DEPARTMENT OF DEFENSE

FINAL REPORT ON THE REVIEW OF LOBBYING ACTIVITIES

Report No. 91-122

September 25, 1991

Office of the Inspector General

The following abbreviations and acronyms are used in this report.

DCAA.....Defense Contract Audit Agency
FAR.....Federal Acquisition Regulation
OMB.....Office of Management and Budget
SPCC.....Navy Ships Parts Control Center

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September 25, 1991

MEMORANDUM FOR EXECUTIVE ASSOCIATE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
DIRECTOR OF DEFENSE PROCUREMENT
DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY

SUBJECT: Final Report on the Review of Lobbying Activities (Report No. 91-122)

This final report is provided for your information and use. The review was made in response to a June 12, 1991, request from the Office of Management and Budget. A draft of this report was issued on September 3, 1991. Management comments were considered in preparing this report.

DoD Directive 7650.3 requires all recommendations within DoD to be resolved promptly. Therefore, we request that the Director of Defense Procurement provide final comments on the unresolved recommendations by November 25, 1991. DoD Directive 7650.3 also requires that comments indicate concurrence or nonconcurrence in each recommendation addressed to you. If you concur, describe the corrective actions taken or planned, the completion dates for actions already taken, and the estimated dates for completion of planned actions. If you nonconcur, state your specific reasons for each nonconcurrence. If appropriate, you may propose alternative methods for accomplishing desired improvements.

The courtesies extended to the audit staff are appreciated. If you have any questions on this final report, please contact Mr. Garold E. Stephenson, Program Director, on (703) 614-6275 (DSN 224-6275) or Mr. John M. Gregor, Project Manager, on (703) 614-3462 (DSN 224-3462). The planned distribution of this report is listed in Appendix K.

Robert J. Lieberman

Robert J. Lieberman
Assistant Inspector General
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Enclosure

cc:
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Office of the Inspector General, DoD

REPORT NO. 91-122 September 25, 1991
(Project No. 1CH-5016)

REVIEW OF LOBBYING ACTIVITIES

EXECUTIVE SUMMARY

Introduction. Section 319 of Public Law 101-121, commonly referred to as the "Byrd Amendment," prohibits recipients of Federal contracts, grants, loans, and cooperative agreements from using appropriated funds for lobbying activities and requires the filing of a disclosure form if other funds are used for lobbying activities subject to the Amendment. It also requires persons or companies that request or receive a contract, grant, loan, or cooperative agreement to certify that no prohibited payments were or will be made. The DoD is required to report to Congress every 6 months on the number of lobbying activity disclosure forms received. The Amendment was effective December 23, 1989.

For the 15-month period ended March 31, 1991, there were 10 lobbying activity disclosure forms forwarded by DoD contracting activities to the Director of Defense Procurement for semiannual reports to the Congress. Because of the small number of disclosures, the Executive Associate Director, Office of Management and Budget (OMB), requested on June 12, 1991, that the Inspector General, DoD, determine whether there was compliance by DoD contractors with respect to the requirements of the Byrd Amendment.

Objective. The overall objective of the review was to evaluate whether Defense contractors and grant recipients understood and complied with the restrictions and disclosure requirements of the Byrd Amendment, as codified in United States Code, title 31, sec. 1352. During the review, we also evaluated the DoD implementation of the Byrd Amendment.

Results of Review. The 13 contractors and 2 universities reviewed were aware of the limitations on lobbying activities imposed by the Byrd Amendment and had generally taken prompt action to disseminate guidance on the Amendment to their senior officials, Government affairs staff, and consultants. None of the contractors in our sample filed a lobbying activity disclosure form. We could not conclusively determine that the contractors had accurately disclosed their lobbying activities because contractor records were not always of sufficient detail, and there were no controls in DoD to ensure that all lobbying activities would be identified. For the 10 lobbying disclosure forms reported to Congress, 7 were filed by contractors and grantees because they were uncertain whether their activities

were covered by the Byrd Amendment. At DoD contracting offices, we found 11 lobbying activity disclosures that were not forwarded to the Director of Defense Procurement for inclusion in semiannual reports. Five disclosure forms should have already been reported to the Congress.

Senior officials, such as program managers and commanders of major military activities, in the DoD Components, did not have guidance regarding the Byrd Amendment prohibitions and disclosure requirements. However, these officials have communications with persons representing contractors and grantees that perform lobbying activities subject to the Byrd Amendment. The Defense Contract Audit Agency (DCAA) was reviewing the allowability of costs incurred by contractors for their legislative liaison activities and for consultants.

Internal Controls. We did not specifically examine internal controls during this review.

Potential Benefits of Review. We did not identify any potential monetary benefits during the review; however, we did identify opportunities to improve compliance with laws and regulations (Appendix I).

Summary of Recommendations. We made an advisory recommendation that OMB issue clarifying guidance; and we recommended additional guidance, training, and procedures to DoD.

Management Comments. The Executive Associate Director of OMB agreed to issue guidance clarifying the difference between program lobbying and lobbying for contracts or grants in the context of follow-on sole-source contracts and grants for ongoing programs.

The Director of Defense Procurement nonconcurred with the recommendations to prepare a DoD-wide notice to inform senior officials of the Byrd Amendment restrictions and requirements, to develop procedures for reporting lobbying activities and suspected violations of the Byrd Amendment, to develop training on the Byrd Amendment requirements, and to establish controls to ensure that all lobbying activity disclosure forms are forwarded to Congress. Accordingly, we request that the Director provide additional comments to the final report by November 25, 1991. The Assistant Director, Defense Contract Audit Agency agreed to establish audit procedures to determine if contractors disclosed unallowable lobbying activities.

The full discussion of the responsiveness of management comments is included in Part II of the report, and the complete text of management comments is included in Part IV of the report.

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This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD. Copies of the report can be obtained from the Information Officer, Audit Planning and Technical Support Directorate, (703) 693-0340.

PART I - INTRODUCTION

Background

On October 23, 1989, the President signed into law the Department of Interior and Related Agencies Appropriations Act for FY 1990 (Public Law 101-121). Section 319 of the Act amended Title 31 of the United States Code by adding a new Section 1352 entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions," (the Byrd Amendment) (Appendix A). The prohibitions and requirements contained in the statute became effective December 23, 1989.

The intent of the Byrd Amendment is to prevent the use of Federal dollars for influencing (lobbying) and ensure full disclosure of lobbying activity that influences the awarding of Federal contracts, grants, loans, and cooperative agreements. The Byrd Amendment prohibits the recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence any member or employee of Congress or an officer or employee of an executive branch agency. The prohibition applies to the award, extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement. The Amendment requires that each person or company who requested or received a Federal contract, grant, loan, or cooperative agreement certify that no prohibited payments will be or have been made. This certification is required for each proposal for a contract, grant, or cooperative agreement over $100,000 (or a loan, loan agreement, or loan insurance over $150,000). Contractors are required to disclose lobbying activities that are paid for with nonappropriated funds and are performed by other than a contractor's own employees. Contractors are also required to certify that they have not used appropriated funds for lobbying activities. A prime contractor is responsible for disclosing lobbying activities by all tiers of subcontractors.

The Byrd Amendment permits use of appropriated funds to pay reasonable compensation costs associated with certain activities. For example, regularly employed officers and employees of a contractor or grantee can lobby a Federal agency or legislative office as long as the contacts are not related to a specific covered action, such as a contract or grant. The Amendment permits the following actions when they occur before issuance of a formal solicitation:

- furnishing any information not specifically requested by an agency employee but necessary for an agency to make an informed decision about contract, grant, loan, or cooperative agreement,

o technical discussions regarding the preparation of an unsolicited proposal before its official submission, and

o capability presentations by small businesses.

Also excluded were professional and technical services provided by employees and nonemployees (consultants, contract labor, and employees who are employed less than 130 working days) to prepare, submit or negotiate bids or proposals or to meet requirements imposed by law or regulation. Such services are limited to advice and analysis directly applying the individual's professional or technical discipline, such as engineering, accounting, and law.

The Byrd Amendment provides that suspected violations be reported to the official designated by agency procedures. The penalty for violations is a fine ranging from $10,000 to $100,000 for each prohibited expenditure or failure to file or amend a disclosure. The agency head or designee will assess the penalties.

Congress designated the Office of Management and Budget (OMB) to issue guidance for agency implementation of and compliance with the requirements of the Amendment. OMB issued interim final Government-wide guidance to implement the statute on December 20, 1989, (Appendix B) and an interim final rule on February 26, 1990, (Appendix C). OMB issued clarifying guidance on March 23, 1990, (Appendix D) and on June 12, 1990, (Appendix E). The guidance clarifies the Amendment as follows.

o Contractors are not required to establish new cost accounting or funds tracking systems for fixed-price contracts.

o Lobbying activities are allowable at any time prior to issuance of a formal solicitation for any of the covered actions.

o All subcontracts and subgrants over $100,000, not just first tier subcontracts, are subject to the reporting requirements.

o Certifications, statements, and disclosures are not required on awards and commitments that were made before December 23, 1989, even if they were changed after that date. However, contract modifications made after December 23, 1989, that incorporate new requirements broadening the scope of a previously exempt contract are covered by the Amendment.

o Only contracts, grants, and cooperative agreements over the $100,000 threshold and loans, loan guarantees, and loan insurance over the $150,000 threshold need certifications or disclosures.

o The Byrd Amendment restrictions do not apply to sales presentations by independent sales representatives before a Federal agency, provided such presentations are prior to formal solicitation by an agency.

o The prohibition on use of Federal funds for lobbying activities was clarified within the context of the profits and fees from cost and fixed-price contracts and the FAR cost principles as they relate to allowable and unallowable expenses chargeable to contracts and grants.

