



# WHAT YOU NEED TO KNOW

## Getting Involved In Public Policy

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COUNCIL *on* FOUNDATIONS

# Getting Involved in Public Policy



**A**s organizations that seek to do good, community foundations understand the problems and needs in their communities and address these needs by raising funds and awareness. However, beyond grantmaking and charitable opportunities, you can benefit your community—as well as the charitable field—by participating in the public policy process. As a leadership organization, you have a powerful voice that can create far more impact than any one grant or program you offer. As a community expert, you are in a unique position to participate in the public policy process.

Community foundations have traditionally shied away from public policy work for fear it might alienate donors or create an impression of partisanship. However, your work allows you to make a significant difference on issues you are already addressing through grantmaking. It also helps to maximize grantmaking dollars while creating lasting change.

In this issue of *What You Need to Know*, you will learn the basics of public policy and how your community foundation can get involved in the process. You will find answers to such basic questions as:

- What is public policy work?
- Can community foundations lobby?
- What are the rules community foundations must follow while lobbying?

**Note:** The IRS rules discussed in this paper are the federal tax rules and are not comprehensive. Congress and some states and regions require registration and disclosure of lobbying activities over certain thresholds, and, at times, of donors funding those activities. Always check with your legal counsel before and during your engagement in public policy work.

## Public Policy Work Defined

Public policy work is any legally appropriate activity that aims to affect or inform government laws, administrative practices, regulations, or executive or judicial orders. It comprises a wide range of activities, including:

- legislative lobbying
- administrative or regulatory advocacy
- judicial advocacy
- public interest research
- informing and educating legislators
- informing and educating the public
- community organizing
- educating voters and candidates
- accessing and disseminating public information
- facilitating and building partnerships
- forming coalitions
- negotiating among nonprofits and government

Although lobbying is only one form of public policy activity, it often gets the most attention. That is because lobbying can be the most effective way to change laws that affect the groups and people you serve.

In addition, lobbying is only a subset of advocacy, although the terms often get confused. Advocacy is active support for an issue—the act of pleading or arguing for something. It includes any activity that supports or opposes an overall cause or issue. Lobbying, however, is more narrowly defined under federal tax law as certain attempts to influence specific legislation. Specific legislation includes a bill or draft legislation that has been or will be

introduced in any legislative body such as a city council, a state legislature, or Congress. There are two types of lobbying:

**Direct lobbying** occurs when the community foundation calls or meets with a legislator or legislative staff, expressing a view on specific legislation. It can also include communicating with the general public on a ballot measure or initiative in a situation in which the general public is deciding whether or not the measure will pass.

**Grassroots lobbying** occurs when the community foundation urges the general public to make contacts with a legislator or legislative staff expressing a view about specific legislation. Grassroots lobbying also includes a call to action, which might be any of the following: encouraging others to contact their legislators or staff; providing contact information for the legislators or staff; providing a mechanism (e.g., a postcard) for the recipient to contact legislators or staff; or specifically identifying which legislator(s) will vote on the legislation.

## Ask Yourself

In what ways can public policy work benefit our foundation and our community?

- What public policy work are we currently engaged in?
- Do we understand the lobbying and advocacy rules? Have we consulted our legal counsel?
- What current public policy strategies work well for us and our work?
- Do we have resources available to take on more public policy work?
- Who within our community foundation is in charge of public policy work?
- How do we select which issues to focus on? Do our public policy activities help us achieve our vision and mission?

- How do we keep the board informed of and involved in our public policy work?
- How do we keep donors, prospects, and key opinion leaders informed and involved?

## Frequently Asked Questions

### Why should community foundations care about public policy?

Public policy work requires strategic leadership—an ability to convene a broad cross-section of people to work on an issue and access to resources to support the work. Most community foundations are advocates for improving their local communities and are therefore in the right position to lead this work.

Lobbying and public policy work benefit the community and can benefit your foundation. For instance, it can:

- raise awareness of your mission
- mobilize members, volunteers, donors, and board members
- attract favorable media attention
- establish and expand government investment in important social programs
- reform laws and regulations that govern the operation of your foundation and the evaluation of its operation
- benefit the citizens of your community beyond any one direct service program

### Can community foundations lobby?

Yes, community foundations, like all public charities, may lobby as long as lobbying is an insubstantial part of the foundation's activities. (See below for the definition of "insubstantial.") Unlike private foundations that are generally restricted from lobbying except on those issues affecting their own tax-exempt status, community foundations may lobby to the same extent as other public charities.

## What are the IRS rules regarding community foundations and lobbying?

As stated above, community foundations may lobby as long as lobbying is an insubstantial part of the foundation's activities. The IRS has established two different tests to determine whether lobbying is insubstantial. Your community foundation may choose which test will govern its activities.

The first test is called the **insubstantial part test**. This test is the default test that the IRS will apply when looking at the organization's lobbying activities. While the term insubstantial has never been clearly defined by the IRS, most practitioners will tell you that about 5 percent of the organization's overall activities is a safe level of lobbying. Some factors the IRS will look at to determine the amount of lobbying include volunteer activities, money spent on lobbying, and the amount of publicity the foundation attributes to its lobbying activities.

