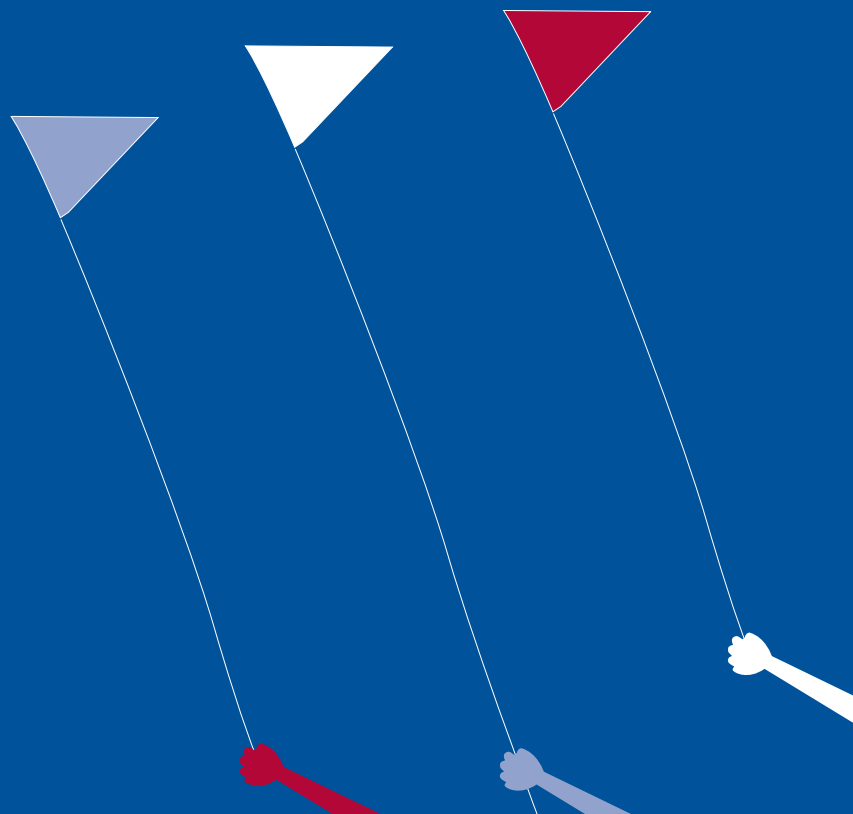




Investing in Change:

A Funder's Guide to Supporting Advocacy



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Foreword

Emmett D. Carson, Ph.D., President and CEO of the Minneapolis Foundation and Chairperson of the Board of Directors of the Council on Foundations

Most of us are familiar with the saying: “You can lead a horse to water, but you can’t make him drink.” Unfortunately, this statement accurately reflects the disappointing state of efforts to encourage foundations to embrace public policy advocacy as a routine aspect of their grantmaking. While foundations have become increasingly aware that public policy advocacy work is possible, many have yet to see the value of such work for advancing their programmatic interests. As a result, these foundations lack the necessary “thirst” to expend any appreciable energy or effort directed at becoming engaged in public policy advocacy.

In truth, the necessary leadership and stamina that are required by a foundation’s board and staff to effectively and responsibly engage in public policy can only come from within a foundation. For those of us who believe in the importance of this work, we must actively encourage foundations to come to their own realizations that public policy engagement is in their self-interest as it relates to fulfilling their charitable aspirations for a better society. It does not matter whether a foundation’s charitable aspirations are characterized as conservative or progressive, or its specific area of interest. What matters is that our society benefits when foundations use the full range of grantmaking strategies that are at their disposal to achieve their charitable objectives. In so doing, foundations maximize their potential for success, help to ensure that diverse viewpoints are vetted through the democratic process, and satisfy their public trust obligations.

Investing in Change: A Funder’s Guide to Supporting Advocacy is an important work from a respected and trusted source as to what foundations can, and cannot do, as it relates to public policy advocacy, and I know it

will be a valued resource for grantmakers. It eliminates the myriad myths and excuses that are often presented as to why foundations do not engage in this work, including that the law prohibits foundations from engaging in public policy advocacy. In fact, the opposite is true. The laws governing foundation engagement in public policy advocacy have evolved to provide progressively clearer guidance about what is allowed by law. What is not widely acknowledged, or appreciated, is that the changes in the laws and regulations have been driven, in large part, with the intent of *encouraging* foundations of all types to become comfortable with utilizing public policy advocacy as a grantmaking strategy.

What this reference book does not do—and should not be expected to do—is provide a foundation with either the passion or the courage (and both are needed) to find at least one area of programmatic interest within its grantmaking portfolio that would benefit from public policy action. Such passion and courage must come from the foundation itself, ideally as it examines its respective vision and mission statements. Even a foundation that sees its mission as focused on supporting direct services by nonprofit organizations may find that severe budget cuts by federal, state, or local entities to these same organizations warrants a public policy response.

As more U.S. foundations discover the will from within to recognize that the pursuit of public policy advocacy is essential to fulfilling their vision for a better society, we can look forward to great things for our cities, our nation, and our world. We should expect nothing less from institutions that collectively hold assets of nearly \$500 billion in the public trust.

Preface

Nonprofits, including all foundations and public charities, have championed many of the most important advances we enjoy in our society today. Without their leadership and advocacy efforts, we would not have achieved our vast environmental and consumer protections or won the civil rights and women's rights struggles of the last century.

These organizations promote changes in government, industry, and other institutions in order to affect the lives of ordinary people in America and around the world. They provide a mechanism for people to confront important issues in their families and communities, and empower them to make needed changes. Nonprofits amplify the voices of underrepresented members of our society. They tackle the seemingly unsolvable problems that government and business avoid. They regularly immerse themselves in the public policy arena through tireless advocacy on behalf of the causes they champion.

But they could not do all of this alone. None of this work would be possible without foundation support. Foundation resources—in the form of financial support, information, organizing, convening and more—enable nonprofit organizations to shape public policy and conduct powerful advocacy work. *Investing in Change: A Funder's Guide to Supporting Advocacy* provides an in-depth discussion of the various roles foundations can play in the advocacy process.

Foundation leaders often recognize the potential impact of advocacy efforts but are unsure which levels of involvement are legal and appropriate. Common questions include:

- Can a foundation fund a charity that lobbies?
- Can a foundation support voter education?
- Can a foundation's staff or board members talk to legislators about specific policy issues?
- How can a foundation promote advocacy?
- How can a foundation evaluate the advocacy activity of grantees?
- What advocacy activities can a foundation participate in directly?

We developed *Investing in Change* to answer these and many other questions raised by foundations wishing to support and/or engage in advocacy. *Investing in Change* consists of legal information, case examples, and tips for supporting advocacy comfortably, legally, and successfully.

This guide provides information to boards, trustees, and staff of all foundations—private and public, large and small, experienced and emerging. While some will find it valuable to read cover-to-cover, others may use it as an occasional reference to answer a specific question.

Investing in Change builds upon and complements other publications created by the Alliance for Justice to assist foundations and other nonprofits, including *Myth v. Fact: Foundation Support of Advocacy*. For a complete list of Alliance for Justice publications, see Appendix G.

Be aware that the legal issues on the following pages are often fact specific. Although this guide provides legal information on the federal tax laws and rules governing foundations and advocacy activity, it does not offer specific legal advice. Foundations considering a particular activity or grant that touches on advocacy activity should seek specific advice or approved guidelines from expert counsel. They also should consult other laws not addressed in depth here, particularly state and federal election and disclosure laws.

Investing in Change: A Funder's Guide to Supporting Advocacy was written by Alliance for Justice staff Susan Hoechstetter, Foundation Advocacy Director; Olga Lozano, Senior Program Associate; Kelly Shipp Simone, former Law Fellow; Liz Towne, Director of Advocacy Programs; and Vernetta Walker, former Foundation Advocacy Counsel. In addition, we would like to thank Mosaica, The Center for Nonprofit Development and Pluralism, for its input on chapters IV and V and Holly Schadler from the law firm of Lichtman, Trister and Ross, LLC, who provided our legal review.

We also would like to thank the many individuals who participated in the formation of this publication, far too many to name individually. Numerous funders provided a wealth of good information and advice

throughout our writing process. This guide would not have been possible without them.

This guide was produced as part of Alliance for Justice's Foundation Advocacy Initiative, which seeks to increase foundation support for nonprofit involvement in the policymaking process. The Foundation Advocacy Initiative provides legal information to help foundations navigate the laws governing their ability to support and engage in advocacy activities. During the production of this guide, the Foundation Advocacy Initiative received generous support from the Beldon Fund, Ford Foundation, George Gund Foundation, Joyce Foundation,

W. K. Kellogg Foundation, John S. and James L. Knight Foundation, John D. and Catherine T. MacArthur Foundation, Rockefeller Brothers Fund, Rosenberg Foundation, Surdna Foundation, and the Unitarian Universalist Veatch Program at Shelter Rock.

As always, thank you to each and every member of the nonprofit community for the valuable, world-changing work that you do every day. We wish you much success with your advocacy efforts.

Nan Aron, President

Introduction: Making the Case for Advocacy

“CHARITY IS A MATTER OF PERSONAL ATTRIBUTE, justice a matter of public policy. Never can the first be a substitute for the second.”

—William Sloan Coffin, Yale University Chaplain

How does a foundation know it is making a difference? When a foundation gives money directly to a program that provides a community service, the impact is seen immediately: low-income children receive a new educational program, or services for AIDS victims continue unabated. Supporting advocacy is a little different. The impact may be harder to see and measure at first, but changes in public policy are often a precursor to the meaningful, long-term success vital to tackling larger community challenges. Supporting advocacy is, quite simply, one of the most powerful tools available to foundations for creating real change.

Supporting advocacy is an investment that can lead to systematic change.

Despite understandable concerns to the contrary, foundations *may* safely support nonprofits that engage in advocacy.¹ What’s more, foundations may engage in advocacy themselves, within certain defined parameters. This section explains why foundation support of advocacy activities is critical. It also describes two major types of foundations and offers several examples of foundation support for advocacy.

Supporting Advocacy is Important

The term “advocacy” encompasses a broad range of activities that can influence public policy. From research and public education to lobbying and voter education, advocacy is about using effective tools to create social change. Recognizing the importance of these tools, many public and private foundations support advocacy and sometimes engage in it themselves. There are a number of compelling reasons to embrace nonprofit public policy advocacy work as a crucial component of an overall funding strategy:

Supporting advocacy is an investment that can lead to systemic change. Public policy work is an effective strategy for bringing about systemic, long-lasting change that can affect large segments of the population for long periods of time. For example, a change in Medicare drug policy may result in millions of people gaining or losing the ability to afford their medicine over many years. In a recent speech, Edward Skloot, executive director of the Surdna Foundation stated, “These are the markers of distinguished philanthropy: going after root causes of poverty, inequity, and disadvantage and, by doing it, making lasting institutional and social change.”

Supporting advocacy is a way to leverage the impact of available funds. Foundations that support nonprofit public policy work stretch their grant dollars and see more far-reaching results from their financial contributions. Winsome D. McIntosh, vice president of the McIntosh Foundation, notes, “As a small foundation, we’ve found supporting nonprofit advocacy to be our most effective funding strategy. Grantees that lobby can leverage every dollar of our support to make an impact.”

Leveraging additional funds is particularly important in an era of stringent cutbacks in state and federal assistance. “Foundations cannot make up the services gaps faced by government,” states Emmett D. Carson, president and CEO of The Minneapolis Foundation. “If advocacy can save one percent of the state budget on housing, medical care, or other services, that means millions of dollars toward those services. Support for public education, advocacy, and lobbying can have great benefits while the same amount spent on direct services could not sustain programs over time.”

Supporting advocacy strengthens the voice of the underrepresented and provides policymakers with information they need to know. National, regional, and local policymakers base policies upon the voices they hear. Too often, however, the constituencies

that need the most help are the quietest. Through grantmaking, foundations can strengthen those voices in policy debates.

Supporting advocacy also provides policymakers with expertise from the charitable service organizations that are typically the first to respond to community needs. The day-to-day experiences of these organizations yield important information and perspectives that policymakers need in order to understand their constituencies' concerns and to draw conclusions about which approaches work and which do not. Former Senator Timothy E. Wirth, president of the United Nations Foundation and Better World Fund, puts it this way: “[I]n the ebb and flow of public debate, a free society needs the tension and testing of conflicting ideas, and is stronger as a result. If you believe in something, leaving the field to others is not much of an option, any more than not voting, or not being informed about our community, state, nation, or the world.”

Supporting advocacy helps a foundation achieve its mission and helps public charities reach their goals. Most foundations include in their missions a broad, long-term goal to address significant areas of need in the community. Advocacy is critical in addressing most of these societal improvements. Funding for advocacy activities balances foundation support for direct service programs that provide more immediate relief. The W.K. Kellogg Foundation made this point on its website: “As always, our mission is to improve the lives of individuals and families. Through policy work, however, we extend the impact of our grantmaking to a far broader level. For example, the lessons we learn can inform decisions that determine how we educate children, protect the environment, or provide health care.”

Supporting advocacy bolsters a foundation's unique role in bringing together diverse members of the community. The work of foundations is carried out at the intersection of government, educational institutions, business, the media, and other groups. As a result, foundations involved in public policy are in a unique position to convene players in the broader community to work for the common good. McKnight Foundation President Rip Rapson, accepting the first Paul Ylvisaker Award for Public Policy Engagement from the Council on Foundations, recognized the importance of involving all sectors of the

community in achieving program goals: “Our welfare reform work proceeded from the belief that helping people move from welfare to work was a community responsibility, not the task of any single sector. We used our financial support to encourage employers, government agencies, nonprofits, religious organizations, civic groups, and individuals to assume collective responsibility—to act as a community. And our twenty-two cross-sector partnerships did just that—developing tailored strategies that ranged from childcare to transportation, from job training to mentoring.”

While foundation leaders have varied reasons and methods for supporting advocacy, the common thread is the recognition that advocacy can be an important tool for success, no matter what the goal.

There are Many Legal Opportunities to Support Advocacy

Foundations, like other nonprofits, may lend their expertise to the policy debate in perfectly permissible ways. They can support organizations that carry out advocacy activities and they can engage in certain types of advocacy themselves. The Internal Revenue Service (IRS) rules, however, vary according to the type of entity and the nature of the advocacy activity.

This guide discusses the federal tax rules applicable to private foundations and public foundations (often referred to as community foundations).

A **private foundation** is a 501(c)(3) organization supported by one or a few individuals or sources. Private foundations generally award grants to support other organizations' charitable activities.

Public foundations are publicly supported charities that make grants to support the charitable activities of other organizations. Public foundations are subject to far fewer restrictions than private foundations.

Many foundations already successfully and legally support advocacy. Some do so through small grants for a distinct activity or product, such as a one-time grant to a public charity for producing a report on a specific policy issue. Others provide general support grants for their grantees to use as needed, or multi-year project grants for a variety of advocacy efforts by different organizations. *For example, the Rosenberg Foundation, a private foundation, embarked on a 10-year campaign to improve child support in California. Through a series of 74 grants to 16 organizations, the foundation gave \$6.6 million to fund a range of advocacy*

activities, including grassroots organizing, state and federal policy analysis, research, and communications. One key result was a major shift in focus from “deadbeat fathers” to the needs of children. The bottom line: total child support collections in California increased from \$1.1 billion in fiscal year 1996 to \$2.1 billion in fiscal year 2001.

The following is a more detailed account of the Rosenberg Foundation program. This guide includes a number of case examples to demonstrate the feasibility of supporting advocacy regardless of a foundation’s mission or method of operation.

The Rosenberg Foundation: Advocacy Campaign to Improve Child Support in California

Overview

The Rosenberg Foundation is a private foundation. One of the foundation’s main priorities is strengthening the economic well-being of children who were living in single-parent homes and dependent on child support payments from non-custodial parents. California was collecting support in only 12.5 percent of cases, compared to a national average of 18 percent.

Program Strategy

Overview

emphasized policy advocacy at local, state, and federal levels. The initiative consisted of:

- Grassroots organizing and advocacy
- State and federal policy analysis and advocacy
- Research
- Communications
- Child support policy development
- Active foundation role in strategy development and convening of grantees

Key Program Accomplishments

- Increased amount and uniformity of California’s support guidelines
- Shift in the public and policymakers’ focus from “deadbeat fathers” to system failure and the needs of children
- Strengthening of state enforcement tools, including revocation of driver’s licenses, suspension of business and recreational licenses, and establishment of a registry to track delinquent parents
- Franchise Tax Board program established to collect delinquent support
- State’s decision to abandon an ineffective \$147 million statewide computer system
- State’s adoption of liberal child support cooperation requirements in welfare reform
- State legislature’s reorganization of the child support program

The impact of the project is measurable: total child support collections in California increased from \$1.1 billion in fiscal year 1996 to \$2.1 billion in fiscal year 2001. The rate of collections jumped from about 12.5 percent in 1993 to 39 percent in 2001.

Chapter I: Defining Advocacy

“WHEN WE TALK OF MAKING AN IMPACT, I think of a continuum of activity, starting with problem formulation at one end, moving through research and policy analysis, stimulating discussion of diverse views, and ultimately advocating a particular policy action.”

—Jonathan F. Fanton, president, John D. and Catherine T. MacArthur Foundation

When someone says “advocacy,” the next word that often comes to mind is “lobbying.” Lobbying is certainly an important part of advocacy work, but advocacy efforts may be much broader. Advocacy can include organizing, picketing, litigating, speaking to government officials, and other methods of influencing political, economic, and social systems. In many cases, these are both permissible and appropriate activities to fund. No matter the method, advocacy is essential to improving life for all Americans.

This chapter provides a general understanding of the types of advocacy activities that nonprofits may consider when trying to influence public policy at the federal, state, and local levels. Multiple forms of advocacy may be desirable in order to move public debate on a particular issue. The examples given below provide a common starting point for thinking about the many ways that nonprofit entities support and engage in advocacy. A detailed discussion of the rules and limitations related to those activities can be found in Chapter II. Activities that involve more than one avenue for advocating change, such as public education, are discussed at the end of this chapter under “Cross-Cutting Activities.” This chapter concludes with a discussion of the basic components in many successful advocacy campaigns.

Avenues for Advocating Change

Avenues for Advocating Change
Executive Branch
Judicial Branch
Legislative Branch
Electoral Process

Executive Branch

Efforts to influence officials in the executive branch of federal, state, or local government is a powerful tool. Under federal law, nonprofits and foundations can do as

much of this advocacy as they want.² Executive branch advocacy can take the form of:

- Commenting on regulations
- Requesting enforcement of laws
- Advocating for or against executive orders
- Otherwise trying to influence administrative decisions on policy and program implementation

There are several points of impact within the executive branch: administrative agencies, executive officials, and special purpose boards. As you will read in Chapter II, public and private foundations may engage in executive branch advocacy with few limits so long as the advocacy is directed at influencing administrative, and not legislative, actions.

Administrative Agencies

Administrative agencies, such as a state department of consumer protection or the U.S. Department of Health and Human Services, are responsible for a range of activities including creating new regulations, enforcing laws, implementing policy, mediating disputes, and providing services and grants. The types of advocacy activities that nonprofits engage in most frequently with administrative agencies are directed at the development of regulations and enforcement of laws.

Creating Regulations: The executive branch of the federal, state, and local government creates regulations to interpret and apply law. Advocacy in this arena may include written or oral comments on regulations or discussions with executive staff and other officials responsible for drafting regulations. For example, if an organization is concerned with predatory mortgage lending, the organization may urge the U.S. Department of Housing and Urban Development to propose regulations that would limit the ability of lenders to charge certain types of fees.

Enforcing Laws: Once a law is enacted, executive branch agencies are responsible for enforcing the law. Nonprofits may advocate for proper enforcement or play an oversight role by urging the government to enforce existing laws. For instance, many foundations and other organizations have been pushing for enforcement of the Americans with Disabilities Act (ADA). They are urging agencies to hire additional staff to clear a backlog of complaints alleging violations, writing briefs to require states to adhere to the ADA, and seeking better technical assistance and guidance from administrative agencies.

Executive Officials

Executive officials include heads of the executive branch (such as the president, governor, or mayor), cabinet level officials, and similar high-ranking administration officials. One type of executive action that nonprofits may seek to influence is an executive order, which is an order issued by the president, governor, or mayor that is not legislation but has the force and effect of law. For example, a nonprofit could ask the president to issue an executive order to establish a commission to strengthen social security.

Special Purpose Boards

Special purpose boards include school boards, housing authorities, zoning boards, and other special purpose administrative bodies. Examples of advocacy with special purpose boards include testifying before the local school board about the importance of increasing the teacher to student ratio in schools or proposing to the county zoning board that a section be re-zoned from commercial to residential use.

