

SEPTEMBER 2010

Foundations for Civic Impact

Advocacy and Civic Engagement Toolkit
for Community Foundations

Acknowledgments



Center for Lobbying in the Public Interest (CLPI) is a nonprofit-sector organization dedicated to promoting, supporting and protecting nonprofit advocacy and lobbying in order to advance charitable missions and strengthen democracy.

The Council on Foundations is a national nonprofit association of approximately 2,000 grantmaking foundations and corporations. As a leader in philanthropy, the Council strives to increase the effectiveness, stewardship and accountability of our sector while providing our members with the services and support they need for success.

CFLeads is a national learning cooperative dedicated to advancing the practice of community leadership by community foundations. CFLeads helps community foundations learn how to take on challenging issues, engage citizens in cross-sector solutions and marshal the needed resources to build healthy, thriving communities.

Founded in 1940, the **Rockefeller Brothers Fund** encourages social change that contributes to a more just, sustainable and peaceful world. The RBF's grantmaking is organized around three themes: Democratic Practice, Sustainable Development, and Peace and Security.

The four partnering organizations would like to acknowledge the valuable contributions of the following current or former organizational staff:

CLPI	Rebecca E. Jones, Erin M. Moffet, Lawrence S. Ottinger and Matthew Saperstone
CFLeads	Martha K. Johnston
Council on Foundations	Linda Raybin, Heather L. Scott and Kelly Shipp Simone
Rockefeller Brothers Fund	Benjamin R. Shute Jr.

Marcus S. Owens, Esq., partner at Caplin & Drysdale, provided a legal review of the content of this toolkit.

Kristen Putnam-Walkerly, MSW, president of Putnam Community Investment, provided project oversight and coordination as a consultant for CLPI.

Diane Hogg, proofreader of 19 years with McNeely Pigott & Fox Public Relations, proofread the toolkit.

Communication Visual oversaw the layout, design and printing of the toolkit. Coqui Marketing assisted CLPI in obtaining photos that were incorporated into the design.

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¹ Community foundations are a subset of public foundations usually distinguished by their focus on a particular local geographic area. While this toolkit applies equally to all public charity grantmakers or “public foundations,” the term community foundation is used for two primary reasons. First, many public foundations are community foundations which identify themselves under this name and reach into all parts of the country. Second, community foundations have a common identity and associations that will enable broad outreach and impact. See Appendix A: Glossary of Key Terms.



How to Use This Toolkit

THIS ADVOCACY AND CIVIC ENGAGEMENT TOOLKIT is designed for community and public foundations that want to educate and encourage their grantees about getting involved in civic and policy activities to increase organizational capacity and impact. While its primary focus is on the grantmaking activity of these foundations, the toolkit also addresses rules and guidance for policy involvement by foundation officials acting on behalf of their foundations.

As confirmed by a recent Johns Hopkins University study, foundations – through their guidelines, grant agreements and other communications – can inadvertently prevent or discourage their own staff and grantees² from relevant and important civic participation.³ To facilitate clear and positive communications, this advocacy and civic engagement toolkit covers not only the basic legal rules but also how foundations apply these rules in developing internal and external materials and guidance.⁴

This toolkit's primary audience is foundation staff, boards and counsel; but it also provides useful information for charitable grantees, policy makers and other stakeholders.

The advocacy and civic engagement toolkit is organized into eight information sheets that provide:

- **Easy-to-read legal basics for foundations crafting policy-related guidance, with citations to relevant resources for those who would like to delve deeper;**
- **Practical samples of foundation materials that are consistent with IRS rules *and* encourage permissible civic engagement, including sample grant guidelines, agreement letters and an advocacy capacity checklist;**
- **Up-to-date rules and guidance on policy and civic engagement;**
- **Plain-language glossary and resource list; and**
- **Success stories and examples from community foundation colleagues.**

The information sheets cover the following topics, each with references to relevant resources for more in-depth inquiry.

