

The Climate Science Legal Defense Fund produced this guide to help scientists understand their rights to participate in activism and advocacy, and navigate related regulations. This guide concerns only U.S. laws, and nothing in it should be construed as legal advice for your individual situation.

CSLDF provides free counsel to scientists with legal questions pertaining to their work. Contact us at **(646) 801-0853** or email lawyer@csldf.org to arrange a free and confidential consultation with an attorney.



The Climate Science Legal Defense Fund (CSLDF) works to protect the scientific endeavor by helping defend climate scientists against politically and ideologically motivated attacks. CSLDF is a non-profit organization under section 501(c)(3) of the Internal Revenue Code.

This guide was made possible by the generous support of the Common Sense Fund.

CSLDF would like to thank Covington & Burling LLP for their research assistance and guidance.

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A POCKET GUIDE FOR SCIENTISTS

Advocating for Science in a Politicized Environment



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the Climate Science
Legal Defense Fund

INTRODUCTION

Many scientists in the United States participate in various forms of activism and political engagement, especially around issues affecting science. And scientists—even those who work for federal agencies or state-funded institutions—are entitled to engage in this kind of advocacy. However, it's important that scientists who receive federal or state funding know that there are certain limitations on their ability to engage in political activism.

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Contact us at
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OVERVIEW OF ANTI-LOBBYING RULES

The Climate Science Legal Defense Fund wrote this guide to help scientists navigate these regulations. The central issues scientists need to be aware of relate to U.S. anti-lobbying laws. **Lobbying** is attempting to influence a politician or public official to create particular legislation or conduct a particular activity, usually in a way that will benefit a particular organization or individual.

The Anti-Lobbying Act is the primary permanent federal statute prohibiting lobbying with federal funds. The Anti-Lobbying Act prevents individuals or organizations from using federal government funds to lobby for their own political aims or to seek more federal funds. It prohibits using federal funds to influence or attempt to influence a Congressperson, legislative staffer, or other government employee in connection with certain activities, specifically, the passage of a legislative bill or the awarding of a federal grant, contract, loan, or cooperative agreement.

In addition to the Anti-Lobbying Act, Congress enacted what is commonly known as the Byrd Amendment, which explicitly applies anti-lobbying restrictions to recipients of federal grants and contracts. Congressional appropriations bills (passed annually) also generally contain language prohibiting the use of congressionally appropriated funds for lobbying or for “publicity or propaganda purposes.”¹ Collectively, these laws restrict how federal agencies, their employees, and their grantees and contractors can use federal funds towards influencing federal legislation and appropriations.

Note that once federal funds become the property of the grantee or employee, they generally lose their identity as federal funds. For example, federal grant money designated for payment of a scientist's salary ceases to be federal money once it is paid to the scientist and is not subject to anti-lobbying laws at that point.

What Kinds of Advocacy Activities do Anti-Lobbying Laws Prohibit Federally Employed Scientists from Engaging In?

Under the Anti-Lobbying Act, scientists who are **federal employees may NOT as part of their official work:**

- Engage in “substantial grassroots” lobbying by using private communications such as letters or emails to expressly urge individuals to contact government officials in support of or in opposition to legislation.
 - Note that “substantial” is not well defined and has been interpreted differently by different law enforcement bodies. However, the Department of Justice has recommended that agencies not include in their communications with private citizens any requests that they contact government officials to avoid even the appearance of a grassroots campaign.
- Appealing to members of the public—for example, in a public appearance, speech, or publication, or via social media—to contact their elected officials in support of or in opposition to legislative proposals.²
- Provide administrative support for the lobbying activities of private organizations.
- Prepare editorials or other communications that will be disseminated without an accurate disclosure of the government’s role in their origin.

However, the above activities are likely fine if done as a private citizen and not in an official capacity. See page 4 for more information.

Recent years have provided real-world examples of federal agencies running into trouble with anti-lobbying rules. In 2015, the Obama administration sought to promote a new Environmental Protection Agency (EPA) clean water rule called the Waters of the United States rule. EPA undertook a campaign on social media to encourage the public to back the rule. The Government Accountability Office (GAO) found that EPA had violated anti-lobbying laws and engaged in “covert propaganda” by using its federally appropriated funding to undertake this social media campaign.³

Other agencies have also encountered trouble. The GAO concluded that the Department of Transportation violated anti-lobbying laws in 2017 when it liked and retweeted a post on Twitter urging Congress to pass a particular piece of legislation related to air traffic control.⁴

The Department of Housing and Urban Development (HUD) encountered similar anti-lobbying troubles in 2014 when its Deputy Secretary sent an email to over 1,000 friends and colleagues requesting they contact specific senators in support of an appropriations bill.⁵

What Kinds of Activities do Anti-Lobbying Laws Prohibit Federally Funded Scientists from Engaging In?

