notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

12. Section 52.236-7 is revised to read as follows:

52.236-7 Permits and responsibilities.

As prescribed in 36.507, insert the following clause:

Permits and Responsibilities (Jan. 1990)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all material delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

13. Section 52.236-13 is revised to read as follows:

52.236-13 Accident prevention.

As prescribed in 36.513, insert the following clause:

Accident Prevention (Jan. 1990)

(a) The Contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment, exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and control costs in the performance of this contract.

(b) For these purposes, on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition, or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of clause)

Alternate I (JAN 1990). If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a Government facility that, on the advice of technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or Government personnel or property, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall—

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards.

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

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Part V

Department of Justice

Office of Justice Programs

Program Guidelines for the Victims Compensation Program Under the Victims of Crime Act; Notice

DEPARTMENT OF JUSTICE

Office of Justice Programs

Program Guidelines for the Victims Compensation Program Under the Victims of Crime Act

AGENCY: Office for Victims of Crime, Justice.

ACTION: Notice of Final Program Guidelines for the Victims Compensation Program under the Victims of Crime Act.

SUMMARY: The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), United States Department of Justice (DOJ), is publishing final Program Guidelines to implement the victims compensation program authorized by the Victims of Crime Act of 1984 (VOCA), Public Law 98-473, as amended by the Children's Justice and Assistance Act of 1986, Public Law 99-401 and as amended by the Anti-Drug Abuse Act of 1988, title VII, subtitle D of Public Law 100-690 (hereinafter referred to as the Act). The Victims of Crime Act has been codified at 42 U.S.C. 10601, *et seq.* The Program is a priority of President George Bush and Attorney General Dick Thornburgh and contributes to national crime and drug control efforts by compensating and assisting eligible victims.

The Act provides Federal financial assistance to states for the purpose of compensating and otherwise assisting victims of crime, and also provides funds for training and technical assistance and assisting victims of Federal crimes. These Program Guidelines provide program background, eligibility requirements, and administrative procedures for the implementation of the crime victims compensation program as authorized in section 1403 of the Act. The Guidelines are based on the experience gained during the first 4 years of the program's implementation and are responsive to the 1988 amendments to the Victims of Crime Act. These Guidelines supersede all previous Program Guidelines issued by the Victims of Crime Act victim compensation program.

FOR FURTHER INFORMATION CONTACT: Jay Olson, (202) 724-5947. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The Victims of Crime Act establishes a Crime Victims Fund in the Treasury that receives moneys annually from four sources: Criminal fines collected from convicted Federal defendants; new penalty assessments imposed on convicted Federal defendants; forfeited appearance bonds, bail bonds, and collateral security posted by Federal criminal defendants; and literary profits due certain convicted Federal defendants.

The 1988 amendments authorize deposits in the Fund through September 30, 1994, and amended section 1402. In section 1402, the ceiling of the Fund was raised and the allocation modified. The maximum amount which could be deposited in the Fund was raised to $125 million for the Fiscal Years 1989-1991, and to $150 million for Fiscal Years 1992-1994. Any excess of these amounts does not become part of the Fund. The first $2.2 million of excess funds will be made available to the Administrative Office of the U.S. Courts for administrative costs to carry out functions related to the collection of fines; the remaining excess will be deposited in the general fund of the U.S. Treasury.

Monies deposited in the Fund shall be made available in the following manner:

• Of the first $100 million deposited in the fund:

—49.5% shall be made available for compensation programs;
—45% shall be made available for assistance programs;
—1% shall be made available for training and technical assistance and for services to Federal victims, and
—4.5% shall be made available for Child Abuse Prevention and Treatment Grants (Children's Justice and Assistance Act).

Of the 4.5% made available for Child Abuse Prevention and Treatment Grants, 15% shall be made available for assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve the handling, investigation and prosecution of child abuse cases, especially child sexual abuse cases.

• Sums up to $5,500,000 above the first $100 million deposited in the Fund shall be made available for Child Abuse Prevention and Treatment Grants.

• Deposits in excess of $105,500,000 *but* not in excess of $110,000,000 shall be made available for victim assistance programming.

• Of deposits in excess of $110,000,000:

—47.5% shall be made available for compensation programs;
—47.5% shall be made available for assistance programs;
—5% shall be made available for services to victims of Federal crime by eligible crime victim assistance programs.

In addition to the changes in section 1402, the Crime Victims Fund, there were significant amendments to section 1403, Crime Victims Compensation:

• Annual grant awards to eligible state crime victim compensation programs will equal 40 percent of the amounts awarded by the state to crime victims from state sources of revenue during the preceding fiscal year or a reduced percentage should the sums available in the Fund be insufficient to provide this amount. The change represents a net increase of 5 percent from the previous figure of 35 percent.

• In order for a state to meet or maintain eligibility for a crime victims compensation grant, the state must by October 1, 1990, satisfy the new eligibility requirements of Section 1403(b):

—State programs must now offer compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence (section 1403(b)(1)). The amendments further provide that "such program does not, except pursuant to rules established by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender. (section 1403(b)(7)).
—State programs must provide compensation to residents of the State who are victims of crimes occurring outside the State if the crimes would be compensable crimes had they occurred inside the State and the places the crimes occurred in are States not having eligible crime victim compensation programs. (section 1403(b)(6)).
—Medical expenses, for which crime victims compensation may be awarded, is expanded to include *eyeglasses and other corrective lenses.* (section 1403(d)(2)).

These Guidelines are intended to implement the crime victim compensation grant provisions of the Act. Final Program Guidelines for the victim assistance provisions were issued separately on May 18, 1989 **Federal Register**, Vol. 54, No. 95 (54 FR 21493).

