



# ACSM



*government affairs update*

## May 2010 ACSM Government Affairs Update

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**JGAC Meeting Recap** --- The Joint Government Affairs Committee recently held its meeting in Phoenix. As always, the meeting was well attended and there was a great discussion on a number of topics important to the surveying and mapping community. The full JGAC Report will be posted on the ACSM website.

**Lobby Day 2010 Webinar** --- **VERY IMPORTANT** --- Since our Fall meeting will take place in Orlando, we will not be having a traditional Lobby Day in Washington. Instead, we are asking you to visit your Member of Congress in their home district offices during the Summer Recess, which will be from August 9 to September 9, 2010. Please make your own appointments to fit your schedule with your Representative and Senator. We will provide you with an electronic version of the materials to take to your meetings.  
Also, mark your calendars for our Lobby Day Webinar, which will take place on **Tuesday, June 22 at 11:00 a.m. eastern standard time.** During the webinar, we will go over the issues and answer any of your questions. Watch your e-mail for details about this exciting event.

**COFPAES Delegate Meeting** --- COFPAES recently held its Delegates Meeting in Washington, DC. During the morning session, we heard from several prominent speakers from the Federal government. Daniel Gordon, Administrator of the Office of Federal Procurement Policy held a roundtable discussion on procurement issues important to the A/E community. Elizabeth Wilkins, Policy Assistant for Urban Affairs and Mobility and Opportunity in the White House discussed the role of the White House Office of Sustainable Communities and COFPAES' proposed Livable Communities Act. H. Glen Walker, Executive Director of the Recovery Accountability and Transparency Board spoke about the Stimulus funds and how the various agencies are using the federal funding.  
During our Delegate meeting, we discussed a number of issues. One of those involved SBA Size Standards. The SBA will review its size standard in the A/E field in 2010. Currently, the SBA Size Standard for surveying is \$4.5 million gross. We will monitor this issue as it moves forward. Another issue discussed was the continued placement of A/E services on the GSA Schedule. Member organizations will review the current GSA Schedules for areas that violate the Brooks Act and COFPAES will meet with GSA to address our concerns. The third issue involved the recent Federal Register Notice

relating to the definition of "inherently governmental" function. There are two main areas of the Notice that give us concern; the first is OFPP's suggested limits on contracting of "professional and technical services" and the second relates to the construction of "buildings or structures intended to be secure from eavesdropping or other penetration by foreign governments." Both of these issues are addressed by comments submitted by both COFPAES and ACSM.

**Fundraiser Report** --- The Political Action Committee (PAC) contributed to several fundraisers recently. Here are the reports from those fundraisers:

Rep. LoBiondo (May 26) -- Congressman LoBiondo (NJ-2) is on the House Transportation and Infrastructure Committee. Laurence Socci spoke with the Congressman, his Chief of Staff and his Legislative Asst. handling transportation issues, about our railroad monumentation issue. They all seemed receptive and the Chief of Staff lobbied the Congressman separately on the importance of the issue. We will set up a detailed meeting with the staff soon.

Rep. Judy Biggert (May 27) Congresswoman Biggert (IL-13) is on the House Education Committee. Laurence Socci spoke with her and her Legislative Director about Trig-Star funding. She agreed help us try to find funding through other sources and will see if she can do something through the Dept. of Education Appropriations bill.

She is also on the House Labor Committee. Laurence Socci explained the Dept. of Labor Professional Exemption issue to her and asked her to facilitate a meeting for us with someone in the Wage and Hour Division at Dept. of Labor. Her staff agreed to help.

Rep. Richard Burr (May 27) Congressman Burr (NC) is on the Senate Labor Committee. Laurence Socci spoke with him and his Chief of Staff about our Professional Exemption issue. The Chief of Staff wants to meet to learn more about the issue. He'll help us get a meeting with Dept. of Labor and will see if there is a legislative fix.

