

UNITED STATES OF AMERICA

**TOBACCO
INDUSTRY
INTERFERENCE
INDEX
2021**



ASH

ACTION
ON SMOKING & HEALTH

Dedicated to ZERO Tobacco Deaths

“

There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.

– Guiding Principle 1 of the World Health Organization Framework Convention on Tobacco Control (FCTC) Article 5.3.

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ABOUT ASH

Action on Smoking and Health (ASH) is the nation's oldest anti-tobacco organization. ASH's vision is to end the worldwide disease, damage and death caused by the tobacco industry. Over its fifty plus years, ASH has consistently pioneered new ways to combat tobacco use, including negotiating the global anti-tobacco treaty (WHO Framework Convention on Tobacco Control), incorporating tobacco into the UN development agenda, and pushing for public health exemptions in trade agreements.



For nearly 15 years, ASH served as the secretariat for the Framework Convention Alliance, a global coalition of over 500 anti-tobacco organizations. Today ASH works domestically and globally on initiatives that include:

- Pushing for legal liability for the tobacco industry, including criminal liability for tobacco executives;
- Changing social norms to end the age of the cigarette;
- Developing and releasing publications and research documents for tobacco control best practices; and
- Demanding respect for basic human rights, and protections against the tobacco industry and their products.

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Global Center for
Good Governance
in Tobacco Control

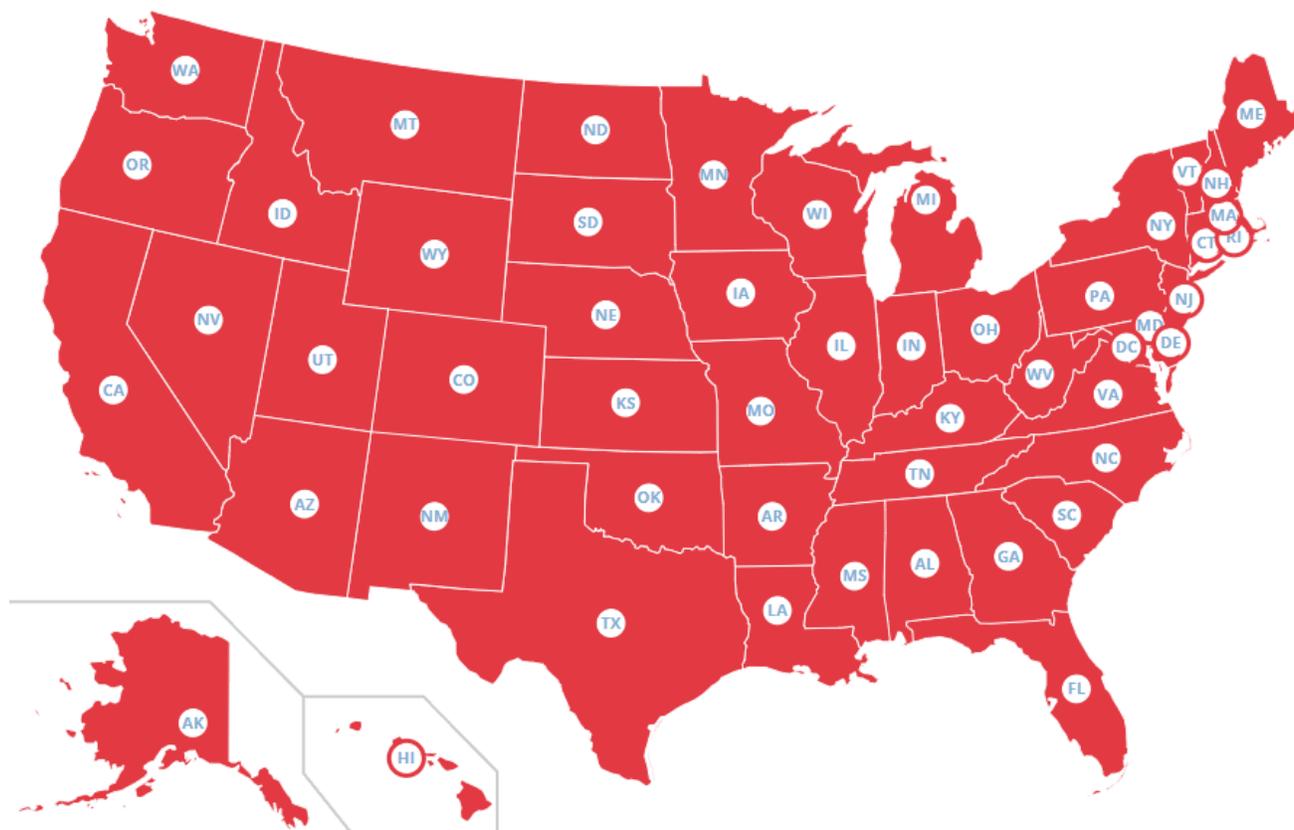


A GLOBAL
TOBACCO
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WATCHDOG

LOBBYIST TRACKER

U.S. Tobacco Lobbyist and Lobbying Firm Tracker

<https://ash.org/tobacco-money>



The ASH Lobbyist Tracker shines a light on publicly-available registrations of lobbyists or lobbying firms registered on behalf of a tobacco company, tobacco industry trade association, or tobacco retail outlet.

At the state level for 2021, a total of 994 lobbying registrations for the tobacco industry were identified, involving at least 918 lobbyists or lobbying firms. At the federal level, the tobacco industry has 236 lobbyists registered in 2021, 78.39% of whom are former government employees.

Allowing tobacco companies to be involved in the regulation of their own products not only undermines public health but also violates the global standards for tobacco regulation laid out in the WHO Framework Convention on Tobacco Control (FCTC) Article 5.3.

Tobacco companies must be actively excluded from policymaking, and in order to do that, advocates must first know who they are. The ASH Lobbyist Tracker shows public health advocates who their allies are in public health and who cannot be trusted to put forth good policy.

