

U.S. Department of Labor

Assistant Secretary for
Veterans Employment and Training
Washington, D.C. 20210



March 5, 1990

VETERANS' PROGRAM LETTER NO: 7-90

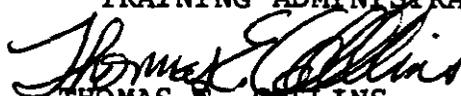
TO: ALL REGIONAL ADMINISTRATORS, DIRECTORS
AND ASSISTANT DIRECTORS **FOR VETERANS'**
EMPLOYMENT AND TRAINING SERVICE

ALL STATE EMPLOYMENT **SECURITY** AGENCY
ADMINISTRATORS (**SESAs**)

ALL STATE JOB TRAINING PARTNERSHIP ACT (**JTPA**)
ADMINISTRATIVE ENTITIES

ALL REGIONAL ADMINISTRATORS, EMPLOYMENT AND
TRAINING ADMINISTRATION (INFORMATION)

FROM:


THOMAS E. COLLINS

SUBJECT: Prohibition on the Use of Appropriated Federal
Funds to Influence Federal Transactions

1. **Purpose:** Explanation and instructions concerning the use of additional certification required to accompany Federal grants to be awarded on or after December 23, 1989.
2. **Reference:** Title 29 of the Code of Federal Regulations, Part 93 as amended, New Restrictions on Lobbying (Copy attached).
3. **Background:**
 - a. P.L. 101-121, Section 319, imposes limitations on the payment of funds to influence Federal transactions. The effective date of this statute was December 23, 1989. This Act prohibits recipients of Federal contracts, **loans**, grants, or cooperative agreements (e.g. **DVOP/LVER**, JTPA Title IV-C, and HVRP Grantees) from using **appropriated** funds to influence or attempt to influence Congress or a Federal agency in connection with the award of a contract, loan, grant or cooperative agreement. Provided they use **nonappropriated** funds, recipients are not otherwise prohibited to influence Congress or Federal Agencies. It **is** required, however, that such lobbying efforts, either conducted or anticipated, be disclosed.

b. According to the law, "influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

c. Effective immediately, applicants for grants in excess of \$100,000 must provide a certification that no appropriated Federal funds have been or will be paid in violation of the Act. Further, a disclosure form is to be submitted, if applicable, as described below.

4. Policy:

a. When a grant application has been submitted on or after December 23, 1989, and is presently under consideration for award, and if the grant award is expected to be in excess of \$100,000, the grant applicant must submit the required certification. (Attachment A)

b. When efforts "to influence or attempt to influence" have been conducted, or are to be conducted using other than Federal monies, in part or whole, a disclosure form, Standard Form LLL and LLL-A (Attachment **B**) must be completed and forwarded as part of the grant application package.

c. Grantees whose grant applications were submitted on or after December 23, 1989, and have already been awarded in excess of \$100,000 must also submit the required certification. However, the grantee has up to 30 days from the date of the award to submit the disclosure statement, if required.

d. Whenever a request for a modification or an amendment to any grant award reflects an increase in the Federal funds causing the Federal share of the grant to exceed \$100,000, the proper certification must be submitted as part of the grant modification request package.

e. Each person required to file a disclosure form shall **file** this form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the **accuracy of** the information contained in any disclosure form previously filed by such person. Events that materially affect the accuracy of the information reported include:

(1) A cumulative increase of \$25,000 or more in the amount paid, or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

5. Action:

a. Grant applicants are required to submit the "Certification Regarding Lobbying" as part of the JTPA Title IV-C, DVOP/LVER, and HVRP grant application package for all applications meeting the above stated criteria on or after December 23, 1989. Applicants are required to forward the appropriate documents to the WET for those applications previously submitted without the certification.

b. VETS staff are to ensure that applicants are aware of this requirement, and forward appropriate documents to the attention of their Desk Officer.

6. Inquiries: Applicant inquiries pertaining to this Veterans' Program Letter (VPL) should be directed to the respective DVET. DVET's inquiries are to be directed through the appropriate channels to the servicing Desk Officer.

Attachment

Federal Register

Monday
February 26, 1990

Part III

New Restrictions on Lobbying; **Interim Final Rule**

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department at the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs

ACTION

International Development Cooperation **Agency**
Agency for International Development
Environmental Protection Agency
Export-Import Bank of the United States
Federal Emergency Management Agency
General Services Administration
National Aeronautics and Space Administration
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
National Science Foundation
Overseas **Private** Investment Corporation
Peace Corps
Small Business Administration
Tennessee Valley Authority
United States Information Agency

