

McKenna Long & Aldridge^{LLP}

Attorneys at Law

1900 K Street, NW • Washington, D.C. 20006
Voice: (202) 496-7500 • Fax: (202) 496-7756

FACSIMILE TRANSMISSION INFORMATION

FROM: Jessica Abrahams

DATE: 12/10/04

CLIENT/MATTER #: 29221.0001

Please forward Fax to the appropriate persons listed below on this form.

Total number of pages including one page coversheet: 4

If you do not receive all of the pages transmitted, please contact our facsimile operator immediately at (202) 496-7979.

TRANSMISSION COMPLETED:

(Date/Time)

BY:

(Operator)

Remarks

CONFIDENTIALITY NOTICE

This facsimile transmission coversheet, and any documents which may accompany it, contain information from the law firm of McKenna Long & Aldridge LLP, which is intended only for the use of the individual or entity to which it is addressed, and which may contain information that is privileged, confidential, and/or otherwise exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, any disclosure, dissemination, distribution, copying, or other use of this communication or its substance is prohibited. If you have received this communication in error, please call us collect to arrange for the destruction of the communication or its return to us at our expense. Thank you.

	NAME	FIRM/COMPANY	FAX NO.
1.	Attn: G. John Heyer	Committee for Purchase from People Who Are Blind or Severely Disabled	703-603-0655
2.	Janet Yandik	Committee for Purchase from People Who Are Blind or Severely Disabled	703-603-0655
3.	Katherine Astrich	Office of Management and Budget	202-395-6566

Atlanta

Denver

Los Angeles

Philadelphia

McKenna Long & Aldridge^{LLP}

Attorneys at Law

1900 K Street, NW - Washington, DC 20006
202.496.7500 • Fax: 202.496.7756
www.mckennalong.com

San Diego

San Francisco

Washington, DC

Brussels

JESSICA C. ABRAHAMS
(202) 496-7204

EMAIL ADDRESS
jabrahams@mckennalong.com

December 10, 2004

BY E-MAIL AND FACSIMILE

Committee for Purchase from People
Who Are Blind or Severely Disabled
1421 Jefferson Davis Highway
Jefferson Plaza 2, Suite 10800
Arlington, VA 22202-3259

Re: Docket No. 2004-01-01; Governance Standards for Central nonprofit Agencies and Nonprofit Agencies Participating in the Javits-Wagner-O'Day Program Notice of Proposed Rulemaking and Request for Comments; 69 Fed. Reg. 65395 (November 12, 2004)

Dear Sir or Madam:

On behalf of the National Association for the Employment of People Who Are Blind ("NAEPB"), I am pleased to submit comments on the information collection and certifications and required determinations aspects of the above-referenced notice of proposed rulemaking.¹ NAEPB is a national association whose constituent members are nonprofit agencies for the blind located in and organized under numerous states of the United States. NAEPB, through its 61 constituent members, seeks to develop jobs and economic opportunities for persons who are blind through the Javits-Wagner-O'Day ("JWOD") Act program as well as through various private and public programs designed to improve employment prospects for persons who are blind so that they may achieve personal and financial independence. In short, NAEPB is committed to the implementation and improvement of relevant programs, including JWOD.

The Notice of Proposed Rulemaking, published in the Federal Register on November 12, 2004 (69 Fed. Reg. 65395), solicits comments on proposed governance standards that the Committee for Purchase from People Who Are Blind or Severely Disabled ("Committee") asserts will "help promote sound governance procedures for central nonprofit agencies and

¹ NAEPB intends to submit comments on the substantive of the proposed rulemaking within the requisite time frame for doing so. Because the deadline for commenting on the certifications and required determinations aspects of the proposed rulemaking did not change, NAEPB is submitting these additional, focused comments. In addition to disagreeing with the substantive language of the proposed regulations, NAEPB disagrees with the Committee's certifications and required determinations. Simply put, this proposed rulemaking is both substantively and procedurally flawed.

Committee for Purchase from People
Who Are Blind or Severely Disabled
December 10, 2004
Page 2

nonprofit agencies participating in the JWOD Program, help ensure the effective and transparent administration of Government contract funds, and continue to maintain a high level of support for the JWOD Program's employment mission." 69 Fed. Reg. 65395. Specifically, with regard to Certifications and Required Determinations, the Rulemaking addresses Executive Order ("E.O.") 12866, E.O. 12988, E.O. 13132, and the Paperwork Reduction Act. NAEPB believes that the Committee's relevant certifications and determinations require comment.