***The World Health
Organization Framework
Convention on Tobacco
Control (FCTC) Article 5.3
legally obligates Parties to the
treaty “to ensure that efforts to
protect tobacco control from
commercial and other vested
interests of the tobacco
industry are comprehensive
and effective.”***

INTRODUCTION

Cigarette smoke is responsible for one in every five deaths in the United States, which accounts for over 480,000 deaths annually in the US.¹ The eruption of the COVID-19 pandemic further exacerbated tobacco's strain on public health and caused 375,000 deaths in 2020.²

People who smoke cigarettes are more vulnerable to respiratory illnesses like COVID-19,³ and youth who have used both conventional and electronic cigarettes in the past 30 days are 6.8 times more likely to be diagnosed with COVID-19 than their tobacco-free peers.⁴ A history of smoking doubles the risk of COVID-19 disease progression and increases the risk of critical or severe COVID-19 and in-hospital mortality.^{5,6} The tobacco industry has exacerbated the public health crisis while taking advantage of this pandemic to promote their deadly products and bolster Big Tobacco's public image through corporate social responsibility schemes.

To combat the tobacco epidemic, the most powerful tool is public policy. However, effective tobacco control and public health policies are antithetical to tobacco industry interests, and reducing tobacco use through public policy is systematically challenged by Big Tobacco. Tobacco industry interference is the greatest barrier to protecting public health from the dangers of tobacco use.⁷ According to Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), States should protect public health policies on tobacco control from industry interference.

While the United States is not a party to the WHO FCTC, it did participate in the negotiations and even signed the treaty in

2004. Although not legally bound by the WHO FCTC, its signature shows an intention to ratify the treaty and carries with it the duty not to undermine the treaty's objective and purpose.

In the United States, like many other countries, Big Tobacco thrives working behind the scenes through industry front groups, special relationships with lawmakers, and industry lobbyists embedded in the government. However, illuminating Big Tobacco's modus operandi through accurate reporting of instances of tobacco industry interference raises awareness among key decisionmakers and reveals industry tactics for public scrutiny. It also holds lawmakers and regulatory actors accountable for their interactions with the industry. For this reason, exposing tobacco industry interference is critical.

To this end, the Global Tobacco Industry Interference Index (Global Tobacco Index) was formulated. The aim of the Global Tobacco Index is to assess and systematically raise awareness of tobacco industry interference in policymaking through a standardized index that can be compared across countries. **The US report quantifies the extent of tobacco industry interference in US policy throughout 2020 across 20 indicators to assess the level of implementation of Article 5.3 of the WHO FCTC.**

The research was conducted using publicly available information from January through December of 2020. The five most circulated news sources, the top 15 government agencies involved in tobacco control, and the websites of the five most prevalent tobacco industries in the US were all systematically searched for keywords.

Instances of tobacco industry interference were gathered and sorted into each of the 20 indicators. Each instance of interference was scored from zero (no interference) through five (high interference). These scores were averaged and systematically adjusted within each indicator then totaled for a final score out of 100. The higher a country's final score, the greater the level of tobacco industry interference in public policy.

This is the third year of using the Global Tobacco Index to quantify tobacco industry interference in public policy in the United States. In 2018, the country scored 72, reflecting a high level of interference, placing the country among the worst performing countries. In 2019, the United States garnered an overall score of 66, indicating some progress but still an unacceptably high level of interference. **This year the United States regressed with an adjusted score of 76. The U.S. received a raw data score of 72 this year, however, this score was adjusted to reflect the STOP Global Index applied penalty rating for countries that are not Party to the WHO FCTC** (Please see Indicator 1.4 on page 17 of this report). This increase was in large part due to the COVID-19 pandemic, which created new avenues for policy interference while simultaneously inhibiting tobacco control advocacy. In October 2021, the Federal Trade Commission (FTC) reported that for the first time in 20 years, annual cigarette sales increased in 2020.

The financial might of the tobacco industry has greatly contributed to its ability to interfere in health policy over the years. The tobacco manufacturing industry has a market value in USD of approximately

\$48 billion in the US.⁸ Key players in the US tobacco industry include Altria,⁹ Philip Morris USA,¹⁰ Reynolds American Inc.,¹¹ ITG Brands (Imperial Brands),¹² Japan Tobacco International,¹³ and Vector Group.¹⁴ These companies, which have historically focused on combustible products, have also expanded their interests into non-combustibles such as JUUL Labs, Inc., which is partially owned by Altria.

In the United States, there were three significant limitations to undertaking the Index. First, the COVID-19 pandemic disrupted in-person tobacco control advocacy, so information from local advocates was sparse in comparison to previous years. In particular, data collection on indicators two and eight were directly inhibited by the transition to a virtual environment.

Second, tobacco control policy in the US is governed at the federal, state, and local levels. These widespread points of entry into the policy process allow the industry to remain present at all levels of government. It was beyond the scope of this project to undertake research in every jurisdiction. The data collected is a broad sample of tobacco industry interference rather than a comprehensive tally.

Third, many government-industry interactions forbidden under the WHO FCTC are constitutionally protected in the US. In particular, industry lobbyists do not need to hide their efforts to influence policy, which has provided more data for the US in this area. These laws are unlikely to change in the coming years; therefore, this report focuses on illuminating instances of industry interference and educating policymakers.

SUMMARY FINDINGS

1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT (Indicators 1-4)

In the United States, the tobacco industry directly interferes with the policy process. The tobacco industry spent USD \$28,156,312 on federal lobbying in 2020, and 78.7% of industry lobbyists were former government employees.¹⁵ The government often accepts, supports or endorses offers of assistance from the tobacco industry in developing public health policies. In 2020 President Trump (R) along with US senators, including Senator Mitt Romney (R-Utah), met with the tobacco industry for input on e-cigarette flavor bans and designing T21 legislation.^{15,17}

Since 2009, the US Food and Drug Administration (FDA) has been responsible for regulating tobacco product manufacturing, marketing, and sales.¹⁸ However, the FDA's structure mandates the presence of tobacco industry representatives. The FDA Tobacco Products Scientific Advisory Committee—which advises the Food and Drug Administration on the public health consequences and safety of tobacco products—includes three non-voting members representing the tobacco manufacturing industry, tobacco growers, and small business tobacco manufacturing industry, respectively.¹⁹

2. INDUSTRY CSR ACTIVITIES (Indicator 5)

During the COVID-19 pandemic, there was a dramatic increase in corporate social responsibility (CSR) activity. Not only did the tobacco industry voluntarily donate to public health measures in an attempt to bolster its public image, but it took advantage of the

COVID-19 pandemic to tout false promotions of public health and deflect criticisms for unethical practices.