The second—and, in many cases, the more advantageous—test is referred to as the **501(h) expenditure test**. Under this test, the amount the community foundation may spend on lobbying is based on a sliding scale—with an annual \$1 million absolute cap on lobbying. Depending on the foundation's budget, lobbying could permissibly constitute as much as 20 percent of the foundation's total expenditures in a tax year. (For more information about this calculation, read the publication *Worry-Free Lobbying*, referenced in the Resources section.)

## Why should community foundations opt for the 501(h) expenditure test?

The Section 501(h) expenditure test allows community foundations to measure lobbying based on their expenditures rather than on their activities (which can be vaguer). The advantages to the 501(h) expenditure test include:

- **Clear dollar-based lobbying limits:** The lobbying limit is calculated on a sliding scale based roughly on the community foundation's

expenditures in one fiscal year. Because the test is based on money spent on lobbying, the rule is: If it doesn't cost the foundation any money, it doesn't count against the foundation's lobbying limit. For example, the time volunteer board members spend talking on behalf of the community foundation with town council members about current legislative issues doesn't count toward the foundation's lobbying limit because no foundation money is being spent.

- **Clear definition of lobbying:** Detailed regulations under Section 4911 of the U.S. Tax Code explain what counts as lobbying and what does not.
- **Sense of security:** As long as the community foundation stays within its lobbying limits its tax-exempt status will not be at risk. In fact, the community foundation would have to exceed its lobbying limits by 50 percent over a four-year period to place its tax-exempt status at risk.

To choose the 501(h) expenditure test, a foundation has to file the simple, half-page Form 5768: <http://www.irs.gov/pub/irs-pdf/f5768.pdf>. Form 5768 can be filed at any time during the tax year and is effective dating back to the beginning of the fiscal year when it was filed. Once filed, the election remains effective indefinitely or until the community foundation chooses to revoke the election.

## What are some tips to help community foundations start lobbying?

Here are some suggestions to help you get started:

- consider making the election under Section 501(h)
- communicate clearly with legislators
- build local coalitions that support the particular policy or legislation
- be prepared with facts and figures to support your effort

- avoid lobbying beyond the permitted limits
- choose your issues carefully and on a nonpartisan basis
- make sure that you don't alienate your strong supporters

Before you begin lobbying, obtain and review a publication that explains lobbying—what it is and what it is not—and the expenditure limits. To get some recommendations, contact the Council on Foundations' Government Relations and Public Policy Department at [govt@cof.org](mailto:govt@cof.org) or Legal Services and Standards Department at [legal@cof.org](mailto:legal@cof.org). You may also consider contacting organizations listed in the Resources section of this paper or your foundation's external counsel.

### **What are some exceptions to lobbying?**

Many advocacy activities do not meet the definition of lobbying for organizations that elect the 501(h) expenditure test. For example, litigation and advocacy in front of school boards and administrative agencies is not considered lobbying. In addition, the IRS has also provided specific exceptions to lobbying. One example is self-defense communications. The self-defense exception applies anytime an electing charity communicates with legislators (or their staff) about legislation that affects the organization's existence, powers, duties, or tax-exempt status or the deductibility of contributions to the organization. Examples of self-defense issues include regulation of donor-advised funds and the deductibility of gifts of appreciated property. Note: The self-defense exception doesn't apply to grassroots lobbying efforts.

Another exception is for a nonpartisan study or research. In general, a nonpartisan study looks at all sides of an issue and provides enough information so that the reader or listener may reach her own conclusion on the issue. Such a study or presentation does not include a direct call to action and is not considered lobbying.

### **How do we talk with elected officials?**

One of the most effective public policy strategies you can use is to meet with your U.S. senators and representatives. This is especially critical if they are members of the Senate Finance Committee or the House Ways and Means Committee. Find out when your representative will be in town, and call his or her office to make an appointment. To find your local representative, visit the House's Write Your Representative page: <https://forms.house.gov/wyr/welcome.shtml>. Meeting with state and local legislators is equally important if you are working on local issues.

Here are a few tips and talking points on how to communicate with elected officials:

#### **1) Talk about your community foundation's work.**

Meet with your legislator to talk about the good work you do in your community. For example, you can bring a list of grants you've made, your annual report (if you have one), and recent press clips that show your work. You may even consider inviting one of your donors or grantees to the meeting. These individuals and organizations have benefited from your work and are in the best position to share their stories.

#### **2) Talk about the importance of philanthropy and the charitable sector.**

Share information with your legislator—and the media—about philanthropy's impact in your own community. You may consider bringing a list of funders in your area and explaining what they do. The Foundation Center offers a list of grants made in your community.

#### **3) Talk about a specific piece of legislation affecting foundations that concerns you.**

Select one or two items about which you would like to voice your concerns and write a letter to your legislator (see sample letters: <http://www.foundationsonthehill.org/requestletter.htm>) or meet with her in person.

