

REGULATORY RESTRICTIONS ON ALLOWABILITY

Cost principles for lobbying restrictions are found at:

- The Department of Energy Acquisition Regulation at Part 970 for DOE Management and Operating Contracts;
- The Federal Acquisition Regulation at Section 31.205 for contracts and financial assistance with commercial organizations;
- Office of Management and Budget (OMB) Circulars on Cost Principles, including:
 - OMB Circular A-21, Cost Principles for Educational Institutions;
 - OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments; and,
 - OMB Circular A-122, Cost Principles for Non-Profit Organizations.

Generally, the various directives contain similar provisions restricting the allowability of costs associated with lobbying. A summary of some of the unallowable lobbying provisions is provided below:

- Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedures, through in kind or cash contributions, endorsements, publicity, or similar activities;
- Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
- Any attempt to influence the introduction, or the enactment or modification of any pending, Federal, state, or local legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

- Any attempt to influence the introduction, or the enactment or modification of any pending, Federal, state, or local legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign;
- Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities; and
- Attempting to improperly influence, either directly, or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter.



Office of Procurement and Assistance Management
Office of Acquisitions and Financial Assistance Policy



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Lobbying . . .

WHAT YOU NEED TO KNOW AS A FEDERAL EMPLOYEE, CONTRACTOR, COOPERATIVE AGREEMENT PARTICIPANT, OR GRANTEE

Various Federal statutes and regulations prohibit “lobbying” by federal employees, as well as federal contractors, cooperative agreement participants, and grantees. Although the definition of “lobbying” may differ within statutes and regulations, the restrictions generally prohibit contacting or encouraging others to contact a state or federal legislator or executive branch official in an attempt to influence the enactment or modification of legislation or other specified activities. The following discussion provides general guidelines that should help identify the various statutory and regulatory lobbying restrictions. For more detailed guidance, you should consult your cognizant legal counsel.

FEDERAL EMPLOYEES

● CRIMINAL LOBBYING STATUTE

18 U.S.C. §1913 provides criminal sanctions and requires removal from office if Federal employees violate the statute's prohibition on lobbying with appropriated moneys. The restriction has been interpreted by the Justice Department to prohibit "grass roots lobbying" -- campaigns in which members of the public are encouraged to contact their Senators or Representatives. Slightly less restrictive rules apply to cabinet members and other Senate-confirmed officials acting within their areas of responsibility. The Justice Department guidance permits Federal employees to do the following:

- communicate with Members and their staffs in support of Administration or Departmental positions;
- communicate with the public through public speeches and published writings;
- communicate privately with individual members of the public, so long as those communications are not part of a grass roots lobbying campaign; and
- lobby Congress or the public on non-legislative or appropriation matters like nominations and treaties.

ALL EMPLOYEES (FEDERAL, CONTRACTOR, AND RECIPIENT) SPECIAL APPROPRIATIONS RIDERS

Annual appropriations legislation may contain provisions that are known as "riders" which may place restrictions on the use of appropriations. For example, a recent rider to the 1998 Energy and Water Development Act included a prohibition on the use of funds to influence congressional action on any legislation or appropriation matters pending before Congress except for communications to

Congress as described in section 1913 of title 18 U.S.C. Another rider to the 1998 Interior Act prohibited the use of funds for publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. Information concerning such riders may be obtained from your legal counsel or the Office of Procurement and Assistance Management, DOE Headquarters.

FEDERAL CONTRACTORS AND FINANCIAL ASSISTANCE RECIPIENTS

● BYRD AMENDMENT

A provision commonly referred to as the Byrd Amendment (31 U.S.C. §1352) prohibits the use of Federal contract, grant, loan or cooperative agreement funds to pay any person for influencing or attempting to influence the executive or legislative branch with respect to certain specified actions. The specified actions include the following:

- awarding of a Federal contract;
- making of a Federal grant;
- making of a Federal loan;
- entering into a cooperative agreement; or
- the extension, continuation, renewal, amendment or modification of any of these.

Any person who requests or receives a Federal contract, grant, loan or cooperative agreement is required to file a certification that no payments prohibited by the Byrd amendment have been made using appropriated funds, and a declaration providing information with respect to any payments made using other than appropriated funds. Violations of the Byrd amendment may

result in the imposition of civil penalties of \$10,000 or more.

● SIMPSON-CRAIG AMENDMENT

Effective January 1, 1996, the so-called Simpson-Craig amendment to the Lobbying Disclosure Act (2 U.S.C. §1611) makes any organization that is tax-exempt under section 501(c)(4) of the Internal Revenue Code ineligible for federal funds through an award, grant, or loan if the organization engages in lobbying activities as defined in that Act. This provision is unique in that it prohibits all lobbying by an organization, rather than simply prohibiting lobbying supported by Federal funds. Lobbying is defined here to include, among other things, any communication to legislative branch officials on behalf of a client with regard to formulation, modification, or adoption of Federal legislation.

● DOE NATIONAL SECURITY CONTRACTS

Special restrictions apply to contracts in excess of \$100,000 obligating funds appropriated for national security programs of the Department of Energy. The restrictions at 42 U.S.C. §7256a make statutorily unallowable any costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

● CONTRACTS IN EXCESS OF \$500,000

The Federal Acquisition Streamlining Act (FASA) created special restrictions applicable to certain contracts, in excess of \$500,000. Costs incurred under these contracts to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State are statutorily unallowable, 41 U.S.C. §256(e).