[Note: It is important before commencing these activities at the state or local level to ensure that the board is acting in an administrative, and not a legislative, capacity. If the board is acting in a legislative capacity, attempts to influence its actions could be lobbying.³]

Judicial Branch

Advocacy occurs in the judicial branch through litigation. Parties can advocate their position on an issue by litigating legal claims within the court system or filing a “friend of the court” brief in litigation filed by another party. Many foundations and public charities have used litigation as an effective tool to preserve and expand the rights and protections of underrepresented Americans.

Legislative Branch

Although many attempts to influence the legislative branch constitute lobbying, some do not. There is a great deal of policy-related work that both public and private foundations may conduct, but familiarity with the rules is critical. The rules for supporting public charities (and other nonprofits) that work with the legislative branch are found in Chapter II of this guide, while the rules for foundations engaging in their own legislative advocacy are found in Chapter VI.

What is Considered Non-Lobbying Advocacy?

Examples of non-lobbying advocacy include public education campaigns and the convening of key players to discuss policy issues. *For example, the California Endowment and the California Wellness Foundation, both private foundations, convened grantees and other stakeholders for educational discussions about the state budget. This type of activity was not considered lobbying because it was not preparing for or discussing strategy for influencing specific legislation.*

In addition, training people on how to conduct advocacy activities, including lobbying, is not treated as lobbying if the training is not directed at specific legislation.

What is Considered Lobbying?

An organization that wants to influence specific legislation can attempt to do so by going directly to a legislature or by urging the general public to contact the legislature. This activity is lobbying, whether it occurs at the federal, state, or local level. Generally, lobbying occurs when a person or group of people express an opinion to a legislator on a specific piece of legislation or on a legislative proposal. Lobbying also includes a communication that asks the public to speak to a legislator about specific legislation or a legislative proposal.

Private Foundations

A private foundation may not lobby or earmark funds to support lobbying. However, as discussed in Chapter II, a private foundation may provide funds to public charities that lobby.

Public Foundations

Under federal law, lobbying may not make up a substantial part of a public foundation’s total activity. A public foundation may choose from one of two tests to determine its amount of permissible lobbying: the “insubstantial part test” or the “expenditure test.”

The **insubstantial part test** requires that lobbying activities be an insubstantial part of a public charity's overall activities.⁴ "Insubstantial" is not defined by the IRS, but many tax practitioners advise their clients that the charity's lobbying activity should be less than five percent of its overall activity.

The **501(h) expenditure test** provides clearer guidance.⁵ It sets limits on lobbying based on the size of the public charity's exempt purpose expenditures. Generally, "exempt purpose expenditures" means the amount of money the organization will spend in its fiscal year. Roughly, no more than 20 percent of an organization's budget may be spent on lobbying and no more than 25 percent of that amount may be grassroots lobbying.

The following chart illustrates the differences between the expenditure test and the insubstantial part test.

The 501(h) Expenditure Test vs. The Insubstantial Part Test	
501(h) Expenditure Test	Insubstantial Part Test
<ul style="list-style-type: none"> ■ Generally allows an organization to spend more of its budget on lobbying (up to 20 percent); grassroots lobbying is limited to 25 percent of total lobbying. 	<ul style="list-style-type: none"> ■ Lobbying activity is restricted to an insubstantial percentage of the annual activities; no separate limit for grassroots lobbying.
<ul style="list-style-type: none"> ■ Objective test with definite expenditure guidelines and clear definitions of lobbying. Unpaid volunteer activity not counted against limit. 	<ul style="list-style-type: none"> ■ Subjective test with no clear definition of lobbying; IRS considers the overall character and emphasis of the lobbying activities; may count unpaid volunteer activity against limit.
<ul style="list-style-type: none"> ■ Direct and grassroots lobbying expenditures must be separately reported on IRS Form 990. 	<ul style="list-style-type: none"> ■ Direct and grassroots lobbying fall under one limit; total figures must be maintained and reported on IRS Form 990.
<ul style="list-style-type: none"> ■ Penalty for exceeding allowable lobbying expenditures is usually an excise tax, but the IRS may also revoke tax-exempt status if in a four-year period the organization exceeds its lobbying limits by greater than 150%. 	<ul style="list-style-type: none"> ■ Penalty for exceeding allowable lobbying is revocation of tax-exempt status and an excise tax on the amount of the excess lobbying expenditures.

For purposes of those public foundations that elect the 501(h) expenditure test, the IRS further distinguishes between two forms of lobbying activity: direct and grassroots lobbying.

Direct lobbying occurs when an organization communicates with a legislator or legislative staff about a specific piece of legislation and reflects a view on that legislation.⁶ Specific legislation can include proposed legislation or legislation that has already been introduced in a legislative body. For example, a letter from a nonprofit to a senator urging her to support a legislative ban on hunting dolphins would be direct lobbying.

Direct lobbying also encompasses any communication with the general public expressing a view about a ballot initiative, referendum, bond measure, or similar procedure. In these cases, the public assumes the role of a legislative body by deciding public policy.

Grassroots lobbying is a communication with the general public that reflects a view on specific legislation and encourages people to contact their legislative representatives or staff in order to influence that legislation. An organization encourages the general public to take action when it:

- Asks them to contact their legislator
- Provides the name, telephone number, email address, or other contact information of the legislator
- Offers a mechanism to contact the legislator (such as a postcard or petition), or
- Identifies legislators who will be voting on the legislation, who are undecided or opposed to the organization's position, or are the recipient's legislators⁷

Exceptions to Lobbying

Not all activities that might influence a legislative debate are considered lobbying. Four types of activity are specifically excluded from the statutory definition of lobbying: 1) nonpartisan analysis, study, or research; 2) requests for technical advice or assistance; 3) self-defense communications; and 4) examinations of broad social, economic, and similar problems.⁸ These exceptions are discussed individually below.

Nonpartisan Analysis, Study, or Research. The definition of lobbying excludes substantive research studies that objectively and factually discuss a legislative issue while advocating a particular position.

One example of this type of advocacy is a report on a particular issue that is balanced enough to permit the public to form independent opinions about the subject. The report's authors may draw conclusions as long as they are evenhanded in presenting opposing opinions. Such a report must be widely distributed and must not be shared exclusively with audiences who agree with the

authors. In addition, the report may not direct readers to contact legislators about the issue.

Requests for Technical Advice or Assistance. An organization's response to a request by a congressional committee or other government body to testify or provide written testimony at a hearing is another lobbying exception. The request must be in writing and made on behalf of the entire government body, not at the request of an individual legislator. The organization's response may be oral or written and must be made available to every member of the requesting body. The preparation time and associated expenses (*e.g.*, production of materials, travel costs) are not lobbying expenses.

Self-Defense Communications. Lobbying also excludes communications with a legislative body regarding legislation that could affect an organization's existence, powers, tax-exempt status, or the deductibility of contributions to the organization.

This "self-defense" exception is reasonably narrow and should be used with caution. For example, the self-defense exception would apply if Congress proposed legislation to eliminate the tax deductibility of contributions to tax-exempt organizations. Any tax-exempt organization that receives tax deductible contributions, including foundations, could oppose this legislation under the self-defense exception.

Examinations and Discussions of Broad Social, Economic, and Similar Problems. This exclusion occurs when an organization communicates with a legislator or the general public without referring to specific legislation.

It is not lobbying, for example, to talk about problems of health care for the uninsured if an organiza-

tion does not discuss a specific legislative solution or proposed legislation. It *would* be lobbying, however, to discuss legislation to fund a national healthcare program that provides health insurance for all Americans.

Election-Related Activity

Election-related activity may be either partisan or nonpartisan. Partisan activity, as more fully defined in Chapter II, is any activity that directly or indirectly supports or opposes a candidate for public office. Foundations and public charities are only permitted to engage in nonpartisan activity, such as voter education and get-out-the-vote efforts.

Foundations and public charities are prohibited from engaging in partisan electoral activity, but they are permitted to engage in nonpartisan voter education and registration activity.

Permissible nonpartisan activities include:

- **Voter Education.** Nonpartisan voter education covers a multitude of activities, including developing candidate questionnaires and voting records, and sponsoring candidate debates.
- **Get-Out-the-Vote Activities.** Get-out-the-vote (GOTV) is any activity that gets people to the polls. GOTV includes phone calls to individuals advising them of an upcoming election or the location of their polling place, or providing rides to the polls on Election Day.
- **Voter Registration.** Voter registration includes facilitating a person's ability to register to vote by providing a voter registration form, referring a person to the voter registration office, or asking a person to register. While public charities and public foundations may engage in nonpartisan voter registration, private foundations are subject to specific rules in their support and engagement of these activities.

Cross-Cutting Activities

Nonprofits use a variety of cross-cutting activities to influence public policy, targeting multiple points of impact. These activities include public education, research, convening key players, and organizing. A discussion of any limits on these efforts for nonprofits can be found in Chapter II and VI.

Special Exception for Private Foundations: Jointly Funded Projects

It is not lobbying when a private foundation:

- Makes a grant to an organization conditioned on the receipt of matching support from a governmental body; or
- Discusses with government officials a jointly funded program or potential program.

This exception applies as long as the discussion does not include a direct attempt to persuade the officials or employees to take positions on specific legislative issues outside of the jointly funded program.⁹

Public Education. Examples of public education include distributing informational brochures, posting flyers, holding a rally, or putting information on an organization's website.

Media. Public education also occurs indirectly through earned and unearned media. Media advocacy is the process of targeting, informing, educating, and securing the support of the media to advance advocacy objectives.

For example, letters to the editor, op-ed pieces, and advertising campaigns are a way to educate the public about a particular issue. Media advocacy can include influencing editorials, developing relationships with the news media, and using those relationships to disseminate an educational message to the general public about a particular issue.

Research. Research is a tool frequently used by nonprofit organizations to influence public policy. By sharing research results with legislators, the general public, government agencies, and other nonprofits, an organization can effectively spread the word about issues it deems important.

Convening Key Parties. Some foundations bring together key players to discuss an issue or ways to address it. Those players may include grantees and other public charities, foundations, policymakers, constituents, government administrators, business representatives, and others.

For example, the California Endowment, a private foundation, held three public forums in September 2002 to facilitate a substantive dialogue among state and county officials, health policy experts, and the public to help inform efforts to redesign the health care system in Los Angeles County. The county health care system was in crisis resulting from a budget deficit, rising health care costs, and an increasing number of uninsured individuals. The California Endowment issued a report outlining the issues and recommendations that arose from the forums. The forums helped give a voice to all affected by the crisis.

Organizing Individuals or Communities. Many nonprofits engage in organizing individuals or groups of individuals to work together toward a common goal. For example, a private or public foundation may fund a child-focused public charity to organize parents of children with learning disabilities to meet to discuss their concerns about the availability of special education services. As explained on the website of the Funding

Exchange, a network of social justice foundations, organizing can be a powerful tool that “amplifies the voices of those whose interests are too often overlooked.”

Basic Components of Successful Advocacy Efforts

At any one time, successful advocacy efforts require one or more activities. In some cases, all of the above-mentioned activities might be utilized in a far-reaching campaign. Target audiences and the avenues used for affecting change (such as the executive, judicial, or legislative branch, or the electoral process) will vary. Factors such as public opinion, state budgets, and elections also have a great impact, requiring organizations to be flexible and open to changing strategies.

Educating, Influencing, and Organizing Target Audiences in Your Advocacy Efforts

As you read in the previous section, nonprofits may use a variety of methods to gain support for their advocacy efforts. Organizations can persuade through credible and useful research, tap into the political power of organized communities, skillfully seek out influential allies, work effectively with the media, and develop productive relationships with decisionmakers. To be most effective, they need to work with one or more of the following target audiences:

Communities. The advocate's community may include members of the lead nonprofit organization, individuals in the neighborhood or other geographic area, and individual members of other organizations working on related issues. Keeping members of this community well-informed about when and how to contact decisionmakers or when to take other actions is a crucial component of a well-organized advocacy effort.

Allies/Stakeholders. An effective advocacy campaign seeks out potential allies wherever possible, including those who might be opponents on other issues. The greater the number and diversity of voices brought to a policy debate, the better the chance of success.

Media. Newspapers, newsletters, magazines, radio, television, and the Internet offer powerful vehicles for reaching and activating target audiences. The key to an effective relationship with the media is to understand how the media operates and what is important to them. When trying to draw media attention to an issue, recognize what makes a story

timely and interesting to readers or viewers, as well as what is valuable to journalists. For example, this may mean timing the release of a new study to coincide with the introduction of legislation supporting an organization's position on that issue.

Decisionmakers. These include members of Congress and their staff, state and county legislators, city council members, city, county, state, and federal regulators, judges, jurors, and other policymakers. The general public can also be the decisionmaker when ballot measures are being considered. Identifying who has the power to make the decision helps

determine which decisionmaker to contact and who else is needed to approach that person. Just identifying and gaining access to some decisionmakers, such as key federal or state legislators, can sometimes take months or longer.

The following chart provides examples of how an effort to reform state child support laws might work to educate, influence, and organize targeted audiences. Be aware—some of the activities may constitute lobbying and therefore may be subject to limitations and restrictions by the rules discussed in Chapter II.

Sample Advocacy Activities and Target Audiences for a Model State Child Support Reform Campaign *				
Target Audiences				
	Community	Allies/Stakeholders	Media	Decisionmakers
	State child support recipients, activists, and family and child welfare organizations.	Public officials, health organizations, and others with ties to child support recipients.	Local press, radio, and television.	State legislators, governor, state regulators, and staff of each.
Educate	Develop and distribute reports and issue updates on child support in the state. Get input from the community.	Develop and distribute reports and issue updates to other organizations, as well as officials from state human resources department.	Distribute reports and press releases to newspapers, run paid ads on radio, and conduct press conferences.	Provide background information on issues to state legislative and executive branch staff. Testify before the state legislature. Prepare and provide written comments to state human resources department on proposed child support regulations.
Influence	Present examples of successful advocacy by others and possible benefits of child support advocacy to this community.	Provide information on how child support reform would benefit potential allies' constituencies.	Respond quickly to media questions with credible information and invite media to selected coalition meetings.	Keep decisionmakers informed of the advocates' position on legislative and regulatory proposals and the reason for those positions. Respond quickly to questions with credible information.
Build Relationships and Organize	Conduct meetings with the community and suggest advocacy actions and results.	Build a child support reform coalition of different organizations to work together on the issue.	Keep in touch on regular basis with members of the media.	Organize community activists, organizational advocates, and other allies to contact or visit decisionmakers.

*Some of the activ

Chapter II: Rules for Private and Public Foundations Supporting Advocacy

“WE FOUND THAT THE FEDERAL RULES GOVERNING ADVOCACY are not that complex—especially with the proper resources to clarify and demystify what is permissible for foundations and their grantees. Understanding the rules—and ensuring our grantees do too—has paid off as we assess public policy advocacy by our grantees on the issues of concern to our foundation.”

—Ellen Widess, senior program officer, Rosenberg Foundation

In order to influence public policy, foundations and their grantees must understand the tax rules. This chapter will explain the rules for private and public foundation support of advocacy. Chapter VI will discuss the rules for foundations actually engaging in advocacy themselves.

Overview of the Rules

The rules governing support of lobbying and election-related activity vary based on the following:

- Type of foundation (private or public)
- Grantee’s tax-exempt status (public charity or other tax status)
- Type of advocacy being funded (lobbying, election-related activity, or other)

For example, private and public foundations face many of the same rules when supporting *election-related* activity; however, *lobbying* rules for each type of foundation differ depending on whether the grantor is a public or private foundation and whether the grantee is a public charity or other type of organization. Both private and public foundations may make grants to various types of organizations. Note that while a grantee does not necessarily have to be a 501(c)(3) organization, foundations typically prefer

to fund public charities. The previous chart shows how the rules apply to 501(c)(3) public charities.

Before making a grant, a foundation must verify the tax-exempt status of a prospective grantee. A foundation should request and review the prospective grantee’s determination letter from the Internal Revenue Service to confirm its tax-exempt status and ensure that it remains effective. If the grantee is not a 501(c)(3) public charity, special rules apply (as discussed later in this chapter). A list of current 501(c)(3) public charities is available in IRS Publication 78.¹⁰

There are three broad categories of advocacy activities, each of which has different legal restrictions depending on the type of organization involved. This chapter will analyze the rules on funding each of these activities.

Lobbying. Lobbying is an attempt to influence specific legislation by communicating views to legislators or asking people to contact their legislators.¹¹ This includes legislation actually introduced in a legislative body, under discussion, or merely being proposed. A limited amount of lobbying is permitted by public charities and public foundations, and generally is prohibited by private foundations.¹² There are also other types of legislative advocacy that do not meet the definition of lobbying. For more information on non-lobbying activities and lobbying exceptions, refer to Chapter I.

Electoral-Related Activity. Election-related activity includes “partisan election-related activity” (activity that supports or opposes candidates for public office) and “nonpartisan election-related activity” (activities that do not attempt to influence an election by supporting or opposing a candidate). Foundations and public charities are prohibited from participating in partisan electoral activity but permitted to engage in nonpartisan election-related activities.¹³ Permissible

Federal Tax Law and Public Charities	
	501(c)(3) Public Charities
Examples	<ul style="list-style-type: none"> ■ Alliance for Justice ■ Human Rights Campaign Foundation
Federal Tax Treatment	<ul style="list-style-type: none"> ■ Tax-exempt ■ Contributions are tax deductible as charitable contributions
Lobbying Activity	<ul style="list-style-type: none"> ■ Limited
Election-Related Activity	<ul style="list-style-type: none"> ■ May not support or oppose a candidate for public office ■ May engage in nonpartisan electoral activity

nonpartisan election-related activity includes voter registration, GOTV, issue advocacy, and candidate education, among other things.

General Advocacy. Advocacy that falls outside the definition of lobbying is permitted without limitation. This includes public education, non-lobbying advocacy, regulatory work, litigation, and work before administrative bodies, such as a school board.

The following charts summarize the rules for private and public foundations that support any of the three categories of advocacy activities.

Rules for Private Foundations Supporting Advocacy

In 1969, Congress established a new category of Section 501(c)(3) organizations—private foundations—and passed additional rules governing their activities.¹⁴ Among these rules is a provision that effectively prohibits private foundations from engaging in lobbying. Private foundations that spend money on lobbying or instruct a public charity to use a grant to engage in lobbying incur a taxable expenditure on those activities.¹⁵ The tax is so substantial that it acts, in effect, as a lobbying prohibition for private foundations.

Section 4945 of the Internal Revenue Code imposes an initial tax equal to 10 percent of a private foundation's taxable expenditure and an additional 100 percent tax on taxable expenditures that are not corrected. In addition, taxes are imposed on foundation managers who knowingly agree to make a taxable expenditure.

The regulations enacted by the IRS, however, provide safe harbors for private foundations to support public charities that lobby, so long as the foundation does not earmark the money for such activities.¹⁶ In addition, statutory exceptions to lobbying broaden the advocacy activities which foundations may fund.¹⁷ Thus, the reforms in 1969 maintained a significant advocacy role for private foundations. Private foundations continue to be able to influence a broad range of governmental activities outside of lobbying and partisan electoral activity

Private Foundation Support for Advocacy by Public Charities

Private foundations enjoy the greatest flexibility to fund advocacy when supporting activities of a 501(c)(3) public charity.

Rules for Supporting <i>Public Charities</i>		
	Private Foundation	Public Foundation
Lobbying	<ul style="list-style-type: none"> Grants may not be earmarked for lobbying and must comply with rules discussed later in this chapter 	<ul style="list-style-type: none"> Earmarked grants for lobbying are allowed within permitted lobbying limits Grants that are not earmarked for lobbying are not subject to limits
Election-Related Activity	<ul style="list-style-type: none"> Prohibited from supporting partisan electoral activity May support nonpartisan election-related activity 	<ul style="list-style-type: none"> Prohibited from supporting partisan electoral activity May support nonpartisan election-related activity
General Advocacy	<ul style="list-style-type: none"> Permitted without limitation if for tax-exempt purposes 	<ul style="list-style-type: none"> Permitted without limitation if for tax-exempt purposes

Rules for Supporting <i>Non-Public Charities</i>		
	Private Foundation	Public Foundation
Lobbying	<ul style="list-style-type: none"> Prohibited 	<ul style="list-style-type: none"> Permitted within limits and subject to rules discussed later in this chapter
Election-Related Activity	<ul style="list-style-type: none"> Prohibited from supporting partisan electoral activity May support nonpartisan election-related activity subject to rules discussed later in this chapter and expenditure responsibility 	<ul style="list-style-type: none"> Prohibited to support partisan electoral activity May support nonpartisan election-related activity subject to rules discussed later in this chapter
General Advocacy	<ul style="list-style-type: none"> Permitted for tax-exempt purposes and subject to expenditure responsibility 	<ul style="list-style-type: none"> Permitted for tax-exempt purposes consistent with public charity status

Lobbying

Private foundations may support public charities that engage in legislative activities, but they must follow specific rules. Most importantly, when making a grant to a public charity, the funds may not be “earmarked” for lobbying. Why? Earmarked funds create a taxable expenditure to the foundation. 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 require grantees to refrain from using grant funds for lobbying. In fact, a grant agreement that forbids use of the funds for lobbying is unnecessarily restrictive. For more information, see Chapter III.