These Guidelines do not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, because these Guidelines will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these rules on such entities is required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The collection of information described in Section VI of the guidelines has been approved by the Office of Management and Budget (OMB) as required under the Paperwork Reduction Act, 44 U.S.C. 3504(h). (OMB Approval Number 1121-0014.)

Summary of the Comments to the Proposed Program Guidelines

In the administration of the crime victims compensation program the Office for Victims of Crime has attempted to adhere closely to the letter and spirit of the Victims of Crime Act. The primary purpose of the VOCA victim compensation program is to assist states in meeting the special needs of victims of crime by supplementing state sources of revenue, for crime victims compensation, through grant awards to eligible state crime victims compensation programs.

The 1988 amendments to the Victims of Crime Act made a number of changes in the crime victims compensation program. These amendments can be found in section 1403(b) which describes the requirements a state compensation program must meet in order to qualify for a state grant award.

An eligible state compensation program must now offer compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence. The explicit inclusion of drunk driving and domestic violence marked a strong interest in promoting substantial change in the policies and practices of state compensation programs. In a related provision, a state program may not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender. Additionally, an eligible state program must now provide compensation to residents of the state who are victims of crimes occurring outside the state if the crimes would be compensable crimes inside the state and if the crimes occurred in states that do not have eligible crime victims compensation programs.

On May 18, 1989, the Office for Victims of Crime published for comment, proposed Program Guidelines for the crime victims compensation, program authorized in section 1403 of the Victims of Crime Act. (Federal Register Vol. 54, No. 95, Pages 21493-21499.) The public comment period extended from May 18, 1989, to July 3, 1989.

The proposed Guidelines provided a complete discussion of program requirements, eligibility requirements including the new requirements mandated in the 1988 amendments to VOCA, and policy issues for the crime victims compensation grant program which provides annual grant awards to eligible state crime victims compensation programs.

A total of 21 written responses to the Proposed Guidelines were received and reviewed by the Office for Victims of Crime. Responses were received from national organizations, state and local coalitions, advisory groups and a VOCA state administrator.

The comments received from all respondents could be said to be very supportive of the proposed Guidelines drafted by the Office for Victims of Crime to implement the amendments to the crime victims compensation program. It could also be said that there was a clear consensus that the amendments to section 1403 will advance the rights of victims of violent crimes and that the implementing proposed Guidelines reflected the spirit of the amendments. Many of the comments were enthusiastic in their endorsement of the proposed Guidelines. A few respondents had specific suggestions which would expand upon the language in one section or another. These are presented and discussed in the analysis that follows.

Analysis of and Response to Comments on the Proposed Program Guidelines

There was considerable consistency among the 21 respondents who submitted comments to the proposed Program Guidelines. All were felt to be supportive of the Guidelines and many expressed their enthusiasm in general or for the explicit inclusion of domestic violence and/or drunk driving in crime victims compensation programs. Respondents included individuals as well as representatives of state and national organizations concerned with various aspects of crime victims compensation. The national organizations included Mothers Against Drunk Driving (MADD), National Coalition Against Domestic Violence, National Association of Crime Victims Compensation Boards, and the National Council of Juvenile and Family Court Judges. Additionally, there were comments from state and local chapters of national organizations, a state victim witness coordinating council and a VOCA state administrator.

One national organization, with over 400 chapters and over one million members and supporters, expressed "full support of the Proposed Program Guidelines for Crime Victims Compensation Grants." Additionally, the organization stated that "we are especially supportive of the language which deletes exceptions such as payment of some but not all compensable expenses and requiring conviction prior to awarding a compensation grant."

Local chapters of another national organization stated that they were pleased that the Guidelines clarified and expanded the scope of the crime compensation program.

Another national organization congratulated the Office for Victims of Crime "for the sensitivity it has shown to the often overwhelming obstacles battered women face when applying for victim compensation. The draft regulations are a step in the right direction toward making victim compensation available on a more equitable basis to victims of domestic violence."

A local coalition commented that it was "pleased that the guidelines reflect such a clear understanding of the dynamics of domestic violence. They represent a serious and sensitive attempt to provide domestic violence victims greater access to compensation programs."

A national association provided the following comment, "We believe that the guidelines strengthen and enhance the unique working relationship between the states and the federal government that has been fostered both by the Victims of Crime Act and the efforts of your office to implement it."

A state VOCA administrator had the following comment about the proposed guidelines, "They are well developed, well written and will provide us, the state administrators with the proper direction to implement VOCA at the state level."

A judge who is Chairman of the Family Violence Committee of the National Association of Juvenile and Family Court Judges had the following remarks, "We strongly agree with the requirement that state programs offer compensation to victims of domestic violence and the compensation not be denied based solely on the type of crime, category of benefits, relationship to the offender or living arrangements."

A state victim and witness coordinating council expressed support of the 1988 amendments and the proposed Guidelines. The council gave specific support to the inclusion of victims and survivors of victims of domestic violence, prohibitions against the categorical exclusions of such victims, and the non-discriminatory application of any rule relating to unjust enrichment of the offender.

One respondent, representing a county chapter of a national organization, stated that "we are especially glad to see the proposal stating that a conviction shall not be required in drunk driving cases as long as the officer's report indicated the offender was driving while intoxicated."

One national organization indicated that they were "very supportive of the new condition for eligibility that requires state victim compensation programs to describe to the Office for Victims of Crime (OVC) their efforts to inform Native Americans about the existence and availability of victim compensation."

