



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGING
Harrisburg, Pa. 17101

PENNSYLVANIA DEPARTMENT OF AGING

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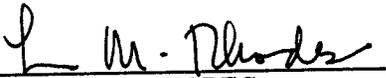
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AGING PROGRAM DIRECTIVE

SUBJECT: CERTIFICATION AND DISCLOSURE REGARDING LOBBYING

TO: COUNTY COMMISSIONERS CHAIRPERSONS, NONPROFIT AAA GOVERNING BOARDS

COPIES: EXECUTIVE STAFF PA COUNCIL ON AGING
DIVISION OF FIELD OPERATIONS PDA GRANTEES AND CONTRACTORS
AREA AGENCIES ON AGING COMPTROLLER
ADMINISTRATION ON AGING (AoA) DPW, OFFICE OF POLICY, PLANNING AND EVALUATION

FROM: 
LINDA M. RHODES
SECRETARY
DEPARTMENT OF AGING

PURPOSE: The purpose of this Aging Program Directive (APD) is to apprise Area Agencies on Aging of recently amended lobbying requirements and to request them to submit a certification regarding lobbying and, where appropriate, a disclosure statement.

BACKGROUND: The U.S. Administration on Aging (AOA) has called the attention of State Units on Aging (SUAs) to recent changes related to lobbying addressed in Section 319 of Public Law 101-121, and implemented under 45 CFR 93 (55 Federal Register 6736, Feb. 26, 1990). Generally, these changes prohibit 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. They also require that each person or entity requesting or receiving federal funding or commitments of funding or loan guarantees must file disclosure forms when any lobbying event requires it.

Area Agencies on Aging are advised that these requirements are applicable not only to federal grantees, such as State Units on Aging, but also to subgrantees, such as Area Agencies on Aging and their service providers.

REQUIREMENTS:

Area Agencies on Aging (AAAs) are requested to submit the attached Certification Regarding Lobbying (ATTACHMENT I), appropriately signed, to the Department no later than February 15, 1991. Furthermore, AAAs shall obtain and keep on file a Certification Regarding Lobbying for each service provider receiving Department funds in excess of \$100,000 under a subcontract with the AAA.

Where required, AAAs shall submit to the Department a completed Disclosure of Lobbying Activities Form (Standard Form-LLL in the attached Federal regulations) for itself or a provider. It is the responsibility of the AAA and, where appropriate, a service provider to determine when an event requires disclosure under 45 CFR 93. For the use of AAAs in making such determinations, the Department is enclosing with the transmittal of this APD a copy of 45 CFR 93 (ATTACHMENT II) and a copy of Focal Point (Issue 2: October 1990) (ATTACHMENT III) which AAAs most likely received at an earlier date. This issue of Focal Point contains a report "based on an analysis of the legislation and regulations pertaining to advocacy conducted by the National Senior Citizens Law Center at the request of the National Association of Area Agencies on Aging."

ATTACHMENT I

CERTIFICATION REGARDING LOBBYING

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 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, subgrantees, 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.

Date

Authorized Signature

Date

Authorized Signature

Date

Authorized Signature

Federal Register

Monday
February 26, 1990

Part III

New Restrictions on Lobbying; Interim Final Rule

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

ACTION

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

DEPARTMENT OF AGRICULTURE
 7 CFR PART 3018

DEPARTMENT OF ENERGY
 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 Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, Veterans Affairs; **ACTION,** Agency for International Development, Environmental Protection Agency, Export-Import Bank of the United States, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Overseas

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

ACTION: Interim final rule; request for comments.

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

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

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

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

SUPPLEMENTARY INFORMATION:

A. Background

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

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

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

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

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

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

B. Regulatory Process Matters

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

(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 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 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.

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

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

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

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

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

Subpart B—Activities by Own Employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly 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 or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly 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

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

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 3470-01-M; 6450-01-M; 6690-01-M;
8025-01-M; 7510-01-M; 3610-FE-M; 6120-01-M; 4710-
24-M; 6110-01-M; 6051-01-M; 8230-01-M; 2810-01-M;
4210-32-M; 4410-18-M; 4510-23-M; 4610-25-M; 3801-01-
M; 4000-01-M; 3820-01-M; 6560-50-M; 6820-61-M; 4310-
PW-M; 6710-01-M; 4150-04-M; 7555-01-M; 7537-01-M;
7534-01-M; 6830-20-M; 4910-42-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
9348-0046

