

**FEDERAL TAX FUNDING TO
"ASSIST"
STATE TOBACCO CONTROL LOBBYING**

When did Congress appropriate \$135 million to fund lobbying of state and local legislators?

Congress didn't. But, the National Cancer Institute is giving millions in federal tax dollars to anti-tobacco activists and that is just what they are doing.

By way of background, in 1991, NCI began the seven-year American Stop Smoking Intervention Study -- ASSIST -- to fund state and local tobacco control strategies. Seventeen states were awarded \$115 million in grants, and an administrative support organization was awarded \$20 million. (These amounts have since been trimmed by across-the-board budget reductions at NCI.) The American Cancer Society pledged amounts equaling 15-percent of each state's grant, as well as personnel, educational materials, and volunteer activists.

The ASSIST program guidelines require participating states to address smoking prevention and cessation in a range of settings: schools, health care providers, and private sector workplaces. Of concern, however, are some of these federally funded program objectives and activities of the grantees.

The language of ASSIST program objectives is cloaked in bureaucratese. For example, the Community Environment objectives is to: *increase and strengthen public support for policies which a) mandate clean air; b) restrict access to tobacco by minors; c) increase economic incentives and taxation to discourage the use of tobacco products; and d) restrict the advertising and promotion of tobacco.*

In action, this translates to *train, mobilize and support activities and organizations who propose and lobby for passage of specific legislation: smoking bans ... vending machine, retail display and advertising bans ... and tobacco tax increases.*

How is this put into practice?

- Criteria for membership in the **Missouri** ASSIST coalition include "influence on policy and/or legislation which can address tobacco issues."
- **West Virginia** county ASSIST activists are pushing Boards of Health to ban or restrict smoking in restaurants.

- ASSIST-funded coalitions in **Minnesota** use teenagers to promote in-store advertising bans and licensing ordinances to City Councils. The state Smoke-Free Coalition 2000 was awarded almost \$20,000 in an ASSIST subcontract to train youth in "tobacco control policy advocacy." The Coalition is getting another \$30,000 to survey state legislators on tobacco issues and to plan petition and letter-writing campaigns.
- For **New York's** local coalition awards, "factors considered in the competitive award process will include...the potential impact on other regional and statewide policy makers....Policy and legislative changes are seen as critical components of the plan."
- In **Michigan** , an ASSIST coalition meeting recessed so the 27 attendees could "car pool to the state Capitol; there they engaged[d] key members of the Governor's staff, legislators and legislative staff to explain support of the tax increase. Members reconvened to report on their meetings and to discuss future efforts. As [a] result of the tax advocacy efforts, bills have been introduced in the house and senate; the Governor stated his intention to sign the bills if they are passed by the legislature."
- **North Carolina** ASSIST staff "created and distributed a resource guide for the Local Health Director's Association on Local Smoking Control Regulation to assist local Boards of Health considering smoking control regulations." The state's program is also utilizing minors to conduct "youth buying operations" - stings -- against retailers and to "speak to statewide policymakers."
- **Colorado** ASSIST staff and subcontractors were closely involved in the 1994 tobacco tax initiative. The first subcontractor to the state project was also the lead proponent of the tax initiative. An Administrative Law Judge ruled that Department of Health staff misused federal ASSIST funds on the campaign. The 1995 legislature has adopted a measure intended to address such activity.

Is There a "Chinese Wall" Segregating Lobbying Expenses?

ASSIST program staff assert that they do not lobby -- any lobbying is done by volunteer activists or by paid staff of coalition member organizations. The official role of the ASSIST staff may not be to lobby directly, but *staff efforts provide the framework for influencing legislators.*

ASSIST staff recruit the coalition members. Staff often draft the legislative language, or otherwise set the legislative objectives. ASSIST program funds provide "advocacy training" for volunteers, who then lobby state or local legislators. ASSIST staff trumpet these activities and the resulting legislation in quarterly reports to NCI. The NCI staff, in turn, applaud the state programs' legislative results. For instance, in May 1994, the NCI's Board of Scientific Counselors heard an update on the "intervention" phase of ASSIST: "Major increases in excise taxes have been reported in two of these states. This is expected to have an effect on tobacco sales." *Influencing state and local legislative action is clearly a top priority of the ASSIST program. And it's a questionable way to spend tax dollars.*