In 2020, the tobacco industry donated USD \$1,546,525 to federal congressional candidates: 307 current or potential House members and 68 current or potential Senators received this funding from Big Tobacco. Tobacco companies also donated to candidates, committees, and ballot initiatives at the state and local level in 2020.⁷⁰ These donations were nonpartisan and spanned all levels of government.^{20,21}

Government officials used the pandemic to call upon the tobacco industry to provide charitable donations.²² In response, the industry donated ventilators and launched charity campaigns during the 2020 pandemic. Vape manufacturers and retailers have donated bottles of hand sanitizer to police and fire departments nationwide.

3. BENEFITS TO THE INDUSTRY (Indicators 6-7)

Even after tobacco control policies have been passed, the industry often negotiates for extended periods that delay or postpone common-sense public health policy. In 2020, a judge in the US District Court for the District of Maryland mandated that e-cigarette manufacturers submit their products to the FDA for review by May 12, 2020. However, industry representatives were able to successfully obtain a 120-day extension from the FDA for the court-mandated submission by arguing that COVID-19 impacted their evaluation process.²³

Big Tobacco is also a recipient of special government benefits due to their aggressive lobbying. In Oklahoma, for example, state and local sales tax is assessed but is not applied to tobacco products,²⁴ and 12 states have laws or court decisions that pre-empt local ordinances from further regulating smoking at worksites or hospitality establishments.²⁵ Lawsuits filed by Big Tobacco were able to prevent the implementation of graphic warning labels on cigarettes—first promulgated in 2009—until at least 2022.²⁶ Also on the federal level, the FDA’s ban on flavored tobacco products exempted tobacco- and menthol-flavors. It also excluded disposable vaping products that are popular with minors and the tank-based systems in vape shops.²⁷

During the COVID-19 pandemic, the tobacco industry benefitted from a special government stimulus that was intended to promote essential industries. Tobacco farmers profited from the USDA’s Coronavirus Food Assistance Program, which provided USD \$100,000,000 in aid to tobacco farmers.²⁸

4. UNNECESSARY INTERACTION (Indicators 8-10)

The COVID-19 pandemic obstructed the tracking of social meetings between tobacco company representatives and government officials. However, the industry still provided voluntary enforcement programs such as “We Card” to reduce the enforcement of existing laws and improve their public image.²⁹ Additionally, the US government has entered into agreements with the tobacco industry, including the Master Settlement Agreement (MSA). The MSA was a legal settlement rather than a voluntary agreement. Although the MSA created important prohibitions

and funding for tobacco control efforts, it allows the industry to remain in business.³⁰

5. TRANSPARENCY (Indicators 11-12)

The FDA is the primary body governing tobacco, and as such, it has an assortment of disclosure rules. The FDA Scientific Advisory Committee discloses meeting agendas, materials, minutes, and webcast recordings of its proceedings. However, other FDA interactions with the industry are subject to inconsistent disclosure. The agency does not publish meeting minutes with the industry,³¹ and its dockets can remain confidential.³²

Other government agencies including the Alcohol and Tobacco Tax and Trade Bureau and the International Revenue Service mandate industry disclosure of certain information.^{33,34}

Under the Lobbying Disclosure Act of 1995, all lobbyists, including tobacco industry lobbyists, working at the federal level must register with the federal government.³⁵ All 50 states also require some form of lobbyist registration.³⁶

6. CONFLICT OF INTEREST (Indicators 13-15)

The US Federal Elections Commission does not prohibit contributions from the tobacco industry. The US does prohibit corporations from donating; however, Big Tobacco uses Political Action Committees (PACs) and other eligible groups in order to bypass this prohibition.³⁷

The industry also employs former US government officials. Most notably, the former lead toxicologist at the FDA’s Center for Tobacco Products, Roxana Weil, and a seasoned former FDA employee who specialized in inspecting tobacco manufacturers, Gabriel Muniz, now occupy upper level positions at JUUL Labs Inc.³⁸

In 2020, the tobacco industry spent USD \$28,156,312 on lobbying and about four out of five (78.7%) tobacco industry lobbyists were former government employees.¹⁵ Notably, three of former Senate majority leader Mitch McConnell's (R-Kentucky) former high-ranking staff were tobacco industry lobbyists this year.^{39,40} On the state level, many current and former government officials had ties to the tobacco industry.⁴¹

Former President Trump exposed his conflict of interest with the tobacco industry when he circumvented his own 2017 ethics executive order, "Ethics Commitments by Executive Branch Appointees." President Trump appointed Brian Ballard, a current lobbyist for British American Tobacco (BAT), to the Board of Trustees of the John F. Kennedy Center for the Performing Arts, giving the lobbyist direct access to Mr. Trump and subsequently, President Biden as a multi-year federal appointee.⁴²

7. PREVENTATIVE MEASURES

(Indicators 16-20)

Records of the interaction between the government and the tobacco industry are not always publicly available. For example, all interactions with the FDA are not subject to public disclosure.

When government officials interact with the tobacco industry, there is no broadly prescribed code of conduct. Furthermore, like other lobbyists, tobacco industry representatives can have informal interactions with lawmakers without disclosing the interactions to the public.⁴³

The tobacco industry must report marketing expenditures, lobbying expenditures and revenues, and some political contribu-

tions.^{35,44} Under the Family Smoking Prevention and Tobacco Control Act (TCA), the FDA has the authority to regulate the manufacturing, marketing, and distribution of tobacco products.³⁴ Additionally, the Alcohol and Tobacco Tax and Trade Bureau (TTB) requires permits to authorize tobacco product manufacturers, importers, warehouse proprietors, and other tobacco industry businesses for operations in the US.³³ However, philanthropic activities are not reported unless tobacco companies elect to share these activities.

