

Grant Agreement Letters and Advocacy

The question is, why do foundations use grant agreement letters that prohibit their grantees from applying grant funds toward public policy advocacy such as lobbying?

The fact is, federal tax law does not require foundations to include lobbying prohibitions in grants made to public charities.

Here's the source: Section 4945(d) of the tax code can be confusing. At first glance, it might appear that this section prohibits private foundations from making any grants that could be used for lobbying. The code section states that any money paid or incurred by a private foundation to carry on propaganda, or to attempt to influence legislation, constitutes a "taxable expenditure." Yet the code also says that 501(c)(3) organizations may use grants from private foundations for this work. In fact, the IRS regulations make clear that, although private foundations are not permitted to influence legislation themselves, they may allow their *grantees* to use grant funds to engage in these activities, as long as the grant is not directed toward nor earmarked for these purposes. (See regulations sections 53.4945-2(5)-(6)).

An example from the IRS regulations illustrates this point further:

W, a private foundation, makes a general support grant to Z, a public charity. . . . Z informs W that, as an insubstantial portion of its activities, Z attempts to influence the State legislature with regard to changes in the mental health laws. The use of the grant is not earmarked by W to be used in a manner that would violate section 4945(d)(1). Even if the grant is subsequently devoted by Z to its legislative activities, the grant by W is not a taxable expenditure under section 4945(d).

The solution is, foundations should remove restrictive language in their grant agreement letters. Also, foundations should be more accepting of grant proposals that mention advocacy work. And, they should increase the number of general support grants they make, since these grants give the nonprofit organizations the greatest flexibility in lobbying.

Foundation grant agreement letters that reflect the flexibility contained in the law could state: "No grant funds are earmarked for purposes of influencing legislation, and the grantee cannot expend any part of the grant in any way that violates its tax exempt status."

Furthermore, since public or community foundations are themselves public charities, they are permitted to earmark grants for lobbying purposes, and may even lobby themselves.

For more information, see our publication *Myth v. Fact: Foundation Support for Advocacy*.

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