

# Public Health Advocacy

## *The Basics*

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ChangeLab Solutions

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ChangeLab Solutions is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

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# Presenter Disclaimer:

## Sarah De Guia

(1) The following personal relationships with commercial interests relevant to this presentation existed during the past 12 months:

No relationships to disclose

# Presenter Disclaimer: Manel Kappagoda

(1) The following personal relationships with commercial interests relevant to this presentation existed during the past 12 months:

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Our mission:

**Healthy communities for all through  
equitable laws & policies**

# Overview of this Session



**What is lobbying?**



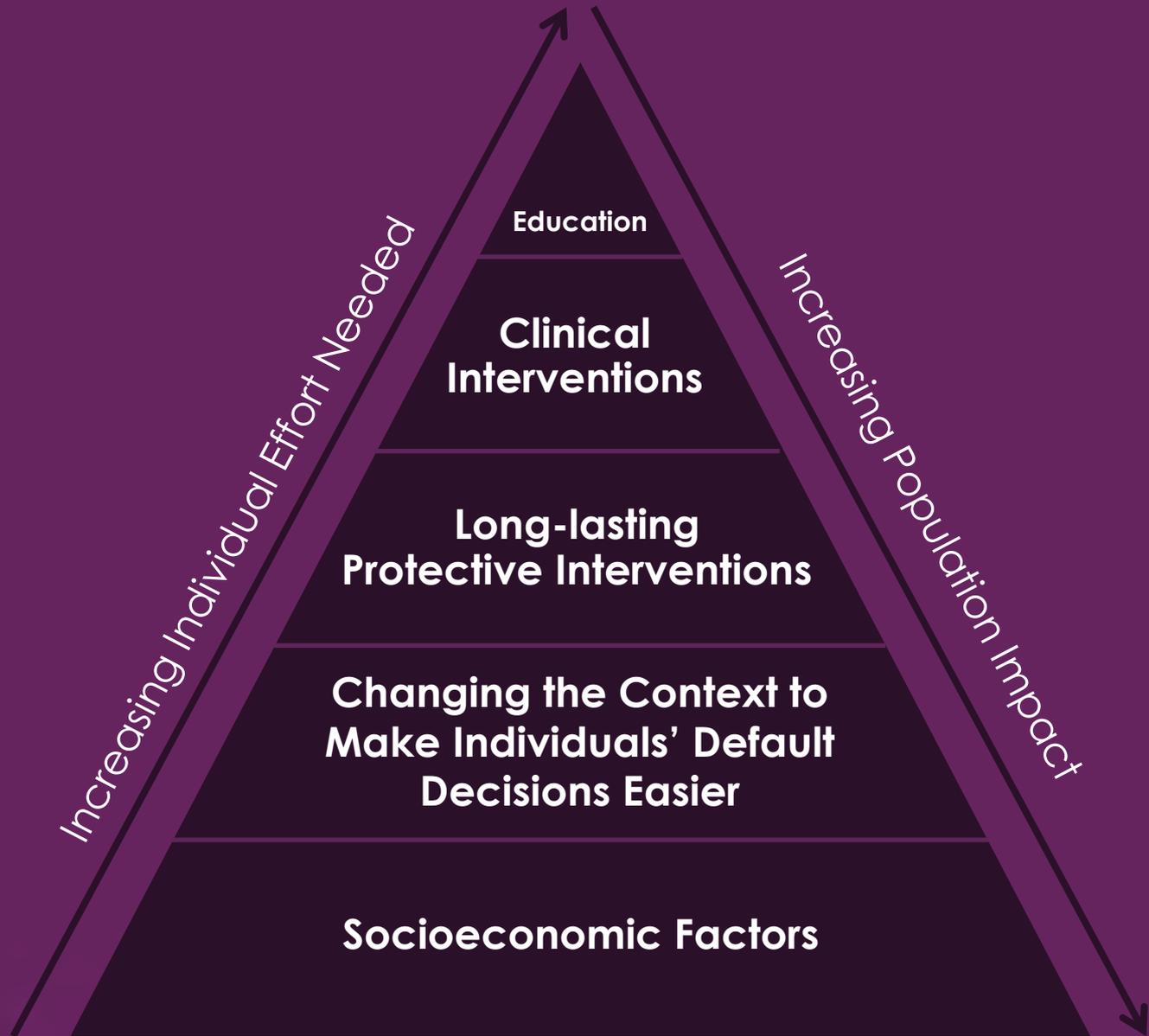
**Philanthropic Funding**



**Federal Funding  
- including social media**



**Examples and  
Q&A**



Source: Friedman T.R. (2010). A Framework for Public Health Action: The Health Impact Pyramid. *American Journal of Public Health*, 100(4), 590-595.



