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Date: March 24, 1989
To: Presidents
From: Caesar J. Naples
Vice Chancellor
Faculty and Staff Relations
Subject: DRUG FREE WORKPLACE REQUIREMENTS - PUBLIC LAWS 100-440 and 100-690

The Drug-Free Workplace Act of 1988 imposes new requirements, effective March 18, 1989, on all recipients of any Federal agency grant or contract. A grantee is "the department, division, or other unit... responsible for the performance under the grant." A contractor is "the department, division, or other unit... responsible for the performance under the contract." It has been determined that institutions receiving Title IV campus-based program funds (e.g., Supplemental Educational Opportunity Grants, College Work Study and Perkins Loans) are required to comply with the Drug-free Workplace provisions. Since all CSU campuses receive such campus-based funds, all campuses must comply with the Act.

Employee Assistance Programs (EAP) are an essential part of these requirements to show a good faith effort to maintain a drug-free workplace. It would seem prudent to have your campus EAP program and policy reviewed and compared to the requirements of the Act to insure compliance.

In addition, each grantee/contractor must now submit a Drug-free Workplace Certification to each Federal agency from which it receives the grant or contract. This means that both the campus and individuals applying for grants/contracts must submit the required certifications. All employees engaged in work under the grants/contracts must also receive a copy of the certification and a notice of other conditions of employment required by the Act.

Initially, we gave some thought to a systemwide certification statement. After an analysis of the Act, it was clear that most of the certification statements must be based on the local policies and procedures at each campus. Therefore, each campus must develop a certification that reflects its own policies and procedures. We are not aware of the level of review that the

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various Federal agencies may apply to these certifications. Past experience indicates that there may well be differences. At this time there is no assurance that the same certification will be acceptable to all agencies. On the other hand, there is no reason to think otherwise. If this problem is encountered I would appreciate a letter outlining the problem and a copy of the documents submitted so that there will be a coordinated approach, on behalf of the system, to the Federal agencies involved.

This is another workload imposition by the Federal government over which we have no control and for which there are no additional resources. On the bright side, since all campuses have an EAP in place, the bulk of the initial workload is in preparing the certifications and notices. Attached is an outline of the various requirements under the Act and a copy of the Act. If you or your staff have questions please call Mac McCarty at (213) 590-5587 or ATSS 635-5587.

Department of Defense contractors are subject to similar but more stringent requirements than those for the Drug-free Workplace Act. We are still reviewing the DOD requirements with the Office of General Counsel. When that review is complete, we will provide guidance on compliance for DOD contractors.

CJN/bk

Attachments

DRUG-FREE WORKPLACE REQUIREMENTS

The certification should contain the following:

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of controlled substances is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

(b) Establishing a drug-free awareness program to inform employees about --

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employees assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. Place of Performance (Street address, city, county, state, zip code).

In addition to submitting the above certification, the CSU or campus must fulfill the following requirements:

1. Publish a statement to employees that unlawful manufacture, possession, distribution, dispensation, or use of a controlled substance is prohibited in the grantee's workplace;
2. Establish a drug-free awareness program for employees informing them of inter alia, (i) the dangers of workplace drug abuse; (ii) the grantee's drug-free workplace policy; (iii) availability of employee assistance and drug counseling programs; and (iv) potential penalties for drug abuse violations.
3. Provide to each employee working on the grant a copy of the grantee's published statement prohibiting drugs in the workplace.
4. Require that each employee, as a condition of employment under the grant, agree to: (i) abide by the terms of the grant statement; (ii) notify the employer of any drug conviction resulting from violation at the workplace no later than five days after such a conviction.
5. Notify the agency within 10 days of receiving notice of a conviction from an employee or receiving actual notice.
6. Sanction the convicted employee or require his participation in a rehabilitation program approved by Federal, State or local health, law enforcement or other appropriate agency.
7. Continue to make a good faith effort to maintain a drug-free workplace through implementation of all of the above provisions.

P.L. 100-690
Sec. 5144

LAWS OF 100th CONG.—2nd SESS.

Nov. 1

the enactment of this Act by a national training unit established by the Secretary.

SEC. 5145. DEFINITIONS.

For purposes of this chapter:

(1) **CONTROLLED SUBSTANCE.**—The term “controlled substance” has the meaning given such term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(2) **SECRETARY.**—The term “Secretary” means the Secretary of Housing and Urban Development.

SEC. 5146. REGULATIONS.

Not later than 6 months after the date of the enactment of this Act, the Secretary shall issue any regulations necessary to carry out this chapter.

Subtitle D—Drug-Free Workplace Act of 1988

SEC. 5151. SHORT TITLE.

This subtitle may be cited as the “Drug-Free Workplace Act of 1988”.

SEC. 5152. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL CONTRACTORS.

