

Federal Restrictions on Lobbying

Division of Cancer Prevention and Control

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Disclaimer

The views expressed in this presentation are those of the presenter and do not constitute statements of policy or necessarily represent the view of the U.S. Department of Health and Human Services or the Centers for Disease Control and Prevention.

General Guidance Only

These slides and discussion are only meant as general guidance. As each situation is unique, please do not rely on this as legal advice on any particular set of facts.

This presentation is for instructional use only. Other applicable state/local restrictions on lobbying could also apply. Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.

Training Objectives

Today's training will provide an overview of the following:

1. Sources of Lobbying Restrictions
2. Grassroots Lobbying vs. Direct Lobbying
3. Requirements for Governmental & Non-Governmental grantees
4. Examples of Allowable vs. Unallowable Activities

Sources of Lobbying Restrictions

Sources of Lobbying Restrictions

18 U.S.C. § 1913
Anti-Lobbying Act

FY 2017 Appropriations Riders § 503(a)-(c)

Grant Regulations
2 Code of Federal Regulations Part 200, et seq.

Additional Requirement (AR) 12
Official CDC Policy incorporated into grants
and cooperative agreements

FY 2017 Appropriations Riders § 503 (a)-(c)

FY 2017 Appropriation

- “No part of any appropriation contained in this Act **or transferred pursuant to section 4002 of Public Law 111–148** shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the **enactment of legislation** before the Congress or any State or local legislature or **legislative body**, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any **proposed or pending regulation, administrative action, or order issued** by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.”

§ 503(a)



FY 2017 Appropriation

- “No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.”

§ 503(b)



FY 2017 Appropriation

- “The prohibitions...shall include any activity to advocate or promote any proposed, pending, or future Federal, State, or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.”

§ 503(c)



Grassroots Lobbying

Federal Restrictions on Lobbying

- Grassroots lobbying - efforts directed at inducing or encouraging members of the public to contact their elected representatives at the Federal, State or local levels to urge support of, or opposition to, proposed or pending legislative proposals.
- Grassroots lobbying for, or against, proposed or pending legislation with federal funds is prohibited.

Grassroots Lobbying



Quiz Question #1

A CDC grantee learns of a proposed bill concerning prohibiting smoking in restaurants and bars. They submit an Op-Ed on-line concerning their thoughts on the importance of passing the bill and encourage the public to contact their representatives. Which answer below best describes whether the CDC grantee may use CDC funds for this activity?

- A. This activity is prohibited**
- B. It is a permissible use of funds**
- C. It would be prohibited, under certain circumstances**
- D. It is unrelated to anti-lobbying restrictions**

Answer

Pursuant to applicable lobbying restrictions discussed today, this would constitute grass-roots lobbying by CDC grantees as it urges the public to contact their representatives to support the bill.

Correct answer:

A. This activity is prohibited

Direct Lobbying

Federal Restrictions on Lobbying

- Direct lobbying includes any attempt to influence legislative or other similar deliberations at all levels of government through communications that directly express a view on proposed or pending legislation and other orders and which are directed to members of staff, or other employees of a legislative body or to government officials or employees who participate in the formulation of legislation or other orders.
- * Legislation or other orders refers to legislation, appropriations, regulations, administrative actions or Executive Orders, as outlines in the FY 2012 appropriations.

Direct Lobbying



Governmental Grantees

State, Local and Tribal Governmental Grantees

For state, local, and other governmental grantees, certain activities falling within the normal and recognized executive-legislative relationships or participation by an agency or officer of a state, local, or tribal government in policymaking and **administrative processes within the executive branch of that government is permissible.**

Quiz Question #2

Pursuant to the lobbying restrictions discussed today, a State governmental grantee may, generally, conduct which of the following activities with CDC funds:

- A. Post a Facebook message urging the public to contact their representatives concerning passage of a local bill.
- B. Work with other State government departments on policymaking and administrative processes concerning public health issues.
- C. Release a press release asking the public to contact the State legislator to vote “yes” on a proposed bill.
- D. None of the above

Answer

Pursuant to the lobbying restrictions discussed today, a State governmental grantee may, generally, conduct which of the following activities with CDC funds:

Correct answer:

B. Work with other State government departments on policymaking and administrative processes concerning public health issues.

Non-Governmental Grantees

Non-Governmental Grantees

Many non-profit grantees, in order to retain their tax-exempt status have long operated under settled definitions of “lobbying” and “influencing legislation.” These definitions are a useful benchmark for all non-governmental grantees, regardless of tax status.