The US does not raise awareness within its departments on policies relating to the FCTC Article 5.3 Guidelines since it has not ratified the FCTC. There is no policy that disallows the acceptance of ALL forms of contributions, gifts, offers of assistance, policy drafts, or study visit invitations offered to the government, its agencies, officials, and their relatives from the tobacco industry. US lobbying laws disallow gifts or financial assistance from lobbyists to an elected official; however, tobacco lobbyists can still legally provide campaign contributions to these officials.⁴⁵

RECOMMENDATIONS

1. Raise awareness of the WHO FCTC and its provisions regarding tobacco industry interference along with its applicability to all 50 states.

The United States participated in the negotiations and signed the WHO FCTC in 2004. However, it remains a non-party to the treaty. Thus, state and federal tobacco control advocates should raise awareness of the importance of Article 5.3 of the WHO FCTC, as it forbids tobacco industry interference in policymaking. While constitutional protections of the freedom of speech prevent the US from fully implementing Article 5.3, by signing the treaty, the country obligated itself not to undermine its goals. Furthermore, the Department of Health and Human Services has indicated that the US is compliant with the WHO FCTC. Therefore, raising awareness of Article 5.3 of the WHO FCTC on the state and federal level can serve as a powerful advocacy tool to combat tobacco industry interference.

2. Strengthen and standardize revolving door prohibitions.

Lobbying is constitutionally protected, and a total ban is extremely unlikely. However, implementing a longer timeframe between when a public official or employee leaves public service and begins lobbying would prevent or lessen interference from regulated industries.

3. Close loopholes in executive branch ethics guidelines.

Former executive branch appointees are prohibited from working as lobbyists for five years after their service. However, an “appointee” is narrowly defined as full-time, non-career individuals. Also, there is no restriction on current and former industry representatives serving as federal appointees. Closing these loopholes would serve to prevent commonly-occurring conflicts of interest related to past employment.

4. Prevent conflicts of interest in the US Food and Drug Administration drug approval process.

When approving new drugs, such as tobacco products that contain nicotine, the FDA often relies on industry-conducted research.⁴⁵ The tobacco industry has historically manipulated the scientific process to distort findings and their studies cannot be trusted. Only independent studies can reliably inform public health policies.

5. Adopt an official code of conduct for public officials.

Public office is a public trust. The principal objective of each public official is the welfare of the people. Hence, an official code of conduct should be adopted to prevent or lessen interference via gifts and contributions from regulated industries. Strict rules against conflict of interest and complete transparency in all government-tobacco industry interactions, both formal and informal, should be implemented.

6. Educate lawmakers on industry interference.

Advocates can inform lawmakers of tobacco industry interference through fact sheets and state-specific industry quotes. They can share key findings with elected officials from internal documents that came as a result of discovery in legislation and legal cases and garner the political will to correct all industry-supported laws by leveraging media, such as earned media.

7. Mandate philanthropic donation disclosure.

The US government does not mandate reporting of philanthropic activities by companies. This exemption allows the tobacco industry to donate to social welfare organizations that contribute industry funding to political action funds, effectively hiding these Big Tobacco monies from the public.

In addition to these recommendations, guidance from the 2020 Tobacco Industry Interference Index still applies and can be found here:

<https://ash.org/2020index/>



RESULTS AND FINDINGS

Indicator Number and Name		
Indicator Sub-Number	Recommendation	Level of Interference
Contextual Information		

INDICATOR 1: Level of Industry Participation in Policy-Development

01 *The government⁴⁷ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry⁴⁸ in setting or implementing public health policies in relation to tobacco control.⁴⁹ (Rec 3.1)*  **5**

In 2020, the tobacco industry spent USD \$28,156,312 on lobbying and 78.7% of industry lobbyists were former government employees.¹⁵ Much of the industry’s lobbying efforts were directed at preventing flavor bans and protecting electronic cigarette products. Big Tobacco’s 2020 lobbying strategy aimed to weaken public health legislation, delay policy implementation,²³ and pre-empt stricter local tobacco control policies.²⁴  **4**

In California, SB 793, which bans the sale of flavored tobacco products, passed the legislature with bipartisan support, yet an industry backed coalition used misleading tactics to qualify the law for a referendum in November 2022.⁵⁰ New York passed similar legislation, overcoming weakened enforcement capacity and a lawsuit led by the Vapor Technology Association, which represents businesses selling e-cigarette products.¹⁶ The new legislation prohibits all vapor products in flavors other than tobacco, including menthol.⁵¹ New Hampshire attempted a flavor ban on all flavored tobacco products, except for menthol, but Governor Chris Sununu (R-New Hampshire), who receives funding from the tobacco industry, refused to endorse this legislation.⁵² The bill was ultimately tabled in the Senate.⁵³  **3**

In an attempt at regulating e-cigarettes, the FDA accepted scientific research for review from the tobacco industry.^{46,54} When approving new drugs, such as tobacco products that contain nicotine, the FDA relies on industry-conducted studies.⁴⁶ Through this framework, Altria received FDA approval to sell its heat-not-burn IQOS system.⁵⁵  **2**

JUULCEO K.C. Crosthwaite testified before the House Subcommittee on Oversight & Investigations on “Vaping in America: E-Cigarette Manufacturers’ Impact on Public Health” in February.  **1**

 **0**

His testimony referenced their FDA submission of JUUL-sponsored research, suggesting vaporized tobacco products would help current cigarette users quit and benefit public health.⁵⁶ Reynolds American CEO Ricardo Oberlander, NJOY CEO Ryan Nivakoff, Logic President Jerry Loftin, and Fontem U.S. President Antoine Blonde were also called as witnesses at the hearing.⁵⁷

