

Lobbying Overview for Private Foundations

FEBRUARY 2018

AUTHOR: Rosemary E. Fei

The following overview is simplified for educational purposes. It is not legal advice, and should not be relied on as such. Consult a qualified attorney for legal advice on the lobbying prohibition imposed on private foundations.

Private foundations' expenditures for legislative lobbying are prohibited as "taxable expenditures" by Section 4945 of the Internal Revenue Code. For the purpose of deciding what is prohibited lobbying, private foundations may rely on the definitions found in Sections 501(h) and 4911 of the Internal Revenue Code, which define lobbying for those public charities that have chosen to have their lobbying governed by Section 501(h).

Under Section 501(h), the following activities count as **direct lobbying**:

- Communications **with legislators** or employees of a legislative body that refer to a **specific legislative proposal** and **reflect a view** on that proposal. Communications to executive branch officials count only if the principal purpose of the contact is lobbying.
- Communications **with the public** that refer to and reflect a view on an initiative, referendum, bond, or other **ballot measure**, in the area where the vote will take place.
- Communications to an organization's **members** suggesting that they contact legislators or other officials to support or oppose a specific legislative proposal.

Under Section 501(h), the following activity counts as **grass roots lobbying**:

- Communications **with the general public** or any segment thereof that refer to and **reflect a view** on a **specific legislative proposal** and include a **call to action** (i.e., encourage recipients to contact their legislators on the proposal).^[1]

Under Section 501(h), the following activities are **not lobbying**:

- **Research** that is not primarily conducted in preparation for lobbying.
- Communications to anyone which discuss but **do not reflect a view** on a specific legislative proposal. And most communications to members or the public that reflect a view on a specific (non-ballot measure) legislative proposal but **do not have a "call to action."**
- Communications made to influence an **executive, administrative, or judicial** decision, rather than a legislative decision. Special purpose bodies, such as school boards, are not legislatures.

Private foundations may take advantage of the following additional **exceptions**:

- Conducting or disseminating **nonpartisan analysis, study, or research**.

- **Technical advice/assistance** given to a legislative body or government agency in response to a written request from the body or agency.
- Lobbying in “**self-defense**” on legislation that would affect the existence, powers, duties, or tax-exempt status of the foundation, or its ability to receive deductible contributions.
- Communications with legislators or government agencies concerning a project that is or may be **jointly funded** by the private foundation and government.

Additional rules apply to private foundation **grant making** activities:

- Lobbying expenditures by a private foundation’s public charity grantees will be attributed to the private foundation funder, resulting in a prohibited taxable expenditure, if the foundation **earmarks** the grant for the lobbying activity.
- Public charity grantee lobbying expenditures from **unrestricted or general support grants** are not attributable to the private foundation funder.
- A private foundation may make a grant to support a specific project of a public charity, if the grantee’s **nonlobbying project budget** is larger than the grant.
- Private foundations may only make grants to **non-public charity grantees** following **expenditure responsibility** procedures, which require an express **lobbying prohibition** in the private foundation’s grant agreement.

In some situations, a private foundation may want to **expressly prohibit use** of its grant funds for lobbying in its grant agreement. In others, it is sufficient to specify that the grant funds are **not earmarked for lobbying**, which would not contractually prohibit the grantee from using them for lobbying.

[1] A “call to action” includes asking the recipient to contact a legislator; giving the address, phone, or fax number of a legislator; including a petition or tear-off postcard to send to the legislator; and identifying a legislator as undecided, opposed to the charity’s position, or a member of a legislative committee that will vote on the legislation.