

Complying with Anti-Lobbying Rules:
What Federal Grantees Need to Know

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ChangeLabSolutions

Moderated by

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ChangeLab Solutions

ChangeLab Solutions creates innovative law and policy solutions that transform neighborhoods, cities, and states. We do this because achieving the common good means everyone has safe places to live and be active, nourishing food, and more opportunities to ensure health.



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RESOURCES ON WEBSITE ONLY

At this time, ChangeLab Solutions **does not expect to provide ongoing technical assistance** on compliance with federal anti-lobbying regulations.



ADDITIONAL RESOURCES

Section 503 and federal grants compliance:

- Ted Waters and Susannah Vance; Feldesman Tucker; 202-466-8960 – on a fee basis

IRS compliance for nonprofit organizations:

- Alliance for Justice: 866-675-6229 or via the web at www.bolderadvocacy.org – free or negotiated fee



SPEAKERS



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SPEAKERS



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TODAY'S DISCUSSION

1. Office of Management & Budget (OMB)
Lobbying Rules
2. Section 503 Lobbying Rules
3. Q & A

SECTION 1

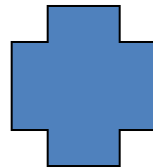
Office of Management & Budget (OMB) Lobbying Rules

Complying with Anti-Lobbying Rules: What Federal Grantees Need To Know

FEDERAL LAW: THE MAKING OF PUBLIC POLICY



**Authorizing Statute
such as ACA**



**Appropriations Statute
(e.g., Consolidated
Appropriations Act of
2012)**

FEDERAL LAW: THE MAKING OF PUBLIC POLICY



Federally Funded Program
(use of federal funds governed by
Circulars of the Office of
Management and Budget)

QUESTION:**WHAT CAN GRANT FUNDS BE USED FOR?****ANSWER:****Allowable Costs – defined as:**

- Reasonable
 - Prudent person standard
 - Ordinary and necessary
- Allocable
- Consistent with program policies and procedures
- Adequately documented

RESTRICTIONS ON “LOBBYING”

- Scope of “lobbying” as unallowable cost is similar under OMB Circulars and appropriations riders
 - “Lobbying” to **attempt to influence the enactment or defeat** of **pending or proposed federal or state legislation**
- “Lobbying” includes communication that is
 - written or oral
 - for or against legislation

LONGSTANDING RESTRICTIONS ON “LOBBYING”

- The Circulars and appropriations statutes bar grantees from using federal funds for:
 - **Direct lobbying:** making a **direct appeal** to Congress or State
 - **Grassroots lobbying:** making a **direct appeal** to the general public
 - **“Legislative liaison activities,”** i.e., preparing for lobbying

EXAMPLES OF UNALLOWABLE LOBBYING

- ✘ Letter to legislator urging passage/defeat of pending bill (direct)
- ✘ Phone call to legislative staff urging “yes/no” vote on proposed legislation (direct)
- ✘ Flyer posted in public places urging readers to call legislators to express support/opposition to a pending bill (grassroots)

EXCEPTIONS TO “LOBBYING”

The following are *excepted* from the definition of “lobbying” under OMB Circulars:

Providing a technical and factual presentation of information to government decision-makers, on a topic directly related to performance of the grant, in response to a documented request *even if it includes a recommendation at end*

EXCEPTIONS TO “LOBBYING”

The following are excepted from the definition of “lobbying”:

Lobbying legislatures to avoid impairment of the grantee’s authority to perform the federal grant

KEY ADDITIONAL POINTS FROM OMB

- **Restrictions do not apply to local-level lobbying:** OMB noted, “Since there is no rigorous separation between legislative and executive authority at the local level, it would be difficult to enforce a rule regarding lobbying at the local level.”
- **No waiver:** By accepting federal funds, an entity does **not** surrender its right to engage in lobbying with unrestricted funds

KEY ADDITIONAL POINTS FROM OMB

- **No tainting:** Employees on federal grants may lobby if other unrestricted funds are used
- **No special documentation requirements:** Standard time-and-effort reporting is sufficient to document that lobbying activities are not charged to the grant

SO, YOU CAN LOBBY WITH NON-FEDERAL FUNDS, JUST GET THE ACCOUNTING STRAIGHT

Section 503

Lobbying Rules

WHAT IS NEW IN CAA 2012, SECTION 503?