In addition to the general support of the Guidelines, some specific suggestions were made. Two national programs recommended that the deadline for meeting the new state grant eligibility requirements, included in the 1988 amendments, be extended from October 1, 1990, to October 1, 1991. A number of states will not have legislative sessions in 1990 and, therefore, cannot make necessary legislative changes to maintain eligibility for crime victims compensation state grants under VOCA. An amendment to section 7129 (Transition Rule) of the Act would be necessary to change the date by which states are required to meet the new provisions.

One respondent recommended that the requirement of state compensation programs to issue "rules" to prevent unjust enrichment of the offender be clarified to include a written policy statement which sets out the criteria for determining unjust enrichment in all claims for crime victims compensation. This recommendation was accepted and these Final Guidelines reflect the change.

One respondent expressed concern about the need to include child victims as eligible claimants for crime victims compensation. Since the enactment of VOCA, child victims have always been included in both the crime victims compensation and assistance programs. Child victims are specifically given priority status in the victims assistance grant program. Statistics reveal that increasing numbers of child victims have been the recipients of compensation grant monies each year since the program began. However, the commentator raises an important issue regarding the special considerations which must be given to child victims of criminal violence particularly when the violence is perpetrated by a family member. Children, because of their age and status, generally are not in a position to make decisions regarding treatment needs, place of residence, or with whom they will reside. In consideration of crime victims compensation on behalf of children, it is important that they not be penalized for situations or conditions beyond their control.

One national organzation made four specific comments in addition to their overall support of the Guidelines:

1. It was suggested that the Office for Victims of Crime require that state grantees frunish specific information about the number of applications from domestic violence victims received by State crime victims compensation programs. This is very well taken. The Office for Victims of Crime recognizes the need for such information in monitoring implementation of the amendments to section 1403. The annual Performance Report form has already been revised by OVC to include this type of information and has been distributed to all state grantees.

2. There was concern expressed that the discussion of domestic violence in the proposed Guidelines was too narrow in scope, making reference only to the familial relationships between the victim and the offender. Section 1403(b)(7) clearly states that eligible programs cannot exclude victim applicants solely because of the familial relationships between the offender and victim or a situation in which the offender and victim share a residence. Therefore, the discussion of the domestic violence requirements has been amended to include victims who may share a residence with the offender.

3. In the proposed Guidelines the discussion of awards for victims of domestic violence includes the statement that the same eligibility requirements which apply to other victims of violence also apply to domestic violence victims such as timely reporting and *cooperation with law enforcement*. The respondent correctly points out that the Victims of Crime Act specifically states that victims must cooperate with the *reasonable request of law enforcement authorities*. The Final Guidelines now reflect the same language as that which appears in the Act.

4. It was also suggested that crime victims compensation programs actively provide information to domestic violence victims through domestic violence shelters and other service programs so that domestic violence victims are made aware of the fact that new efforts are being made to include them in crime victims compensation programs. The Domestic Violence section of these Final Guidelines supports the recommendation by making it clear that the Office of Victims of Crime expects crime victims compensation programs and domestic violence coalitions to work together to meet the specific needs of domestic violence victims.

Guidelines for Crime Victim Compensation Grants

I. Overview of the Statute

Section 1403(a)(1) of the Act provides that, funds permitting, the Director will make an annual grant to an eligible crime victim compensation program in an amount equal to 40% of the amount paid from State funds by the program as compensation to victims of crime (excluding amounts paid to compensate victims for property damage) during the preceding fiscal year. If the amount in the Fund is insufficient to award each state 40% of its prior year compensation payouts, section 1403(a)(2) provides that all States will be awarded the same reduced percentage of their prior year payouts from the available funds. For purposes of the victim compensation provisions of the Act, "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States. (Section 1403(d)(4)).

Section 1403 of the Act prescribes the conditions and eligibility criteria related to crime victim compensation grants.

II. Program Requirements for Grants

In order to be eligible for awards under Section 1403 of the Act, a State must submit the following information and assurances:

(1) A statement certified by the chief executive of the State, State Attorney General, or the Secretary of State, of the total amount of payments made to victims during the preceding fiscal year from State sources.

(2) The amount of such compensation paid for "property damage";

(3) The total amount and each source of revenue for the program;

(4) A certified copy of the State statute or other legal authority establishing the program.

For the purpose of requirement (1), the amount to be certified is only the amount actually spent by the program to compensate victims of crime. Amounts expended for administration of the program or other types of victim assistance are to be excluded, as are amounts appropriated or collected for the purpose of victim compensation which were not expended.

For the purpose of requirement (2), the term "property damage" is defined by the Act to exclude damage to eyeglasses, corrective lenses, dental devices, and prosthetic devices. Therefore, a State may include payments made for damage to those devices in the amount reported under requirement (1) as compensation to victims of crime. Compensation paid to reimburse crime victims for damages to, or loss of, any other real or personal property must be reported under requirement (2).

For the purpose of requirement (4), certification may be effected by the chief executive, the State Attorney General, or the clerk of the State legislature.

The requested information and assurances must be provided annually when the applicant State agency furnishes the Office of Victims of Crime with the total amount of payments to victims of criminal violence for the year requested.

III. State Grant Eligibility Requirements

State crime victims compensation programs which apply for a grant under the provisions of the Victims of Crime Act, as amended, must provide assurances of compliance with the requirements of section 1403(b) of the Act and these Guidelines. The definitions of terms used in section 1403(b) appear in section 1403(d). The 1988 amendments to the Act are italicized.