Under federal tax law, private foundations may make two types of grants that avoid creating taxable expenditures, while permitting grantees flexibility in the use of their funds. The IRS refers to these as **general support grants** and **specific project grants**.¹⁸

General Support Grants

A general support grant is a grant to a public charity that is not earmarked for a particular purpose and specifically is not earmarked to be used in an attempt to influence legislation. Note that a foundation’s knowledge that a public charity has lobbied in the past does not render the grant earmarked for lobbying. Provided there is no agreement between the private foundation and the public charity as to how the money should be spent, the public charity may use the grant funds for any purpose, including lobbying. If the grantee uses the money for lobbying, the foundation will not incur a taxable expenditure.¹⁹

Example: General Support Grant

The Markham Foundation, a fictitious private foundation, makes a general support grant to the Alliance for Research and Education (ARE), a fictitious 501(c)(3) public charity. The written agreement between Markham and ARE confirms that the funds are not earmarked for lobbying and allows ARE to use the funds for purposes consistent with its charitable status. There are no oral understandings between the Markham Foundation and ARE that are inconsistent with this agreement. ARE accepts the grant and uses a portion of the funds for its direct lobbying activities. The grant by the Markham Foundation is not a taxable expenditure and ARE is free to use the funds as it chooses.

Specific Project Grants

A private foundation may make a specific project grant to a public charity for a project that includes lobbying. When making a specific project grant, the foundation must review the grantee’s budget and may give a grant in an amount *up to* the non-lobbying portion of the budget. The grantee *must* spend the funds for the designated project; it does not have the discretion to spend the funds on another project, even one in the same broad program area, or for general purposes. If these conditions are met and there is no agreement that is inconsistent with this understanding between the private foundation and the public charity as to how the money is spent (and it is not earmarked for lobbying), there is no taxable expenditure to the foundation.²⁰ This is true even if the grantee subsequently uses some of the foundation’s 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. The foundation may wish to obtain a statement signed by the grantee’s treasurer or other officer certifying the proposed budget for the specific project and that the project’s budgeted non-lobbying expenses are less than the amount of the grant.

If, however, the foundation has reason to doubt the grantee’s information or, in light of all the facts and circumstances, reasonably should doubt the accuracy of the documents provided, the foundation may not rely on that information.²¹ Note that if the foundation awards more than one grant to a grantee in the same year for the same project, the amount of all grants to that grantee must not exceed the amount budgeted for the project’s non-lobbying activities.²²

Example: Specific Project Grant

ARE applies for a specific project grant from the Markham Foundation. ARE’s project seeks to educate the public on the importance of preserving wildlife habitats. In addition, the project intends to influence legislation by seeking to urge legislators to introduce a bill to preserve certain habitat lands. ARE is seeking a \$100,000 grant for the project, of which it has budgeted \$80,000 for non-lobbying activity and \$20,000

for lobbying. The Markham Foundation reviews ARE's budget and gives ARE an \$80,000 specific project grant. Markham's agreement expressly states that the funds are not earmarked for lobbying. The grant does not create a taxable expenditure for the foundation, even if ARE uses some of the \$80,000 grant money for lobbying.

ARE Habitat Project Budget:	
\$80,000	Public Education
\$20,000	Lobbying
\$100,000	Total
Markham Foundation Grant:	\$80,000
Taxable Expenditure:	-0-

If, however, the Markham Foundation made a grant in the amount of \$90,000, the grant would then exceed the non-lobbying portion of the specific project. A portion of the grant—\$10,000 (the amount of the grant minus the non-lobbying activity)—would be considered a taxable expenditure.

ARE Habitat Project Budget:	
\$80,000	Public Education
\$20,000	Lobbying
\$100,000	Total
Markham Foundation Grant:	\$90,000
Taxable Expenditure:	\$10,000

These same specific project grant rules apply when multiple foundations fund a specific project.

Example: Multiple Foundations Funding a Specific Project

ARE applies for a specific project grant from the Markham Foundation and the Washburn Foundation (both fictitious private foundations). ARE is seeking a \$50,000 grant from each of the two foundations for its project to educate the public on the importance of preserving wildlife habitats. ARE has budgeted \$80,000 for non-lobbying activity and \$20,000 for lobbying legislators to introduce a bill to preserve certain habitat lands.

The Markham Foundation gives ARE a \$50,000 specific project grant based on ARE's budget, ensuring that the grant is not earmarked for lobbying. The Washburn Foundation also gives ARE a \$50,000 specific project grant based on ARE's 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.

ARE Habitat Project Budget:	
\$80,000	Public Education
\$20,000	Lobbying
\$100,000	Total
Markham Foundation Grant:	\$50,000
Washburn Foundation Grant:	\$50,000
Taxable Expenditure	-0-

Multi-Year Specific Project Grant. Some private foundations award multi-year specific project grants. These grants operate under the same rules as a single-year specific project grant, except that the private foundation may choose whether to measure its grant award against the non-lobbying portion of the budget in the year the grant is given (the "per year election") or to divide the grant equally across all the years of the project (the "equal application election"). The same method must be used in all years of the grant.

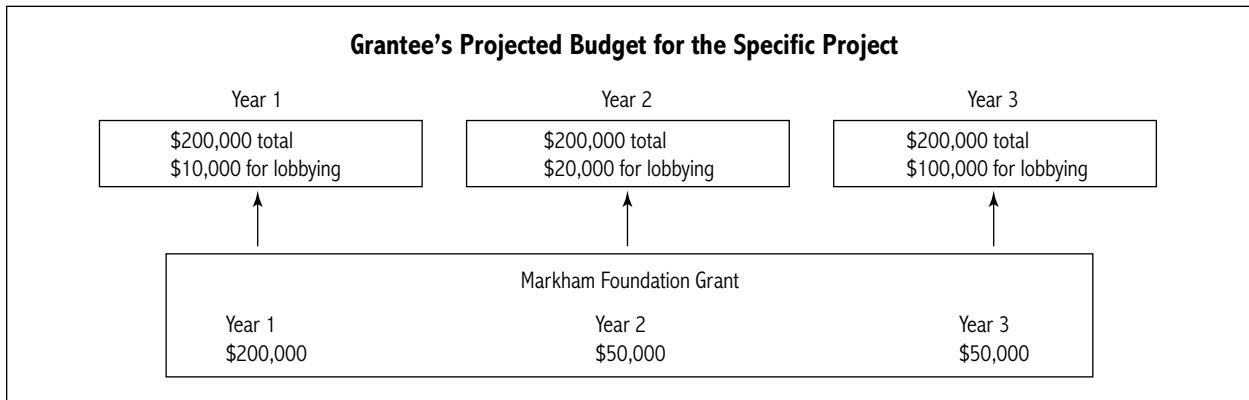
Per Year Election

A private foundation choosing a **per year election** (measuring a grant against the year it is awarded) would treat the multi-year specific project grant as if it were a series of single-year grants. The foundation would measure the amount actually given per year against the non-lobbying portion of the project that year. If the non-lobbying portion of the budget exceeds the grant amount given in that year, then the private foundation would incur a taxable expenditure in that year.

Example: Multi-Year Specific Project Grant, Per Year Election

ARE seeks a three-year specific project grant from the Markham Foundation. ARE's three-year project will educate the public on the importance of preserving wildlife habitats and will introduce a bill to preserve certain habitat lands. ARE requests a \$300,000 grant from the Markham Foundation for the project. The project budget presented by ARE indicates that the project will spend \$600,000 over three years, at a rate of \$200,000 **per year**. ARE intends to spend \$10,000 for lobbying in year one, \$20,000 in year

Multi-Year Specific Project Grant



two, and \$100,000 in year three. The Markham Foundation awards ARE a \$300,000 grant and agrees to pay ARE \$200,000 in year one, \$50,000 in year two, and \$50,000 in year three.

Because the Markham Foundation chooses to measure the grant against the non-lobbying portion of the project per year, the foundation **would** incur a taxable expenditure of \$10,000 in year one. The reason: The Markham Foundation gave ARE \$200,000 in year one, which exceeded by \$10,000 the non-lobbying portion of the project for that year. The foundation would not incur a taxable expenditure in years two and three, however, since its grants in each of those years is well below the non-lobbying portion of the grantee's budget.

Equal Application Election

A private foundation choosing an equal application election (measuring its multi-year grant in equal portions over the life of the project) would measure the total amount of the grant against the total non-lobbying portion of the multi-year project. If the total grant exceeds the total non-lobbying portion of the project, then the private foundation would incur a taxable expenditure.

Example: Multi-Year Specific Project Grant, Equal Application Election

Same facts as above except the Markham Foundation applies the \$300,000 total grant equally over each year of the project term, or \$100,000 per year. The foundation would not incur any taxable expenditure since the non-lobbying portion of the project is \$190,000 in the first year, \$180,000 in the second, and \$100,000 in the third. The \$100,000 grant per year does not exceed the non-lobbying portion of the project in any year.

A taxable expenditure may also occur if the foundation becomes aware of inaccuracies in the grantee's budget but continues to fund the public charity. If, after the foundation has disbursed the first-year grant and before it disburses the second-year grant, the foundation has reason to believe that the grantee's budget inaccurately represents its lobbying and non-lobbying expenditures, the foundation should not pay the second-year installment to avoid a taxable expenditure. If the foundation has reason to doubt the budget and still proceeds to make the grant, the foundation may incur a taxable expenditure.

Election-Related Activity

A private foundation looking to fund nonpartisan election-related activity must adhere to special rules. Several bodies of law apply to the political activities of nonprofits. These include federal statutes, regulations, and rulings under the Internal Revenue Code; the Federal Election Campaign Act and its regulations; and state and local laws governing elections.

501(c)(3) organizations, including private foundations, are absolutely prohibited from engaging in activity that directly or indirectly supports or opposes a candidate for public office.²³ This prohibition applies to candidates in federal, state, and local elections. Determining whether an organization is participating or intervening, directly or indirectly, in a political campaign on behalf of or in opposition to a candidate for public office depends upon the "facts and circumstances" of each case.

Despite this prohibition on partisan activity, foundations and public charities have a recognized role in supporting and conducting nonpartisan activities to educate voters and mobilize individuals to exercise their right to vote. As discussed in the previous chapter, various IRS rulings state

that voter education activities conducted in a nonpartisan manner by tax-exempt organizations are allowable.

While specific rules apply to each type of activity, certain general guidelines apply to the planning and conduct of all voter education and registration activities.

Partisan statements of candidate or political party preference are prohibited. No support or opposition to a candidate or political party may appear in written or oral statements. This restriction includes not only communications or publications that are distributed or made available as part of the project but also buttons, bumper stickers, t-shirts, and the like.

Projects may not be designed or targeted to influence voter acceptance or rejection of a candidate. For example, targeting media ads or distributing literature in a particular voting district to directly or indirectly assist or oppose a candidate or influence the outcome of an election is not permitted. Indications of such targeting would include focusing on swing areas in a voting district or “battleground states.”

Coordinating activities with a candidate’s campaign or a political party is also prohibited. Voter education and registration activities may not be coordinated with candidates, campaigns, or a political party. [Note, however, if an organization is sponsoring a candidate debate or issue briefing, discussions with campaign staff or the candidate about the invitation and logistics are acceptable.]

Voter Education

Educational activities, such as organizing candidate debates and forums and distributing candidate questionnaires and voting records, are acceptable as long as they are carried out in a nonpartisan manner. Private foundations may support such activities without limits. The nonpartisan character of these activities is judged by examining all the facts and circumstances surrounding the activity.

While this guide briefly introduces some of the rules governing these nonpartisan activities, it does not begin to address the myriad nonpartisan activities that private foundations may fund and public charities may engage in. For a more detailed look at nonpartisan activities, see *Rules of the Game: An Election Year Legal Guide for Non-profit Organizations*, available from the Alliance for Justice.

Publication of Voting Records

A 501(c)(3) organization may publish and distribute voting records of incumbent Members of Congress or other elective bodies, such as a state legislature or town council.²⁴ A voting record lists selected pieces of legislation, a brief description of each, and an indication of how members voted. Generally, the record must include all incumbents, and not single out certain legislators or members of one political party. It should not identify candidates for reelection or relate the voting records to a political campaign. There should be no comparisons drawn between an incumbent’s record and his or her opponent’s stand on an issue, or editorializing on specific votes or voting patterns. The record should discuss a broad range of issues.

How widely voting records may be distributed depends principally on whether or not the publication includes editorial comment on incumbents’ votes. If the publication reports such votes with an indication of whether they voted in accordance with the organization’s position on the issue (using a plus or minus, for example), distribution must be more restricted. Voting records that include no “plus or minus” of incumbents’ records may be distributed more broadly to the general public and media.

Also note that the distribution of the report may not coincide with an election campaign. If the report goes out annually after the end of a legislative session in the fall as a regular activity of the organization, sending it in the fall of an election year may be permissible.

Finally, beware of battleground states. Charities must avoid targeting distribution of the record to swing districts, to electorally sensitive areas, or only to areas or states where elections are taking place.

Public Forums: Nonpartisan Candidate Debates

A 501(c)(3) organization may invite candidates to a public forum to discuss their views and answer questions on issues of interest to the organization. The forum may not promote or advance one candidate.²⁵ In planning such events, sponsors must consult both tax, as well as federal and state election law.

All legally qualified candidates from the voting district on which a public forum is focused must be invited to participate. A sponsoring group may limit invitations to only “viable” or “significant” candidates. For example, if the debate is for candidates running for the U.S. House of Representatives, all “viable” candidates running for the congressional seat must be asked. Third-party or independent candidates who are not “viable” need not be invited.

The IRS has stated that all facts and circumstances will be reviewed in determining whether the political prohibition is violated by not inviting all legally qualified candidates, including: (a) whether inviting all legally qualified candidates is impractical; (b) whether the organization adopted reasonable, objective criteria for determining which candidates to invite; (c) whether the criteria were applied consistently and not arbitrarily; and (d) whether other factors suggest that the debate was conducted in a neutral, nonpartisan manner.²⁶

Some additional rules to consider:

- At least two candidates must appear at the forum.
- If the debate is held during a primary election, a sponsoring group is not required to invite candidates of both parties to the debate. A separate Democratic and Republican party debate may be organized.
- The forum must address a broad range of issues, and not just issues considered to be of important educational interest to the organization's members.
- Questions should be prepared and presented by a nonpartisan, independent panel of individuals knowledgeable about the issues covered.
- A moderator should be designated to ensure that the ground rules are observed and to make clear that the views expressed are those of the candidate and not of the sponsoring organization.
- Each candidate must be allowed an equal opportunity to speak and answer questions on his or her views.
- The candidates must be treated fairly and the moderator should disavow any preference or endorsement by the sponsoring organization.

Voter Registration and Get-Out-the-Vote

Voter registration and get-out-the-vote (GOTV) activities encourage the public to exercise their right to vote. **The threshold question for private foundations that wish to support voter registration and GOTV is whether the activities are conducted in a nonpartisan manner.** These activities: 1) must be designed solely to educate the public about the importance of voting; 2) may not show any bias for or against any candidate or political party; and 3) must not be coordinated with any candidate or political party.

Generally, the following guidelines apply:

- The literature for the activity must either avoid any reference to a candidate or list all candidates for a particular office without stating or implying any preference. No political party may be named except

to identify the party affiliation of each candidate.

- Voter registration and GOTV activity should be limited to encouraging people to register to vote and to providing information about when and where to register and/or vote.
- Voter registration and GOTV drives need to discuss a broad range of issues and may encourage people to be informed voters. For instance, an organization might appeal to individuals to register to vote in order to have a more effective voice in government. If the drive raises issues important to the organization, it may not discuss how a candidate voted on these issues and may not distribute voter guides indicating a candidate preference.
- Distribution of voter registration forms to the general public via mail, canvassing, or in the organization's offices is permitted. Acceptable activities also include maintaining booths at fairs, shopping centers, or other locations, and media advertisements urging people to register to vote.
- Voter registration and GOTV activities may not be coordinated with or targeted to assist a candidate, political party, or political action committee (PAC). Groups may want to provide a disclaimer such as: *"This voter education project is nonpartisan and does not reflect an endorsement of any candidate or political party."*
- Voter registration materials and activities must be made available to all individuals without regard to political views. For example, if an organization maintains a booth at a college campus or local fair, those staffing the booth may not determine a person's party or candidate preference before distributing the registration materials. Federal Election Commission (FEC) regulations require that the organization notify those receiving assistance in writing at the time of the registration or GOTV drive about the availability of services.²⁷ This notification must provide the following information:
"Services are being made available without regard to any voter's political preference. Information and other assistance regarding registering or voting, including transportation, shall not be withheld or refused on the basis of support for or opposition to particular candidates or a particular political party."
- Voter registration and GOTV drives may, on a nonpartisan basis, target geographic areas or commonly disenfranchised or traditionally underrepresented groups, including minorities, women, the poor, homeless, or unemployed. In developing literature for

these drives, it is important to discuss why these areas or groups have been targeted. Facts that demonstrate historic patterns of under representation in the political process should be highlighted.

A drive may also be targeted to register students and other groups that have a community of interests; however, targeting may not be based on the political or ideological interests of any group. A 501(c)(3) organization may choose areas based on proximity. Thus, a charity with a small budget may work in its own community. A charity also may choose to work where its members are or where it might find those most likely to be interested in the organization's issues.

Voter Registration Rules for Private Foundations

The Internal Revenue Code (IRC) imposes added restriction on private foundations that wish to support voter registration activities.

Private foundations, and public charities devoted primarily to voter registration that receive earmarked grants from private foundations specifically for voter registration, must meet certain requirements under IRC section 4945(f). Otherwise, the private foundation providing the grant will be taxed for all expenditures supporting the public charity's voter registration activity.

Section 4945(f) requires:

- The sponsoring organization must be a 501(c)(3) organization.
- The registration activities of the sponsoring organization must be nonpartisan, conducted in five or more states, and occur over more than one election cycle.
- At least 85 percent of the organization's income must be directly spent on activities relating to the purpose for which it was organized and operated.
- At least 85 percent of the organization's support, other than gross investment income, must be contributed by exempt organizations, the general public, or government units; no more than 25 percent of its support may come from any one exempt organization; and no more than 50 percent of its support may come from gross investment income (interest, dividends, or other investment-related income).
- A contribution for such activities may not be subject to conditions requiring use in a specific state (or political subdivision) or in a specific election cycle.²⁸

A private foundation may earmark funds for voter registration and a public charity may accept such fund-

ing only if the charity's program meets the criteria and special rules provided under IRC section 4945(f).

An organization may obtain an advance ruling from the IRS that will determine whether the organization qualifies for section 4945(f) status. Alternatively, a private foundation may obtain a detailed statement from the prospective grantee outlining the facts that demonstrate that it meets the 4945(f) requirements. Because the rules to qualify and conduct voter registration drives under section 4945(f) are complicated, it is best for private foundations to consult an attorney before proceeding with any voter registration activity or support.

It is important to remember that these requirements *only* apply to grants from private foundations that are **earmarked** for voter registration to public charities that engage exclusively in voter registration activities. If a private foundation provides a general support grant to a charity, the charity may choose to use some, or all, of the grant for voter registration work without penalty to the charity or to the private foundation.

Unless there is a specific oral or written understanding that the grant is to be used for voter registration activities, a general support grant will not be deemed "earmarked" for voter registration. In addition, the amount of the general support grant may not exceed the total amount the grantee spends on non-voter registration activities. Similarly, grants earmarked for a grantee's other projects, other than voter registration, are not subject to the rules under 4945(f).

Example: Funding voter engagement activities

In 2003, the Carnegie Corporation of New York, a private foundation, granted the Youth Vote Coalition (YVC) a two-year \$300,000 general support grant. YVC is a national nonpartisan coalition of diverse organizations established to increase the political involvement of 18- to 30-year olds through a variety of activities. The Carnegie Corporation's grant helped YVC achieve unprecedented success in three central categories: 1) expanding the size and diversity of the youth civic engagement community; 2) increasing that community's efficiency and capacity; and 3) directly engaging youth, political figures, and media in YVC's campaign strategy and message. Voter registration, GOTV drives, and nonpartisan youth-organized political forums are just a few ways YVC directly engaged young adults across the ideological spectrum into the political process.

