

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**LAWS PROHIBIT THE USE OF
HHS GRANT FUNDS FOR
LOBBYING, BUT LIMITED
METHODS EXIST TO
IDENTIFY NONCOMPLIANCE**



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EXECUTIVE SUMMARY: LAWS PROHIBIT THE USE OF HHS GRANT FUNDS FOR LOBBYING, BUT LIMITED METHODS EXIST TO IDENTIFY NONCOMPLIANCE
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WHY WE DID THIS STUDY

This evaluation responded to a congressional request for the Office of Inspector General (OIG) to review grantees' use of Department of Health and Human Services (HHS) funds and awarding agencies' implementation and oversight regarding the prohibitions on the use of grant funds for lobbying.

HOW WE DID THIS STUDY

This evaluation included 13 grantmaking agencies (awarding agencies) within HHS. We collected and reviewed departmental and awarding agency directives in place for fiscal years (FYs) 2011 and 2012. We conducted structured telephone interviews with each agency's Chief Grants Management Officer and/or his or her designated staff. We asked about awarding agencies' notifications to grantees of the prohibitions on the use of grant funds for lobbying. We also asked about awarding agencies' mechanisms for identifying grantees that may have violated lobbying prohibitions and the mechanisms in place for reviewing allegations of lobbying. We conducted surveys with a sample of grantees from five awarding agencies regarding their awareness of the prohibitions.

WHAT WE FOUND

All awarding agencies reported using Federal and departmental sources of guidance regarding the prohibitions on the use of grant funds for lobbying. Through grant applications, notices of award, and/or training, all awarding agencies informed grantees of the prohibitions. For all sampled grant awards, grantees reported being aware of the lobbying prohibitions. However, limited methods exist to identify noncompliance. HHS awarding agencies found two instances of noncompliance in FYs 2011 and 2012.

WHAT WE RECOMMEND

We recommend that the Assistant Secretary for Financial Resources (ASFR) facilitate Departmentwide information sharing among awarding agencies about methods to identify the use of grant funds for prohibited lobbying activities. We also recommend that ASFR centralize on its Web site the guidance pertaining to the prohibitions on the use of grant funds for lobbying. ASFR concurred with our recommendations.

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OBJECTIVES

To determine:

1. the policies, procedures, and guidance that awarding agencies within the Department of Health and Human Services (HHS) had in place regarding the prohibitions on the use of grant funds for lobbying activities;
2. the extent to which awarding agencies informed grantees of these prohibitions;
3. the extent to which grantees were aware of the prohibitions; and
4. the extent to which awarding agencies monitored grantees for compliance with the prohibitions and identified instances of noncompliance.

BACKGROUND

This evaluation responded to a congressional request for the Office of Inspector General (OIG) to review grantees' use of HHS funds and awarding agencies' implementation and oversight regarding the prohibitions on the use of grant funds for lobbying activities.

HHS Grants

HHS is the largest grantmaking agency in the Federal Government. In fiscal year (FY) 2012, HHS operating divisions and staff divisions awarded nearly \$347 billion in grants. (We refer to grantmaking operating divisions and staff divisions collectively as awarding agencies.) Table 1 shows the number and dollar amount of grants that awarding agencies made in FY 2012.

Table 1: FY 2012 Grant Awards by Awarding Agency

Awarding Agency	Number of Awards	Percentage of Awards	Dollar Amount of Awards	Percentage of Dollar Amount
Administration for Children and Families (ACF)	8,097	10%	\$47,908,116,593	14%
Administration for Community Living (ACL)	1,470	2%	\$1,461,721,177	<1%
Agency for Healthcare Research and Quality (AHRQ)	641	<1%	\$138,004,180	<1%
Centers for Disease Control and Prevention (CDC)	4,654	6%	\$4,993,308,851	1%
Centers for Medicare & Medicaid Services (CMS)*	1,472	2%	\$256,600,245,678	74%
Food and Drug Administration (FDA)	462	<1%	\$114,070,061	<1%
Health Resources and Services Administration (HRSA)	5,759	7%	\$7,544,435,173	2%
Indian Health Service (IHS)	1,009	1%	\$2,328,004,693	<1%
National Institutes of Health (NIH)	54,674	67%	\$22,244,072,528	6%
Office of the Secretary**	607	<1%	\$462,607,574	<1%
Substance Abuse and Mental Health Services Administration (SAMHSA)	2,909	4%	\$3,187,756,086	<1%
Total	81,754	100%	\$346,982,342,594	100%

Note: Percentages do not sum to 100 percent because of rounding.

*Includes approximately \$254 billion of grants to States from Medicaid and the Children's Health Insurance Program.

**Includes staff divisions, such as the Office of the Assistant Secretary for Health, the Office of the Assistant Secretary for Preparedness and Response (ASPR), and the Office of the National Coordinator for Health Information Technology.

Source: Tracking Accountability in Government Grants System. Accessed on May 14, 2013 at <http://taggs.hhs.gov>.

Within the Office of the Secretary, the Assistant Secretary for Financial Resources (ASFR) serves as the lead official for grants. Within ASFR, the Office of Grants and Acquisition Policy and Accountability (OGAPA) provides Departmentwide leadership and management in the areas of grants and acquisition management through policy development, data systems operations and analysis, performance measurement, oversight and workforce training, development, and certification. OGAPA:

- develops departmental regulatory guidance, policies, and performance standards;
- provides technical assistance to awarding agencies;
- evaluates effectiveness of the grants programs and processes;
- maintains and reports departmental grant award information; and
- conducts special departmental initiatives related to grants.¹

¹ HHS, *Office of the Assistant Secretary for Financial Resources Functional Statement*. Accessed at http://www.hhs.gov/asfr/about/orginfo/asrfunctions.html#AMT_Off_Grants_Acquisition on July 9, 2012.

Additionally, individual awarding agencies maintain staff dedicated to grants administration.

Federal Laws and Regulations Regarding Lobbying Prohibitions

Federal laws address general restrictions on direct and indirect lobbying.² Direct lobbying occurs when an individual or a group directly contacts legislators either in person or by means of written or oral communication to support or oppose some legislative matter. Indirect or “grassroots” lobbying occurs when an individual or group contacts third parties and urges them to contact their legislators to support or oppose some legislative matter. In addition to the restrictions on direct or indirect lobbying, there are lobbying-related appropriations restrictions on publicity or propaganda.³ Finally, Federal regulations require grantees to make certifications about their lobbying activities in certain circumstances.⁴ Further details of each of these legal provisions are described below.

Federal Laws. There are two codified Federal laws that pertain to the prohibitions on the use of grant funds for lobbying. First, 18 U.S.C. § 1913 prohibits the use of Federal funds to lobby unless expressly authorized by law.⁵ It provides that no Federal appropriations may be used directly or indirectly

to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law ratification, policy or appropriation. . . .

Second, 31 U.S.C. § 1352 prohibits recipients of Federal grants from using Federal appropriations to influence Federal officials in connection with the grant award process (e.g., awarding or extending a grant).

² 18 U.S.C. § 1913; 31 U.S.C. § 1352; and see, e.g., Departments of Labor, HHS, and Education, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Div. F, Title V, § 503.

³ See, e.g., Departments of Labor, HHS, and Education, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Div. F, Title V, § 503(a).

⁴ 45 CFR pt. 93.

⁵ We understand that although there are differing interpretations of the scope of the 2002 amendments to 18 U.S.C. § 1913, the Department considers the provision to continue to apply only to executive agencies and not to have been affirmatively extended to grantees, contractors, or other recipients of funds from agencies.

Annual Appropriations Acts. Appropriations acts authorize Federal agencies to incur obligations and make payments for specified purposes.⁶ HHS programs and activities are generally funded through a number of appropriations. For many years, the annual HHS fiscal year appropriations act stated: “No part of any appropriation contained in this Act 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 legislation or appropriations pending before the Congress or any State legislature.”⁷ The FY 2012 Labor, HHS, and Education Appropriations Act (hereafter in this report referred to as FY 2012 HHS Appropriation) broadened the scope of these appropriation restrictions and prohibits the use of Federal funds to grantees, or their agents

related to any activity designed to influence the enactment of legislation, appropriation, 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.⁸

The FY 2012 HHS Appropriation also broadened the restrictions to include any activity to advocate or promote any requirement or restriction on any legal consumer product.⁹

The Labor, HHS, and Education Appropriations Act provides funding for many HHS programs, but not all of them. For example, the Interior and Environment Appropriations Act appropriates funds for IHS, the National Institute of Environmental Health and Sciences within NIH, and the Agency for Toxic Substances and Disease Registry within CDC. Funds appropriated in this Act are unavailable “for any activity or the publication or distribution of literature that in any way tends to promote public support

⁶ Government Accountability Office (GAO), *Principles of Federal Appropriations Law*, GAO-04-261SP, Appropriations Law 3rd ed., Vol. 1, pp. 2–5, 2004.

⁷ E.g., P.L. No. 111-117, Div. D, Title V, § 503(b) (Dec. 16, 2009).

⁸ P.L. No. 112-74, Div. F, Title V, § 503(b) (Dec. 23, 2011).

⁹ P.L. No. 112-74, Div. F, Title V, § 503(c) (Dec. 23, 2011).

or opposition to any legislative proposal on which Congressional action is not complete. . . .”¹⁰

In addition, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act provides appropriations for FDA.¹¹ Unlike funds from the general HHS appropriations, funds appropriated in this Act do not have any appropriation-specific lobbying restrictions. All other lobbying restrictions generally still apply to FDA appropriations.

Governmentwide restrictions on lobbying are also included in an annual appropriations act.¹² These restrictions apply to funds specifically appropriated in the particular appropriation act as well as “any other Act.”

Federal Regulations. On the basis of 31 U.S.C. § 1352, Federal regulations at 45 CFR pt. 93 require an applicant for a grant exceeding \$100,000 to certify that no federally appropriated funds have been or will be paid to any Federal official in connection with the making, extending, continuing, renewing, amending, or modifying of a Federal grant. After the award of a grant, if a grantee uses nonappropriated funds to influence the grant-awarding process or in a way that materially affects the accuracy of the information provided in the certification, the grantee must submit Standard Form LLL, “Disclosure of Lobbying Activities.”

Federal regulations at 45 CFR pts. 74 and 92 establish uniform administrative requirements governing HHS grants to (1) institutions of higher education, hospitals, and other nonprofit organizations and (2) to State, local, and tribal governments, respectively. Federal regulations (45 CFR §§ 74.27 and 92.22) incorporate by reference the Federal cost principles in the Office of Management and Budget (OMB) circulars that

¹⁰ P.L. No. 111-88, Div. A, Title IV, § 402 (Oct. 30, 2009), and P.L. No. 112-74, Div. E, Title IV, § 402 (Dec. 23, 2011).

¹¹ See P.L. No. 111-80, Title VI (Oct. 21, 2009); P.L. No. 112-55, Div. A, Title VI (Nov. 18, 2011).

¹² See P.L. No. 111-117, Div. C, Title VII, § 717 (Dec. 16, 2009), and P.L. No. 112-74, Div. C, Title VII, §§ 716 and 719 (Dec. 23, 2011).

restrict the use of Federal grant funds for costs incurred as a result of prohibited lobbying activities.¹³

HHS Guidance Regarding Lobbying Prohibitions

The HHS Grants Policy Directives (GPD) and the *Awarding Agency Grants Administration Manual* (AAGAM) are HHS internal policies applicable to awarding agencies, but not to grantees.¹⁴ The HHS Grants Policy Statement (GPS) describes the general terms and conditions of HHS discretionary grant awards and is applicable to most grantees.¹⁵

Grants Policy Directives. The GPD provides guidance on grants-management issues to affected program offices at all organizational levels within the Department and is the highest level of departmental grants-policy issuance within the Department. With respect to the prohibitions of using grant funds for lobbying activities, the GPD references 45 CFR pt. 93 and the OMB circulars.¹⁶

AAGAM. The AAGAM implements the GPD by providing detailed guidance to awarding agency staff involved in grants administration. With respect to the prohibitions on using grant funds for lobbying, the AAGAM references 18 U.S.C § 1913, 31 U.S.C. § 1352, appropriations act language, and the applicable Federal cost principles in the OMB circulars.¹⁷ In addition, the AAGAM requires that each award include general terms and conditions that address the post-award requirements of applicable public policies, including those related to lobbying.¹⁸

GPS. The GPS describes general terms and conditions that are included in all HHS discretionary grant awards unless there are statutory, regulatory, or award-specific requirements to the contrary. The GPS refers to the lobbying limitations in 31 U.S.C. § 1352, which prohibit grantees from

¹³ OMB Circulars A-21 (regarding educational institutions); A-87 (regarding State, local, and tribal governments); and A-122 (regarding nonprofit organizations). The lobbying provisions in these three circulars are codified at 2 CFR pt. 220, App. A, § 28; 2 CFR pt. 225, App. B, §§ 24(a) and (b); and 2 CFR pt. 230, App. B, § 25(a) 1–5, respectively. These requirements have been superseded and streamlined by OMB guidance that will largely become effective for all Federal awards or funding increments provided on or after December 26, 2014 (78 Fed. Reg. 78590 (Dec. 26, 2013)). The new lobbying provision is at 2 CFR § 200.450.

¹⁴ Ch. 1.01.101-2 of the AAGAM states that the AAGAM must be used by any awarding agency that is not developing and maintaining its own grants administration manual. Currently, NIH is the only awarding agency with its own grants administration manual and therefore does not use the AAGAM. HHS departmental grants guidance is being updated to become a new *Grants Policy and Administration Manual*.

¹⁵ In 1998, NIH issued the first version of its own NIH Grants Policy Statement (NIHGPS). Therefore, the HHS GPS does not apply to NIH.

¹⁶ HHS, GPD, 1.01H.2 and H.3.

¹⁷ HHS, AAGAM, ch. 6.99.101-2.B.7, and Attachment 1.