“this advocacy and civic engagement toolkit covers not only the basic legal rules but also how foundations apply these rules”



Toolkit Sections

1. **Why Advocacy and Civic Engagement** – four key reasons that foundations should fund and be involved in advocacy and civic engagement. Foundations engage in and support policy involvement by charities and their constituents in order to effectively carry out their shared missions and strengthen democracy.
 2. **Basic Rules for Community Foundations as Grantmakers** – a brief overview of the basic legal rules for funding advocacy. It emphasizes how community and public foundations can support grantees that engage in general advocacy, lobbying or nonpartisan voter engagement.
 3. **Basic Rules for Community Foundations as Advocates** – a brief overview of the basic legal rules for permissible policy involvement by community and public foundations and their personnel when acting on behalf of their foundations.
 4. **Sample Grantmaking Guidelines** – six community foundation examples of guidelines and program descriptions that clearly encourage permissible advocacy and civic engagement.
 5. **Sample Grant Agreement Letters** – two sample letters for foundations to encourage grantee civic engagement and avoid inadvertently restricting permissible advocacy. One letter omits boilerplate language on lobbying and political activity restrictions that is not legally required and can confuse or discourage grantees. The second letter offers an example of how to include such boilerplate language while minimizing confusion and encouraging civic engagement.
 6. **Grantee Advocacy Capacity and Evaluation Checklist** – a series of questions you can use in evaluating and assisting your potential and existing grantees concerning their advocacy capacity and progress. The checklist covers an organization's advocacy capacity, experience, strategy and commitment.
 7. **Success Stories** – examples of how community foundations, as grantmakers and in their own right, have effectively leveraged advocacy and civic engagement strategies.
 8. **General Resources** – lists the main resources for community foundations on advocacy and civic engagement rules and practices. In addition, each information sheet contains references to relevant resources for that topic.
- Appendix A: Glossary of Key Terms** – The glossary defines key terms used throughout the information sheets, and seeks to clarify the often differing language used in this area by the Internal Revenue Service (IRS), foundations, charities and the public.
- Appendix B: IRS Letter to CLPI** – Requested by CLPI through its attorneys at Caplin & Drysdale, this 2004 IRS letter answers 16 common questions that foundations have about lobbying and influencing public policy.

- 2 Most foundation grantees are public charities governed by Section 501(c)(3) of the Internal Revenue Code. Thus, when this toolkit refers to grantees it is referring to public charities. While the term nonprofit also can refer to the full range of tax-exempt organizations, this toolkit uses the terms nonprofits and charities interchangeably as is often done in nontechnical communications. See Glossary of Key Terms, Appendix A. Different rules may apply to advocacy by other tax-exempt organizations that are not charities, like Section 501(c)(4) social welfare organizations. You should consult your counsel with any questions.
- 3 Salamon, Lester M. and Stephanie Lessans Geller. *Communiqué No. 9 – Nonprofit America: A Force for Democracy?* Johns Hopkins University, 2008.
- 4 These information sheets focus on the federal tax laws regulating advocacy activity by Section 501(c)(3) organizations. In some cases, additional registration or reporting requirements may be imposed by other federal, state or local agencies. Consult with your foundation's legal counsel about the rules regarding specific activities you are considering. While there are efforts to simplify and update nonprofit advocacy rules, they are beyond the scope of this toolkit.

Legal Disclaimer

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Why Advocacy & Civic Engagement?

THROUGH STAFF, BOARD, DONORS AND VOLUNTEERS, community foundations engage in and support civic and policy involvement by charities and their constituents in order to effectively carry out charitable missions and strengthen community involvement in democracy. Advocacy and civic engagement activities protect a foundation's investments and are important tools in the toolbox of strategic philanthropy.

Three Roles of Community Foundations as Part of Community Leadership

1. Community foundations educate and support a diverse group of donors, including through administering donor advised funds.
2. Through both unrestricted funds and restricted funds, community foundations make grants to charities to support effective civic engagement and leadership.
3. Community foundations convene cross-sector partners to develop and implement effective solutions on important local issues.

