

grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, SSA may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, SSA will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR chapter II). Litigation or the filing of any form of appeal does not extend the date from which interest is computed.

#### Subpart E—Entitlement [Reserved]

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 438

RIN 0960–AE29

#### Restrictions on Lobbying

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rules.

**SUMMARY:** These final rules establish new regulations dealing with the restrictions on lobbying contained in the Common Rule, “New Restrictions on Lobbying,” commonly referred to as the Byrd Anti-Lobbying Amendment common rule. The Social Security Independence and Program Improvements Act of 1994 established SSA as an independent agency separate from the Department of Health and Human Services (HHS), effective on March 31, 1995. To implement our own set of grants regulations, we have essentially codified the text of the Common Rule. These final rules, along with the final rules we are publishing elsewhere in today’s **Federal Register**, establish SSA grants regulations, separate from those of HHS, effective upon publication.

**EFFECTIVE DATE:** These final rules are effective May 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Phyllis Y. Smith, Chief Grants Management Officer, Office of Operations Contracts and Grants, Office of Acquisition and Grants, SSA, 1710 Gwynn Oak Ave., Baltimore, MD 21207–5279; telephone (410) 965–9518; FAX (410) 966–9310.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 319 of Pub. L. 101–121, enacted October 23, 1989, 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,” commonly known as the Byrd Anti-Lobbying Amendment. This law prohibits the recipient of a Federal contract, grant, loan or cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence 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.

The law also imposes requirements for disclosure and certification related to lobbying by recipients of any of the covered Federal actions. As called for by section 319 of Public Law 101–121, on December 18, 1989 (published December 20, 1989), the Office of Management and Budget (OMB) issued interim final guidance entitled “Governmentwide Guidance for New Restrictions on Lobbying,” which called for governmentwide implementation of, and compliance with, the requirements of section 1352.

HHS implements the provisions of the Byrd Anti-Lobbying Amendment common rule through its regulations at 45 CFR part 93. Prior to March 31, 1995, SSA was an operating component of HHS. As a result of Public Law 103–296, SSA became an independent agency on March 31, 1995. However, pursuant to section 106(b) of that law, the HHS regulations at 45 CFR part 93 have remained applicable to SSA. In order to implement our own set of grants regulations dealing with lobbying, we are essentially adopting the text of the anti-lobbying common rule at 20 CFR part 438. Part 438 is similar in all material respects to 45 CFR part 93 and to the governmentwide anti-lobbying common rule, which implements the requirements of section 319, Public Law 101–121 (31 U.S.C. 1352). HHS regulations at 45 CFR part 93 will cease to be applicable to SSA on the effective

date of these regulations, in accordance with section 106(b) of Public Law 103–296.

##### II. Differences Between Part 438 and Common Rule/Part 93

A. In § 438.100(a), we have corrected the spelling of the word “agreement” where it is initially used in the term “cooperative agreement.”

B. In the second sentence of § 408.300(c), we have changed the word “or” to “of.” The sentence properly reads “For example, drafting of a legal document accompanying a bid \* \* \*”.

C. Throughout new part 438, we have replaced, where appropriate, references to “awarding agency(ies)” with references to SSA. We have also made numerous nonsubstantive changes to make these rules easier for the public to read and understand.

##### Regulatory Procedures

###### *Justification for Final Rule*

Section 702(a)(5) of the Social Security Act (Act) makes the regulations we prescribe subject to the rulemaking procedures established under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. These procedures generally require publication of notice of the proposed rulemaking and the solicitation of comments from interested persons. However, the APA provides exceptions to notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

After due consideration, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking because such procedure would be unnecessary. These final regulations adopt as SSA regulations the provisions of the governmentwide anti-lobbying common rule without substantive change. Pursuant to section 106(b) of Public Law 103–296, the HHS regulations at 45 CFR part 93, which implement the provisions of the anti-lobbying common rule, remain applicable to SSA until such time as these regulations become effective. The differences in these regulations over those of the anti-lobbying common rule or those of 45 CFR part 93 are not substantive. Accordingly, promulgation of these regulations pursuant to notice and comment rulemaking is unnecessary and may be dispensed with pursuant to 5 U.S.C. 553(b)(B).

