

U.S. Department of Housing and Urban Development  
Washington, DC 20410-3000

1060.03  
APPENDIX 1

December 24, 1991

OFFICE OF THE ASSISTANT SECRETARY  
FOR ADMINISTRATION

Ethics Letter 91-5

Special Attention of:  
PRINCIPAL STAFF  
ALL REGIONAL ADMINISTRATORS  
ALL FIELD OFFICE MANAGERS

Subject: "Byrd Amendment" Regarding the Limitation on Payments  
Made to Influence Certain Federal Contracting and  
Financial Transactions

PART I - INTRODUCTION

- A. PURPOSE. The purpose of this Letter is to bring to your attention and clarify certain collection and monitoring responsibilities of Headquarters' Program Offices and the Regional and Field Offices in implementing the requirements that pertain to the Byrd Amendment.
- B. BACKGROUND.
1. The Byrd Amendment (Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990, Pub. L. 101-121), was signed into law by President Bush on October 23, 1989, and became effective on December 23, 1989.
  2. The Office of Management and Budget (OMB) published an "Interim Final Rule" on the Byrd Amendment (see Attachment I) on February 26, 1990 (55 FR 6736). The Interim Final Rule was supplemented by a Notice published by OMB at 55 FR 24540 (see Attachment II) on June 15, 1990.
  3. The Interim Final Rule pertains to applicants requesting or receiving a Federal contract, grant, loan, cooperative agreement, loan guarantee or loan insurance. Indian tribes and tribal organizations are excluded from coverage with respect to expenditures permitted by other Federal law. (Therefore, Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage.) The Rule also governs certain post-award actions including the extension, continuation, renewal, amendment, or modification of contracts, grants, loans, or cooperative agreements.

---

PART II -- OVERVIEW OF SUBSTANTIVE REQUIREMENTS

The Byrd Amendment imposes requirements on applicants and recipients of Federal assistance who use either of the following sources of funds to influence Federal decision makers:

- o Funds appropriated to Federal agencies by Congress.
- o Other than appropriated funds from non-Federal sources.

A summary of the requirements follows. You should refer to the rule (see Attachment I) for a detailed description of the requirements.

A. APPROPRIATED FUNDS.

1. Basic Prohibition. No appropriated funds may be used by a person who receives a Federal contract, grant, loan, or cooperative agreement to pay for influencing or attempting to influence Executive or Legislative branch personnel in connection with the award of any Federal contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement. This prohibition also applies to payments made to influence a Federal official in connection with the extension, continuation, renewal, amendment or modification of any contract, grant, loan or cooperative agreement.
2. Required Reporting. Any person who requests or receives a Federal contract, grant, or cooperative agreement exceeding \$100,000, or a Federal loan exceeding \$150,000, must file a certification (see Attachment I, page 6741) that the person has not made, and will not make, any prohibited payment from appropriated funds. Additionally, the applicant or recipient must certify that a disclosure statement (see Attachment I, page 6743) will be filed, as described in subparagraph II.B.2.c, below, if a payment is made from other than appropriated funds to influence, or attempt to influence, Federal personnel. The certification must be filed at the time the application or request to enter into an agreement is submitted. If it is not filed at the time of application, it must be filed prior to receipt of the award or assistance involved. Submission of the certification is a condition for receipt of the assistance involved.

3. Exceptions. The prohibition on the use of appropriated funds does not apply to:
  - a. Agency and Legislative Liaison Activities and Agency Requirements. Appropriated funds may be used to pay reasonable compensation to an officer or employee of a person requesting or receiving a contract, grant, loan, or cooperative agreement, if the payment is for:
    - (1) Agency and legislative liaison activities not directly related to the transaction or the post-award action involved; or
    - (2) Providing any information specifically requested by the Department.
  - b. Professional and Technical Services. Appropriated funds also may be used to pay:
    - (1) Reasonable compensation to an officer or employee of a person requesting or receiving a contract, grant, loan, or cooperative agreement, or a post-award 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 the transaction involved, or for meeting requirements imposed by or pursuant to law as a condition for receipt of such assistance.
    - (2) Reasonable compensation to a person, not employed by the person requesting or receiving a contract, grant, loan, or cooperative agreement, or a post-award 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 the transaction involved, or for meeting requirements imposed by or pursuant to law as a condition for receipt of the assistance.
  - c. No disclosure forms are required to be filed with respect to payments which are permissible pursuant to the above exceptions.

1. Basic Requirement. The Byrd Amendment does not prohibit the use of other than appropriated funds to influence, or attempt to influence, a Federal official in connection with a Federal contract, grant, loan, cooperative agreement, loan guarantee or loan insurance, or a post-award action. If other than appropriated funds are used for such purposes, each person requesting or receiving a contract, grant, loan, cooperative agreement, loan guarantee, or loan insurance must file a disclosure form with the Department detailing the lobbying activities. Also, any person who requests or receives a commitment for a loan guarantee or loan insurance must submit a statement whether he or she has made any payments to influence a Federal official in connection with that loan guarantee or insurance.
  
