



## Lobbying Do's and Don'ts

- Federal Lobbying Regulations

# Speak Up!

1 LOBBYING DO'S AND DON'TS



## WHAT IS LOBBYING?

“Lobbying occurs when... (an entity) urges a legislative official to take a position or action on specific legislation or regulation, and when the...(entity) has expended funds for that purpose.” (Excerpted from Lobbying, Advocacy, and Nonprofit Boards. 1997)

- **Direct lobbying** occurs when you ask a member of a legislature to take a position or action on a specific piece of legislation (e.g., increase funding for a program under an appropriations bill or oppose a particular amendment to an authorizing bill) and when the organization or agency has expended funds for that purpose. Direct lobbying also occurs when a membership organization (with a dues structure) encourages its members to contact and influence legislators on specific legislation.
- **Grassroots lobbying** occurs when an organization or agency communicates with non-members (e.g. the general public, third parties) in an effort to influence legislators on a specific piece of legislation or legislative issue and expends funds for that purpose.
- Educating members on legislative issues is not considered lobbying.

## WHAT ARE THE RULES AND REGULATIONS ABOUT LOBBYING?

### For volunteers:

- There are no restrictions as long as you do not expend organizational or grant funds as part of the effort.
- Lobbying can be done by uncompensated board members without limit and is not reportable.

### For 501(c)(3) non-profit organizations:

- Under the Internal Revenue Code, you can lobby as long as “no substantial part” of your organization’s activities consist of attempts to influence legislation. Although there is no precise definition of “no substantial part” it is generally defined to mean no more than 5% of an organization’s total activities.
- If you’ve made the special election under 1990 IRS lobbying rules, you can spend even more of your organization’s resources for advocacy purposes. The rules allow a 501(c)(3) organization to spend up to \$500,000 or 20% of exempt purpose expenditures for “direct lobbying” and up to 25% of total lobbying expenditures for “grassroots lobbying.” (The limits are higher for organization’s with higher annual expenses.)
- Your time involved in researching materials, preparing materials and meeting with legislators or their staffs, postage, printing, taxi trips to Capitol Hill, phone charges to members of Congress, and so on must be included in the above calculations and are reportable to the IRS.



## WHAT ARE THE RULES AND REGULATIONS ABOUT LOBBYING?

- Under the Lobbying Reform Act of 1995, you must register as a lobbyist if you made two lobbying contacts and spent 20% or more of your time on lobbying and your organization has spent \$20,000 or more on lobbying in a six-month period.

### For recipients of federal funds:

- You are prohibited from using federal funds for any personal service, advertisement, letter, telephone, printed or written material, telegram or other device for the purpose of influencing Congress on any legislation. The Department of Justice and the General Accounting Office have interpreted that prohibition to be against doing any **grassroots lobbying** that encourages third parties, special interest group or the general public to urge Congress to support or oppose a legislative or appropriations matter.
- Language in the Transportation Equity Act of the 21st Century (TEA-21) added a restriction on state officials. That language prohibited federal grantees and subgrantees from 1) urging Congress to oppose or support a **pending** legislative or appropriations matter or 2) urging state or local legislators to support or oppose a **pending** legislative or appropriations matter. In other words, you can do direct lobbying but only before legislation is introduced.
- This prohibition applies to all DOT funds, including NHTSA funds to states and their subgrantees. It also applies to state officials whose salaries are supported, in whole or in part with DOT/NHTSA funds.
- Further, federal funds cannot be used to try to earmark a federal appropriations or authorizing bill for a specific project. Federal funds cannot be used to obtain, on a non-competitive basis, a follow-on grant. In other words, you can't use your federal grant to influence federal legislation which would allow you to get more funds under that grant program.
- State and local persons who are recipients of federal grants of at least \$100,000 must sign a disclosure form and certify that they will not use the federal funds to influence the award of a federal grant, contract or other agreement.
- You are **not** prohibited from:
  - using grant funds to contact members of Congress directly prior to the introduction of legislation
  - providing most technical or professional services
  - conducting workshops on highway safety topics (including teaching advocacy skills) provided that the workshops do not focus on pending federal or state legislation
  - participating in a highway safety coalition except if that coalition involves lobbying for specific pending legislation, or providing information to a federal official
  - responding to statutory or regulatory activities and requirements



