

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 9

RIN Number 1601-AA12

Restrictions Upon Lobbying

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: The interim final rule prohibits use of appropriated funds by recipients of a federal contract, grant, loan, or cooperative agreement to influence any federal agency or Congress in connection with federal awards and establishes the Department of Homeland Security procedures for enforcement of this prohibition.

DATES: This interim final rule is effective March 6, 2003. Written comments may be submitted by April 7, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to the Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Robert Coyle, (202) 282-8410 (not a toll free call).

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act (Pub. L. 107-296) ("Act"), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate the operations of the new Department, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes those procedures necessary to fulfill departmental obligations to impose restrictions upon lobbying. Except to the extent a Department component has adopted separate guidance under 31 U.S.C. 1352, the provisions of this subpart shall apply to each component of the Department.

This regulation establishes procedures concerning general prohibitions on lobbying and the use of certain appropriated funds and the appropriate penalties for violations of those prohibitions. The purpose of the

procedures is to ensure that neither the recipients of appropriated funds nor the employees of the Department of Homeland Security inappropriately solicit for action by Congress.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the operations of the new Department. Furthermore, this interim final rule parallels the existing operational regulations of other cabinet-level agencies to impose restrictions upon lobbying, similar regulations were transferred to DHS from other agencies, and the regulations are only being technically adapted for DHS, imposing no substantive requirement that is different from the existing regulations of other agencies. Accordingly, the Department has determined that notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

List of Subjects in 6 CFR Part 9

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

Authority and Issuance

For the reasons set forth above, 6 CFR chapter I is amended by adding part 9 to read as follows:

PART 9—RESTRICTIONS UPON LOBBYING

Subpart A—General

Sec.

- 9.1 Conditions on use of funds.
- 9.2 Definitions.
- 9.3 Certification and disclosure.

Subpart B—Activities by Own Employees

- 9.11 Agency and legislative liaison.
- 9.15 Professional and technical services.
- 9.20 Reporting.

Subpart C—Activities by Other than Own Employees

- 9.23 Professional and technical services.

Subpart D—Penalties and Enforcement

- 9.31 Penalties.
- 9.32 Penalty procedures.
- 9.33 Enforcement.

Subpart E—Exemptions

- 9.41 Secretary of Defense.

Subpart F—Agency Reports

- 9.51 Semi-annual compilation.
- 9.52 Inspector General report.

Appendix A to Part 9—Certification Regarding Lobbying

Appendix B to Part 9—Disclosure Form to Report Lobbying

Authority: Sec. 319, Pub. L. 101-121, 103 Stat. 750 (31 U.S.C. 1352); Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301.

Subpart A—General

§ 9.1 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 to this part, 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 to this part, if such person has made or has agreed to make any payment using non appropriated 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 to this part, 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 to this part, 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.

§ 9.2 Definitions.

For purposes of this part:

(a) *Agency* has the same meaning as provided in 5 U.S.C. 552(f), and 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) The term *covered Federal action*:

(1) Means any of the following Federal actions:

(i) The awarding of any Federal contract;

(ii) The making of any Federal grant;

(iii) The making of any Federal loan;

(iv) The entering into of any cooperative agreement; and

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

(2) 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) (48 CFR Chapter 1) 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 that 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 definition of Indian tribe 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* or 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 appointed to a position in the Government pursuant to title 5 of the United States Code, including any position by temporary appointment or any appointment as an acting official as outlined in section 1511(c) of the Homeland Security Act;

(2) A member of the uniformed services as defined in 37 U.S.C. 101(3);

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

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act at 5 U.S.C. App. 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.

§ 9.3 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)(1) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

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

(ii) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(2) A filing described in paragraph (b)(1) of this section shall not be required if such person previously filed a certification, and a disclosure form 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 paragraph (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;

(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)(1) The requirements of paragraph (d)(2) of this section apply to any person who requests or receives from a person referred to in paragraph (a) or (b) of this section:

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

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

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

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

(2) A person described in paragraph (d)(1) of this section shall file a certification, and a disclosure form, if required, to the next tier.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph (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 31 U.S.C. 1352.

(g) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C of this part.

Subpart B—Activities by Own Employees

§ 9.11 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 9.1(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.

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

§ 9.15 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 9.1(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.

§ 9.20 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

§ 9.23 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 9.1(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 § 9.3(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 action 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

§ 9.31 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 this part) 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.

§ 9.32 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. 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements in this part.

§ 9.33 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

§ 9.41 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**§ 9.51 Semi-annual compilation.**

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B to this part) 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) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 9.52 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 an evaluation of the compliance of that agency with, and the effectiveness of, the requirements in this part. 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 9—Certification Regarding Lobbying**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

I. 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 sub awards 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 31 U.S.C. 1352. 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.

II. 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 31 U.S.C. 1352. 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 9—Disclosure Form to Report Lobbying

[Approved by OMB 0348-0046]

BILLING CODE 4410-10-P

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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

This disclosure form shall be completed by the reporting entity, whether subawardee of 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 follow-up 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 charge 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.