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

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p><i>Congressional District, if known:</i></p>	<p>5. If Reporting Entity in No. 4 is Subawardee. Enter Name and Address of Prime:</p> <p><i>Congressional District, if known:</i></p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> <p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p> <p style="text-align: center;"><i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i></p>		
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply):</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____</p>	
<p>12. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____</p>		
<p>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:</p> <p style="text-align: center;"><i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i></p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>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.</p>		<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>
<p>Federal Use Only:</p>		<p>Authorized for Local Reproduction Standard Form - LLL</p>

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.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[Empty reporting area for disclosure of lobbying activities]

Authorized for Local Reproduction
Standard Form - 111-A

BILLING CODES 3410-01-C; 6450-01-C; 6690-01-C;
8025-01-C; 7510-01-C; 9510-FE-C; 8120-01-C; 4710-24-
C; 6110-01-C; 6061-01-C; 8230-01-C; 8210-01-C; 4210-
32-C; 4410-18-C; 4510-23-C; 4810-25-C; 3901-01-C;
6090-01-C; 3620-01-C; 6500-50-C; 6830-01-C; 4310-RF-
C; 8710-01-C; 4160-04-C; 7555-01-C; 7537-01-C; 7536-
01-C; 8050-26-C; 4910-62-C

Subpart F—Agency Reports

- 18.600 Semi-annual compilation.
- 18.605 Inspector General report.

Appendix A to Part 18—Certification Regarding Lobbying

Appendix B to Part 18—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 301.

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

2. Part 18 is further amended as follows:

a. Section 18.405 is amended by adding paragraph (a) to read as follows:

§ 18.405 Penalty procedures.

(a) The Department of the Interior implementation of the Program Fraud and Civil Remedies Act of 1985 is found at 43 CFR part 35.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 18

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Chief, Policy Division, Office of the Comptroller, (202) 648-3718.

List of Subjects in 44 CFR Part 18

Contract programs, Grant programs, Loan programs, Lobbying.

Title 44 of the Code of Federal Regulations is amended as set forth below.

Arthur E. Curry,
Chief, Policy Division, Office of the Comptroller.

Part 18 is added to read as set forth at the end of the common preamble.

PART 18—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

- Sec.
- 18.100 Conditions on use of funds.
 - 18.105 Definitions.
 - 18.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 18.200 Agency and legislative liaison.
- 18.205 Professional and technical services.
- 18.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 18.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 18.400 Penalties.
- 18.405 Penalty procedures.
- 18.410 Enforcement.

Subpart E—Exemptions

- 18.500 Secretary of Defense.

Subpart F—Agency Reports

- 18.600 Semi-annual compilation.
- 18.605 Inspector General report.

Appendix A to Part 18—Certification Regarding Lobbying

Appendix B to Part 18—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 551, 552, 553; 5 U.S.C. 601, *et seq.*; E.O. 12291, Reorganization Plan No. 3 of 1976, E.O. 12127, E.O. 12148, E.O. 12857, E.O. 12899.

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 93

FOR FURTHER INFORMATION CONTACT: Beverly Cordova, 202-245-0377.

List of Subjects in 45 CFR Part 93

Contract programs, Grant programs, Loan programs, Lobbying.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Dated: February 13, 1990.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Part 93 is added to read as set forth at the end of the common preamble.

PART 93—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

- Sec.
- 93.100 Conditions on use of funds.
 - 93.105 Definitions.
 - 93.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 93.200 Agency and legislative liaison.
- 93.205 Professional and technical services.
- 93.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 93.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 93.400 Penalties.
- 93.405 Penalty procedures.
- 93.410 Enforcement.

Subpart E—Exemptions

- 93.500 Secretary of Defense.

Subpart F—Agency Reports

- 93.600 Semi-annual compilation.
- 93.605 Inspector General report.

Appendix A to Part 93—Certification Regarding Lobbying

Appendix B to Part 93—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 301.

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

NATIONAL SCIENCE FOUNDATION

45 CFR Part 604

FOR FURTHER INFORMATION CONTACT: Jodi Condes, 357-7880.

List of Subjects in 45 CFR Part 604

Contract programs, Grant programs, Loan programs, Lobbying.

Title 45 of the Code of Federal Regulations is amended as set forth below.

William S. Kirby,

Procurement Executive.

Part 604 is added to read as set forth at the end of the common preamble.