The statute was implemented in the Federal Acquisition Regulation (FAR) Subpart 3.8, in Federal Acquisition Circular 84-55 (January 30, 1990) (Appendix F), and by incorporation of the OMB guidance verbatim as a common rule into various parts of the Code of Federal Regulations. The Director of Defense Procurement implemented the provisions of FAR 3.8 in DoD by a memorandum dated January 16, 1990.

A certification is required for all Federal awards made on or after December 23, 1989, that exceeded $100,000 ($150,000 for loans). Certification is required at the time of a contract proposal and grant, loan, or cooperative agreement application. The certification generally states that no appropriated funds have been or will be used to influence Government personnel with regard to an award. If any lobbying, subject to the Byrd Amendment, occurred, then an OMB Standard Form LLL, "Disclosure of Lobbying Activities," must be filed. The disclosure, if required, is made with the initial offer and quarterly thereafter upon the occurrence of any event that materially affects the accuracy of information previously filed. The disclosure form is submitted by the contractor or grantee to the contracting officer and identifies: basic contract award information; the name and address of the individual or firm hired to engage in lobbying activities; amounts paid and terms of the payment; and a description of the services performed, to include the dates and names of individuals contacted. Subsequently, the disclosure forms are compiled by DoD for submission to Congress semiannually.

Objective, Scope and Methodology

The overall objective of the review was to evaluate whether Defense contractors and grant recipients understood and complied with restrictions and disclosure requirements of the Byrd Amendment. During the review we also evaluated the DoD implementation of the Byrd Amendment. To satisfy the objective, we:

o examined the legislative history and implementing guidance issued by OMB and DoD;

- evaluated actions taken to comply with the Byrd Amendment by a sample of 13 Defense contractors and 2 universities that received contracts, grants, and cooperative agreements from DoD;

- reviewed consultant agreements, activity reports, and miscellaneous information for 144 consultants retained by the sampled contractors and universities;

- determined whether appropriate clauses were inserted by DoD contracting officers into the solicitations and contract documents for a sample of 133 contract actions and grants and 1 cooperative agreement;

- determined whether contractors and grantees had provided lobbying disclosure forms;

- determined the scope of audit coverage provided by Defense Contract Audit Agency;

- assessed disclosure reports submitted by seven U.S. Defense contractors and grantees and two foreign Defense contractors; and

- determined whether there were any Hotline allegations of suspected violations of the Byrd Amendment.

To select a sample of Defense contractors and grantees for review, we reviewed registrations under the Lobbying Registration Act of 1946 and the publication, "Washington Representatives 1991." We interviewed personnel in the Office of the Secretary of Defense, the Military Departments, and the Defense National Stockpile Center of the Defense Logistics Agency to identify recipients of grants. We also reviewed information in the Federal Procurement Data System to identify recipients of contract awards over $100,000. Of more than 2,000 contractors and grantees identified through these sources, we selected 13 contractors and 2 universities for our sample. None of the contractors or universities selected for review had filed disclosure forms according to the semiannual reports that were forwarded by the DoD to Congress.

We provided a questionnaire to the sample contractors and universities, then interviewed company officials and reviewed company records for additional information related to our questions.

To obtain information from DoD contracting officers, we sent letters to 28 contracting activities and visited 5 contracting offices to determine whether FAR clauses 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions," (Appendix G), and 52.203-12,

"Limitation on Payments to Influence Certain Federal Transactions," (Appendix H), were included in their contracts, grants, and the cooperative agreement and whether disclosures were made.

We interviewed DoD contract administration and contract audit personnel responsible for oversight of the 15 sampled activities. We also contacted the Office of Inspector General for the Department of Health and Human Services, which was responsible for audit coverage at the two universities selected for review.

Our review was conducted between June and September 1991 and covered actions and documentation from December 23, 1989, through June 30, 1991. The review did not comply with Comptroller General work standards for performance audits and therefore was not conducted in accordance with government auditing standards. Because of the short time frame for the review, we generally relied on verbal and written representations by contractor and DoD officials. We used computerized data to achieve the audit objectives. We relied on DoD's computer-processed database of contract actions over $100,000 (DD Form 350, "Individual Contract Actions Report") to make our initial selection of contracts for review. We did not establish the reliability of these data because the primary purpose of the review was to select a nonrandom sample of contractors subject to provisions of the Byrd Amendment. We also did not interview consultants engaged by the contractors or the senior DoD officials that were identified as being contacted in activity reports filed by consultants. A list of the activities visited or contacted during the review is in Appendix J.

Internal Controls

We did not specifically evaluate internal controls during this review. We did note, however, that there were no internal control objectives or techniques to verify that all lobbying activity disclosure forms filed with contracting officers were forwarded to the Office of the Director of Defense Procurement.

Prior Audits and Other Reviews

The Byrd Amendment requires the Inspector General, DoD, to submit to the Congress an annual evaluation of the DoD compliance with and the effect of the requirements imposed by the law. On February 5, 1991, the Inspector General submitted an evaluation titled "Report on the Department of Defense Implementation of Section 319 of Public Law 101-121, Department of the Interior and Related Agencies Appropriations Act for FY 1990." The report described the actions that DoD had taken to comply with the requirements of the statute. It stated that one disclosure was

reported in the March 1990 period, six were reported in the September 1990 period, and no disclosures concerning possible violations of the statute were received by the DoD. The report contained no recommendations.

On June 20, 1991, the General Accounting Office initiated a review of the implementation of and compliance with the Byrd Amendment by selected agencies, including DoD. This review was requested by the Chairman, Senate Committee on Oversight and Management, Senate Committee on Governmental Affairs.

PART II - RESULTS OF REVIEW AND RECOMMENDATIONS

COMPLIANCE WITH BYRD AMENDMENT REQUIREMENTS

Although contractors had issued policies and performed training to inform employees and their consultants of the Byrd Amendment, contractor records generally lacked sufficient detail to determine whether contractors fully complied with disclosure requirements. The Amendment relies on self-reporting by contractors and grantees. Defense contractors have continued to use employees and consultants to lobby the Congress and DoD officials for their systems and projects. In addition, we found 11 disclosure forms of lobbying activity, including 5 that were not forwarded from DoD contracting offices for inclusion in previous reports to Congress.

Contractors' Compliance

Our review could not confirm that the 13 contractors in our sample had fully complied with the Byrd Amendment. The Amendment relies on self-reporting by recipients, and unreported lobbying activities cannot be readily identified by reviewing contractors' records. Each contractor was familiar with the Byrd Amendment and established policies and procedures to comply with its requirements. Contractors' policies and procedures attempted to distinguish permitted from nonpermitted lobbying activities and provided this information in training modules to key corporate personnel. Corporate contracting officials administered contract flow-down clauses on the Byrd Amendment to subcontractors and processed Byrd Amendment certifications on contracts. Most of the companies had modified or reissued agreements with consultants to incorporate Byrd Amendment provisions and to either require that the lobbying activities be reported that were contract related, or require that the consultant not engage in any activities subject to disclosure by the Byrd Amendment.

Activity reports, which consultants were generally required to submit each month with their invoices, varied in the level of detail provided. The reports ranged from one-line statements that appeared on each invoice to detailed reports on who was contacted, a short description of each contact, and the date of the contact. The activity reports did not discuss the details of the contacts, such as what was discussed and what agreements were reached. Contractor officials stated that they had directed their consultants, either orally or in writing, not to engage in any activities that required disclosure under the Byrd Amendment.

All of the contractors reviewed had filed certifications in association with a DoD contract that they had not used and would not use appropriated funds to lobby for specific contracts. None of the contractors had filed an OMB Standard Form LLL,

"Disclosure of Lobbying Activities," which is used to disclose lobbying activities subject to the Byrd Amendment. All of the contractors acknowledged that they engaged in agency and legislative lobbying and liaison activities and most stated that they tried to influence the authorization and appropriation of funds for their programs. The contractors stated that their lobbying activities ceased or would cease once a request for proposal for a contract was issued.

We concluded, based on our review of 144 agreements that the contractors had with consultants and consultants activity reports as well as our interviews of contactor officials, that contractor books and records do not provide sufficient detail to discern whether any prohibited lobbying activities occurred. Also, we were unable to determine if all reportable lobbying activities were disclosed to the contracting officer.

Grantees' Compliance

One of the two universities sampled had employed a consultant to assist it in entering into a $24 million cooperative agreement with DoD. The university filed a disclosure form in January 1991 with the Office of Naval Research, which was the DoD funding activity, but the disclosure form was not forwarded to the Office of Director of Defense Procurement for inclusion in the May 1991 semiannual report to the Congress.

The other university filed a certification that it had not lobbied for a $375,000 grant from DoD. The university did engage a consultant, however, to study grant sources, but not to lobby on behalf of the university for grants.

Congress adds many research grants as line items in the DoD authorization and appropriation acts. Any lobbying of Congress for these grants by a paid consultant would require the consultant to register under the Federal Regulation of Lobbying Act of 1946. According to DoD officials, the lobbying for most research grants and cooperative agreements occurs with the Congress before the grants and cooperative agreements are placed in the authorization and appropriation acts by Congress. DoD primarily processes and administers the grant applications after the grants and cooperative agreements are placed in the budget by Congress.

Departmental Compliance

DoD contracting activities have been primarily responsible for implementing the Byrd Amendment provisions listed in the FAR. The Deputy Assistant Secretary of Defense for Procurement (now called the Director of Defense Procurement) issued three memorandums that provided guidance on the Byrd Amendment.

o A January 16, 1990, memorandum to DoD contracting activities concisely described the Byrd Amendment restrictions on lobbying activity and provided a preliminary copy of Federal Acquisition Circular 84-55.

o A March 9, 1990, memorandum requested the Service Acquisition Executives and Directors of the Defense Agencies to establish focal points within their organizations to collect contractor disclosure forms and to forward the forms not later than May 2 and November 2 after the close of each 6-month period.

o A May 8, 1990, memorandum informed the Service Acquisition Executives and Directors of the Defense Agencies that, until the FAR was modified, a class deviation to the FAR was approved to implement the OMB March 23, 1990, clarifying guidance on the Byrd Amendment.

