



April 30, 2013

Congressional Requesters

Subject: *Centers for Disease Control and Prevention: Lobbying Policies and Monitoring for Program to Reduce Obesity and Tobacco Use*

According to the Centers for Disease Control and Prevention (CDC), obesity-related medical expenses in the U.S. were an estimated \$147 billion in 2008, and tobacco use costs the nation \$96 billion in medical expenses each year. To help reduce obesity and tobacco use, two leading causes of chronic disease, CDC established the Communities Putting Prevention to Work (CPPW) program using funds appropriated to the Department of Health and Human Services (HHS) by the American Recovery and Reinvestment Act of 2009 (Recovery Act).¹ With this funding, CDC awarded a total of approximately \$522.3 million in cooperative agreements to state and local health departments in fiscal year 2010 throughout the country to address issues related to obesity and nutrition, and support tobacco use-cessation efforts.² CDC made additional awards totaling approximately \$36.9 million using funds appropriated by the Patient Protection and Affordable Care Act (PPACA), enacted in 2010, and transferred to an account specifically for the CPPW program.³ All CPPW awards were made during fiscal year 2010, and, according to CDC officials, all CPPW award recipients will have completed their work by September 2013; CDC has no plans to continue the CPPW program.

¹Pub. L. No. 111-5, Div. A, Tit. VIII, 123 Stat. 115, 172. The Recovery Act directed that \$650 million be used to carry out evidence-based clinical and community-based prevention and wellness strategies authorized by the Public Health Service Act, as determined by the Secretary of Health and Human Services, that deliver specific, measurable health outcomes that address chronic disease rates. Pub. L. No. 111-5, 123 Stat. 180. These funds were available for obligation through fiscal year 2010. See Pub. L. No. 111-5, §1603, 123 Stat. 302.

²Health departments could receive awards to address obesity and nutrition or tobacco use, or receive multiple awards to address both issues. As the primary recipients of these awards, health departments had the ability to provide funding to other organizations, which are referred to as subrecipients.

³See Pub. L. No. 111-148, §§ 4002(b) and (c), 10401(b), 124 Stat. 119, 541, 974. PPACA established in HHS and appropriated specified amounts each year to the Prevention and Public Health Fund (PPHF) to provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private- and public-sector health care costs. PPACA appropriated \$500 million to this fund for fiscal year 2010, of which HHS transferred a portion to CDC to fund additional CPPW awards. See GAO, *Prevention and Public Health Fund: Activities Funded in Fiscal Years 2010 and 2011*, [GAO-12-788](#) (Washington, D.C.: Sept. 13, 2012).

CDC has administered and provided oversight of the CPPW program, which includes the monitoring of award recipients. CDC required recipients to use their CPPW funds to support efforts to improve nutrition, increase physical activity, or reduce tobacco use and exposure to secondhand smoke. In addition, CDC suggested possible strategies for achieving these results, such as working to establish smoke-free zones or to implement zoning changes that promote physical activity. CDC policy prohibited CPPW award recipients from using funds for specific types of activities, including lobbying, which generally meant certain activities designed to influence action in regard to a particular piece of pending legislation.

You asked that we review CDC policies on lobbying and CPPW award recipients' activities. We are providing information on several issues about CDC policy on lobbying as it pertained to CPPW award recipients.

To obtain the information we present here, we reviewed documents provided by CDC, including the written policy on lobbying that pertained to CPPW award recipients; CPPW award notices, which were the written agreements between the CDC and recipients; documentation generated by CDC staff during the monitoring of CPPW recipients; and CDC site visit reports. We interviewed CDC officials regarding the lobbying policy that applied to CPPW award recipients; the types of activities agency staff would define as violations of this policy; how CDC educated CPPW award recipients about this policy; how CDC monitored CPPW recipients to detect potential violations of this policy; and the steps CDC took in the event that it suspected a CPPW recipient was in violation of it. Our results are limited to the 280 CPPW cooperative agreements, all of which were made in fiscal year 2010.

