

Summary Points for Adam Issenberg,  
Council Coordinating Committee Meeting  
NMFS Regional Fishery Management Councils  
May 6-8, 2008

**Overview of “Lobbying”**

- 1 The term “lobbying” can be generally defined as a direct or indirect attempt to influence government decision making in either the legislative or executive branches.
- 2 Direct lobbying involves contacts with legislators, their staffs, or other government officials, either in person or through written or oral communication.
- 3 Indirect or “grassroots” lobbying involves contacting others and urging them to support or to advocate changes to legislation or policy.

**Overview of Lobbying Restrictions Proscribed in the Federal Cost Principles for Grants and Cooperative Agreements**

- 1 Cost principles differ, but generally prohibit use of funds to influence Federal, state, local elections and Federal and state legislation by direct contact or by publicity or propaganda (including “grassroots” lobbying)
- 2 *See* 2 C.F.R. Subtitle B (Part 220 - OMB Circular A-21, Sections 28, 33; Part 225 - OMB Circular A-87, Sections 24, 28; and Part 230 - OMB Circular A-122, Section 25, 30)

**Federal Cost Principles Applicable to Regional Fishery Management Council Grants and Cooperative Agreements**

- 1 2 C.F.R. part 230 - *Cost Principles for Nonprofit Organizations* (OMB Circular A-122) is applicable to the federal assistance awards issued to the Councils.
- 2 The purpose of the cost principles at 2 C.F.R. part 230 is to define what costs can be paid on Federal awards issued to non-profit organizations. The regulation establishes both general principles and detailed items of costs.
- 3 Under 2 C.F.R. part 230, costs for certain lobbying activities are unallowable as charges to federal awards.
- 4 These specific lobbying activities include any attempts to influence:
  - The introduction of Federal or state legislation;
  - The enactment or modification of any pending legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public to contribute to or to participate in any demonstration,

march, rally, fundraising drive, lobbying campaign, or letter writing or telephone campaign.

- 5 Generally, costs associated with providing a technical and factual presentation directly related to the performance of a grant, through hearing testimony, statements, or letters to Congress or a State legislature are allowable if made in response to a documented request.
- 6 Costs associated with lobbying to influence State legislation in order to reduce the cost or to avoid material impairment of the organization's authority to perform the grant are also allowable.

### **Remedial Action**

- 1 Grantees must provide the Grants Management Division (GMD) with an estimate of the costs incurred in any proscribed efforts. This information is essential for GMD to have a basis on which to determine the level of cost disallowance on the award.
- 2 In accordance with their own internal operating procedures, Grantees must impose appropriate disciplinary measures against Council staff who have misused award funds.
- 3 Staff training regarding the appropriate use of grant funds should be coordinated through the Federal Assistance Law Division and the General Law Division, Office of the General Counsel, U.S. Department of Commerce.

### **Available Resources**

- 1 Given possible uncertainty concerning which costs may be allowable in situations involving political activity, please direct any questions to Jeff Joyner, Senior Counsel, Federal Assistance Law Division. He can be reached at (301) 713-2177.
- 2 FALD has prepared guidance on this topic in an article entitled *The Restriction on the Use of Grant Funds for Lobbying and Other Political Activity*. This guidance, part of FALD's *It's the Law* series, is available online at <http://www.ogc.doc.gov/ogc/fl/fald/itl/vol-12.doc>.