

“Refusal of Funds from Tobacco-related Entities” Requirement
Center for Community Health
New York State Department of Health

The New York State Department of Health (NYSDOH) Center for Community Health (CCH) requires that contractors certify that it has a written policy prohibiting any affiliationⁱ with a tobacco company or tobacco product manufacturerⁱⁱ, including receipt of gifts, grants, contracts, financial support and in-kind support, and other relationships. In addition, contractors must certify that no not-for-profit subcontractors receiving funding through the contract for work instrumental to achieving the goals and objectives of the grant has any affiliation with a tobacco company or tobacco product manufacturer.

Questions and Answers

Q. What is the purpose of the Refusal of Funds from Tobacco-related Entities (RFTE) requirement?

A. The RFTE requirement helps to assure that there are no conflicts of interest, potential conflicts of interest or perceived conflicts of interest between the NYSDOH CCH, its grant recipients and tobacco-related entities. It assures that not-for-profit grantees do not rely on funding from sources that could dilute, or call into question, their commitment to tobacco control.

Q. Does the RFTE requirement apply only during the life of the grant or does it extend more broadly?

A. The RFTE requirement prohibits not-for-profit grantees from having any ongoing contractual relationships or any other affiliations with a tobacco manufacturer, its affiliates or its subsidiaries when the grantee signs the grant contract or from entering into such a relationship during the life of the grant contract. It does not bar grants to entities which have had past contractual relationships or any other affiliations with tobacco companies, nor does it prohibit grantees from entering into relationships with tobacco companies after the completion of the grant.

Q. The RFTE requirement states that applicants may not accept any grant or anything else of value. In this context, what does “value” mean?

A. Value means anything having or being perceived as having monetary value. This includes, but is not limited to, a salary, fee, goods, services, gifts, benefits, discounts, loans, advances, forbearances, travel, lodging, or any other thing paid, owed, given or promised. It also includes items which may be of a nominal value, including but not limited to refreshments, promotional items or ceremonial items (e.g., awards or plaques).

Q. Does the RFTE requirement apply to the institutional recipient, the individuals working on the grant, or both?

A. The RFTE requirement applies to both the institutional recipient and all individuals working on the grant.

Q. How does the RFTE requirement apply to complex institutions, for example, universities or state or local governments? Is the entire university or state or local government bound by the RFTE requirement when one part of it accepts a NYSDOH CCH grant that includes the RFTE requirement in the funding announcement?

A. No. NYSDOH CCH understands that it would be unduly burdensome for a university or state or local government to enforce this throughout the entire institution or state. For that reason, CCH only requires that the organizational unit receiving the grant comply with the RFTE requirement.

Q. What does that mean in the context of an educational institution or other large institution such as a hospital? What is the “organizational unit receiving the grant”?

A. In the case of an educational institution, the RFTE requirement applies to all programs of the School for which the grant project coordinator and/or principal investigator carries out in regard to grant duties. It does not apply to other Schools or other components of the university. For example, if the grant project coordinator and principal investigator are carrying out grant duties for a university’s School of Public Health or for a department of the School of Public Health, the entire School of Public Health, including all of its departments and any other sub-units, must comply with the RFTE requirement. Schools, departments, or other units located outside of the School of Public Health would not be similarly bound.

Similarly, in the case of a hospital, the RFTE requirement applies to the organizational unit for which the grant project coordinator and/or principal investigator are carrying out in regard to grant duties. It does not apply to other organizational units within the hospital. For example, if the grant project coordinator and principal investigator are carrying out grant duties in the community health unit of a hospital, the entire unit, including all of its departments and any other sub-units, must comply with the RFTE requirement. Other parts of the hospital would not be similarly bound.

Q. What about a local government such as a local health department?

A. The same principles apply. The department or agency within which the Grant Project Coordinator and/or Principal Investigator are carrying out grant activities would be bound by the RFTE requirement. Other departments, agencies, etc. would not be.

Q. Do the RFTE requirement restrictions apply to sub-contractors or anyone else to whom the grantee disburses NYSDOH funds?

A. The RFTE requirement of the grant contract applies to any not-for-profit sub-contractors that are instrumental to achieving the goals and objectives of the grant. For example, if a grantee subcontracts a scope of work to an entity to work on developing a media campaign to educate residents about the dangers of secondhand smoke in multi-unit housing buildings, or if a grantee sub-contracts with a consultant to do work with a health system to ensure tobacco screening policies, those sub-contracts/consultants are subject to the same requirements. If a grantee subcontracts with an entity to process payroll, conduct audits or rent space for a coalition meeting, those businesses are not subject to the RFTE requirement.

Q. Is a grantee required to divest itself of tobacco-related stock or other financial holdings?

A. No. The RFTE requirement does not contain divestiture provisions.

Q. How will a grantee know the identity of tobacco manufacturers, distributors or other tobacco-related entities?

A. NYSDOH CCH recognizes that identifying tobacco manufacturers, distributors and other tobacco-related entities can be challenging given the complex nature of conglomerates. Grantees are encouraged to make a good-faith effort by reviewing publically-available information regarding tobacco companies. For example, some other states publish lists of cigarette manufacturers that have satisfied certain requirements for sale in that state; these directories can be a helpful list of the main tobacco manufacturers. One example of such a list is: <http://www.mass.gov/dor/businesses/help-and-resources/cigarette-and-tobacco-tax/tobacco-product-manufacturers-directory.html>

Q. Are there any exceptions to the RFTE requirement?

A. NYSDOH CCH will consider, on a case-by-case basis, requests for a waiver of the RFTE requirement. Waiver requests should be submitted as a question during the procurement's open Q&A period. In addition, under unusual circumstances NYSDOH CCH may decide not to include the RFTE requirement in a grant procurement based on the targeted applicants for that funding opportunity.

Q. Isn't NYSDOH CCH concerned that potential grantees that could make a real contribution to tobacco control may be disqualified by this RFTE requirement?

A. NYSDOH CCH has made a substantial effort to assure that the RFTE required obligations are realistic, do not unduly burden not-for-profit educational or government institutions and do not interfere with humanitarian work. However, it is NYSDOH's carefully considered view that it would be inconsistent with our mission and lead to conflicts of interest, if we were to fund institutions or, as described above, components of institutions that accept tobacco-industry funding. We encourage institutions to review their own fundraising criteria and programs and consider the concerns we have put forward.

Q. What is the penalty if a grantee is not compliant with the RFTE requirement?

A. Depending on the nature of the noncompliance, NYSDOH reserves the right to terminate the grant contract.

ⁱ Affiliation:

- being employed by or contracted to any tobacco company, association or any other agents known by you to be acting for tobacco companies or associations;
- receiving honoraria, travel, conference or other financial support from any tobacco company, association or any other agents known by you to be acting for or in service of tobacco companies or associations;
- receiving direct or indirect financial support for research, education or other services from a tobacco company, association or any agent acting for or in service of such companies or associations, and;
- owning a patent or proprietary interest in a technology or process for the consumption of tobacco or other tobacco use related products or initiatives.

ⁱⁱ Tobacco company or tobacco product manufacturer: any person, corporation or entity, including any repacker or relabeler, who:

- manufactures, fabricates, assembles, processes, or labels a tobacco product; or
- imports a finished tobacco product for sale or distribution in New York State.