We confirmed that DoD contracting activities reacted to the guidance on the Byrd Amendment. We contacted 33 contracting offices to determine whether FAR clauses 52.203-11 and 52.203-12 were used for 134 contracts, grants, and cooperative agreements (awards). We found that 110 of 133 awards included the clauses. At the time of the issuance of this report, we had not received a response on one contract. Where the clauses were not included, the solicitation was issued prior to the effective date of the Byrd Amendment or before the contracting office received implementing guidance. One contracting office stated that it did not receive the January 1990 guidance from OSD until March 1990.

The DoD contracting offices usually received certifications from contractors that no appropriated funds were used for lobbying activities and no lobbying activities occurred related to the specific contract. We also determined that when offers were received without signed certification forms, the contracting officers interpreted signature of the contract as a certification.

An example of the volume of contracts subject to the Byrd Amendment at a DoD contracting office was found at the Navy Ships Parts Control Center (SPCC). The SPCC stated that it awarded an average of 80 buys per month over $100,000 and all of the contracts contained the applicable FAR clauses. Certifications were received for the contracts issued. These clauses place the responsibility on the contractor to provide a disclosure form when necessary. However, despite the volume of contracts and certifications received, SPCC did not receive any completed disclosure forms.

The general belief among contracting officers was that the Byrd Amendment had little effect except in the amount of paperwork submitted with a contract proposal.

At the Defense National Stockpile Center, we found two lobbying activity disclosure statements that were not forwarded to the Office of the Director of Defense Procurement. One statement should have been included in the November 1990 semiannual report to Congress and the other statement applies to the November 1991 semiannual report. In addition, we contacted four U.S. contractors and grantees that had previously filed lobbying activity disclosure forms. We found that one contractor had prepared eight additional disclosure forms that were not forwarded from the DoD contracting offices to the Director of Defense Procurement. Three of the eight disclosure forms should have already been reported to Congress, and the other five disclosure forms should be reported in the November 1991 semiannual report.

There were no lobbying activity disclosure forms forwarded from 32 of the 33 DoD contracting offices. However, we located 11 lobbying activity disclosure forms that were not forwarded to the Director of Defense Procurement including the 5 that should have already been submitted to Congress. Based on the additional forms we located, we believe there is a need for an internal control such as a periodic data call for use in preparing the semiannual report.

Defense Contract Audit Agency Involvement

The Defense Contract Audit Agency (DCAA), which is responsible for auditing DoD contracts, treats costs made expressly unallowable by the Byrd Amendment in the same manner as any of the other unallowable costs. In November 1990, DCAA issued guidance to its staff on audit coverage of the Byrd Amendment restrictions during its audits. DCAA reviews the allowability of costs incurred by contractors for their legislative liaison activities and for consultants. DCAA evaluates the contractors' internal controls for ensuring that unallowable costs are identified and excluded from contract proposals, billings, and claims submitted to the Government. DCAA also assesses the risk of whether unallowable costs have been or will be charged to the Government.

Much of DCAA's recent audit coverage related to the approval of contractor overhead rates for years before the Byrd Amendment became effective. These overhead audits examine costs that are charged to indirect expense accounts. DCAA has historically questioned the allowability of many costs because of inadequate documentation to support reasonableness. The results of DCAA audit work are provided to the contracting officer who negotiates costs, payments, and contract terms and conditions with the contractor.

DCAA can be a control mechanism to verify that contractors filed a lobbying disclosure form when needed. DCAA audit guidance relative to the Byrd Amendment restrictions does not currently include steps for assessing compliance with Byrd Amendment disclosure requirements. We believe that DCAA should also examine this area because DCAA has access to contractor records that show lobbying activities and whether the lobbying costs were allowable or unallowable. This examination will require review of documentation for consultant costs that the contractors are treating as unallowable and not charging to the Government. This is a necessary first step to provide the DCAA the ability to identify any violations that are subject to monetary fines.

Responsibility for Identification of Lobbying Activities

As conveyed to us by officials outside of DoD contracting activities, the Byrd Amendment restrictions are not understood because guidance on the Byrd Amendment was not widely distributed. Also, there was little coverage on the Byrd Amendment in training courses. When large contracts and modifications are involved, senior DoD officials and program officials are more likely to be lobbied by contractors and their consultants than are contracting officers. Although the DoD guidance on the Byrd Amendment was circulated to contracting offices, senior DoD officials who are program officials and commanders of major commands, did not receive the DoD guidance. Governmental affairs consultants employed by the contractors we reviewed had contacts with high-level DoD officials to discuss program requirements and budget matters. Many of these consultants were former high-ranking military personnel or senior Government officials, who typically do not deal with contracting personnel, but with senior managers. We believe that compliance with the Amendment might be enhanced if the Secretary of Defense issued a Department-wide notice on the Byrd Amendment prohibitions and disclosure requirements. In addition, DoD should develop forms for use by senior officials to report lobbying efforts and suspected violations of the Byrd Amendment.

Further Guidance Needed

Seven of the twenty-one disclosure forms we examined were submitted only because the contractor or grantee was uncertain whether its activities were covered by the Byrd Amendment. Both DoD and contractor officials stated that the Byrd Amendment and its implementing instructions are not easy to follow. There are exemptions to when a lobbying disclosure form should be filed in the current guidance. In addition, contractors and DoD personnel also had difficulty interpreting when the Byrd Amendment prohibitions and disclosure requirements came into effect for the lobbying activities relating to ongoing major programs that have follow-on sole-source contracts. There is a need for additional guidance from OMB to clarify this area. We believe the guidance

should use the existing FAR cost principles related to executive and legislative lobbying and selling costs. The cost principles will help differentiate between program and contract lobbying activities when one contractor is the producer of a weapon system that is purchased through use of follow-on sole-source contracts over a period of time. The clarification would provide a basis for a contractor to determine when a disclosure form is needed. The guidance could be clarified to show that costs properly classified and made unallowable under FAR 31.205-22, "Legislative Lobbying Costs," and FAR 31.205-50, "Executive Lobbying Costs," when incurred by consultants on behalf of a prospective contractor, represent activities that require the filing of a disclosure form. DCAA can then use this guidance to help determine if a contractor should have, but had not, filed a disclosure form. As now interpreted by most contractors, the Byrd Amendment has had virtually no effect on their precontract communications with the Government.

RECOMMENDATIONS, MANAGEMENT COMMENTS, AND REVIEW RESPONSE

1. We recommend that the Office of Management and Budget issue guidance to Federal agencies that clarifies, in the context of the cost principles contained in Federal Acquisition Regulation Part 31, the difference between program and contract/grant lobbying as it relates to follow-on sole-source contracts or grants for ongoing programs.

Executive Associate Director, Office of Management and Budget comments. The Executive Associate Director concurred with the recommendation and stated that implementation would proceed immediately upon receipt of the final audit report.

2. We recommend that the Director of Defense Procurement:

a. Prepare a DoD-wide notice for signature by the Secretary of Defense to inform senior officials in the DoD Components of Byrd Amendment restrictions and disclosure requirements.

b. Develop statements and forms used by senior officials in DoD to report persons lobbying them and any suspected violations of the Byrd Amendment to a designated official.

c. Develop a training module for use by DoD Components to make DoD officials aware of the requirements of the Byrd Amendment.

d. Establish a procedure for a periodic data call for lobbying activity disclosure forms that are reported to Congress.

Director of Defense Procurement comments. The Director nonconcurred with the recommendations and stated that the recommendations would add bureaucratic requirements to an already clogged and overburdened system. The Director believed Recommendation 2.a. was unnecessary since no improper lobbying was disclosed. For Recommendation 2.b., the Director did not believe that it was appropriate to include Byrd Amendment monitoring requirements in the guidance for annual ethics statements filed by DoD officials. The Director also commented that implementation of Recommendation 2.c. did not seem cost-effective because contracting personnel were aware of Byrd Amendment requirements. For Recommendation 2.d., the Director noted that the collection of statistical information would be burdensome and expensive. The Director stated that they would emphasize to the Services and Agencies the importance of the disclosure reporting requirements.

Review response. Based on the Director's comments, we revised Recommendations 2.b. and 2.d. for the final report. The intent of the recommendations is to promote an awareness on the part of those officials who are most likely subject to be lobbied and to establish control mechanisms that would improve compliance with the lobbying disclosure and reporting requirements. The absence of any disclosure of improper lobbying during this review should not be construed to mean that such lobbying has not occurred or will not occur in the future. Also, Recommendation 2.c. is directed more toward program officials and not just contracting personnel as the Director commented. We request that management reconsider its position when responding to Recommendation 2.a., 2.b., 2.c., and 2.d. in the final report. Also, the concluding comments made by the Defense Contract Audit Agency in response to Recommendation 3. reinforce the need for the Director to initiate corrective action.

3. We recommend that the Director, Defense Contract Audit Agency establish procedures for the reviews of contractor lobbying and agency liaison costs, for audit personnel to use in determining if lobbying activities subject to Byrd Amendment were reported on lobbying activity disclosure forms.

Defense Contract Audit Agency comments. The Assistant Director, Policy and Plans, Defense Contract Audit Agency agreed in principal with Recommendation 3. The Assistant Director added that clarifying guidance as to the exact nature of unallowable and disclosable lobbying and specific record keeping requirements for contractors to follow would be needed to make audit efforts meaningful. The Assistant Director also addressed the need for DoD officials to report instances of lobbying to a designated official as a means of enforcing the Byrd Amendment.