# *Philanthropies: What is lobbying?*

# Philanthropy/ Foundations

## IRS §501(c)(3) Nonprofit Organizations

- The use of funds for lobbying are likely to be restricted by contract/grant
- Review contracts carefully and consult your legal counsel if needed

**Must Have**  
All 4 Elements

- 1. Communication** with a
- 2. Government official or employee** who participates in forming legislation that
- 3. Reflects a point of view** (i.e., attempts to influence)
- 4. Specific legislation**

# Two Types of Lobbying



Direct lobbying

Grassroots lobbying



Photo courtesy of Tim Wagner for HEAC

## *Direct Lobbying:*

A communication directly with a government official to influence specific legislation

# Communication



**Email**

**Phone call**

**Letter**

**In-person meeting**

**Tweets**

**And more ...**

# Government Official



**Anyone working for a legislative body, a legislator, or other government agency/department that takes part in forming legislation.**

# Influencing Legislation



**Reflecting a particular view about the legislation or making a direct appeal.**

# Grassroots Lobbying

**SIGN THE PETITION**

**To all Members of US Congress:**

“ As concerned citizens, we call on you to stand for a free and open Internet and vote against both the Protect IP Act and the Stop Online Piracy Act. The Internet is a crucial tool for people in the US and around the world to exchange ideas and work collectively to build the world we all want. We urge you to show true global leadership and do all you can to protect this basic pillar of our democracy.

**Already an Avaaz member?**  
Enter your email address and hit "Send".

Email  **SEND ▶**

**First time here?** Please fill out the form below.

Name

Email

Country  Post code

Cell/phone

[Avaaz.org](#) will protect your privacy and keep you posted about this and similar campaigns.

**SEND ▶**

**Grassroots Lobbying:**  
a communication encouraging the public to take action to influence specific legislation.

## What Kind of Lobbying?

- The health officer sends a letter to the local Congresswoman in support of HR 123 to restore funding for HIV/AIDS services.
- The health department sends a letter to the members of a Healthy Equity Coalition urging them to write a letter to Congress in support HR 123.
- The health officer tells the Congresswoman about the great work being done with HIV/AIDS services funding.

Philanthropies:  
*Only*  
Legislation



**Prohibitions on lobbying with philanthropy funds do *not* apply to:**

- **Regulations**
- **Administrative actions**
- **Often non-legislative bodies like planning commissions or school boards**



## *Exceptions to Lobbying Rules*

=

**Not Lobbying under either  
philanthropy rules or  
federal rules**



*Coalition building*  
among governments,  
nonprofits, the private  
sector, and community  
members to discuss  
problems and share  
ideas



