

Private and Public Foundations May Fund Charities that Lobby

501(c)(3) public charities may legally seek to influence legislation—in other words, lobby. They may engage in a limited amount of lobbying. Public and private foundations may support public charities that lobby.

Private foundations may support public charities that lobby, but they must follow specific rules. Most importantly, the grant may not be “earmarked” for lobbying, as earmarked funds create a taxable expenditure to the 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. The prohibition on earmarking 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.

Under federal tax law, private foundations may make two types of grants that avoid creating taxable 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 may use the grant funds for any purpose, including lobbying. If the grantee uses the money for lobbying, the private foundation will not incur a taxable expenditure.

Private foundations may also fund specific projects, even those that include lobbying. When making a specific project grant, the private 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. The public charity must use the grant funds only for the specific project. If these conditions are met, the private foundation will not incur a taxable expenditure, even if the grantee subsequently uses some of the grant money for lobbying under the designated project.

Public foundations, such as community foundations, may earmark funds for lobbying; however, earmarked grants will count against the public foundation’s lobbying limit. Generally, such earmarked grants will be double counted—against the lobbying limits of both the public foundation and the public charity.

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*.

Note: This handout provides general guidelines only. Organizations should consult with their attorney to receive guidance on special rules governing their conduct.