

Private and Public Foundations May Fund Charities that Lobby

501(c)(3) public charities may legally seek to influence legislation—in other words, lobby – subject to generous limits. In addition, private foundations and public foundations (which are public charities) may support public charities that lobby. Foundations should follow the following rules when making grants to grantees that lobby.

Private foundations may not earmark funds for lobbying. A grant that is “earmarked” for lobbying creates a taxable expenditure for the private foundation. A grant is considered earmarked for lobbying if it is conditioned upon an oral or written agreement that the grant be used for lobbying purposes. However, this does not mean that private foundations must require grantees to refrain from using grant funds for lobbying. In fact, a grant agreement that forbids use of the funds for lobbying is unnecessarily restrictive. For more information on why restrictive grant clauses are not legally required, click here: http://www.afj.org/assets/resources/nap/grant_agreements.pdf.

Public foundations may earmark funds for lobbying. A grant that is earmarked for lobbying will count against the public foundation’s lobbying limit (and be treated as a lobbying expenditure). Generally, such earmarked grants will be double counted—against the lobbying limits of both the public foundation and by the public charity receiving and spending the money.

Additional Rules for Private and Public Foundations (Safe Harbors). Both private foundations and public foundations that have made the 501(h) election may make two types of grants that avoid creating, respectively, taxable or lobbying expenditures – general support and specific project grants – while permitting grantees flexibility in the use of their funds.

A **general support grant** is not earmarked for a particular purpose and specifically is not earmarked to be used in an attempt to influence legislation. The public charity grantee may use the grant funds for any purpose, including lobbying. If the grantee uses the money for lobbying, the grantor foundation will not incur a taxable (for private foundations) or lobbying (for public foundations) expenditure.

To make a **specific project grant**, even one for a project that includes lobbying, the foundation must review the grantee’s project budget and may give a grant in an amount up to the non-lobbying portion of the budget. If the grant exceeds the non-lobbying portion of the project budget, then the foundation must treat as a taxable or lobbying expenditure the amount by which the grant exceeds the non-lobbying amount. The public charity grantee must use the grant funds only for the specific project – the grantee does not have the discretion to spend the funds on another project, even one in the same broad program area, or for general purposes. If these conditions are met, the foundation will not incur a taxable or lobbying expenditure, even if the grantee subsequently uses some of the grant money for lobbying under the designated project.

As long as a private or public foundation uses one of these two safe harbors, the foundation does not need to include a lobbying restriction in its grant. Proper use of the safe harbors protects the foundation from incurring any taxable or lobbying expenditure, even if the grantee uses the funds for lobbying.

Both private and public foundations may fund without restriction charitable activities that do not fall within the federal tax law definitions of lobbying.

What is Lobbying? There are two types of lobbying—direct lobbying and grassroots lobbying. In general, direct lobbying is a communication with a legislator (federal, state, local) or legislative staff member that refers to specific legislation and takes a position on that legislation. Direct lobbying also includes communications with the general public that refer to and state a position on ballot measures

(such as referenda, ballot measures, and constitutional amendments). Grassroots lobbying is a communication with the general public that refers to specific legislation, reflects a view on that legislation, and contains a call to action. For more specifics on the definitions of lobbying and the lobbying limits for public charities and public foundations, see Investing in Change: A Funder's Guide to Supporting Advocacy.

For more information on how to safely fund grantees that lobby or how the facts and circumstances test might apply to your particular activity, please feel free to call Alliance for Justice's toll free technical assistance line at: 866-NPLOBBY.

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