Photo courtesy of Tim Wagner for HEAC

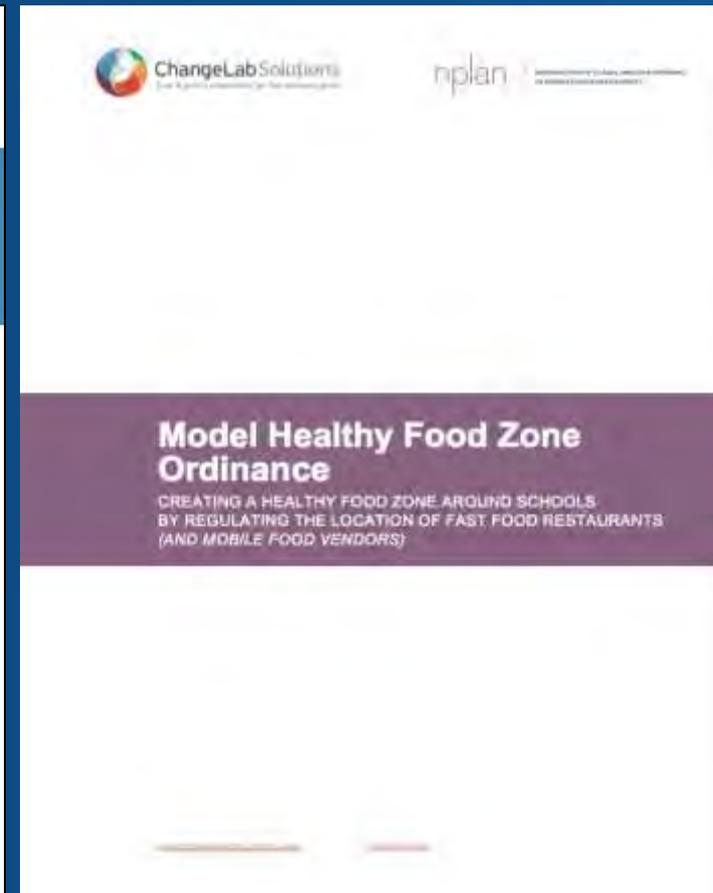
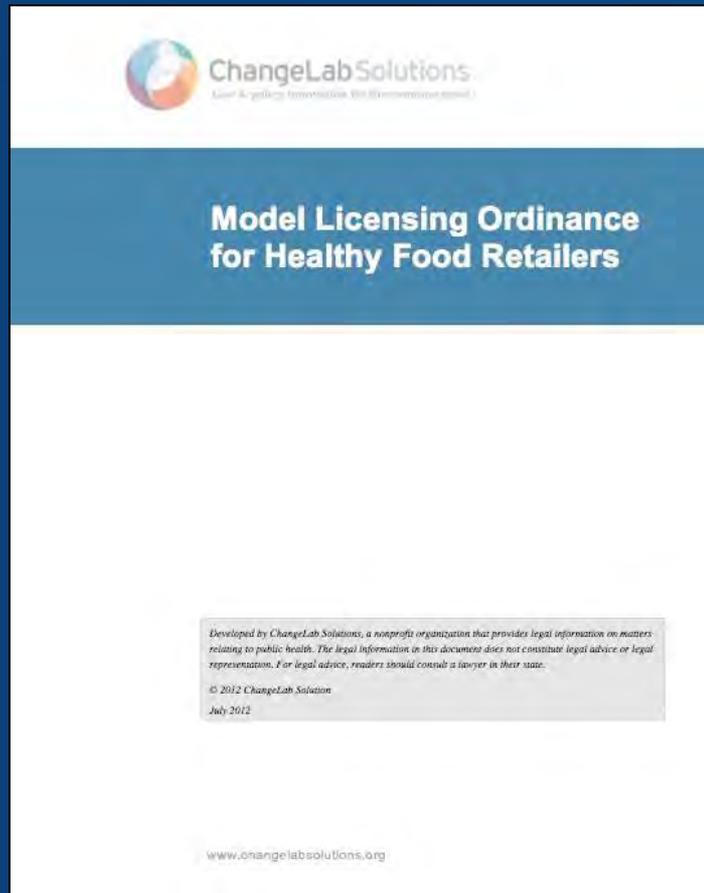
**Educational campaigns**  
*that explain the advantages & disadvantages  
of public policies*



Photo: Creative Commons Flickr: Michigan Municipal League

**Sharing best practices & success stories**  
*with the public or government officials*

# Broadly Sharing Evidence-Based Policy Approaches



# Exceptions for IRS 501(c)(3) Nonprofits

Even if the 4 elements are present, a communication will **NOT** be lobbying if:

1. Nonpartisan Study  
Research and Analysis
2. Invitations to Testify

## Other Allowed Activities

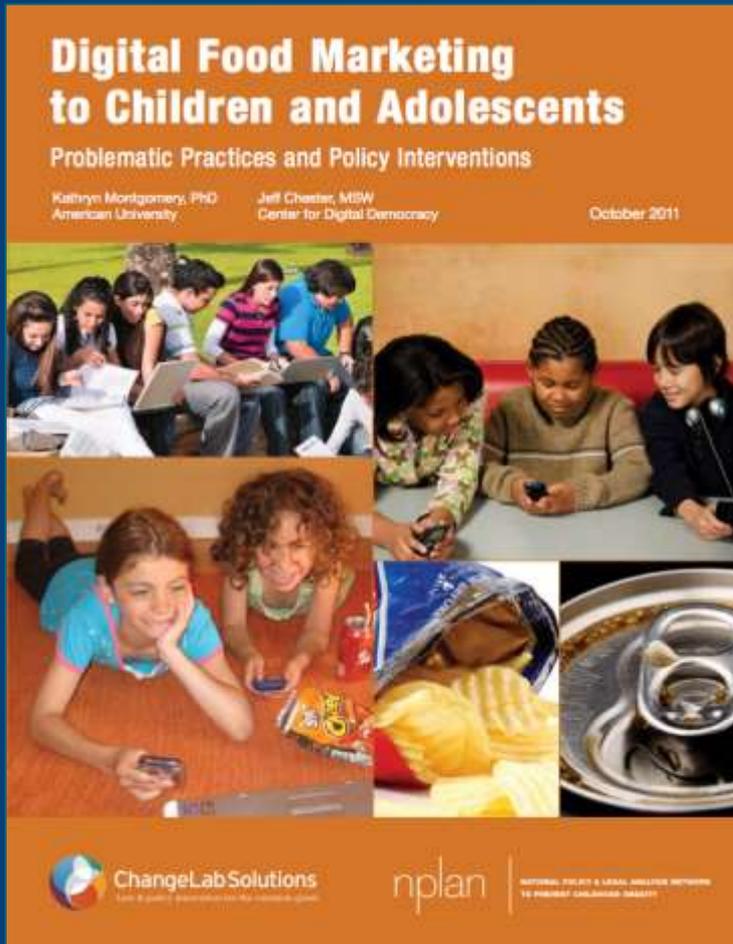
- Educating the public about personal health behaviors
- Communicating to the public about health risks and their consequences
- Working with private sector organizations about voluntary institutional changes without public policy

What are examples of each of these **non-lobbying** activities?



# **Nonpartisan Study, Research, and Analysis**

# Non-Partisan Analysis, Study or Research



Non-partisan  
analysis, study, or  
research  
on policy  
alternatives or  
specific legislation  
that may express  
support for a  
specific policy

# Non Partisan Generally Means

1. Independent, **balanced** and objective;
2. **Fair to both sides** of an issue (contains a full and fair exposition of the pertinent facts);
3. Allows a reader to **draw own independent opinion or conclusion** but author may include his/her own conclusion;
4. Conclusion is based on **evidence and facts**, but not unsupported opinion;
5. **Broadly distributed** to the public, and not directed to only one side of an issue.

## Examples of Non Partisan

- Model ordinance for SSB taxes
- Toolkits on improving government food procurement along with model contracts
- Results of policy scans that summarize school district policies on tobacco control.

*What are other examples of nonpartisan analysis, study and research?*



# Invitations to Testify



*At request of a government or legislative body,*  
**a technical or factual presentation of information to  
government decision-makers regarding specific  
legislation or a legislative proposal.**

## Key Questions

1. Is the request related to proposed/specific/pending legislation?
2. Is the requestor involved with the legislative process, such as drafting, sponsoring, voting, or commenting?
3. Can this person provide a **written** request?

# Sample Request

A written TA Request only needs to contain the 3 requirements by the IRS.

1. Written on behalf of the government or legislative body (or subdivision);
2. Request for information AND recommendations;
3. Response will be available to ALL members of the legislative or gov't body.

**Keith Nagayama**  
**State Senator**  
**District 19**  
**Metropolis – Southwest and Downtown**

123 State Capitol  
13579 A Street  
Capitol City, New State 02589

May 14, 2014

**VIA FIRST CLASS MAIL AND EMAIL ([taprovider@publichealthexpert.org](mailto:taprovider@publichealthexpert.org))**

Susannah Vance Gopalan  
Staff Attorney  
Public Health Organization  
8642 Main Avenue  
New Town, New State 98765

Re: Request for Technical Assistance

Dear Ms. Gopalan,

On behalf of the Transportation and Housing Division of the New State Senate Finance Committee, I request that you provide our committee with information regarding mechanisms other states have used for funding healthy housing options. Based on your expertise in this area, and the Public Health Organization's experience with these issues in other states, please provide the Transportation and Housing Division with your recommendations regarding which, if any, of these mechanisms would work in New State. As chair of the Senate Transportation and Housing Division, I will ensure your information and recommendations are made available to all members of the committee.

Thank you for your assistance.