Quiz Question #3

It may be problematic for a non-profit grantee to conduct which of the following activities with CDC grant funds:

- A. Collect and analyze data on cancer incidence
- B. Provide leadership and training related to cancer data collection
- C. Prepare and disseminate nonpartisan analysis, study, or research reports
- D. Present materials referring to specific legislation *that do not* include an objective, balanced presentation of evidence, and/or that are made available only to stakeholders or a narrow or selective audience

Answer

It may be problematic for a non-profit grantee to conduct which of the following activities with CDC grant funds:

Correct answer:

D. Present materials referring to specific legislation *that do not* include an objective, balanced presentation of evidence, and/or that are made available only to stakeholders or a narrow or selective audience

Incorrect answers:

A. Collect and analyze data

B. Provide leadership and training related to their grant

C. Prepare and disseminate nonpartisan analysis, study, or research reports

Quiz Question #4

True or False...

A subrecipient does not have to adhere to anti-lobbying requirements.

- A. True
- B. False

Answer

FALSE

A subrecipient, just like a recipient, is also bound by the anti-lobbying provisions prohibiting impermissible lobbying with CDC funds.

Federal Restrictions on Lobbying: A Policy Perspective

Policy Overview

What is “Policy”?

“Policy” is defined as a law, regulation, procedure, administrative action, incentive, or voluntary practice of governments and other institutions.

Allowable Activities

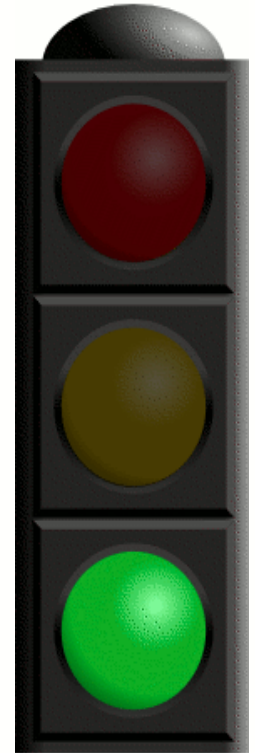
Allowable Activities

It remains permissible for CDC/HHS grantees to use CDC funds to engage in:

- activities to enhance prevention,
- collect and analyze data,
- publish and disseminate results of research and surveillance data,
- implement prevention strategies,
- conduct community outreach services, and
- provide leadership and training, and foster safe and healthful environments.

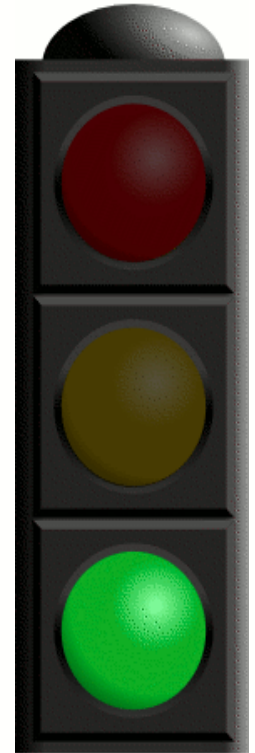
Examples of Allowable Activities using CDC Appropriated Funding

- ✓ **Conducting research on policy alternatives and their impact.**
- ✓ **Educating the public on personal health behaviors and choices.**
- ✓ **Communicating with the public on health issues and their public health consequences.**
- ✓ **Working with private sector organizations to achieve organizational or systems changes.**



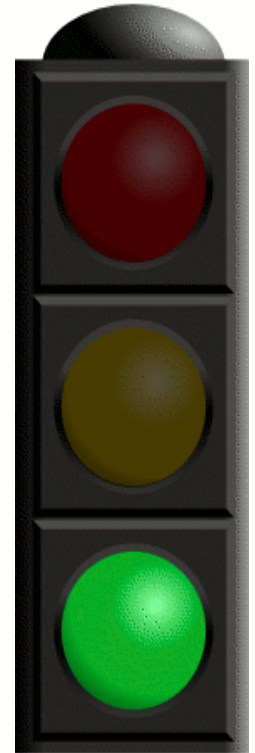
Examples of Allowable Activities using CDC Appropriated Funding Contd.

- ✓ Educating the public with examples of best practices or success stories across states or localities.
- ✓ Compiling and communicating the results of research on health issues and policy approaches that have successfully addressed them.
- ✓ Conducting educational campaigns



Examples of Allowable Activities using CDC Appropriated Funding Contd.