¹⁸ HHS, AAGAM, ch. 2.04.104D-3.A.5.c(9).

influencing Federal officials in connection with the grant awards. The GPS describes the implementing regulations at 45 CFR pt. 93 that state that applicants for grants with total costs expected to exceed \$100,000 are required to certify that they (1) have not made, and will not make, such a prohibited payment (i.e., for lobbying activities); (2) will be responsible for reporting the use of nonappropriated funds for such purposes; and (3) will include these requirements in consortium agreements, other subawards, and contracts under grants that exceed \$100,000 and will obtain necessary certifications from those consortium participants and contractors.¹⁹ In addition, the GPS states that lobbying is generally an unallowable cost, includes general restrictive language found in HHS appropriations, and references the Federal cost principles in the OMB circulars.²⁰

Awarding Agency Guidance Regarding Lobbying Prohibitions

Awarding agencies may publish their own guidance to grantees in various formats. For example, NIH publishes its own GPS, which contains the policy requirements that serve as the terms and conditions of NIH grant awards. CDC maintains a list of “Additional Requirements” (delineated by number) that may apply to a funding opportunity.²¹ Additional Requirement 12 addresses the prohibition of using CDC funds to engage in any lobbying activity.

Awarding Agency Staff Roles and Responsibilities

The GPD outlines the primary responsibilities of the awarding agency staff involved in the award and management of HHS grants.²²

Chief Grants Management Officer (CGMO). Each awarding agency head must designate an individual to serve as the official responsible for the business and nonprogrammatic management aspects of the awarding agency’s grants. The CGMO is the appointing authority for additional grants management officers (GMOs) within the awarding agency.

GMO. A GMO is responsible for all Federal business management matters associated with the review, negotiation, award, and administration of the grants to which he/she is assigned. GMOs also interpret grants-administration policies and provisions and are responsible for maintaining the official grant files for individual grant awards. The GPS

¹⁹ HHS GPS, p. I-15. Accessed online on September 24, 2012; link has since changed to <http://www.hhs.gov/asfr/ogapa/aboutog/hhsgps107.pdf>.

²⁰ Ibid., II-35.

²¹ CDC, *Additional Requirements*. Accessed at http://www.cdc.gov/od/pgo/funding/grants/additional_req.shtm on September 17, 2012. There were 32 additional requirements as of that date.

²² HHS, GPD, 1.04.

advises grantees to seek advance understanding with their respective GMOs on any activities directly related to the performance of the grant that might otherwise be considered lobbying activities.²³

Related Report

In 2013, GAO issued a report regarding CDC's Communities Putting Prevention to Work (CPPW) cooperative agreement program.²⁴ GAO reviewed CDC policies on lobbying and reviewed activities by CPPW award recipients. CDC used funding-opportunity announcements and meetings with CPPW award recipients to educate them on lobbying policies. The report described two CPPW award recipients that were suspected of conducting prohibited activities. One of the two recipients was found to be conducting activities that constituted lobbying under CDC's policy.

METHODOLOGY

This evaluation examined 13 awarding agencies.²⁵ We relied on three data sources for this evaluation: (1) awarding agency documents and data, (2) structured interviews with CGMOs, and (3) surveys of grantees.

Awarding Agency Data Request

We asked awarding agencies to provide us with departmental and/or awarding agency guidance regarding prohibitions on the use of grant funds for lobbying during FYs 2011 and 2012. We requested the standard language that each awarding agency used to describe lobbying restrictions in FY 2012 applications and notices of grant awards. Lastly, we requested the number and description of documented instances of noncompliance with the prohibitions on the use of grant funds for lobbying activities identified in FYs 2011 and 2012.

Structured Interviews With CGMOs

We conducted structured telephone interviews with CGMOs from 13 awarding agencies.²⁶ We asked about awarding agencies' notifications to grantees of the prohibitions on the use of grant funds for lobbying. We also asked about awarding agencies' mechanisms for identifying grantees that may have violated lobbying prohibitions.

²³ HHS GPS, p. II-35. (See footnote 19 for URL.)

²⁴ GAO, *Centers for Disease Control and Prevention: Lobbying Policies and Monitoring for Program to Reduce Obesity and Tobacco Use*, GAO-13-477R, April 30, 2013.

²⁵ The 13 awarding agencies consisted of 10 operating divisions (ACF, ACL, AHRQ, CDC, CMS, FDA, HRSA, IHS, NIH, and SAMHSA) and 3 staff divisions in the Office of the Secretary (the Office of the Assistant Secretary for Health, ASPR, and the Office of the National Coordinator for Health Information Technology).

²⁶ CGMOs have oversight responsibility for GMOs; therefore, CGMOs should have knowledge of awarding-agency enforcement actions.

Grantee Surveys

In FY 2012, the top five awarding agencies for numbers of grants awarded were ACF, CDC, HRSA, NIH, and SAMHSA. These awarding agencies awarded 94 percent of the total number of HHS grant awards.²⁷ ASFR provided us with data (e.g., grantee name, award number) for each grant award in the universe of FY 2012 grant awards from each of these five awarding agencies. Because NIH awarded more than two-thirds of FY 2012 HHS grants, we selected a stratified random sample of 150 grant awards: 110 grant awards from NIH and 40 grant awards from the remaining 4 awarding agencies. The population and sample sizes are shown in Table 2.

Table 2: Number of Grant Awards in Population and Sample by Stratum

Stratum	Awarding Agency	Population Size	Sample Size
1	NIH	50,445	110
2	ACF	6,909	40
	CDC	3,867	
	HRSA	5,679	
	SAMHSA	2,535	
Total		69,435	150

Source: Tracking Accountability in Government Grants System report created on December 5, 2012.

