximate dates of the activity.

(2) Together with the employee's request for approval, the employee shall provide a certification that:

(i) The outside activity will not depend in any way on nonpublic information;

(ii) No official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside activity; and

(iii) The employee has read subpart H ("Outside Activities") of 5 CFR part 2635.

(3) Upon a significant change in the nature or scope of the outside activity or in the employee's official position, the employee shall submit a revised request for approval.

(c) *Approval of requests.* Approval shall be granted only upon a determination by SIGAR's Inspector General or Inspector General's designee, in consultation with the General Counsel and the Director of Public Affairs, that the outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Definitions.* For purposes of this section:

§ 9303.102

(1) *Active participant* has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) *Nonpublic information* has the meaning set forth in 5 CFR 2635.703(b).

(3) *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves

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application of the skills of a profession as defined in 5 CFR 2636.305(b)(1).

(4) *Prohibited source* has the meaning set forth in 5 CFR 2635.203(d).

(5) *Relates to the employee's official duties* has the meaning set forth in 5 CFR 2635.807(a)(2)(i)(B) through (a)(2)(i)(E).

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