(a) DRUG-FREE WORKPLACE REQUIREMENT.—

(1) **REQUIREMENT FOR PERSONS OTHER THAN INDIVIDUALS.**—No person, other than an individual, shall be considered a responsible source, under the meaning of such term as defined in section 4(8) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(8)), for the purposes of being awarded a contract for the procurement of any property or services of a value of \$25,000 or more from any Federal agency unless such person has certified to the contracting agency that it will provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the person's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment on such contract, the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5154; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

(2) REQUIREMENT FOR INDIVIDUALS.—No Federal agency shall enter into a contract with an individual unless such contract includes a certification by the individual that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF THE CONTRACTOR.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Each contract awarded by a Federal agency shall be subject to suspension of payments under the contract or termination of the contract, or both, and the contractor thereunder or the individual who entered the contract with the Federal agency, as applicable, shall be subject to suspension or debarment in accordance with the requirements of this section if the head of the agency determines that—

(A) the contractor or individual has made a false certification under subsection (a);

(B) the contractor violates such certification by failing to carry out the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

(C) such a number of employees of such contractor have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—(A) If a contracting officer determines, in writing, that cause for suspension of payments, termination, or suspension or debarment exists, an appropriate action shall be initiated by a contracting officer of the agency, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures.

(B) The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and such other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual in such proceeding.

(3) EFFECT OF DEBARMENT.—Upon issuance of any final decision under this subsection requiring debarment of a contractor or individual, such contractor or individual shall be ineligible for award of any contract by any Federal agency, and for

participation in any future procurement by any Federal agency, for a period specified in the decision, not to exceed 5 years.

SEC. 5153. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL GRANT RECIPIENTS.

(a) DRUG-FREE WORKPLACE REQUIREMENT.—

(1) PERSONS OTHER THAN INDIVIDUALS.—No person, other than an individual, shall receive a grant from any Federal agency unless such person has certified to the granting agency that it will provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5154; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

(2) INDIVIDUALS.—No Federal agency shall make a grant to any individual unless such individual certifies to the agency as a condition of such grant that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting any activity with such grant.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF THE GRANTEE.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Each grant awarded by a Federal agency shall be subject to suspension of payments under the grant or termination of the grant, or both, and the grantee thereunder shall be subject to suspension or debarment, in accordance with the requirements

of this section if the agency head of the granting agency or his official designee determines, in writing, that—

(A) the grantee has made a false certification under subsection (a);

(B) the grantee violates such certification by failing to carry out the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1); or

(C) such a number of employees of such grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1).

(2) **CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.**—A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding Executive order and any regulations promulgated to implement such law or Executive order.

(3) **EFFECT OF DEBARMENT.**—Upon issuance of any final decision under this subsection requiring debarment of a grantee, such grantee shall be ineligible for award of any grant from any Federal agency and for participation in any future grant from any Federal agency for a period specified in the decision, not to exceed 5 years.

SEC. 5154. EMPLOYEE SANCTIONS AND REMEDIES.

A grantee or contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to section 5152(a)(1)(D)(ii) or 5153(a)(1)(D)(ii)—

(1) take appropriate personnel action against such employee up to and including termination; or

(2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

SEC. 5155. WAIVER.

(a) **IN GENERAL.**—A termination, suspension of payments, or suspension or debarment under this subtitle may be waived by the head of an agency with respect to a particular contract or grant if—

(1) in the case of a waiver with respect to a contract, the head of the agency determines under section 5152(b)(1), after the issuance of a final determination under such section, that suspension of payments, or termination of the contract, or suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract, as the case may be, would severely disrupt the operation of such agency to the detriment of the Federal Government or the general public; or

(2) in the case of a waiver with respect to a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) **EXCLUSIVE AUTHORITY.**—The authority of the head of an agency under this section to waive a termination, suspension, or debarment shall not be delegated.

SEC. 5156. REGULATIONS.

Not later than 90 days after the date of enactment of this subtitle, the governmentwide regulations governing actions under this subtitle shall be issued pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

SEC. 5157. DEFINITIONS.

For purposes of this subtitle—

(1) the term "drug-free workplace" means a site for the performance of work done in connection with a specific grant or contract described in section 5152 or 5153 of an entity at which employees of such entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this Act;

(2) the term "employee" means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the provisions of the grant or contract described in section 5152 or 5153;

(3) the term "controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812);

(4) the term "conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(5) the term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance;

(6) the term "grantee" means the department, division, or other unit of a person responsible for the performance under the grant;

(7) the term "contractor" means the department, division, or other unit of a person responsible for the performance under the contract; and

(8) the term "Federal agency" means an agency as that term is defined in section 552(f) of title 5, United States Code.

SEC. 5158. CONSTRUCTION OF SUBTITLE.

Nothing in this subtitle shall be construed to require law enforcement agencies, if the head of the agency determines it would be inappropriate in connection with the agency's undercover operations, to comply with the provisions of this subtitle.

SEC. 5159. REPEAL OF LIMITATION ON USE OF FUNDS.

Section 628 of Public Law 100-440 (relating to restrictions on the use of certain appropriated amounts) is amended—

- (1) by striking "(a)" after "SEC. 628."; and
- (2) by striking subsection (b).

SEC. 5160. EFFECTIVE DATE.

Sections 5152 and 5153 shall be effective 120 days after the date of the enactment of this subtitle.