



Making the Link

A Publication of Grantmakers for Children, Youth & Families

Getting Impact: Foundation Funding of Advocacy

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WHAT IS ADVOCACY?

Advocacy is one of the most powerful tools for creating real change, and supporting advocacy is one of the most powerful ways for foundations to effect that change. In spite of understandable concerns to the contrary, foundations may safely support nonprofits that engage in advocacy.

The term “advocacy” encompasses a broad range of activities that can influence public policy. From research and public education to lobbying and voter education, advocacy is about using effective tools to create social change. Advocacy:

- Is an investment that can lead to systemic change
- Is a way to leverage the impact of available funds
- Strengthens the voice of the underrepresented
- Provides policymakers with information they need
- Helps foundations achieve their missions and helps public charities reach their goals
- Bolsters a foundation’s unique role in bringing together diverse members of the community

Supporting advocacy comes in many forms, including making grants, offering skills trainings, sharing expertise, convening seminars and forums and conducting research. Before taking on any of these roles, however, foundations need to understand the federal tax rules that govern their activities.¹ These rules vary depending on whether a foundation is classified as a **private foundation** or a **public foundation**.

A private foundation is a 501(c)(3) organization supported by one or several individuals or sources that generally awards grants to support other organizations’ charitable activities.

A public foundation is a publicly supported 501(c)(3) public charity that makes grants to support the charitable activities of other organizations. Public foundations are subject to far fewer restrictions than private foundations.

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 or 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 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.

ADVOCACY AND LOBBYING FOR PRIVATE AND PUBLIC FOUNDATIONS

Private and public foundations may support many types of advocacy including litigation, seeking executive orders and influencing regulations and other administrative policies without limits. Foundations can also, within the generous guidelines of the law, support organizations that lobby or engage in election-related activities.

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.

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 the public charity receiving and spending the money.

ADDITIONAL RULES FOR PRIVATE AND PUBLIC FOUNDATIONS

Both private foundations and public foundations that have made the 501(h)² election may make two types of grants that avoid creating, respectively, taxable or lobbying expenditures while permitting grantees flexibility in the use of their funds—general support and specific project grants.³

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. This type of grant is therefore particularly useful to help nonprofits grow their advocacy capacity as well as to help groups that lobby gain support for their work.

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 the difference as a taxable or lobbying expenditure. 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 follows the rules for making a general support grant or a specific project grant, the foundation does not need to include a lobbying restriction in its grant. Proper use of these rules protects the foundation from incurring any taxable or lobbying expenditure, even if a grantee uses funds for lobbying.

Visit the Alliance for Justice Web site, <http://www.afj.org>, or email us at advocacy@afj.org for more information about any of these issues.

Notes

- ¹ States may have registration and reporting requirements for engaging in certain activities. *This Making the Link* discusses federal tax law rules only.
- ² Public charities, including public foundations, can measure their lobbying under the “insubstantial part test” or the “501(h) expenditure test.” Organizations must “elect” (by filing IRS Form 5768) to be covered by the 501(h) test, which provides clearer guidance as it defines lobbying, provides an exact dollar-based lobbying limit and measures lobbying based upon an organization’s expenditures.
- ³ Although these rules technically apply to private foundations only, Alliance for Justice received a ruling from the IRS that indicates the IRS will likely apply the rules to public charities as well.