Scientists who are the recipients, or whose organizations are the recipients, of **federal grant or contract funds may NOT:**

- Use federal funds to lobby a member of Congress. For example:
 - Do not call your Congressperson to ask for “yes” or “no” on a bill using your federally funded work phone. Instead, use your personal phone on your personal time.
 - Do not write an op-ed or open letter urging specific legislation on your work computer. Use your personal computer on your personal time, and be sure to include disclaimers in the piece that you are speaking as a private citizen. (See also pages 8-9.)
- Use federal funds to meet with a Congressperson or staffer, especially to seek a renewal or extension of a federal grant, contract, loan, or cooperative agreement, or to seek additional such funding. For example:
 - Do not use federal grant money for the purpose of visiting Washington D.C. to talk to your Congressperson. However, if you are traveling to D.C. for work-related purposes, you are allowed to visit with your Congressperson on your own time and using your own resources as long as you do not incur any additional federal expense.
 - Do not use federally funded resources, like a phone, tablet, or computer paid for with federal grant funds, to initiate conversations

with a Congressperson or their staff about your federal funding. However, you may respond to documented requests from Congress about your funding.

What Kinds of Advocacy and Activism Are Scientists Allowed to Participate in Without Running Afoul of Anti-Lobbying Laws?

While anti-lobbying laws impose some restrictions on how scientists can engage in their official capacity with legislators and with the legislative process, there are many things scientists can do.

PERSONAL CAPACITY

Overall, meeting or talking with a legislator in your capacity as a private citizen **is generally OK** as long as **no federal funds or resources** are used to carry out these activities.⁶ This is particularly true if you are meeting with a legislator regarding a bill or appropriation that does not relate to your professional role. For example, if you are a federally employed or federally funded climate scientist, you **MAY** call a Congressperson as a private citizen to ask her to vote a certain way on a gun rights bill, as long as you do so on your own time and not using any federal funds or resources.

Federally employed or federally funded scientists **MAY** also communicate with members of Congress or otherwise engage in activism **as private citizens** on broad social or economic issues—even if you have concerns that overlap with the subject matter of your work—such as improving environmental protections or supporting scientific research as a general matter, so long as **no federal funds or resources** are used. (However, a discussion with a Congressperson regarding the **funding of specific research or a specific grant**, even in an area wholly unrelated to your own research, likely would be prohibited.)

In general, you may attend a demonstration, write an op-ed, or sign a petition **as long as you do so using your own money and on your own time.**

OFFICIAL CAPACITY

1. Scientists Who Receive Federal Grant or Contract Funding

As discussed earlier, scientists whose work is funded by federal grants or

contracts cannot use federal grant or contract funding to lobby a member of Congress. However, such scientists **are still generally permitted in their professional roles to:**

- Talk with a Congressperson about a broad social or economic problem, especially in areas that are unrelated to the scientist's federal government funding.
 - For example, a federally funded climate scientist could meet with a Congressperson to discuss issues related to workplace diversity.
- Discuss non-partisan studies or research with a Congressperson or agency employee.
- Give technical and factual presentations on specific topics directly related to the performance of a grant, contract, or other agreement in response to a documented request made by a member of Congress.

2. Federally Employed Scientists

Scientists who are federal government employees can do the things described above with respect to scientists with federal grants or contracts. Federally employed scientists **are also permitted in their professional roles to:**

- Directly lobby Congress in support of their administration or agency policy positions as part of their official duties.
- Use public speeches, appearances, and publications to advocate for administration policy positions.
- Communicate with the public privately, for example, through emails or letters, to inform them of an issue, or even to promote administration policy positions **as long as these communications do not constitute a “substantial grassroots campaign.”** (See pages 1-2.)
- Attempt to influence Congress or the public regarding activities or issues unrelated to legislation or appropriations, such as supporting an administration nominee or the adoption of a treaty, since the Anti-Lobbying Act by its terms only applies to legislation and appropriations.

Other Limitations on Some Scientists' Political Activities: The Hatch Act

In addition to the Anti-Lobbying Act, scientists who are federal employees should be familiar with the **Hatch Act**, which prevents federal employees—as well as some local government employees who work in connection with federally funded programs—from engaging in certain political activities. Political activity is defined as “activity that is directed at the success or failure of a political party, partisan political group, or candidate for partisan political office.”⁷

Generally speaking, scientists who are federal employees may engage in political activities as private citizens in their personal time. For example, as long as they are off duty and on their own time, **federally employed scientists MAY:**

- Register and vote as they choose.
- Assist in voter registration drives.
- Contribute money to partisan groups and candidates in partisan elections.
- Attend political rallies, meetings, and fundraisers.
- Sign and circulate nominating petitions.
- Express opinions about political issues.
- Campaign for or against candidates in partisan elections.⁸
- Make campaign speeches and distribute literature in partisan elections.

However, federally employed scientists may NOT, for example:

- Engage in political activity while on duty, in the workplace, while wearing a uniform or official insignia, or in a government vehicle.
- Use email or social media to engage in political activity while in the workplace, in a government vehicle, or on duty.
- Express opinions about partisan groups or candidates in partisan elections while at work or using official authority.