“This cutting edge work around electoral advocacy fits into Carnegie Corporation’s Strengthening U.S. Democracy Program’s central goal of increasing civic participation in the United States, including voting. The Corporation focuses on two particular areas: removing structural barriers that impede an individual’s participation in the democratic system and addressing attitudinal barriers to civic engagement.”
 —Geri Mannion, program chair, Strengthening U.S. Democracy, Carnegie Corporation of New York

General Advocacy

A private foundation may, without limitation, fund a public charity to engage in general advocacy. Possible examples include commenting on regulations, seeking enforcement of a law, filing a lawsuit, or writing editorials or letters to the editor. Please note that advocacy directed at an agency official for the purpose of influencing the outcome of specific legislation is considered lobbying.

***Example:** A grantee submits a funding proposal that includes plans to oppose proposed legislation for a school voucher program by communicating with the Secretary of Education. Although the Secretary of Education is not an elected position, if she has the ability to participate in the formulation of school voucher legislation, they are treated as a legislator when the grantee asks them to exert their influence over the legislation. This activity is considered lobbying.*

Lobbying is not the only legislative advocacy tool available to nonprofits. **Private foundations may fund and even earmark funds for activities that are considered exceptions to lobbying or non-lobbying advocacy.** For example, a private foundation could award a grant to a public charity to enable it to testify in support of or oppo-

sition to legislation before federal, state, or local legislative committees, upon request by that committee. For more information on these lobbying exceptions, see Chapter I.

Private Foundation Support for Advocacy by Non-Public Charities

Tax law allows non-public charities—such as 501(c)(4), 501(c)(5), and 501(c)(6) organizations—to engage in unlimited lobbying activities, but also to generally conduct 501(c)(3) permissible charitable and educational work. **Private foundations may support the educational and charitable work of non-501(c)(3) organizations, but must exercise what is called “expenditure responsibility” when doing so.**

Expenditure responsibility does not mean that the foundation is responsible for the grantee’s every action and expense. A private foundation making a grant to a non-public charity must: (1) assure the grant is spent solely for the purpose for which it was awarded; (2) obtain full and complete reports from the grantee on how the funds are spent; and (3) make full and detailed reports of the grant expenditures to the IRS.²⁹ In many ways, expenditure responsibility requires compliance with the procedures many foundations have already instituted as sound grantmaking practice.

Expenditure responsibility grants may not be used for lobbying. This is the only grant in which a lobbying prohibition is required.

A private foundation grant to a non-public charity or a private operating foundation³⁰ is considered a taxable expenditure unless the foundation exercises

Federal Tax Law and Select Non-Public Charities			
	501(c)(4) Social Welfare Groups	501(c)(5) Labor Unions	501(c)(6) Business Leagues
Examples	<ul style="list-style-type: none"> ■ Alliance for Justice Action Campaign ■ Human Rights Campaign 	<ul style="list-style-type: none"> ■ AFL-CIO ■ AFSCME 	<ul style="list-style-type: none"> ■ U.S. Chamber of Commerce ■ American Bar Association
Federal Tax Treatment	<ul style="list-style-type: none"> ■ Tax-exempt ■ Contributions are not tax deductible 	<ul style="list-style-type: none"> ■ Tax-exempt ■ Contributions are not tax deductible 	<ul style="list-style-type: none"> ■ Tax-exempt ■ Contributions are not tax deductible
Lobbying Activity	<ul style="list-style-type: none"> ■ Unlimited 	<ul style="list-style-type: none"> ■ Unlimited 	<ul style="list-style-type: none"> ■ Unlimited
Election-Related Activity	<ul style="list-style-type: none"> ■ Partisan electoral activity must be secondary activity and is subject to federal and state election laws 	<ul style="list-style-type: none"> ■ Partisan electoral activity must be secondary activity and is subject to federal and state election laws 	<ul style="list-style-type: none"> ■ Partisan electoral activity must be secondary activity and is subject to federal and state election laws

expenditure responsibility with respect to the grant.³¹ Generally, the expenditure responsibility rules require a foundation to take additional steps to ensure that the grant is spent for its intended purpose. These steps include: (1) conducting a pre-grant inquiry; (2) preparing a written agreement between the grantor and the grantee; (3) receiving regular reports from the grantee; and (4) submitting a report from the grantor to the IRS on its annual information return, IRS Form 990-PF. Strict compliance with each of these requirements is mandatory to avoid an excise tax on the total or a portion of the grant.

Pre-Grant Inquiry: The pre-grant inquiry requirement may be met with a letter to the prospective grantee requesting sufficient information about the organization and its proposed use of the funds. To gain reasonable assurance that the funds will be used for charitable purposes only, the foundation's letter should seek details about the identity, prior history, activities, and experience of the grantee organization and its managers.

The foundation may also seek information from outside references or conduct its own research to gain additional assurances. The scope of the inquiry will vary depending on the size and purpose of the grant, the period of payment, and any previous experience the grantor has had regarding the capacity of the grantee to use the funds appropriately.

Written Grant Agreement: A private foundation's grant agreement must be signed by an officer, director, or trustee of the grantee organization. The agreement must state in clear and specific language how the grant will be used. It must include terms ensuring compliance with the expenditure responsibility requirements, including the following commitments by the grantee:

- To repay any portion of the grant that is not used for the specified purposes
- To submit full and complete annual reports about how the funds are spent and the progress made toward accomplishing the grant goals
- To maintain records of receipts and expenditures and to make its books and records available to the grantor at reasonable times
- Not to use any of the funds to: 1) undertake any activity that is not for a charitable or other 501(c)(3) purpose; 2) carry on propaganda or otherwise attempt to influence legislation; 3) influence the

outcome of any election; 4) conduct voter registration drives; 5) make grants to individuals or to organizations other than public charities or a private operating foundation unless the organization exercises expenditure responsibility

- If it is not a public charity, it must agree to maintain the grant funds in a separate fund dedicated to charitable purposes. These funds may not be commingled with other funds received for non-charitable purposes

Reports from Grantee: The private foundation must require reports on the progress of the grant and the use of the funds. The grantee must make an annual accounting of the funds within a reasonable time after the end of the grantee's accounting period, plus a final report on all expenditures and achievement of program goals. The grantor is not required to verify the accuracy of these reports independently unless there is reason to doubt their accuracy or reliability. The foundation may rely, therefore, on the representations of a grantee's officer or director and adequate records that support the report.

Failure of the grantee to supply these reports could subject the private foundation to penalties unless it has complied with all expenditure responsibility requirements, made a reasonable effort to obtain the reports, and withholds any future payments until the reports are received.

Reports to the IRS: In addition to the general information required on the private foundation's annual information return, IRS Form 990-PF, any private foundation making a grant subject to the expenditure responsibility requirements must also provide the IRS with the following information:

- The name and address of the grantee
- The date and amount of the grant
- The purpose of the grant
- The amount spent by the grantee based on the grantee's most recent report
- Whether, to the knowledge of the grantor, the grantee has diverted any funds from the purpose of the grant
- The dates of any reports received from the grantee
- The dates and results of any verification of the grantee's reports undertaken by, or at the request of, the grantor foundation

The private foundation must also make available to the IRS at the foundation's main office the following items:

- A copy of the agreement covering each expenditure responsibility grant made during the tax year
- A copy of each report received during the tax year for each grantee receiving an expenditure responsibility grant
- A copy of each report made by the foundation's personnel or by independent auditors of any audits or investigations made during the tax year on an expenditure responsibility grant

[Note: Although a private foundation has an obligation to ask about the organization's spending practices and history, it is not responsible for the grantee's subsequent improper use of the funds.]

Compliance with these rules gives private foundations the freedom to make grants to non-public charities without concern that the grant will be treated as a taxable expenditure. What's more, private foundations may have greater opportunities to achieve their overall goals if they are able to fund the work of various organizations—even those that are not 501(c)(3) public charities.

Private Foundation Support for Advocacy by Coalitions

Increasingly, individuals and organizations working on common issues are collaborating to engage in lobbying or other advocacy. These coalitions take on many forms and are frequently supported by private and public foundations. Sometimes coalitions form around a lead organization; sometimes coalition partners each conduct activities separately, but consistent and coordinated with the efforts of the coalition; and sometimes the coalition is itself an entity that may or may not be incorporated or possess tax-exempt status.

The rules for private foundations supporting advocacy by coalitions are an extension of the rules outlined in the previous sections. The structure and tax-exempt status of the coalition and its members determines the activities a private foundation may fund and the tax implications for grantmaking.

Rules for Public Foundations Supporting Advocacy

Public Foundation Support for Advocacy by Other Public Charities

Public foundations have more flexibility than private foundations in funding advocacy. Unlike private foundations, public foundations may engage in lobbying themselves and, therefore, may earmark grants for lobbying. Public foundations may also fund lobbying by non-public charities that use the funds for charitable purposes without assuming expenditure responsibility.

Lobbying

In contrast to private foundations, public foundations may earmark funds for lobbying. Like other public charities, public foundations' lobbying activity is limited by either the "insubstantial part test" or the "501(h) expenditure test." For more information on these tests, refer back to Chapter I. Under either test, grants earmarked to public charities for lobbying (in addition to the foundation's own lobbying activities) will count against the public foundation's lobbying limit. Such earmarked grants will be double counted—against both the public foundation's and the public charity's lobbying limits.

For public foundations that elect under the 501(h) expenditure test, a grant to a public charity that is not earmarked for lobbying does not count towards the public foundation's own lobby limits—regardless of whether the public charity grantee spends the grant on lobbying. For public foundations that elect under the 501(h) expenditure test, a grant to a public charity earmarked for grassroots lobbying counts as grassroots lobbying by the foundation itself. A grant earmarked for direct lobbying or direct and grassroots lobbying is treated as grassroots lobbying, except to the extent that the public foundation grantor can demonstrate that all or part of the grant was expended for direct lobbying.³²

Election-Related Activity

All 501(c)(3) organizations, including public foundations, are absolutely prohibited from engaging in activity that directly or indirectly supports or opposes a candidate for public office. Public foundations may, however, support each of the nonpartisan election-related activities described in this chapter. For a more detailed look at public foundations and election-related activity, see *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations*, available from the Alliance for Justice.

Public foundation grant agreements funding nonpartisan election-related activities should specifically state that all funds must be used exclusively for charitable purposes consistent with public charity status. The rules under section 4945(f) governing private foundation funding of voter registration activity do not apply to public foundations.

General Advocacy

A public foundation may, without limitation, fund public charities to comment on regulations, seek enforcement of a law, or file a lawsuit. These activities are not considered lobbying; however, note that efforts directed at an agency official who has the ability to influence the outcome of specific legislation would be considered lobbying and would count against the public foundation's lobbying limits.

Public Foundation Support for Advocacy by Non-Public Charities

Public foundations are permitted to fund any work of non-public charities that the foundation could engage in itself. For example, a public foundation could provide a grant to a 501(c)(4) organization to conduct nonpartisan voter registration activity, but could not fund the same organization to produce a partisan voter guide because the public foundation itself is not allowed to support or engage directly or indirectly in partisan activity.

Lobbying

In general, a public foundation grant to a non-public charity that lobbies is treated as a lobbying expenditure, absent any evidence to the contrary. Thus, the grant will count against the public foundation's lobbying limit.³³ What's more, the public foundation must count the lobbying expenditure against its grassroots lobbying limit—unless the grant was specifically earmarked for direct lobbying. If a public foundation earmarks a grant for grassroots lobbying, the grant is considered grassroots lobbying. If the grant is earmarked for direct lobbying only or direct and grassroots lobbying, the grant is treated as a grassroots expenditure—unless the foundation can demonstrate that all or part of the grant was used for direct lobbying.

Example: Public Foundation Grant Used for Lobbying

The Orange Community Foundation, a fictitious public foundation, provides a \$100,000 one-year project grant

to the Wildlife Action Fund (WAF), a fictitious 501(c)(4) organization, for the protection of animal habitats in Orange. Because WAF engages in some lobbying activity, the Orange Community Foundation must determine what portion of the grant counts against the Foundation's own lobbying limit. Reports provided by WAF show that WAF spent \$20,000 in direct lobbying and \$5,000 in grassroots lobbying during the grant period. Therefore, the Foundation must report \$20,000 for direct lobbying and \$5,000 for grassroots lobbying as its own lobbying expenditures. [Note, however, that if the Orange Community Foundation has not made the 501(b) expenditure test election, it must report all \$25,000 simply as lobbying.]

Alternatively, a public foundation may choose to make a "controlled grant" in order to avoid counting the grant amount as a lobbying expenditure. A controlled grant requires the grantee to use the funds for a non-lobbying purpose.

Example: Public Foundation Controlled Grant

The Orange Community Foundation awards a \$100,000 one-year grant to WAF for the protection of animal habitats in Orange. The Foundation's grant agreement states that the funds cannot be used for lobbying activities. No part of the \$100,000 will count against the Foundation's lobbying limits.

Special Rules for Supporting Advocacy on Ballot Measures for Both Public and Private Foundations

In states that allow ballot measures, the general public may propose and enact new laws through a process of petition and popular vote. There are four main types of ballot measures:

1. **Ballot initiatives** enable voters to propose and enact laws directly;
2. **Bond measures** allow voters to decide whether a governmental entity can issue bonds to finance government programs;
3. **Constitutional amendments** allow voters to amend the state constitution; and
4. **Referenda** permit voters to determine whether a bill enacted by the legislative body should become law.

The IRS treats *all* activities to influence ballot measures as lobbying.³⁴ Because the general public is acting in the role of legislators, advocacy for or against a ballot measure

is considered direct, not grassroots, lobbying. Thus, public charities and public foundations may support or oppose ballot measures within the lobbying limits discussed earlier.

The same rules that apply to private foundation grants for lobbying apply to ballot measure activity. If a private foundation funds ballot measure work or earmarks a grant for ballot measure work, it creates a taxable expenditure for the private foundation. For more information about funding ballot measure activity, see

Foundations and Ballot Measures: A Legal Guide, available from the Alliance for Justice.

While federal tax law considers activities supporting or opposing ballot measures as lobbying, most states separately regulate this activity as election activity and have specific registration and reporting requirements. All organizations must learn and follow the applicable state rules and federal tax law.

Chapter III: Grant Agreements

“AT THE PUBLIC WELFARE FOUNDATION, we are always trying to be user-friendly and advocacy-friendly, so when groups we support suggested that language in our agreement letters could be restricting their work, we checked with our lawyer and took that sentence out.”

—Larry Kressley, executive director, Public Welfare Foundation

In theory, a grant agreement is a simple document that formally seals the terms and conditions between a foundation and a grantee. For many foundations, though, determining the contents of the agreement is not so simple.

Grant agreements are only required under certain circumstances, such as when a private foundation makes an expenditure responsibility grant to a non-public charity. Even when a grant agreement is not required by law, however, it makes good business sense for both public and private foundations to use them. These agreements should be routine practice for foundations that want to ensure their grantees make the most out of the funds provided.

Unfortunately, such grant agreements often end up producing the opposite effect. Many foundations mistakenly believe that they will create a taxable expenditure if their grant agreements are not filled with highly restrictive language. For example, countless grant agreements contain a clause that prohibits lobbying. The truth is that there is no legal requirement for such language.

The tax code makes it clear that federal law does not require a foundation to impose lobbying prohibitions on its public charity grantees.

As John Edie, former general counsel of the Council on Foundations, stated in a 1992 Foundation News and Commentary article, “Foundation grant agreements that prohibit lobbying need to be revisited.”

Of course, understanding the tax code and its regulations can be challenging for even the most experienced program officers and foundation executives. This chapter aims to clarify what is legally required, what is permissible, and what is unnecessary.

Grant Agreement Requirements

When drafting a grant agreement, remember that it is a binding contract. Although some boilerplate language

is necessary, one size does not fit all. The agreement should be carefully tailored to the particular circumstances in order to provide adequate protection for the foundation and appropriate flexibility for the grantee. The foundation, with the assistance of legal counsel, must ultimately decide what is suitable for the organizations involved. Foundations should always bear in mind that federal law usually *does not* pose an obstacle to effective grantmaking, including grants that support advocacy.

Any required grant agreement language will depend on whether the foundation is public or private. If the foundation is private, the language will also depend on whether the grant is for general support or a specific project. In addition, grants by private foundations to non-public charities trigger specific expenditure responsibility requirements (discussed in Chapter II).

[Note: Grants by private foundations to non-public charities are the *only* type of grants that require language in a grant agreement that forbids the use of grant funds for lobbying.]

The overall length of the grant agreement will vary depending on the nature and duration of the project, amount of the grant, payment schedule, and reporting requirements.

In general, **public foundation** grant agreements should contain at least:

- Grantee’s name and address
- If the grantee is a public charity, the foundation’s basis for relying upon that status
- Duration and purpose of the grant
- Whether the grant is for general support or a specific project
- Foundation’s reporting requirements
- A statement that the grant will be used only for charitable, educational, or other section 501(c)(3) purposes
- A statement whether the grant, or any portion of the grant, is earmarked for lobbying

Private foundation grant agreements should contain at least:

- Grantee's name and address
- If the grantee is a public charity, the foundation's basis for relying upon that status
- Duration and purpose of the grant
- Whether the grant is for general support or a specific project
- Foundation's reporting requirements
- A statement that the grant will be used only for charitable, educational, or other section 501(c)(3) purposes
- A statement that the grant is not earmarked for lobbying
- If the grant is a specific project grant, the budget to support that statement
- A statement that:
 - a) the grantee will not intervene in any election or support or oppose any political party or candidate for public office, or engage in any lobbying not permitted by IRC §501 (c)(3) or, if applicable, IRC§§501(h) and 4911; and
 - b) the grant is not earmarked for any transmittal to any other entity or person that is not itself a public charity.

Both public and private foundations may also want to include terms in the grant agreement that further clarify the responsibilities of the foundation and the grantee. Such terms may include:

- Conditions for payment of the grant funds (such as proof of matching funds or in-kind contributions for a challenge grant)
- Whether the foundation has permission to reproduce or publish copyrighted material produced as a result of the grant
- Types of project modifications that require written approval from the foundation (*e.g.*, budget variances exceeding 10 percent)
- Whether the foundation should be acknowledged in written materials produced as a result of funding
- The foundation's right to terminate the grant and under what conditions

The grant proposal, as well as the project or organization's overall budget, may be attached to the grant agreement and incorporated into the terms of the agree-

ment. The Alliance for Justice recommends that all grant agreement issues be discussed with legal counsel and occasionally revisited to stay current with new developments in the law.

Grants to Public Charities

"Never, ever tell an organization it can't lobby as a condition of your support. It's their legal and constitutional right to lobby. Why would a foundation want to take that away?"

—Bill Roberts, executive director, Beldon Fund

A primary consideration for drafting grant agreement language is the protection of the foundation's tax-exempt status. Too often, though, foundations believe this requires provisions that forbid the use of grant funds for "any propaganda or attempt to influence legislation."

At first glance, it might seem that this language is required by section 4945(d) of the tax code, which deals with taxable expenditures for private foundations that earmark funding for lobbying. A closer look at the statute, however, reveals that this language is not required for grants to public charities, only for private foundation grants to non-public charities.

As a general rule, when a foundation wants to include lobbying restrictions in its grant agreements, it should first consider what the potential benefit is for the foundation and what the likely cost is to the grantee. Unless the potential benefit to the foundation will outweigh the cost to the grantee, restrictions should not be imposed.

For sample general support and specific project grant agreements, see Appendices A and B.

Grants to Non-Public Charities

Private foundations *must* provide a written agreement when awarding a grant to a non-public charity. Public foundations, which are *not* required to exercise expenditure responsibility, are not required to provide such grant agreements. Nevertheless, public foundations should document their grants to non-public charities to establish that no funds were used for impermissible activities.

A private foundation must exercise expenditure responsibility over grants to non-public charities. This is the only type of grant in which a private foundation must prohibit grantees from using the funds for lobbying, and thus makes a general support grant to a non-public charity effectively impossible.

Chapter IV: Strategies for Building the Advocacy Capacity of Grantees

“FOUNDATIONS ARE UNIQUELY WELL SITUATED to help grantees strengthen their capacity for advocacy. It’s a marvelous time to be doing just that.”

—Dorothy Ridings, president and CEO, Council on Foundations

As grantmakers, foundations have the expertise, leadership, and financial resources to help grantees strengthen their advocacy skills. In most cases, foundation assistance begins even before solicitation for proposals and guidelines are issued and continues after the grant has closed. By using several simple strategies to build a nonprofit’s advocacy toolbox, a foundation’s contribution can last even longer.