Specifically, with regard to the Paperwork Reduction Act, NAEPB believes that the new certifications required by the Committee's proposed rulemaking are inappropriate and duplicative. Specifically, the information requested by the Committee in the form of the new certifications is the same as that required by the Internal Revenue Service ("IRS") on Form 990. The Form 990 discloses publicly a non-profit agency's finances, including administrative expenses and executive compensation. The Form 990 is readily available to the public and to the Committee staff. Accordingly, NAEPB does not believe that it is necessary or appropriate for the Committee to impose additional certification requirements on JWOD participants to obtain information that is already in the public domain.

Furthermore, the filing deadline for the relevant certifications – December 1 – creates difficulties for certain of the non-profit agencies as the deadline is inconsistent with their fiscal years, which are often dictated by state law requirements. Submission of the IRS Form 990 is required four and one half months after the conclusion of the non-profit agency's fiscal year. On the contrary, the December 1 deadline does not provide adequate time to properly audit the requisite financial data. Premature filing of the Committee's certification may result in inconsistencies in the information reported to the Committee and on the IRS Form 990. Moreover, NAEPB believes that gathering the relevant information and preparation of the certification will consume significantly more time than that estimated by the Committee. NAEPB believes the burden on its constituent members by requiring the new certifications far outweighs any benefit, especially because the requisite information is already in the public domain.

NAEPB does not agree with the Committee's E.O. 12866 determination that the proposed rulemaking is not significant. While the Committee is the only agency that manages the JWOD program, as will be described in NAEPB's substantive comments, the rights of the non-profit agencies for the blind will be materially impacted by the proposed rulemaking. Further, not only will there be a direct economic impact on the agencies as a result of the rule, because the Committee is not adequately staffed to become an accrediting organization, its shift in focus away from the administration of the JWOD program will necessarily impact the non-profit agencies in an adverse financial way as well as the mission of the JWOD program.

Moreover, the proposed rules raise significant constitutional concerns. By singling out the non-profit agencies for the blind and severely disabled and imposing certain preconditions to contracting with the Government, including restrictions on compensation (conditions that are not imposed with regard to other contracts), the proposed rulemaking violates fundamental principles of equal protection. There is no justification for disparate treatment of non-profit agencies for

DC:50306908.1

Committee for Purchase from People
Who Are Blind or Severely Disabled
December 10, 2004
Page 3

the blind and severely disabled wishing to participate in the JWOD program and no precedent for imposing the requirements of the proposed rulemaking as a prerequisite to participation in government contracting.

With regard to E.O. 12988 and E.O. 13132, NAEPB disagrees that the proposed rulemaking will have no pre-emptive effect on state and local law and regulation and that there will be no federalism implications as a result of the proposed rulemaking. Specifically, it is inappropriate for the Committee to assume regulatory authority over the governance standards for 501(c)(3) organizations when numerous other governmental agencies, federal, state, and local, already regulate them. The non-profit agencies are organized under state law. While primary oversight over a wide range of financial and governance affairs, including executive compensation, resides with the IRS, the Attorneys General and consumer protection agencies of most states enforce abuses of charitable trusts and activities. Additionally, because many of the non-profits participate in state and local government programs that are similar to JWOD, the imposition of proposed rulemaking implicates issues of federalism. Accordingly, the requirements imposed by the proposed rulemaking are duplicative, implicate federalism concerns, and pre-empt state and local legal requirements to which the non-profit agencies are subject. In sum, NAEPB asserts that the Committee's proposed rulemaking is flawed from a procedural, as well as a substantive, perspective.

Please do not hesitate to contact me if you would like to discuss further these comments. I can be reached at 202-496-7204.

Sincerely,



Jessica C. Abrahams

JCA:bas

cc: Janet Yandik, Information Management Specialist
Committee for Purchase from People Who are Blind or
Severely Disabled
1421 Jefferson Davis Highway
Jefferson Plaza 2, Suite 10800
Arlington, VA 22202-3259

Ms. Katherine Astrich
Office of Management and Budget
Office of Information and Regulatory Affairs
Eisenhower Executive Office Building
725 17th Street, N.W.
Washington, DC 20502

DC:50306908.1