“An informed and responsive democracy requires that a wide range of voices and interests be heard in shaping and implementing public policy.”

Four Reasons That Community Foundations Get Involved in Advocacy and Civic Engagement

1. **It's the mission.** Whether seeking to help the homeless or promote the arts, it is critical to understand and leverage public and private resources. By removing barriers to much-needed policy involvement, community foundations can exercise community leadership with and on behalf of their constituents and missions.
2. **It's enlightened.** Community foundations are governed by public laws, and their missions are affected by government tax, budget and regulatory decisions. Moreover, being involved in public policy can increase the foundation's visibility, influence and fundraising.
3. **It's solving social problems.** Charities and philanthropy cannot solve society's most pressing challenges alone. They must partner with government and businesses, and also hold them accountable, in order to create systemic change. Whether they relate to human services, civil rights, economic security, education or the environment, nonprofit advocacy and civic engagement have been critical to social and economic progress throughout the history of our nation.
4. **It's democracy.** An informed and responsive democracy requires that a wide range of voices and interests be heard in shaping and implementing public policy. Community foundations and their constituents have knowledge and expertise that policymakers want and need to make government work. Nonprofits are well-positioned to experiment, innovate, evaluate and educate. Nonprofits are among our nation's best vehicles for civic participation.

To paraphrase Robert F. Kennedy, the real question is not why to engage but why not.



Additional Resources

Alliance for Justice and Council on Foundations. *Words to Give by: Leading Voices in Funding Advocacy*. 2008. <http://www.afj.org/nonprofits-foundations/resources-and-publications/free-resources/words-to-give-by.html>

Alliance for Justice. *Investing in Change: A Funder's Guide to Supporting Advocacy*. 2007.

Arons, David F. (Ed.) *Power in Policy: A Funder's Guide to Advocacy and Civic Participation*. St. Paul, Minn.: Fieldstone Alliance, 2007.

Aspen Institute, The; and CFLeads. *Framework for Community Leadership by a Community Foundation*. Arlington, VA.: Aspen Institute and Council on Foundations, 2008.

Ballard, Cindy Sesler. *Community Foundations and Community Leadership*. CFLeads, August 2007. http://www.cfleads.org/resources/ccfy_pubs/docs/cfleads_cls1_2007.pdf

Center for Lobbying in the Public Interest. *10 Reasons to Lobby for Your Cause*. 2007. http://www.nadsa.org/assets/library/479_10reasonstolobby.pdf

Center for Lobbying in the Public Interest. *Community Foundations: Lobbying & Public Policy Engagement*. http://www.clpi.org/images/pdf/commfound_andLobbying.pdf

Center for Lobbying in the Public Interest. *Make a Difference for Your Cause: Strategies for Nonprofit Engagement in Legislative Advocacy*. 2006. [http://www.clpi.org/images/stories/content_img/Make_a_Difference_RG\[1\].pdf](http://www.clpi.org/images/stories/content_img/Make_a_Difference_RG[1].pdf)

Council on Foundations. *What You Need to Know: Getting Involved in Public Policy*. January 2008. <http://www.cof.org/templates/311.cfm?ItemNumber=16207&navItemNumber=14849>

Foundation Center, *Foundations and Public Policy*. March 2009.

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

Leighninger, Matt of Deliberative Democracy Consortium. *Funding and Fostering Local Democracy: What Philanthropy Should Know About the Emerging Field of Deliberation and Democratic Governance*. PACE (Philanthropy for Active Civic Engagement) April 2009. <http://www.pacefunders.org/publications/FundingLocalDemocracy.pdf>

National Committee for Responsive Philanthropy. *Strengthening Democracy, Increasing Opportunities: Impacts of Advocacy, Organizing and Civic Engagement in Minnesota* (September 2009), New Mexico (December 2008), North Carolina (May 2009), Los Angeles (2010).

