

Private & Public Foundations Can Advocate

Private and public foundations may participate in many forms of advocacy activities and may also fund advocacy. Although private foundations incur a prohibitive tax on lobbying expenditures, they may participate in many forms of non-lobbying advocacy that can also be engaged in by public foundations. For example, both private and public foundations can:

- Influence the adoption of agency regulations that interpret existing laws
- Build relationships with legislators or help grantees build and sustain these relationships
- Convene nonprofits and decision-makers to discuss a broad topic
- Educate legislators about a broad range of issues, without referencing specific legislation
- Meet with legislators to discuss the scope and impact of the foundation's work
- Sign on to an amicus brief, file a lawsuit or challenge a law or enforce a law, or fund litigation to challenge the constitutionality of a particular law
- Train grantees on advocacy rules and how to lobby
- Influence school board policies or the policies of any other "special purpose body" that has limited, non-legislative, jurisdiction and authority (e.g. housing authorities, sewer and water districts, and zoning boards)
- Conduct public education campaigns that do not include [calls to action](#) or mention [specific legislation](#)
- Offer [technical assistance](#) in response to a written request for testimony from a legislative body
- Produce a comprehensive, accurate study or analysis of an issue (often referred to as a "[nonpartisan analysis study or research report](#)" that is widely distributed and provides enough information about the issue to allow the reader to draw their own conclusions, even if the report contains specific legislative conclusions
- Attempt to influence legislation that impacts the private foundation's existence, powers and duties, tax-exempt status, or the deductibility of contributions ([self-defense lobbying](#))¹

Although foundations may not support or oppose candidates, they may conduct nonpartisan [voter education](#). Special rules exist for private funding of [voter registration activities](#), but these restrictions are not applicable to public foundations.

Private Foundations Cannot Engage In or Directly Support Lobbying

Private foundations cannot engage in lobbying or support lobbying with earmarked lobbying grants. Under federal tax law, lobbying is divided into two types – [direct and grassroots](#). Direct lobbying is a communication with a legislator (federal, state, local, or [similar international body](#)) that expresses a view about specific legislation. Grassroots lobbying is a communication with the general public that expresses a view about specific legislation and includes a [call to action](#).

¹ The foundation may wish to consult with an attorney to confirm the legislation would actually impact the foundation in this way prior to engaging in any attempts to influence the legislation.

Public Foundations May Lobby

Unlike their [private foundation colleagues](#), public (including community foundations) can lobby and can make grants earmarked for lobbying. The amount of lobbying they can do and fund depends on which test the foundation uses to measure its lobbying – the 501(h) expenditure test or the insubstantial part test. Most public foundations will benefit from electing to measure their lobbying using the [501\(h\) expenditure test](#) because the rules are clearer than those that apply under the [insubstantial part](#) test.

Private Foundations May Support Charities That Lobby

Although private foundations may not fund or engage in lobbying, they **may still support grantees that lobby**. A private foundation cannot make a grant earmarked for lobbying², but it may make [general support and specific project grants](#). Such grants, when written correctly, would not be considered a lobbying expenditure by the foundation, even if the public charity grantee uses the funds for lobbying. When making grants to public charities, private foundations [do not need to prohibit](#) grant funds from being used for lobbying.

Public Foundations May Support Charities That Lobby

Public foundations may earmark funds for lobbying; however, earmarked grants will count against the public foundation's lobbying limit. 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 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.³

The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code.

² A grant is earmarked if it is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes.

³ Alliance for Justice received a [Private Letter Ruling](#) from the IRS confirming that AFJ, a 501(h) elector, may rely on the two grantmaking safe harbors. 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.