PART III - ADDITIONAL INFORMATION

APPENDIX A - Title 31, United States Code, Section 1352, "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions"

APPENDIX B - Office of Management and Budget Governmentwide Final Guidance for New Restrictions on Lobbying - Interim Final Guidance

APPENDIX C - Office of Management and Budget New Restrictions on Lobbying - Interim Final Rule

APPENDIX D - Clarifications Regarding Lobbying Restrictions

APPENDIX E - Clarifications Regarding "Governmentwide Guidance for New Restrictions on Lobbying"

APPENDIX F - Federal Acquisition Circular 84-55, Federal Acquisition Regulation Subpart 3.8

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APPENDIX A: TITLE 31 UNITED STATES CODE SECTION 1352

§ 1352. Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions

(a)(1) None of the funds appropriated by any Act 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 Federal action described in paragraph (2) of this subsection.

(2) The prohibition in paragraph (1) of this subsection applies with respect to the following Federal actions:

(A) The awarding of any Federal contract.

(B) The making of any Federal grant.

(C) The making of any Federal loan.

(D) The entering into of any cooperative agreement.

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

(b)(1) Each person who requests or receives a Federal contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency, in accordance with paragraph (4) of this subsection—

(A) a written declaration described in paragraph (2) or (3) of this subsection, as the case may be; and

(B) copies of all declarations received by such person under paragraph (5).

(2) A declaration filed by a person pursuant to paragraph (1)(A) of this subsection in connection with a Federal contract, grant, loan, or cooperative agreement shall contain—

(A) a statement setting forth whether such person—

(i) has made any payment with respect to that Federal contract, grant, loan, or cooperative agreement, using funds other than appropriated funds, which would be prohibited by subsection (a) of this section if the payment were paid for with appropriated funds; or

(ii) has agreed to make any such payment;

(B) with respect to each such payment (if any) and each such agreement (if any)—

(i) the name and address of each person paid, to be paid, or reasonably expected to be paid;

(ii) the name and address of each individual performing the services for which such payment is made, to be made, or reasonably expected to be made;

(iii) the amount paid, to be paid, or reasonably expected to be paid,

(iv) how the person was paid, is to be paid, or is reasonably expected to be paid; and

(v) the activity for which the person was paid, is to be paid, or is reasonably expected to be paid; and

(C) a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a).

(3) A declaration filed by a person pursuant to paragraph (1)(A) of this subsection in connection with a commitment providing for the United States to insure or guarantee a loan shall contain—

(A) a statement setting forth whether such person—

(i) has made 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 guaranty; or

(ii) has agreed to make any such payment; and

(B) with respect to each such payment (if any) and each such agreement (if any), the information described in paragraph (2)(B) of this subsection.

(4) A person referred to in paragraph (1)(A) of this subsection shall file a declaration referred to in that paragraph—

(A) with each submission by such person that initiates agency consideration of such person for award of a Federal contract, grant, loan, or cooperative agreement, or for grant of a commitment providing for the United States to insure or guarantee a loan;

(B) upon receipt by such person of a Federal contract, grant, loan, or cooperative agreement or of a commitment providing for the United States to insure or guarantee a loan, unless such person previously filed a declaration with respect to such contract, grant, loan, cooperative agreement or commitment pursuant to clause (A); and

(C) at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any declaration previously filed by such person in connection with such Federal contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guaranty commitment.

(5) Any person who requests or receives from a person referred to in paragraph (1) of this subsection a subcontract under a Federal contract, a subgrant or contract under a Federal grant, a contract or subcontract to carry out any purpose for which a particular Federal loan is made, or a contract under a Federal cooperative agreement shall be required to file with the person referred to in such paragraph a written declaration referred to in clause (A) of such paragraph.

(6)(A) The head of each agency shall collect and compile the information contained, pursuant to paragraphs (2)(B) and (3)(B) of this subsection, in the statements filed under this subsection 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, pursuant to such paragraphs, in the statements received during the six-month period ending on March 31 or September 30, respectively, of that year. The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(B) Notwithstanding subparagraph (A)—

(i) information referred to in subparagraph (A) 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;

(ii) information referred to in subparagraph (A) that is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, is classified in accordance with such order, and is available only by special access 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; and

(Iii) information reported in accordance with this subparagraph shall not be available for public inspection.

(7) The Director of the Office of Management and Budget, after consulting with the Secretary of the Senate and the Clerk of the House of Representatives, shall issue guidance for agency implementation of, and compliance with, the requirements of this section.

(C)(1) [1] Any person who makes an expenditure prohibited by subsection (a) of this section shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(2)(A) Any person who fails to file or amend a declaration required to be filed or amended under subsection (b) of this section shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(B) A filing of a declaration of a declaration amendment on or after the date on which an administrative action for the imposition of a civil penalty under this subsection is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. For the purposes of this subparagraph, 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.

(3) Sections 3803 (except for subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812 of this title shall be applied, consistent with the requirements of this section, to the imposition and collection of civil penalties under this subsection.

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

(d)(1) The official of each agency referred to in paragraph (3) of this subsection shall submit to Congress each year an evaluation of the compliance of that agency with, and the effectiveness of, the requirements imposed by this section on the agency, persons requesting or receiving Federal contracts, grants, loans, or cooperative agreements from that agency, and persons requesting or receiving from that agency commitments providing for the United States to insure or guarantee loans. The report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(2) The report of an agency under paragraph (1) of this subsection shall include the following:

(A) All alleged violations of the requirements of subsections (a) and (b) of this section, relating to the agency's Federal actions referred to in such subsections, during the year covered by the report.

(B) The actions taken by the head of the agency in such year with respect to those alleged violations and any alleged violations of subsections (a) and (b) of this section that occurred before such year, including the amounts of civil penalties imposed by the head of such agency in such year, if any.

(3) The Inspector General of an agency shall prepare and submit the annual report of the agency required by paragraph (1) of this subsection. 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 such annual report.

APPENDIX A: TITLE 31 UNITED STATES CODE SECTION 1352 (Continued)

(e)(1)(A) Subsection (a)(1) of this section 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 to the extent that the payment is for agency and legislative liaison activities not directly related to a Federal action referred to in subsection (a)(2) of this section.

(B) Subsection (a)(1) of this section does not prohibit any reasonable payment to a person in connection with, or any payment of reasonable compensation 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 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.

(C) Nothing in this paragraph shall be construed as permitting the use of appropirated [2] funds for making any payment prohibited in or pursuant to any other provision of law [3]

(2) The reporting requirement in subsection (b) of this section shall not apply to any person with respect to—

(A) payments of reasonable compensation made to regularly employed officers or employees 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;

(B) a request for or receipt of a contract (other than a contract referred to in clause (C)), grant, cooperative agreement, subcontract (other than a subcontract referred to in clause (C)), or subgrant that does not exceed $100,000; and

(C) a request for or receipt of a loan, or a commitment providing for the United States to insure or guarantee a loan, that does not exceed $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater, including a contract or subcontract to carry out any purpose for which such a loan is made.

(f) The Secretary of Defense may exempt a Federal action described in subsection (a)(2) from the prohibition in subsection (a)(1) 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 determination.

(g) The head of each Federal agency shall take such actions as are necessary to ensure that the provisions of this section are vigorously implemented and enforced in such agency.

(h) As used in this section:

(1) The term "recipient", with respect to funds received in connection with a Federal contract, grant, loan, or cooperative agreement—

(A) includes the contractors, subcontractors, or subgrantees (as the case may be) of the recipient; but

(B) does not include an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency but only with respect to expenditures that are by such tribe or organization for purposes specified in subsection (a) and are permitted by other Federal law.

APPENDIX A: TITLE 31 UNITED STATES CODE SECTION 1352 (Continued)

(2) The term "agency" has the same meaning provided for such term in section 552(f) of title 5, and includes a Government corporation, as defined in section 9101(1) of this title.

(3) The term "person"—

(A) includes 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; but

(B) does not include an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency but only with respect to expenditures by such tribe or organization that are made for purposes specified in subsection (a) and are permitted by other Federal law.

(4) The term "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.

(5) The term "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, the following entities:

(A) A local public authority.

(B) A special district.

(C) An intrastate district.

(D) A council of governments.

(E) A sponsor group representative organization.

(F) Any other instrumentality of a local government.

(6)(A) The terms "Federal contract", "Federal grant", "Federal cooperative agreement" mean, respectively—

(i) a contract awarded by an agency;

(ii) a grant made by an agency or a direct appropriation made by law to any person; and

(iii) a cooperative agreement entered into by an agency.

(B) Such terms do not include—

(i) direct United States cash assistance to an individual;

(ii) a loan;

(iii) loan insurance; or

(iv) a loan guaranty.

(7) The term "Federal loan" means a loan made by an agency[4] Such term does not include loan insurance or a loan guaranty[4]

(8) The term "reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(9) The term "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.

(10) The term "regularly employed" with respect to an 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, means 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 guaranty commitment.

(11) The terms "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).

(Added Pub.L. 101-121, Title III, § 319(a)(1), Oct. 23, 1989, 103 Stat. 750, and amended Pub.L. 101-612, § 820, Nov. 6, 1990, 104 Stat. 1977.)

[1] So in original. Probably should read "(c)(1)"

[2] So in original. Probably should be "appropriated"

[3] So in original. Probably a period should be inserted.

Historical and Statutory Notes

Effective Date. Section 319(d) of Pub.L. 101-121 provided that: "Section 1352 of title 31, United States Code [this section] (as added by subsection (a)), shall take effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guaranty commitments that are entered into or made more than 60 days after the date of the enactment of this Act [Oct. 23, 1989]."

First Report on May 31, 1990; Content. Section 319(b) of Pub.L. 101-121 provided that: "The first report submitted under subsection (b)(6) of section 1352 of title 31, United States Code [subsec. (b)(6) of this section] (as added by subsection (a)), shall be submitted on May 31, 1990, and shall contain a compilation relating to the statements received under subsection (b) of such section [subsec. (b) of this section] during the six-month period beginning on October 1, 1989."