(1) the term "property damage" does not include damage to prosthetic devices, *eyeglasses or other corrective lenses,* or dental devices;

(2) the term "medical expenses" includes, to the extent provided under the eligible crime victim compensation program, expenses for *eyeglasses and other corrective lenses, for* dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term "compensable crime" means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, *and includes driving while intoxicated and domestic violence;* and

(4) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

A State crime victim compensation program is eligible for a grant upon providing to the Office for Victims of Crime the necessary assurances, supported by written documentation of compliance with the eight eligibility requirements in section 1403(b). The requirements are provided below with a discussion of each. New requirements, added by the 1988 amendments, are italicized and must be met by October 1, 1990.

Eligibility Requirements

Section 1403(b) (1) through (8) of the Victims of Crime Act (42 U.S.C. 10602(b)) lists the eight eligibility requirements which must be met by a state crime victims compensation program in order to be considered for a grant award. Those requirements are listed below followed by a discussion of each. The 1988 Amendments to the Act are italicized.

A crime victims compensation program is an eligible crime victims compensation program if:

(1) Such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence, [for—]

(A) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) Loss of wages attributable to a death resulting from a compensable crime; and

(C) Funeral expenses attributable to a death resulting from a compensable crime;

(2) Such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

(3) Such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

(4) Such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are non-residents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

(5) Such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

(6) Such program provides compensation to residents of the State who are victims of crimes occurring outside the State if—

(A) The crimes would be compensable crimes had they occurred inside that State; and

(B) The places the crimes occurred in are States not having eligible crime victim compensation programs;

(7) Such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender; and

(8) Such program provides such other information and assurances related to the purposes of this section as the *Director* may reasonably require.

Discussion of the eight eligibility requirements is presented here:

1. Such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for:

(A) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) Loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) Funeral expenses attributable to a death resulting from a compensable crime.

Discussion: The fundamental criterion of eligibility is an operational State-administered crime victim compensation program. Although an authorized program that has not actually paid out compensation benefits would be technically eligible under subsection 1403(b)(1), the program would not be entitled to any Federal funds because it had not awarded any benefits that the Federal government could match under subsection 1403(a)(1). Federal funds may not be used as "start-up" funds for a new State program.

The Act requires as a condition of eligibility that a crime victim compensation program offer compensation for crime-related medical expenses (including mental health counseling and care), lost wages, and funeral expenses. This criterion does not require the payment of all these expenses without limitation: Rather, it requires that the State offer compensation in each area, subject to such limitations and conditions as the State deems appropriate.

"Mental health counseling and care" means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is required to alleviate psychological trauma resulting from a compensable crime. Such intervention must be provided by a person who meets such standards as may be set by the State for victim mental health counseling and care.

The 1988 amendments require, as a new condition of eligibility, effective October 1, 1990, that a State must specifically include two categories of crime victims to those eligible for crime victims compensation. These two categories are victims of drunk driving and domestic violence. Exclusion of victims in these two categories as eligible recipients of crime victims compensation would make a state ineligible to apply for a VOCA crime victim compensation grant. Victims of drunk driving and domestic violence must be considered for crime victims compensation on the same basis or criteria as other victims of criminal violence. Domestic violence victims include victims of spouse abuse, child abuse and elder abuse.

Some States include the two categories of victims identified above as eligible applicants for compensation but within one or both of the categories the State statute provides specific exceptions, conditions, or limitations which serve to eliminate some victims of drunk driving and domestic violence from compensation awards. Some of the exceptions are indicated below:

- Payments of some but not all compensable expenses available to other victims;
- Denial of compensation to relatives of the perpetrator, *e.g.* victims of child abuse denied compensation because the perpetrator was the parent who may or may not have lived in the same residence;
- Denial of compensation to victims living with the perpetrator;
- Requiring, in all drunk driving cases, that a conviction of the offender precede the awarding of compensation.

This short list is not exhaustive. It only serves to identify *some* of the exceptions. These exceptions, or any other specific exceptions, which have the effect of establishing a categorical exclusion for the two types of victims specifically mentioned in the amendments (domestic violence and drunk driving) will not be allowable effective October 1, 1990.

This does not mean that State discretion in determining whether to make an award, has been eliminated. It only means that a denial of compensation to any victim of drunk driving or domestic violence cannot be made solely on the basis of the type of crime, the category of benefits requested, the living arrangement of the offender and victim, or the fact that victim and perpetrator are related.

Domestic Violence

In considering awards of compensation to victims of domestic violence, States should apply the same standards that are applied to claims from victims of other violent crimes, regardless of the familial relationship of the offender and the victim or because the victim and offender share a residence. This means that the same level of benefits for compensable expenses available to other victims must be available to domestic violence victims, and that the same eligibility requirements, such as timely reporting and victim cooperation with the reasonable requests of law enforcement authorities, shall apply.

Subsection 1403(b)(7), another new provision of the Act effective October 1, 1990, prohibits State programs from denying compensation because of the living arrangements of victim and perpetrator: "Such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residency by the victim and the offender. . . ." This means that unjust enrichment, as the basis for denying crime victims compensation, must be based upon written rules issued by the State crime victims compensation program. "Rules" is interpreted to mean either written policies or directives developed and distributed by state crime victim compensation programs, or rules adopted by legislative or administrative bodies.

Such rules cannot have the effect of denying most domestic violence victims of compensation. The rules relating to unjust enrichment should be applicable to all claims for compensation although it is recognized that domestic violence cases may have the greatest potential for unjust enrichment.