**THE "ASSIST" PROGRAM
DOES IT SHOW CONTEMPT FOR CONGRESS?**

Congress Has Affirmed that Federal Dollars Should Not Be Used to Influence Legislation

The Federal Acquisition Streamlining Act of 1994 disallows:

Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

Indeed, for more than ten years, the Office of Management & Budget has barred use of federal contracts or grants for lobbying at the federal or state level and for influencing state ballot measures, stating:

Use of appropriated funds for lobbying diverts scarce resources from the purpose for which the grant or contract was awarded. By permitting such a use of its funds, the government subsidizes the lobbying efforts of its contractors and grantees. This improperly distorts the political process, by favoring the political expression of some -- organizations with contracts or grants -- relative to others, who must conduct their political expression at their own expense.

Unfortunately, *lobbying is one of the express purposes of ASSIST grants.* Members of Congress have made clear that use of ASSIST funds for lobbying activities is unacceptable. In August 1992, Senators Orrin Hatch, Mitch McConnell, and Malcolm Wallop wrote to then-Secretary of Health & Human Services Louis Sullivan:

Regardless of the steps that may or may not be taken to control the use of federal funds, the record is clear that grant applications have been approved which state that federal dollars will be used to pressure state legislatures and other elected officials into enacting laws, ordinances or regulations. This practice must be stopped.

In early 1993, Representative Helen Bentley queried HHS Secretary Donna Shalala on this point and was assured, "NCI program staff will closely monitor all contract activities to ensure that Federal fiscal resources are being used appropriately and in accordance with existing Federal law and HHS policy." During this period, however, ASSIST was in a two-year planning period. *In October 1993, ASSIST coalitions entered the intervention period. Clearly ASSIST funds provide the framework for lobbying of state and local officials.*

The Next Four Years...

As programmed, ASSIST has almost four more years of "intervention" activities -- including lobbying -- scheduled. *Should ASSIST staff and activists continue to be given free rein to use federal taxpayer dollars for activities that may be - at best - wasteful and - at worst - illegal? Or is it time to ensure that federal funds are used for worthwhile purposes unconnected with lobbying?*

WHAT DO TAXPAYERS' DOLLARS BUY WITH "ASSIST" FUNDS?

A Selection of Expenses...

The **Missouri** ASSIST project spent \$311 on coffee mugs...\$750 on watercolor drawings... \$793 for plaques...as well as buying T-shirts and paying for photography and costume rental for a Smoke Free Class 2000 "graduation" ceremony. The Show-Me State's contract with HHS requires indirect costs be calculated at 39-percent of state merit employees salaries and fringe benefits -- instead of the 25-percent cap otherwise set required by NCI.

The **Massachusetts** ASSIST proposal budgeted for 49 out-of-state trips over the seven-year project. Despite the ASSIST staff's experience and "expertise" in anti-tobacco activities, the national ASSIST program apparently requires considerable top-down direction. Multiple "training" sessions were held for ASSIST staff outside their home states - an expense for travel and accommodation.

Computers are a staple purchase for ASSIST project offices. The national coordinating contract with NCI provides for on-line strategy communication among ASSIST staff.

Who Directly Benefits from ASSIST Funds?

The largest single chunk of federal ASSIST funding provides the salaries and benefits for state project directors, managers and clerical staff. In many states, these staff people are former state health department employees. In some instances, the ASSIST staff have held previous NCI contracts on tobacco control or are well-known anti-tobacco advocates. For instance, the original Project Director for **Missouri** ASSIST was Dr. Ross Brownson, a state employee and frequent federal grant recipient. One of his best known NCI research projects attempted to assess the impact of ETS on nonsmoking women in the state. His conclusions reported **no significant risk**.

