



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



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TO: Thomas R. Frieden, MD, MPH
Director
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FROM: Daniel R. Levinson *Daniel R. Levinson*
Inspector General

SUBJECT: Communities Putting Prevention to Work -- EARLY ALERT

The Office of Inspector General (OIG) received allegations from congressional staff concerning potentially inappropriate uses of funds by grantees under the Communities Putting Prevention to Work (CPPW) program. Specifically, those allegations indicated that grantees may have violated a series of anti-lobbying statutes. In response to this information, OIG reviewed quarterly reports submitted by CPPW grantees and posted to the Recovery.gov Web site, researched applicable law and met with officials of the Centers for Disease Control and Prevention (CDC), the CPPW program, and the Office of the General Counsel. We are concerned that some statements in those reports may reflect inappropriate lobbying activities using CPPW grant funds. Our review also indicated that this may have originated from a lack of clear guidance – or even conflicting information – from CDC to CPPW grantees concerning the anti-lobbying restrictions.

We propose that CDC:

- review its guidance and other materials posted on its Web site,
- clarify any misleading statements about lobbying activities by grantees under this program,
- train CDC employees, as necessary, and
- provide updated and more detailed guidance to grantees describing how to avoid violating these statutory provisions. Such guidance should also advise grantees concerning new restrictions on lobbying contained in the FY 2012 HHS appropriations.

Additionally, OIG plans to review CDC grants to reduce chronic disease and promote healthy lifestyles funded with money subject to the lobbying prohibitions contained in the FY 2012 HHS

appropriation. We also will evaluate HHS oversight of lobbying prohibitions in FY 2012. Additional details are provided in the attachment to this memorandum.

Attachment

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Communities Putting Prevention to Work Early Alert

Summary

The Office of Inspector General (OIG) received allegations from congressional staff concerning potentially inappropriate uses of funds by grantees under the Communities Putting Prevention to Work (CPPW) program. Specifically, those allegations indicated that grantees may have violated a series of anti-lobbying statutes. In response to this information, OIG has reviewed quarterly reports submitted by CPPW grantees that were posted to the Recovery.gov Web site, researched applicable law, and met with officials of the Centers for Disease Control and Prevention (CDC), the CPPW program, and the Office of the General Counsel. We are concerned that some statements in those reports may reflect inappropriate lobbying activities using CPPW grant funds. Our review also indicated that this may have originated from a lack of clear guidance – or even conflicting information – from CDC to CPPW grantees concerning the anti-lobbying restrictions.

Background and Analysis

CPPW is a CDC initiative authorized by §§ 311 and 317(k)(2) of the Public Health Service Act (42 U.S.C. §§ 243 and 247b(k)(2)) and funded through the American Recovery and Reinvestment Act of 2009 (ARRA) and most recently through the Affordable Care Act. CPPW grants focus on prevention of chronic diseases, and are intended to support community efforts to increase physical activity, improve nutrition, and decrease obesity and smoking. The CPPW grant announcement solicited applications in the last quarter of 2009; CDC awards were made in 2010 and support 50 communities throughout the U.S. The CDC Web site includes an Online Resource Center with tools describing how grant funds can be used to accomplish the objectives of the grant. ARRA grantees report quarterly to CDC on the use of CPPW grant funds, and these reports are posted on Recovery.gov.

Numerous anti-lobbying provisions have created a complicated web of restrictions with which CPPW grantees must comply. Very generally, those are:

- 18 U.S.C. § 1913 prohibits the use of Federal funds to lobby unless expressly authorized by law. It provides, in pertinent part, that no Federal funds 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. . . .” Significant amendments were made to this provision in 2002, most significantly substituting civil for criminal penalties. There has been no definitive ruling by the Office of Legal Counsel, Department of Justice, or by the

courts on whether the amended restriction applies to grantees or is limited to Federal employees and agencies.¹

- Recipients of Federal grants are specifically prohibited by 31 U.S.C. § 1352 from influencing Federal officials in connection with the award of a particular contract, grant, cooperative agreement, or loan.
- In addition, HHS fiscal year appropriations provisions for many years have stated that “[n]o 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.” See, e.g., the Departments of Labor, HHS, and Education, and Related Agencies Appropriations Act, 2010, P.L. 111-117, § 503(b). The FY 2012 Labor, HHS, and Education Appropriation Act, P.L. 112-74, § 503(b), broadened the scope of these appropriation restrictions and bars the use of Federal funds to grantees, or their agents “related to any activity designed to influence the enactment of legislation, appropriations, regulation, administration action or Executive order proposed or pending before the Congress or any State” or local government “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.” The FY 2012 appropriations rider also specifies, for the first time, that the restrictions apply to lobbying to tax or place restrictions on “any legal consumer product.”
- Finally, HHS grant rules (45 CFR §§ 92.22 and 74.27) incorporate by reference OMB circulars which restrict the use of Federal grant funds for costs incurred as a result of prohibited lobbying activities. See 2 CFR Part 225, App. B, § 24 and Part 230, App. B, par. 25.