In general, programs must balance the goals of making compensation benefits available to domestic violence victims and preventing unjust enrichment of offenders. State programs are strongly encouraged to work with domestic violence coalitions and representatives to this end. As new policies are developed, states are encouraged to provide this information to domestic violence victims through those individuals and organizations who come into contact with domestic violence victims (*e.g.* shelters, counseling programs, law enforcement authorities and medical personnel.)

In developing rules, the States should consider:

A. The legal responsibilities of the offender to the victim under the laws of the state, and collateral resources of funds available to the victim from the offender. For example, legal responsibilities may include court-ordered restitution or requirements for spouse and/or family support under the domestic or marital property laws of the State. Collateral resources may include insurance or pension benefits available to the offender to cover the costs incurred by the victim as a result of the crime. As with other crimes, victims of domestic violence should not be penalized when collateral sources of payment are not viable, *e.g.*, when the offender refuses to or cannot pay restitution or other civil judgments within a reasonable period of time or when the offender otherwise impedes direct or third party (*i.e.*, insurance) reimbursements.

B. The extent to which the payment will substitute for money that the offender otherwise normally would expend for the benefit of the household or its members. Payments to victims of domestic violence which benefit offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. To deny payments, in some instances, could serve to further victimize the claimant.

C. Consultation with social services and other concerned governmental entities, as well as with private organizations that support and advocate on behalf of domestic violence victims.

D. The special needs of child victims of criminal violence especially when the perpetrator was the parent who may or may not have lived in the same residence.

Drunk Driving

Victims of drunk driving is the second category of victims specifically named in the 1988 amendment to section 1403(b)(1). Effective October 1, 1990, State programs will be required to offer compensation to victims and survivors of victims of "drunk driving."

Section 1403(d)(3) defines the term "compensable crime" to include victims of those "driving while intoxicated." In these Guidelines, the Office for Victims of Crime does not make a distinction between the terms "drunk driving" and "driving while intoxicated." The use of both terms in the amendments to section 1403 of the Victims of Crime Act, signals an interest in the inclusion of victims of both drunk driving and driving under the influence of other intoxicants. States use these two terms, and others, in their statutes to denote offenses associated with the operation of a motor vehicle while chemically impaired. In addition, the specific classification of offenses is contingent upon the results of appropriate tests to determine intoxication or the influence of drugs or alcohol.

In FY 1991, States will be required to offer crime victims compensation to victims and survivors of victims of vehicular crashes attributable to drunk or intoxicated driving. Consistent with the practice of awarding compensation to all other victims of criminal violence on the basis of a law enforcement officer's investigation report establishing the commission of a crime, victims of drunk driving crashes should be considered for compensation on the same basis. It is acknowledged that occasionally a police report may not be sufficient to establish that a crime took place. With drunk driving cases, as with other cases, individual decisions will have to be made on the basis of available documentation.

2. Such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

Discussion: This criterion requires that a State program promote victim cooperation with the reasonable requests of law enforcement authorities. The States may impose such reasonable requirements as they see fit, but must, at a minimum, require a victim to report the crime to the appropriate criminal justice agency and assist in the identification of the suspect.

3. Such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

Discussion: The Act prohibits States from using the Federal funds made available under the Act to supplant State funds otherwise available for crime victim compensation. Section 1403(b)(3).

The nonsupplantation provision is fundamentally intended to assure that the States use the Federal funds provided under the Act to augment, not replace, otherwise available State funding for victim compensation. Federal funds should be used to enhance compensation benefits or expand program coverage, not simply a substitute for previously available State monies. The State may not decrease their financial commitment to crime victim compensation solely because they are receiving Federal funds for the same purposes.

4. Such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

Discussion: This provision is intended to assure that nonresidents of a State who are victimized in a State that has an eligible compensation program are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the State. The provision of reciprocal agreements with certain other States, or foreign compensation programs will not suffice to meet this criterion. Eligibility for Federal funding will require the program to extend its coverage to all nonresidents victimized in the State.

5. Such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

Discussion: This does not constitute a new eligibility requirement, rather it is a rewording of the requirement in a more concise manner. States must compensate victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes. For example, a victim of a rape occurring on a Federal installation or Indian reservation inside the State must be afforded the same benefits that would be available to the victim if the rape were committed elsewhere in the State.

6. Such program provides compensation to residents of the State who are victims of crimes occurring outside the State if—

(A) The crimes would be compensable crimes had they occurred inside that State; and

(B) The places the crimes occurred in are States not having eligible crime victim compensation programs;

Discussion: This requirement protects residents of a State, with an eligible crime victims compensation program, who are victims of criminal violence in another State which does not have an eligible crime victims program. In such instances, the victim would be eligible for crime victims compensation from the State in which he/she resides, effective October 1, 1990. If a person from one State is victimized in another which has an eligible compensation program, the State in which the crime was committed would offer compensation to the victim as provided in "Item 4" above.

7. Such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender;

Discussion: Effective October 1, 1990, program requirements governing unjust enrichment as the basis for denying crime victims compensation by a State must be based upon written policies or directives developed and distributed by State crime victims compensation programs, or rules adopted by legislative or administrative bodies. Such rules, policies, or directives cannot have the effect of denying most domestic violence victims of compensation. A full discussion of this requirement was included in the discussion of requirement "Item 1" above.

8. Such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

Discussion: States receiving crime victims compensation grants are required to prepare annual performance reports on the form provided by the Office for Victims of Crime. The reports furnish specific information about claims for compensation including types of crimes committed, including drunk driving and domestic violence, disposition of claims and payments for compensable expenses. The performance report covers the Federal fiscal year ending September 30, and is due in the Office for Victims of Crime by December 30 of the same year. Data furnished by the States provides necessary information for the preparation of the Report to the President and the Congress due December 31, 1990, and on December 31 every two years thereafter.