Building advocacy capacity means helping grantees to strengthen their skills, resources, and knowledge so they may effectively recognize and act on opportunities. The Alliance for Justice suggests six strategies to build the advocacy capacity of grantees:

- Define and articulate the foundation’s own advocacy goals
- Communicate the foundation’s advocacy goals when identifying grantees
- Recognize advocacy opportunities when reviewing proposals
- Encourage advocacy in grantwriting
- Make advocacy resources available to grantees
- Use leadership to focus on advocacy strategies and bring diverse players together

Define and Articulate the Foundation’s Own Advocacy Goals

Before promoting advocacy activities to current and prospective grantees, foundations should perform some self-analysis, including:

- The foundation’s mission and how advocacy can help accomplish that mission
- The foundation’s advocacy-related grantmaking over time, including long-term relationships with grantees in a field or issue area
- The mix of issues and activities the foundation would like to support, as well as the types of grants (project or general support) and the length of grant awards (single-year or multi-year)

Once the foundation has articulated its goals for supporting advocacy, it should spread the word internally, through strategic and program planning. The foundation’s board of directors and staff must discuss goals and be comfortable supporting advocacy work before publicizing its support externally. The following box highlights some ways that foundations have generated internal discussions and raised comfort levels with advocacy within their organizations.

Tips for Discussing Advocacy Goals within the Foundation

- Discuss the rationale for funding advocacy with board members and staff (use this guide’s Introduction as a starting point)
- Show how funding advocacy fits into the broader goals and mission of the foundation
- Demonstrate how funding advocacy can meet the needs of the community
- Discuss how much and what types of advocacy the foundation has funded in the past
- Demonstrate how funding advocacy can enhance current grantmaking on issues of interest
- Invite the foundation’s lawyer or other experts to talk about legal ways to support, and even engage in, advocacy work
- Highlight past successes in funding advocacy within the foundation or in other foundations
- Address advocacy in the strategic planning process
- Invite other foundations that fund advocacy to talk about their challenges and successes

When the board and staff are ready, the foundation should broadcast its commitment to advocacy. Something as simple as the language included on business cards can send a powerful message about the value an organization places on advocacy. For example, the Kirsch Foundation, a public foundation, includes its motto, “Effecting change through strategic giving and advocacy,” on all employee business cards.

Other ways to communicate these goals include websites, annual reports, foundation letterhead, correspondence, requests for proposals, and meetings, panels, and workshops led by program officers. Letting grantees know that the foundation cares about supporting advocacy makes grantees more comfortable including it in their proposals. The clearer the foundation is about its own advocacy-related goals, the more likely it is to attract potential grantees that are equally clear.

Communicate the Foundation's Advocacy Goals When Identifying Grantees

From the outset of the grantmaking process, grantmakers have ample opportunities to initiate a dialogue about the type of advocacy they are willing and permitted to fund. Solicitations for proposals and grant guidelines are ideal vehicles to introduce advocacy into the grantmaking process and to increase the advocacy awareness of potential grantees.

Clearly Express the Types of Advocacy the Foundation Supports

Foundations can express their desire to fund specific kinds of advocacy in requests for proposals. There are two important reasons for doing this: 1) it increases the potential for receiving proposals that include advocacy, and 2) it helps grantees think differently about the projects they undertake.

Some foundations that are uncomfortable using the term “advocacy” in written materials will replace or complement the word “advocacy” with other terms, such as “engaging in public policy work,” “nonpartisan voter education,” “grassroots development,” “civic engagement,” “raising public awareness,” “conducting applied or participatory research,” “engaging in leadership development,” “undertaking strategic communications campaigns,” “community organizing,” or “coalition building.”

However a foundation chooses to describe its advocacy goals, the end result should be a clear message about what types of advocacy or organizations it supports. Some foundations broadly describe the type of organization they seek to fund. For instance, the Beldon Fund, a private foundation, clearly states, “[b]y supporting effective, nonprofit advocacy organizations, the Beldon Fund seeks to build a national consensus to achieve and sustain a healthy planet.” The message to grant applicants is obvious: the Beldon Fund supports advocacy organizations that work on environmental issues.

Other foundations describe the specific categories of advocacy they support. On its website, the Schott Foundation for Public Education, a public foundation, states:

“Schott advocates for increased public funding for excellent public schools—from early childhood experiences through high school. Schott seeks to build public will and improve public policy to achieve quality education for all students.”

Some grantmakers explicitly inform grantees that direct services and other program activities can and should include an advocacy component. For example, MAZON: A Jewish Response to Hunger, a public foundation, explains why it funds advocacy:

“MAZON believes that charitable food programs, while important and necessary, are not substitutes for the systemic change needed to address the problems of hunger and poverty in America. Although applicants are not required to request MAZON funding for anti-hunger advocacy and education, all proposals must evidence a strong commitment to and participation in this kind of work.”

Ask Applicants Questions that Encourage Thinking about Advocacy Activities

A foundation can encourage applicants to explore the role advocacy might play in their programs by asking important questions, such as:

- What are some examples of active leadership by your organization or its constituency?
- What is the long-term, systemic, or social change being sought in your project?
- How will you raise public awareness of the issues?
- Does your advocacy project involve partnerships with other organizations? If so, how did you identify these organizations? How will the project benefit from this partnership? What are the key roles of each partner?
- What relationships does your organization have with community leaders, such as business executives and policymakers, and how might you work with them to achieve your mission?
- What information does your organization have that would be useful to policymakers and other decision-makers? How will you share information about your project or your constituency in a way that is useful to these audiences?

Grantmakers can use the proposal process to identify groups engaged in policy and those that are direct service

providers. They can introduce advocacy as an option to those that are strictly direct service providers. Some foundations with formal request-for-proposal (RFP) processes conduct pre-application workshops where applicants can ask questions and make connections with other organizations working in the same field. If structured appropriately, these workshops can encourage advocacy components and help potential grantees identify alliances.

Recognize Advocacy Opportunities When Reviewing Proposals

Some foundations ask their program officers to suggest advocacy components in proposals when appropriate. This is an opportunity for foundations to challenge service providers to expand their range of activities for sustained results. Introducing an advocacy option helps nonprofits think strategically about how to impact systemic problems. Program officers can bring this up in a number of ways, including:

- Asking what long-term, systemic, or social change would advance the organization's mission
- Asking if and where advocacy might play a role in the project to promote such change
- Asking if the organization has thought about sharing information about its work or the needs of its community in a way that would be useful to policymakers and other decisionmakers
- Letting potential grantees know that their proposals would be stronger with an advocacy component
- Suggesting the kind of advocacy a grantee may want to consider, such as coalition building, media work, or research and analysis

Keep in mind that grantees may want to do advocacy work, but feel afraid to mention it in their proposals. Foundations should emphasize their support for advocacy in all communications with grantees and prospective grantees.

Encourage Advocacy in Grantwriting

Here are some creative ways for foundations to build advocacy capacity:

Provide general support grants. General support grants can be used for any charitable purpose, including basic organizational needs, capacity building, and advocacy. These unrestricted grants allow grantees to respond quickly to a policy issue. For example, in

January 2003, the Marguerite Casey Foundation, a private foundation, announced \$15.3 million in new grants to organizations developing the advocacy voices of families and youth. Recognizing the need for advocacy organizations to build their organizational capacity and to be flexible in addressing public policy issues as they arise, the foundation announced that most of the grants were for general support.

Can Foundations Accept Proposals that Mention Advocacy or Lobbying?

References to advocacy or lobbying in the proposal are acceptable and should not deter foundations. Under federal tax law, both public and private foundations may legally support public charities that lobby, although private foundations may not earmark funds for lobbying without incurring a taxable expenditure.

Chapter II of this guide provides a roadmap for private foundations to avoid tax liability when funding advocacy. If a public foundation earmarks a grant for lobbying, the expenditure counts against its lobbying limits.

Write flexible grant agreements. A foundation's grant agreement should not include overly restrictive language that will prevent grantees from engaging in legal advocacy activities. For general support grants, the grant agreement letter should not deter or prohibit an advocacy component. For example, language prohibiting the use of grant funds for lobbying is *only* necessary when private foundations make grants to non-public charities. In all other situations, grantees should be able to decide how to spend the grant funds. For more information on grant agreements and language, see Chapter III.

Evaluate advocacy activities thoughtfully. Provide grantees with reporting requirements and suggestions at the time the grant is awarded, so grantees can better document their achievements and activities. Foundations may ask grantees to document activities such as media coverage, distribution of fact sheets and policy/education alerts, communications to members of the grantee's network, submission of testimony, policymaker support on a particular issue (such as "Dear Colleague" letters), and increased funding for, or access to, services.

Foundations can also help grantees determine how to measure their advocacy activities so they have a basis for reporting. This is accomplished by asking appropriate questions in proposal guidelines, RFPs, and report formats, and by providing sample

benchmarks for success. For details on evaluation of advocacy, see Chapter V.

“The California Wellness Foundation grants build the capacity of community coalitions, community organizing groups, and grassroots organizations to engage in policy efforts. Some of the most effective public policy work is done by those directly affected by the problem that needs to be resolved: community members, including youth, working to make their communities healthy and safe places to live; direct-service providers who know what the problems are and have solutions; and individuals who don’t have access to basic services because of eligibility barriers or lack of funding.”

—Ruth Holton, policy director, The California Wellness Foundation

Maintain ongoing and open relationships with grantees. Remember that social change takes time. Consider making multi-year grants which allow grantees to expand their expertise and build their advocacy capacity in incremental steps. For the grantmaking experience to be a learning process, foundations need to create a safe environment where grantees feel comfortable communicating the challenges they face. These conversations should not be used to evaluate the effectiveness of a grantee’s efforts or as reasons to stop funding them.

Clearly, a funder’s input—whether expressed as clearly communicated expectations, or in providing advocacy skills training, or by offering policy networking opportunities—can enhance a grantee’s capacity to engage in advocacy.

One grantmaker, MAZON, has developed a model to measure the impact of its efforts. This model is reproduced in Appendix H.

Make Advocacy Resources Available to Grantees

Just as supporting advocacy requires some foundations to learn new rules and strategies, grantees may need additional information to become confident and effective advocates for social change. Foundations can support this learning process by alerting current and potential

grantees to resources about advocacy. Foundations can also facilitate the education in a few ways:

Provide advocacy-related technical assistance and resource materials to grantees. Foundations can offer technical assistance to nonprofits directly through the foundation’s staff or by supporting external technical assistance providers. The assistance can cover different aspects of advocacy, from knowing the legal rules to mobilizing constituencies. For example, The Rhode Island Foundation, a public foundation, hosted a training session on the rules for lobbying and election-related activity for its grantees and other public charities in the state.

Educate current and prospective grantees about the 501(h) election. Foundations have used several methods to educate both current and prospective grantees about the benefits of making the 501(h) election. As described in Chapter I, this election allows public charities to maximize their lobbying efforts and provides clear definitions of lobbying. Alerting grantees to the 501(h) election does more than simply educate; it sends a clear message that the foundation believes advocacy efforts are important.

The grant application process provides an ideal opportunity to raise the 501(h) election issue. *For example, the Ms. Foundation for Women, a public foundation:*

- *Asks applicants if they have made the 501(h) election*
- *Tells grantees that filing a 501(h) election means they can allocate up to 20 percent of their expenses to lobbying without losing their 501(c)(3) status*
- *Advises groups to order publications on lobbying from the Alliance for Justice (and other sources)*

Give a grant for legal assistance. Foundations can make grants to pay legal fees for grantees that want to engage in more sophisticated activities.

Use Leadership to Focus on Advocacy Strategies and Bring Diverse Players Together

In addition to the strategies outlined above, foundations can use their leadership roles and other creative tools to build the advocacy capacity of nonprofits. Here are some suggestions:

Take a leadership role on issues important to the foundation. Funders are powerful and credible spokespersons, particularly with their peers. The

foundation provides a role model for both prospective grantees and other grantmakers. As Gayle Williams, executive director of the Mary Reynolds Babcock Foundation, a private foundation, states: “Funding from mid-sized to large foundations like the Mary Reynolds Babcock Foundation—and the ensuing patience, flexibility, and commitment of the Foundation’s staff and board—gives credibility, focus, and inspiration to the efforts of state and local groups.” Foundation leadership lets current and prospective grantees, fellow grantmakers, and other allies know that they are all part of a larger movement.

Link grantees to key players. Foundations often have connections or the potential to make connections with policymakers and other decisionmakers. Public charities can benefit from those relationships.

Convene diverse players around an issue. Many foundations bring together grantees and other public charities to discuss particular subjects. Some foundations facilitate dialogues between funders with similar grantmaking priorities, often drawing in researchers, policymakers, media, and grantees. This allows all parties to learn from one another, analyze key issues, and develop advocacy strategies. Foundations can also sponsor workshops on best practices, new legislative developments or challenges, and specific advocacy skills.

Engage in collaborative funding. Many foundations find it helpful to pool resources with other grantmakers—a particularly good model because advocacy efforts benefit from collaboration. Reflecting on 10 years of experience hosting collaborative funds, the Ms.

Foundation for Women notes: “Collaborative funds can harness the collective power of a group of committed funders and practitioners to impact public policy in a field. The size and reputation of a fund gives the host organization added legitimacy with policymakers and enables staff to bring best practice lessons to bear on national policy.”

Feature advocacy grantees in promotional materials. Press conferences, coordinated media campaigns, websites, newsletters, and annual reports are great venues to highlight grantee advocacy achievements. Such exposure helps grantees to build credibility with leaders in the public and private sectors, which increases their influence and the ultimate effectiveness of their advocacy efforts. It also helps them raise money, build coalitions and partnerships, and ensures that they are viewed as important participants in formal and informal consultations on policy issues. The Joyce Foundation, a private foundation, features news about its grants for gun violence prevention, the environment, and campaign finance reform on its website and highlights the advocacy work of its grantees in its print and electronic newsletter, “Work in Progress.”

Foundations can play an important role in building the capacity of grantees to engage in advocacy throughout the entire grantmaking process. By pairing the strategies discussed in this chapter with an understanding of the rules for supporting advocacy, foundations can help grantees meet their advocacy goals and achieve their missions.

Chapter V: Evaluating and Reporting Advocacy

“MEASURING ADVOCACY IS MESSY AND DIFFICULT. I could make the same case regarding mentoring a child. We know it works, but not exactly how. It depends on the kids, the mentors, and circumstances. We must ask what are our missions and values. What are the best measures we can find? If we avoid what is difficult to measure, we will only do the simplest things in our communities that can be counted and not do all that we can do. Racial harmony cannot be easily measured, but we know what happens if we don’t have it. Cancer research is not close to finding a cure, but we still support it. People are too often driven by measurements—if we can’t measure, let’s not do it. That is uninspired grantmaking.

—Emmett D. Carson, president and CEO, The Minneapolis Foundation

In recent years, the philanthropic community has increasingly focused on effectiveness and accountability. Funders want to make sure their funding has the greatest possible impact. Yet for many foundations, evaluating advocacy is uncharted territory. How does one go about evaluating the often subtle steps that eventually result in societal change? Without a clear and measurable bottom line, how does a foundation know that its investment in a grantee’s advocacy campaign is paying off? In a 2001 survey by the Women’s Fund of the Greater Milwaukee Foundation, a public foundation, most of the participating foundations that supported public policy said they were “unclear about the most effective methods of measuring the impact of their investments.”

The nature of advocacy work makes it especially difficult to determine which approaches work and which do not. For example:

- Advocacy goals are often long-term and system-wide
- Successes are incremental and frequently uneven
- External factors, such as the political or economic environment, are hard to predict and impossible to control
- Policymaking processes have unique, often complex rules with varying points of potential impact. The processes themselves may be fluid and subject to change; therefore, any measurements of success must be flexible
- Building relationships with decisionmakers and educating and/or influencing them are critical to success but challenging to measure
- Determining which players’ efforts are individually responsible for an advocacy outcome may be difficult

Despite these challenges, there are many successful ways to measure advocacy work. This chapter sets out a workable approach to evaluating grantees’ performance in a variety of advocacy efforts. It also provides guidance to foundations in evaluating their own activities.

Guidelines for Working with Grantees

Effective evaluation starts with an understanding of what it takes to influence policy and be a successful advocate. For example, measuring the number of clients served is a useful way of viewing outcomes when delivering services, but advocacy often has no comparable measure. By contrast, a grantee’s labor-intensive effort to gain access to key public officials on an important environmental issue may be time-consuming but ultimately very helpful to the grantee’s ultimate objectives. To someone unfamiliar with the public policy process, however, this might not appear to be a useful investment of time.

Foundations can use a number of barometers to measure success, as few organizations are likely to show achievements in every area. Foundations should also consider the size, experience, and skill level of each grantee. Here are some helpful guidelines to determine the effectiveness of advocacy work:

Talk about advocacy expectations from the start. A clear understanding about what a campaign is expected to achieve makes for a smoother evaluation process. This might mean identifying the desired regulatory or policy changes or simply the steps that are likely to lead to those changes. It might also involve a demonstrated increase in public understanding about candidates for office and involvement in the policymaking process.

Moreover, foundations should let grantees know upfront the types of documentation necessary to conduct a fair and effective evaluation. These might include constituent updates on current policy issues or records showing that other organizations endorsed the grantee's advocacy efforts.

Encourage grantees to develop both long-term and incremental measures of success and progress. Funders and grantees need to acknowledge that they may not accomplish every intended goal and that small steps are often essential to any advocacy effort. Even if advocates cannot identify major policy changes likely to be made in the short term, they can develop realistic interim objectives that show progress in creating social, regulatory, statutory, or legal policy change.

For their part, grantmakers should openly articulate that interim success over a period of one or several years is acceptable, as long as the interim measures are plainly defined. Grantees should be free to refine these measures to reflect any changes in outside factors, such as the political, social, and economic environment.

In proposal guidelines, funders should ask grantees to identify both long-term advocacy goals *and* what can reasonably be accomplished during the grant period. Grantmakers can also ask grantees to set incremental benchmarks of progress and explain how they plan to document and measure that progress. Sample benchmarks are discussed later in this chapter and are included in Appendix F.

Example: *The Alliance for Research and Education (ARE) wants to convince parents, state legislators, and the governor that public school should start at age four rather than five. ARE's proposal should identify the following interim and long-term goals and objectives:*

- *Produce and distribute a report on the need for mandatory public education at age four*
- *Make 20 percent of the public aware of the benefits of offering public education to four-year-olds*
- *Achieve a five percent increase in the level of media coverage addressing this issue*
- *Establish the grantee's credibility as an expert on this topic, as documented by a defined increase in the number of calls received from policymakers and the media*
- *Receive survey responses from candidates for the state legislature*
- *Facilitate contact between 300 members of the grantee's network and their state legislative representatives*

- *Instigate the state legislature's first-ever oversight hearing on the value of beginning mandatory public education at age four*
- *Motivate the state medical association to endorse mandatory public education at age four*
- *Pass a state law requiring public education to begin at age four*

Ask grantees to include advocacy capacity building in their expectations and evaluations. Capacity building strengthens the organization's ability to anticipate, respond to, and advance policy issues. In the broadest sense, building advocacy capacity means developing an internal support structure, from staff to board members to organization members. All should be able to effectively communicate the organization's goals. The objectives of an effective capacity building effort may include:

- Being publicly viewed as a trusted source of credible information on specific issues
- Increasing board and staff members' knowledge of advocacy processes, such as how the local city council makes policy
- Developing key constituencies' familiarity with and motivation to participate in the democratic process
- Increasing grassroots leadership skills
- Building relationships with policymakers

We all know that a grantee may not always accomplish all of its advocacy objectives. But, if it has successfully built its organizational capacity then it is better positioned to meet long-term goals. "In supporting advocacy, foundations need to understand that process can be as important as the outcome," notes Anna Wadia, director of program, Economic Security, of the Ms. Foundation for Women, a public foundation. "A grant for a ballot measure that fails might be seen negatively, but you need to take into account how the work increased the nonprofit's understanding of the political process, the awareness that was created around a particular issue, and the leadership development that it might have provided in communities."

Help grantees establish reasonable expectations that reflect the environment in which they operate. Many external factors influence what constitutes success and what level of success is realistic. Sometimes maintaining current policy is in itself a victory. Ask grantees to explicitly address external factors when drafting their proposals and expectations. Factors may include the policy making climate, the views of key current and prospective public officials, the

number and character of media outlets, and the state of the economy. Grantee interim and final reports should analyze how such factors affected their progress.

