



**U.S. Department of Justice**

Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

**November 9, 2009**

The Honorable F. James Sensenbrenner, Jr.  
Ranking Minority Member  
Select Committee on Energy Independence  
and Global Warming  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Sensenbrenner:

This responds to your letters to the Attorney General, dated June 18 and July 17, 2009, regarding your concerns over the possible abuse of federal funds received by General Motors (GM) and Chrysler. We apologize for the delay in responding. Specifically, you identify the Byrd Amendment's prohibition on using federal funds for lobbying, 31 U.S.C. § 1352, and ask the following questions:

- (1) What, if any, federal lobbying is permissible for GM and Chrysler?
- (2) What options for enforcement does the Department of Justice have if the manufacturers' lobbying activities are found to be inappropriate?
- (3) Can GM and Chrysler legally participate in the United States Climate Action Partnership (USCAP) (which you identify as a group of businesses and environmental associations organized to lobby the Federal Government for climate legislation)?

As a preliminary matter, let me assure you that the Department takes its duty to enforce the laws enacted by Congress very seriously, especially those, like the Byrd Amendment, that are designed to protect taxpayer money. We are also keenly aware of the potential for abuse in connection with the substantial federal assistance provided to the automakers. Working with our agency partners, we are taking steps to ensure that such funds are used properly and protected against fraud. Without specific facts, however, we cannot say whether a particular entity, such as GM or Chrysler, has violated the law (nor would it be appropriate for us to do so were there a pending investigation). With this caveat, we respond to each of your questions on the pages that follow.

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***What, if any, federal lobbying is permissible for GM and Chrysler?***

In your letter, you recognize that the Byrd Amendment does not prevent federal fund recipients from using funds received from other sources for lobbying, but suggest that the “scope of the government’s investment in GM and Chrysler raises significant questions as to whether such segregation of funds is possible.” Your letter goes on to state that “[b]y their own admission, the auto manufacturers would not be in business without government funding. As a result, any money spent lobbying would not have been spent but for government funding.”

Although we cannot comment on GM and Chrysler specifically, we note that the Byrd Amendment prohibits the use of appropriated funds only for certain kinds of lobbying activity, i.e., lobbying in connection with the award or making of a federal contract, grant, loan, or cooperative agreement, or with the extension, continuation, renewal, amendment, or modification of such contract, grant, loan, or cooperative agreement. 31 U.S.C. § 1352(a). Therefore, the Byrd Amendment on its face does not prohibit the use of federal funds for all lobbying activity. We also note that GM and Chrysler are not unique in their reliance on government funds for their existence. Defense contractors who do little or no work in the commercial sector, health care providers who serve primarily Medicare and Medicaid patients, and non-profits who receive substantial subsidies also depend on government funds for their existence. Ultimately, whether these entities have violated the Byrd Amendment or other laws intended to prevent the abuse of federal funds expended, depends on the facts of the individual case and the limits of the law enacted.

***What options for enforcement does the Department of Justice have if the manufacturers’ lobbying activities are found to be inappropriate?***

In addition to prohibiting the use of federal funds for certain lobbying activity (31 U.S.C. § 1352(a)), the Byrd Amendment requires those who request or receive federal contracts, grants, loans, or cooperative agreements to file declarations of their lobbying activity with the relevant agency or agencies (31 U.S.C. § 1352(b)). Any person who expends federal funds in violation of these provisions is subject to civil penalties under 31 U.S.C. § 1352(c). The statute further provides that such penalties shall be enforced under the procedures established in the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3803-3808 and 3812, which provide for administrative enforcement of violations after obtaining the approval of the Attorney General.

Other options for enforcement could include criminal penalties under 18 U.S.C. §§ 287 and 1001, and damages and penalties under the civil False Claims Act, 31 U.S.C. § 3729, for knowingly presenting, or causing to be presented, false claims for federal funds. This would include claims for lobbying costs in violation of government contract provisions, *see, e.g.*, 48 U.S.C. § 31.205-22 of the Federal Acquisition Regulation (rendering lobbying costs unallowable to government contracts), or claims in violation of similar restrictions tied to the receipt of federal grants and subsidies. Again, however, we want to emphasize that any enforcement action would depend on the unique facts of each case.

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***Can GM and Chrysler legally participate in the USCAP?***

The Department does not have sufficient facts to respond to this question. Nevertheless, we repeat our commitment to investigate and prosecute the fraudulent use of government funds in violation of federal law, including the Byrd Amendment.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this, or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'm w h', likely representing Ronald Weich.

Ronald Weich  
Assistant Attorney General

cc: The Honorable Edward J. Markey  
Chairman