Information about State crime victims compensation programs and the eligibility of victims of Federal crimes for State compensation awards is not readily available on Indian reservations in many States. Because of this situation, the Office for Victims of Crime, as part of its responsibility for implementing the new requirements of the Act, has included a new condition of eligibility for a crime victims compensation grant. States are now required to initiate efforts to inform those on Indian reservations about the State crime victims compensation program and the availability of compensation to all victims of violent crimes including those victimized on Indian reservations or Federal installations. States will be asked to describe these efforts in their applications for fiscal year 1990 funding.

IV. Financial Requirements

A. Payment of Grant Funds

1. *Annual Requirement Under $120,000.* Grantees whose annual fund requirement is less than $120,000 will receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a Request for Advance or Reimbursement, H-3 Report 1121-0013 (OJP, Form 7160/3) by the grantor agency, a voucher and a schedule for payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance

and mailing of a check directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly.

2. *Annual Requirement Over $120,000.* Grantees whose annual fund requirement exceeds $120,000 generally receive Federal funds by utilizing the "Letter of Credit" procedures. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients.

3. *Check Issuance.* All checks drawn for the payment of fund requests, either under the "Check Issued" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and *not* by the grantor agency.

4. *Termination of Advance Funding.* If a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, the grantor agency may terminate advance funding and require the grantee organization to finance its operations with its own working capital. Payments to grantee will then be made by the direct Treasury check method to reimburse the grantee for actual cash disbursements. It is essential that the grantee organization maintain a minimal amount of cash on hand and that drawdowns of cash are made only when necessary for disbursements.

B. Cost Allowability

Allowable costs for crime victims compensation are:

(1) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care:

(2) Loss of wages attributable to a physical injury resulting from a compensable crime; and

(3) Funeral expenses attributable to a death resulting from a compensable crime.

Amounts expended for administration of the program (including the performance of audits) are not allowable costs.

States are encouraged, but not required, to provide emergency awards for allowable costs when immediate services or assistance are necessary for the victim's health or welfare. A number of States currently provide for emergency awards.

Audit costs: Although under OMB Circular A-128 audit costs are generally allowable charges under Federal grants, audit costs incurred at the grantee (State) level are determined to be an administrative expense and, therefore, *cannot* be paid for with crime victim compensation grant funds.

c. *Audit Responsibilities.* Pursuant to the Office of Management and Budget (OMB) Circular A-128, "Audits of State and Local Governments," grantees, subgrantees, and subrecipients have the responsibility to provide for an audit of their activities. These audits shall be made annually, unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Note: Institutions of higher education, hospitals, and other nonprofit organizations have the responsibility to provide for an audit of their activities not less than every 2 years. While governments (state and local) receiving less than $25,000 in any fiscal year are exempt from a single audit, there is no audit exclusion for private nonprofit organizations. However, where state and local governments and nonprofit organizations received grants or other agreements less than $100,000 and do not obtain audits that meet the requirements of OMB Circulars A-110 and A-128, DOJ grantor organziations shall ensure that Federal funds are spend in accordance with applicable laws and regulations. Techniques to use to determine recipient compliance with Federal requirements include:

1. Recipient obtained audits made in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General;

2. Previous audits performed on recipients' operations;

3. Desk reviews by program officials of project documentation;

4. Project audits by Federal auditors or auditors obtained by recipients; and

5. Evaluations of recipients' operations by program officials.

These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards governing financial and compliance audits. The required audits are to be performed on an organization-wide basis as opposed to a grant-by-grant basis. The audit reports must include:

1. The auditor's report on financial statement of the receipt organization and a schedule of financial assistance showing the total expenditure for each Federal assistance program;

2. The auditor's report on compliance containing:

(a) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

(b) A negative assurance of those items not tested and a summary of all instances of noncompliance; and

(c) The auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls designed to provide reasonable assurance that Federal programs are being managed in compliance with applicable laws and regulation. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of that evaluation.

D. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

1. Financial statements of the government, department, agency, or establishment that present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

2. The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulation; and

3. The organization has complied with laws and regulations that may have material effect on its financial statements and on each Federal assistance program.

E. *Audit Implementation.* Grantees are required to specify their arrangement for complying with the provisions of OMB Circular A-128 and include in their grant application, to the extent possible, the following information:

1. The identity of the organization that will conduct the audit;

2. Approximate timing of when the audit will be performed;

3. Audit coverage to be provided. Where the audit will not provide the coverage requirements as specified previously, the audit policy or procedures must describe the specific arrangements for obtaining audit services that will meet the requirements;

4. An identification of the audit standards, if any, with which the grantee will not comply;

5. Receipt and appropriate distribution of the resultant audit report; and

6. Audit resolution policies and procedures to be followed in resolving the audit report.

F. *Fund Suspension or Termination.* If, after notice and opportunity for a hearing, the Office for Victims of Crime, Office of Justice Programs finds that a State has failed to substantially comply with the Victims of Crime Act, the *Financial and Administrative Guide for Grants,* OJP M 7100.1 (effective edition), these final implementing Guidelines, or any implementing regulation, the Director of the Office for Victims of Crime, may suspend or terminate funding to the State, or take other appropriate action, as deemed necessary.

G. *Grant Application.* The Office for Victims of Crime prepares and distributes an annual Program Instruction for crime victims compensation grants.

The Program Instruction, which is sent to all State compensation programs eligible to apply for a grant, provides the necessary information and guidance for the preparation and submission of an application for a grant award. Enclosed with the Program Instruction is an application kit containing the necessary application materials and instructions for the submission of the required assurances.