DEPARTMENT OF AGRICULTURE

7 CFR PART 3018

DEPARTMENT OF ENERGY

9 CFR PARTS 600 AND 601

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR PART 411

SMALL BUSINESS ADMINISTRATION

13 CFR PART 146

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1271

DEPARTMENT OF COMMERCE

15 CFR PART 28

TENNESSEE VALLEY AUTHORITY

18 CFR PART 1315

DEPARTMENT OF STATE

22 CFR PART 138

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR PART 227

PEACE CORPS

22 CFR PART 311

UNITED STATES INFORMATION AGENCY

22 cm PART 519

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR PART 712

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PART 87

DEPARTMENT OF JUSTICE

28 CFR PART 69

DEPARTMENT OF LABOR

29 CFR PART 93

DEPARTMENT OF THE TREASURY

31 CFR PART 21

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR PART 282

DEPARTMENT OF EDUCATION

34 CFR PART 82

DEPARTMENT OF VETERANS AFFAIRS

38 CFR PART 45

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 34

GENERAL SERVICES ADMINISTRATION

41 CFR PART 105-69

DEPARTMENT OF THE INTERIOR

43 CFR PART 18

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 18

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PART 93

NATIONAL SCIENCE FOUNDATION

45 CFR PART 604

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR PART 1158

National Endowment for the Humanities

45 CFR PART 1188

ACTION

45 CFR PART 1230

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR PART 20

New Restrictions on Lobbying

AGENCIES: Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, Veterans Affairs; **ACTION,** Agency for International Development, Environmental Protection Agency, Export-Import Bank of the United States, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Overseas

private Investment Corporation, Peace Corps, Small Business Administration, Tennessee Valley Authority and United States Information Agency.

ACTION: Interim final rule: request for comments.

SUMMARY: This interim final rule is in response to section 319 of Public Law 101-121. Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract grant, cooperative agreement, loan, or a Federal commitment to insure or guarantee a loan, must disclose lobbying.

DATES: OMB's interim final governmentwide guidance was effective December 23, 1989; this rule is effective February 26, 1990, except for the Department of Education. For the Department of Education effective date, see the agency specific preamble below. Comments must be in writing and must be received by April 27, 1990. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Management and Budget, 10300 New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: See agency-specific preambles for the contact person for each agency.

SUPPLEMENTARY INFORMATION:**A. Background**

On October 23, 1989, the president signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amended title 31, United States Code, by adding a new section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 1352 took effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments that were or are entered into more than 60 days after the date of the enactment of the Act, i.e., December 23, 1989.

Section 1352 required the Director of the Office of Management and Budget (OMB) to issue governmentwide guidance for agency implementation of and compliance with the requirements of this section. The Conference Report

indicated that the conferees "expect that all agencies shall expeditiously promulgate regulations to implement the requirements of this section, and that all such regulations shall be uniform and shall comply with the government-wide guidance issued by the Office of Management and Budget pursuant to paragraph (b)(7). Also, major agencies, as designated by OMB, shall issue a common rule complying with the guidance issued by OMB."

On December 18, 1989, OMB issued interim final governmentwide guidance. This guidance was published on December 20, 1989 (54 FR 52306-52332). In OMB's guidance the following 29 major agencies were identified: Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, Veterans Affairs; ACTION, Agencies for International Development, Environmental Protection Agency, Export-Import Bank of the United States, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Overseas Private Investment Corporation, Peace Corps, Small Business Administration, Tennessee Valley Authority and United States Information Agency.

A second interim final common rule, part of the Federal Acquisition Regulation (FAR), for most contracts was published on January 30, 1990 (55 FR 3190). The FAR rule, this common rule, and OMB's interim final guidance will share a public docket. The final versions of all three will be published simultaneously.

Submission of Appendix A, Certification for Contracts, Grants, Loans, and Cooperative Agreements or Statement for Loan Guarantees and Loan Insurance, does not bind the Federal Government to award a contract, grant, loan, or cooperative agreement or to make a commitment for a loan guarantee or loan insurance.

B. Regulatory Process Matters

This rule is not a major rule under Executive Order 12291. The Act requires certifications and disclosures to be made by all types of entities, including State agencies. For this reason, the agencies have determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12812.

As a statutory matter, this rule applies to all entities, regardless of size.

The agencies find that publishing a notice of proposed rulemaking on this matter would be impracticable, unnecessary, and contrary to the public interest since it would prevent compliance with the statutory deadline (60 days from the statute's date of enactment) for issuance of OMB's governmentwide guidance and the governmentwide effective date.

Consequently, this rule is published as an interim final rule. As an interim final rule, this regulation is fully in effect and binding. No further regulatory action by the agencies is essential to the legal effectiveness of the rule. In order to benefit from comments that interested parties and the public may make however, the agencies will keep the rulemaking docket open for 60 days. Comments are invited, on all portions of the rulemaking, through April 27, 1990. Following the close of the comment period, OMB and the agencies will respond to the comments and, if appropriate, amend provisions of OMB's governmentwide guidance and this rule.

c. Paperwork Reduction Act

This rule contains information collection requirements subject to the Paperwork Reduction Act. A Paperwork Reduction Act emergency approval was requested by OMB pursuant to 44 U.S.C. 3507(g) and 5 CFR 1320.18 and was granted under OMB control number 0348-0046. OMB estimates the reporting burden for this information collection to average 30 minutes per response. The time necessary for filing the first disclosure may differ from that for the subsequent disclosures. However, in the absence of experience with such reporting, OMB does not have sufficient data to determine the universe of total covered Federal actions or the volume of activity that will be affected by this rule. Therefore, an estimate of the total burden of this information collection requirement is not provided at this time. Public comment is requested to assist in accurately estimating the burden of this information collection, including: (1) Estimates of the amount of time required to comply with this reporting requirement, (2) estimates of the number of expected disclosure reports, and (3) the basis for these estimates.

