DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

JUL 17 2012

FROM: Alan Kotch, Director, Procurement and Grants Office

TO: Barbara G. Alberson
California State Department of Health Services
P.O. Box 997426, MS 7700
Sacramento, CA 95899

SUBJECT: FY2012 Appropriations Act Requirements

Dear HHS Grantee –

On December 23, 2011, Congress passed the Consolidated Appropriations Act, Fiscal Year 2012 (FY 12), Public Law 112-74, for the Departments of Labor, Health and Human Services, and Education and the Department of Interior and Related Agencies; and the Consolidated and Further Continuing Appropriations Act, Fiscal Year 2012, Public Law 112-55 for the United States Department of Agriculture, and Related Agencies. The attached list summarizes the key provisions that potentially affect the implementation of your grant/cooperative agreement.

The purpose of this memorandum is to communicate the new provisions of the above cited FY 12 Appropriations Acts, including affecting funds transferred pursuant to section 4002 of the Patient Protection and Affordable Care Act, Public Law (PL) 111-148 (hereafter referred to as FY 12 Appropriation Acts or FY 12 funds). The Department expects all grantees to keep up with and comply with all applicable federal laws including Appropriations Acts. The FY 12 Appropriation Act is applicable to grants and cooperative agreements with an initial issue date or obligation of FY 12 funds on/after December 23, 2011. These provisions remain in effect until further modified, superseded, or rescinded by a subsequent law. Any grants or cooperative agreements awarded in previous fiscal years (e.g., FY 2011, FY 2010, etc.) and to which FY 12 funds are not obligated are not impacted by the FY 12 Appropriations provisions. If the President signs a Continuing Resolution for any part of FY 13, the FY 12 Appropriations provisions will apply unless legislative language provides otherwise.

Also attached to this memo please find a revised Additional Requirement-12 (AR-12) on lobbying restrictions that will be incorporated into fiscal year (FY) 2012 grants and cooperative agreements. This AR-12 replaces the current AR-12, and will become part of the terms and conditions of your CDC award. As you are aware, recipients have always been required to adhere to restrictions on lobbying with CDC funds to influence legislation or appropriations pending before the Congress or any State legislature. These restrictions are derived from appropriations riders, applicable OMB circulars that specify unallowable costs, and AR-12. The Departments of Labor, Health and Human Services (HHS) and Education Appropriations Act, 2012 ("2012 Appropriations Act"), reenacted and modified the anti-lobbying rider in section 503. These Amendments expanded the scope of section 503 to address recipient activities aimed at influencing action on "proposed" legislative matters that are not as yet "pending" before Congress or a State legislature, as well as proposed or

pending ordinances considered by city councils, county commissions, and other local legislative bodies, and regulations and administrative orders issued by executive branch officials at the state or local level. These lobbying restrictions apply to activities funded under the 2012 Appropriations Act, as well as appropriations transferred from the Prevention and Public Health Fund established by the Affordable Care Act. Although the new language does not specifically apply to activities funded before FY 12, because many activities span multiple fiscal years, we advise you to carefully consider this new guidance relative to all CDC funded activities. Generally, these prohibitions include restrictions on grass roots lobbying and direct lobbying by award recipients. As further explained in AR-12, award recipients cannot use CDC funds to induce or encourage members of the public to contact their elected representatives to urge support of, or opposition to, proposed or pending legislation, appropriations, regulations, administrative actions, or Executive Orders ("legislation and other orders"). In accordance with applicable law, direct lobbying communications by award recipients are also prohibited. This includes communications that refer to and directly express a view on proposed or pending legislation or other orders and which are directed to members, staff, or other employees of a legislative body or to government officials or employees who participate in the formulation of legislation or other orders.
It remains permissible, when conducted within applicable limitations, however, to use CDC funds for a broad range of activities that improve the public's health, including collection and analyses of data; publishing and widely disseminating results of research and surveillance data; providing balanced and objective information on public health policies; implementation of prevention strategies; and other prevention related activities. These are described in more detail in the attached AR-12. Beyond these activities allowable for all grantees, there are provisions reflected in new statutory language that recognize the unique role of state and local executive agency grantees. Certain activities falling within the normal and recognized executive-legislative relationship, and those within the executive branch of that government, are permissible. Finally, CDC award recipients must isolate and separate the appropriate use of CDC funds from non-CDC funds and avoid the appearance that CDC funds are being used improperly.

