

● **CONTRACTS:**

- Commercial Organizations - The Federal Acquisition Regulation (FAR) at section 31.205-22—Lobbying and Political Activity Costs
- Educational Institutions - 2 CFR part 200.450 as specified at FAR 31.3
- State, Local, and Indian Tribal Governments - 2 CFR part 200.450 as specified at FAR 31.6
- Non-Profit Organizations - 2 CFR part 200.450 as specified at FAR 31.7
- DOE Management and Operating Contractors - the Department of Energy Acquisition Regulation (DEAR) at section 970.3102-05-22

● **FINANCIAL ASSISTANCE:**

- 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.

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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 member of Congress, a jurisdiction, or an official of any government (Federal, state or local) in an attempt to influence the enactment or modification of legislation or other specified activities, such as the award or 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, contractors or subcontractors, and financial assistance recipients. 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:

- communicating with Members of Congress and their staffs in support of Administration or Departmental positions;
- communicating with the public through speeches and published writings to promote Administration or Departmental positions;
- communicating 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
- lobbying Congress or the public on non-legislative or appropriation matters like nominations and treaties.

ALL EMPLOYEES (FEDERAL, CONTRACTOR, AND FINANCIAL ASSISTANCE 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, recent riders to appropriations acts, including the Consolidated Appropriations Act, 2021, 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 CONTRACTOR AND FINANCIAL ASSISTANCE RECIPIENT EMPLOYEES

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 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

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 awards to an organization that engages in certain lobbying, 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: