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FIDELL LLP**

## **Questions and Answers About the Impact of Section 503 on Public Health Organizations**

Here, we address hypothetical questions about whether certain activities commonly undertaken by public health organizations and their partners would fall within the lobbying restrictions imposed by the OMB Cost Principles or by Section 503, Division F, Consolidated Appropriations Act of 2012.

- 1. A city receiving federal funds wants to lower consumption of sugar sweetened beverages (“SSBs”) in its jurisdiction to address increasing childhood obesity rates.**
  - Can the city council direct its local health department to use federal funds to develop educational programs about the public health impact of SSBs, if the educational programs do not promote any proposed, pending, or future legal restriction or requirement?**

Yes. Grantees’ public health education activities do not fall within the lobbying restrictions as long as they advance the purposes of the grant and do not include a “direct appeal” for the public to take action on proposed legislative or State regulatory changes.

- Can federal funds be expended to do economic research about the value of an SSB tax to the local community?**

Yes. A research analysis that includes a discussion of the implications of prospective government policies or laws typically does not constitute “lobbying,” so long as it does not exhort the public to support, or officials to enact, specific proposed laws or regulations. Public health organizations can, without crossing the line to “lobbying,” include in such research reports conclusions about the effectiveness of taxes or other forms of government action in addressing public health problems.

- Can the city council request testimony from the local health officer, whose salary to work on childhood obesity issues is covered by federal funds, about the impact of SSBs on community health? About the health value of imposing a SSB tax?**

Yes. The testimony of a local health officer (an employee of a grantee agency) before the city council would fall under the “normal and recognized executive-legislative relationships” exception, under whose auspices grantees can make communications designed to influence the enactment of legislation. Moreover, even if the grantee were not a local government, the testimony of one of its employees would be an allowable activity, so long as the testimony is primarily factual rather than advocacy-oriented and is provided at the legislative body’s documented request, and the content of the testimony is readily obtainable and deliverable.

- **If the answer is yes to any of these questions, does the local government itself need to do all the work or can the work be delegated to a subcontractor?**

The work may be delegated to a subcontractor. As noted above, we do not think most of the activities described in Question 1 are lobbying. To the extent any of these activities would be lobbying, however, and would be a permissible use of grant funds only because of an exception in the statute (*i.e.*, “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”), the exception would apply to subcontractors or subrecipients of a government grantee the same as to the grantee itself.

**2. A state health department tobacco control program, which is fully funded by the CDC Office on Smoking and Health:**

- **Is directed to submit comments to the US Food & Drug Administration (“FDA”) encouraging the FDA to regulate the use of menthol in tobacco products. Can federal funds be used for these comments?**

Yes. Section 503 is not implicated in this situation, because Section 503 does not appear to apply to the use of appropriated funds for communications concerning regulatory action taken by the executive branch of the U.S. government.

- **Is directed to develop state-level regulations to disallow flavored smokefree tobacco products for consideration by the state-level Food and Drug agency. Can federal funds be used to develop draft state regulations?**

Yes. A State-agency grantee could use grant funds to prepare draft regulations for another state agency, under the exception in the statute for “participation by an agency or officer of a State . . . in policymaking and administrative processes within the executive branch of that government.” However, with respect to grantees that are *not* State governments or their agents, drafting model regulations for the purpose of presenting the model to a state agency and urging its promulgation would likely be an unallowable cost.

- **Would answers to the above change if, instead of regulating tobacco products, the subject was regulating a public service, such as smoking cessation classes? What about smokefree apartments?**

No. The answers above would apply to any state-level regulatory activity. We interpret the restrictions in subsection (c) of Section 503 (relating advocacy on tax increases and restrictions on legal consumer products) as subject to the same exceptions and qualifications as those in subsection (b).

- **Would answers to the above change if the efforts related to local or state legislation rather than regulation?**

Yes, in the case of a State health department advocating on State legislation; probably not, in the case of a State health department advocating on local legislation. Interactions between a State agency grantee and a State legislature (including providing model legislation to the State legislature with the recommendation that it be enacted) would likely fall within the exception in the statute allowing advocacy relating to “normal executive-legislative relationships.” Interactions between a State agency grantee and a local city council would fall within the exception only if State law defines localities as instrumentalities of State government.

3. **An existing local government zoning code requires a conditional use permit be approved before new liquor stores can be sited. Using National Institute on Alcohol Abuse and Alcoholism (“NIAAA”) federal funding, the health department is researching the viability of using community-based organizations as a vehicle to reduce alcohol-related violence in targeted neighborhoods. The health department informs the coalition members that the zoning board is holding a public hearing on whether a conditional use permit should be issued for yet another liquor store in one of the target neighborhoods.**

- **Can the health department staff, whose salary is fully covered by the NIAAA grant, testify at the administrative hearing about illegal sales to youth and the over-proliferation of alcohol outlets?**

Yes. Even if the testimony did constitute lobbying (which it likely would not), the exceptions in the statute for “normal and established executive-legislative relationships” and “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” would apply. The health department staff’s time spent testifying would be an allowable cost to the grant if the activity furthers the purpose of the grant.