For example, suppose a grantee designs an advocacy effort to increase access to state human services programs for non-citizen immigrants. Such an effort is more likely to succeed in a state with a strong track record of supporting similar policies than in a state that has never allocated funds for such purposes. In the latter state, success might involve stopping “bad policies” from being implemented rather than encouraging proactive policy changes.

Similarly, the level of anticipated success often depends on the economic environment. In a year when most states are grappling with budget deficits, it may be unrealistic to expect large increases in budget allocations for health care or education. In a year of surpluses, however, increased appropriations may be a realistic objective.

Fit the method of evaluation to the type of advocacy. Grantees often engage in many forms of advocacy, depending on the issue, their organizational capacity, and the external environment. Grantees adept at several types of advocacy are often the most successful. The challenge for funders is to recognize that methods of evaluation need to be customized to diverse methods.

Consider the following two very different approaches:

- A broad coalition of organizations serving children, youth, and families conducts a public education and media campaign. The coalition’s goal is to educate the public and policymakers of a large state about the importance of quality child care for children age three and under.
- A single individual works behind-the-scenes to convince an administrative agency to implement a technical regulatory change in calculating levels of carbon monoxide emissions from automobiles.

These two efforts require varying skills, activities, and measures of success. Documenting a change in public attitudes (as in the first example) is more labor-intensive and expensive than documenting a regulatory change (the second example). Consequently, each approach calls for different methods of assessment.

Allow for changes in objectives, as well as the possibility of failure. Given external realities, grantees may frequently need to alter the course of their campaigns or rethink their goals entirely. Grantees should be assured

that such changes may be viewed by the foundation as a sign of success, rather than of failure. As an example of a mid-course shift, health care advocates seeking changes in state Medicaid policies may become frustrated by opposition to strengthening laws against Medicaid fraud. Therefore, they may need to change their focus to reforming executive branch enforcement policies or pursuing civil lawsuits in order to have a real impact.

According to Luz Vega-Marquis, president and CEO of the Marguerite Casey Foundation, a private foundation, “[b]ecause advocacy is not a linear process, evaluation models must be designed to be flexible enough to reflect the complexity of the environment in which advocates operate.”

Keep in mind that persistence is often an essential part of advocacy work. A grantee that fails to win an advocacy campaign did not necessarily do a poor job. Although it may have failed to accomplish policy change or even policy maintenance during the grant period, it may have laid valuable groundwork for future victories.

Acknowledge that grantees may not be able to prove cause and effect relationships between their efforts and eventual outcomes. When several different advocacy efforts occur simultaneously, it can be difficult to determine which approaches have the greatest impact. Suppose, for example, that the city council appropriates a significant increase in local funds for early childhood development programs. The grantee may then develop strong relationships with the media and organize a meeting with editors from local newspapers to discuss coverage of early childhood education issues. This work results in one paper running an editorial favoring increased funding. The grantee’s advocacy efforts may, in fact, have contributed significantly to the increased appropriation, but it was probably one of several advocacy strategies used by different groups. Another coalition may have mobilized young parents to visit their public officials and urge support of this program; and yet another advocacy group prepared a convincing cost-benefit analysis to which the policymakers responded.

Given all the groups involved in the effort, it may be impossible for the grantee to prove that its work was instrumental in obtaining the increased appropriation. In such situations, the best option may be to evaluate the grantee’s achievements based on incremental results, such as the local newspaper’s editorial. If additional foundation or grantee resources were available, the project’s impact could be measured through interviews with policymakers or others to see

if they read the editorial and if it changed their position.

In the end, informed judgment is important to determine a grantee's effectiveness. "We need to be clear about what evaluations and data can and cannot do," notes Gayle Williams, executive director of the Mary Reynolds Babcock Foundation, a private foundation. "They can give helpful information, but ultimately foundation board, staff, and grantees have to use our collective, informed judgment to decide how effective the program is."

Permit grantees to determine the appropriate evidence of success. Once reasonable measures of success have been identified, let grantees decide how best to collect and analyze their own results.

Don't forget: evaluation costs money. Remind grantees to budget resources for their proposed evaluations.

If a foundation prefers that its grantees use outside evaluators, it should ask applicants to allocate a portion of their grant funds for that evaluation. Whether grantees do their own evaluation or use outside evaluators, funds should be sufficient to support these efforts.

Program evaluation does not always require a formal study or outside experts. Much information can be obtained through consistent use of a documentation system that records information about:

- Conditions at the beginning of the project (baseline data)
- Major activities related to interim and long-term advocacy objectives and progress made on specific measures of success
- External factors and their impact on advocacy strategies

The James Irvine Foundation, a private foundation, uses a simple three-step approach in evaluating advocacy grants that focus on program implementation rather than outcomes. The approach allows grantees to use only the criteria appropriate to their work, and grantees conduct their own evaluations. The James Irvine Foundation believes that evaluation should be integrated into advocacy work itself and linked to program planning and decision-making. They find this more helpful and meaningful than conducting retrospective evaluations. The three steps are:

1. *Assess the scope and reach of the grantee's deliverables, such as policy-related research papers or town hall*

meetings, by tracking the number produced and their distribution to constituents and policymakers.

2. *Look at the target population and its level of engagement with grantees, such as participation in meetings and other events. Determine if the program is reaching the intended target population (examples of the target population might be the staff of a state's human services agency, the media, or members of a school board).*
3. *Obtain "customer" feedback that goes beyond "customer satisfaction" to determine the effects of the advocacy-related information or services on the target populations (e.g. how the policymakers used the grantee's deliverables).*

Note that there is one exception to the data collection and evaluation practices. Grantees doing advocacy work should not interview or survey those being targeted by their efforts. This includes policymakers, media, or constituent groups. Such contact may skew otherwise objective responses or interfere with relationships formed during the effort.

When a project has multiple funders, grantmakers may need to be flexible about how the evaluation results are presented. Foundations should think twice before requiring grantees to engage in multiple evaluation efforts of a single project.

Remember that evaluations will be more workable and effective under multi-year grants. Successful advocacy efforts take time. It may take several years for organizations to engage constituents, negotiate within a complicated bureaucracy, build coalitions with allies, gain credibility as experts in the field, develop relationships with policymakers and the media, and accomplish significant policy changes. Documenting results is also time-consuming. Multi-year grants make it easier to plan, implement, and evaluate solid advocacy efforts.

Include an evaluation of the foundation's non-grantmaking assistance to the grantee. In addition to providing money, foundations play many important roles in helping grantees accomplish their objectives. For example, they might introduce grantees to policymakers or bring together organizations working on the same issue. Evaluating your own organization's strategies and techniques can yield important information for future efforts.

For instance, MAZON: A Jewish Response to Hunger, a public foundation, commissioned an evaluation of the first four years of its five-year California Nutrition Initiative. The Initiative sought to improve "the nutritional health and

well-being of low-income Californians by strengthening the capacity of the state's nonprofits and anti-hunger network.” The evaluation of the advocacy project focused on five areas, two of which were aimed at assessing the funder’s own work. MAZON was able to determine the strategies in its grantmaking model that enabled its grantees to become more effective. MAZON’s evaluation also assessed whether it added value to its grantees, such as by bringing the grantees together for advocacy training and introducing grantees to community leaders. Information about MAZON’s report is located in Appendix H.

Sample Benchmarks

- **Executive Branch:** grantee comments on two sets of regulations related to its project objectives
- **Judicial Branch:** grantee recruits six other organizations to participate in a legal case challenging a state law
- **Electoral Process:** grantee’s Voting Record is widely published and referenced
- **Cross-cutting:** members of grantee’s organization overwhelmingly respond to advocacy alerts

Public Foundations and Public Charities Can Also Use a Lobbying Benchmark: grantee works with two key legislative committee members and obtains their support for its position

Benchmarks

Benchmarks are tools used by grantees and foundations to document and evaluate advocacy efforts. They measure the effectiveness of advocacy campaigns in terms of outcomes, progress toward achieving goals, and building the advocacy capacity of organizations. Benchmarks can also be grouped by target audiences to document the impact of the advocacy work on public officials, constituents, other grantees, and the board and staff of the grantee or foundation. Benchmarks must be prepared in a manner consistent with the legal restrictions discussed in Chapter II.

Benchmarks can be grouped by outcomes, progress towards goals, and capacity-building efforts

Outcome benchmarks demonstrate success in obtaining results related to one or more of the organization’s goals and objectives. Outcome benchmarks can take years to achieve and then still be incomplete. They usually build upon progress and capacity building efforts. Examples of outcome benchmarks include a court striking down weak

state laws on water pollution which the organization had challenged through litigation, or final adoption of strong regulations that enforce new anti-pollution laws.

A particularly powerful benchmark is successful leveraging of public dollars. As Marcia Egbert, senior program officer of the George Gund Foundation, a private foundation, described,

“In 2002, the Gund Foundation provided modest grants totaling \$120,000 to help local transitional housing programs put roofs over several hundred people’s heads in Cleveland. In the same year, we provided \$25,000 for advocacy support to the Coalition on Housing and Homelessness in Ohio. That grant culminated a decade-long effort and resulted in the Coalition’s securing a permanent public revenue source for the Ohio Housing Trust Fund. That Fund now generates \$50 million per year to support low-income housing for tens of thousands of Ohio residents. Both types of grants are important yet there’s no comparison in terms of the level of the impact of our investments.”

Progress benchmarks track the steps taken toward achievement of the grantee’s advocacy goals and objectives. There are two types of progress benchmarks: **key activities accomplished** and **incremental results obtained**. Together, they form the bulk of successes for many organizations.

An activity benchmark could include the submission of comments to a state agency on proposed new anti-pollution regulations; another might be holding a series of meetings with staff from the state agency and the governor’s office.

An incremental results benchmark could include a request by state agency officials for more research or for further discussions of the organization’s suggestions. Or, it might involve a governor’s decision to form a panel to investigate causes of pollution in local lakes and rivers and develop future preventative measures.

Capacity building benchmarks demonstrate the strengthening of a grantee’s capacity to achieve advocacy success. Examples include developing relationships with key regulators, as well as motivating members of the organization’s network to contact administrative officials in support of the grantee’s position on certain regulations. Even if the proposed regulations did not pass, the organization increased its ability to carry out future policy work because it established relationships with policymakers and a network ready to act.

Benchmarks can be grouped by their impact on target audiences

Benchmarks can measure an effort’s success by the impact it had on policymakers, constituents, other organizations, and the grantee’s own organization. Following are examples of how these benchmarks might be used in a campaign aimed at strengthening anti-water pollution regulations.

Example: Sample benchmarks for anti-water pollution regulations

Public Officials

- *Twenty key decisionmakers received the organization’s report and proposal for strengthening the state anti-water pollution regulations*
- *Several key public officials endorsed the proposal*
- *The organization submitted comments on proposed pollution regulations*
- *The state agency changed the regulations to reflect concerns expressed in the organization’s comments*

Constituents and the Public

- *The organization’s water pollution policy position was included in a flyer sent to its entire membership*

- *Polls showed a 10 percent increase in general population support for the organization’s recommended changes in water pollution laws*
- *Four hundred people attended meetings to organize support for new state water pollution regulations*

Other Organizations

- *The organization distributed materials to 50 other groups interested in the environment*
- *Thirteen other organizations endorsed the grantee’s proposal*
- *The state coalition on water pollution concerns added 10 new member organizations*

Own Organization

- *The organization’s board and staff gained expertise on water pollution policy as well as a familiarity with state legislative and administrative processes*
- *The board and staff committed to a multi-year advocacy campaign against water pollution*
- *One hundred people concerned with water pollution signed on for membership in the organization*

Case Study: Foundation Evaluation of Advocacy	
<p>The Washington AIDS Partnership is a grantmaking collaborative established to engage the philanthropic community in the fight against HIV/AIDS and help ensure a continuing and coordinated philanthropic response to the AIDS epidemic in the Washington metropolitan area. It developed the following procedures for evaluating its advocacy grants and grantmaking:</p> <ol style="list-style-type: none"> 1. The collaborative requires all applicants to include in their grant proposals: <ol style="list-style-type: none"> a. Both long-term policy goals and shorter-term objectives the applicant believes can be reached during the grant period; and b. An evaluation plan that specifies methods for ongoing documentation and assessment of progress towards these objectives. 2. The collaborative requires all grantees to submit a progress report during the funding period. Examples include: 	
Increased media coverage of policy issues—progress benchmark	Documentation of media coverage and/or editorial support of particular policy issues; increased requests from the media for comments on grantee’s priority policy issues
Increased public awareness of policy issues—progress benchmark; capacity building benchmark	Development of e-mail network or other group that supports specified policies; demonstrated ability to mobilize public to respond to policy issues (e.g., participating in advocacy efforts, signing letters or e-mails)
Increased policymaker awareness of policy issues—progress benchmark	Documentation of testimony delivered at City Council, State legislature, or other legislative hearings; meetings with key policymakers
Increased policymaker support for policy action—progress benchmark	Documentation of policymaker support for a proposed policy change, sponsorship, or support of proposed legislation to address a policy need
Changes in public policy—outcome benchmark	Documentation of new or changed legislation, regulations, or procedures used to implement legislation or regulations
Improvements in programs or services due to policy changes—outcome benchmark	Documentation of improvements in the program planning process, contracting, or contract management; increased funding of services; increased access to services by vulnerable populations

The case study below shows how one grantmaker, the Washington AIDS Partnership (with the help of Mosaica, The Center for Nonprofit Development), developed evaluation procedures that incorporated various benchmarks.

Legal Considerations for Grantee Reporting

Even foundations that recognize the value of supporting advocacy work may be nervous about receiving reports that mention the “A” word from grantees. Their questions and concerns include:

- What are our legal ramifications if a grantee reports that it used foundation money to lobby?
- What if a grantee reports that a major accomplishment of a funded project was the passage of legislation?
- What if a grantee reports that it produced a voting record or engaged in other nonpartisan electoral activities?

The short answer is, don't worry. **Grantees can generally engage in advocacy activities and freely report their activities—even lobbying or nonpartisan voter registration activity—without negative consequences for the foundation.** As discussed throughout this guide, however, legal obligations vary by type of foundation, type of grantee, and type of advocacy funded. As a result, limitations on use of grant funds, and the procedures for requesting and receiving evaluation reports, will differ. Also, the foundation itself may have imposed certain additional obligations in the grant agreement that must be considered during the evaluation process.

Reports from Public Charities

Public charities are permitted to engage in a wide range of advocacy activities, as discussed in Chapter I. Reports on those activities inform the foundation about how the grantee is allocating grant funds and whether

the funds are being used strictly for charitable purposes. Funders should not fear reports that mention permissible advocacy activity; this information will not place a foundation at risk for paying additional taxes or losing its tax-exempt status.

For further assurance, a foundation may request a written certification from the grantee, as part of its evaluation and reporting forms, stating that the grantee's activities are permissible within its tax-exempt status as a public charity.

Reports on Lobbying

Tax law *does not* prohibit public charities from using grant funds for lobbying. Therefore, charities may report their lobbying activities to a foundation, whether public or private, without legal ramification to either grantees or funders.

Private foundations: A public charity grantee's report that describes its lobbying activities will generally not create a tax liability for the private foundation, so long as the foundation properly awarded the grant. The applicable rules, discussed in Chapter II, prohibit earmarking the grant for lobbying—regardless of whether the grant is for general support or a specific project. Be careful to follow the additional rules applicable to specific project grants as well.

As an example, the following language in a grant report to a private foundation would generally not create a taxable expenditure for the foundation or adversely impact the foundation's ability to fund the charity in future years:

The support you and others provided allowed our organization to engage in a successful campaign on contraceptives. We distributed 100,000 fact sheets educating the public about reproductive choice and served over 250 clients. In addition, our efforts resulted in the passage of H.R. 32, a bill to provide medical coverage for contraceptives.

Public foundations: In general, public foundations may receive reports that discuss lobbying from public charity grantees. If the grant were not earmarked for lobbying (grassroots or direct), the public foundation generally does not even have to count the reported lobbying against its own lobbying limits. If the grant were earmarked for lobbying, then the earmarked funds are reportable against the public foundation's lobbying limits. The grantee must count the money spent against its lobbying limit as well. For more information about public foundation grants, see Chapter II.

Sample Certification Language

All activities by the grantee preparing this report were and are consistent with its status under IRC §§ 501(c)(3) and 509(a), which has not changed since grantee's last application to the foundation. If any lobbying was conducted by the grantee (whether or not discussed in this report), the grantee complied with the applicable limits of §§ 501(c)(3) and/or 501(h) and 4911. The grantee warrants that it is in full compliance with its grant agreement with the foundation and that, if the foundation's grant was subject to any restrictions, all such restrictions were observed.

What if the foundation grant agreement prohibited the use of funds for lobbying?

Although such restrictions are only required for private foundation grants to non-public charities (*i.e.*, expenditure responsibility grants), some foundations choose to impose them on other grantees as well. If a public or private foundation's grant agreement prohibits using funds for lobbying, any violation of that agreement is generally a contractual matter between the foundation and the grantee. The foundation may, at its discretion, require the grantee to return grant funds spent on lobbying and may choose not to fund the organization in the future.

What if the grantee's report reveals that the grantee exceeded its lobbying limits?

If the grantee reports lobbying that exceeded its legal lobbying limit, neither private nor public foundations have a legal obligation to rescind the grant or take other action. If a private foundation provided a general support grant to a public charity under the rules discussed in Chapter II and the charity subsequently lost its tax-exempt status for excessive lobbying, the private foundation will not be found to have made a taxable expenditure, as long as:

1. the grantee had an advance or final determination of 501(c)(3) status when the grant was made
2. there was no public notice that the tax-exempt status was revoked before the foundation made the grant
3. the foundation did not learn that the grantee received notice that it would be removed from charitable status
4. the grantee is not controlled directly or indirectly by the private foundation³⁵

Reports of Election-Related Activity

As we have already explored, all public charities are prohibited from engaging in partisan electoral activity, meaning any activity that directly or indirectly supports or opposes candidates for public office. Therefore, if a public charity reported using grant funds to engage in partisan electoral activity, both a public or private foundation could take action (under the rights stipulated in the grant agreement) to request a refund of the grant amount. Under tax law, if the foundation does not plan to fund the grantee again and the charity does not have any grant funds remaining, the foundation may not have any legal obligations to rescind the grant. A foundation facing this situation should consult with legal counsel.

Finally, grantee reports about nonpartisan electoral activity should not worry either public or private founda-

tions. There is one exception: Special rules apply for private foundation support of nonpartisan voter registration activity. If the private foundation provided a general support grant and the grantee engaged in some voter registration activity or a project that included it, the report should clearly state that the voter registration activity was not the organization's sole or primary activity. Grantee reports to private foundations for a project grant should demonstrate that the voter registration took place under the section 4945(f) rules, in five or more states, and during more than one election period.

A report to a *public* foundation grantor may describe nonpartisan voter registration activities.

To worry or not to worry?

Example 1: "This year your foundation's grant funds allowed our organization to host a nonpartisan candidate forum. During this forum all the mayoral candidates had the opportunity to share their views on a range of issues including education, economic development, and crime."

A foundation receiving this report should have no concerns. The activity described is permissible nonpartisan election-related activity.

Example 2: "This year your grant funds allowed our organization to invite Mayor Hernandez to discuss her reelection campaign. The event was very effective with over 30 attendees committing to help with her campaign."

This report clearly indicates that the public charity was involved in partisan electoral activity. A foundation receiving this report should consult with legal counsel.

What if the foundation wants to make future grants to a public charity that reports partisan activity?

If the public or private foundation wants to fund the public charity again, the foundation should seek written assurances from the grantee that it understands the rules. The grantee must certify that it will not conduct partisan political activities in the future. These assurances from the public charity generally protect the foundation against questions that it sought to intervene in an election by funding the grantee again.

Reports from Non-Public Charities

Reports to Private Foundations

As described in Chapter II, a private foundation has more oversight responsibilities (expenditure responsibility) when making grants to organizations that are *not* public charities than it does for grants to public charities. If a non-public charity grantee reports that the private founda-

dation's funds were used for lobbying, partisan electioneering, voter registration drives, or other prohibited purposes, the private foundation will be treated as having made a taxable expenditure unless it takes reasonable steps to:

1. Recover the grants funds or have the grantee restore the diverted funds for the original purpose of the grant
2. Withhold further payments to the grantee until it has received assurances that future diversion of grant funds will not occur and require the grantee to take precautions to prevent future diversions³⁶

Non-public charities may freely report to private foundations all permissible forms of general advocacy, including sending press releases, filing comments with an executive branch agency, or litigation. The grantee may even discuss its lobbying activity, so long as it is clear in the report that the private foundation's grant funds did not finance the lobbying.