Notification of Compliance Date; Guidance for Agency Implementation. Section 319(c) of Pub.L. 101-121 provided that: "The Director of the Office of Management and Budget shall notify the head of each agency that section 1352 of title 31, United States Code [this section] (as added by subsection (a)), is to be complied with commencing 60 days after the date of the enactment of this Act [Oct. 23, 1989]. Not later than 60 days after the date of the enactment of this Act [Oct 23, 1989], the Director of the Office of Management and Budget shall issue the guidance required by subsection (b)(7) of such section [subsec (b)(7) of this section]."

Library References

United States ⇐82(1)

WESTLAW Topic No 393.

C.J.S. United States § 122

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Guidance for New Restrictions on Lobbying

AGENCY: Office of Management and Budget

ACTION: Interim Final Guidance

SUMMARY: This interim final guidance is called for by 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.

DATE: This guidance is effective December 23, 1989. Comments on OMB's interim final guidance must be in writing and must be received by [60 days from publication]. Late-filed comments will be considered to the extent practicable.

ADDRESS: Office of Management and Budget, 10300 New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For contracts, contact Richard C. Loeb, Office of Federal Procurement Policy, OMB (telephone: 202-395-3300). For grants and loans, contact Barbara F. Kahlow, Financial Management Division, OMB (telephone: 202-395-3053).

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 amends 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 takes effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments that are entered into or made more than 60 days after the date of the enactment of the Act, i.e., December 23, 1989.

Section 1352 requires the Director of the Office of Management and Budget to issue governmentwide guidance for agency implementation of, and compliance with, the requirements of this section. The Conference Report indicates that the conferees "expect that all agencies shall expeditiously promulgate regulations to implement the requirements of this section, and

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

that all such regulations shall be uniform and shall comply with the government-wide guidance issued by the Director of 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."

B. Interim Final Guidance.

OMB's interim final guidance is prepared in regulation format to facilitate its use by the executive departments and agencies in preparing the common rule called for in the Conference Report. There will be two common rules issued by the executive departments and agencies as interim final rules within 90 days of this interim final guidance: a common rule to appear in the Federal Acquisition Regulation (FAR) for most contracts; and a common rule for contracts not subject to the FAR, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments ("nonprocurement"). The FAR common rule will contain the same substance as the OMB guidance, without elaboration, but will be reformatted, with additional instructions. The nonprocurement common rule will be verbatim to the OMB guidance. All three documents (OMB's interim final guidance and the two interim final common rules) will share a public docket. The final versions of all three will be published simultaneously.

The FAR common rule will be co-signed by the three agencies (the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration) authorized to issue the FAR rulemaking, effective for all executive departments and agencies. The nonprocurement common rule will be signed by the following 29 major 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.

The following Circulars of the Office of Management and Budget (OMB) will be revised to indicate a cross reference to the requirements in the OMB guidance: OMB Circular A-21, "Cost Principles for Educational Institutions;" OMB Circular A-87, "Cost Principles for State and Local Governments;" and, OMB Circular A-122, "Cost Principles for Nonprofit Organizations." Costs made specifically unallowable by the requirements in the guidance are not made allowable under any of the provisions of

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

these Circulars. Conversely, costs that are specifically unallowable under the provisions of these Circulars are not made allowable under the requirements in the guidance.

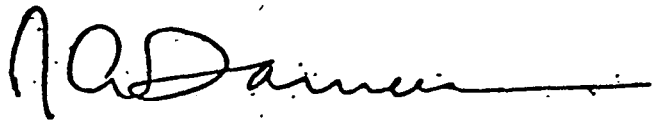
Costs made specifically unallowable by the requirements in the OMB guidance will not be made allowable under any of the provisions of the FAR. Conversely, costs that are specifically unallowable under the provisions of the FAR are not made allowable under the requirements in the OMB guidance.

The guidance calls for an annual report to be prepared by each Inspector General and to be submitted to Congress. Copies of these reports should be forwarded to the Financial Management Division of OMB as well.

The guidance also calls for semi-annual compilations of disclosure reports to be prepared by each agency and to be submitted to Congress. Agencies shall submit a "negative" report if no disclosure reports were received.

C. Paperwork Reduction Act.

This interim final guidance contains information collection requirements. Accordingly, a Paperwork Reduction Act emergency approval was requested pursuant to 44 U.S.C. 3507(g) and 5 C.F.R. 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 guidance. 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. OMB is also interested in comments on the feasibility of electronic or other methods for filing the information on the disclosure standard form to the Federal Government.



Richard G. Darman
Director.

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

PART ____ - NEW RESTRICTIONS ON LOBBYING

Subpart A - General

Sec.
___.100 Conditions on use of funds.
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Appendix A to Part ___ - Certification Regarding Lobbying

Appendix B to Part ___ - Disclosure Form to Report Lobbying

Appendix C to Part ___ - Contract Clause

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

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,

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APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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 an 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 an 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 Federal 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

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APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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) Federal 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) Federal 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 an 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 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.

(i) Loan guarantee and loan insurance mean 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) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position

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APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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) An 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 an 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 an 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

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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(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.

(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,

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING — INTERIM FINAL GUIDANCE (Continued)

all 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) 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

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APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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 agency 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

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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 and 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

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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 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 and 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.

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(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 $10,000 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.

(___.410 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.

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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, 1989 to March 31, 1990.

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APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

(f) Major agencies, designated by the Office of Management and udget (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 B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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 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 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 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 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.

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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 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 1352, 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.

[See attached.]

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *If known:* Congressional District, *If known:*	 Congressional District, *If known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *If applicable:* _____
8. Federal Action Number, *If known:*	9. Award Amount, *If known:* $
10. a. Name and Address of Lobbying Entity (*If individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)	
11. Amount of Payment (*check all that apply*): $ _____ ☐ actual ☐ planned	13. Type of Payment (*check all that apply*): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:	
(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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 first 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 activity, not 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 not 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

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

Authorized for Local Reproduction
Standard Form - LLL-A

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

Appendix C to Part ___ - Contract Clause

NEW RESTRICTIONS ON LOBBYING

(a) Definitions. As used in this clause,

"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).

"Covered Federal 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.

"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.

"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.

"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.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

(1) An 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,

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APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

(4) An 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.

"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.

"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.

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

"Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, 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. 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.

"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.

(b) Prohibition.

(1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this section, 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 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 (i) 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 (ii) 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 agency 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) (ii) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(iii) 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.

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APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

(E) Only those activities expressly authorized by paragraph (i) of this section are allowable under paragraph (i).

(ii) Professional and technical services by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (1) of this section, 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 or an extension, continuation, renewal, amendment, or modification of a Federal contract 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 or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(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 and 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.

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

(D) Only those services expressly authorized by paragraph (ii) of this section are allowable under paragraph (ii).

(iii) Reporting for Own Employees.

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

(iv) Professional and technical services by Other than Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (1) of this section, 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 or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(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 and 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.

APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

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

(E) Only those services expressly authorized by paragraph (iv) of this section are allowable under paragraph (iv).

(c) Disclosure.

(1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in ____, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.

(2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," 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 (b) of this clause if paid for with appropriated funds.

(3) 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 paragraph (c)(2) of this section. An event that materially affects the accuracy of the information reported includes:

(i) 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

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

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

(4) Any person who requests or receives from a person referred to in paragraph (c)(1) of this section a subcontract exceeding $100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.

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APPENDIX B: OMB GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL GUIDANCE (Continued)

(5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph (c)(1) of this section. That person shall forward all disclosure forms to the agency.

(d) Agreement. In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

(End of Clause)

[FR Doc. 89-29732 Filed 12-19-89; 12:55 pm]
BILLING CODE 3110-01-M

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APPENDIX C: OMB NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL RULE

DEPARTMENT OF AGRICULTURE

7 CFR PART 3018

DEPARTMENT OF ENERGY

10 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 CFR 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 1168

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 Humnan 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 Fedreal 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 then 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

APPENDIX C: OMB NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL RULE (Continued)

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, Transporation, 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 Goverment 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 12612.

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

APPENDIX C: OMB NEW RESTRICTIONS ON LOBBYING — INTERIM FINAL RULE (Continued)

(c) Each person who requests or receives from an 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 an 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 Federal 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) *Federal 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) *Federal 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 an 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 an officer or employee or 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.

(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) An 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) An 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 perfessional and other technical services, a payment in an 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 an 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

APPENDIX C: OMB NEW RESTRICTIONS ON LOBBYING — INTERIM FINAL RULE (Continued)

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(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.

(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

APPENDIX C: OMB NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL RULE (Continued)

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 and 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 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 and 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 $10,000 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

APPENDIX C: OMB NEW RESTRICTIONS ON LOBBYING — INTERIM FINAL RULE (Continued)

provisions are not inconsistent with the requirements herein.

§ ____.410 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, 1989 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 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 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 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 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 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 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil

APPENDIX C: OMB NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL RULE (Continued)

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; 8025-01-M; 7510-01-M; 2810-FE-M; 8170-01-M; 6710-24-M; 6116-01-M; 8061-01-M; 8230-01-M; 3210-01-M; 4210-32-M; 4410-18-M; 4810-32-M; 4810-25-M; 3001-01-M; 6000-01-M; 3820-01-M; 6560-50-M; 6420-01-M; 4310-BF-M; 6718-01-M; 6750-04-M; 7555-01-M; 7537-01-M; 7534-01-M; 6050-28-M; 4910-62-M

APPENDIX C: OMB NEW RESTRICTIONS ON LOBBYING — INTERIM FINAL RULE (Continued)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

APPENDIX C: OMB NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL RULE (Continued)

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 first 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 activity, not 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 not 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.