PART 604—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

- Sec.
- 604.100 Conditions on use of funds.
 - 604.105 Definitions.
 - 604.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 604.200 Agency and legislative liaison.
- 604.205 Professional and technical services.
- 604.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 604.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 604.400 Penalties.
- 604.405 Penalty procedures.
- 604.410 Enforcement.

Subpart E—Exemptions

- 604.500 Secretary of Defense.

Subpart F—Agency Reports

- 604.600 Semi-annual compilation.
- 604.605 Inspector General report.

Appendix A to Part 604—Certification Regarding Lobbying

Appendix B to Part 604—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 42 U.S.C. 1870.

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

Issue 2: October 1990

AAAs and Advocacy

May Area Agencies on Aging legally engage in advocacy and lobbying activities? Is there any difference between advocating at the Federal or state levels? What issues are the proper domain for advocacy by AAAs? As these questions suggest, there is often ambiguity on the part of AAAs regarding their advocacy role and responsibilities. As a result, some AAAs are hesitant about engaging in advocacy activities that are permissible under Federal statutes and regulations. To clarify the advocacy activities that are allowable for Area Agencies, this *Focal Point* summarizes the key issues and outlines steps Area Agencies can take to assure that their advocacy activities are in compliance with Federal legislation and regulations. This report is based on an analysis of the legislation and regulations pertaining to advocacy conducted by the National Senior Citizens Law Center at the request of the National Association of Area Agencies on Aging.

Summary of Findings

Under the Older Americans Act, Area Agencies on Aging have a responsibility to engage in advocacy on behalf of older persons. Subsequent legislation and regulations have not abridged that responsibility. *Legislation and regulations that curb advocacy and lobbying activities do so by limiting the use of Federal funds in carrying out some legislative advocacy. The limiting legislation and regulations do not prohibit or restrict Area Agencies on Aging from using non-Federal funds or contributions to support their advocacy or political activities.*

In order for a Federally funded activity to be viewed as acceptable legislative advocacy (i.e., able to be charged against the agency's Federal contribution), the Area Agency on Aging should ensure that all advocacy activities are in keeping with the purposes and principles of the Older Americans Act and its implementing regulations. The following are guidelines for keeping within Federal statutes and regulations regarding the use of Federal funds for advocacy.

1. Area Agencies may use Federal funds to respond to specific requests for information, technical advice or assistance, or for their opinions from a Member of Congress, Federal departments and agencies, or state legislatures and their subdivisions.
2. For the use of Federal funds to support unsolicited communication to influence legislation, the Area Agency on Aging should establish that the issues about which it communicates to legislative or related bodies are of *bona fide* interest to the Area Agency; that they are issues that affect the agency itself and/or its constituency (persons 60 years old and older). The communication may not involve a specific grant or contract that directly benefits the Area Agency (such as an AoA discretionary grant). Examples of issues that are consistent with this guideline include: the Federal budget and appropriations; reauthorization of the Older Americans Act; and legislation pertaining to Medicare and Medicaid, Social Security, housing, caregivers, and older workers.
3. The communication or contact should, when possible, present a balanced view of the topic.
4. The issues selected for advocacy should be consistent with the Area Agency's priorities and goals for programs and services within their planning and service area.
5. The Area Agency should have a protocol for determining the appropriateness of legislative contacts about new issues that may not be part of current priority statements or goals. This can be a simple statement that references examples of relevant issues, a standard (such as benefiting older persons), or a process (such as consultation with the Chair of the AAA Advisory Council or policy committee).
6. The Area Agency should insure that its advisory council is properly consulted and involved in decisions that lead to legislative contacts.

Background to the Problem

Many Area Agencies on Aging are finding it difficult to define permissible bounds of advocacy in fulfilling their statutory and regulatory mandate to serve as advocates for the elderly, particularly with respect to state, local, and national legislative issues and with respect to communications with legislators and their staffs. The statutory and regulatory provisions which mandate state and Area Agency advocacy do not adequately define advocacy nor do they define acceptable advocacy functions or restrictions.

To determine the permissible bounds of advocacy, guidance was obtained from several sources: (a) the Older Americans Act, (b) implementing regulations from the Administration on Aging (AoA), (c) the Office of Management and Budget (OMB) Circular A-122, (d) correspondence between Congress, AoA, and OMB; (e) new Internal Revenue Service regulations, and (f) the recently enacted New Restrictions on Using Federal Funds for Lobbying for Grants, Contracts, Loans, and Other Forms of Federal Assistance (P.L. 101-121) and the subsequent Administration on Aging Program Instruction (AoA-PI-90-09). Each of these sources will be briefly reviewed. State regulations are not reviewed.