ASSIST funds are also being used to compensate "experts" in tobacco control and litigation, including Richard Daynard of the Tobacco Product Liability Project, to travel around the country training staff and volunteer "advocates."

Is the ASSIST Methodology Likely to Succeed?

Although it appears that ASSIST staff actually measure their success by the number of state laws or ordinances they cause to be passed, the **experimental** basis of the program is to test whether coalition activity will cause a reduction in smoking rates.

This hypothesis has been called into question by the recently published results from ASSIST's predecessor study, the Community Intervention Trial for Smoking Cessation, known as COMMIT. The COMMIT program paired cities around the country to test whether coalition activities (now being used in ASSIST) would be effective in getting "heavy" and "moderate smokers" to quit. For instance, the COMMIT coalition pursued vending bans in Raleigh, North Carolina. *Four years and \$45 million later, the program produced no change in the quit rates of "heavy smokers" in the intervention cities compared to the national average and only a 3-percent higher quit rate among "moderate smokers."* *Should the NCI continue to allocate scarce resources on a program that replicates the strategies of a failed experiment?*

IS "POLICY INTERVENTION" THE PROPER MISSION OF THE NCI?

Research or Lobbying?

Ask the "man on the street" what the National Cancer Institute does and the answer would very likely be scientific research for a cure for cancer. But the NCI's Smoking and Tobacco Control Program is anything but that.

The goal of the STCP is to eliminate smoking and use of tobacco products, and a primary strategy is to blanket the nation with state and local laws against smoking in public or limiting sale of tobacco products. Whether it's called "policy advocacy" or "lobbying," federal taxpayer dollars are being used to influence state and local lawmakers to adopt legislation drafted or promoted by the STCP and its contractors.

The STCP was inaugurated in 1982. In its first ten years, it spent nearly \$300 million and conducted nearly 100 "trials" of smoking prevention or cessation strategies. By the late 1980's, the STCP's began to target community activism. The first in a series of "Smoking and Tobacco Control Monographs, entitled Strategies to Control Tobacco Use in the United States: a blueprint for public health action in the 1990's, presents extensive analysis of federal, state and local legislative action against smoking. A table of tobacco control activities for city or county activists includes:

- *Lobby politicians to earmark government funds for counteradvertising and to regulate tobacco ads and promotions*
- *Lobby politicians to mandate smoke-free health care facilities; mandate insurance coverage for cessation services, and premium discounts for nonsmokers; and mandate performance of tobacco control services by health departments, hospitals, and other health care facilities*
- *Lobby politicians to mandate smoking restrictions in worksites*

In May 1994, the NCI's Board of Scientific Counselors approved \$3 million over four years to continue publishing the Smoking and Tobacco Control Monographs. The newly approved series of books will "shift its orientation to place more emphasis on policy based interventions..."

Other Agencies in the Lobbying Business

NCI is not the only federal government agency to distribute tax dollars to anti-tobacco activists for use in influencing legislation. The Centers for Disease Control and Prevention has made some \$3 million available for long-term tobacco control projects in the states that did not receive ASSIST grants.

In 1993, the CDC sponsored a "Seize the Initiative" conference to train tobacco control activists in how to promote tobacco tax initiatives. ASSIST program staff and coalition activists from various states attended this conference to take campaign techniques back to their states.

The 17 ASSIST states:

Colorado
Indiana
Maine
Massachusetts
Michigan
Minnesota

Missouri
New Jersey
New Mexico
New York
North Carolina
Rhode Island

South Carolina
Virginia
Washington
West Virginia
Wisconsin

Project ASSIST

Background:

The American Stop Smoking Intervention Study (ASSIST) is an eight-year collaborative effort between the National Cancer Institute (NCI) and the American Cancer Society (ACS). ASSIST was originally scheduled to expire in FY 1998, but was recently extended for an eighth year (FY 1999). Funneling money through state health departments, ASSIST creates grassroots anti-tobacco coalitions that develop and implement anti-tobacco programs. The goal of the program is to reduce adult smoking to 17% by 1998 and to reduce youth smoking initiation by 50% by the year 2000.