Text of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

PART --NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.

- ____.100 Conditions on use of funds.
- ____.105 Definitions.
- ____.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- ____.200 Agency and legislative liaison.
- ____.205 Professional and technical services.
- ____.210 Reporting.

Subpart C—Activities by Other than Own Employees

- ____.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- ____.400 Penalties.
- ____.405 Penalty procedures.
- ____.410 Enforcement.

Subpart E—Exemptions

- ____.500 Secretary of Defense.

Subpart F—Agency Reports

- ____.600 Semi-annual compilation.
- ____.605 Inspector General report.

Appendix A to Part ____—Certification Regarding Lobbying

Appendix B to Part ____—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); [citation to Agency rulemaking authority].

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

§ ____ 100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay, any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from a" agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from a" agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 105 Definitions.

For purposes of this part:

(a) **Agency**, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) **Covered Fedeml action** means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) **Fedeml contract** means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR),

and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) **Fedeml cooperative agreement** means a cooperative agreement entered into by an agency.

(e) **Federal grant** means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) **Federal loan** means a loan made by a" agency. The term does not include loan guarantee or loan insurance.

(g) **Indian tribe and tribal organization** have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) **Influencing or attempting to influence means making**, with the intent to influence, any communication to or appearance before a" officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or a" employee of a Member of Congress in connection with any covered Federal action.

(i) **Loan guarantee and loan insurance** means an agency's guarantee or insurance of a loan made by a person.

(j) **Local government** means a unit of government in a State and, if chartered, established, or otherwise recognized by a state for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) **Officer or employee of an agency** includes the following individuals who are employed by an agency:

(1) A" individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) A" individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act title 5, U.S. Code appendix 2.

(l) **Person** means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) **Reasonable compensation** means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) **Reasonable payment** means, with respect to professional and other technical services, a payment in a" amount that is consistent with the amount normally paid for such services in the private sector.

(o) **Recipient** includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) **Regularly employed** means, with respect to a" officer or employee of a person requesting or receiving a Federal contract, grant, loan or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) **State** means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or

interstate entity having governmental duties and powers.

§ _____.110 **Certification and disclosure.**

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(e) or individual(a) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C.

Subpart B—Activities by Own Employees

§ _____.200 **Agency and legislative liaison.**

(a) The prohibition on the use of appropriated funds, in § _____.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and.

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the, Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ _____.205 **Professional and technical services.**

(a) The prohibition on the use of appropriated funds, in § _____.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of

a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly end solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ ____ 210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ ____ 300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § ____ 100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract grant, loan, or cooperative agreement or for meeting requirements

imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § ____ 110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly end solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ ____ 400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$10,030 and \$100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ ____ 405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these

provisions are not inconsistent with the requirements herein.

§ -HO Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E-Exemptions

§ ____ 500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F-Agency Reports

§ ____ 600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the

Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1983 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ ____ 605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

Appendix A to Part -- Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of a Member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and the, all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1336, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil

penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Appendix B to Part _____—Disclosure Form to Report Lobbying

**BILLING CODES 3410-01-M; 6450-01-M; 6690-01-M;
6025-01-M; 7510-01-M; 3610-FE-M; 8120-01-M; 4710-
24-M; 6116-01-M; 6061-01-M; 8220-01-M; 3210-01-M;
4210-32-M; 4410-18-M; 4510-23-M; 4619-25-M; 3801-01-
M; 4000-01-M; 3820-01-M; 6960-50-M; 6620-61-M; 4310-
RF-M; 6719-01-M; 4180-64-M; 7865-01-M; 7537-01-M;
7575-01-M; 6856-39-M; 4910-62-M**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget, for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the firm, subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activities, if any. Check all that apply: Civilian, no, just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or no, a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

certification Regarding Lobbying

Certification Concerning Contracts, Grants, Loans, and Agreements ivc

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by Or on behalf of the undersigned, to any **person for influencing** or attempting to influence an officer or employee of any agency, a Member of Congress, an **officer**, or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into Of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any **person for influencing** or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, Or a employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 71, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ACHMENT: A

Authorized Signature

Date

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by CMB
0348-0046

Reporting Entity _____ **Page** _____ of _____

ATTACHMENT : B(1)