We surveyed grantee administrative staff (e.g., institutional grants officer) representing each grant award. We asked about their awareness of the prohibitions on the use of grant funds for lobbying and the sources from which they derived this knowledge. We asked respondents to describe how their organizations ensured that grant funds were not used for prohibited lobbying. We also asked whether grantee organizations were contacted by awarding agencies regarding concerns about the potential use of grant funds for lobbying. Finally, we asked whether the respondents wanted further information about the lobbying prohibitions. Overall, our survey had a 97-percent response rate. Weighted response rates for individual survey questions ranged from 88 percent to 97 percent.

Analysis

We reviewed the departmental and awarding agency guidance and the standard language included in grant applications and notices of grant

²⁷ CMS awarded about 74 percent of HHS FY 2012 grant dollars, most of which was for Medicaid and Children’s Health Insurance Program grants to States. However, CMS awarded only about 2 percent of the *number* of HHS FY 2012 grant awards; therefore, we did not include CMS in our population.

award to identify the guidance that awarding agencies used. We compared the guidance that awarding agencies reported being in effect in FY 2011 with that in effect in FY 2012 to determine whether changes were made as a result of the enactment of section 503 of the FY 2012 HHS Appropriation. In addition, we reviewed language from FY 2012 grant applications and notices of award to see if it reflected the enactment of section 503. We supplemented that analysis with the interview responses from CGMOs regarding how they informed grantees of the lobbying prohibitions. We also used the interview responses to determine how awarding agencies monitored grantees for compliance with the prohibitions.

We analyzed the responses to our survey of grantees to determine grantee awareness of the lobbying prohibitions and to assess grantees' needs for additional information on this topic. We also analyzed these survey responses to determine the methods that grantees used to ensure that grant funds were not used for prohibited lobbying.

Scope

The period of our review encompassed FYs 2011 and 2012. We determined the extent to which grantees in five awarding agencies—ACF, CDC, HRSA, NIH, and SAMHSA—were aware of lobbying prohibitions, but we did not make comparisons among awarding agencies or between NIH and the other four awarding agencies. Grantee survey responses are self-reported; we did not verify their accuracy. We did not examine expenditures to identify grantees that may have violated lobbying prohibitions.

Standards

This study was conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

FINDINGS

All HHS awarding agencies reported using Federal and departmental guidance on the prohibitions on the use of grant funds for lobbying

Each of the 13 awarding agencies we reviewed reported using 1 or more sources of Federal and/or departmental guidance on the topic of lobbying. Federal sources included 45 CFR pt. 93, OMB circulars, and annual appropriations acts. Departmental sources included the GPD, AAGAM, and GPS. Two awarding agencies published their own guidance with respect to lobbying prohibitions. All but one awarding agency subject to the language in section 503 of the FY 2012 HHS Appropriation informed grantees that restrictions on lobbying with Federal funds appropriated under this specific Act had been broadened.

Two awarding agencies supplemented Federal and departmental guidance with their own guidance

Two awarding agencies (CDC and NIH) published guidance to grantees regarding the prohibitions on the use of grant funds for lobbying. CDC published Additional Requirement 12, in effect in FY 2011 and updated in June 2012, which describes activities that do and do not constitute lobbying and addresses the prohibition on using CDC funds to engage in lobbying. For example, Additional Requirement 12 states that it is permissible for grantees to use CDC funds to conduct community outreach services, but cautions grantees “to be careful not to give the appearance that CDC funds are being used to carry out activities in a manner that is prohibited under Federal law.” In July 2012, CDC distributed a six-page guidance document to grantees entitled *Anti-Lobbying Restrictions for CDC Grantees*. CDC intended this document to provide an overview of lobbying restrictions, along with examples of allowable and prohibited activities.

On May 24, 2013, NIH published a reminder to grantees that all NIH-funded awards are subject to a prohibition on using Federal funds for lobbying. The reminder referenced the relevant NIHGPS chapter and section 503 of the FY 2012 HHS Appropriation.

All but one awarding agency informed grantees of the language in the FY 2012 HHS Appropriation

Most commonly, awarding agencies informed grantees of broadened lobbying restrictions in the FY 2012 HHS Appropriation by including the language from section 503 in the agencies’ terms and conditions of award. A few awarding agencies disseminated this information in additional

ways. For example, NIH released a notice dated January 20, 2012, entitled *Notice of Legislative Mandates in Effect for FY 2012*, that provided information on the statutory provisions that limit the use of NIH grant funds. AHRQ sent an email to staff and published an article in its employee newsletter regarding Federal laws on lobbying prohibitions and section 503 of the FY 2012 HHS Appropriation.