Very Truly Yours,  
*Keith Nagayama*

Keith Nagayama  
State Senator, District 19  
Chair of the Transportation and Housing Division of the New State Senate Finance Committee



## Important To Remember

- 1. All governments and nonprofits are allowed to conduct lobbying activities.**
- 2. Your lobbying activities may be restricted by a funder or particular state or local law.**
- 3. Consult your legal counsel about your particular grants/contracts and state/local laws.**



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# *Federal Grants: What is lobbying?*

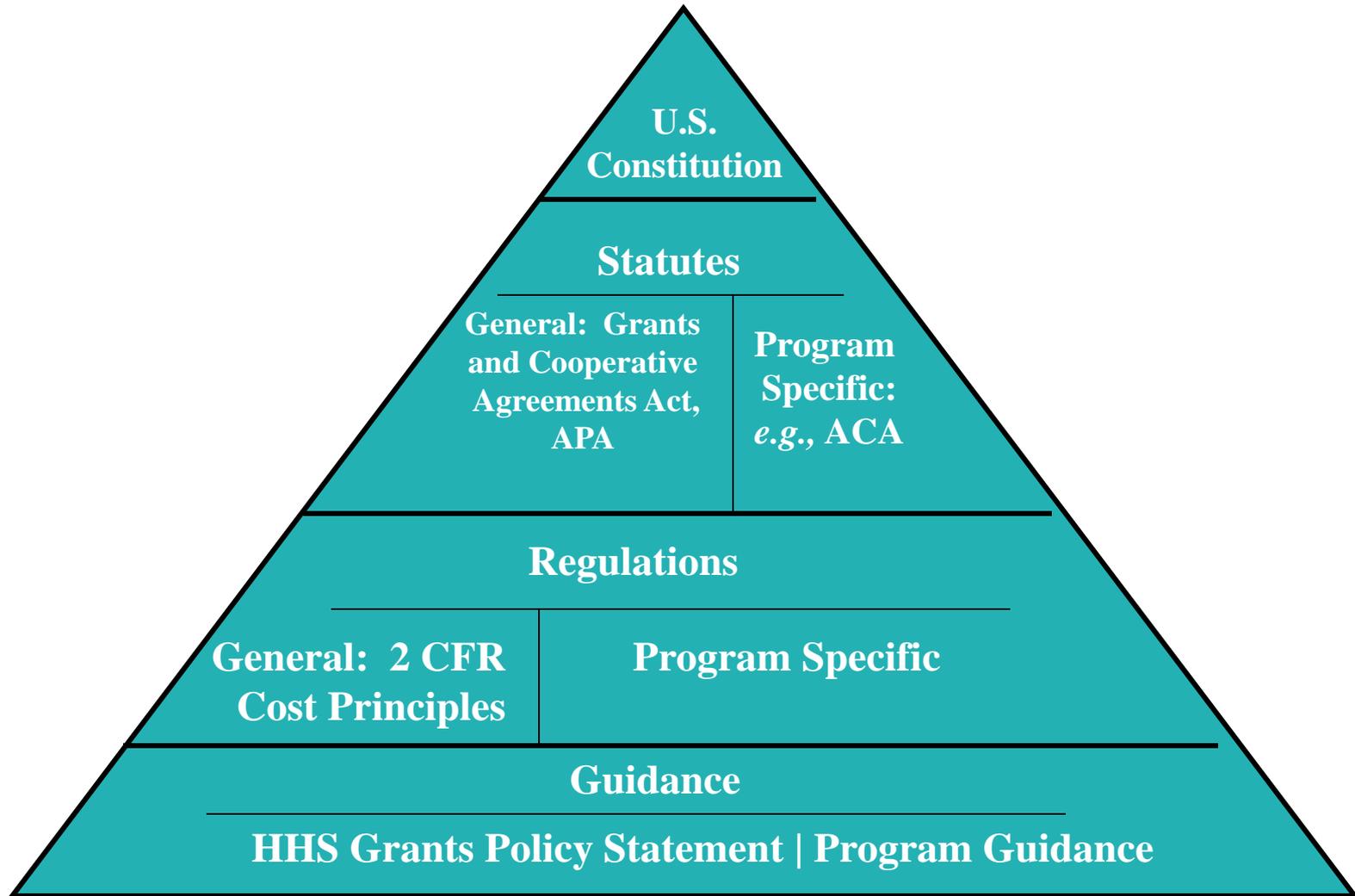
**Must Have**  
All 4 Elements

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- 2. Government official or employee** who participates in forming legislation that
- 3. Reflects a point of view** (i.e., attempts to influence)
- 4. Specific legislation +++**

# Federal Grants

Grants from federal government agencies prohibit grantees from using funds for direct or grassroots lobbying.