The Older Americans Act and Implementing Regulations

The Older Americans Act of 1965 (P.L. 89-73), as amended in 1987 (P.L. 100-175), includes a provision which clearly states that Area Agencies on Aging have a responsibility for advocacy. The provision [Sec. 306(a)(6)(D)] states that Area Agencies on Aging shall serve:

as the advocate and focal point for the elderly within the community by monitoring, evaluating, and commenting upon all policies, programs, hearings, levies, and community actions which will affect the elderly.

Under the Act, Area Agencies have broad advocacy responsibilities. The final regulations implementing the 1987 amendments, issued by the Administration on Aging (Federal Register, August 31, 1988), gave considerable discretion to Area Agencies on the issue of advocacy. Under Section 1821.61, "Advocacy Activities of the Area Agency," the regulations rephrased Section 306(a)(6)(D) of the Act to read:

Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons.

The regulations further state that the Area Agencies advocacy role includes a broad scope of activities, including: (a) serving as the public advocate for the development of community-based systems of service; (b) soliciting comments from the public on the needs of older persons; (c) representing the interests of older persons to local level and executive branch officials, public or private agencies or organizations; and (d) consulting with the state's long-term care ombudsman program. The final paragraph of this section makes reference to the regulations not superseding the prohibitions against the use of Federal funds for lobbying contained in OMB Circular A-122. The phrase "where appropriate," added to Section 306 (quoted above) leaves AoA's intentions regarding Area Agency advocacy open to interpretation. The broad array of activities included under the section on advocacy, and that the regulations do not establish guidelines regarding specific activities that are in (or out of) compliance with the Act, allow Area Agencies considerable latitude in selecting issues to pursue and in their advocacy activities.

Office of Management and Budget (OMB) Circular A-122

On April 27, 1984, OMB published, in the Federal Register, "Circular A-122 Cost Principles for Non-Profit Organizations - Lobbying Revision." The Circular applies to the use of Federal funds for lobbying activities. Section a.(1)-(5) of the Circular delineates a range of lobbying activities that can not be done with Federal funds and are, thus, unallowable under Federal grants or contracts. Section b. (1)-(3) describes activities that are allowable expenditures for Federal funds. The following activities may not be paid for by Federal grants or contracts: (a) attempts to influence the outcomes of any Federal, State, or Local election through cash contributions, endorsements, or publicity; or (b) establishing, administering, contributing to, or paying the expenses of a political party, campaign, or political action committee.

established for the purpose of influencing the outcomes of elections.

Activities Area Agencies may engage in (Federally refundable activities) under Circular A-122 include: (a) requests by a Member of Congress, State Legislature, or a subdivision for technical and factual information on a topic directly related to the performance of a grant or contract through hearing testimony, statements, or letters to Congress or a state legislature; (b) lobbying in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement; and (c) any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

Congressional Correspondence with OMB and AoA

In correspondence with former Representative Mario Biaggi (February 14, 1984), OMB's Deputy Assistant Director for Legislative Affairs, Frederick S. Upton, commented on the intention of the revisions being drafted to Circular A-122. He stated, "I want to make it clear that this cost principle will not negate the Congressional intent of advocacy as provided in the Older Americans Act of 1965." He added, "the proposed rule would bar Federal reimbursement of costs of political activities and most types of lobbying, but would not in any way restrict lobbying or political activities paid for with non-Federal funds."

Representative Biaggi's staff director for the Subcommittee on Human Services, Robert Blancato, wrote to former Commissioner on Aging Carol Fisk to obtain clarification on the regulations governing Area Agency advocacy, particularly the regulations' reference to OMB Circular A-122. Commissioner Fisk responded (October 6, 1988):

"Since the Act is clear with regard to the role that AoA, State Agencies and Area Agencies on Aging should play in advocating on behalf of Older Americans, there should be no conflict."

The OMB circular, as clarified by congressional correspondence with OMB and the Commissioner on Aging, allows for Federal reimbursement for responding to requests from Federal and State officials and their staffs, and advocacy performed under the auspices of the Older Americans Act for: (a) purposes that enable Area Agencies to carry out their mission under the Act, and (b) on behalf of older persons.