Funding and cost to the taxpayer:

ASSIST is a discretionary program funded by NCI, which in turn is funded through the Labor, HHS, and Education appropriations bill. Approximately \$1 out of every \$100 destined for NCI each year goes to ASSIST. It is estimated that the total cost to the taxpayer will be \$135 million at the end of the first seven years; funding amounts for the eighth year are unclear. \$20 to \$25 million will be spent on ASSIST in FY 1998 alone. The American Cancer Society provides additional resources in the form of funding, staff, and educational materials. Their contribution is estimated at \$30 million over the course of the project. With budgets for legitimate scientific research at NCI already tight, the use of taxpayer dollars to create and oversee grassroots, anti-tobacco lobbying coalitions is questionable.

ASSIST states and activities:

17 state public health departments have been awarded ASSIST grants. Those states are:

Colorado	Indiana	Maine	Massachusetts
Michigan	Minnesota	Missouri	New Jersey
New Mexico	New York	North Carolina	Rhode Island
South Carolina	Virginia	Washington	Utah
Wisconsin			

ASSIST is, to a great degree, a nationwide anti-tobacco lobbying program financed by federal taxpayers. ASSIST spends federal tax dollars training and mobilizing anti-tobacco activists. In several ASSIST states, funds are spent on salaries for state and local project directors and staff. ASSIST funds are also used to compensate "experts" in tobacco control and litigation to travel the country training staff and volunteer advocates. Improper activities have occurred most notably in Colorado, Minnesota, and Washington:

Colorado

In 1994, the Colorado Department of Health used ASSIST funds to establish and operate a coalition that organized an effort to increase tobacco taxes by 50 cents through the ballot initiative process. An Administrative Law Judge ruled that the Department of Health misused ASSIST funds when it created this coalition. The decision was later overturned on a technicality.

Minnesota

ASSIST funds in Minnesota have been used primarily to lobby local governments to enact restrictions on the sale of tobacco products and bans on the use of tobacco products in public places.

- Over 120 local governments have been targeted for passage of anti-tobacco ordinances.
- Minnesota ASSIST has directly lobbied members of the legislature to enact tobacco tax increases, smoking restrictions, and sales restrictions.

Washington

Changing public policy is an important part of Washington ASSIST activity. Washington ASSIST created a "Policy Task Force" which the chairman of the coalition called "the heart of our coalition," according to documents obtained through Freedom of Information Act (FOIA) requests. In addition:

- Washington ASSIST has held training seminars on lobbying.
- Washington ASSIST has directly lobbied the legislature and the State Department of Labor and Industry as it attempted to enact a statewide workplace smoking ban.
- Washington ASSIST has stated its intention to lobby for an increase in the tobacco tax, and conducted survey research and held discussions about the feasibility of launching a statewide initiative aimed at increasing that tax.
- Washington ASSIST and local affiliated coalitions paid for lobbying expenses and activities at both the state and local level.
- A complaint relating to the illegal use of public funds by Washington ASSIST has been brought by a Washington tobacco retailer and is pending before the State Public Disclosure Commission.

Lobbying Abuses Under Project ASSIST

The American Stop Smoking Intervention Study for cancer prevention (ASSIST) is a federally funded, collaborative effort between the National Cancer Institute and the American Cancer Society, along with state and local health departments and other voluntary organizations, to develop and implement comprehensive tobacco control programs in seventeen states, including Virginia.

