

Legal Opinion: GMP-0006

Index: 6.600

Subject: Byrd Amendment; Section 112 of HUD Reform Act

October 18, 1991

Mr. Michael J. Hoogendyk  
Executive Vice President  
National Association of Mortgage Brokers  
706 East Bell Road  
Suite 101  
Phoenix, Arizona 85022

Dear Mr. Hoogendyk:

Thank you for your inquiry regarding the new regulations on lobbying activities before the Department. This will attempt to provide general information regarding section 112 of the HUD Reform Act and the Byrd Amendment, and suggest how these two provisions might affect the activities of the National Association of Mortgage Brokers (NAMB).

Section 112 of the HUD Reform Act might properly be regarded as placing a sunshine requirement on two actors typically involved in the lobbying effort: those who pay for lobbying services and those who are paid to provide the services. The regulation covers expenditures made to influence HUD employees through communications with respect to the award of any financial assistance or the taking of management action involving the change in the terms and conditions or status of the financial assistance awarded to any person. Specifically, those who make expenditures to influence a HUD employee in the award of financial assistance or the taking of management action must keep records on the expenditures, and must report them to HUD on an annual basis. Those who are retained to influence a HUD employee in the award or taking of a management action must register with HUD within 14 days of being retained, and must report annually to HUD on their lobbying activities. A second feature of the bill, not directly applicable to NAMB, places limitations on the fees that may be paid to consultants who engage in activities to influence the award or allocation of HUD financial assistance.

In considering whether section 112 affects the activities of NAMB, it is essential to first determine whether NAMB makes expenditures to influence the award of financial assistance or the taking of management action either on its own behalf or on behalf of its members. Expenditures and communications involving Department policy and rules, for example, would be covered by the regulation if designed to assist a member in a management action pending before the Department. Expenditures or communications regarding compliance with HUD conditions or requirements, on the other hand, would not be covered by section 112. Similarly, expenditures and communications involving general policy and rulemaking, such as the development of rules implementing the

Real Estate Settlement Procedures Act, would not be subject to section 112 since they do not involve a specific assistance award or management action.

The application of section 112 is more fully described in the final rules published in the Federal Register (56 Fed. Reg. 22912, May 17, 1991). The rules provide a number of additional examples that may be helpful in determining the effect of section 112 on the activities of the NAMB.

The second piece of legislation that has been recently enacted to regulate lobbying activity is section 319 of the Department of Interior and Related Agencies Appropriations for Fiscal Year 1990, better known as the Byrd Amendment. In general, this legislation prohibits the use of appropriated funds, with minor exceptions, to pay any person to influence, or attempt to influence, Executive or Legislative branch personnel in connection with the award of any Federal contract, grant, loan or cooperative agreement. Since this legislation is directed at applicants and recipients of Federal assistance, it will not directly impact the NAMB. This prohibition is more fully described in rules published by the Office of Management and Budget in the Federal Register (55 Fed. Reg 6736, February 26, 1990).

I hope that you find this information helpful. Please contact me or Aaron Santa Anna at (202) 708-2205 if you have any questions.

Sincerely,

Frank A. Keating  
General Counsel