Internal Revenue Service Regulations

The Internal Revenue Service recently issued final regulations (Federal Register, August 31, 1990) governing lobbying by private non-profit, 501(c)(3) organizations. For these organizations, either of two rules apply. First, the "substantial part" rule concerns the entire lobbying effort by an organization, both in terms of funds expended and the efforts of volunteers. Thus, an organization may be said to use a substantial part of its resources in lobbying if they spend 10% of their budget lobbying or if staff or volunteers devote a large part of their time (vaguely defined) on such activities. A charitable organization will lose its tax-exempt status if a substantial part of its activity is lobbying. Secondly, organizations may, instead, elect the "expenditure test." Under the expenditure test, an excise tax is imposed on an organization if its direct lobbying expenditure "normally" exceeds \$100,000 or its grassroots expenditure exceeds \$25,000. As these rules apply only to Area Agencies that are 501(c)(3) organizations, and virtually none of these devote a significant part of their budget to lobbying activities, they have little direct impact.

New Restrictions on Using Federal Funds for Lobbying for Grants, Contracts, Loans, and Other Forms of Federal Assistance

On October 23, 1989, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 was signed into law (P.L. 101-121). Section 319 of this Act generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of government for a specific contract, grant, or loan. Further, each person receiving a Federal grant, cooperative agreement, or loan (or loan guarantee), must disclose lobbying. This new Act is primarily aimed at lobbying by the outside consultants of an organization (e.g., lobbyists hired to obtain a grant, contract, or loan for the organization). It does not prohibit Area Agencies from contacting

legislators regarding Older Americans Act funding or on behalf of other legislation benefiting Area Agencies or older persons.

Administration on Aging Program Instruction AoA-PI-90-09

In accordance with P.L. 101-121, the Administration on Aging, on July 30, 1990, issued a Program Instruction on 'New Restrictions on Lobbying' to State and Area Agencies on Aging and to service providers. The Program Instruction (PI) restricts the use of Federal appropriated funds for lobbying on behalf of a specific Federal contract, grant, loan, cooperative agreement, or the extension, continuation, renewal, or modification of any Federal contract, grant, loan, or cooperative agreement. An Area Agency, for example, may not use Federal funds to lobby on behalf of their application for an AoA discretionary grant. The PI does not restrict Area Agency advocacy activities on behalf of appropriations for Older Americans Act programs or other issues pertaining to the Area Agency or their constituency (persons age 60 or older). The PI does not place restrictions on the use of non-Federal funds for advocacy or lobbying activities, but does require that such action on behalf of a Federal grant, contract, loan, or cooperative agreement be disclosed. Likewise, the PI does not refer to dues paid to NAAAA (the Association does not conduct advocacy on behalf of specific grants, contracts, or loans) or dues to state associations (see preceding paragraph).

Conclusion

To answer the questions posed at the beginning of this *Focal Point*, there is a clear mandate under the Older Americans Act that Area Agencies on Aging have advocacy responsibilities for issues pertaining to older persons and the Area Agency. Subsequent legislation and regulations have not abridged or reduced this responsibility. The legislation and regulations that have circumscribed advocacy have done so by restricting the use of Federal funds to support legislative advocacy, not in prohibiting or restricting specific advocacy activities. The advocacy activities that comply with statutory and regulatory guidelines for the use of Federal funds include: (a) responding to specific requests for information, technical advice or assistance, or opinions from a Member of Congress, from Federal departments and agencies, or from state legislatures and their subdivisions; (b) advocacy on behalf of issues that affect the Area Agency and its operation; and (c) advocacy on behalf of issues that affect the Area Agency constituency (persons age 60 or older). Legislation and regulation provide considerable discretion in the interpretation of these provisions and the issues which may be pursued. Area Agencies may conduct advocacy at the Federal, state, or local/community levels. In addition, Area Agencies on Aging are not restricted from using non-Federal funds for advocacy activities. However, states and counties may also place restrictions on the use of their contributions for advocacy.

As a practical matter, these guidelines and restrictions place few limits on Area Agency advocacy. Most advocacy by Area Agencies is conducted by mail, during Hill or state capital visits when conducting other business, or with elected representatives in their home district offices. The amount of money and time expended is minimal -- preparing and mailing letters or transportation costs. The restrictions on the use of Federal funds for advocacy do not pertain to the advocacy conducted by NAAAA on behalf of member agencies, the cost of which is funded by dues income. Area Agency Advisory Councils are not restricted in their advocacy activities.

Area Agencies on Aging may advocate on behalf of legislation which directly impacts the Area Agency or older persons. The guidelines listed on page one provide suggestions for complying with Federal statutes and regulations pertaining to advocacy.