Reports to Public Foundations

While public foundations are not *required* to exercise expenditure responsibility, they must still review reports to ensure appropriate use of grant funds. Many non-public charities such as 501(c)(4)s are permitted to engage in partisan electoral activity, but the public foundation's grant funds cannot be used for those efforts. If a report indicates that the funds *were* used for partisan electoral activity, the

public foundation should consider rescinding the grant and requesting a refund.

Typically, a public foundation grant to a non-public charity that engages in lobbying will automatically count against the foundation's lobbying limit, as mentioned in Chapter II. Public foundations should expect to receive reports indicating that grant funds were expended on lobbying.

If the public foundation awarded a controlled grant that prohibited or restricted the use of grant funds for lobbying, the grant will not count against the foundation's lobbying limit. But, if a report indicates that grant funds were used for lobbying in violation of the grant agreement, the public foundation should either seek to recover the grant funds used in violation of the agreement or increase the portion of the grant counted against the public foundation's lobbying limits.

In sum, when grantee reports discuss advocacy work, foundations can more accurately assess the impact of the programs they support. Everyone wins. Grantees are permitted to report the full range of their activities and successes—including advocacy—without foundations fearing negative legal consequences. So long as grant money is used in the many permissible ways described above, reporting should not present adverse legal consequences.

Chapter VI: Rules for Foundations Engaging in Advocacy

“FOUNDATIONS HAVE MUCH MORE THAN MONEY, even small foundations. They have facilities, employees, board members, collective memory, experience, opinions, and access to many places of influence. ... Our individual voices, on behalf of the people we support, are seriously underused resources.”

—from an article in *The Chronicle of Philanthropy* by Madeline Lee, former president, New York Foundation

In addition to supporting the advocacy work of grantees, foundations can themselves engage in advocacy. A foundation’s reputation and influence within a community can be an especially powerful advocacy tool—one that can persuade other foundation and nonprofit leaders to support and engage in advocacy. Foundations can also produce research pertinent to legislative issues, offer technical assistance, or bring lawsuits that challenge the status quo. As Karen Bryne of the McKay Foundation, a private foundation, notes, “Funders have to be advocates themselves and recognize the whole breadth of work they can be doing around advocacy by framing and engaging in the issues.”

This chapter explains the rules for foundations that engage in lobbying, nonpartisan election-related activity, and general advocacy. In addition, it describes how foundation officers, trustees, and employees, acting in an individual capacity, can participate in advocacy activities.

Lobbying

Private Foundations

Private foundations *may not* lobby, nor can they earmark a grant for lobbying, without incurring a taxable expenditure. Since the exceptions to lobbying discussed in Chapter I apply to private foundations, however, they may engage in those activities without tax consequences.

Public Foundations

As public charities, public foundations may engage in a limited amount of lobbying and may earmark grants for lobbying; however, earmarked grants count toward the public foundation’s lobbying limits. For details on public charity lobbying activities, see Chapter II.

Election-Related Activity

Both public and private foundations must abide by the same *absolute prohibition* against partisan electoral activity as their grantees. They may not participate in any activity that supports or opposes a candidate or party for public office. Like their grantees, however, private and public foundations can participate in the nonpartisan election-related activities including:

- Conducting candidate debates and forums
- Compiling and distributing voting records and candidate questionnaires
- Operating Get-Out-The-Vote (GOTV) drives
- Voter registration campaigns (remember that private foundations have special rules for conducting voter registration activities.

For more details on nonpartisan voter education activities and the special voter registration rules for private foundations, see Chapter II.

The following fictional examples highlight permissible election-related activities for both public and private foundations:

Example: Candidate Questionnaire and Voter Guide

Blue Community Fund, a fictitious public foundation, sends a questionnaire to all candidates for governor in North Carolina. The questionnaire solicits a brief position statement from each candidate on a wide variety of issues. All responses are published, unedited, in a voter’s guide that the Fund makes available to the general public. The Fund selects the issues solely on the basis of their importance and interest to the electorate as a whole. Neither the questionnaire nor the voter’s guide, in content or structure, demonstrates a bias or preference about the views of any candidate or group of candidates. Based on the facts and circumstances described here, this is a permissible nonpartisan voter education activity.³⁷

Example: Candidate Debate and Forum Example

The Gray Family Foundation, a fictitious private foundation, invites all viable congressional candidates to participate in a candidate forum. A nonpartisan, independent panel prepares and presents the questions. The topics cover a broad range of issues of interest to the public, including those that may be of particular importance to the foundation's grantees. Each candidate is given an equal opportunity to present views on the issues discussed. In addition, the moderator does not comment on the questions or make statements that imply approval or disapproval of any of the candidates. Based on the facts and circumstances described here, this is a permissible candidate forum.³⁸

General Advocacy

As discussed throughout this guide, general advocacy—advocacy that does not meet the legal definition of lobbying—is unlimited for all tax-exempt organizations, including foundations. Private and public foundations may engage in non-lobbying advocacy, including:

- Conducting public education campaigns
- Convening public or private meetings
- Requesting enforcement of a law
- Advocating for or against an executive order
- Commenting on regulations
- Influencing non-legislative actions of administrative bodies
- Participating in litigation
- Engaging in activity that falls under one of the lobbying exceptions or does not otherwise meet the definition of lobbying

Using these approaches, many foundations have found effective ways to draw attention to issues of importance. For example:

Public Education. The Minneapolis Foundation's "Let's Fix This" advertising campaign raised awareness of homelessness among Minnesota's children.

Convening Meetings. The California Endowment and the California Wellness Foundation sponsored meetings of key stakeholders to discuss state budget issues.

Commenting on Regulations. Several foundations signed on to comments submitted to the Federal Election Commission opposing a proposed rulemaking that would

redefine 501(c) organizations as "political committees" subject to FEC regulation.

Litigation. Several foundations filed friend of the court (*amicus curiae*) briefs in *Dobbins v. Legal Services Corporation*, a case seeking to overturn congressionally mandated limits on how private legal organizations that receive any funding from the Legal Services Corporation can use their non-federal funds. The New York Foundation, a public foundation, was a plaintiff in the case.

Nonpartisan Analysis, Study, or Research. The W.K. Kellogg Foundation, a private foundation, issued a report entitled "Federal Investment in Rural America Falls Behind," to look at current policy toward rural communities and rural development. The foundation recognized that the ongoing debate about the government's policy lacked any real analytical data. It undertook this study to provide needed facts about the government's spending priorities towards rural areas.

Request for Technical Advice or Assistance. Assume the Senate Finance Committee holds a hearing to determine whether the self-dealing rules that already apply to private foundations should also apply to public charities. If the Committee's Chair sends a letter to the president of the Markham Foundation, a fictitious private foundation, asking her to testify about how the Foundation monitors and applies the self-dealing rules, her time and expense of preparing testimony, traveling to and from Washington, D.C., and testifying would not be considered lobbying.

Examinations and Discussions of Broad Social, Economic, and Similar Problems. The Robert Wood Johnson Foundation, a private foundation, together with several other foundations, annually sponsors "Cover the Uninsured Week" to raise public awareness about the millions of Americans who lack health coverage. The goal of the program is to bring the plight of the uninsured to the national agenda.

Self-Defense Communications. Officials from several private foundations spoke to members of Congress about proposals to increase the mandatory annual payout required for private foundations. The foundations even hired a lobbyist to act on their behalf. Likewise, a public foundation could urge legislators to oppose a bill that would remove property tax exemptions for 501(c)(3) organizations. Neither of these actions constitute lobbying.

In addition to reacting to legislation, private foundations can use the self-defense exception proactively. For example, a private foundation could propose that Congress lower the tax on foundation investment income. Since this proposal affects the existence of private foundations, it would fall under the self-defense exception.

[Note: The self-defense exception applies in rare circumstances, and foundations should seek legal advice before relying on it.]

Individual Activity

Individuals who work for or sit on the board of any foundation or public charity are allowed to participate in legislative or partisan electoral activity as private individuals—on their “own” time. Individuals may make contributions to candidates, volunteer for a candidate’s campaign, raise money for a candidate or political party, and even run for public office. Of course, no foundation resources may be used to support such activities since the use of foundation money for partisan political activity is strictly prohibited.

Foundations should take steps to ensure that the individual’s actions are not imputed to the foundation by instituting the following rules:

- Individuals must not use the foundation’s facilities or equipment to engage in political activity (*e.g.*, no use of the foundation’s telephones, copiers, or postage machines)
- Individuals should take vacation days, a leave of absence as provided under standard personnel policies, or confine their personal legislative or political involvement to outside the normal business day
- An individual should always make clear that he/she is representing himself/herself only and not the foundation

Foundation trustees, officers, and employees can take additional steps to ensure their actions are not attributed to the foundation by:

- Avoiding statements supporting or opposing candidates for public office during an event sponsored by the foundation or in any of its publications
- Not wearing political buttons at public events or functions when acting on behalf of the foundation
- Not providing the foundation’s mailing list or any other asset to a candidate
- Not thanking or acknowledging trustees, officers, or employees of a foundation for their work on behalf of a candidate

A foundation can further protect itself by:

- Requiring trustees, officers, or employees who engage in partisan political activity to clearly state that they are acting in their individual capacity, not on behalf of the foundation, and that any reference to their work for the foundation is made for identification purposes only
- Notifying employees of the prohibition on the use of foundation time and resources, and ensuring that leave records reflect when employees are taking leave to participate in outside personal activities
- Timely disavowing, in writing, any partisan actions of trustees, officers, or employees that appear to be authorized by the foundation, and taking steps to ensure that such actions are not repeated

Final Note

As you have seen in the preceding pages, there are many rules and guidelines surrounding foundation and grantee advocacy, but the overriding message is clear: we work in this field to make a difference and advocacy can play a major part in making our world a better place.

Notes

¹ In this guide, the word “**nonprofit**” is specifically used when referring to all tax-exempt organizations collectively, including public and private foundations and public charities.

² Sometimes these activities may trigger registration and reporting requirements under federal, state, or local lobbying disclosure laws.

³ 26 CFR § 56.4911-2 (d)(4)

⁴ 26 USC § 501(c)(3); 26 CFR § 1.501(h)-1(a)(1)

⁵ 26 USC § 501(h); 26 CFR § 1.501(h)-1 through 26 CFR § 1.501(h)-3

⁶ 26 CFR § 4911-2(b)(1)

⁷ 26 CFR § 4911-2(b)(2)

⁸ 26 USC § 4911(d)(2); 26 CFR § 56-4911-2(c)(1)-(4)

⁹ Treas. Reg. 53.4945-2(a)(3)

¹⁰ A searchable online version of the publication is available on the IRS website at <http://www.irs.gov/charities/page/0,,id=15053,00.html>.

¹¹ 26 CFR. § 56.4911-2(b) for 501(h) electors only

¹² For a more detailed analysis of the lobbying rules, refer to the Alliance for Justice publication, *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities*.

¹³ 26 USC § 501(c)(3) and 26 CFR § 1.501(c)(3)-1(c)(3)(iii)

¹⁴ 26 USC § 509(a)

¹⁵ 26 USC § 4945; 26 CFR § 53.4945-2

¹⁶ 26 CFR § 53.4945-2(a)(6)

¹⁷ 26 USC § 4945(e); 26 CFR § 53.4945-2(d)

¹⁸ 26 CFR § 53.4945-2(a)(6)

¹⁹ 26 CFR § 53.4945-2(a)(6)(i)

²⁰ 26 CFR § 53.4945-2(a)(6)(ii)

²¹ 26 CFR § 53.4945-2(a)(6)(iii)

²² 26 CFR § 4945-2(a)(6)(ii)(B)

²³ 26 USC § 501(c)(3); 26 CFR § 1.501(c)(3)-1(c)(3)(iii)

²⁴ Rev. Ruls. 78-248 and 80-282

²⁵ Rev. Rul. 86-95; TAM 96-35-003 (April 19, 1996)

²⁶ *Id.*

²⁷ 11 CFR § 114.4(d)(6)

²⁸ 26 USC § 4945(f); 26 CFR § 53.4945-3

²⁹ 26 USC § 4945(h)

³⁰ **Private operating foundations** are private foundations that use the bulk of their resources to provide charitable services or run charitable programs of their own. They make few, if any, grants to outside organizations and, like private independent and private family foundations, they generally do not raise funds from the public.

³¹ 26 CFR § 53.4945-5(a)(1)

³² There are no parallel rules for public foundations and public charities that do not elect under the 501(h) expenditure test. The 501(h) regulatory regime is much more detailed and the IRS has agreed that in certain situations it is appropriate for non-electors to look to the 501(h) regulations for guidance. See GCM 39694 (Jan. 21, 1988). It is unclear whether this is such a situation.

³³ 26 CFR § 53.4911-3(c)(3)

³⁴ 26 CFR § 56.4911-2(b)(1)(iii)

³⁵ 26 CFR § 53.4945-2(a)(7)(i)

³⁶ 26 CFR § 53.4945-5(e)(1)(iii)

³⁷ Rev. Rul. 78-248

³⁸ Rev. Rul. 86-95; TAM 96-35-003 (April 19, 1996)

Appendix A: Sample General Support Grant Agreement Language

The Markham Foundation (“Grantor”) is pleased to notify Alliance for Research and Education (“Grantee”), located at (address), that it has been selected to receive a \$10,000 general support grant. The award cycle is September 1, 2004 through September 1, 2005. We look forward to working with you in what we hope to be an exciting year of organizing, advocacy, education, and progress.

This grant is made by the Grantor subject to the following terms and conditions:

- (a) Grantee, or its fiscal agent, is an organization that is both exempt from tax under section 501 (c)(3) of the Internal Revenue Code (IRC) and an organization described in IRC §509(a)(1), (2), or (3) whose status has been duly confirmed by one or more operative IRS rulings or determination letters, a copy of which Grantee has filed with Grantor.
- (b) Grantee will utilize the grant’s proceeds only for charitable and educational activities consistent with its tax-exempt status described above. Without limiting the generality of the preceding sentence, Grantee will not intervene in any election or support or oppose any political party or candidate for public office, or engage in any lobbying not permitted by section 501(c)(3) of the IRC, or, if applicable, IRC §§501(h) and 4911.
- (c) Grantee will inform Grantor immediately of any change in its IRS tax-exempt status, proposed or actual as described in paragraph b.
- (d) This is a general support grant. It is not earmarked for any project or for transmittal to any other entity or person, even if Grantee’s proposal or other correspondence expresses expenditure intentions. Rather, Grantee accepts and will discharge full control of the grant and its disposition and responsibility for complying with this agreement’s terms and conditions.
- (e) This grant is not in any way earmarked to support or carry on any lobbying or voter registration activity.
- (f) Grantee will submit a six-month report to Grantor by March 1, 2005, and a final report by September 1, 2005, that details any work that Grantee has completed using these grant funds. The report should include information on how the grant funds were used. Grantor awards the grants in two installments. The second installment will be mailed upon the completion and return of a six-month report. All grant requirements for the initial six-month grant period must be met in order for Grantee to receive the full grant sum.

Grantee’s deposit, negotiation, or endorsement of the first installment check will constitute its agreement to the terms and conditions set forth above. However, please have the enclosed copy of this letter reviewed and signed where indicated by an authorized officer of Grantee and then returned to us at your earliest convenience so that we may have a copy for our files.

Sincerely,

On behalf of Grantee, I understand and agree to the foregoing terms and conditions of this grant and hereby certify my authority to execute this agreement on Grantee’s behalf.

Signature: _____

Name: _____

Title: _____

Date: _____

Appendix B: Sample Specific Project Grant Agreement Language

This grant agreement details a one-year specific project grant from the Markham Foundation (Grantor) to the Alliance for Research and Education (Grantee), located at (address) to support Grantee's Preservation of Wildlife Habitats project.

Project Term:

The term of the project is one year beginning on January 1, 2005.

Project Description:

This project will seek to identify and preserve wildlife habitats in Upstate New York through the promotion of ecosystem conservation, sound management, and the preservation of sustainable natural landscapes through a combination of education, litigation, and advocacy.

The Grantor makes this grant subject to the following terms and conditions:

- (a) Grantee must repay to grantor any portion of this grant not used for the stated purpose.
- (b) Grantee is an organization both exempt from tax under section 501(c)(3) of the Internal Revenue Code (IRC) and an organization described in IRC section 509(a)(1), (2), or (3), which statuses have been duly confirmed by one or more operative IRS rulings or determination letters, copies of which Grantee has filed with Grantor.
- (c) Grantee will utilize the grant's proceeds only for charitable and educational activities consistent with its tax-exempt status described above. Without limiting the generality of the preceding sentence, Grantee will not intervene in any election or support or oppose any political party or candidate for public office, or engage in any lobbying not permitted by section 501(c)(3) of the IRC or, if applicable, IRC sections 501(h) and 4911.
- (d) Grantee will inform Grantor immediately of any change in its IRS tax-exempt status, proposed or actual, described in paragraph (b).
- (e) Grantee will submit quarterly written reports to the grantor on the disposition of the grant proceeds. The report should describe:
 - The goals set for the project during the grant period
 - Any progress or setbacks relative to these goals
 - Other funding received for this project and how it was used
 - The impact of project activities on the target issue(s)
 - Any modification of strategies in light of changing issues
 - Significant challenges and how they were dealt with
 - Major staff and programmatic changes
- (f) Grantee agrees to show these grant funds separately on its books; however, Grantee is not required to segregate these funds in separate bank accounts. All expenditures made for the purposes of the grant shall appear on Grantee's books. Grantee agrees to make such books and records available to Grantor at reasonable times upon request and to keep copies of all books, records, and reports to Grantor for at least four years after the grant term has ended.
- (g) This grant is earmarked for the project identified in this grant agreement. The grant is not earmarked for transmittal to any other entity or person, even if the proposal or other correspondence expresses expenditure intentions. Rather, Grantee agrees to accept complete control of the grant and its disposition and responsibility for complying with the terms and conditions of this agreement.
- (g) This grant is not in anyway earmarked to support or carry on any lobbying or voter registration drive. Grantee hereby reaffirms that the project's current budget, attached to this grant agreement, accurately reflects Grantee's present intention to expend at least the amount of this grant on project non-lobbying and non-voter registration activities in Grantee's current fiscal year.

By signing below, Grantee accepts and agrees to all terms and conditions set forth in this letter. Please retain a copy of this grant agreement and return a signed copy to Grantor by January 1. Upon receipt of a signed agreement, Grantor shall disburse the grant.

Signature: _____

Name: _____

Title: _____

Date: _____

Appendix C: Rules for Foundation Support of Advocacy by Public Charities

This chart provides general information and should not be relied on without consulting specific guidance contained in this guide.

	Private Foundations (including family and corporate-sponsored foundations)			Public Foundations (including community foundations)		
	Fund	Earmark Funds*	Notes	Fund	Earmark Funds†	Notes
Administrative Advocacy						
Regulatory advocacy	Yes	Yes		Yes	Yes	
Enforcement of enacted laws	Yes	Yes		Yes	Yes	
Executive orders	Yes	Yes		Yes	Yes	
Judicial Advocacy						
Litigation	Yes	Yes		Yes	Yes	
Legislative Advocacy						
Lobbying	No	No	May provide general support and specific project grants to charities that lobby	Yes, limited	Yes, limited	Count earmarked grants against the foundation's lobbying limit
Nonpartisan analysis, study, or research	Yes	Yes		Yes	Yes	
Requests for technical advice or assistance	Yes	Yes		Yes	Yes	
Self-defense communications	Yes	Yes		Yes	Yes	
Examinations & discussions of broad social, economic, and similar problems	Yes	Yes		Yes	Yes	
Electoral Advocacy						
Partisan	No	No		No	No	
Nonpartisan	Yes	Yes	Special rules for funding voter registration activity	Yes	Yes	
<p>* According to for specific purposes." 26 CFR 53.4945-2(a)(5)(i). .</p> <p>† According to regulations, a transfer, including a grant, is earmarked "(i) to the extent that the transferor directs the transferee to add the amount transferred to a fund established to accomplish the purpose, or (ii) to the extent of the amount transferred or, if less, the amount agreed upon transfer 26 CFR 56.49 public charities.</p>						

Appendix D: Rules for Foundations Engaging in Advocacy

This chart provides general information and should not be relied on without consulting specific guidance contained in this guide.