V. Additional Requirements

A. Civil Rights

1. *General.* The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, color, religion, national origin, handicap, or sex. (Section 1407(e) of the Act.) Recipients of funds under the Act are also subject to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) (prohibiting discrimination in Federally-funded programs on the basis of race, color, or national origin), section 504 of the Rehabilitation Act of 1973, 2 U.S.C. 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*, and the Department of Justice Nondiscrimination Regulations, 28 CFR part 42, subparts C, D, and G.

2. *Required Assurances and Information.* To be eligible for funding under the Act, a crime victim compensation program must submit the following assurances and information:

a. An assurance that the program will comply with all applicable nondiscrimination requirements;

b. An assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex, age or handicap against the program, the program will forward a copy of the finding to the Office of Justice Programs, Office for Civil Rights (OCR);

c. The name of the civil rights contact person who has lead responsibility in ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCR;

d. An assurance that programs will maintain information on victim services provided by race, national origin, sex, age and handicap. Note: States are not required to submit this information as part of their program performance report.

B. *Confidentiality of Research Information.* No recipient of monies under the Victims of Crime Act of 1984, as amended, shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this program and the Act. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. (See section 1407(d) of the Act.) This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to those working in State crime victims compensation programs. Whatever the scope of application given this provision, it is clear that there is nothing in the Act or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information which is supportive of the Act's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to the mandatory reporting of suspected child abuse. See *Pennhurst State School and Hospital* v. *Halderman, et al.*, 451 U.S. 1 (1981).

C. *Drug-Free Workplace.* On November 18, 1988, Congress passed the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). This statute requires that grantees of Federal agencies certify that they will provide drug-free workplaces. Making the required certification is a precondition for receiving a grant from a Federal agency. State crime victims compensation programs that apply for a crime victims compensation grant, as authorized in section 1403(a)(1) of the Victims of Crime Act must provide the necessary certification. The instrument for the certification is OJP Form 4061/3 and is titled "Certification Regarding Drug-Free Workplace Requirements." The form is furnished as a part of the grant application packet mailed annually to States eligible to apply for a grant award. The grantee's authorized representative is required to sign and date the certification and include it with the State's application for a crime victims compensation grant award.

VI. Reporting Requirements

A crime victim compensation program receiving funds under the Act will be required to submit an annual performance report. These reports will be on a form prepared and distributed by the Office for Victims of Crime. Reports will be due no later than December 30 for the Federal fiscal year ending September 30.

Approved:

Jane Nady Burnley,

Director, Office for Victims of Crime.

T. March Bell,

General Counsel, Office of Justice Programs.

[FR Doc. 90-2085 Filed 1-29-90; 8:45 am]

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Tuesday
January 30, 1990

Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 3 and 52

Federal Acquisition Regulation (FAR); Anti-Lobbying; Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[Federal Acquisition Circular 84-55]

Federal Acquisition Regulation (FAR); Anti-Lobbying

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 84-55 amends the Federal Acquisition Regulation (FAR) to implement section 319 of the Department of Interior and Related Agencies Appropriations Act, Public Law 101-121, which added a new section 1352 to title 31 U.S.C. entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 319 generally prohibits recipients of Federal contracts, grants, loans, and cooperative agreements from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, loan, or cooperative agreement. Section 319 also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of $100,000, or a loan or Federal commitment to insure or guarantee a loan, in excess of $150,000, must disclose lobbying with other than appropriated funds.

The Act also required the Director of the Office of Management and Budget (OMB) to issue guidance for agency implementation of, and compliance with the Act. OMB interim final guidance appeared in the **Federal Register** on December 20, 1989. The Act is effective as of December 23, 1989. This FAC 84-55 interim rule is based upon such OMB guidance.

DATES: *Effective:* January 30, 1990.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 2, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAC 84-55 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-55.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed change to the FAR may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The impact is likely to occur because, in connection with contract awards in excess of $100,000, offerors will be required to gather and provide to the Government certain information with respect to the use of nonappropriated funds with respect to the procurement. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be sent to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will also be considered. Such comments must be submitted separately and cite section 89-610 (FAR Case 89-93) in correspondence.

B. Paperwork Reduction Act

The requirements of the Act were addressed by the Office of Management and Budget (OMB) in the development of its interim final guidance, published in the **Federal Register** on December 20, 1989 (54 FR 52306), implementing section 319 of the Department of Interior and Related Agencies Appropriations Act, Public Law 101-121, which added a new section 1352 to title 31 U.S.C. entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." A Paperwork Reduction Act emergency approval was granted by OMB under control number 0348-0046 for the information collection requirements.

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: January 26, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in this interim rule FAC 84-55 is effective January 30, 1990.

Dated: January 22, 1990.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

Ida M. Ustad,

Acting Associate Administrator for Acquisition Policy, GSA.

S.J. Evans,

Associate Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-55 amends the Federal Acquisition Regulation (FAR) as specified below:

Item—Anti-Lobbying

FAR subpart 3.8, the provision at 52.203-11, and the clause at 52.203-12 are added to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101-21, which added a new section 1352 to title 31 U.S.C. entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions" (the Act). The Act prohibits recipients of Federal contracts, grants, loans, and cooperative agreeements from using appropriated funds for lobbying the executive or legislative branches of the Government in connection with a specific contract, grant, loan, or cooperative agreement. The Act also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of $100,000, or a loan or Federal commitment to insure or guarantee a loan, in excess of $150,000, must disclose lobbying with other than appropriated funds. This FAC 84-55 reflects the interim final guidance issued by the Office of Management and Budget (OMB) and published in the **Federal Register** on December 20, 1989 (54 FR 52306).

