

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.

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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.

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, public employee, or other public official in the performance of their duties, usually in a way that will benefit a particular organization or individual.

You can always call us at the **Climate Science Legal Defense Fund**, where we provide free and confidential counsel to scientists with legal questions related to their work.

Contact us at
(646) 801-0853

Or send an email to
lawyer@cslidf.org

OVERVIEW OF ANTI-LOBBYING RULES

The Anti-Lobbying Act is the primary permanent federal statute prohibiting lobbying with federal funds.¹ 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, measure, or resolution.

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.² More specifically, the Byrd Amendment prevents the recipients of federal funds from using such funds to influence or attempt to influence a Congressperson, legislative staffer, or other government employee in awarding or modifying a federal grant, contract, loan, or cooperative agreement, and recipients of federal funds are often required to certify their compliance with such prohibition.³ **Congressional appropriations bills** (passed annually) also generally contain language prohibiting the use of congressionally appropriated funds for lobbying or for “publicity or propaganda purposes.”⁴ 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. Note also that state and local governments may impose additional restrictions on your activities; if you are employed or funded by a state or local governmental entity, consider consulting CSLDF or other counsel about your specific legal rights and responsibilities.

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.
 - The Department of Justice has clarified that the ban generally does not prohibit private communications designed to inform individuals about Administration positions, or to promote such positions.⁵ However, “substantial” is not well defined and has been interpreted differently by different law enforcement bodies.
- Use public communications—such as public appearances, speeches, publications, or social media—to ask the public to contact officials in support of or in opposition to legislation.⁶
- Provide administrative support for the lobbying activities of others.
- Prepare communications that will be disseminated without disclosing the government’s role in them.

However, the above activities are likely fine if done as a private citizen and not in an official capacity. See page 7 for more information.

Recent years have provided real-world examples of federal agencies and their employees running into trouble with anti-lobbying rules. For example, the Department of Housing and Urban Development (HUD) encountered 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.⁷ The Secretary of Agriculture crossed the political activity line when, in a 2017 speech, he urged listeners to contact their legislators to support a “permanent fire funding fix.”⁸ 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.⁹

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.¹⁰

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

Under the **Byrd Amendment**, 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, or print such a letter using your work printer. Use your personal devices on your personal time, and be sure to include disclaimers in the piece that you are speaking as a private citizen. (See page 7.)
- Use federal funds to meet with a Congressperson or staffer, especially to seek a renewal, extension, or modification of a federal grant, contract, loan, or cooperative agreement, or to seek additional such funding. For example:
 - Do not use federal grant money to travel to Washington D.C. for the purpose of talking 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, such as additional mileage on a federally funded work vehicle.
 - Do not use your federally funded work phone or computer 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 Can Scientists 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.¹¹ 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 healthcare bill as long as you do so on your own time and without 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**.

Note that engaging in lobbying activity on behalf of another person or organization may require registration and/or disclosure under lobbying laws, especially if you are being paid for that activity. Additionally, individuals who contract directly with the federal government are prohibited from making federal political contributions. Similar laws may exist at the state or local level.

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 page 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 and Byrd Amendment, 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.¹² 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.”¹³

Generally speaking, most 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, most **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.¹⁴
- Make campaign speeches and distribute literature in partisan elections.

However, most **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.¹⁵

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 election, law enforcement, and intelligence fields—are subject to additional restrictions on their ability to take part in political activity.¹⁶

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, tablet, printer 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.
- Document which hours are spent working, and ensure not to engage in political activity during those hours.
- 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 work, or during your standard business hours if working from a remote location.
- Use federal grant or contract money for travel, transportation, 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, other than to clarify that your personal advocacy role is not affiliated with your employment.

- Wear clothing with your organization’s name, logo, or other identifiers when participating in personal advocacy or activism.

Endnotes

- ¹ 18 U.S.C. § 1913.
- ² 31 U.S.C. § 1352
- ³ See FAR 52.203-11 and FAR 52.203-12 (implementing the Byrd Amendment).
- ⁴ See, e.g., Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, tit. V, 134 Stat. 1275 (“No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.”).
- ⁵ 1989 Department of Justice Memorandum to the Attorney General, Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts, https://www.justice.gov/sites/default/files/olc/opinions/1989/09/31/op-olc-v013-p0300_0.pdf
- ⁶ National Institutes of Health Ethics Program, Lobbying Activities, <https://ethics.od.nih.gov/lobbying>
- ⁷ 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
- ⁸ U.S. Department of Agriculture—Anti-Lobbying Provisions, B-330095 (July 22, 2020), <https://www.gao.gov/assets/b-330095.pdf>
- ⁹ 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>
- ¹⁰ 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>
- ¹¹ However, there may be additional agency-specific prohibitions, especially for those in the election, law enforcement, or intelligence fields or who work with classified information.
- ¹² This resource provides a brief overview of Hatch Act restrictions. CSLDF has prepared a more thorough handout on Hatch Act restrictions titled “A Pocket Guide for Scientists: Participating in Political Campaigns and Elections,” which can be made available upon request.
- ¹³ Office of Special Counsel, Frequently Asked Hatch Act Questions for Federal Employees, <https://osc.gov/FAQ#tabGroup03>
- ¹⁴ Note that some federal employees—especially those in the election, law enforcement, or intelligence fields 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.
- ¹⁵ Office of Special Counsel, The Hatch Act: Permitted and Prohibited Activities for Most Federal Employees, <https://osc.gov/FAQ#tabGroup03>
- ¹⁶ Office of Special Counsel, The Hatch Act: Permitted and Prohibited Activities for Federal Employees Subject to Further Restrictions, <https://osc.gov/FAQ#tabGroup03>