We conducted this performance audit from August 2012 to April 2013 in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In developing information on the CDC's CPPW program, we addressed the following questions:

1. *What CDC policies on lobbying applied to the recipients of CPPW awards, which were made in fiscal year 2010?*

All CPPW awards were made subject to the provisions in CDC policy memo AR-12, which is CDC's policy restricting the use of federal funds for lobbying purposes. See enclosure I for the version of AR-12 that was in effect at the time that CPPW awards were made.⁴ According to AR-12, lobbying would be considered "[a]ny activity designed to influence action in regard to a particular piece of pending legislation"

⁴Unless otherwise noted, all references to AR-12 in this report are to the version that was in effect prior to December 2011, which is reprinted in enc. I. According to CDC officials, this version of AR-12 applied to CPPW awards because they were made in fiscal year 2010. In 2012, CDC amended and expanded AR-12, http://www.cdc.gov/od/pgo/funding/grants/additional_req.shtm (accessed September 12, 2012).

and would include efforts directed at inducing members of the public to contact their elected representatives at the federal, state, or local levels to urge support of, or opposition to, pending legislative proposals. Among other things, the policy specifically prohibited the use of funds for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before Congress or any state or local legislature, except in presentation to the Congress or any state or local legislature itself. This prohibition contained an exception for normal and recognized executive-legislative relationships, which could include presentations to legislative branch officials. The policy also recognized that funding could be used under certain circumstances to provide information to the legislative branch in order to foster implementation of prevention strategies to promote public health and to engage in activity to enhance prevention, such as the collection, analysis, and dissemination of data and conducting community outreach services. According to CDC officials, AR-12 applied to both primary CPPW recipients and their subrecipients.⁵

2. *What types of activities would CDC have considered to be a violation of the lobbying policy that applied to the use of CPPW awards by recipients?*

According to CDC officials, subject to certain exceptions, activities that would have constituted a violation of AR-12 included: communicating directly in support of or opposition to specific legislation pending before Congress or a state or local legislature (direct lobbying); expressly encouraging the public or other entities to contact their elected representatives to ask them to support or oppose specific legislation pending before Congress or a state or local legislature (grassroots lobbying); and selectively presenting materials relating to the adoption of specific legislation to a narrow audience, such as only to the supporters of the legislation. For example, according to CDC officials, the policy would not have allowed CPPW award recipients to use CDC funds to produce and distribute a pamphlet that expressly encouraged the public to contact their elected representatives to urge their support of, or opposition to, pending legislation. However, CDC officials told us that CPPW recipients would have been permitted to present information directly to elected representatives in order to educate them about a public health issue unconnected to pending specific legislation. According to CDC officials, the exception for normal and recognized executive-legislative relationships pertained to interaction between executive and legislative branches of government at the state and local level. For example, a state health department may interact with the state legislature to provide factual information related to a public health topic.

⁵Subrecipients are other organizations to which primary recipients can provide CPPW funding.

3. *How did CDC inform CPPW award recipients of the lobbying policy that applied to them?*

CDC used funding opportunity announcements (FOA) and meetings with CPPW award recipients to educate them on AR-12. Each CPPW FOA to which applicants responded contained a reference to AR-12. In addition, officials stated that each notice of award issued to awardees contained a summary of AR-12 and a reference to the full version of the policy, which was available on CDC's website. CDC officials told us that they reminded recipients about the requirements of AR-12 during required training sessions and other meetings. For example, during a mandatory kick-off meeting attended by all recipients, CDC officials reported that officials and recipients discussed the restriction on using CPPW funds for lobbying activities. In addition, CDC officials told us that they discussed AR-12 and its restrictions on other occasions with recipients, including sometimes during discussions regarding the recipients' budgets.⁶

4. *How did CDC monitor CPPW award recipients to detect potential violations of CDC lobbying policy that applied to them?*

CDC officials told us that they used reviews of the proposed budgets of CPPW award recipients to identify any planned activity that could violate AR-12. CDC officials explained that before a recipient began work funded by CDC, officials from CDC's Procurement and Grants Office (PGO), the assigned CDC project officer, and the recipient met to review each line item of a recipient's budget. Officials said that during these meetings, they would determine whether the proposed activities were allowable under the CPPW program. CDC officials stated that this process would have identified any planned activity that appeared inconsistent with AR-12. For example, officials reported that during the review of activities proposed by several recipients, they disapproved some activities, such as a proposal to promote state legislation to ban indoor smoking, as well as a proposal to engage in a public health campaign to support the passage of a law to ban smoking in public places.