Therefore, 48 CFR parts 3 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 3 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Subpart 3.8, consisting of sections 3.800 through 3.808, is added to read as follows:

Subpart 3.8—Limitation on the Payment of Funds to Influence Federal Transactions

Subpart 3.8—Limitations on the Payment of Funds to Influence Federal Transactions

3.800 Scope of subpart.

This subpart prescribes policies and procedures implementing section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31, United States Code, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions" (the Act).

3.801 Definitions.

"*Agency,*" as used in this section, means an executive agency as defined in 2.101.

"*Covered Federal action,*" as used in this section, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"*Indian tribe*" and "*tribal organization,*" as used in this section, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"*Influencing or attempting to influence,*" as used in this section, means making, with the intent to influence, any communication to or appearance before 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 covered Federal action.

"*Local government,*" as used in this section, 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 an agency,*" as used in this section, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code;

(c) A special Government employee, as defined in section 202, title 18, United States Code; and

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"*Person,*" as used in this section, 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,*" as used in this section, 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,*" as used in this section, 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,*" as used in this section, includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"*Regularly employed,*" as used in this section, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 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.

"*State,*" as used in this section, 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 multi-State, regional, or interstate entity having governmental duties and powers.

§ 3.802 Prohibitions.

(a) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds 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; or, the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Act also requires offerors to furnish a declaration consisting of both a certification and a disclosure. These requirements are contained in the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and the clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions.

(1) By signing its offer, an offeror certifies that no appropriated funds have been paid or will be paid in violation of the prohibitions in 31 U.S.C. 1352.

(2) The disclosure shall identify if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) 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 a Federal contract, grant, loan, or cooperative agreement.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) *Agency and legislative liaison by own employees.* (i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, 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 covered Federal action if the payment is for

agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this section, providing any information specifically requested by an agency or Congress is permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities;

(B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(iv) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(A) Providing any information not specifically requested bo covered Federal action;

(B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and subsequent amendments.

(v) Only those activities expressly authorized by subparagraph (c)(1) of this section are permitted under this section.

(2) *Professional and technical services.* (i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, 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 covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, 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 action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action;

(B) 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 action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(ii) For purposes of subdivision (c)(2)(i) of this section, "professional and technical services" shall be 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.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents

(iv) Only those services expressly authorized by subdivisions (c)(2)(i) (A) and (B) of this section are permitted under this section.

(v) The reporting requirements of 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

3.803 Certification and disclosure

(a) Any contractor who requests or receives a Federal contract exceeding $100,000 shall submit the certification and disclosures required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, with its offer. Disclosures under this section shall be submitted to the contracting officer using OMB standard form LLL, Disclosure of Lobbying Activities.

(b) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (a) 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.

(c) The contractor shall require the submittal of a certification, *and* if required, a disclosure form, by any person who requests or receives any subcontract exceeding $100,000 under the Federal contract.

(d) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the contracting officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

3.804 Policy

(a) The contracting officer shall obtain certifications and disclosures as required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding $100,000.

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at 52.203-12, Limitation on

Payments to Influence Certain Federal Transactions, to the official designated in accordance with agency procedures, for subsequent submission to Congress. The original of the disclosure shall be retained in the contract file.

3.805 Exemption

The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibitions of this section whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of such exemption to Congress immediately after making such a determination.

3.806 Processing suspected violations

Suspected violations of the requirements of the Act shall be referred to the official designated in agency procedures.

3.807 Civil penalties

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804–3408, and 3812, insofar as the provisions therein are not inconsistent with the requirements of this subpart.

3.808 Solicitation provision and contract clause

(a) The provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, shall be included in solicitations expected to exceed $100,000.

(b) The clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, shall be included in solicitations and contracts expected to exceed $100,000.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.203–11 is added to read as follows:

52.203–11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

As prescribed in 3.808, insert the following provision:

Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Jan 1990)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that—

(1) No 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 on his or her behalf 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 (including profit or fee received under a covered Federal transaction) 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 on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

(End of provision)

4. Section 52.203–12 is added to read as follows:

52.203–12 Limitation on Payments to Influence Certain Federal Transactions

As prescribed in 3.808, insert the following clause:

Limitation on Payments to Influence Certain Federal Transactions—(Jan 1990)

(a) *Definitions.*

"*Agency*," as used in this clause, means executive agency as defined in 2.101.

"*Covered Federal action*," as used in this clause, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"*Indian tribe*" and "*tribal organization*," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"*Influencing or attempting to influence*," as used in this clause, means making, with the intent to influence, any communication to or appearance before 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 covered Federal action.

"*Local government*," as used in this clause, 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 an agency*," as used in this clause, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(c) A special Government employee, as defined in section 202, title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"*Person*," as used in this clause, 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*," as used in this clause, 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*," as used in this clause, 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*," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"*Regularly employed*," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 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.

"*State*," as used in this clause, 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 multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions.* (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds 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; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) *Agency and legislative liaison by own employees.* (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, 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 covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(*1*) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(*2*) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action—

(*1*) Providing any information not specifically requested but necessary for an agency 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 an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivison (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) *Professional and technical services.* (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of—

(*1*) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, 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 action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(*2*) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of 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 action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be 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 clients'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 and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A) (*1*) and (*2*) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) *Disclosure.* (A) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to *include* profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. 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.

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding $100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(iv) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.

(v) *Penalties.* (A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(vi) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

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