

Byrd Amendment; Section 112 of HUD Reform Act

Legal Opinion: GMP-0005

Index: 6.600, 6.665

Subject: Byrd Amendment; Section 112 of HUD Reform Act

October 17, 1991

MEMORANDUM FOR: Arnold Haiman, Director, Office of Ethics

FROM: Carole W. Wilson, Associate General Counsel for Equal
Opportunity and Administrative Law

SUBJECT: Responses to Requests for Legal Opinions

This memorandum contains our responses to various questions raised by you and your staff in a meeting with members of my staff on October 2, 1991, concerning the implementation of the Byrd Amendment and Section 112 of the HUD Reform Act.

Byrd Amendment
Byrd Amendment

1. Denver has added language to a standard format "Statement for Loan Guarantees and Loan Insurance" which states that Standard Form-LLL must be submitted "only if other than Federal appropriated funds for lobbying activities have been used or will be used." In addition, they have modified the Certification Form by adding an asterisk after the description of the Standard Form-LLL discussion to state "Submit only if applicable." Neither of the modified forms is an OPM or HUD form. Apparently the addendum was prepared because entities which were not engaged in lobbying were filing the Standard Form-LLL.

Question: Is this language appropriate?
Question

Response: The addendum is not very clear. We suggest that the language be modified to state that the Standard Form-LLL must be submitted only if other than Federal appropriated funds have been used or will be used for lobbying activities. Otherwise, we have no objection to the addendum.

2. Some Program Offices (example CDBG) use funding applications which contain one certification statement requiring the applicant to certify to all mandatory certification requirements (Byrd, drug-free environment, fair housing, etc.). In the case of the CDBG package, the only signature which appears on the application package is that which appears at the bottom of the face page of the application package, under a statement which includes the proviso that the applicant will comply with the "attached assurances" if funding is approved.

Question: Is this signature sufficient or should the
 Question
 applicant also be required to separately sign the certification?

Response: As long as the signatory has the authority to
 Response
 bind the applicant to the certifications as well as to the other
 parts of the package, we do not believe that a separate signature
 is required. It is our position that the certifications could be
 enforced. However, we do not have any opposition to requiring a
 separate signature on the certification.

Section 112
 Section 112

1. The Registration form, by statute, requires the lobbyist
 or consultant to state whether he or she has been employed by the
 federal government during the preceding two years and, if so, in
 what capacity.

Question: If the response to that question reveals that the
 Question
 lobbyist is violating the Standards of Conduct statutes and
 regulations, what should be done?

Response: If the information provided on the registration
 Response
 form indicates a potential violation of statutory post-employment
 restrictions, the matter should be referred to the Inspector
 General. Both Section 112 and 18 USC Section 207 (restricting
 employment activities following federal employment) were
 intended, in part, to reduce "influence-peddling" by former
 federal officials. The requirement in Section 112 that a
 registrant report recent federal employment provides one
 mechanism for ensuring that this "influence-peddling" does not
 occur, both by revealing and, consequently, deterring violations
 of 18 USC Section 207.

2. A law firm which has registered as a lobbyist/consultant
 has asked whether the state and local government exemption in
 Section 1121 applies to departments of the federal government as
 well.

Question: Is the federal government covered by Section 112?
 Question

Response: Pursuant to Section 112 (f) the definition of
 Response
 the term "person" includes an "individual" and "any other
 organization or group of people." Technically, therefore, the
 Federal government may be covered under Section 112. However,
 the reporting and registration requirements of Section 112 extend
 only to actions by persons who make expenditures or receive

1In fact, this exemption was created in the final rule, not the statute.

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consideration for the purpose of influencing decisions by Department employees. As a matter of practice, covered expenditures are not made by federal agencies.

We will communicate guidance to the remaining questions which were raised during the October 2 meeting as soon as we have completed our research into the issues which have been raised in those questions.

If you have any questions concerning the above, please contact either Judy Keeler or Aaron Santa Anna on my staff.