The US Food and Drug Administration (FDA) took inadequate action on flavored tobacco products in January, banning all flavors except tobacco and menthol flavored products.⁵⁷ The ban only applies to cartridge-based e-cigarettes, excluding disposable vaping products that are popular with minors and the tank-based systems in vape shops.⁵⁸ The Trump Administration pursued these weak regulations and T21 legislation after the President, the Secretary of Health and Human Services, Alex Azar, and prominent senators met with tobacco industry representatives, accepting vaping industry polling data suggesting political ramifications of stronger action.^{17,59} The vaping industry's "We Vape, We Vote" grassroots lobbying campaign also influenced the President's decision.⁶⁰ Reynolds American, the second-largest cigarette brand in the US,⁶¹ praised the T21 and flavor ban laws as a "positive step."⁶²

When a subsequent menthol ban passed the House of Representatives to strengthen the new flavor regulations, President Trump threatened a veto, and Senate Majority Leader Mitch McConnell (R-Kentucky), who received USD \$74,224 from the tobacco industry in the 2020 election cycle,⁶³ did not bring the bill up for a vote.⁶⁴

02 *The government accepts, supports or endorses policies or legislation drafted by or in collaboration with the tobacco industry. (Rec 3.4)*

-  5
-  4
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-  2
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-  0

During the COVID-19 pandemic, Big Tobacco likely was more successful in drafting and passing their legislation, as many tobacco control advocates could not meet with legislators in person. An inability to meet in person also prohibited advocates from successfully tracking instances of legislation drafted by and in collaboration with the industry.

In Utah, multiple bills drafted to regulate e-cigarettes failed in committee except for legislation drafted by Representative Jon Hawkins (R-Pleasant Grove) in collaboration with the vape industry. His bill carved out flavor exemptions and implemented low vape taxes. The legislation concerned many Utah representatives, as it will not immediately prevent youth vaping, especially because the legislation's grandfathering language permits a two-year grace period for vape shop compliance.⁶⁵

According to tobacco-control advocates at the American Lung Association, in Colorado Philip Morris USA negotiated language in a tobacco tax ballot measure with state government officials. The resulting ballot measure was acceptable enough for industry representatives that they elected not to oppose it.⁶⁶

03 *The government allows/invites the tobacco industry to sit in government interagency/multi-sectoral committee/advisory group body that sets public health policy. (Rec 4.8)*  5
 4

Since 2009, the Food and Drug Administration (FDA) has been responsible for regulating tobacco product manufacturing, marketing, and sales.¹⁸  3

The FDA Tobacco Products Scientific Advisory Committee advises the Commissioner of Food and Drugs on the public health consequences and safety of tobacco products. Comprised of 12 members, the Committee includes nine voting members from the medical or scientific field. The remaining three non-voting members are identified with one representative each for the following tobacco industry interests: tobacco manufacturing industry, tobacco growers, and small business tobacco manufacturing industry.¹⁹  2
 1
 0

04 *The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG)⁶⁸ (Rec 4.9 & 8.3)*  5
 4
 3

The US is not a Party to the WHO FCTC  2

**The USA scored 0 on this Indicator along with other non-Parties to the WHO FCTC such as Switzerland, Indonesia, Argentina, and the Dominican Republic. The U.S. raw score of 72 was divided by the total number of applicable Indicators (95 out of 100 for non-Parties) then multiplied by 100 ((n/95)*100). Please visit <https://globaltobaccoindex.org/> for more details.*  1
 0

INDICATOR 2: Industry CSR Activities

05 *(A) The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2)*  5
 4

(B) The government (its agencies and officials) receives contributions⁶⁹ (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)  3
 2

In 2020, the tobacco industry donated USD \$1,546,525 to federal congressional candidates: to 307 potential House members and 68 potential senators.²¹ During the 2020 presidential race, President Trump received USD \$92,923 and President Biden received USD \$92,069 from tobacco industry PACs and individual contributions of over USD \$200 associated with the tobacco industry.⁷⁰ Alone, Reynolds American donated USD \$16,229,475 spread over 700 donations to candidates, committees, ballot initiatives, and PACs.⁷¹ These donations were nonpartisan and spanned all levels of government.⁷¹  1
 0

The tobacco industry often employs corporate social responsibility (CSR) schemes to distract

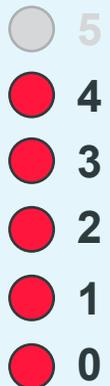
from the reality that tobacco-related diseases kill one person every 4.5 seconds.⁷² The COVID-19 pandemic cultivated an ideal environment for the industry to bolster its reputation, promulgate false health claims, and deflect attention for unethical practices.

During the COVID-19 pandemic, government officials have called upon the tobacco industry to provide charitable donations to certain localities. Governor Ralph Northam (D-Virginia) asked tobacco companies to supply respirator masks in the United States.²² Altria committed USD \$1 million in COVID relief in Richmond, Virginia and other regions where its manufacturing occurs. The industry has donated ventilators and launched charity campaigns during the 2020 pandemic. Vape manufacturers and retailers have donated bottles of hand sanitizer to police and fire departments nationwide.²⁰

These ostensibly helpful activities were a façade to garner trust between the tobacco industry and government officials during a global health emergency. If the industry wanted to support government efforts to lessen the impact of the COVID-19 pandemic, it would have ceased production of cigarettes, which are associated with more severe disease and death from COVID-19.⁷³

INDICATOR 3: Benefits to the Tobacco Industry

06 *The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)*



The US government often accommodates requests from the tobacco industry that delay or postpone common-sense public health policy.