###### *Waiver of 30-Day Delay in Effective Date*

As indicated above, section 702(a)(5) of the Act makes the regulations we

prescribe subject to the rulemaking procedures established under section 553 of the APA. Section 553(d) of the APA requires that the effective date of a substantive rule be no less than 30 days after its publication, except in cases of: Rules which grant or recognize an exemption or relieve a restriction; interpretative rules and statements of policy; or as otherwise provided by the agency for good cause found and published with the rule.

Under 5 U.S.C. 553(d)(3), good cause exists for dispensing with the minimum 30-day period between publication date and effective date. As indicated above, these regulations adopt without change the substantive provisions of the anti-lobbying common rule. A 30-day delay in the effective date of these regulations would serve no purpose since, during such delay, the identical provisions of Part 93, which implement the provisions of the anti-lobbying common rule, would remain applicable. Accordingly, these regulations are effective on publication.

#### *Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and have determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

#### *Regulatory Flexibility Act*

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because this rule merely reflects the adoption of existing grant policies and procedures by SSA and does not promulgate any new policies or procedures which would impact the public. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in § 438.110 of these final rules. The OMB Control Number for this collection is 0348-0046 (Standard Form—LLL (Disclosure Form to Report Lobbying)

(Catalog of Federal Domestic Assistance: Program No. 96.007—Social Security—Research and Demonstration; and Program No. 96.008—Social Security Administration—Benefits Planning, Assistance, and Outreach Program)

#### **List of Subjects in 20 CFR Part 438**

Administrative practice and procedures, Federal procurement programs, Grant programs.

Dated: April 25, 2003.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we are adding a new part 438 to chapter III of title 20 of the Code of Federal Regulations to read as follows:

■ 1. Part 438 is added to read as follows:

#### **PART 438—RESTRICTIONS ON LOBBYING**

##### **Subpart A—General**

Sec.

- 438.100 Conditions on use of funds.
- 438.105 Definitions.
- 438.110 Certification and disclosure.

##### **Subpart B—Activities by Own Employees**

- 438.200 Agency and legislative liaison.
- 438.205 Professional and technical services.
- 438.210 Reporting.

##### **Subpart C—Activities by Other than Own Employees**

- 438.300 Professional and technical services.

##### **Subpart D—Penalties and Enforcement**

- 438.400 Penalties.
- 438.405 Penalty procedures.
- 438.410 Enforcement.

##### **Subpart E—Exemptions**

- 438.500 Secretary of Defense.

##### **Subpart F—Agency Reports**

- 438.600 Semi-annual compilation.
- 438.605 Inspector General report.
- Appendix A to Part 438—Certification Regarding Lobbying
- Appendix B to Part 438—Disclosure Form to Report Lobbying

**Authority:** 5 U.S.C. 301.

##### **Subpart A—General**

###### **§ 438.100 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 SSA, 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 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 SSA a Federal contract, grant, loan, or cooperative agreement must file with SSA 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 SSA a Federal contract, grant, loan, or a cooperative agreement must file with SSA 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 SSA a commitment providing for the United States to insure or guarantee a loan must file with SSA 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 SSA, 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 SSA a commitment providing for the United States to insure or guarantee a loan must file with SSA 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 SSA, 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.

###### **§ 438.105 Definitions.**

For purposes of this part:  
*Commissioner* means the Commissioner of Social Security.

*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.

*Federal contract* means an acquisition contract awarded by the Social Security Administration, 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.

*Federal cooperative agreement* means a cooperative agreement SSA enters into.

*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.

*Federal loan* means a loan made by SSA. The term does not include loan guarantee or loan insurance.

*Indian tribe and tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

*Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee of SSA, 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.