ACF grant officials reported that they did not inform grantees specifically about section 503 of the FY 2012 HHS Appropriation. However, the standard language in ACF's notices of award informs grantees that any applicable statutory or regulatory requirements directly apply to the award. IHS and FDA have separate appropriations acts; therefore, their grantees are not subject to the FY 2012 HHS Appropriation.

Through grant applications, notices of award, and/or training, all HHS awarding agencies informed their respective grantees of the prohibitions on the use of grant funds for lobbying

Most commonly, awarding agencies used the assurance and certification language in grant applications²⁸ and terms and conditions in notices of award as information sources for grantees about the prohibitions on the use of grant funds for lobbying. For example, the Office of the Assistant Secretary for Health and ASPR included the language from section 503 of the FY 2012 HHS Appropriation in its entirety on notices of award. Four awarding agencies included information on lobbying prohibitions in their funding-opportunity announcements or requests for applications.

More than half of awarding agencies included lobbying information in grantee training

Eight of the thirteen awarding agencies reported that lobbying is a topic covered during grantee training. For example, the Office of the National Coordinator for Health Information Technology reported that lobbying is addressed in grantee training entitled "Staying Inside the Lines With Federal Funding." For its Center for Tobacco Products grants, FDA approached each grantee individually to provide training on this topic. Two awarding agencies—the Office of the Assistant Secretary for Health and CMS—told us that they had received specific inquiries from grantees regarding lobbying and that they had provided technical assistance in response.

²⁸ Grant applications include documents such as Public Health Service 398 and Standard Form 424.

For all sampled grant awards, grantees reported being aware of the prohibitions on the use of grant funds for lobbying; a few grantees suggested the need for more guidance

For all grant awards in our sample, all grantees responded that they were aware of the lobbying prohibitions.²⁹ For these awards, grantees reported various sources that informed them of the prohibitions and described methods by which their organizations ensured that Federal grant funds are not used for prohibited lobbying activities. Only 3 percent of awards were associated with grantees that wanted to receive further information about the lobbying prohibitions.

For grant awards, grantees reported becoming informed of the prohibitions through grant applications, awarding agency Web sites, and notices of award

For 71 percent of grant awards, grantees reported receiving information about the prohibitions on the use grant funds for lobbying from grant applications or through reading funding-opportunity announcements. Additionally, 69 percent of awards were associated with grantees that reported receiving information about the prohibitions through agency Web sites, and 67 percent were associated with grantees that had received information by notices of award. Other sources included Web sites (e.g., www.grants.gov, www.grantsolutions.gov), training and technical assistance (e.g., Web seminars, grantee orientation sessions), and awarding agency printed materials.

For all the sampled grant awards, no grantees reported that they sought awarding agency clarification regarding the lobbying prohibitions, nor were they contacted by awarding agencies regarding concerns about potential prohibited lobbying activities. Furthermore, for all grant awards in our sample, no grantees reported that they had contacted awarding agencies with concerns about potential lobbying activities by either their own organizations or those of subgrantees.³⁰

²⁹ Although for all grant awards in our sample, grantees reported awareness of the lobbying prohibitions and we can be confident that the percentage in the population is large and possibly 100 percent, we cannot be certain—because of sampling error—that 100 percent of the population was aware of the prohibitions. We are at least 95 percent confident that the population percentage is greater than 94.5 percent.

³⁰ No grant awards in our sample were associated with grantees that sought clarification of guidance from awarding agencies, were contacted by awarding agencies, or contacted awarding agencies with concerns. Although we can be confident that the percentage in the population is small and possibly none, we cannot be certain—because of sampling error—that none of the awards in the population were associated with such grantees. We are at least 95 percent confident that the population percentage is less than 5.5 percent.

For grant awards, grantees described two main methods used to ensure that grant funds are not used for prohibited lobbying activities

First, for 66 percent of awards, grantees stated that they review expenditures or conduct internal audits to ensure that grant funds are not used for lobbying. For example, for one sampled award, the grantee explained that grantee officials review expenditures to determine whether they are allowable. In addition, the grantee's accounting system contains certain edits that do not allow the accounting code for lobbying costs to be used against federally funded awards.

Second, for 55 percent of awards, grantees pointed to internal policy communicated to grantee staff as a means to ensure that grant funds are not used for prohibited lobbying activities. For example, for one sampled award, the grantee stated that it has a policy requiring advance clearance prior to making appointments or establishing lobbying contacts with any local, State, or Federal elected officials. In comparison, for 5 percent of awards, grantees responded that their organizations do not engage in any lobbying activities whatsoever, regardless of the funding source for those activities.

Few awards were associated with grantees that indicated a desire for further guidance

Three percent of awards were associated with grantees that wanted to receive further information about the prohibitions on the use of grant funds for lobbying. For two sampled awards, grantees suggested that Web site links to reference materials would be helpful and one grantee suggested a "one-pager" on the topic written in plain language without legal jargon. The respondent stated that such a document would be useful to provide to subgrantees. Finally, for one sampled award, one grantee noted the continuing need for future updates as guidance changes in this area.

