

The American Recovery and Reinvestment Act of 2009 Lobbying by Entities that Accept Government Funds

Bud Fitch, Director, Office of Economic Stimulus

Lobbying – Federal Law

Thank you, for your interest in the American Recovery and Reinvestment Act of 2009. I'm going to tell you about some of the requirements for people who through contracts or grants or loans receive money from the American Recovery and Reinvestment Act and restrictions that apply to the use of that money for lobbying and political parties.

Under federal law the recipient of a Federal contract, grant, loan, or cooperative agreement may not use federal funds received from that source to pay any person for lobbying on federal contracts, grants, loans, or cooperative agreements. In essence you can't use money from the government to try to persuade the government to give you additional funds or extend the grant or to give you other grants.

Paying for lobbying is to pay any person for influencing or attempting to influence any of the following people in connection with federal contracts, grants, loans, or cooperative agreements. So for federal funds this means you can't pay someone to try to influence an officer or employee for any federal agency or any department, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress such as a congressional staffer.

If any funds other than federally appropriated funds have been paid in the past by you, your corporation or your organization or will be paid in the future for someone to lobby federal authorities or Congress that is permitted not using federal funds, you are required to file a "Disclosure Form to Report Lobbying." And it is very important that you do so.

The form is not long or complicated, you can obtain that form at the Office of Management and Budget website at www.whitehouse.gov/omb/grants/sfillin.pdf. Or you can link to the NH Recovery website at www.nh.gov/recovery where you will be able to find a link, in the document library section to the disclosure form if you need to complete one.

It is important to comply with this law, any person who makes an expenditure prohibited by this law shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

31 U.S.C.A. § 1352 (c)(1)

As you may have learned from your studies of the stimulus bill it funds approximately \$184 million dollars worth of federal resources to audit and otherwise oversee the use of these funds and were you to violate this law the likelihood of being caught is much greater then with other federal funds.

Any person who fails to file or amend a declaration required to be filed or amended regarding the use of non-government funds to lobby shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

31 U.S.C.A. § 1352 (2)(A)

The prohibition does not apply in the case of a payment of reasonable compensation made to an officer or employee for agency and legislative liaison activities not directly related to a Federal contract, grant, loan, or cooperative agreement.

31 U.S.C.A. § 1352 (d)(1)(A)

You need to consult with your attorney regarding this matter. You may very well be able to have some government relations work done by members of your staff and stay in compliance with this statute.

This law does not prohibit reasonable payment or compensation to an officer or employee of your company or non-profit for the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement

This law does not prohibit reasonable payment or compensation for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

What are the things you are required to do to satisfy the proof that you have used the money appropriately? You are allowed to pay people from the funds for that purpose. You should be aware that New Hampshire has a state law that applies to state funds and funds that are provided through the American Recovery and Reinvestment Act are federal funds but they are also passing through the state treasury so they also take on some of the requirements and restrictions that apply generally to sate funds.

Lobbying - State Law

RSA 15:5 Prohibited Activities. –

I. Except as provided in paragraph II, no recipient of a grant or appropriation of state funds may use the state funds to lobby or attempt to influence legislation, participate in political activity, or contribute funds to any entity engaged in these activities.

Again the general rule is you cannot use the people's money paid to you through the government to try and influence the political process or the government's process of selecting vendors for contracts, grants or other awards.

Prohibited uses for funds received from the state include; lobbying, attempting to influence legislation, you may not participate in political activity for example to make campaign contributions and you may not contribute funds to any entity engaged in these activities. Even though you have done the work required by the grant or contract and have in affect earned those funds it's not permissible to use those funds for these purposes

Roman numeral II of that statute provides:

II. Any recipient of a grant or appropriation of state funds that wishes to engage in any of the activities prohibited in paragraph I, or contribute funds to any entity engaged in these activities, shall:

- **Segregate the state funds in such a manner that such funds are physically and financially separate from any non-state funds that may be used for any of these purposes.**

The law provides specifically that mere bookkeeping separation of the state funds from other moneys shall not be sufficient.

One way to satisfy this law is to have a separate bank account and separate records for those non-government funds that will be used to:

- **Lobby;**
- **Engage in political activity; or**
- **Contribute to those that do either.**

The penalty under state law is;

RSA 15:8 Penalty. – Whoever violates any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Other person in this event is a corporation or non-profit corporation that could be charged with a felony and the individuals responsible could be charged with a misdemeanor.

Any entity entering into contracts with or accepting grants or allocations from the State using State or Federal funds will be required to agree to comply with these restrictions on the use of government funds for lobbying. These will be terms in the contracts or grants agreements you'll receive.

Recipients of allocations, awards, grants, or contracts to be paid with American Recovery and Reinvestment Act funds will be required to sign a document certifying that the restrictions on lobbying will be complied with.

Remember this presentation is not legal advice, but serves as guidance to aid those doing business with the State regarding the legal prohibitions on certain uses of federal and state funds to pay for lobbying or political activity.

If your business or organization pays for lobbying with non-government funds you should seek legal advice on how to properly comply with federal disclosure requirements and State segregation of funds requirements.