CDC officials told us that CDC project officers conducted regular monitoring phone calls with each award recipient, during which they discussed ongoing CPPW activities, including milestones specific to each award. Project officers also conducted at least one annual site visit to each primary award recipient where they met with the recipient, reviewed

⁶The HHS Office of the Inspector General (OIG) issued an early alert in June 2012, noting a lack of clear guidance from CDC to CPPW award recipients concerning lobbying policy. In the early alert, OIG advised that CDC, among other things, provide additional training of CDC staff working with CPPW award recipients about antilobbying provisions, and provide additional guidance to award recipients on how to avoid violating these provisions. See Daniel R. Levinson, OIG, HHS, memorandum to Thomas R. Frieden, M.D., M.P.H., CDC, (June 29, 2012). In its response to the OIG's early alert, CDC reported that it is taking steps to implement each of the actions noted by the OIG. See Thomas R. Frieden, M.D., M.P.H., CDC, memorandum to Daniel R. Levinson, OIG, HHS (July 26, 2012). The OIG is also conducting additional work generally related to this topic pertaining to HHS-wide awards made in fiscal years 2011 and 2012, and therefore does not anticipate the inclusion of CPPW awards in this work.

award documentation, provided any necessary technical assistance, and reviewed progress related to award-specific milestones.⁷ According to CDC officials, these monitoring activities were intended, in part, to identify unallowable activities, such as violations of CDC lobbying policy in AR-12. Finally, CDC officials stated that each recipient is required to complete a final report summarizing the work done under its CPPW cooperative agreement, which is reviewed by CDC officials.⁸

CDC officials reported that the project officers overseeing CPPW awards were trained to be cognizant of any CPPW-funded activities that could be in violation of AR-12. According to CDC staff, lobbying information was shared during meetings with CDC staff. For example, during a May 2010 CDC staff meeting, project officers and other CDC officials specifically discussed AR-12 and the steps project officers should take if they suspected a violation of this policy. Project officers also engaged in case review exercises to practice identifying issues, such as lobbying, among CPPW award recipients.

5. *What procedures did CDC have in place to investigate CPPW award recipients suspected of violating the CDC lobbying policy?*

According to CDC officials, at the time of the CPPW awards, if a project officer identified information that indicated a CPPW award recipient was conducting activities that violated AR-12, the project officer would implement a risk-mitigation plan, which was established for CPPW to address any potentially unallowable activity performed by a recipient. Under this plan, CDC would contact the recipient by telephone to request additional information and ask that the activity cease immediately until further information could be gathered by CDC. The project officer would then investigate the activity to gather additional information. This information would then be presented and reviewed at a risk mitigation meeting. According to CDC's risk mitigation plan, risk mitigation meetings typically included the director of the CPPW program and the project officer, as well as other CDC staff. If this group determined that no violation of AR-12 occurred, a note would be made in the file and no further action would be taken beyond regular monitoring of the recipient. However, if it was determined that a potential violation occurred, written findings and recommendations would be prepared by the CPPW program and the case elevated to the Recovery Act Coordination (RAC) Unit and

⁷CDC officials stated that some recipients received two site visits in a year, depending on the needs of the recipients and availability of CDC travel funds. In addition, officials stated that during site visits to these primary recipients, project officers would also typically meet with selected sub-recipients based, in part, on the needs of the sub-recipient and availability of time and travel funds.

⁸The Single Audit Act, as amended, requires all nonfederal entities (states, local governments, and nonprofit organizations) that expend \$500,000 or more in federal awards per year to obtain an annual audit in accordance with specified criteria. See 31 U.S.C. §§ 7501 et seq. Office of Management and Budget Circular A-133, *Audit of States, Local Governments, and Non-Profit Organizations*, sets forth standards for obtaining consistency and uniformity among federal agencies for such audits. CDC officials stated that they receive A-133 audit findings for primary CPPW award recipients and follow up on the findings to ensure that necessary action is taken.

the Associate Director for Policy within the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP).⁹ Cases referred to these entities would be discussed and reviewed at an NCCDPHP risk-mitigation meeting that would include RAC members, CPPW program representatives, policy staff, PGO staff, and staff from HHS's Office of the General Counsel. Results from this meeting would be used to determine whether an enforcement action was warranted.

