

CLAUSE 12: FREQUENTLY ASKED QUESTIONS

1. Q: What is Clause 12?

A: Clause 12 is a part of the American Legacy Foundation's standard grant contract in which grantees agree not to accept any grant or anything else of value from any tobacco manufacturer, distributor, or other tobacco-related entity. It provides:

12. Refusal of Funds From Tobacco-Related Entities

The Grantee agrees that it shall not accept any grant or anything else of value from any tobacco manufacturer, distributor, or other tobacco-related entity.

2. Q: What is the purpose of Clause 12?

A: Legacy adopted Clause 12 to assure that there are no conflicts of interest, potential conflicts of interest or perceived conflicts of interest between Legacy, its grant recipients and tobacco-related entities. It assures that Legacy's grantees do not rely on funding from sources that could dilute, or call into question, their commitment to tobacco control.

3. Q: Does Clause 12 apply only during the life of the grant or does it extend more broadly?

A: Clause 12 prohibits Legacy 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. It does not bar grants to entities which have had past economic relationships with tobacco companies; nor does it prohibit grantees from entering into relationships with tobacco companies after the completion of the grant.

4. Q: Does Clause 12 apply to the institutional recipient, the individuals working on the grant, or both?

A: Clause 12 applies to both the institutional recipient and all individuals working on the grant.

5. **Q:** How does Clause 12 apply to complex institutions, for example, universities or state or local governments? Is the entire university or state or local government bound by Clause 12 when one part of it accepts a Legacy grant?

A: No. Legacy understands that it would be unduly burdensome for a university or state or local government to enforce the requirements of Clause 12 throughout the entire institution or state. For that reason, Legacy only requires that the organizational unit receiving the grant comply with Clause 12.

6. **Q:** What does that mean in the context of an educational institution? What is the "organizational unit receiving the grant"?

A: In the case of an educational institution, Clause 12 applies to all programs of the School for which the grant project coordinator and/or principal investigator are carrying out the 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 the 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 Clause 12. Schools, departments, or other units located outside of the School of Public Health would not be similarly bound. ✓

7. **Q:** What about a state or local government?

A: The same principles apply. The department or agency within which the Grant Project Coordinator and/or Principal Investigator are carrying out the grant activities would be bound by Clause 12. Other departments, agencies, etc. would not be. Accordingly, if the grant project coordinator is working within the state Department of Health, neither the Department of Health nor any sub-unit of the Department of Health could accept a grant or anything else of value from any tobacco manufacturer, distributor, or other tobacco-related entity. The state Department of Agriculture, however, assuming that it is not in receipt of a grant from Legacy, would not be bound by these requirements.

8. **Q:** Do Clause 12 restrictions apply to sub-contractors or anyone else to whom the grantee disburses Legacy funds? ✓

A: Yes. Clause 2(f) of the grant contract requires all grantees to agree that they will require any organization or entity to which they distribute any portion of the grant to enter into a written agreement with the grantee obligating such organization or entity to comply with Clause 12. ✓

9. **Q:** Can a Legacy grantee, for example a state agency, make grants with non-Legacy dollars to entities that accept tobacco funds?

A: Yes. Clause 12 prohibits Legacy grantees and sub-grantees from accepting tobacco-related funds. It does not, however, prohibit a Legacy grantee (or sub-grantee) from making grants with non-Legacy funds to another entity that receives tobacco support. For example, a state Department of Health that is a Legacy grantee may use its own criteria for making grants with non-Legacy funds.

10. **Q:** Does Clause 12 require that a grantee divest itself of tobacco-related stock or other financial holdings?

A: No. Clause 12 does not contain divestiture provisions.

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

A: In order to assist grantees and potential grantees identify tobacco manufacturers, their affiliates and subsidiaries and thereby comply with Clause 12, Legacy will release a list of such entities and up-date it as appropriate. The Clause 12 limitation applies only to entities included on this list. Prior to the release of the list, grantees should consult with Legacy if a question arises regarding whether a particular funding source is tobacco-related. Of course, grantees will also be encouraged to consult with Legacy if they have questions after the list becomes available.

13. **Q:** Are there any exceptions to the rule?

A: Yes. Clause 12 does not apply to contractual relationships or any other affiliations with a tobacco manufacturer's food subsidiaries for the sole purpose of distributing food to needy persons. For example, an educational institution, governmental entity, or non-profit organization could accept a grant from Legacy and also accept a grant or contract from a tobacco manufacturer's food subsidiary to deliver food to homeless persons in their community.

In addition, Legacy will consider, on a case-by-case basis, requests for a temporary waiver to permit a grantee to come into compliance with Clause 12.

14. **Q:** Does Clause 12 prohibit grants to entities that sell tobacco products, for example, through a cafeteria or convenience store?

A: No. By its terms, Clause 12 does not apply to this situation. However, Legacy certainly encourages grantees to refrain from participating in the sale of tobacco products.

15. **Q:** Isn't Legacy concerned that potential grantees who could make a real contribution to tobacco control may be disqualified by Clause 12?

A: Legacy is certainly aware of this concern. We have made a substantial effort to assure that the Clause 12 obligations are realistic, do not unduly burden educational or government institutions and do not interfere with purely humanitarian work. However, it is Legacy's carefully considered view that it would be inconsistent with our mission and lead inevitably 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.