APPENDIX C: OMB NEW RESTRICTIONS ON LOBBYING – INTERIM FINAL RULE (Continued)

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

BILLING CODES 3410-01-C; 6450-01-C; 6690-01-C; 8025-01-C; 7510-01-C; 3510-FE-C; 8120-01-C; 6710-24-C; 6116-01-C; 6051-01-C; 8230-01-C; 3210-01-C; 4210-32-C; 4410-18-C; 4510-23-C; 6810-25-C; 3801-01-C; 4000-01-C; 3820-01-C; 6560-50-C; 6820-61-C; 4310-RF-C; 6718-01-C; 4150-04-C; 7565-01-C; 7537-01-C; 7536-01-C; 6050-28-C; 4910-62-C

APPENDIX D: CLARIFICATIONS REGARDING LOBBYING RESTRICTIONS

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 2 1 1990

MEMORANDUM FOR ASSISTANT SECRETARIES FOR MANAGEMENT AND AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM: Allan V. Burman, Administrator for Federal Procurement Policy

D. Morgan Kinghorn, Acting Assistant Director for Financial Management

SUBJECT: Clarifications Regarding Lobbying Restrictions

On December 20, 1989, the Office of Management and Budget's (OMB's) interim final "Governmentwide Guidance for New Restrictions on Lobbying" was published in the Federal Register. The effective date of the guidance was December 23, 1989. Included in the guidance at Appendix A are the "Certification Regarding Lobbying" and the "Statement for Loan Guarantees and Loan Insurance." This memorandum provides clarifications concerning the guidance and the "Certification" and "Statement." Please alert your headquarters and field staffs to them.

First, the Certification and the Statement are intended to apply only to the instant Federal transaction for which a Certification or Statement is being obtained: the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, or the making of a Federal commitment for a loan guarantee or loan insurance.

Second, the final version of the Certification and Statement will reference OMB's guidance, including Subparts B and C, which specify certain "Agency and Legislative Liaison" and "Professional and Technical Services" activities which are allowable with appropriated funds and for which no disclosure is necessary.

Third, only bids, offers, applications and awards, submitted or made on or after the December 23, 1989 effective date of the restrictions need to contain certifications or statements and disclosures, if required, i.e., awards and commitments made before December 23, 1989, but modified, amended, extended, continued or renewed after that date do not need certifications or statements.

Fourth, only Federal transactions over the $100,000 (contracts, grants, cooperative agreements) or $150,000 (loans, loan guarantees, loan insurance) thresholds need certifications or statements and disclosures, if required.

Lastly, contracts subject to the Federal Acquisition Regulation (FAR) are covered by the January 30, 1990 FAR interim final rule (Federal Acquisition Circular 84-55), not the February 26, 1990 common rule. The February 26, 1990 rule applies only to contracts not subject to the FAR (generally non-procurement contracts) as well as to grants, loans, cooperative agreements, loan guarantee commitments, and loan insurance commitments.

APPENDIX E: CLARIFICATIONS REGARDING "GOVERMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING"

Herein follows the text of the first letter and OMB's reply:

[Lantos]

Herein follows the text of the second letter and OMB's reply:

[Penny]

Herein follows the text of OMB's clarification memorandum to the agencies:

June 12, 1990

MEMORANDUM FOR ASSISTANT SECRETARIES FOR MANAGEMENT AND AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM: Allan V. Burman, Administrator for Federal Procurement Policy /s/

Susan Gaffney, Acting Assistant Director for Financial Management /s/

SUBJECT: Clarifications Regarding "Governmentwide Guidance for New Restrictions on Lobbying"

On December 20, 1989, the Office of Management and Budget's (OMB's) interim final "Governmentwide Guidance for New Restrictions on Lobbying" was published in the Federal Register. The effective date of the guidance was December 23, 1989. Included in the guidance at Appendix A are the "Certification Regarding Lobbying" and the "Statement for Loan Guarantees and Loan Insurance." This memorandum provides clarifications concerning the guidance and the "Certification" and "Statement." Please alert your headquarters and field staffs to them.

First, the Certification and the Statement are intended to apply only to the instant Federal transaction for which a Certification or Statement is being obtained: the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, or the making of a Federal commitment for a loan guarantee or loan insurance.

Second, the final version of the Certification and Statement will reference OMB's guidance, including Subparts B and C, which specify certain "Agency and Legislative Liaison" and "Professional and Technical Services" activities which are allowable with appropriated funds and for which no disclosure is necessary.

Third, only bids, offers, applications and awards, submitted or made on or after the December 23, 1989 effective date of the restrictions need to contain certifications or statements and disclosures, if required, i.e., awards and commitments made before

APPENDIX E: CLARIFICATIONS REGARDING "GOVERMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING" (Continued)

December 23, 1989, but modified, amended, extended, continued or renewed after that date do not need certifications or statements unless they are modified or amended beyond the scope of the award. An existing Federal grant, loan, or cooperative agreement with such a modification or amendment needs to contain a certification and disclosure form, if required. A bilateral modification to an existing Federal contract which requires justification and approval pursuant to Federal Acquisition Regulation (FAR) section 6.303, citing the authorities in FAR section 6.302, and which exceeds the $100,000 threshold needs a certification and disclosure form, if required.

Fourth, only Federal transactions over the $100,000 (contracts, grants, cooperative agreements) or $150,000 (loans, loan guarantees, loan insurance) thresholds need certifications or statements and disclosures, if required.

Fifth, contracts subject to the FAR are covered by the January 30, 1990 FAR interim final rule (Federal Acquisition Circular 84-55), not the February 26, 1990 common rule. The February 26, 1990 rule applies only to contracts not subject to the FAR (generally non-procurement contracts) as well as to grants, loans, cooperative agreements, loan guarantee commitments, and loan insurance commitments.

Sixth, nothing contained in Subpart C of the guidance, Activities by Other Than Own Employees, applies to selling activities by independent sales representatives before an agency provided that the selling activities are prior to formal solicitation by an agency. Such selling activities are:

(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.

Note that the activities in (1) and (2) above are specifically limited to the merits of the matter. An independent sales representative who engages in selling activities described above, prior to the issuance of a formal solicitation by an agency, is not deemed to be engaged in influencing with regard to a particular contract and will not need to disclose such activities.

Seventh, under subsections (___.305(b) and (___.300(e), the examples cited are not intended, in any way, to be all inclusive, to limit the application of the "Professional and technical services" exemption provided in the law, or to limit the exemption to licensed professionals. "Professional and technical services" shall be advice and analysis directly applying any professional or technical expertise. Note that the "Professional and technical

services" exemption is specifically limited to the merits of the matter.

Lastly, the following clarify OMB's interim final guidance:

(1) To the extent a person can demonstrate that the person has sufficient monies, other than Federal appropriated funds, the Federal Government shall assume that these other monies were spent for any influencing activities unallowable with Federal appropriated funds. This assumption applies equally to persons who do and do not submit to the Federal Government cost or pricing data. Where no cost or pricing data are submitted, the Federal Government shall assume that monies spent are a reduction from profits otherwise available.

(2) Profits and fees earned under Federal contracts (see FAR subpart 15.9) are not considered appropriated funds. Profits, and fees that constitute profits, earned under Federal grants, loans, and cooperative agreements are not considered appropriated funds.

(3) Nothing in OMB's interim final guidance requires a person to make any changes to that person's existing accounting systems.

(4) The prohibition on use of Federal appropriated funds does not apply to influencing activities not in connection with a specific covered Federal action. These activities include those related to legislation and regulations for a program versus a specific covered Federal action.

BILLING CODE 3110-01-C

APPENDIX F: FEDERAL ACQUISITION CIRCULAR 84-55, FAR SUBPART 3.8

SUBPART 3.8—LIMITATION ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

3.800 Scope of subpart.

This subpart prescribes policies and procedures implementing section 319 of the Department of Interior and Related Agencies Appropriations Act, Pub. L. 101-121, which added a new section 1352 to title 31, United States Code, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions" (the Act).

3.801 Definitions.

"Agency," as used in this section, means an executive agency as defined in 2.101.

"Covered Federal action," as used in this section, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

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

"Indian tribe" and "tribal organization," as used in this section, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this section, 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.

"Local government," as used in this section, means a

APPENDIX F: FEDERAL ACQUISITION CIRCULAR 84-55, FAR SUBPART 3.8 (Continued)

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.

"Officer or employee of an agency," as used in this section, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code;

(c) A special Government employee, as defined in section 202, title 18, United States Code; and

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this section, 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.

"Reasonable compensation," as used in this section, 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.

"Reasonable payment," as used in this section, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this section, includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this section, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 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.

"State," as used in this section, 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 multi-State, regional, or interstate entity having governmental duties and powers.

3.802 Prohibitions.

(a) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds 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; or, the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Act also requires offerors to furnish a declaration consisting of both a certification and a disclosure. These requirements are contained in the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions.

(1) By signing its offer, an offeror certifies that no appropriated funds have been paid or will be paid in violation of the prohibitions in 31 U.S.C. 1352.

(2) The disclosure shall identify if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) 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 an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) *Agency and legislative liaison by own employees.*

(i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, 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 covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this section, providing any information specifically requested by an agency or Congress is permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are

APPENDIX F: FEDERAL ACQUISITION CIRCULAR 84-55, FAR SUBPART 3.8 (Continued)

not related to a specific solicitation for any covered Federal action:

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

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

(iv) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

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

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

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

(v) Only those activities expressly authorized by subparagraph (c)(1) of this section are permitted under this section.

(2) *Professional and technical services.*

(i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, 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 covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, 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 action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action;

(B) 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 action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(ii) For purposes of subdivision (c)(2)(i) 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 and 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.

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

(iv) Only those services expressly authorized by subdivisions (c)(2)(i)(A) and (B) of this section are permitted under this section.

(v) The reporting requirements of 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

3.803 Certification and disclosure.

(a) Any contractor who requests or receives a Federal contract exceeding $100,000 shall submit the certification and disclosures required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, with its offer. Disclosures under this section shall be submitted to the contracting officer using OMB standard form LLL, Disclosure of Lobbying Activities.

(b) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under

paragraph (a) 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(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.

(c) The contractor shall require the submittal of a certification, and if required, a disclosure form, by any person who requests or receives any subcontract exceeding $100,000 under the Federal contract.