Limited methods exist to identify noncompliance with prohibitions on lobbying; HHS awarding agencies found two instances of noncompliance in FYs 2011 and 2012

When signing grant applications, grantees certify that they are generally prohibited from using Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific grant. However, this is only a self-certification. Awarding agencies have limited abilities to uncover potential noncompliance. In

FYs 2011 and 2012, awarding agencies identified two instances of prohibited lobbying activities.

Awarding agencies described limited methods to identify lobbying activities prior to award and after award

When we asked CGMOs about the ways in which lobbying activities are identified prior to award, they told us that there is limited information that would reveal such activities. One method that awarding agencies may use to identify potential lobbying activities is reviewing budgets. For example, CMS grant officials told us that they look closely at planned expenditures for offsite meetings and follow up on areas about which they have questions.

After a grant is awarded, there are more sources of information that could reveal a grantee's prohibited lobbying activities. CGMOs reported that, through reviewing expenditures, conducting site visits, or conducting conference calls, they could identify instances in which grant funds were used for lobbying. External sources of information are also important. Two awarding agencies mentioned that lobbying activities could be detected during an annual financial audit, and four awarding agencies mentioned whistleblowers or media reports. One CGMO said that a whistleblower or media contact would be the primary source of identifying a possible violation.

Awarding agencies identified two instances of noncompliance in FYs 2011 and 2012

Two awarding agencies each identified one instance of noncompliance with the use of grant funds for lobbying activities during FYs 2011 and 2012. In FY 2011, a CDC project officer identified one grantee that had conducted activities related to a planned press event regarding a local smoke-free ordinance. In response, CDC sent the grantee a letter indicating that it was noncompliant with CDC's Additional Requirement 12, which addresses the lobbying prohibitions. CDC disallowed all costs (\$247.79) associated with the activities and required the grantee to repay or offset those costs with non-Federal funds. In addition, CDC required the grantee and its contractors to attend training related to the antilobbying requirement.

In FY 2012, HRSA officials initiated a review of one grantee's expenditures following HRSA staff concerns that the grantee might have overcharged the grant for personnel and numerous new projects. During their review of over \$58 million of expenditures spanning 3 FYs, HRSA staff discovered expenditures for a July 2010 trip to Washington, D.C. The itinerary detailed the purchase of dinner and drinks for several

legislative staff members, which raised concerns as to whether grant funds were used for lobbying. In May 2012, HRSA submitted a draft report to the grantee that identified these expenditures, as well as over \$2 million in other unsupported and unallowable expenditures. In response to followup documentation submitted by the grantee, HRSA issued a letter to the grantee in March 2013 requesting a refund of the unsupported and unallowable costs and allowing the grantee a final opportunity to submit additional documentation for the unsupported costs. In May 2013, the grantee submitted additional documentation. HRSA completed its review of the documentation in December 2013, continuing to disallow \$5,258.94 (\$3,005.11 in direct expenditures and \$2,253.83 in indirect costs) because the expenditures (e.g., lodging, meals) were made for the purposes of lobbying. HRSA requested a refund of these costs. The grantee filed an appeal of HRSA's decision. As of May 2014, the appeal is pending with the Departmental Appeals Board.

CONCLUSION AND RECOMMENDATIONS

Our results show that all awarding agencies reported using Federal and departmental sources of guidance regarding the prohibitions on the use of grant funds for lobbying. All awarding agencies informed their respective grantees of the prohibitions on the use of grant funds for lobbying through grant applications, notices of award, and/or training.

Although the level of grantee awareness of lobbying prohibitions was high and identified noncompliance (i.e., the identified use of grant funds for prohibited lobbying activities) was low, we note that limited methods exist for awarding agencies to identify prohibited lobbying activities. Our data collection showed that awarding agencies look to ASFR to keep them informed of any changes to Federal and departmental guidance on this topic, such as the April 2012 Action Transmittal regarding the implementation of language in the FY 2012 HHS Appropriation.

We recommend that ASFR:

Facilitate Departmentwide information sharing about methods to identify uses of grant funds for prohibited lobbying activities

Awarding agency CGMOs reported limited methods to identify the use of grant funds for prohibited lobbying activities, stating that third-party reports are a primary source of this information. Given the difficulty of identifying violations, whenever violations are identified ASFR should share this information with HHS awarding agencies. ASFR could consider using its established Program Integrity Coordinating Council as the forum for information sharing.

Centralize on its Web site the guidance pertaining to the prohibitions on the use of grant funds for lobbying

On its Division of Grants Web site, ASFR highlights specific grants-policy topics (e.g., audits, objective grant review). ASFR should add lobbying as one of these topics. This would serve as a central reference point for guidance at the Federal and department levels. In addition, ASFR should include links to any evaluation reports regarding grantee lobbying. ASFR should also include information about how individuals can report activities that might constitute federally prohibited lobbying activities.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

ASFR concurred with both of the recommendations. To address our first recommendation, ASFR stated that it will work with awarding agencies to determine the best use of resources to share information on methods to identify grant funds used for prohibited lobbying activities. To address our second recommendation, ASFR stated that it will work with awarding agencies and the Office of the Assistant Secretary for Public Affairs to ensure that the Division of Grants Web site captures relevant lobbying guidance, links to any existing evaluation reports regarding grantee lobbying, and recommends a method of reporting activities that might constitute federally prohibited lobbying activities.