- **While Project ASSIST purports to be about “education” and “media advocacy,” many of its objectives are legislative in nature, and lobbying is its favorite means of achieving those goals.** According to Virginia ASSIST’s Comprehensive Tobacco Control Plan, “policy change. . . can be accomplished most effectively through expansive legislation. . .” Virginia ASSIST’s goals include increasing tobacco taxes, and restricting public smoking and advertising.
- **Despite the fact that two Secretaries of Health and Human Services (HHS) have denied that the purpose and function of Project ASSIST is lobbying, the evidence uncovered via the Freedom-of-Information Act and other sources is overwhelming.** As Secretary of HHS Donna Shalala wrote to Rep. Helen Bentley (R-MD) in 1993, “It is neither the design nor the intent of ASSIST to use Federal funds to support lobbying at the state and local levels. . . .” Apparently Secretary Shalala’s message has not reached the state ASSIST coalitions:
- Virginia ASSIST reported in 1993 that it had “[j]oined with other smoking control advocates to successfully urge the Governor to veto the smokers [sic] rights legislation passed by the General Assembly.”
- N.J. ASSIST co-sponsored an advertisement in the July 1994 edition of the *New Jersey Casino Journal* which encouraged citizens to call Members of the House Commerce Committee to express support for “The Smoke Free Environment Act.”
- The minutes of a 1992 Michigan ASSIST meeting note that:

The original agenda . . . was set aside and the meeting was devoted to leaving messages of support regarding an increased tobacco excise tax with the Governor and legislative leaders The 27 TFMAC [Tobacco-Free Michigan Action Coalition, the statewide ASSIST coalition] members at the meeting recessed to car pool to the state Capitol; there they engage [sic] key members of the Governor’s staff, legislators, and legislative staff to explain TFMAC support of the tax increase As result [sic] of tax advocacy efforts, bills have been introduced in the house and senate.

These are only a few of the many examples of ASSIST lobbying abuses.

Publicly, Secretary Shalala and Secretary Louis Sullivan have stated that there is no room for lobbying in ASSIST. Yet, communications between ASSIST staff within NCI and the state ASSIST directors appears to contradict such public admonitions.

- For example, on September 15, 1994, Donna Grande, ASSIST Project Officer, and Theresa Shroff, a Contracting Officer for ASSIST wrote Dick Welch, the ASSIST Project Director in Minnesota. They complain:

Finally, there appears to be little commitment from ASSIST in supporting an excise tax campaign. If you plan to be successful in this area more support will be needed than the \$30,000 in kind contribution from the ACS [American Cancer Society]. A clear delineation or recognition of how the local coalitions could be mobilized to support a tax increase and how ASSIST could support these efforts should be made.

Project ASSIST and Claims of Success

Recently NCI has indicated that it will extend Project ASSIST an additional year, despite the fact that the program was never authorized by Congress. Anti-tobacco activists have claimed that the program has achieved great success, although David Abrams, a member of the ASSIST Scientific Advisory Committee noted recently in The Cancer Letter that “the main results don’t look too exciting.” Indeed.

- Project ASSIST’s goal is to reduce smoking rates in ASSIST states to below 15 percent. According to Centers for Disease Control (CDC) data (the only federal data which breaks rates out by state) on smoking rates, however, only one state has even broken the 20 percent barrier, New Jersey. According to the CDC data, New Jersey’s smoking rate went from 20.1 percent in 1992 (the first year of ASSIST) to 19.2 percent in 1995. In fact, when CDC smoking rates in ASSIST states are compared from 1992 to 1995, the results are hardly impressive -- a .5 percent reduction in smoking rates.
- ASSIST backers claim that smoking rates in ASSIST states are 10 percent below those in non-ASSIST states. According to The Cancer Letter, they cite “[u]npublished data . . . [disclosed] in a closed session.” For the sake of argument, when changes in smoking rates (as measured by CDC, 1992 - 1995) in ASSIST states are compared with those in non-ASSIST rates, the differences are minuscule -- a .5 percent reduction in ASSIST states versus a .2 percent increase in non-ASSIST states.
- It is possible that ASSIST is using state tax-paid sales data to create their success story. This is highly misleading. State tax-paid sales data is not indicative of consumption. State tax-paid sales data only indicates how many packs sold in a given state were taxed in that state. As has been widely documented by the press and the federal government, high state taxes can often create an incentive for consumers to cross-borders to purchase cigarettes from low-tax neighboring states, or Indian reservations, where state taxes are not applied. In many cases, organized smuggling has been involved.

