

§ 73.735-903

a timely basis and are referred to the appropriate reviewing officials for review and certification. (See § 73.735-202 (e)(1)).

(2) The reviewing official shall review statements to determine whether conflicts of interest or apparent conflicts might arise from the activities reported thereon. If the review discloses no conflict or apparent conflict, the reviewing official shall certify the statement with his or her signature. Action to take if the individual is not in compliance with applicable laws and regulations is discussed in § 73.735-903 and § 73.735-904.

§ 73.735-903 Action if conflicts of interest or possible conflicts are noted.

(a) If after reviewing a financial disclosure report or a financial interest statement, a reviewing official believes that additional information is needed, he or she shall tell the individual submitting such report what additional information is required and the time by which it must be submitted.

(b) If the reviewing official is of the opinion that, on the basis of information submitted, the reporting individual is not in compliance with applicable laws and regulations, he or she shall notify the individual, afford him or her a reasonable opportunity for a written or oral response, and after consideration of such response, determine whether or not the individual is in compliance.

(c) If the reviewing official determines that an individual is not in compliance with applicable laws and regulations, he or she shall notify the individual of that determination in writing and, after an opportunity for personal consultation, determine and notify the individual of the action, including those actions set forth in § 73.735-904, that would be appropriate to assure compliance with such laws and regulations, and the date by which such action should be taken. The action required and the date for taking it shall be determined by the nature of the financial interest or other relationship, the particular circumstances of the reporting individual (including his or her ability to resolve the problem), and other factors which the reviewing official deems relevant. In no case, how-

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ever, should the date be later than 90 days after the reporting individual is notified of the reviewing official's opinion.

(d) If steps for assuring compliance with applicable laws and regulations are not taken by the date set in paragraph (c) of this section, the matter shall be referred to the Department Ethics Counselor.

§ 73.735-904 Resolution of apparent or actual conflicts of interest.

(a) Disqualification from participating in a particular matter or category of matters is an appropriate method for resolving apparent or actual conflicts of interest when the interest or activity giving rise to the problem:

(1) Bears a direct or indirect relationship to particular, identifiable duties of the employee involved; and

(2) Is not so substantial as to affect or give the appearance of affecting the integrity of the services which the Government may expect of the employee. Whenever disqualification is employed to resolve an apparent or actual conflict of interest, the disqualified employee shall sign a written statement reflecting the scope of the disqualification and the precise nature of the conflicting interest or activity. The reviewing official shall keep a file of all such disqualification statements and shall monitor compliance with these statements on a regular basis.

(b) *Change of assignment* is an appropriate method for resolving apparent or actual conflicts of interest when the interest giving rise to the problem bears a direct or indirect relationship to particular, identifiable duties of the employee involved, and those duties constitute a significant portion of the employee's position.

(c) *Waiver* under 18 U.S.C. 208(b) is an appropriate method for resolving apparent or actual conflicts of interest when:

(1) The employee seeking the waiver reported the financial interest that bears some relationship to his or her official duties, and the reviewing official, in consultation with a deputy ethics counselor or the Department Ethics Counselor, determines that the financial interest is not so substantial as to

be deemed likely to affect the integrity of the services which the Government may expect from such employee; or

(2) By general rule or regulation published in the FEDERAL REGISTER, the Department has exempted the financial interest from the requirements of 18 U.S.C. 208 and this part as being too remote or too inconsequential to affect the integrity of the Government officers' service.

(d) A trust containing a financial interest which may give rise to an apparent or actual conflict of interest is an appropriate method of resolving such conflicts when:

(1) The trust is qualified under section 202(f) of the Ethics in Government Act of 1978 (Pub. L. 95-521), as amended, and subject to the regulations of the Office of Government Ethics; or

(2) In the opinion of the Department's Ethics Counselor, it is sufficiently independent of the employee involved so that the integrity of the employee's services to the Government are not compromised.

(e) *Divestiture* is an appropriate method for resolving actual conflicts of interest when the nature of the financial interest is such that the conflict of interest cannot be adequately resolved by any of the methods set forth in paragraphs (a), (b), (c), and (d) of this section.

(f) *Terminating* an appointment as a method for resolving an actual conflict of interest should be used only when it is clear that no other remedy can be found which would be acceptable to both the Department and the employee. Generally, this method will be employed only in the most extreme cases. Such a termination would be subject to adverse action.

Subpart J—Provisions Relating to Experts, Consultants and Advisory Committee Members

§ 73.735-1001 Coverage.

(a) For purposes of this subpart the title "consultant" will be used to include those who are appointed to serve as experts, consultants or members of advisory committees. All persons who serve as an employee of the Government in the capacity of a consultant

are covered by the provisions of this subpart irrespective of:

- (1) The title by which designated;
 - (2) The statutory authority under which services are obtained;
 - (3) The duration of the period for which services are obtained;
 - (4) Whether services are obtained by appointment or invitation and acceptance;
 - (5) Whether services are compensated or rendered without compensation;
 - (6) Whether or not services are obtained pursuant to a statute excepting employees or special Government employees from conflict of interest statutes.
- (b) When the service is for less than 130 days in a service year, experts, consultants, and advisory committee members are included in the group of employees designated by law (18 U.S.C. 202) as "Special Government employees."

§ 73.735-1002 Ethical standards of conduct.

(a) Like other Federal employees, an individual serving in a consultant capacity must conduct himself or herself according to ethical behavior standards of the highest order. In particular, such an individual must:

(1) Refrain from any use of office which is, or appears to be, motivated by a private gain for himself or herself or other persons, particularly those with whom he or she has family, business, or financial ties. The fact that desired gain, if it materializes, will not take place at the expense of the Government makes his or her actions no less improper.

(2) Conduct himself or herself in a manner devoid of any suggestion that he or she is exploiting Government employment for private advantage. A consultant must not, on the basis of any inside information, enter into any speculation or recommend speculation to members of his or her family or business associates, in commodities, land, or the securities of any private company. This injunction applies even though the consultant's duties have no connection whatever with the Government programs or activities which may affect the value of such commodities, land, or securities. He or she should be