Your Notice of Award/Notice of Grant Award (NOA or NGA) was issued and/or had funds obligated on/after December 23, 2011. The NoA is the legal document issued to the receiving organization that indicates an award has been made and that funds may be requested from the designated HHS payment system or office. A recipient indicates acceptance of an award and its associated terms and conditions by drawing or requesting funds from the designated HHS payment system or office; in the case of cooperative agreement awards, an awarding office may require the recipient to formally accept the award by signing and returning the NoA or separate document. The NoAs terms and conditions include: general administrative and public policy requirements that apply to all recipients or certain classes of awards or activities; program-specific-requirements; and, as necessary, award-specific requirements, including reference to the HHS Grants Policy statement and appropriations act provisions as appropriate.

Your Notice of Award 3 VF1 CE001155-05S1, issued on/after December 23, 2011, contains the following term and condition:

> *This award is based on the application submitted to, and as approved by, CDC on the above referenced project and is subject to the terms and conditions incorporated either directly or by reference in the following:*
>
> - *The grant program legislation and program regulation cited in this Notice of Award.*

- *The restrictions on the expenditure of federal funds in appropriations acts to the extent those restrictions are pertinent to the award.*
- *45 CFR Part 74 or 45 CFR Part 92 as applicable.*
- *The HHS Grants Policy Statement, including addenda in effect as of the beginning date of the budget period.*

And the following certification statement:

- *By drawing down funds, Awardee certifies that proper financial management controls and accounting systems to include personnel policies and procedures have been established to adequately administer Federal awards and funds drawn down are being used in accordance with applicable Federal Cost Principles, Regulations and Budget and Congressional intent of the President.*

This memorandum notifies you that such term and condition and certification, incorporates, by reference, the FY 12 Appropriation Act provisions (Titles II and V of Division F of the Consolidated Appropriations Act, Pub. L. 112-74 [12/23/2011] and Agriculture Appropriations Act PL 112-55) and requires that you adhere to all the requirements therein including those such as: Caps on Extramural Salaries, Gun Control, Lobbying (Section 503), Needle Exchange, etc., as applicable. Please contact your Grants Management Officer to discuss how these provisions may affect your implementation activities.

Thank you for your attention and assistance in this matter.

Attachments

Attachment 1: Summary of Requirements for Grants

General FY 12 Appropriations Act Provisions

HHS recipients must comply with all terms and conditions outlined in their grant award, including grant policy terms and conditions contained in applicable Department of Health and Human Services (HHS) Grant Policy Statements, requirements imposed by program statutes and regulations, and HHS grant administration regulations, as applicable; as well as any requirements or limitations in any applicable appropriations acts.

Salary Cap

None of the funds appropriated in this title shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level II ($179,000).

Note: The salary rate limitation does not restrict the salary that an organization may pay an individual working under an HHS contract or order; it merely limits the portion of that salary that may be paid with Federal funds.

Publicity and Propaganda (Lobbying—see Attachment 2 for additional information)

No part of any appropriation may be used for:

- Publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation, designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation of the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself
- Paying 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 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
- Any activity to advocate or promote any proposed, pending, or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale of marketing, including, but not limited to the advocacy or promotion of gun control.

AR-13: Prohibition on Use of CDC Funds for Certain Gun Control Activities

None of the funds made available, in whole or in part, may be used to advocate or promote gun control.

Needle Exchange

No funds appropriated in the FY 12 Appropriations Act may be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prevention and Public Health Fund

Responsibilities for Reporting on Sub-recipients:

- Recipients agree to separately identify each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for 2012 PPHF purposes and the amount of PPHF funds
- Recipients agree to separately identify each sub-recipient, and document at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for 2012 PPHF purposes and the amount of PPHF funds. When a recipient awards PPHF funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental 2012 PPHF funds from regular sub-awards under the existing program.

This award requires the recipient to complete projects or activities which are funded under the 2012 Prevention and Public Health Fund (PPHF) and to report on use of PPHF funds provided through this award. Information from these reports will be made available to the public.