*Loan guarantee and loan insurance* means SSA's guarantee or insurance of a loan made by a person.

*Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

*Officer or employee of SSA* 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.

*Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

*Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

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

*Recipient* includes all contractors, 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.

*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.

SSA means the Social Security Administration.

*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.

#### § 438.110 Certification and disclosure.

(a) Each person must file a certification, and a disclosure form, if required, with each submission that initiates SSA consideration of that 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 must file a certification, and a disclosure form, if required, if he or she receives:

(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 must 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 that 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, must file a certification, and a disclosure form, if required, to the next tier above.

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

(f) Any certification or disclosure form filed under paragraph (e) of this section will be treated as a material representation of fact upon which all receiving tiers must rely. All liability arising from an erroneous representation will be borne solely by the tier filing that representation and will 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) 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**

##### **§ 438.200 Agency and legislative liaison.**

(a) The prohibition on the use of appropriated funds, in § 438.100(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 SSA 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 SSA (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 SSA's use.

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

(1) Providing any information not specifically requested but necessary for SSA 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 SSA 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.

##### **§ 438.205 Professional and technical services.**

(a) The prohibition on the use of appropriated funds, in § 438.100(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* are 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.

##### **§ 438.210 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**

##### **§ 438.300 Professional and technical services.**

(a) The prohibition on the use of appropriated funds, in § 438.100(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 § 438.110 (a) and (b) regarding filing a

disclosure form by each person, if required, do 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* are 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 that directly apply to 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

### § 438.400 Penalties.

(a) Any person who makes an expenditure prohibited by this part is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each prohibited 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 by this part is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each 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 begun does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action begins with respect to a failure when an investigating official determines in writing to begin 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, SSA will consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of the person to continue in business, any prior violations by the person, the degree of culpability of the person, the ability of the person to pay the penalty, and any other matters that may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section are subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons are subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the Commissioner or his or her designee.

(f) 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 the civil penalty.

### § 438.405 Penalty procedures.

We will 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, to the extent these provisions are not inconsistent with the requirements in this part.

### § 438.410 Enforcement.

The Commissioner of Social Security will take any actions necessary to ensure that the provisions in this part

are vigorously implemented and enforced.

## Subpart E—Exemptions

### § 438.500 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

### § 438.600 Semi-annual compilation.

(a) The Commissioner of Social Security will 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 6-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, will be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters will 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 Committee on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information will not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order will be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of 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 will not be available for public inspection.

(e) The first semi-annual compilation was submitted on May 31, 1990, and contains 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) were required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives by May 31, 1991. OMB provided detailed specifications in a memorandum to these agencies.

(g) SSA will keep the originals of all disclosure reports in our official files.

#### **§ 438.605 Inspector General report.**

(a) The Inspector General of Social Security, or other official as specified in paragraph (b) of this section, will prepare and submit to Congress each year an evaluation of SSA compliance 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) The annual report will be submitted at the same time we submit our annual budget justification to Congress.

(c) The annual report will include the following: All alleged violations covered by the report, the actions taken by the Commissioner 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 SSA in the year covered by the report.

#### **Appendix A to Part 438—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 438—Disclosure Form to Report Lobbying**

**BILLING CODE 4191-02-P**

**DISCLOSURE OF LOBBYING ACTIVITIES**

Approved by OMB  
0348-0046

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

<b>1. Type of Federal Action:</b> <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	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known:		<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known:
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$	
<b>10. a. Name and Address of Lobbying Entity</b> (if individual, last name, first name, MI):  (attach Continuation Sheet(s) SF-LLLA, if necessary)		<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):
<b>11. Amount of Payment (check all that apply):</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment (check all that apply):</b> <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: _____	
<b>12. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
<b>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:</b>  (attach Continuation Sheet(s) SF-LLLA, if necessary)		
<b>15. Continuation Sheet(s) SF-LLLA attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>16.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

**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-LLLA 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-LLLA Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. 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, DC 20503.