12/4/01

**LETTER TO THE FACULTY ON THE PROPOSED POLICY TO NOT ACCEPT
GRANTS AND CONTRACTS FROM THE TOBACCO INDUSTRY**

FROM RONALD BAYER AND SHARON SCHWARTZ

Dear Colleague,

Allan Rosenfield and the School's Policy Advisory Committee have recommended a School policy to not accept grants and contracts for research from the tobacco industry. This policy would apply to the School's receipt of grants, not to the private activities of faculty members. The School's Steering Committee reviewed this policy statement last spring and recommended a Faculty Assembly discussion to gauge faculty opinion on this issue. At the request of the Committee, we prepared a series of questions to guide the discussion.

In a related development, The American Legacy Foundation has declared that as a condition of the award of its tobacco research and prevention grants to schools of public health that they prohibit the schools from obtaining any grant or contract from the tobacco industry. The Association of Schools of Public Health has accepted this condition, although individual schools are free to establish their own policies bearing in mind the potential loss of Legacy support that would follow.

A number of critical issues bearing on academic freedom are posed by the proposed school policy. The Steering Committee believes that open discussion of these issues is critical to guide school policy and will lead an open forum at the next school assembly on December 11th.

To facilitate that discussion we pose the following questions:

- 1. As a matter of general principle, should the school be permitted to prohibit faculty members from obtaining grants for research that does not otherwise violate standards of academic freedom (e.g., grants that prohibit researchers from publishing their findings without permission of the sponsor?)**
 - Does academic freedom include the right to seek research support?
 - Whose interests are served by limits on the source of research support? A faculty member who may be "used" or manipulated or the school and its reputation?
 - To the extent that reputation matters does it matter enough to trump academic freedom?

- Are schools of public health different from universities more generally? Would a school of journalism be justified in limiting its faculty members from taking a grant from an organization that does not support First Amendment freedoms? Would a divinity school be within its rights to bar the receipt of a grant to faculty members from the Association of American Atheists?
- Is there a distinction between a school's refusal to take funds from an industry or organization and the imposition of limits on the faculty member's freedom to seek such support?

2. If, in general, such limitations on grants are unacceptable are there unique circumstances where limitations are acceptable? If so, what standards should guide the determination of such limits?

- If the principle is that funds should not be taken from industries whose products have deleterious health or public health consequences would that include McDonald's because of the consequences of eating high cholesterol foods?
- Would the application of limits apply only if the research bears directly on the interest of the sponsoring industry or organization? For example, a study sponsored by the Advertising Council on the role of advertising in stimulating consumption of unhealthy products or by the National Rifle Association on the relationship between firearm possession and patterns of community mortality?
- Would they apply equally if the research had only an indirect bearing on industry interests? For example, sponsorship of a history of the First Amendment and commercial speech by the Advertising Council? Research on the limits of meta-analysis for policy formulation funded by the Ad Council?
- Are there unique problems posed by grants from conglomerates that have constituent industries that produce goods that are harmful – guns and butter?
- Are there problems posed by taking research funds from groups, organizations or entities that have a distinctive advocacy position? Planned Parenthood, the Children's Defense Fund? The Archdiocese of New York, the American Medical Association?
- If such limitations are deemed acceptable under certain circumstances, what is the process for bringing these concerns to the school? How should decisions about limitations on the acceptability of research funding be made?

3. If, in general, restrictions on faculty grants are deemed unacceptable, and if the restrictions are unacceptable even when industry sponsors are linked to products harmful to the public health, is the tobacco industry different?

- Is the tobacco industry different because of the level of morbidity and mortality?
- Is the tobacco industry different because of its particularly egregious pattern of industry lies and deception?
- Is the fact that sponsorship of research may be used to buy goodwill for an awful industry a legitimate consideration?
- A cynical view might be that this case is different because, in the end, it will lead to more, rather than less funding for the school.

4. Finally, should we be troubled that Legacy has dictated the conditions to schools regarding how faculties behave? Is the precedent troubling? Or does the uniqueness of tobacco obviate the risks?

Well that should be enough to chew over and to fuel the engines of fierce debate.

Ronald Bayer and Sharon Schwartz

To: Faculty

**From: Allan Rosenfield, and the
Policy Advisory Committee**

**Subject: Proposed Policy to Not Accept Grants and Contracts
From the Tobacco Industry**

Date: December 1, 2001

Mailman School faculty have provided important research evidence that tobacco use is a leading cause of preventable disease, disability, and death in the United States and, increasingly, around the world. Indeed, addiction to tobacco is one of the most challenging public health issues we face.

Recent accounts of research sponsored by organizations and companies directly or indirectly funded by the tobacco industry indicate the use of deliberate strategies to purposely mislead the public about the adverse health effects of tobacco use. This systematic manipulation can take a variety of forms, including the selection of projects that receive support and the way in which project results are reported. The magnitude of disease, disability, and death caused by tobacco use, and the conduct of the tobacco industry, is completely at odds with our mission to promote and protect the health and well being of all people.

Therefore, the School's Policy Advisory Committee and I concur on the establishment of a new policy whereby the Mailman School will not accept new grants and contracts for research from the tobacco industry. We ask that you vote in support of this policy at the School Assembly meeting on December 11.