- Invite subordinate employees to political events or otherwise suggest that they engage in political activity.
- Be candidates in partisan elections, although they may be candidates in non-partisan elections in which candidates are neither endorsed nor supported by political parties. For example:
 - A federal scientist *may not* run for a city council position with a party affiliation. However, a federal scientist may run for election to a non-partisan position, such as president of a school Parent-Teacher Association.
- Knowingly solicit or discourage the political activity of any person with business before their agency.
- Solicit or receive political contributions. There are some very limited exceptions to this rule, but in general, the safest course is for federal scientists to avoid accepting political contributions.⁹

Note that the preceding list contains representative examples and is not meant to be an exhaustive list of all activities covered by the Hatch Act. If you have a question about how the Hatch Act applies to a specific situation, please contact us at CSLDF or consult another attorney.

Finally, note that some specific federal employees—particularly those who work in the intelligence field—are subject to additional restrictions on their ability to take part in political activity.¹⁰

Important Dos and Don'ts for Federally Employed or Federally Funded Scientists Engaging in Activism and Advocacy

Do:

- Use your own resources and your own time to engage in activism and advocacy. This includes using your personal computer, phone, or other device to prepare or relay your message.
 - This is particularly true if the topic involves a federal grant, federal contract, loan or cooperative agreement, or the passage of a particular legislative bill.
- Consider speaking in your personal capacity and not as an agency employee or federal grantee—this is generally the safer path.
- Consider using disclaimers:
 - “Titles and institutional affiliations are for identification purposes only.”
 - “These are my personal views, not those of my organization.”
- Keep your work and personal email accounts separate. Use your work account only for professional activities and your personal account only for your personal activities. Keep non-work records, including personal advocacy work, off of your work email account and work computer.
- Inquire about and understand any policy your institution may have on political speech.
- Make sure you are familiar with your institution's rules for speaking to the press.

Don't:

- Participate in personal activism or advocacy while at the office or work.
- Use federal grant or contract money for travel or other expenses related to promoting or opposing a specific piece of legislation.
- Use federally funded resources, such as phones, computers, tablets, or printers to promote specific bills, to influence Congress regarding specific federal grants or contracts, or to further your personal advocacy efforts.

- Use federal agency or other government-affiliated social media accounts to promote or oppose specific legislation or to advocate for a specific federal appropriation.
- Identify your work affiliation when publicizing your personal advocacy role.
- Wear clothing with your organization's name, logo, or other identifiers when participating in personal advocacy or activism.

Endnotes

¹ Nicholas Pacifico and Scott Amey, *Understanding the Anti-Lobbying Law*, Project on Government Accountability (June 15, 2017), <https://www.pogo.org/analysis/2017/06/understanding-anti-lobbying-law>

² National Institutes of Health Ethics Program, *Lobbying Activities*, <https://ethics.od.nih.gov/topics/lobbying.htm>

³ Eric Lipton and Michael D. Shear, *E.P.A. Broke Law With Social Media Push for Water Rule, Auditor Finds*, THE NEW YORK TIMES (December 14, 2017), <https://www.nytimes.com/2015/12/15/us/politics/epa-broke-the-law-by-using-social-media-to-push-water-rule-auditor-finds.html>

⁴ Melanie Zanona, *Watchdog: Trump DOT Violated Lobbying Laws with Retweet*, THE HILL (December 14, 2017), <https://thehill.com/policy/transportation/364938-watchdog-trump-admin-violated-anti-lobbying-laws-with-retweet-on-air>

⁵ Rachel Weiner, *McAuliffe Appointee Accused of Violating Lobbying Rules*, THE WASHINGTON POST (February 25, 2014), https://www.washingtonpost.com/local/virginia-politics/mcauliffe-appointee-accused-of-violating-lobbying-rules/2014/02/25/0883d2d8-9e5e-11e3-b8d8-94577ff66b28_story.html

⁶ However, there may be additional agency-specific prohibitions, especially for those in the intelligence field or who work with classified information.

⁷ Office of Special Counsel Frequently Asked Hatch Act Questions for Federal Employees, <https://osc.gov/Pages/HatchAct-FAQs.aspx>

⁸ Note that some federal employees—especially those in the intelligence field or who work with classified information—are further restricted under the Hatch Act and may not campaign for or against candidates, make campaign speeches, or distribute literature in partisan elections.

⁹ Office of Special Counsel, *The Hatch Act: Permitted and Prohibited Activities for Most Federal Employees*, <https://osc.gov/Resources/HA%20Poster%20Lesser%20Restricted%202016.pdf>

¹⁰ Office of Special Counsel, *The Hatch Act: Permitted and Prohibited Activities for Federal Employees Subject to Further Restrictions*, <https://osc.gov/Resources/HA%20Poster%20Further%20Restricted%202016.pdf>