(d) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the contracting officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

3.804 Policy.

(a) The contracting officer shall obtain certifications and disclosures as required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding $100,000.

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, to the official designated in accordance with agency procedures, for subsequent submission to Congress. The original of the disclosure shall be retained in the contract file.

3.805 Exemption.

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

3.806 Processing suspected violations.

Suspected violations of the requirements of the Act shall be referred to the official designated in agency procedures.

3.807 Civil penalties.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804-3408, and 3812, insofar as the provisions therein are not inconsistent with the requirements of this subpart.

3.808 Solicitation provision and contract clause.

(a) The provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, shall be included in solicitations expected to exceed $100,000.

(b) The clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, shall be included in solicitations and contracts expected to exceed $100,000.

APPENDIX G: FAR CLAUSE 52.203-11, "CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS"

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

As prescribed in 3.808, insert the following provision:

CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,—

(1) No 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 an employee of a Member of Congress on his or her behalf 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 (including profit or fee received under a covered Federal transaction) 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 an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

(End of provision)

APPENDIX H: FAR CLAUSE 52.203-12, "LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS"

52.203-12 Limitation on Payments to Influence Certain Federal Transactions.

As prescribed in 3.808, insert the following clause:

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

(a) *Definitions*

"Agency," as used in this clause, means executive agency as defined in 2.101

"Covered Federal action," as used in this clause, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

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

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives

"Influencing or attempting to influence," as used in this clause, 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.

"Local government," as used in this clause, 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.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code

(c) A special Government employee, as defined in section 202, title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, 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

"Reasonable compensation," as used in this clause, 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.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector

"Recipient," as used in this clause, includes the Contractor and all subcontractors This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 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.

"State," as used in this clause, 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 multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions*

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds 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; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

APPENDIX H: FAR CLAUSE 52.203-12, "LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS" (Continued)

(3) The prohibitions of the Act do not apply under the following conditions:

(i) *Agency and legislative liaison by own employees*

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, 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 covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

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

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

(D) The following agency and legislative liaison activities are permitted 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 Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) *Professional and technical services.*

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of—

(*1*) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, 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 action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(*2*) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of 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 action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "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 and 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

APPENDIX H: FAR CLAUSE 52.203-12, "LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS" (Continued)

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 and any other requirements in the actual award documents

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(*1*) and (*2*) of this clause are permitted under this clause

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person

(c) *Disclosure*

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, 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 subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes—

(i) 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

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

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

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding $100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.

(e) *Penalties.*

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

APPENDIX I: SUMMARY OF POTENTIAL BENEFITS RESULTING FROM REVIEW

Recommendation Reference	Description of Benefits	Type of Benefit
1., 2.a., 2.b., 2.c., 2.d., and 3.	Program Results. Improve compliance with the Byrd Amendment.	Nonmonetary

APPENDIX J: ACTIVITIES VISITED OR CONTACTED

Office of the Secretary of Defense

Director of Defense Procurement, Washington, DC
Director for Research and Laboratory Management, Washington, DC
Director, Defense Research and Engineering, Washington, DC

Department of the Army

Office of the Assistant Secretary of the Army, Research, Development and Acquisition, Washington, DC
Army Missile Command, Redstone Arsenal, AL
Aberdeen Proving Ground Support Activity, Aberdeen, MD
Army Armament, Munitions and Chemical Command, Rock Island, IL
Army Aviation Systems Command, St. Louis, MO
Army Aviation Systems Activity, Ft. Eustis, VA
Army Communications-Electronics Command, Ft. Monmouth, NJ
Army Strategic Defense Command, Huntsville, AL
Army Tank-Automotive Command, Warren, MI
Army Corps of Engineers (Contracts, Research and Technology), Washington, DC
Army Contracting Support Agency, Arlington, VA
Army Medical Research Institute of Infectious Diseases, Fort Detrick, MD
Headquarters, Army Materiel Command, Alexandria, VA
National Guard Bureau, Washington, DC

Department of the Navy

Office of the Chief of Naval Research, Arlington, VA
Naval Avionics Center, Indianapolis, IN
Naval Aviation Supply Center, Philadelphia, PA
Naval Coastal Systems Center, Panama City, FL
Naval Sea Systems Command, Washington, DC
Naval Supply Center, Charleston, SC
Naval Supply Center, Puget Sound, Bremerton, WA
Naval Training Systems Center, Orlando, FL
Naval Weapons Center, China Lake, CA
Navy Ships Parts Control Center, Mechanicsburg, PA
Space and Naval Warfare Systems, Washington, DC
Strategic Systems Programs Office, Washington, DC
Marine Corps Logistics Base, Albany, GA

Department of the Air Force

Office of the Assistant Secretary of the Air Force (Acquisition), Washington, DC
Aeronautical Systems Division, Wright-Patterson Air Force Base, OH
Air Force Flight Test Center, Edwards Air Force Base, CA
Ballistic Missile Organization, Norton Air Force Base, CA
Electronic Systems Division, Hanscom Air Force Base, MA

Department of the Air Force (Cont'd)

Ogden Air Logistics Center, Hill Air Force Base, UT
Oklahoma City Air Logistics Center, Tinker Air Force Base, OK
Sacramento Air logistics Center, McClellan Air Force Base, CA
San Antonio Air Logistics Center, Kelly Air Force Base, TX
Space Systems Division, Los Angeles, CA
Warner Robins Air Logistics Center, Robins Air Force Base, GA
Office of Scientific Research, Washington, DC

Defense Agencies

Headquarters, Defense Logistics Agency, Alexandria, VA
Defense Logistics Agency, Defense National Stockpile Center, Arlington, VA
Defense Advance Research Projects Agency, Arlington, VA
Headquarters, Defense Contract Audit Agency, Alexandria, VA
Defense Contract Audit Agency Resident Auditors at:
- Boeing Aircraft Company, Seattle, WA
- FMC Corporation, Chicago, IL
- General Electric Corporation, Philadelphia, PA
- Grumman Corporation, Bethpage, NY
- Hercules Aerospace Company, Wilmington, DE
- Kaman Aerospace Corporation, Bloomfield, CT
- Loral Corporation, New York, NY
- McDonnell Douglas, St. Louis, MO
- Martin Marietta Corporation, Bethesda, MD
- Northrop Corporation, Los Angeles, CA
- Sunstrand Corporation, Rockford, IL
- Textron Inc., Providence, RI

Defense Contract Management Command Corporate Administrative Contracting Officers at:
- Boeing Aircraft Company, Seattle, WA
- FMC Corporation, Chicago, IL
- General Electric Corporation, Philadelphia, PA
- Grumman Corporation, Bethpage, NY
- Hercules Aerospace Company, Wilmington, DE
- Kaman Aerospace Corporation, Bloomfield, CT
- Loral Corporation, New York, NY
- McDonnell Douglas, St. Louis, MO
- Martin Marietta Corporation, Bethesda, MD
- Northrop Corporation, Los Angeles, CA
- Sunstrand Corporation, Rockford, IL
- Textron Inc., Providence, RI

Defense Contract Management Area Operations - Boston

Non-DoD Federal Organizations

Office of Management and Budget, Washington, DC
Government Accounting Office, Washington, DC
U.S. Congress:
  Clerk of the House of Representatives, Washington, DC
  Secretary of the Senate, Washington, DC
  Senate Committee on Appropriations, Washington, DC
  Senate Committee on Governmental Affairs, Washington, DC
  Office of Congressman Neal Smith, Washington, DC
Department of Health and Human Services, Office of
  Inspector General at:
    Region III, Philadelphia, PA
    Region IV, Atlanta, GA

Non-Government Activities

Boeing Aircraft Company, Seattle, WA
FMC Corporation, Chicago, IL
General Electric Corporation, Philadelphia, PA
Grumman Corporation, Bethpage, NY
Hercules Aerospace Company, Wilmington, DE
Howmet Corporation, Greenwich, CT
Kaman Aerospace Corporation, Bloomfield, CT
Loral Corporation, New York, NY
McDonnell Douglas, St. Louis, MO
Marlowe & Company, Washington, DC
Martin Marietta Corporation, Bethesda, MD
Maxco Inc., Dayton, OH
Northrop Corporation, Los Angeles, CA
Nuclear Metals, Inc., Concord, MA
SEMATECH, Inc., Austin, TX
Sunstrand Corporation, Rockford, IL
Textron, Inc., Providence, RI
United Technologies Corporation, Sikorsky Aircraft Division,
  Stratford, CT
Drake University, Des Moines, IA
Lehigh University, Bethlehem, PA
University of Hawaii, Honolulu, HI
University of Mississippi, University, MS

APPENDIX K: REPORT DISTRIBUTION

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition
Director of Defense Procurement
Comptroller of the Department of Defense
Director, Defense Acquisition Regulations System

Other DoD

Secretary of the Army
Assistant Secretary of the Army (Financial Management)
Secretary of the Navy
Assistant Secretary of the Navy (Financial Management)
Secretary of the Air Force
Assistant Secretary of the Air Force (Financial Management and Comptroller)
Director, Defense Contract Audit Agency

Non-DoD Activities

Executive Associate Director, Office of Management and Budget
Administrator, Office of Federal Procurement Policy

U.S. General Accounting Office, NSIAD Technical Information Center
Inspector General, Department of Health and Human Services, Office of the Assistant Inspector General for Public Health Services Audits

Congressional Committees:

Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
Senate Ranking Minority Member, Committee on Armed Services
Senate Committee on Appropriations
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Ranking Minority Member, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Operations
House Subcommittee on Legislation and National Security, Committee on Government Operations

PART IV - MANAGEMENT COMMENTS

Executive Associate Director, Office of Management and Budget

Director of Defense Procurement

Defense Contract Audit Agency

MANAGEMENT COMMENTS: EXECUTIVE ASSOCIATE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 20, 1991

Mr. David K. Steensma
Director, Contracts Management Directorate
Office of the Inspector General
Department of Defense
400 Army Navy Drive
Arlington, VA 22202-2884

Dear Mr. Steensma:

Thank you for the opportunity to review and comment on the proposed report entitled "Draft Report on the Review of Lobbying Activities (Project No. 1CH-50161." We appreciate your assistance in helping us determine the adequacy of existing guidance in this important area, and the degree to which it is being implemented in the Department. We also appreciate the expeditious manner in which you and your staff have responded to our request for assistance.

