

# LOBBYING

## What You Should Know as a Federal Employee, Contractor, Cooperative Agreement Participant, or Grantee

Various Federal statutes and regulations prohibit certain "lobbying" and other similar activities by federal employees, as well as federal contractors, cooperative agreement participants, and grantees. The definition of "lobbying" differs within each statute or regulation. 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 such as the award extension of a contract or financial assistance agreement. The following discussion provides general guidelines that identify the primary statutory and regulatory lobbying restrictions which are relevant to DOE, federal employees, and contractors or subcontractors. This information is not intended to be all-inclusive and does not constitute an official interpretation of the meaning or applicability of the statutes or regulations addressed below. Readers should consult their legal counsel for guidance on lobbying and similar activities.

### FEDERAL EMPLOYEES

#### Lobbying Statute

18 U.S.C. 1913 prohibits using Federal appropriated funds, without the express authorization of Congress, to directly or indirectly pay for personal services or communications intended or designed to influence Members of Congress, jurisdictions, or officials of any government with regard to any legislation, law, ratification, policy, or appropriation. The prohibition does not prohibit officers or employees of the United States Federal Government from making such communications to Members or Congress or other officials at their request through the proper channels. Violations of this statute are subject to the same penalties as those provided by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), which is discussed below. The Department of Justice guidance permits Federal employees to do the following in the course of their duties:

- communicate with Members of Congress and their staffs in support of Administration or Departmental positions;
- communicate with the public through public speeches and published writings to promote Administration or Departmental positions;
- communicate privately with individual members of the public, to promote Administration or Departmental positions 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

Appropriations Acts may contain provisions often known as "riders," which may place restrictions on the use of funds provided in Appropriations. For example, a recent rider to the Consolidated Appropriations Act of 2014 included a prohibition on the use of funds appropriated in the Act to influence congressional action on any

legislation or appropriation matters pending before Congress except for communications to Congress as described in 18 U.S.C. 1913.

## **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 appropriated 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 of a cooperative agreement; or
- 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 or will be 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, policies and programs, including the negotiation, award, or administration of Federal contracts, grants, loans, permits, or licenses .

### **DOE National Security Contracts**

Special restrictions apply to contracts in excess of \$100,000 obligating funds appropriated for Department of Energy national security programs. The restrictions at 50 U.S.C. 2781 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 contracts in excess of \$500,000 except for fixed price contracts without cost incentives or any firm fixed price contract for the purchase of commercial items (41 U.S.C. 4304). 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.

## **REGULATORY RESTRICTIONS ON ALLOWABILITY**

Cost principles addressing lobbying and political activity costs are organized based on award and organization type:

- Contracts:
  - Commercial Organizations - The Federal Acquisition Regulation (FAR) at section 31.205-22—Lobbying and Political Activity Costs
  - Educational Institutions - OMB Circular A-21
  - State, Local, and Indian Tribal Governments - OMB Circular A-87
  - Non-Profit Organizations - OMB Circular A-122
  - DOE Management and Operating Contracts - the Department of Energy Acquisition Regulation (DEAR) at Part 970.3102-05-22
- Financial Assistance:
  - Awarded before December 26, 2014:
    - For-Profit Organizations – in accordance with 10 CFR 600.317, FAR 31.205-22—Lobbying and Political Activity Costs (also applicable to nonprofit organizations listed in Attachment C to OMB Circular A-122)
    - Educational Institutions - OMB Circular A-21
    - State, Local, and Indian Tribal Governments - OMB Circular A-87
    - Non-Profit Organizations - OMB Circular A-122
  - Awarded on or after December 26, 2014:
    - For-Profit Organizations – in accordance with 2 CFR 910.352, FAR 31.205-22—Lobbying and Political Activity Costs
    - All other Organizations – 2 CFR 200.450

The various directives contain almost identical provisions describing the lobbying and political activities for which associated costs are unallowable. Some of these provisions are summarized below.

Attempts to influence the outcomes 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.

This guidance was prepared by the U. S. Department of Energy, Office of Acquisition Management, MA-61, 1000 Independence Ave. SW, Washington, D.C. 20585-0705, (202) 287-1330.