# Rules, Rules, Rules



# Continuing Appropriations Act § 503(b)

**“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...**”

Department of Defense and Labor, Health and Human Services, and Education  
Appropriations Act, 2019 and Continuing Appropriations Act, 2019

# Designed to Influence

## TYPE of ACTION

- Legislation
- Appropriations
- Regulations
- Administrative action
- Executive order

## VENUE for ACTION

- Congress
- State government
- State legislature
- Local legislature
- Legislative body



## Remember:

# *Lobbying Must Have All 4 Elements*

1. Communication with a
2. Government official or employee who participates in forming legislation that
3. Reflects a point of view
4. Specific legislation *AND* *appropriation, regulation, administrative action, executive order*

If one of these elements is not present.

**IT IS NOT LOBBYING**

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 (i.e., the EXCEPTIONS):***

**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.**

**Federal Government Grants  
Continuing Appropriations Act  
§503(b)**

## Exceptions for Federal Grantees

Normal and recognized  
executive-legislative  
relationships

Participation in policymaking  
and administrative processes  
within the executive branch  
of same level of government



## *Normal and recognized executive-legislative relationships =*

- A health department *typically* provides an annual state of the health report to elected officials with recommendations for legislative action.
- State legislative liaisons *typically* consult local health agencies about pending legislation.

What else?

*What are other examples of  
typical communications in  
your state or locale?*

*Participation in policy or admin processes =*  
**Government officials may communicate with anyone within the same government about policy or legislation**



## For Example

- A state health agency liaison may discuss legislation with the governor's office.
- A county planner may discuss updates to the zoning code with the county public health department.
- A city public health department employee may discuss specific legislation with a city manager.

## Hypothetical Exercise

County Health Department receives a grant from the CDC for reducing tobacco use.

- May the county health department use federal funds to develop model legislation for cities to pass to ban smoking in public places?
- May the county health department use federal funds to discuss the model legislation with county supervisors? With the cities within the jurisdiction of the county?

## Good Questions to Ask Yourself

- Does funding include a restriction on lobbying?
- What activities can I do without lobbying?
- Which laws or rules do I need to follow for my lobbying activities?
- Are there any state or local laws that prevent me from lobbying?

## Hatch Act: “Political Activity”

Any activity directed at the success or failure of a political party or partisan political group, or candidate for political office.

See Office of Special Council website:

<https://osc.gov/Services/Pages/HatchAct.aspx>

# Hatch Act: Political Activity via Traditional and Social Media

Federal employees may not use their official capacity to engage in political activities.

Political activity OK in a private capacity without identifying official titles or positions.

Careful!! Can be ambiguous!

## Ambiguity: Be Careful!

It's OK to have your work affiliation someplace on a Facebook page or Twitter account, but *not* associated with the political activity.

Include disclaimers on posts with personal views. Do not allow content to be viewed as work related.

*More information: A Guide to the Hatch Act for Federal Employees*



## *Important Tips*

**If you engage in lobbying, maintain accurate and detailed records** that distinguish between your lobbying and non-lobbying activities.

**Standard time reporting is sufficient** to show that grant funds were not used for lobbying activities.

Yikes! I Got It  
Wrong! Did I  
Break the Law?

- Bill your time to a fund code that allows lobbying.
- **Government:** General funds
- **Nonprofits:** Unrestricted funds
- Get a proper cost accounting system in place.
- Talk to your legal counsel to understand the rules.

## Wrap Up

- Lobbying is allowed, unless there are specific restrictions
- Restrictions on lobbying vary based on funding, contract language, and federal/state/local laws
- There are many allowable activities regardless of lobbying restrictions
- Carefully separate personal and professional lives
- It is important to consult your legal counsel

# Guidance on Lobbying Activities

**Webinar/background materials hosted by ChangeLab Solutions**

<http://changelabsolutions.org/publications/webinar-complying-anti-lobbying-rules>

**Feldesman Tucker** – a private law firm specializes in federal contracts

**A Guide to the Hatch Act**

<https://osc.gov/Resources/HA%20Pamphlet%20Sept%202014.pdf>

**National Council of State Legislature's Chart on Laws that Limit Public Funds to Lobby**

<http://www.ncsl.org/research/ethics/50-state-chart-limits-on-public-funds-to-lobby.aspx>



**Center for Lobbying in the Public Interest** [clpi.org](http://clpi.org)

**Alliance for Justice:** [bolderadvocacy.org](http://bolderadvocacy.org)

# Thank you!

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