### **How do we report our lobbying activities?**

All lobbying activities must be reported on Schedule A on IRS Form 990. Community foundations that have made the 501(h) election must fill out Part VI-A and report their expenditures. Those that have not and instead follow the insubstantial part test must complete Part VI-B and report their activities and expenditures.

### **Can we issue grants for lobbying activities?**

Community foundations may make grants for lobbying purposes. If the grant is earmarked for a grantee's lobbying activities, the foundation must count that grant against the foundation's lobbying limits. An earmark is a written or oral agreement that funds will be used in a particular manner. In contrast, a general support grant to a 501(c)(3) organization that may engage in some lobbying activity should not count against the foundation's lobbying limits.

One issue to consider if you seek contributions from individuals in support of lobbying activity: Contributions earmarked or designated for lobbying purposes by the donor are not eligible for a charitable contribution deduction. To avoid this issue, carefully consider what you state in your solicitation materials.

### **If we choose not to lobby, in what other ways can we influence public policy?**

As stated above, some community foundations do not engage in lobbying themselves, but make general support grants to charities that do lobby. A general support grant that is not earmarked for lobbying will not be considered to be lobbying by the foundation.

Community foundation staff can educate donors about organizations that engage in public policy work on causes they care about. When foundations inform donors about opportunities to support public

policy, it increases the pool of dollars for public policy activities. And when donors give to public policy causes, it makes them feel a part of promoting and contributing to social change.

There are also many opportunities to work with government departments and agencies to advance good public policies. Partnering on policy issues helps foundations initiate pilot programs that may later attract government funding.

### **How can we help the entire community foundation field?**

In the current legislative climate, it's very important that community foundations demonstrate accountability and transparency in the field. According to the Panel on the Nonprofit Sector, every charitable organization should develop a code of ethics to regularly assess its policies and practices and strengthen its transparency, governance, and accountability procedures. Independent Sector offers a sample code of ethics.

You can also help the community foundation field by:

- keeping an eye on the changing environment and pending legislation
- being willing to share information with colleagues about public policy and how you can participate in it
- volunteering your time, experience, and support to help the Council as it continues to monitor—and proactively respond to—pending legislation
- getting involved in local and regional associations of grantmakers that are working on important issues that are locally and nationally relevant

## Resources

Final Report to the 109th Congress. Panel on the Nonprofit Sector, June 2005. [www.nonprofitpanel.org](http://www.nonprofitpanel.org)

*Four Important Facts About Lobbying With Foundation Grant Funds.* Center for Lobbying in the Public Interest and the Forum of Regional Associations of Grantmakers. [www.givingforum.org](http://www.givingforum.org)

*Funding and Engaging in Advocacy: Opportunities for Small Foundations.* ASF and the Alliance for Justice, 2005. [www.smallfoundations.org](http://www.smallfoundations.org)

*Investing in Change: A Funder's Guide to Supporting Advocacy.* Alliance for Justice. <http://www.afj.org/for-nonprofits-foundations/resources-and-publications/pay-for-publications/investing-in-change-1.html>

Public Policy Grantmaking Toolkit, Northern California Grantmakers. [www.ncg.org/toolkit](http://www.ncg.org/toolkit)

*Worry-free Lobbying: How to Use the 501(h) Election to Maximize Effectiveness.* Alliance for Justice, 2003. <http://www.afj.org/assets/resources/resources2/Worry-Free-Lobbying-for-Nonprofits.pdf>

*Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities.* Alliance for Justice, 1995. <http://www.afj.org/for-nonprofits-foundations/resources-and-publications/pay-for-publications/being-a-player-1.html>

*Advocacy Funding: The Philanthropy of Changing Minds.* Grantcraft, 2005. <http://www.grantcraft.org/index.cfm?fuseaction=Page.viewPage&pageID=734>

Power in Policy: A Funder's Guide to Advocacy and Civic Participation. Fieldstone Alliance. [www.fieldstonealliance.org/productdetails.cfm?PC=62](http://www.fieldstonealliance.org/productdetails.cfm?PC=62)

### Websites

Alliance for Justice: <http://www.afj.org>

Center for Lobbying in the Public Interest: <http://www.clpi.org>

The Council's Policy Action Center: [www.cof.org/policy](http://www.cof.org/policy)

The Council's Legal Information page: [www.cof.org/legal](http://www.cof.org/legal)

Foundations on the Hill: [www.foundationsonthehill.org](http://www.foundationsonthehill.org)

Stateline (public policy news by state): [www.stateline.org/live](http://www.stateline.org/live)

THOMAS: Legislative Information on the Internet: <http://thomas.loc.gov>

The United States House of Representatives: <http://www.house.gov>

The United States Senate: <http://www.senate.gov>

The White House: <http://www.whitehouse.gov>

For further information email [community@cof.org](mailto:community@cof.org) or call 703-879-0600.



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