- **Can the community coalition staff, whose salary is fully covered by the NIAAA grant, use grant funds to testify at the administrative hearing about the illegal sales to youth and the over-proliferation of alcohol outlets?**

Probably. Attempting to influence a zoning board’s decision about a use permit is a type of activity that would fall within the scope of Section 503, in that the zoning board’s decision on a use permit could comprise an “administrative action” before a “local legislature.” But the activity of providing factual or technical information to the administrative board at its documented request – even if the testimony includes a recommendation or conclusion – would not constitute “lobbying.”

- **Can unpaid neighborhood residents' testimony reference the research findings and activity of the NIAAA-funded coalition related to the illegal sales to youth and the over-proliferation of alcohol outlets?**

Yes; the neighborhood residents' testimony would not involve the use of any appropriated federal funds and so would fall outside the scope of both the appropriations law and OMB Cost Principles.

4. **A developer is planning a new housing subdivision in a rural area of the county, not served by a common sewer system. Each house lot is to accommodate its own septic tank, and the proposed subdivision is upgrade to a major water table for an adjacent economically depressed neighborhood served by well water. A committee of the planning and zoning department is reviewing the application. The matter will need the approval of the county zoning board. If there is a dispute, the county manager reviews the matter and makes a recommendation to the county commissioners, who have the final administrative decision-making authority.**

- **Can the health department's environmental specialist, whose salary is paid by federal HHS grant funds, present information about potential water contamination risks and consequences to the various levels in this administrative decision-making county process (the planning and zoning staff, the zoning committee, the zoning board, the county manager, and the county commissioners)?**

Assuming that the county zoning board is a legislative or quasi-legislative entity, communications with county officials about this proposed action would fall within the ambit of Section 503. The specialist's time advising local officials would be an allowable cost if this activity furthers the purposes of the grant award. Even if such input constituted "lobbying," the activity would still be allowable because of the exception for "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."

- **Can the community coalition staff, whose salary is fully covered by HHS grants, provide information or advocate a position to these various levels of the administrative decision-making?**

The community coalition staff can use grant funds to provide information at meetings or hearings whose purpose is to deliberate on the proposed development, but only if the information stems from a documented request by the government entity, the presentation is primarily factual or technical in content and tone, and the presentation contents are readily obtainable and deliverable. If advocacy and policy recommendations constitute more than a minor part of the presentation, and there is a direct appeal to a government decision-maker, then the advocacy would constitute lobbying and could be undertaken only with private funds.

Because it is unclear how these new lobbying restrictions will apply in the local context, it is best practice for grantees (1) to avoid using federal grant funds to provide such input in private conversations, as opposed to formally convened meetings and hearings, and (2) to maintain the documentation of the government entity's request that the grantee testify or present information.

**5. Using federal funds, could groups urge school boards to remove soda machines from cafeterias? If not, what can they discuss with school boards?**

School boards are often viewed as quasi-legislative entities, and therefore, advocacy relating to matters before them would fall within the scope of Section 503. If the grantee is a nonprofit organization, allowable activities would be limited to providing factual or technical information to the school board at its request, as described above.

**6. A city council is holding a hearing on a smoke-free ordinance. With federal funds, can my organization let people know about the hearing and urge them to attend if they care about the issue?**

It depends. Notifying the public of a hearing is not, by itself, lobbying. However, where the statement goes beyond notice and includes statements suggesting why the public should attend the hearing, the grantee runs the risk of engaging in grassroots lobbying. A notice urging the public to attend a hearing on the smoke-free ordinance would probably be viewed as a call to action if it conveyed the grantee's support of such a measure, and would definitely constitute improper lobbying if it urged the public to support the measure. If either of those types of statements were present, then the notice would be interpreted as lobbying, and federal grant funds should not be used to prepare or disseminate it.

**7. May federally-funded groups share lists of interested persons with groups that lobby? May a grantee place a link on its website to the website of a nonprofit organization that conducts lobbying? Would either constitute lobbying?**

These activities do not in themselves constitute lobbying, since they do not involve a direct appeal for members of the public to take action, but they are still likely unallowable costs. The key consideration in each case would be whether the activity falls within the purposes of the grant. Sharing lists of members with lobbying groups for the purpose of advancing the groups' lobbying efforts may not fall within the purposes of the grant, since those purposes do not include lobbying. On the other hand, a grantee would likely have legitimate grant-related reasons (*e.g.*, promoting education of the public) to post a link on its website to an organization working in a related field that happens to conduct lobbying. Costs associated with this activity would likely be allowable.