



IRS Clarifies Rules on Foundation Support of Nonprofits That Lobby

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By Eleanor A. Evans, Esq., CAPLAW

Community Action Agencies (CAAs) that engage in lobbying should be aware that private foundations can make grants to organizations that lobby. The IRS clarified this point in a letter issued in June 2000 to the nonprofit Charity Lobbying in the Public Interest (CLPI) explaining the Internal Revenue Code's rules on foundation support of lobbying.¹ (In this context, lobbying means attempting to influence action by a legislative body.)

Generally speaking, unless a 501(c)(3) organization demonstrates that it is a "public charity" - i.e., that it receives a certain amount of financial support from the public - the IRS will consider it to be a private foundation.² Under the Internal Revenue Code, private foundations are subject to a number of restrictions on how they operate, including a tax on amounts they spend on lobbying and voter registration activities.³ According to CLPI, many foundation executives mistakenly assume that foundation funding of groups that lobby is illegal and not an appropriate activity.

The IRS letter clarifies that a private foundation can make an unrestricted grant to support the general charitable purposes of a public charity (such as a CAA) that lobbies, as long as no part of the grant is earmarked for lobbying (i.e., the grant must not be made with an oral or written agreement that it will be used for lobbying).⁴ Moreover, according to the letter, a private foundation can make a grant to a public charity for a specific project that includes lobbying, as long as the following requirements are met:

- No part of the grant may be earmarked for lobbying;
- The foundation must get a proposed budget from the grantee showing that the amount of the grant is not more than the amount budgeted for non-lobbying activities; and
- The foundation must not have reason to doubt the accuracy of the budget.

The letter also notes that the foundation need not concern itself about other sources of funding for the project.

So, for example, if a CAA plans to run a \$50,000 project to educate its clients about avoiding predatory lending schemes and to advocate for legislation that will protect consumers against such schemes, a private foundation may fund up to the amount the CAA budgets for the non-lobbying part of the project. If the lobbying portion is budgeted to cost \$12,500, the foundation may fund up to \$37,500. Moreover,

the foundation is not required to get information from the grantee about other sources of funding for the project. If the CAA actually spends more on lobbying than it budgeted, the foundation will not be penalized. However, the foundation's knowledge of the overrun may give it a reason to doubt future budgets submitted by the CAA.

The IRS letter also explains that private foundations are not required to include a specific provision in their grant agreements stating that no part of the grant funds may be used for lobbying. CAAs that find this or similar language in their foundation grant agreements should consider pointing this out and asking for the language to be removed.

The letter notes that private foundations may fund policy-related activities that are not lobbying, such as discussions of broad social problems and activities involving contact with executive branch officials in order to influence non-legislative policy positions. The letter also observes that although private foundations generally cannot fund voter registration activities, they can fund other nonpartisan election-related activities, including voter education projects, candidate forums and "Get Out the Vote" activities (such as transportation to the polls).⁵

When seeking foundation support, CAAs should keep in mind that community foundations⁶ are often public charities rather than private foundations and are therefore freer than private foundations to fund lobbying and nonpartisan voter registration activities.

¹ Since the [letter](#) was issued, CLPI changed its name to Center for Lobbying in the Public Interest. For other online nonprofit lobbying and advocacy resources, visit [CLPI's website](#) and [NPAction's website](#).

² See 26 U.S.C. § 509(a).

³ See 26 U.S.C. §§ 4940-4945 and, in particular, 26 U.S.C. § 4945(d)(1) and (2) (lobbying and voter registration).

⁴ See Treas. Reg. (26 C.F.R.) §53.4945.2(a)(6)(i).

⁵ A CAA must carry out foundation-supported, nonpartisan "Get Out the Vote" activities in a way that does not result in the identification of its CSBG or Head Start programs with such activities (e.g., by using staff, facilities and equipment that are not funded through CSBG or Head Start). See 42 U.S.C. § 9918(b)(2) (CSBG) and 42 U.S.C. § 9851(b).

⁶ According to the Foundation Center, a community foundation is a 501(c)(3) organization that makes grants for charitable purposes in a specific community or region. Funds are usually derived from many donors and held in an endowment independently administered; income earned by the endowment is then used to make grants. Although a few community foundations may be classified by the IRS as private foundations, most are classified as public charities.