Lobbying restrictions now apply to:

- **Lobbying on state-level executive actions**

(regulations, administrative actions, executive orders), as well as lobbying on regulations, administrative actions, executive orders proposed or pending before Congress or a local legislature

- **Lobbying on the local level** (before city councils, county commissions, etc.)

- Advocacy related to proposed, pending, or future (1) **tax increases** and (2) **regulation of any legal consumer product**

EXAMPLES: UNALLOWABLE ACTIVITIES

- It is an unallowable cost for a grantee that is a *nonprofit organization*:
 - ✘ To provide an issue brief to a State agency urging the agency to promulgate a regulation restricting the sale of sugar-sweetened beverages
 - ✘ To contact a quasi-legislative agency like a zoning board urging a “no/yes” vote on a proposed housing development

APPLICATION TO CTG ACTIVITIES

- “Lobbying” typically does **not** include sharing information with the public
- Under the Affordable Care Act, CTG grantees must:
 - Submit to the CDC a plan that “includes the **policy, environmental, programmatic, and as appropriate infrastructure changes** needed to promote healthy living and reduce disparities”
 - “Develop **models for the replication of successful programs and activities** and the mentoring of other eligible entities”

PPACA § 4201(c)(2), (c)(5), Pub. L. No. 111-148

ACTIVITIES THAT ARE NOT “LOBBYING”

- ✓ Educating the public on personal health behaviors and choices that do not relate to law or public policy
- ✓ Working with private sector organizations to achieve institutional or systems changes that do not require governmental action
- ✓ Communicating with the public about health risks and their consequences

See *CDC Implementation of Anti-Lobbying Provisions*, June 25, 2012. p. 7

ACTIVITIES THAT ARE NOT “LOBBYING”

Policy-related activities are not lobbying **so long as they do not include a “direct appeal”** to decision-makers or to the general public:

- ✓ Conducting research on policy alternatives and publishing related analysis that expresses support for a specific policy
- ✓ Educational campaigns that explain the advantages and disadvantages of public policies
- ✓ Sharing with the public examples of best practices or success stories across states or localities
- ✓ Broadly sharing evidence-based policy approaches (including model regulations) to improve healthy choices

See *CDC Implementation of Anti-Lobbying Provisions*, June 25, 2012, p. 7

EXCEPTIONS TO “LOBBYING” FOR GOVERNMENT ENTITY GRANTEES

For state, local and tribal government grantees, the following are excepted from “lobbying” under Section 503:

- ✓ Lobbying officials within the executive branch of the grantee’s own government
 - A county public health department can lobby another county agency
- ✓ Lobbying legislative entities or officials within the grantee’s own government
 - A city health department can lobby the city council

EXCEPTIONS TO “LOBBYING” FOR GOVERNMENT ENTITY GRANTEES

The exceptions to “lobbying” make allowable:

- Lobbying communications of a nonprofit organization that is a sub-recipient of a government entity grantee
- Lobbying communications between different levels of government (e.g., a county health department lobbying a local city council) **but only if** the two entities are defined as part of the same government under applicable state law

ACTIVITIES THAT ARE ALLOWABLE

- ✓ Nonprofit grantee accepts invitation of city council to present research findings on a smoke-free ordinance
- ✓ X city health department lobbies X city council to ban on sale of sugar-sweetened beverages in schools
- ✓ X state health department lobbies the X state Department of Industrial Relations to regulate smoke-free workplaces

KEY POINTS: CDC GUIDANCE

The CDC guidance makes clear:

1. A wide range of public education, research, and communication falls outside “lobbying”
2. Section 503 does not impose special restrictions with respect to tax increases and regulation of legal consumer products
3. The new restrictions on local-level lobbying do not impose additional requirements on grantees, since CDC previously enforced this requirement through FOAs

LIMITS TO THE CDC GUIDANCE

The following three important points are not made clear in the CDC guidance:

1. “Lobbying” standard in IRS regulations is **not** identical to standard under OMB Circulars / appropriations riders

LIMITS TO THE CDC GUIDANCE

2. Subcontractors of government entity grantees **are not** grantees or sub-recipients, so the lobbying restrictions do not apply to them; the restrictions (and exceptions) apply to the grantee that hired the subcontractor

LIMITS TO THE CDC GUIDANCE

3. Per the CDC guidance, grantees may lobby at their own expense only if they “segregate federal funds from other financial resources” used for lobbying; but in fact, **no segregation of accounts** is required by the OMB

SECTION 3

Questions?

REMINDER: ADDITIONAL RESOURCES

Section 503 and federal contract compliance:

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Thank you for participating
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