## WHAT ARE THE RULES AND REGULATIONS ABOUT LOBBYING?

- interacting with most agency legislative liaisons
  - responding to inquiries from Congress, state legislatures or other officials
  - presenting testimony requested by a congressional committee or state legislature
  - inquiring about a grant
  - developing highway safety materials and generally distributing them as long as they do not encourage others to influence Congress or state legislatures on specific legislation.
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- In summary, you are allowed to contact Congress or a state legislator directly about broad social, economic or similar issues (such as highway safety, reauthorization of safety programs, funding of federal grant programs, etc.) as long as you do not urge action by Congress or the state legislator on a specific bill.

# Memorandum

U.S. Department  
of Transportation

**National Highway  
Traffic Safety  
Administration**

Subject: Update on Lobbying Restrictions on  
State Officials Who Receive NHTSA Funds

Date: APR 30 2004

From: Jacqueline Glass  
Chief Counsel

<sup>1</sup>  


Reply to  
Attn. of:

To: Marlene Markinson  
Associate Administrator for ICOR

By memorandum of February 25, 2000, we summarized the impact of then new lobbying restrictions on State officials who administer or whose salaries are supported, in whole or in part, by NHTSA funds. Since that time, some of the restrictions discussed in that memo have changed. The purpose of this memorandum, which supersedes our February 25, 2000 memo, is to update you and members of your staff on existing restrictions on lobbying activity by State officials supported by NHTSA funds.

Currently, lobbying prohibitions are contained in two Federal statutes: (1) The Anti-Lobbying Act (a criminal statute), 18 U.S.C. § 1913; and (2) The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), 49 U.S.C. § 30105.

## Restriction on Grassroots Lobbying

The Anti-Lobbying Act, which Congress broadened in scope in 2002, prohibits the use of appropriated funds, directly or indirectly, to pay for:

any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy or appropriation.

Violators are subject to a fine of not more than \$500, imprisonment of not more than one year, or both, and removal from office.

The Act prohibits the use of Federal funds for "grassroots" lobbying campaigns that encourage third parties, members of special interest groups or the general public to

contact members of Congress or of a State or local legislature or an official of any government in support of or in opposition to a legislative, policy or appropriations matter. It applies to activities both before and after the introduction of legislation.

These prohibitions apply to all DOT funds, including NHTSA funds awarded to States under grants, cooperative agreements and contracts. Accordingly, these prohibitions apply to State officials whose salaries are supported, in whole or in part, by NHSTA funds.

#### TEA-21 Restrictions on Lobbying State and Local Legislators

The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), which was enacted in 1998, prohibits the use of NHTSA funds for "any activity specifically designed to urge a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body."

This prohibition imposes additional lobbying restrictions on NHTSA, such as by prohibiting agency officials from:

- Visiting or sending letters to State or local legislators, urging them to favor or oppose specific State or local legislation pending in those jurisdictions; or
- Developing and providing to anyone (including lobbyists) materials designed expressly to advocate for the enactment or repeal of specific pending State or local legislation.

It is the agency's continued view, however, that these restrictions do not apply to State officials engaged in State-sanctioned communications with their legislatures, even if their salaries are supported, in whole or in part, with NHTSA funds. We believe that any direct communications between State executive officials and State or local legislators properly are governed by the laws, regulations and customary practice in the State.

#### Special Provision in TEA-21 regarding Testimony

Although TEA-21 restricts communications between NHTSA officials and State or local legislators, the TEA-21 restriction "does not prohibit officers or employees of the United States from testifying before any State or local legislative body in response to the invitation of any member of that legislative body or a State executive office."

Accordingly, State executive officials should note that they (as well as members of a State or local legislative body) are authorized to invite Federal officials to testify before that legislative body on pending legislation. (NHTSA officials have been advised that any such invitation should be documented in writing.)

If you or your staff have questions or need further information regarding lobbying restrictions, please contact John Donaldson, Assistant Chief Counsel for Legislation and General Law.

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