	Private Foundations (including family and corporate-sponsored foundations)		Public Foundations (including community foundations)	
	Permissible	Notes	Permissible	Notes
Administrative Advocacy				
Regulatory advocacy	Yes		Yes	
Enforcement of enacted laws	Yes		Yes	
Executive orders	Yes		Yes	
Judicial Advocacy				
Litigation	Yes		Yes	
Legislative Advocacy				
Lobbying	No, lobbying is a taxable expenditure		Yes, limited	Count any money spent on lobbying against the foundation's lobbying limit
Nonpartisan analysis, study, or research	Yes		Yes	
Requests for technical advice or assistance	Yes		Yes	
Self-defense communications	Yes		Yes	
Examinations & discussions of broad social, economic, and similar problems	Yes		Yes	
Electoral Advocacy				
Partisan	No		No	
Nonpartisan	Yes	Special rules for engaging in or funding voter registration	Yes	

Appendix E: Resources

National Supporting Organizations

Alliance for Justice

11 Dupont Circle, NW
2nd Floor
Washington, DC 20036
Phone 202.822.6070
Fax 202.822.6068
fai@afj.org
www.afj.org

Association of Small Foundations

4905 Del Ray Ave., Suite 308
Bethesda, MD 20814
Phone 301.907.3337 or 888.212.9922
Fax 301.907.0980
asf@smallfoundations.org
www.smallfoundations.org
www.foundationinbox.org

Charity Lobbying in the Public Interest

2040 S Street NW
Washington DC 20009
202.387.5048
Fax 202.387.5149
www.clpi.org

Chronicle of Philanthropy

1255 23rd St. NW, Suite 700
Washington, D.C. 20037
Phone 202.466.1200
help@philanthropy.com
philanthropy.com

Council on Foundations

1828 L Street, NW
Washington, DC 20036
Phone 202.466.6512
Fax 202.785.3926
info@cof.org
www.cof.org

Forum of Regional Association of Grantmakers

1111 19th St., NW, Suite 650
Washington, DC 20036
Phone 202.467.1120
Fax 202.467.0055
info@givingforum.org
www.GivingForum.org

Foundation Center

79 Fifth Avenue/16th Street
New York, NY 10003-3076
Phone 212.620.4230 or 800.424.9836
Fax 212.691.1828
http://fdncenter.org
Philanthropy News Digest:
http://fdncenter.orgpnd

GuideStar

4801 Courthouse Street, Suite 220
Williamsburg, VA 23188
Phone 757.229.4631
www.guidestar.org

Independent Sector

1200 18th St., NW, Suite 200
Washington, DC 20036
Phone 202.467.6100
Fax 202-467.6101
http://www.independentsector.org/

National Committee for Responsive Philanthropy

2001 S Street, NW, Suite 620
Washington, DC 20009
Phone 202.387.9177
Fax 202.332.5084
info@ncrp.org
www.ncrp.org

National Council of Nonprofit Associations

1030 15th Street, NW, Suite 870
Washington DC 20005
Phone 202.962.0322
Fax 202.962.0321
ncna@ncna.org
www.ncna.org

OMB Watch

1742 Connecticut Ave NW
Washington DC 20009
Phone 202.234.8494
Fax 202.234.8584
ombwatch@ombwatch.org
www.ombwatch.org

Administrative Agencies

Federal Election Commission

999 E Street, NW
Washington, DC 20463
Phone 202.694.1100 or 800.424.9530
TTY 202.219.3336
www.fec.gov

Internal Revenue Service

TE/GE Customer Account Services

P.O. Box 2508
Cincinnati OH 45201
Phone 513.263.3333
Or toll free at 877.829.5500
www.irs.gov

Appendix F: Sample Benchmarks of Advocacy Effectiveness

Below are sample benchmarks, or indicators, for each type of advocacy defined in Chapter I. Grantmakers may wish to share these with grantees, or applicants for advocacy funding, so they can use such benchmarks in developing concrete objectives and evaluation plans in their proposals and their work. Please note that these are only examples; grantees should be encouraged to develop their own benchmarks in line with advocacy goals and objectives.

Some of these benchmarks point toward a level of activity or accomplishment that is considered desirable for any organization evaluating its advocacy work. Others are more demanding and indicate what an advocacy organization would do in an ideal situation, with sufficient resources. As always, each organization's capacity, resources, history, and current situation must be taken into account.

Many of these benchmarks, such as building relationships with policymakers, building an active constituent network, and learning the legislative or regulatory process, develop the organization's **capacity** for effective future advocacy work; others reflect **progress** towards objectives, or both. Still others, such as showing increased voter turnout, show that the organization reached a goal or objective as an **outcome** of its work.

Remember: Be as definitive as possible and quantify as much as possible. For example:

- "Reached public with voter education materials" could be reported as: "Reached 50% of Casper County with two voter education brochures."
- "Building relationships with legislators and staff on key issues" might be reported as: "Developed close relationship with two environmental committee chairs that included weekly meetings with their staff on the upcoming water pollution bill."

There are many additional examples of effective benchmarking related to specific areas of advocacy work. Think about your organization and which of these benchmarks might apply:

Executive Branch

The organization:

- can identify and has contacts in agencies that implement policies and programs related to its issue priorities
- understands relevant agencies' deliberation and rule-making processes

- monitors the implementation of legislation related to key priorities at the administrative/executive level by tracking rules and regulations
- has an ongoing relationship with the cabinet-level secretaries and/or key department administrators of the government agencies overseeing public policy
- identifies gaps in data of government agencies and develops and advocates for strategies for filling the gaps
- files comments on governmental actions and proposed regulations
- directs public attention to proposed regulations, and challenges policies or regulations in court when they are inconsistent with the law
- negotiates with department administrators and provides input on initial and ongoing implementation of policies
- meets with chief administration officials of target jurisdiction, prior to official submission of legislative agenda and budgets
- has its comments on proposed regulations cited by the targeted administrative agency in final regulations
- generates numerous comments on proposed regulations from members of the public
- demonstrates that its concerns are reflected in stepped-up implementation or enforcement of legislation or regulations by an administrative agency

Judicial Branch

The organization:

- has a working knowledge of the litigation process and develops annual, proactive plans for engaging in litigation
- develops ongoing relationships with lawyers, judges, and other key stakeholders
- works collaboratively with other organizations engaged in judicial advocacy
- participates in legal challenges to legislation
- has clear criteria for selecting prospective cases, including their potential for setting legal precedents
- regularly prepares *amicus* briefs in support of cases relevant to its issues
- has language from its legal pleadings or *amicus* brief used by a judge in his or her opinion
- shows favorable rulings related to its interests

Legislative Branch

The organization:

- Possesses a clear working knowledge of the rules regarding lobbying by a nonprofit organization. This is reflected in the organization's board policies and personnel policies and in the orientation of new board members and employees
- Understands federal, state, county, and local legislative process, including annual schedules for development of legislative and budgetary priorities
- Understands and complies with federal and state rules governing direct and grassroots lobbying and reporting of lobbying
- Identifies, builds, and maintains working relationships with appropriate legislators and their staff who make or influence policy decisions related to the organization's objectives or its core constituency
- Maintains a consistent presence in federal, state, county, and local legislative bodies
- Invites lawmakers to meet and observe the people and places for which it is advocating
- Develops relationships across all political parties
- Identifies and tracks bills directly related to its issue priorities
- Analyzes proposed legislation and develops proposed changes, when needed, to significant bills that it tracks
- Provides all legislators with written copies of its annual legislative agenda and data-driven information on the status of its constituents
- Generates jurisdiction-specific information and data for legislators throughout the year
- Is called upon by policymakers for information and opinions on key issues
- Maintains records for tracking lobbying expenses that are adequate to meet federal, state, and local requirements
- Has a working knowledge of public programs related to its key issues, as well as their revenue structure and sources
- Tracks and monitors the annual budget and/or expenditures (federal, state, or local) in areas related to its issue priorities
- Analyzes the nature and adequacy of revenues as well as the impact of tax policies on its constituents
- Makes recommendations to key legislative committees about strategies effectively using additional public funds

- Articulates the needs of its constituents during issue debates by providing timely information on the potential impact of legislative proposals
- Strategically publicizes information on spending trends on issues affecting its constituents
- Understands the judicial nominations process
- Monitors judicial appointments, obtains information on prospective appointees' backgrounds related to its issues, and disseminates this information to its network
- Proves that a legislative committee holds a hearing on issues for which the organization seeks the legislature's attention
- Is asked to testify at hearings
- Sees its stance reflected in ballot measure outcomes
- Shows that policymakers champion its issue in committee or with other legislators
- Demonstrates that policymakers give informal or formal (written) support to its recommendations
- Shows that policymakers introduce bills which reflect some or all of its interests
- Establishes that legislation representing its interests proceeds through different steps of approval in the legislative process
- Confirms that legislation representing its interests is signed into law

Electoral Process

The organization:

- Clearly understands the rules regarding what a nonprofit organization can and cannot do during election season. This is reflected in its board policies and personnel policies and in the orientation of new board members and employees
- Engages in nonpartisan voter registration campaigns
- Regularly engages with its constituents in get-out-the-vote campaigns
- Requests candidates' positions through candidate forums, questionnaires, or other strategies
- Has a process for briefing all candidates or newly elected officials on key issues facing its constituents
- Reaches the public with voter education activities
- Shows increased voter registration
- Shows increased voter turnout

Cross-cutting Advocacy

Note: Cross-cutting advocacy can be applied to all types of advocacy

Constituency Involvement:

The organization:

- Has a clearly defined core constituency (*i.e.*, a group of individuals and/or organizations that it feels accountable for its actions)
- Involves its constituency in the development of its issue priorities and advocacy objectives
- Obtains input from its constituents on its mobilization activities through strategies such as convening planning meetings, conducting surveys, and using action committees
- Has procedures through which its constituency holds it accountable
- Increases the involvement of its core constituency, particularly those people affected by the issues, across a number of policy issue priorities

Network Building:

The organization:

- Has a network of individuals and organizations interested in and willing to take coordinated action to address issues affecting its constituents
- Communicates regularly with its network to share information on progress and key issues
- Periodically engages in activities to reach out to and expand its network. This builds the network to include a range of individuals and organizations with a shared commitment to its constituency or core issue
- Conducts one or more formal activities each year to educate and engage its network about issues affecting its constituency
- Strategically builds its network to engage those likely to have an impact on policies affecting its constituency
- Regularly communicates with its network through e-mail, newsletters, meetings, or other means
- Uses mobilization activities to promote diversity, tolerance, and understanding
- Monitors actions taken by network members in response to its requests for action

- Periodically asks its network to take specific action in support of its issue priorities and advocacy objectives
- Regularly provides formal activities to educate and build the advocacy capacity of its network, using approaches such as skills training and/or leadership development, and provides training based on needs articulated by its network
- Successfully mobilizes its network and other interested individuals and organizations to take advantage of unexpected events bringing attention to its core public policy issues

Coalition Building:

The organization:

- Understands the definition of, types of, and strategies for building coalitions
- Regularly identifies other organizations working toward the same goals and meets with them to share information and avoid duplication of effort
- Conducts a strategic assessment of whether, when, and with whom it should collaborate in order to advance its goals, before becoming part of a coalition or alliance
- Participates in coalitions that can help advance its goals
- Has a clear understanding about which coalitions and issues it will choose to lead and in which coalitions it will play a supporting role
- Plays a lead role in starting and building coalitions that can help advance strategic objectives
- Reaches out to a broad array of groups and sectors by building alliances and coalitions

Mobilization:

The organization:

- Has established communication procedures and infrastructure necessary to mobilize its network in a timely and strategic fashion
- Uses multiple strategies for alerting and mobilizing its network
- Has a mobilization plan with objectives, targeted groups, timelines, and strategies for reaching diverse individuals and organizations
- Uses mobilization activities to promote diversity, tolerance, and understanding
- Provides constituents with resources and ready-made materials to take action on specific bills or proposals

Media Advocacy:

The organization:

- Has identified media spokespersons
 - Provides media training for staff and board members who are involved in its media activities
 - Has written policies and procedures that guide its media work
 - Monitors media coverage of issues affecting its major issue areas and identifies trends in coverage
 - Identifies opportunities for placement of stories about key issues and the impact of policy decisions on those issues
 - Maintains strong relationships with key personnel in both print and broadcast media and works to become familiar with reporters, editors, and producers
 - Is respected as a credible source by the media and is regularly contacted for information about its important issues
- Disseminates news releases for major events and reports, and consistently follows up with phone calls and e-mail messages
 - Uses a variety of methods and vehicles to attract electronic and print media coverage of its issues
 - Facilitates media use of its information and materials by adapting them for easy use and dissemination (*e.g.*, adapting material to the Associated Press style guide)
 - Frames its media messages to take advantage of breaking news stories, supportive data, and timely information on public opinion
 - Provides a “local angle” to data and a “human story” enmeshed in a policy framework for the media
 - Influences regular press coverage on its key issue priorities, demonstrated through quotes and issue stances reflecting its view

Appendix G: Alliance for Justice Publications

- *Being A Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities* (1995)
- *E-Advocacy for Nonprofits: The Law of Lobbying and Election-Related Activity on the Net* (2000)
- *Foundations and Ballot Measures: A Legal Guide* (1998)
- *Give Me Your 990! Public Disclosure Requirement for Tax-Exempt Organizations* (2002)
- *Lobby Government Officials, Advocate for Legislation, and You Know What Will Happen?* (2002)
- *Myth v. Fact: Foundation Support of Advocacy* (1995)
- *Seize the Initiative* (1996)
- *Support Grantees that Lobby, and You Know What Will Happen?* (2002)
- *The Connection: Strategies for Creating and Operating 501(c)(3)s, 501(c)(4)s, and PACs* (1998)
- *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations* (1996)
- *Worry-Free Lobbying for Nonprofits: How to Use the 501(h) Election to Maximize Effectiveness* (1999)

Appendix H: A Model for Funder Intervention to Support Advocacy

The following model diagrams opportunities for funder inputs that are needed to support advocacy at different stages in the agency action continuum of advocacy activity. Through this study, several key choice-points were discovered where, with stimulation and support by funders, agencies advance toward greater advocacy activity.

The first is **IMPETUS**. Many grantees cited MAZON's clear expectation of advocacy as key in stimulating them to take action. In agencies where advocacy was an established part of their operations, it was often either a person who was committed to advocacy who pushed the effort or an issue that galvanized staff and board. Funder inputs at this point include the expectation of advocacy activity, setting an example by being involved in advocacy, and providing funding for general support or for specific advocacy activity.

PERMISSION is often where agencies experience barriers. Many organizations believe that they are not "allowed" to engage in advocacy or lobbying, either because of funders' restrictions or simply by virtue of their nonprofit status. Some organizations face an inhospitable political climate in their local communities, sometimes simply because they serve the poor, minorities, immigrants, and welfare recipients. Funder inputs to support education about the legal issues of nonprofit advocacy, educating other funders to remove restrictions about "lobbying" on their grant documents, and training of agency boards can help establish permission to move forward.

ENGAGEMENT was cited by many grantees as the most effective strategy for building capacity for advocacy. Creation and support of community coalitions, conferences, networks, and communication tools are essential in increasing the quantity and quality of advocacy involvement. Support for regional and statewide networks, like the California Association of Food Banks (CFPA), helps to build ongoing engagement, connection and relationships. Support for coalition building is one of the most effective things that a funder can do to build capacity for advocacy.

EDUCATION to build skills and confidence in media relations, letter writing, visiting legislators and other advocacy actions is essential. Funders can support regional workshops, development and dissemination of toolkits, technical assistance, and specialists to work with groups of organizations.

STRATEGY increases agencies' effectiveness and empowerment. It is important to match the issues and targets with the appropriate actions and to mobilize the right constituents to join in larger efforts. Policy development and advocacy groups, like CFPA and Food Research and Action Center (FRAC), are essential to the infrastructure of support and provide a depth of knowledge, analysis, strategy development, and tracking that the individual agencies are unable to do by themselves. Support for these types of groups should be part of every advocacy funder's portfolio.

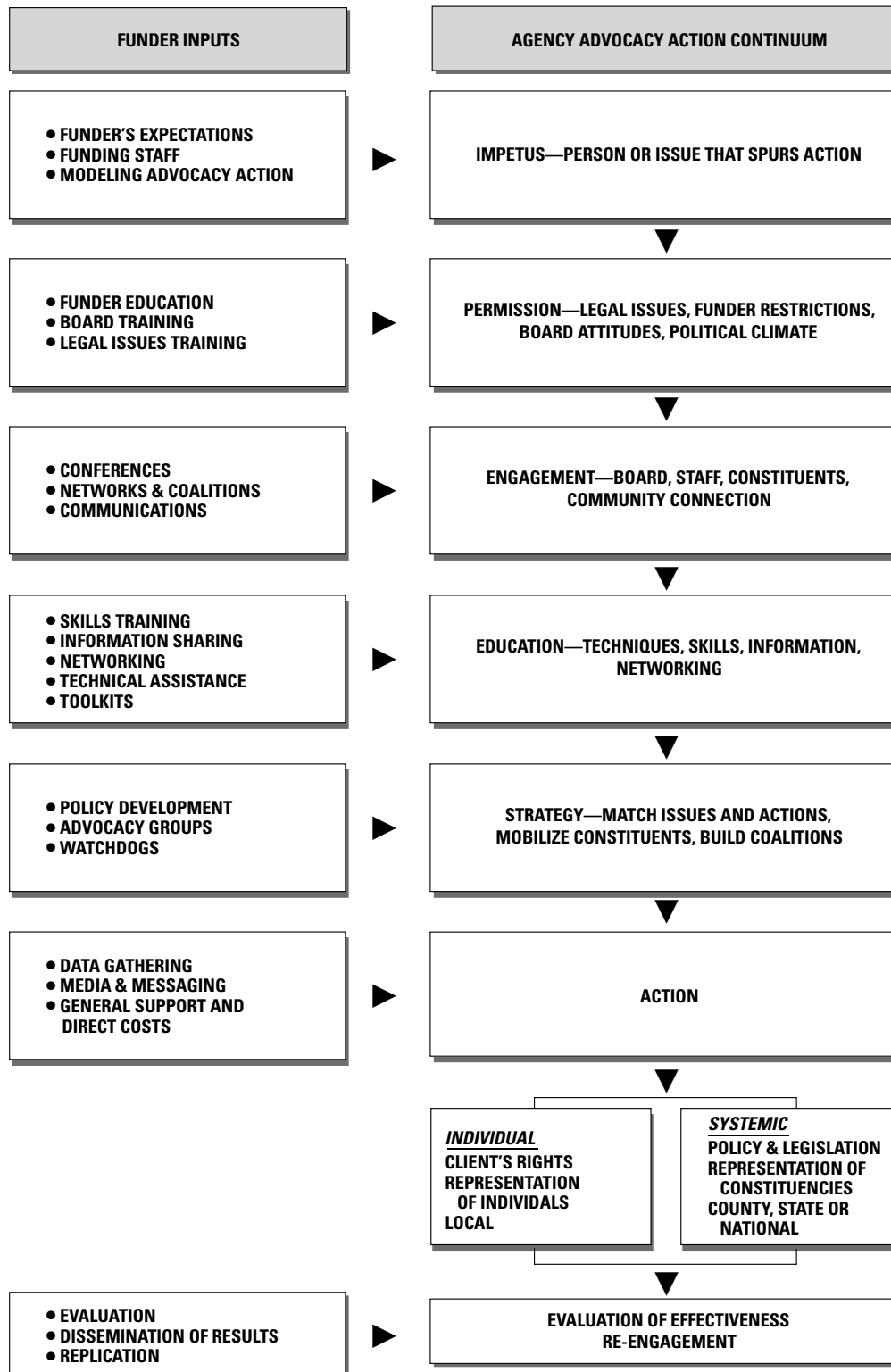
ACTION occurs on both the individual and systemic level. Advocacy on the individual level is representing a specific client or group of clients to obtain rights or benefits and usually happens at the local level. Systemic advocacy addresses larger legislative issues, whether county, state or national, or other broad-based media campaigns aimed at bringing about social change. While it is important to do both, moving agencies toward more systemic advocacy requires the impetus and support outlined in this model. At this point, funders' support for media and messaging is important as well as funding data gathering so that evaluation can occur.

EVALUATION OF EFFECTIVENESS is essential both for feedback into the system to fine-tune actions and to encourage participants to keep going. Assessment of the effectiveness of advocacy activities is often difficult to measure and it is easy to become discouraged when progress appears to be slow. Funders should support the development of easily implemented evaluation tools to measure advocacy activity and success indicators.

From Strengthening Anti-Hunger Advocacy In California: Evaluation of the California Nutrition Initiative 1998-2001, Mazon: A Jewish Response to Hunger, by LKM Foundation Services, 2003.

Appendix H: (continued)

Opportunities for Funder Input into Agency Advocacy Continuum



From Strengthening Anti-Hunger Advocacy In California: Evaluation of the California Nutrition Initiative 1998-2001, Mazon: A Jewish Response to Hunger, by LKM Foundation Services, 2003.



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