

## Grants & Lobbying—What Funders Need Grantees to Know

Most 501(c)(3) public charities rely on support from foundations to carry out their programs, but don't always understand the legal rules that govern how foundations can give out money for advocacy activities. Understanding the rules under which foundations operate will help grantees become more savvy when it comes to seeking support for their advocacy efforts.

For more information on the lobbying rules for 501(c)(3) public charities, see the AFJ fact sheet [“Public Charities Can Lobby: Guidelines for 501\(c\)\(3\) Public Charities”](#)

For more information on the rules for 501(c)(3) organizations related to election activities, see the AFJ fact sheet [“Election Checklist for 501\(c\)\(3\) Public Charities: Ensuring Election Year Advocacy Efforts Remain Nonpartisan”](#)

### How Foundations' Rules Affect Grantees

Private foundations may support public charities that lobby, but they must follow specific rules. Most importantly, the grant may not be **earmarked** for lobbying, since earmarked lobbying funds create a taxable expenditure for the foundation.<sup>1</sup> 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 prohibit grantees 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 grants and specific project grants—while permitting public charity 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 for lobbying. 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; it does not have the discretion to spend the funds on another project, even one in the same program area, or for general purposes. If these conditions are met, the private foundation will not incur a taxable expenditure, even if the grantee later uses some of the grant money for lobbying under the designated project. In determining if the grant amount is less than the non-lobbying portion of the budget for a specific project, the foundation may rely on the grantee's proposed budget for the project so long as it has no reason to doubt its accuracy.

<sup>1</sup> For more information on how the IRS defines lobbying, see the AFJ fact sheet [“Lobbying Defined for Private Foundations.”](#)

Before a public charity can complete its budget, it needs to understand what counts as lobbying—and what does not. While the categorization will depend on the exact nature of each communication, in general, here are some common examples of activities that constitute lobbying or non-lobbying:

### Lobbying

- Meetings with legislators to express a view about specific legislation: League of Women Voters of Washington published a [guide](#) for lobbying legislators with tips on how to plan for and facilitate a lobbying meeting. Lobbying expenditures include travel costs, including the travel for participants and hotel rooms (if all travel costs were specifically for the lobby day) as well as staff time to prepare for meetings and materials prepared for meetings.
- Designing an ad urging the public to contact their legislators: National Council of Jewish Women [urged the public to contact their legislators](#) to support H.R. 1619, the Paycheck Fairness Act. Lobbying expenditures include the staff time and proportionate overhead to create the ad and send the communication to the general public.<sup>2</sup>
- Drafting a sign-on letter: Organizations [sign on to a letter](#) urging Congressional leadership to move S.192, the Older Americans Act Reauthorization Act of 2015, to the Senate floor for passage. Lobbying expenditures include staff time at coalition meetings to discuss content of sign on letter, to draft the sign on letter, and/or getting internal approval.
- Capitol Hill Lobby Day: Clean Air Carolina and coalition partners organized [a lobby day](#) in North Carolina on the importance of energy efficiency. Lobbying expenditures include travel to Raleigh, lunch (if provided), creation of signs for lobby day, and staff time and proportionate overhead for preparation.
- Organizing an event asking the public to contact their legislators: Mothers Against Drunk Driving [staged an event](#) to discuss issues with Hawaii's Drunk Driving laws. A large sign was attached to the podium that listed the phone numbers of the Senate President and Governor of Hawaii and urging the public to contact these officials. Lobbying expenditures include equipment rented (if any) for the event, staff time during event, staff time in preparing event, proportionate overhead costs, and cost of signs created for the event.
- Coordinating volunteers to go door-to-door to urge their neighbors to support a ballot measure: The National Gay and Lesbian Task Force worked with local organizations in Cincinnati to [pass a ballot measure](#) that repealed a law that forbid City Council from enacting anti-discrimination or relationship protections for LGBT people. Part of their strategy was mobilizing volunteers for door-to-door canvassing. Lobbying expenditures include staff time in organizing and educating volunteers, proportionate overhead, copies of materials volunteers handed out, creation of signs for volunteers to use (if any). Remember, volunteer hours are not considered lobbying expenditures.
- Writing talking points for volunteers to use when calling legislators about legislation: Oregonians for Alternative to the Death Penalty wrote [talking points](#) for volunteers to use when they call legislators to urge them to pass legislation that would repeal the Oregon death penalty. Lobbying expenditures include staff time and proportionate overhead to write the talking points.