2. Required Reporting.
  - a. Certification. Each person who requests or receives a contract, grant or cooperative agreement exceeding \$100,000 or a commitment to guarantee or insure a loan exceeding \$150,000 must file the certification described at paragraph II.A.2., above. The certification must be filed at the time the application or request to enter an agreement is submitted. If it is not filed at the time of application, it must be filed before receiving the assistance involved.
  
  - b. Statements for Loan Guarantees and Loan Insurance. Each person who requests or receives from the Department a commitment to guarantee or insure a loan exceeding \$150,000 must file a statement that the person will file a disclosure form (SF-LLL) if the person has made, or will make, any payment to influence, or attempt to influence, any Executive or Legislative branch personnel in connection with that loan insurance or guarantee. For single family insurance, each application that involves a mortgage amount that exceeds the minimum dollar threshold, a statement and, if necessary, a disclosure form should be filed. The statement must be filed at the time the request for guarantee or insurance is made. If it is not filed at the time of application, it must be filed before receiving the commitment.

- c. Disclosure Form (SF-LLL). Every person who

requests or receives a Federal contract, grant, or cooperative agreement exceeding \$100,000, or a Federal loan, loan guarantee, or loan insurance exceeding \$150,000 must disclose any payments made, or agreement to make any payment, from other than appropriated funds for the purpose of influencing, or attempting to influence, any Executive or Legislative branch personnel in connection with the contract, grant, cooperative agreement, loan, loan insurance, or loan guarantee. These disclosures must be made on Form SF-LLL.

It is the responsibility of the applicant to determine whether a Form SF-LLL is required to be submitted to the Department. There are two requirements:

- (1) The form must be submitted to the Department at the time of application or request. If it is not filed at the time of request, it must be filed prior to award or agreement.
- (2) A new disclosure form must be filed at the end of each calendar quarter in which a payment, or an agreement to make a payment, is made which would have otherwise required reporting at the time of application. Moreover, if an event occurs during the calendar quarter which materially affects the accuracy of information reported on a disclosure form previously submitted, the submitter must file a new disclosure form. Events which "materially affect" the accuracy of information already reported include:
  - 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;
  - A change in the person(s) influencing or attempting to influence; or
  - A change in the Federal official(s) contacted to influence or attempt to influence a covered Federal action.

3. Exceptions. The disclosure requirements do not apply

to the following:

- a. No disclosure form (SF-LLL) is required to be filed in connection with professional or technical services rendered directly in the preparation, submission, or negotiation of a commitment to insure or guarantee a loan.
- b. No disclosure form (SF-LLL) is required to be filed with respect to payments of reasonable compensation made to regularly employed officers and employees of the person requesting or receiving the assistance.

C. SUBCONTRACTORS AND SUBRECIPIENTS

1. Filing of Certifications and Disclosure Forms.  
Subcontractors and subrecipients are subject to the requirements of the Byrd Amendment concerning the filing of certifications and disclosure forms in the case of:
  - a. A subcontract exceeding \$100,000 at any tier under a Federal contract;
  - b. A subgrant, contract or subcontract exceeding \$100,000 at any tier under a Federal grant;
  - c. A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement; or
  - d. A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000.
2. Reporting by Subcontractors and Subrecipients.  
Certification and disclosure forms required to be filed by subcontractors and subrecipients must be submitted to the next tier above the submitter. All disclosure forms must be forwarded from tier to tier until they are submitted to the Department. Certification forms are to be retained by the tier to whom they are submitted.

D. PENALTIES

1. Any person who makes a prohibited expenditure is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

2. Any person who fails to submit or amend the disclosure

form, when required, is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

3. Failure to submit the required certification or statement may result in an application or assistance being delayed or denied.

### PART III. PROCEDURAL REQUIREMENTS

A. FIELD RESPONSIBILITIES. Field Offices should adhere to previously issued program specific guidance (see B. below). The following is a listing of ongoing field responsibilities for the implementation of the Byrd Amendment:

1. Maintenance of Certifications and Statements. Executed certifications and statements should be retained in the appropriate program file (e.g. project file, contract file) with other material submitted by the applicant or requester.
2. Incomplete Applications. The Field Offices must review each application or request received to determine whether it is complete and contains the appropriate certification or statement. If an application submitted to the Department does not contain the required certification or statement, the applicant or requester must be advised that the required documents must be submitted before assistance will be provided.
3. Forwarding and Maintenance of Disclosure Forms. In cases where a disclosure form (SF-LLL) is submitted by an applicant or requester:
  - a. At the point of receipt make a duplicate of the disclosure form and forward the original to the Office of Ethics (Headquarters, Room 2158). The Office of Ethics will be the central depository for all disclosure forms filed with the Department.
  - b. A duplicate copy of each disclosure form should be retained in the appropriate contract, loan, grant, cooperative agreement file or other similar file.
  - c. Disclosure forms which may be submitted at the end of each calendar quarter will be directed to the point where the application or other material

of a calendar quarter shall be forwarded to the Office of Ethics.