According to CDC officials, two CPPW award recipients were suspected of conducting activities that violated AR-12, and one of the recipients was found to be conducting activities that constituted lobbying under CDC's AR-12 policy. In this case, a project officer identified activities that demonstrated CPPW-funded staff at the South Carolina Department of Health and Environmental Control significantly contributed to planning and scheduling a press event designed to influence the decision of city council members with regard to a smoke-free ordinance. CDC submitted a written request to this recipient in May of 2011 for additional information, and the recipient responded in writing the following month. CDC determined that this recipient conducted lobbying activities. In its written response, the recipient calculated the amount of funds spent on staff time for planning activities related to lobbying (\$247.79) and agreed to refund this amount. The recipient also agreed to provide additional training to staff on lobbying restrictions as outlined in AR-12. CDC officials noted that the activities conducted by this recipient were planning activities and the planned press event was not held.

In the other case, CDC suspected that subrecipients of the Public Health Institute of Metropolitan Chicago, a primary CPPW award recipient, might have violated AR-12 by participating in a May 2011 hearing on sugar-sweetened beverages before the Illinois Senate Public Health Committee. CDC wrote to this primary recipient in May of 2012 and requested additional information about its subrecipients' attendance at this hearing. The primary recipient responded in June of 2012 with additional information. On the basis of this information, CDC concluded that the activity in question had not been approved as part of the award when the recipient applied for funding. As a result, CDC disallowed funding related to this activity. Officials stated that because the activity was not approved, no further evaluation was undertaken to determine whether the activity violated AR-12.

Agency Comments

We provided a draft of this report to HHS. HHS provided technical comments that we incorporated, as appropriate.

⁹Officials stated that this same process was used for all CPPW awards, including those funded through PPACA. Officials stated that they wanted to use the same process for all CPPW awards in order to maintain consistency.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this correspondence to the Secretary of Health and Human Services, appropriate congressional committees, and other interested parties. The report is also available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-7114 or kohnl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this correspondence. Other key contributors to this correspondence included Will Simerl, Assistant Director; George Bogart; Krister Friday; Andrea E. Richardson; and Jennifer Whitworth.



Linda T. Kohn
Director, Health Care

Enclosures – 1

List of Requesters

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Lamar Alexander
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Tom Coburn, M.D.
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Susan Collins
Ranking Member
Special Committee on Aging
United States Senate

**Centers for Disease Control and Prevention (CDC) Policy on Lobbying
Applicable to Awards Made during Fiscal Year 2010**

CDC AR-12: Lobbying Restrictions

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352, recipients (and their sub-tier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition no part of CDC appropriated funds, shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State or local legislature, except in presentation to the Congress or any State or local legislature itself. No part of the appropriated funds 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 or local legislature.

Any activity designed to influence action in regard to a particular piece of pending legislation would be considered "lobbying." That is lobbying for or against pending legislation, as well as indirect or "grass roots" lobbying efforts by award recipients that are directed at inducing members of the public to contact their elected representatives at the Federal or State levels to urge support of, or opposition to, pending legislative proposals is prohibited. As a matter of policy, CDC extends the prohibitions to lobbying with respect to local legislation and local legislative bodies.

The provisions are not intended to prohibit all interaction with the legislative branch, or to prohibit educational efforts pertaining to public health. Clearly there are circumstances when it is advisable and permissible to provide information to the legislative branch in order to foster implementation of prevention strategies to promote public health. However, it would not be permissible to influence, directly or indirectly, a specific piece of pending legislation

It remains permissible to use CDC funds to engage in activity to enhance prevention; collect and analyze data; publish and disseminate results of research and surveillance data; implement prevention strategies; conduct community outreach services; provide leadership and training, and foster safe and healthful environments.

Recipients of CDC grants and cooperative agreements need to be careful to prevent CDC funds from being used to influence or promote pending legislation. With respect to conferences, public events, publications, and "grassroots" activities that relate to specific legislation, recipients of CDC funds should give close attention to isolating and separating the appropriate use of CDC funds from non-CDC funds. CDC also 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.

In use prior to December 2011

(291075)

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#). Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#). Visit GAO on the web at www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Katherine Siggerud, Managing Director, siggerudk@gao.gov, (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