Recipients awarded a grant, cooperative agreement, or contract from such funds with a value of $25,000 or more shall produce reports on a semi-annual basis with a reporting cycle of January 1- June 30 and July1- December 31, and email such reports to pphfsio@cdc.gov no later than 20 calendar days after the end of each reporting period (i.e., July 20 and January 20, respectively). Recipient reports shall reference the notice of award number and title of the grant or cooperative agreement, and include a summary of the activities undertaken and identify any sub-grants or sub-contracts awarded (including the purpose of the award and the identity of the [sub] recipient).

Attachment 2: Additional Requirements 12 (AR-12) Lobbying Restrictions

Applicants should be aware that award recipients are prohibited from using CDC/HHS funds to engage in any lobbying activity. Specifically, no part of the federal award shall be used to pay the salary or expenses of any grant recipient, sub-recipient, or agent acting for such recipient or sub-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.

Restrictions on lobbying activities described above also specifically apply to lobbying related to any proposed, pending, or future Federal, state, or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

This prohibition includes grass roots lobbying efforts by award recipients that are directed at inducing members of the public to contact their elected representatives to urge support of, or opposition to, proposed or pending legislation, appropriations, regulations, administrative actions, or Executive Orders (hereinafter referred to collectively as "legislation and other orders"). Further prohibited grass roots lobbying communications by award recipients using federal funds could also encompass any effort to influence legislation through an attempt to affect the opinions of the general public or any segment of the population if the communications refer to specific legislation and/or other orders, directly express a view on such legislation or other orders, and encourage the audience to take action with respect to the matter.

In accordance with applicable law, direct lobbying communications by award recipients are also prohibited. Direct lobbying includes any attempt to influence legislative or other similar deliberations at all levels of government through communications that directly express a view on proposed or pending legislation and other orders and which are directed to members, staff, or other employees of a legislative body or to government officials or employees who participate in the formulation of legislation or other orders.

Lobbying prohibitions also extend to include CDC/HHS grants and cooperative agreements that, in whole or in part, involve conferences. Federal funds cannot be used directly or indirectly to encourage participants in such conferences to impermissibly lobby.

However, these prohibitions are not intended to prohibit all interaction with the legislative or executive branches of governments, or to prohibit educational efforts pertaining to public health that are within the scope of the CDC award. For state, local, and other governmental grantees, certain activities falling within the 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 are permissible. There are circumstances for such grantees, in the course of such a normal and recognized executive-legislative relationship, when it is permissible to provide information to the legislative branch in order to foster implementation of prevention strategies to promote public health. However, such communications cannot directly urge the decision makers to act with respect to specific legislation or expressly solicit members of the public to contact the decision makers to urge such action.

Many non-profit grantees, in order to retain their tax-exempt status, have long operated under settled definitions of "lobbying" and "influencing legislation." These definitions are a useful benchmark for all non-government grantees, regardless of tax status. Under these definitions, grantees are permitted to (1) prepare and disseminate certain nonpartisan analysis, study, or research reports; (2) engage in examinations and discussions of broad social, economic, and similar problems in reports and at conferences; and (3) provide technical advice or assistance upon a written request by a legislative body or committee.

Award recipients should also note that using CDC/HHS funds to develop and/or disseminate materials that exhibit all three of the following characteristics are prohibited: (1) refer to specific legislation or other order; (2) reflect a point of view on that legislation or other order; and (3) contain an overt call to action.

It remains permissible for CDC/HHS grantees to use CDC funds to engage in activities to enhance prevention; collect and analyze data; publish and disseminate results of research and surveillance data; implement prevention strategies; conduct community outreach services; foster coalition building and consensus on public health initiatives; provide leadership and training, and foster safe and healthful environments.

Note also that under the provisions of 31 U.S.C. Section 1352, recipients (and their sub-tier contractors and/or funded parties) are prohibited from using appropriated Federal funds to lobby in connection with the award, extension, continuation, renewal, amendment, or modification of the funding mechanism under which monetary assistance was received. In accordance with applicable regulations and law, certain covered entities must give assurances that they will not engage in prohibited activities.

CDC cautions recipients of CDC funds 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. Recipients of CDC funds should give close attention to isolating and separating the appropriate use of CDC funds from non-CDC funds.

Use of federal funds inconsistent with these lobbying restrictions could result in disallowance of the cost of the activity or action found not to be in compliance as well as potentially other enforcement actions as outlined in applicable grants regulations.