

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 in-

sure 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 or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* 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