We concur in your proposed recommendation that this office issue guidance clarifying the difference between program lobbying and lobbying for grants or contracts in the context of follow-on sole source contracts and grants for ongoing programs.

The recommendations you have addressed to the Director of Defense Procurement and the Director of the Defense Contract Audit Agency also appear to us to have merit, and we hope they will be received and acted upon appropriately by those officials.

In our review of the draft report, we also noted several specific points requiring either clarification or correction. Those points are listed on the enclosure.

Thank you, again, for your assistance and the opportunity to comment. We will proceed with implementation of the recommendation applicable to this office immediately upon receipt of your final report.

Sincerely,

Frank Hodsoll

Frank Hodsoll
Executive Associate Director

Enclosure

Specific Comments
of the
Office of Management Budget

1. Page 1, Executive Summary - The first paragraph should be corrected to indicate that the "Byrd Amendment" was enacted on October 23, 1989 not December 23, 1989, as stated. The provisions became effective on December 23, 1989. i

2. Page 4, Draft Report - Another sentence should be added to the third bullet to address a related point. Specifically, it should be expressly noted that contract modifications -- made after December 23, 1989 -- that incorporate new requirements broadening the scope of a previously exempt contract are covered by the Byrd Amendment. 2

3. Page 5, Draft Report - The third paragraph should be amended to indicate that, certification is required with the application, not "prior to award." Certification is permitted prior to award if there is no application process. 3

MANAGEMENT COMMENTS: DIRECTOR OF DEFENSE PROCUREMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3000

ACQUISITION

SEP 13 1991

DP/CPA

MEMORANDUM FOR THE DOD INSPECTOR GENERAL

SUBJECT: Draft Report on the Review of Lobbying Activities (Project No. 1CH-5016)

This is in response to your memorandum of September 3 transmitting the subject draft report. As indicated in our memorandum of August 29, we have many concerns with the draft report and do not concur with any of its recommendations.

The report, which comprehensively examined the lobbying issue, states in several places that all contractors who were required to execute a certification had done so, and all contracts which needed to include the certification requirement contained it. The report also stated there were no indications that contractors had not filed disclosure forms when required to do so. In addition, there had been no allegations of improper lobbying activity reported to the Inspector General's Hotline. Furthermore, we would like to reiterate that the auditors have done a complete and thorough job during the course of their review, carefully selecting those firms and locations which had the highest likelihood of lobbying activity.

The recommendations made in the report would add bureaucratic requirements to an already clogged and overburdened system. No problems were found with contractor compliance and, considering the potential cost of implementing the recommendations, we disagree with all of the recommendations. We are unable, after repeated review of our lobbying reporting procedures and rereading of your report, to draw any nexus between your recommendations and the findings contained in the audit report.

Specific DoD comments on the recommendations are provided in the attachment.

Eleanor Spector

Eleanor R. Spector
Director, Defense Procurement

Attachment

DOD IG DRAFT REPORT ON THE REVIEW OF LOBBYING ACTIVITIES
DATED SEPTEMBER 13, 1991
PROJECT NO. 1CH-5016

"DEFENSE PROCUREMENT: SOLICITATION FOR CONTRACT SUPPORT SERVICES LIMITED COMPETITION"

DIRECTOR, DEFENSE PROCUREMENT COMMENTS

* * * * *

RECOMMENDATION 1: We recommend that the Office of Management and Budget issue guidance to Federal Agencies that clarifies, in the context of the cost principles contained in the Federal Acquisition Regulation Part 31, the difference between program and contract/grant lobbying as it relates to follow-on sole-source contracts or grants for on-going programs.

DDP POSITION: None. This recommendation will be addressed by the Office of Federal Procurement Policy.

RECOMMENDATION 2: We recommend that the Director of Defense Procurement:

a. Prepare a DoD-wide notice for signature by the Secretary of Defense to inform senior officials in the DoD Components of Byrd Amendment restrictions and disclosure requirements.

b. Develop statements about the Byrd requirements and the need to report suspected violations of the Amendment for inclusion in the guidance for annual ethics statements filed by senior officials in DoD.

c. Develop a training module for use by DoD components to make DoD officials aware of the requirements of the Byrd Amendment.

d. Establish a procedure for a periodic data call for the semiannual reports to Congress, requesting DoD components to identify the number of covered transactions, the number of certifications received and the number of disclosure forms obtained from recipients of contracts, grants, loans and cooperative agreements.

DDP POSITION:

a. Nonconcur. A notice from the Secretary of Defense to inform senior officials of the Byrd Amendment provisions is unnecessary as no problems concerning improper lobbying of senior officials were uncovered.

b. Nonconcur. The only statement that is filed annually by senior government officials is the SF 278, Statement of Financial

Disclosure. These forms are solely within the control of the Office of Government Ethics, and they seek very specific information unrelated to lobbying issues. It would be inappropriate to add questions on lobbying to an already complex and lengthy form. In addition, the offices to which the forms are submitted have no direct dealings with contracting offices which are the only ones who could cross check the information. An elaborate and manpower intensive bureaucracy would have to be established for this effort.

c. Nonconcur. Contracting personnel are aware of the Byrd Amendment as its requirements are set forth in the Federal Acquisition Regulation. Since the system appears to be functioning well internally, this does not seem to be a cost effective recommendation.

d. Nonconcur. There is no reason or rationale to collect the requested information. All transactions over $100,000 which involve new contracts or add new work to old contracts are covered. The clauses covering the Byrd Amendment are inserted automatically by the contracting officer. No instances of improperly leaving the clause out of a contract were uncovered by the IG. Each contract which has the clause must have a certification before the contract is awarded. Again, no instances of noncompliance were found by the IG. This statistical information would be burdensome and expensive to collect. After receipt we would have no use for it, and it would simply be filed with no future use contemplated. In recognition that five forms were not correctly forwarded to OSD though they were received from contractors, we will emphasize to the Services and Agencies the importance of the reporting requirements.

RECOMMENDATION 3: We recommend that the Director, Defense Contract Audit Agency establish procedures for the review of contractor lobbying and agency liaison costs, for audit personnel to use in determining if lobbying activities subject to the Byrd Amendment were reported on lobbying activity disclosure forms.

DDP POSITION: None. DCAA will respond directly to this recommendation.

MANAGEMENT COMMENTS: DEFENSE CONTRACT AUDIT AGENCY

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

12 SEP 1991

PLD 703.3.3.10 (1CH-5016)

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING, DEPARTMENT OF DEFENSE

SUBJECT: IG Draft Report on Special Review of Lobbying Activities (Project No. 1CH-5016)

Our response to your draft report dated 3 September 1991 on the review of lobbying activities is enclosed.

We will be pleased to discuss our response further with you or your staff. Please direct questions concerning our response to Mr. William I. Luke, Chief, Policy Liaison Division, at (703) 274-7521.

William J. Sharkey
Assistant Director
Policy and Plans

Enclosure

Recommendation 3:

"We recommend that the Director, Defense Contract Audit Agency establish procedures for the reviews of contractor lobbying and agency liaison costs, for audit personnel to use in determining if lobbying activities subject to Byrd Amendment were reported on lobbying activity disclosure forms."

DCAA Response:

Concur in Principle.

Current DCAA audit guidance requires the auditor to:

a. Evaluate the contractor's internal controls for assuring that unallowable lobbying costs (as defined in the Byrd Amendment and implementing OMB guidance), including directly associated costs, are identified and excluded from any billing, claim, or proposal applicable to U.S. Government contracts,

b. Assess the risk that unallowable costs have been, or will be, charged to the Government, and, when appropriate, perform audit steps to evaluate the risk, and

c. Report on the results of the audit effort to the contracting officer.

The recommendation would levy an additional requirement on the auditor to determine if the contractor has disclosed, in the prescribed manner, unallowable lobbying activity performed by other than the contractor's own employees, primarily consultants.

We believe that testing for compliance with the disclosure requirement is feasible, provided it is performed in conjunction with our normal audits of incurred costs, particularly our audits of professional and consultant service costs. In other words, we would agree to ascertain if the contractor has disclosed unallowable lobbying activity that has been identified, either by the contractor or the auditor, during the course of our audits of incurred costs.

As a practical matter, we would expect that our auditors will encounter the same obstacles as encountered by the IG reviewers during their review, such as:

a. Confusion on the part of contractors as to the exact type of lobbying activity that is unallowable and subject to disclosure,

b. Insufficient detail in contractor books and records to permit the auditor to determine compliance with the disclosure requirement, and

ENCLOSURE

c. Reluctance on the part of contractors to permit the auditor sufficient access to records to test for compliance with the disclosure requirement, particularly when no lobbying costs were claimed.

To make this effort meaningful, and before we can implement your recommendation, it is essential that:

a. Clarifying guidance be issued which addresses the exact nature of lobbying activity that is unallowable and subject to disclosure, and

b. Specific record keeping requirements are prescribed for contractors to allow auditors to perform compliance testing. Such record keeping requirements could be incorporated into the contract clauses at FAR 52.203-11 and 52.203-12.

Notwithstanding our concurrence with the above recommendation, we believe that the most effective way to enforce the Byrd Amendment disclosure requirement would be to direct DoD officials to notify a designated official in each component when persons lobby them for contracts or grants. This simple procedure would provide the ultimate enforcement mechanism, by providing a basis for comparing disclosures by the persons doing the lobbying with persons being lobbied. We note that this recommendation was contained in the IG's working draft report but was not included in the draft report.