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BILLING CODE 4191-02-C

Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 470

[FHWA Docket No. FHWA-97-2394]

RIN 2125-AD74

#### Federal-Aid Highway System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

**SUMMARY:** The FHWA adopts as final an interim final rule that amends the regulation on Federal-aid highway systems to incorporate changes made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the National Highway System Designation Act of 1995 (NHS Act). The purpose of adopting the interim final rule as final is to reflect statutory changes in defining the Federal-aid highway systems, reduce regulatory requirements and simplify recordkeeping requirements imposed on States, and consolidate (in appendices to the regulation) all nonregulatory guidance material issued previously by the FHWA on this subject.

**EFFECTIVE DATES:** June 26, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Clark, Office of Interstate and Border Planning (HEPI), (202) 366-5006, or Ms. Grace Reidy, Office of the Chief Counsel (HCC-40), (202) 366-6226. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the Federal Register's Home page at: <http://www.archives.gov> and the Government

#### Background

The FHWA published an interim final rule on part 470, subpart A on June 19, 1997, at 62 FR 33351. Interested persons were invited to submit comments to FHWA docket No. FHWA-97-2394. The interim final rule amended the regulation on Federal-aid highway systems to (1) reflect statutory changes made by the ISTEA (Pub. L. 102-240, 105 Stat. 1914 (1991)) and the NHS Act (Pub. L. 104-59, 109 Stat. 568 (1995)); (2) reduce regulatory requirements and simplify recordkeeping requirements imposed on the States; and (3) consolidate, in appendices to the regulation, all relevant nonregulatory guidance previously issued in the FHWA's policy memoranda and the "Federal-Aid Policy Guide." This rule has been in effect since July 21, 1997.

#### Summary of Comments

The FHWA received four comments, two from State transportation departments (Texas and Illinois), one from the Advocates for Auto and Highway Safety (AAHS) and one from a private individual.

The Illinois DOT found the interim final rule to be satisfactory.

The Texas DOT commented that Appendix B to part 470 does not address access points to the Interstate System as required by the FHWA and asked for a clarification. The policy on Interstate System access points is addressed in a separate policy statement that was updated and published in the **Federal Register** on February 11, 1998, at 63 FR 7045. It can also be accessed at <http://www.fhwa.dot.gov/programadmin/fraccess.html>.

The Texas DOT also commented that the FHWA omitted an obsolete requirement related to the former Interstate Cost Estimates.

The AAHS objected to issuing this material as an interim final rule with an after-the-fact comment period. The FHWA believes that because the amendments made in the interim final rule were statutorily mandated, incorporated existing policy, or were well-established procedures, requirements, or practices, that prior notice and an opportunity for comment was unnecessary. The amendments made by the interim final rule were specifically designed to simplify administrative procedures, minimize regulatory burdens, and provide flexibility for accomplishing required systems. Of the two State DOTs that commented, both were in favor of the change and only one pointed out a

possible omission mentioned previously. Additionally, the FHWA was careful in the regulatory wording to refer to the appendices as guidance to be considered in carrying out the procedures of the regulation.

The private individual correctly pointed out an error in the miles to kilometers conversion factor noted in the preamble. The rule language in the interim final rule uses the correct factor.

#### Conclusion

For the reasons stated above, the FHWA adopts as a final rule the interim final rule published on June 19, 1997, at 62 FR 33351. The FHWA acknowledges that the definition of "consultation" in this rulemaking for Part 470 of title 23, CFR, is not the same as the definition of "consultation" in Part 450 of title 23, CFR. This action does not change the definition in Part 450 or the way the FHWA administers Part 450.

#### Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rule will be minimal. This action merely adopts as final the interim final rule that has been in effect since July 21, 1997.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this final rule on small entities and has determined it will not have a significant economic impact on a substantial number of small entities. This final rule adopts as final the interim final rule that clarifies, streamlines, and simplifies Federal-aid highway systems policies for modification and management of the systems. This rule reduces the administrative burden on the States associated with the Federal-aid systems actions.