

GUIDANCE ON LOBBYING RESTRICTIONS

The purpose of this guidance is to remind nonprofit organizations, universities, and other non-government recipients of EPA grants that, with very limited exceptions, you may not use Federal grant funds or cost-sharing funds to conduct lobbying activities. The restrictions on lobbying are explained in 40 CFR, Part 34. As a recipient of EPA funds, you must be aware of and comply with these restrictions.

The general objective of the restrictions is to prohibit the use of appropriated funds for lobbying, publicity, or propaganda purposes designed to support or defeat legislation. The restrictions do not affect the normal sharing of information or lobbying activities conducted with your own funds (so long as they are not used to match the grant funds.)

Unallowable Lobbying Activities

Under 40 CFR, Part 34, the costs of the following activities are unallowable:

(1) Contributions, endorsements, publicity or similar activities intended to influence Federal, State or local elections, referenda, initiatives, or similar processes.

(2) Direct and indirect financial or administrative support of political parties, campaigns, political action committees, or other organizations created to influence elections. Recipients may help collect and interpret information. These efforts must be for educational purposes only, however, and cannot involve political party activity or steps to influence an election.

(3) Attempts to influence the introducing, passing, or changing of Federal or State legislation through contacts with members or employees of Congress or State legislatures, including attempts to use State and local officials to lobby Congress or State legislatures. For example, you may not charge a grant for your costs of sending information to Members of Congress to encourage them to take a particular action. Also prohibited are contacts with any government official or employee to influence a decision to sign or veto Federal or State legislation. The restriction does not address lobbying at the local level.

(4) Attempts to influence the introducing, passing, or changing of Federal or State legislation by preparing, using, or distributing publicity or propaganda, i.e., grass roots lobbying efforts to obtain group action by members of the public, including attempts to affect public opinion and encourage group action. For example, the costs of printing and distributing to

members of the public or the media a report produced under a grant, if intended to influence legislation, are unallowable.

(5) Attending legislative sessions or committee hearings, gathering information about legislation, and similar activities, when intended to support or prepare for unallowable lobbying.

Exceptions

There are three exceptions to this list of unallowable lobbying activities in 40 CFR, Part 34. These exceptions do not necessarily make the cost of these activities allowable; they make the costs potentially allowable. Allowability will be determined based on whether the costs in a particular case are reasonable, necessary, and allocable to the grant.

The first exception is for technical and factual (not advocacy) presentations to Congress, a State legislature, member, or staff, on a topic directly related to performance of the grant, in response to a request (not necessarily in writing) from the legislative body or individual. For requests that are not made in writing, recipients should make a note for their files documenting the requests. The information presented must be readily available and deliverable. Costs for travel, hotels, and meals related to the presentation are generally unallowable unless related to testimony at a regularly scheduled Congressional hearing at the written request of the chairperson or ranking minority member of the congressional committee.

The second exception is for actions intended to influence State legislation in order to directly reduce the actual cost of performing the Federal grant project or to protect the recipient's authority to perform the project. The exception does not apply to actions that are intended merely to shift costs from one source to another. For example, in response to Federal funding cutbacks, a Federally-funded recipient lobbies for State funds to replace or reduce the Federal share of project costs for next year. The cost of that lobbying activity would not be allowable because its purpose is not to directly reduce the actual cost of performing the work but merely to shift from Federal funding to State funding.

Finally, 40 CFR, Part 34 allow lobbying costs if they are specifically authorized by law.

Indirect Cost Rate

When you seek reimbursement for indirect costs (overhead), you must identify your total lobbying costs in your indirect cost rate proposal so that the Government can avoid subsidizing lobbying. This is consistent with the circulars' requirement of disclosure of the costs spent on all unallowable activities.

This requirement is necessary so that when the Government calculates the amount of an organization's indirect costs that it will pay, it does not include the costs of unallowable activities that the organization happens to count as indirect costs.

Enforcement

In cases of improper lobbying with grant funds, EPA may recover the misspent money, suspend or terminate the grant, and take action to prevent the recipient from receiving any Federal grants for a certain period. To avoid improper lobbying activities, please review carefully 40 CFR, Part 34. Your project officer is available to handle any questions or concerns.