

Section 112 of HUD Reform Act of 1989

Legal Opinion: GMP-0050

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Subject: Section 112 of HUD Reform Act of 1989

January 31, 1992

Stephen J. Geissler, Esq.
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RE: Section 112 of the HUD Reform Act of 1989

Dear Mr. Geissler:

This responds to your letter of January 8, 1992, concerning the application of the recordkeeping, reporting and registration requirements of Section 112 of the HUD Reform Act, set forth in 24 CFR Part 86. Your letter related your conclusion that these requirements did not apply to your firm and other interested parties with respect to activities performed on behalf of the Connecticut Institute for the Blind (CIB) because those activities fall within the exemptions set forth in 86.20 (d) and 86.25 (d)--"Exception for Compliance with HUD requirements."

The determination of whether Section 112 applies to any relationship or activity is one that initially necessarily must be made on a case-by-case basis by those doing business with the Department. The key factor in making this determination is whether there has been an expenditure, or an agreement to make an expenditure, to another person for the purpose of influencing a decision of the Department with respect to either an award of financial assistance or a management action. The broad definition of "influence" set forth at 86.15, is: "to affect in any way any aspect, including (but not limited to) the outcome, of the award of any financial assistance or the taking of any management action by the Department." Actions taken in compliance with HUD requirements, purely informational inquiries or ministerial requests, and communications with respect to litigation, are excluded from the definition of "influence."

Unfortunately, there is no bright line distinction that can be drawn between covered activities and activities taken to comply with HUD requirements. Apparently, you have examined the agreements and expenditures related to your representational activities on behalf of the CIB and have concluded that they fall within the exemption. In your continuing assessment of whether the Section 112 requirements apply to your firm or other interested parties, you may find the examples contained in the Appendix to the Rule, as well as the preliminary discussion of the Comments to the Rule, to be helpful.

One activity of the firm that you have described in your letter is a request that HUD allow CIB to amend its articles of incorporation to reflect a change in state law concerning liability limitations of officers and directors of corporations. Based upon the facts that you have presented, we do not believe that the request to HUD constituted an attempt to influence an agency funding decision or management action as defined in the Rule.

We hope that this information has been helpful to you. If you have any further questions, please let us know.

Very sincerely yours,

Carole W. Wilson
Associate General Counsel
Office of Equal Opportunity and
Administrative Law

cc: Arnold Haiman
Office of Ethics