For the full text of ASFR's comments, see Appendix B.

APPENDIX A

Point Estimates and Confidence Intervals for Grantee Surveys

We calculated confidence intervals for key data points for responses to our survey of grantees. The sample sizes, point estimates, and 95-percent confidence intervals are given for each of the following:

Data Point Description	Sample Size	Point Estimate	95-Percent Confidence Interval
Awards associated with grantees responding that they were aware of the prohibitions on the use of Federal grant funds for lobbying	146	100.0%	94.5%–100.0%
Awards associated with grantees reporting that they would like to receive further information about lobbying prohibitions	145	2.8%	1.0%–7.3%
Awards associated with grantees reporting that they received information about lobbying prohibitions via grant applications or by reading funding-opportunity announcements	137	70.8%	62.6%–77.9%
Awards associated with grantees reporting that they received information about lobbying prohibitions from awarding agency Web sites	132	69.5%	61.4%–76.5%
Awards associated with grantees reporting that they received information about lobbying prohibitions from notices of award	133	66.9%	58.3%–74.4%
Awards associated with grantees reporting that they sought clarification from awarding agencies regarding the prohibitions on the use of grant funds for lobbying activities	146	0.0%	0.0%–5.5%
Awards associated with grantees reporting that awarding agencies contacted them regarding concerns about the potential use of grant funds for lobbying activities	146	0.0%	0.0%–5.5%
Awards associated with grantees reporting that they had contacted awarding agencies regarding concerns about the potential use of grant funds for lobbying activities	146	0.0%	0.0%–5.5%
Awards associated with grantees reporting that they review expenditures or conduct internal audits to ensure that grant funds are not used for lobbying	140	65.6%	57.3%–73.0%
Awards associated with grantees reporting that internal policy is a means of ensuring that grant funds are not used for prohibited lobbying activities	140	54.8%	46.6%–62.8%
Awards associated with grantees reporting that they do not engage in any lobbying activities, regardless of the funding source for those activities	140	5.1%	2.4%–10.2%

Source: OIG analysis of grantee surveys, 2013.

APPENDIX B

Agency Comments



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

MAY 2 2014

TO: Daniel R. Levinson
Inspector General

FROM: Ellen G. Murray *ISI*
Assistant Secretary for Financial Resources and Chief Financial Officer

SUBJECT: HHS Comments on OIG Draft Report: *Laws Prohibit the Use of HHS Grant Funds for Lobbying, but Limited Methods Exist to Identify Noncompliance*, OEI-07-12-00620

The Department of Health and Human Services' (HHS's) Office of the Assistant Secretary for Financial Resources (ASFR) appreciates the opportunity to review and comment on the Office of Inspector General's draft report: *Laws Prohibit the Use of HHS Grant Funds for Lobbying, but Limited Methods Exist to Identify Noncompliance*, OEI-07-12-00620.

ASFR values departmentwide information sharing and is committed to ensuring that guidance to HHS's awarding agencies related to the prohibition and identification of the use of HHS grant funds for lobbying activities is effectively disseminated and incorporated into grants administration practices. As the report states, all HHS awarding agencies use federal and departmental sources of guidance regarding the prohibition on the use of grant funds for lobbying, and employ numerous methods to inform grantees through grant applications, notices of award, and/or training.

ASFR concurs with the OIG that additional information sharing between ASFR and the awarding agencies regarding methods to identify uses of grant funds for prohibited lobbying activities is appropriate and warranted. ASFR will work with the awarding agencies to determine the most effective and efficient use of resources to accomplish this coordination and information sharing. We will provide the OIG with an update on these efforts as they progress.

ASFR also agrees that it should centralize federal and departmental guidance pertaining to the prohibitions on the use of grants funds for lobbying on its Division of Grants website. ASFR will work with the awarding agencies and the Office of the Assistant Secretary for Public Affairs to ensure the site captures relevant lobbying guidance, links to any existing evaluation reports regarding grantee lobbying activities, and a recommended method of reporting potential violations of federal laws on prohibited lobbying activities. We will provide the OIG with an update on these efforts as they progress.

ACKNOWLEDGMENTS

This report was prepared under the direction of Brian T. Whitley, Regional Inspector General in the Kansas City regional office.

Tricia Fields served as the team leader for this study. Other Office of Evaluation and Inspections staff from the Kansas City regional office who conducted the study include Dennis Tharp. Central office staff who provided support include Heather Barton, Althea Hosein, Christine Moritz, and Talisha Searcy.

Office of Inspector General

<http://oig.hhs.gov>

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