- d. Any request from a member of the public for a copy of a disclosure form shall be forwarded to the Office of Ethics for handling. The Office of Ethics will forward the request to the Executive Secretariat to be handled in accordance with the Department's Freedom of Information Act (FOIA) procedures.
  4. Notice of Violations. Any suspected violation of requirements of the Byrd Amendment should be immediately brought to the attention of the Director, Office of Ethics.
  5. NOTE: Even if the loan or grant amounts are not large enough to trigger the certification and disclosure requirements, the prohibitions against the use of Federally appropriated funds for influencing or attempting to influence the actions of Federal officials apply. Accordingly, Field Office staff must be alert to possible violations, which must be reported to the Office of Ethics.
- B. HEADQUARTERS RESPONSIBILITIES. Any Headquarters Program Office which receives initial applications or other similar materials submitted to the Department must adhere to the procedures described for Field Offices in paragraph A. above. In addition, the head of each major office who has responsibility for a program involving contracts, grants, cooperative agreements, loan guarantees or loan insurance has issued program specific guidance ensuring compliance with the procedural requirements. A listing of each office's guidance is shown below.
1. Administration -- Office of Ethics
    - a. February 9, 1990 -- Interim Notice -- "Implementation of the "Byrd Amendment" Regarding the Limitation on Payments Made to Influence Certain Federal Contracting and Financial Transactions" -- Interim Notice 90-01 ADM I (expired June 8, 1990).
  2. Administration -- Office of Procurement and Contracts
    - a. January 11, 1990 -- Memorandum to OPC Contracting Staff and Regional Contracting Officers -- "Implementation of the Limitation on the payment of funds to influence Federal transactions."



- b. February 6, 1990 -- Memorandum to OPC Contracting Staff and Regional Contracting Officers -- "Limitation on the payment of funds to influence Federal transactions"
  - c. May 4, 1990 -- Memorandum to OPC Staff and Regional Contracting Officers -- "SF-LLL, Disclosure of Lobbying Activities"
  - d. July 5, 1990 -- Memorandum to OPC Staff and Regional Contracting Officers -- "Clarification Regarding the Lobbying Restrictions"
  - e. August 8, 1990 -- Memorandum to OPC Staff and Regional Contracting Officers -- "Lobbying Certifications on Indefinite Quantity Contracts"
3. Office of Housing
- a. April 13, 1990 -- Notice H 90-27 - "OMB's Guidance on New Government-wide Restrictions on Lobbying" (expired April 30, 1991)
  - b. April 19, 1990 -- Memorandum from Office of Insured Single Family Housing -- "Single Family Development-OMB's Guidance on New Government-Wide Restrictions on Lobbying-the Byrd Amendment"
  - c. April 26, 1990 -- Coinsuring Lender Letter No. 90-3 -- "OMB's Interim Final Guidance on Government-Wide New Restrictions on Lobbying"
  - d. April 26, 1990 -- "Mortgagee Letter 90-13 -- "OMB's Guidance on Government-wide New Restrictions on Lobbying"
4. Community Planning and Development
- a. December 21, 1989 -- Memorandum to All Regional Administrators and All Category "A" Field Office Managers -- "Revised Certification, CDBG Entitlement Program Prohibition of Use of Federal Funds for Lobbying"
  - b. Notices for Funding Availability (NOFA) for the Rental Rehabilitation Program for last two fiscal years
5. Public and Indian Housing
- a. April 27, 1990 -- Memorandum to All Public Housing Authorities and Resident Management Corporations
-

---

1060.03

- b. July 10, 1990 -- Memorandum to All Regional Administrators and All Field Office Managers -- "FY 1990 CIAP Implementation of the Byrd Amendment"
  - c. Notices concerning the Public Housing Development/Major Reconstruction of Obsolete Public Housing Processing in FY 1990 and 1991
6. Fair Housing and Equal Opportunity
- a. September 4, 1990 -- Memorandum to All Regional Office Directors for Fair Housing and Equal Opportunity -- "Implementation of Byrd Amendment"
7. Policy Development and Research
- a. PDR does not have field counterparts, therefore, no field guidance was issued.
8. Government National Mortgage Association
- a. GNMA does not have field counterparts, therefore, no field guidance was issued.

In addition to the above listed program specific guidance, all NOFAs published in the Federal Register contain Byrd Amendment language.

APPENDIX 1

ATTACHMENT I

ATTACHMENT 1 CONTAINS A COPY OF A FEDERAL REGISTER DOCUMENT THAT MAY BE FOUND IN THE DAS FEDERAL REGISTER DATABASE.

---

APPENDIX 1

ATTACHMENT II

ATTACHMENT 2 CONTAINS A COPY OF A FEDERAL REGISTER DOCUMENT THAT MAY BE FOUND IN THE DAS FEDERAL REGISTER DATABASE.