- ✓ **Governmental grantees may work with their own state or local government's legislative body on policy approaches to health issues, as part of normal and recognized executive-legislative relationships.**
- ✓ **Provide public officials with technical advice or assistance concerning evidence of program or policy effectiveness.**



Quiz Question #5

True or False...

CDC State University Grantee launches an educational media campaign to promote the public health benefits of a smoke-free campus. The communications are widely disseminated, balanced in their analysis, and avoid an express call to action with respect to specific legislation. True or False...This would be a permissible use of CDC dollars.

A. True

B. False

Answer

TRUE

Conducting an educational campaign on the benefits of implementing a smoke-free campus policy would be a permissible activity with CDC dollars, as long as those communications are widely disseminated, balanced in their analysis, and avoid an express call to action with respect to specific legislation.

Quiz Question #6

True or False...

CDC State Health Department grantee is working with the State Transportation Department on ideas for how the built environment can increase physical activity in the State. Ideas about sidewalk usage, multi-use facilities, and transit are being discussed. True or False...this would be an allowable activity with CDC funds.

- A. True
- B. False

Answer

TRUE

This would be an allowable use of CDC funds, as State and local agencies funded by CDC are permitted to work directly on policy-related matters across their equivalent branches of state or local government, so long as the communications are through a normal and recognized relationship.

Unallowable Activities

Prohibited Activities

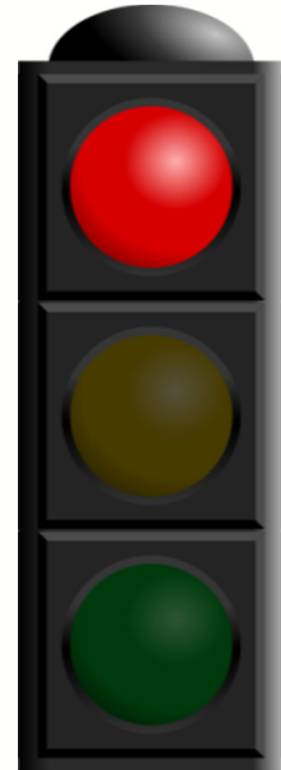
All award recipients should be aware that using CDC/HHS funds to develop and/or disseminate materials that exhibit all three of the following characteristics are prohibited:

1. refer to specific legislation or other order,
2. reflect a point of view on that legislation or other order, *and*
3. contain an overt call to action.

Examples of Unallowable Activities using CDC Appropriated Funding

Grassroots lobbying examples:

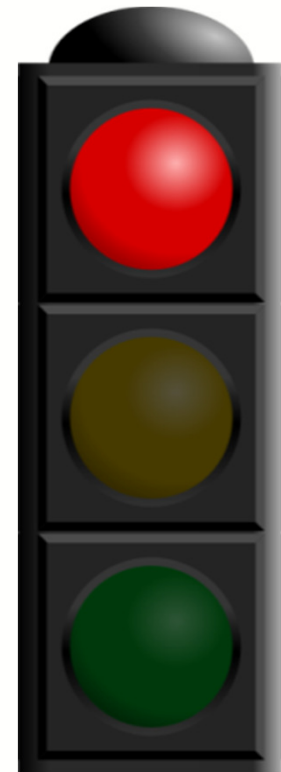
- ✘ Calls to action
- ✘ Sign-on letters urging support for a bill
(*such as Medicaid expansion*)
- ✘ Media campaign ads recommending the public contact legislators



Examples of Unallowable Activities using CDC Appropriated Funding

Direct lobbying examples:

- ✘ Direct lobbying of the US Congress
- ✘ Advocacy to perpetuate or increase funding from the federal government
- ✘ Communications to legislators that refer to, reflect a view on, and contain a direct call to action on a specific pending or proposed measure.



Quiz Question #7

True or False...

CDC State Grantee learns of a tobacco related bill that if passed would increase the age requirement to purchase tobacco products from 18 to 21 in their state. CDC State Grantee proceeds to post flyers in public places urging members of the public to call legislators to express support for this pending bill. True or False...this would be a permissible use of federal funds?

A. True

B. False

Answer

FALSE

Posting flyers encouraging the passage of pending or proposed legislation would be considered grassroots lobbying and would therefore be an unallowable activity using CDC appropriated funding.

Key Takeaways



Questions?

Please remember that questions related to ethics and anti-lobbying are very fact specific.

When in doubt, seek advice as to whether a particular activity is an allowable use of CDC funds.