The CPPW grant announcement provides that grantees “will implement population-based approaches such as policy, systems, and environmental changes” to decrease obesity and tobacco use. Specifically, grantees “will be required to implement specific high priority interventions, including implementing comprehensive smoke free air policies, using evidence-based pricing strategies that discourage tobacco use, and/or limiting availability of unhealthy food and beverages.” Although the CPPW grant announcement does not use these exact words, the CDC answer to a Frequently Asked Question states that CPPW “applicants are requested to provide a comprehensive plan to reduce tobacco use through legislative, regulatory, and educational arenas” (<http://www.cdc.gov/chronicdisease/recovery/faq.htm>). In conjunction with the grant

¹ We understand that while there are differing interpretations of the scope of the 2002 amendments to 18 U.S.C. § 1913, the Department is of the view that the provision continues to apply only to executive agencies, and was not affirmatively extended to grantees, contractors, or other recipients of funds from agencies. In support of this view, the President’s FY 2013 proposed budget would remove appropriations rider language that addresses lobbying by agencies, because such language is duplicative of section 1913, but would leave intact the language governing lobbying by grantees and contractors.

announcement, CDC provided evidence-based strategies, called MAPPS, which grantees were expected to use in designing their own strategies. Some of the strategies listed included zoning restrictions, banning displays and vending, eliminating trans fats and reducing sodium through purchasing actions, labeling initiatives, restaurant standards, banning free samples and price discounts, and changing relative prices of healthy and unhealthy items.

To assist CPPW grantees in designing strategies to address obesity and tobacco use, CDC created an Online Resource Center that includes links to webinars, model policies, toolkits, databases, fact sheets and other materials that are not created by CDC. For example, the Resource Center link for Tobacco contains a series of model smoke-free ordinances. (<http://www.cdc.gov/CommunitiesPuttingPreventiontoWork/resources/tobacco.htm>). CDC posted a disclaimer on the Online Resource Center that these links do not constitute an endorsement of these organizations or their programs.²

Although the official CDC materials, described above, make reference to activities that could include lobbying, the CPPW grant announcement, the grant award, and the CDC Web site reference a CDC document titled “AR-12 Lobbying Restrictions.” This one-page document cautions grantees against using Federal funds to lobby for more Federal funds, to induce members of the public to contact elected representatives (“grassroots lobbying”), or to pay for any activity designed to influence legislation pending before Congress or any State or local legislature. It mentions that not all interaction with the Legislative branch is prohibited, but provides no concrete examples of proper or improper activities. Though AR-12 describes permissible uses of CDC funds, those descriptions are so general – such as engaging “in activity to enhance prevention” or to “foster safe and healthful environments” – that they could potentially mislead grantees. There are many lobbying activities that could be reasonably viewed by a grantee as “activit[ies] to enhance prevention.” AR-12 also does not address efforts to influence the development and introduction of proposed legislation, and does not reference the OMB Circular limitations on claiming costs for certain lobbying activities. AR-12 does caution CDC 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.”

CPPW grantees provide quarterly reports describing activities supported by the grant. These reports, posted at Recovery.gov, contain numerous examples of activities that, on their face, may violate anti-lobbying provisions. We note that the Congress has pointed out several dozen such statements in correspondence with CDC, and CDC is reviewing each of these. CDC is in the process of reporting back to the various congressional correspondents. As described above, some of the CDC information, as well as the non-CDC resource materials posted to the CDC Web site appear to authorize, or even encourage, grantees to use grant funds for impermissible lobbying. Furthermore, grantee activity reports posted online make troubling assertions that, on their face, raise the possibility that these anti-lobbying provisions were violated. We recognize that grantees may have described activities accomplished before the award of the grant or even accomplished by other entities or with non-Federal funds – all of which would not implicate the anti-lobbying restrictions. Nonetheless, the fact that grantees are reporting favorably about

² The Resource Center page was revised in April 2012 and now includes a reminder that CDC grantees are prohibited from using Federal funds for lobbying activities.

apparent lobbying is of concern, and may indicate faulty understanding of underlying funding prohibitions.

Proposed Interim Action

For these reasons, we propose that CDC reconsider some of the reference materials provided on the Web site. Given some of the potentially confusing (perhaps even contradictory) statements made in the CDC-issued documents, we also suggest training of CDC staff working on community-based initiatives about the legal limitations imposed by these anti-lobbying provisions. We also advise that detailed guidance be provided to grantees that give detailed examples of how grantees can avoid violating these provisions. Grantees should also be advised that non-Federal funds can be used for lobbying, but such activities should be separately accounted for and all reports on federally funded activities should make clear when efforts described were not federally funded. Finally, we understand from a March 2012 meeting with CDC, CPPW, and OGC officials that CDC guidance will be revised to reflect the new anti-lobbying provisions in the FY 2012 HHS appropriation.

Follow-Up

In follow-up to these suggestions, OIG intends:

- To review the fiscal controls that CDC has in place to prevent grantees from expending funds on prohibited lobbying activities. In addition, this audit will examine the allowability of costs (including costs for lobbying) claimed by CDC grantees for reducing chronic disease and promoting health lifestyles funded with money subject to the lobbying prohibitions contained in the FY 2012 HHS appropriation.
- Beginning in FY 2012, to evaluate more broadly the extent that HHS agencies notify grantees of lobbying prohibitions and have mechanisms in place to identify violations and the extent to which HHS grantees are aware of lobbying prohibitions.