In 2019, the US District Court in Maryland mandated that the FDA require all e-cigarette manufactures to submit their products for federal review by May 12, 2020. After industry representatives argued that the COVID-19 pandemic delayed necessary scientific research for the submission, they requested a 180-day extension from the FDA. The FDA partially granted this request by granting a 120-day extension. The tobacco industry's request was granted.²³

The FDA also attempted to close a loophole that allowed disposable vaporizers like Puff Bar e-cigarettes to remain unregulated on the market in July 2020. Despite issuing warning letters to select disposable e-cigarette manufacturers,⁷⁴ disposable vaporizers like Puff Bar are still sold on e-commerce sites.⁷⁵

Big Tobacco filed lawsuits to prevent the implementation of graphic warning labels on cigarettes as a result of a court case brought by the American Lung Association and partners. The warning labels, which would have been implemented in 2020, will not take effect until at least 2022.²⁶

07 *The government gives privileges, incentives, exemptions or benefits to the tobacco industry. (Rec 7.3)*



The tobacco industry regularly inhibits state or local ordinances from implementing strong tobacco control policies by lobbying state legislatures to enact pre-emption. As of December 31st, 2020, 12 states have laws or court decisions that pre-empt local ordinances from further regulating smoking at worksites or hospitality establishments, and 19 states pre-empt local regulations on tobacco product distribution to youth.²⁵

On the state level, tobacco industries frequently benefit from tax exemptions that do not apply to other products. In Oklahoma, for example, state and local sales tax is assessed but is not applied to tobacco products.²⁴ In 2020, Florida, Pennsylvania, and the District of Columbia did not tax cigars; Florida, the Marshall Islands, and the Northern Mariana Islands did not tax little cigars; North Dakota, Rhode Island, the Marshall Islands, and Puerto Rico did not tax roll-your-own cigarettes; 25 states did not tax dissolvable tobacco.⁷⁶

The FDA’s ban on flavored tobacco products exempted tobacco and menthol flavors.²⁷ It also excluded disposable vaping products that are popular with minors and the tank-based systems in vape shops.⁵⁸ These substantial exemptions benefited vaping retailers and manufacturers, leaving a considerable portion of the multi-million dollar vaping industry unscathed.⁷⁷ This flavor ban also exempts new IQOS heated tobacco sticks and Velo oral pouches.⁷⁸

During the COVID-19 pandemic, the tobacco industry benefitted from special government stimulus and exemptions. Tobacco farmers profited from the USDA’s Coronavirus Food Assistance Program, which provided billions of dollars in aid to farmers producing food, but was expanded to include tobacco farmers.⁷⁹ Tobacco farmers received USD \$100,000,000 from this economic stimulus package.²⁸ Furthermore, in some states like New York, distributing tobacco and vape products was deemed “essential,” propagating tobacco use during a global pandemic.⁸⁰

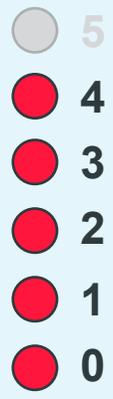
INDICATOR 4: Forms of Unnecessary Interaction

08 *Top-level government officials (such as President/Prime Minister or Minister⁸¹) meet with/foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests. (Rec 2.1)*



Due to the COVID-19 pandemic and subsequent stay-at-home orders, it was difficult to track informal meetings between tobacco industry representatives and top-level government officials.

09 *The government accepts assistance/offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)*



Big Tobacco leverages “educational programs” to assist the government in enforcing smoke free policies, and specifically, no sales to minors. In 2019, JUUL paid schools for access to students nationwide to “educate” kids about “healthy lifestyles” and promote JUUL products. This tactic has been used by Big Tobacco for decades to prevent government regulation, yet no evidence suggests that it decreases smoking.⁸² In 2020, the “We Card” program continued to be used to promote Big Tobacco’s public image and thwart the enforcement of existing laws or new stricter regulations.²⁹

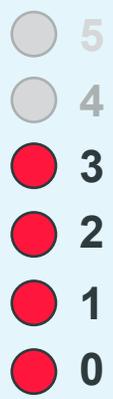
10 *The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1)*
NOTE: *This must not involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.*



Although no new agreements between the tobacco industry and US government formed in 2020, the existing Master Settlement Agreement (MSA) from 1998 is still in effect. The MSA is a legal settlement-rather than a voluntary agreement-between the state between the state Attorneys General of 46 states, the District of Columbia, five US territories and the four largest tobacco companies in the US. The MSA mandates that the industry pays billions of dollars annually to these states and restricts marketing, promotional programs, and targeting minors.³⁰

INDICATOR 5: Transparency

11 *The government does not publicly disclose meetings/interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. (Rec 2.2)*



As the primary body governing tobacco, the FDA has an assortment of disclosure rules. The FDA Scientific Advisory Committee publishes an agenda and background material two days prior to a session. Meeting minutes are disclosed and additional materials that may not have been made available before the meeting are shared after. The Committee also posts a webcast of the proceedings, which are open to the public.⁸³

However, other FDA activities are subject to dubious disclosure activities. During the pre-market review process for e-cigarettes, certain cigars, and hookah products, the FDA must comply with federal disclosure laws and cannot divulge data on these products until after

the completion of the federal review.⁸⁴ Furthermore, the FDA does not publish meeting minutes with the industry,³¹ and and comments submitted to the FDA concerning new rules and regulations can remain confidential and unavailable for full public viewing.³²

12 *The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists. (Rec 5.3)* 5

The Lobbying Disclosure Act of 1995 regulates lobbying of the federal government. It mandates that lobbyists register and provide quarterly reports of lobbying activities if they meet the expense or income threshold and have multiple lobbying contracts.³⁵ Lobbyists must also report funds paid for lobbying.³⁵ All 50 states have a publicly available system for lobbyist registration.³⁶ 4

Several laws specifically target the tobacco industry and mandate disclosure of certain information. Tobacco firms are required to secure permits to authorize tobacco product manufacturers, importers, warehouse proprietors, and other tobacco industry businesses for operations in the US from the Alcohol and Tobacco from the Alcohol and Tobacco Tax and Trade Bureau and the Internal Revenue Service.³³ The Family Smoking Prevention and Tobacco Control Act requires annual registration of tobacco companies and inspection of manufacturing and processing facilities every two years.³⁴ The FDA is also granted the authority to implement standards for tobacco products and registration information must be publicly available.⁸⁵ 3

As of August 8, 2016, all e-cigarettes and other electronic nicotine delivery systems (ENDS) are subject to FDA pre-market authorization requirements under the Federal Food, Drug, and Cosmetic Act (FD&C Act). However, the FDA has deferred enforcement of these rules, meaning all ENDS are illegally marketed and subject to enforcement at the FDA's discretion.⁸⁶ On September 9, 2020, the FDA required all ENDS be submitted for federal review to demonstrate that they present a net benefit to public health.⁸⁷ 2