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<sup>2</sup> For more information on how to calculate staff time and overhead, please see our publication [Keeping Track: A Guide to Recordkeeping for Advocacy Charities](#).

Not Lobbying

- Research: The Center for Digital Democracy released a [report](#) titled “YouTube, Big Data, Big Brands = Trouble for Kids and Parents” to educate families about the ways YouTube markets to children using the YouTube Kids app. However, research done for the sole purpose of drafting sample legislation would be considered preparation for lobbying and therefore would constitute a lobbying expenditure.
- Regulatory Efforts: Consumer Action has [pushed](#) the U.S. Department of Labor to update a rule on fiduciary duty that would require investment brokers working with investment accounts to act in the best interest of their clients.
- Educate Legislators: The Texas Education Grantmakers Advocacy Consortium supported research and advocacy to [educate legislators](#) on the negative impact education cuts were having on students.
- Organizing a Rally: The Center for Reproductive Rights and many allied organizations stood up outside of the Supreme Court during the oral arguments for *Whole Women’s Health v. Hellerstedt* to [rally for abortion access](#).
- Litigation: The Women’s Law Project acted as [co-counsel for Tara Brady](#), a student who was involuntarily dismissed from her university basketball team and forced to withdraw from her university because she was pregnant.
- Drafting a petition: Alliance for Justice drafted a petition to [urge Spotify](#) to remove their forced arbitration clause and urged the public to sign on to the petition.
- Inviting legislators to visit your facility: The American Health Care Association encourages their members to [invite legislators to visit their facilities](#) because they understand these visits play a critical role in educational and legislative efforts. Do NOT discuss specific legislation at these visits or it could constitute direct lobbying.
- Write an Op-Ed: The National Employment Law Project wrote an op-ed on [the importance of a living wage](#) in Baltimore.
- Voter Registration: [Nonprofit Vote](#) works with nonprofits across the country and provides resources on how to conduct nonpartisan voter outreach to increase voter participation.

**So what does this mean for public charities seeking a specific project grant?**

A 501(c)(3) public charity should provide a budget for the specific project described in the grant proposal. The budget does not need to be complex, but must include a breakdown of expected lobbying and non-lobbying expenses.

For example:

PROJECT BUDGET	
Public Education including research, organizing a rally, and drafting a petition	\$70,000
Lobbying	\$30,000
<b>Total</b>	<b>\$100,000</b>
Foundation grant awarded	\$70,000
Taxable expenditure for foundation	0

When a 501(c)(3) public charity applies for a specific project grant from **two different foundations**, the same rules described above allow both foundations to take advantage of the specific project grant

procedures. The 501(c)(3) may seek a \$50,000 grant from each of the two foundations for its project, even though the project will contain some lobbying, as the project above indicates.

Foundation 1 may give the 501(c)(3) public charity a \$50,000 specific project grant based on the grantee's project budget, ensuring that the grant is not earmarked for lobbying. Foundation 2 may also give the same 501(c)(3) public charity a \$50,000 specific project grant based on the grantee's project budget. Since neither grant individually exceeded the total non-lobbying portion of the project, neither grant creates a taxable expenditure for either foundation. This is the case even though, added together, the total amount of the grants—\$100,000—exceeds the total non-lobbying portion of the budget. Neither foundation is required to put a lobbying restriction in its grant award; each foundation is protected by the specific project grant rules. The grantee could then legally lobby with both or either grant, and neither foundation should incur a taxable expenditure because neither foundation earmarked its grant for lobbying. For more details about the rules for specific project grants, see pages 13-16 of [Investing in Change: A Funder's Guide to Supporting Advocacy](#).