**FEMA News** --- FEMA recently released a report entitled "Housing Units in One-Percent Annual Chance Floodplain Impacts of FEMA's Flood Map Modernization Program." In order to provide an estimate for the number of housing units "mapped in" the one-percent annual chance (1%) floodplain over the last few years, an analysis using Geographic Information Systems (GIS) was performed in January 2010. To provide a comparison of the flood zones mapped during Flood Map Modernization (Map Mod), new Digital Flood Insurance Rate Map (DFIRM) floodplain boundaries (studies contracted as of 2004 and effective as of April 2009) were acquired from the National Flood Hazard Layer (NFHL) and calculations regarding the areal extent of each flood zone were calculated. A total of 798 counties in the United States and territories were deemed as having sufficient NFHL flood zone coverage to include in this analysis.

Because FEMA prioritized high-risk high-population (not large geographic) areas in Map Mod, the 798 counties used in this analysis showed a change in the special flood hazard area (SFHA), or 1% annual chance floodplain, from 56,700 square miles prior to Map Mod to 60,500 mapped square miles as of April 2009. It is estimated that the current SFHA nationwide (including Alaska, Hawaii, American Samoa, Guam, Northern Mariana Islands, Puerto Rico and Virgin Islands) is on the order of 243,500 square miles, whereas the total land area of the Nation is almost 3,600,000 square miles.

The following conclusions were reached based on this analysis:

- As of the close of Fiscal Year 2009 (FY09), FEMA has issued modernized Flood Insurance Rate Maps (FIRM) in preliminary format for over 80% of the Nation's population, in about 16,000 communities
- Of those maps, maps for 58% of the Nation's population have been finalized, in about 9,000

communities

- Among those FIRMs, the overall size of the Special Flood Hazard Area has increased by about 7%, based on FEMA mapping completed by April 2009
- The estimated number of people in the SFHA was reduced from 10.2 million prior to Map Mod to 10.0 million post Map Mod in the 798 counties analyzed.
- The estimated number of housing units in the SFHA went from 4.44 million prior to Map Mod down to 4.35 million housing units post Map Mod in the 798 counties analyzed.

By the end of this fiscal year, FEMA expects to have preliminary Flood Insurance Rate Maps (FIRM) issued for over 92% of the Nation's population. FEMA noted that it will continue to ensure, as draft maps are released, that it will provide ample opportunity for the public to comment on the maps before they are finalized.

**Federal Register Notice – “Inherently Governmental” Function** --- ACSM recently filed comments to the Federal Register Notice relating to OFPP's review of the definition of “inherently governmental” function.

In our comments, we noted that ACSM is very much concerned with several points in the Proposed OFPP Policy Letter as it relates to the discussion of “inherently governmental” function. The Federal Activities Inventory Reform (FAIR) Act (P.L. 105-270) defines “inherently governmental” function as an activity that is “so intimately related to the public interest as to mandate performance by Federal employees.” This definition is somewhat vague and ambiguous because it does not define what “intimately related” is and who makes that determination.

Another concern that ACSM has can be found at page 16191 of the Notice. The language states, in part, “For ongoing contracts, agencies should review how work is performed, focusing, in particular, on functions that are closely associated with inherently governmental activities and *professional and technical services*, (emphasis added) to ensure the scope of the work or the circumstances have not changed to the point that inherently governmental authority has been transferred to the contractor.” Surveyors receive extensive education and go through a testing and licensing procedure in their state to ensure they have the highest degree of technical expertise. As a provider of “professional and technical services” they should not be subject to a higher degree of scrutiny over their work product than any other government contractor. Additionally, surveying professionals are already subject to the qualifications based selection (QBS) process, as required by the Brooks Act (40 U.S.C. 1101, et. seq.) which requires that their qualifications be examined prior to selection for federal contract work.

ACSM is also concerned about the discussion of “Construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments” under the “illustrative list ... of functions that are closely associated with the performance of inherently governmental functions.”

This language could result in the design and construction of all Federal buildings and structures being deemed closely associated with the performance of inherently governmental functions and a gray area with regard to whether such design and construction could be performed by contract to the private sector.

The comments were due on June 1, 2010.