INDICATOR 6: Conflict of Interest

13 *The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. (Rec 4.11)* 1

The US government does not prohibit contributions from the tobacco industry or political action committees (PACs) to political parties, candidates, or campaigns. Although all campaign contributions over USD \$200 must be disclosed, they are often disguised using industry front groups and super PACs, which can receive funding from political nonprofits and shell corporations that are not required to disclose their donors.⁸⁸ 0

14 *Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General). (Rec 4.4)*

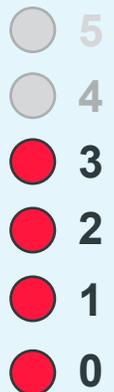


In the US, retired senior government officials can, and often do, join the tobacco industry. In response to the federal review that will determine its regulatory future, JUUL Labs Inc. recruited multiple former FDA employees to fill legal, regulatory, and science-focused positions. Notably, the former lead toxicologist at the FDA's Center for Tobacco Products, Roxana Weil, began serving as Principle Scientific Advisor for JUUL. JUUL Labs Inc. also secured former FDA employee Gabriel Muniz, who worked in tobacco inspection, as a Director of Regulatory Compliance.³⁸

In 2020, the tobacco industry spent USD \$28,156,312 on lobbying and 78.7% of industry lobbyists were former government employees.¹⁵ Notably, three of Senate majority leader Mitch McConnell's former staffers were linked to the tobacco industry in 2020. McConnell's former Chief of Staff, G. Hunter Bates, represented Altria.³⁹ His former policy adviser, Malloy McDaniel, lobbied for Vapor Technology Association,⁹⁰ and McConnell's former Policy Director, Brian McGuire, lobbied for a firm that represents Altria but did not directly represent the company in 2020.⁴⁰

On the state level, there are many registered tobacco industry lobbyists who are also former government officials. For example, in Oklahoma during 2020, former state legislators Tom Rogers, Robert D. Johnson, and Benny F. Vanatta lobbied for Altria, Reynolds American, Inc., and Swisher International, Inc., respectively.^{41,91,92}

15 *Current government officials and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)*



In 2020, President Trump used a loophole within his own 2017 ethics executive order regarding the definition of an "appointee" to appoint Brian Ballard to a special role on the Board of Trustees at the John F. Kennedy Center for the Performing Arts. Ballard is a foreign agent and current lobbyist for British American Tobacco (BAT). In this multi-year position, Ballard has access to President Trump and President Biden. He has leveraged this loophole to continue lobbying for BAT and serving as a foreign agent to multiple foreign governments while also fulfilling his role as a federal appointee. These activities are prohibited for all full-time, non-career appointees.⁴²

On the state level, former Utah House speaker and nephew of Senator Kirk Cullimore (R-Utah), Greg Curtis, is a lobbyist for a major Juul Labs investor. Curtis leveraged his connections in 2020 to dilute e-cigarette legislation: his governmental ties helped kill a Utah vaping control bill. Also in Utah, the House Majority Leader Francis Gibson's (R-Mapleton) son is a lobbyist for the Utah Vapor Business Association along with Casey Hill, who ran campaigns for Senate president and House speaker. Hill is also a lobbyist for Utah Medical Association.⁶⁵

INDICATOR 7: Preventative Measures

16 *The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)*

○ 5

○ 4

○ 3

● 2

● 1

● 0

The FDA Tobacco Scientific Advisory Committee provides links to agendas, rosters, webcasts, presentations, public submissions, minutes, and questions for their meetings. Federal oversight is also conducted by several government agencies (for example FDA, IRS, CDC, ATB). However, some interactions are not subject to disclosure as highlighted under Indicator 12.^{31,32,84}

17 *The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)*

● 5

● 4

● 3

● 2

● 1

● 0

There is no code of conduct for public officials or prescribed set of standards with which they should comply in their dealings with the tobacco industry. Despite a lack of cohesive regulations, in most states public officials cannot solicit funds or gifts from a principal, lobbyist, or subordinate of a lobbyist.⁴³

Furthermore, tobacco industry representatives can have informal interactions with lawmakers without disclosing the interactions to the public.⁴³

18 *The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. (Rec 5.2)*

○ 5

○ 4

○ 3

● 2

● 1

● 0

The Federal Trade Commission (FTC) announced the tobacco industry spent USD \$8.2 billion marketing cigarettes and smokeless tobacco in the U.S. in 2019.⁴⁴

The tobacco industry regularly reports federal lobbying expenditures and revenues as mandated under the Lobbying Disclosure Act of 1995.³⁵ However, there is no requirement to report philanthropy. This exemption allows the tobacco industry to donate to social welfare organizations that contribute industry funding to political action funds, effectively hiding these Big Tobacco monies from the public. State and federal laws require reporting of direct political contributions but loopholes exist.

Government bodies listed in Annex A oversee and regulate reporting in some of these areas, but reporting efforts are not comprehensive.

Under the Family Smoking Prevention and Tobacco Control Act, the FDA has the authority to regulate the manufacturing, marketing, and distribution of tobacco products. The act mandates annual registration of tobacco company owners and operators. Additionally,

changes in product lists must be submitted bi-annually to the FDA and all of this information is to be made publicly available.³⁴

The Alcohol and Tobacco Tax and Trade Bureau (TTB) requires permits to authorize tobacco product manufacturers, importers, warehouse proprietors, and other tobacco industry businesses for operations in the US.³³

19 *The government has a program/system/plan to consistently⁹³ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)*  **5**
 **4**

There is no government program, system, or plan to consistently raise awareness on policies relating to the WHO FCTC Article 5.3 Guidelines. The US is not a Party to the WHO FCTC.  **3**
 **2**

The CDC collects Global Tobacco Surveillance System Data (GTSSData), but these data do not include the US and are out-of-date.⁹⁴ The Bloomberg Initiative to Reduce Tobacco Use, in partnership with The Campaign for Tobacco-Free Kids, works with civil society in low- and middle-income countries to promote legislation compliant with the WHO FCTC.⁹⁵ In 2020, six tobacco control organizations submitted a letter to the FDA on tobacco products citing WHO FCTC guidelines in relation to US law.⁹⁶  **1**
 **0**