Public foundations, such as community foundations and women's foundations, are 501(c)(3) public charities, and can lobby within the generous limits allowed by federal law. They can lobby themselves and/or by make grants to other organizations for their lobbying activities. This means public foundations may earmark funds for lobbying; however, earmarked grants will count against the public foundation's lobbying limit.<sup>3</sup> Such earmarked grants will be double counted—against the lobbying limits of both the public foundation giving the grant and the public charity spending the grant funds on lobbying. In addition, public foundations that have made the 501(h) election may generally follow the same general support and specific project grant rules that apply to private foundations, and these grants should not be considered a lobbying expenditure by the foundation, even if the recipient public charity spends the grant funds on lobbying.

**TIP:** If a 501(c)(3) public charity wants to raise money specifically for a lobby day or another activity that is clearly lobbying, it should seek funding from a public foundation, not a private foundation. A private foundation should never make an earmarked lobbying grant.

For more information on these rules, see the AFJ fact sheet "[Private and Public Foundations May Fund Charities that Lobby](#)" and the publication [Investing in Change](#).

**Example 1:** A 501(c)(3) public charity receives a general support grant which is not earmarked for lobbying, and which does not prohibit lobbying. The grantee can legally use the grant on its lobbying activities, and the funder is not responsible for the grantee's lobbying. The grantee can even report to the funder that the grant was used on lobbying. The funder is protected from a taxable expenditure by the manner in which it made the non-earmarked and non-restricted general support grant.

**Example 2:** A 501(c)(3) public charity is seeking a grant for a specific project. The project will contain some lobbying. In order for the foundation to take advantage of the IRS specific project grant rules, the foundation must ask the grant seeker for a project budget, which specifies how much of the project's expenditures will be devoted to lobbying and how much to non-lobbying advocacy and education activities.

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<sup>3</sup> For more information on the lobbying rules for public foundations, see the AFJ fact sheet "[Public Foundations Can Lobby](#)."

The 501(c)(3) grantee should assess how much it plans to spend on the entire project, and determine what portion of that budget will be spent on lobbying. The project budget the grantee submits to the foundation should make clear this distinction between planned lobbying and non-lobbying expenditures.

E.g., the 501(c)(3) wants to allocate \$100,000 to a project to educate community members about the harms of second-hand smoke. Part of the project will involve asking the City Council to pass an ordinance banning smoking in certain locations. Efforts to pass the ordinance will likely be considered lobbying. The grantee has determined that it will spend \$30,000 on the lobbying effort to pass the ordinance (including direct and grassroots lobbying), and \$70,000 on general education and non-lobbying advocacy. The grantee should communicate this allocation of lobbying and non-lobbying costs within the project to the funder. The funder is then able to make a grant of up to \$70,000 (the non-lobbying portion of the project budget) to the grantee without the foundation being considered to have made an earmarked lobbying grant, allowing the foundation to avoid incurring a taxable expenditure. The foundation is not legally required to restrict the project grant from being used for lobbying, and if there is no lobbying restriction in the grant agreement, the grantee can even use a portion of the grant for lobbying. If the grantee uses part of the grant for lobbying, and even reports back on the fact that it lobbied with some of the grant funds, the funder is protected by the manner in which it made the non-earmarked and non-restricted specific project grant.

## Non-501(c)(3) Organizations Seeking Grants

Private foundations may make grants to 501(c)(4) organizations (or other non-public charities) as long as the grant is for educational and charitable purposes. Although a private foundation's grant may be used by a public charity for lobbying and voter registration activity, a private foundation is prohibited from funding a non-public charity for these activities. The private foundation must exercise "expenditure responsibility" over a grant to a non-public charity to ensure that the money is spent properly. For more information on expenditure responsibility grants, see the AFJ fact sheet "[Can a Private Foundation Make a Grant to a Non-Public Charity?](#)"

### Tips for Grant Proposals and Reports:

A grantee should not ask a **private** foundation to directly fund a lobbying activity or partisan political activity.

A grantee may seek a grant from a **public** foundation for lobbying activity, but not for partisan political activity. A public foundation making a lobbying grant must count the grant amount toward its own annual lobbying cap.

Because no 501(c)(3) resources may be used to support or oppose candidates for public office, a grantee should not report back to either a **private** or **public** foundation that it used any grant funds for prohibited election-related activities.

A 501(c)(3) that happens to have an affiliated 501(c)(4) should be clear to report back on its own activities, not report back on the activities of the 501(c)(4).

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