

How Can Foundations Support Policy Change?

Advocacy grantmaking is a great way in which foundations can leverage their dollars and advance their missions. Both private and public foundations can support grantees who lobby for sound public policies that protect the interests of the communities they serve. In fact, there are several ways that funders can lawfully engage in advocacy grantmaking.

Contrary to popular belief, federal tax law does not require private foundations to include lobbying prohibitions in grants made to public charities. Unfortunately, many foundations make restricted grants by using grant agreement letters that prohibit their grantees from using grant funds for “any propaganda or attempt to influence legislation.” Such language is overly restrictive and may undermine the grantee’s ability to effectively and efficiently achieve its goals. The prohibition on using grant funds for lobbying only applies to private foundation grants to non-public charities, such as 501(c)(4) organizations.

Private Foundations Can Fund Grantees That Lobby

Private foundations can support public charities that lobby. Although private foundations incur a tax penalty when they spend money directly on lobbying — including by earmarking grant funds for lobbying, the law provides two safe harbors they can use. By following these rules, private foundations may make two types of grants without suffering a compliance issue or a taxable expenditure for the foundation. In both instances, the private foundation does not need to prohibit grantees from lobbying with the grant funds.

A general support grant from a private foundation allows the public charity grantee to use the grant funds for any purpose. If the grantee chooses to use the money to pursue its legislative goals, the private foundation will not incur a taxable expenditure since its grant was for general support and not earmarked for lobbying.

A specific project grant may be used only

Specific Project Grant Example:

A private foundation’s public charity grantee proposes a project budget to expand access to healthcare in low-income communities. The budget includes educational activities costing \$80,000 and lobbying expenses costing \$20,000. The organization plans to use the \$20,000 in lobbying funds to pursue Medicaid expansion at the Texas Legislature. The private foundation may safely fund the project up to the \$80,000 mark since that is the cost of the educational, non-lobbying portion of the budget. But, the foundation must avoid funding more than that amount since that would earmark a portion of the grant funds for lobbying and create a taxable expenditure.

for the specific project described in the agreement. The grantee must submit a detailed project budget that includes lobbying and non-lobbying expenses, and the grant amount cannot exceed the non-lobbying portion of the budget. 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 purposes.

Public Foundations Can Earmark Grants for Lobbying

Public foundations, such as community foundations, have more flexibility than their private foundation counterparts. Public foundations may earmark funds for lobbying without creating a taxable expenditure. Earmarked lobbying grants will count against the public foundation's own lobbying limit (public foundations fall under the same lobbying limits as other public charities). Generally speaking, the earmarked grants are effectively counted "twice" as lobbying since both the public foundation giving the grant and the public charity spending the grant must report their lobbying expenses to the IRS on their annual Form 990.

Public foundations that have made the [501\(h\) election](#) have additional flexibility, and they may follow the same general support and specific project grant rules that apply to private foundations. By doing so, these grants would not be considered a lobbying expenditure by the public foundation since they are not earmarked for lobbying purposes. This is the case even if the recipient public charity spends the grant funds on lobbying.¹

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](#).

¹ Alliance for Justice (AFJ) received a [Private Letter Ruling](#) from the IRS confirming that AFJ, a 501(h) elector, may rely on these two types of grants when it receives them and that they do not create a taxable event to the private foundation. Although organizations other than AFJ may not rely on the ruling or cite it as precedent, it does reflect the approach the IRS likely will take in evaluating grants from one charity to another.



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