Michigan, an ASSIST state, is a perfect example. Michigan has seen a 21 percent reduction in state tax-paid sales since it raised taxes in 1994 (from 25 cents per pack to 75 cents per pack). Yet, using CDC data for comparison purposes, smoking rates in Michigan actually went up slightly between 1992 and 1995. Neighboring states appear to have taken up the slack. Since the tax increase, low-tax states nearby have seen sales rise dramatically: Indiana (up 9.2 percent); Kentucky (up 9 percent); Missouri (up 6 percent); Ohio, (up 2 percent). Contraband cigarettes have filled the void as well. As the *Detroit Free Press* noted, “Smugglers Win.”

As the Michigan example highlights, state tax-paid sales can not be assumed to give an accurate picture for cigarette consumption.

WHAT HHS TELLS THE ASSIST STAFF...

In 1994, Congress passed the Federal Acquisition Streamlining Act (FASA), adding an explicit, statutory prohibition on use of federal funds for lobbying of state and local legislators. In January 1996, NCI's ASSIST contracting officer wrote to all state ASSIST staff:

"Since the ASSIST (prime) contracts were awarded in September 1991, it is clear that the new cost principles do not apply to NCI's contracts with the ASSIST states. A question remained concerning the applicability of the new cost principles to subcontracts, including subcontracts executed on or after October 1, 1995. The Office of General Counsel, Department of Health and Human Services, has advised that the language that exists in the FASA statute supports the conclusion that such subcontracts are not covered by the amendment..."

"You are advised to continue to refer to the March 1993 Restrictions on Lobbying and Public Policy Advocacy by Government Contractors: the ASSIST Contract document."

This document includes such advice as:

"...non-profit and for-profit entities may use federal funds to...conduct direct or indirect lobbying campaigns directed at local government legislative processes, such as town or city councils."

"This may also include efforts to influence members of Congress or state legislatures to perform activities that do not constitute law-making, such as conducting legislative oversight of administrative law enforcement activities."

"State public health agencies are likewise free to lobby the legislative branch at the state or local level, and to attempt to influence initiatives or referenda."

"Examples of Permissible Policy Advocacy Activities Under OMB Circular A-122 [applies to non-profit organizations receiving ASSIST subcontracts]...Persuade local city or town councils to adopt smoke-free laws or bans on vending machines in their jurisdictions...Urge the public to contact a local elected or appointed official about the need to enact new or stronger tobacco control laws..."

“Examples of Permissible Policy Advocacy Activities Under OMB Circular A-87 [applies to state and local governments receiving ASSIST contracts or subcontracts]...Petition or urge state legislators to implement increases on tobacco taxes or to enact clean indoor air legislation, or encourage the public to do so...”

After receiving NCI’s 1996 communiqué, the Director of the New York State ASSIST program wrote to Coalition Project Directors and Contacts. The letter includes:

“I am happy to tell you that a final interpretation of the regulations by the Department of Health and Human Services has determined that contracts awarded prior to October 1, 1995, are not subject to the FASA and, therefore, these regulations do not apply to contractors or subcontractors participating in the ASSIST program.”

The New York Director’s letter reviews costs allowable under NCI’s guidance:

“Costs associated with communicating with the Executive branch regarding regulations, such as the proposed FDA regulation on tobacco product marketing, are reimbursable.”

“Costs associated with lobbying with regard to local (county, city or town) legislation are allowable under these costs principles...Contract funds may also be used to urge members of the general public to support such legislation and to communicate their support to local officials.”

“With regard to lobbying state legislators and the Governor, coalitions fall into two different groups, depending on what type of agency holds the subcontract. If the subcontracting agency of record is a county health department, a hospital or an educational institution (such as BOCES), the coalition may use contract funds to lobby state officials and to urge members of the general public to do so.”

The New York ASSIST letter concludes:

“This news should encourage all coalitions to redouble their policy advocacy efforts. All coalitions may use contract funds to appropriately advocate for tobacco control at the local level, and most may do so at the state level. Local legislation, regulation and voluntary policies are the cornerstone of our effort to eradicate tobacco-caused disease. Your vigorous advocacy for tobacco control is the key to our success.”