20 *The government has put in place a policy to disallow the acceptance of all forms of contributions/gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (Rec 3.4)*  **5**
 **4**
 **3**

There is no policy that disallows the acceptance of ALL forms of contributions, gifts, offers of assistance, policy drafts, or study visit invitations offered to the government, its agencies, officials, and their relatives from the tobacco industry.  **2**
 **1**

US lobbying laws disallow gifts or financial assistance from lobbyists to a public official; however, tobacco lobbyists can still legally provide campaign contributions to these officials.⁴⁵ Additionally, the FDA accepts scientific research conducted by the tobacco industry to inform public health policy and did so in 2020.⁴⁶  **0**

U.S. TOTAL SCORE

76

OUT OF 100

The U.S. had a raw score of 72 which was adjusted to 76. This score represents data compiled between January 1, 2020 through December 31, 2020 and the adjustment reflects the STOP Global Index applied penalty rating for countries that are not Party to the WHO FCTC (please see Indicator 1.4 on page 17 of this report).

The higher the score the higher the level of tobacco industry interference. The global rank for the U.S. is 68 out of 80 countries, showing the continued need to address tobacco industry interference across the nation, as many other countries have done.



ANNEX A: SOURCES OF INFORMATION

TOBACCO INDUSTRY ACTIVITY

LOCAL TOBACCO COMPANIES

Top 5 Tobacco Companies/ Distributors	Source
Altria (Philip Morris USA)	https://investor.altria.com/press-releases/news-details/2020/Altria-Reports-2020-Third-Quarter-and-Nine-Months-Results-Tobacco-Businesses-Demonstrate-Resilience-Narrows-2020-Full-Year-Earnings-Guidance/default.aspx
Reynolds American Inc.	https://www.businesswire.com/news/home/20201111005827/en/Reynolds-Consumer-Products-Reports-Third-Quarter-2020-Financial-Results
ITG Brands (Imperial Brands)	https://www.imperialbrandsplc.com/content/dam/imperial-brands/corporate/investors/annual-report-and-accounts/2020/Online-Annual-Report/Annual_Report_2020.pdf
Japan Tobacco International	https://www.jti.com/sites/default/files/press-releases/documents/2020/jt-group-2020-third-quarter-financial-results.pdf
Vector Group	http://ir.vectorgroupltd.com/news-releases/news-release-details/vector-group-reports-third-quarter-2020-financial-results

TOBACCO INDUSTRY FRONT GROUPS⁹⁷

Al Sharpton's National Action Network
American E-Liquids Manufacturing Standards Association
American Enterprise institute (AEI)
Americans for Tax Reform
American Smokers Alliance
American Vaping Assn
Ballantyne Brands
Burley Tobacco Growers Cooperative Association
Center for Consumer Freedom
Cheyenne International
Cigar Rights of America
Cigarette Store
Citizens for Tobacco Rights
Competitive Enterprise Institute
Convenience Distribution Association
Corona Cigar
Covance Laboratories
Dosal Tobacco
Foundation for a Smoke free World
FreedomWorks Foundation
Georgia Chamber of Commerce
Goldwater Institute
Hay Island Holding
Heartland Institute
Holt's Cigar
Idaho Freedom Foundation
Independent Women's Forum
Indiana Grocery and Convenience Store Association
Indiana Petroleum Marketers and Convenience Store Association (IPCA)
Intl Premium Cigar & Pipe Retailers Association
Intrepid Brands
JC Newman Cigars
John Locke Foundation
Law Enforcement Action Partnership
Liggett Vector Brands
National Association of Convenience Stores
National Association of Tobacco Outlets (NATO)
National Center for Public Policy Research
National Council of State Legislators (NCSL)
National Governors Association
National Newspapers Publishers Association
National Smokers Alliance
National Tobacco
North Dakota Petroleum Marketers Association (NDPMA)
Oklahoma Council of Public Affairs
Padron Cigars
Petroleum Marketers Association
Pipe Tobacco Council
Price & Co
PURO PAC
Pyxus International
R Street Institute
Reason Foundation
RYO Machine Rental
Scandinavian Tobacco Group
Smoke Free Alternatives Trade Association
Specialty Tobacco Council
State Policy Network (SPN)
TechFreedom
The American Legislative Exchange Council (ALEC)
The Cigarette Shop
The Institute for Policy Innovation
The James Madison Institute
The Mackinac Center for Public Policy
The Maryland Public Policy Institute
United States Conference of Mayors
Universal Leaf Tobacco
US Tobacco Cooperative
VGR Holding
Wild Bill's Tobacco

GOVERNMENT AGENCIES

Agency	Specify if the agency has a specific branch dedicated to tobacco control	General Sources of Information/News for Each Office
US Food and Drug Administration (FDA)	Center for Tobacco Products (CTP)	https://www.fda.gov/about-fda/office-medical-products-and-tobacco/center-tobacco-products
Centers for Disease Control and Prevention (CDC)	Office on Smoking and Health (OSH)	https://www.cdc.gov/tobacco/about/osh/index.htm
US Department of Health and Human Services (HHS)		https://www.hhs.gov/
Internal Revenue Service (IRS)		https://www.irs.gov/
Alcohol and Tobacco Tax and Trade Bureau (TTB)		https://www.ttb.gov/
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)		https://www.atf.gov/
Substance Abuse and Mental Health Services Administration (SAMHSA)		https://www.samhsa.gov/
US Department of Justice		https://www.justice.gov/
Federal Communications Commission		https://www.fcc.gov/
Federal Trade Commission (FTC)		https://www.ftc.gov/
US Environmental Protection Agency		https://www.epa.gov/
Agency for Healthcare Research and Quality		https://www.ahrq.gov/
Department of Agriculture (USDA)		https://www.usda.gov/
Indian Health Service (IHS)		https://www.ihs.gov/Epi/index.cfm?module=epi_tobacco_projects
Occupational Safety and Health Administration (OSHA)		https://www.osha.gov/

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