Northern California Grantmakers. *Public Policy Grantmaking Toolkit*. <http://www.publicpolicytoolkit.org/home.html>

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Basic Rules for Community Foundations as Grantmakers

THE FOLLOWING IS INTENDED to provide community and public foundation staff, board and advisers with a brief overview of the basic legal rules for funding charities that engage in advocacy. Community and public foundations are Section 501(c)(3) public charities, like their charitable grantees. Thus, unlike private foundations, community and public foundations can directly fund lobbying by charitable grantees up to limits established by Congress and the Internal Revenue Service.⁵

The two primary areas of nonprofit advocacy that are regulated by the IRS are lobbying and partisan political activities. Foundations may generally fund unlimited advocacy and civic engagement by grantees outside of these two areas.

Lobbying

As defined by the Treasury Regulations, lobbying includes direct lobbying – expressing a view to legislators (or their staffs) about specific legislation – and grassroots lobbying – expressing a view to the general public about specific legislation and including a call to action. As mentioned below, there are exceptions to these general definitions.

A community foundation may:

- ✓ Make unlimited general support grants to Section 501(c)(3) public charities that engage in lobbying.⁶
- ✓ Earmark project-specific grants to Section 501(c)(3) public charities for lobbying up to the community foundation's legal limit.⁷ Grantmakers should track such grants for lobbying activity so that the information may be reported on Form 990.
- ✓ Make unlimited project-specific grants to Section 501(c)(3) public charities for:⁸
 - Nonpartisan analysis, study or research;
 - Technical assistance requested in writing by a government body; and
 - Self-defense communications on matters affecting the organization's existence, tax-exempt status, powers and duties, or deductibility of contributions to the organization. This exception applies only to direct communications with legislators and their staffs and not to communications with the public.

A community foundation may not:

- ✗ Exceed IRS lobbying limits under Internal Revenue Code Section 501(c)(3) without incurring penalties.

Voter Engagement Activities

A community foundation may:

- ✓ Make general support and project-specific grants to Section 501(c)(3) public charities that engage in a wide range of *nonpartisan* voter education and engagement activities, including nonpartisan voter registration, get-out-the-vote, voter guides, issue advocacy⁹ and candidate forums.¹⁰ The IRS has provided some guidance to help define hallmarks of nonpartisan activity. Depending on the activity, grantees may be subject to certain conditions to ensure impartiality, such as addressing a wide range of issues and including all candidates for a particular office.

A community foundation may not:

- ✗ Support charities to engage in partisan political or voter engagement activities (i.e., supporting or opposing a candidate for public office or political party). The IRS determines whether particular political or voter-related activities are partisan or not by examining the "facts and circumstances" of each case.
- ✗ While the IRS has no explicit bright line rules, it is clear that public charities are prohibited from:
 - Making direct or indirect communications for or against a candidate for public office or political party;
 - Targeting projects with the purpose of supporting or opposing a candidate for public office or political party; and
 - Coordinating activities with a candidate for public office or political party.



General Advocacy is Legal and Unlimited

- Advocacy and civic engagement activities that are not regulated under the law as lobbying or partisan political activity are generally permissible and unlimited for community foundations and their grantees.
- Such permissible activities include public education, community organizing, grassroots organizing (without a legislative call to action¹¹), issue advocacy (including through media and coalitions), and nonpartisan voter education and engagement.
- Directly influencing administrative regulations, judicial decisions and other actions by nonlegislative governmental bodies, or decisions by private actors.
- Support for charities to get training and technical assistance on lobbying, voter engagement, and general advocacy and civic engagement rules, strategies and implementation.

- 5 Under the 1934 default “substantial part” test, community foundations and other public charities may engage in an insubstantial amount of lobbying as determined by a range of factors. Under Internal Revenue Code Section 501(h), enacted by Congress in 1976, public charities may “elect” an alternative test with bright line rules for permissible lobbying based on an organization’s annual expenditures to pursue its exempt purposes. See Glossary (Appendix A) for more detailed information. The issue of simplifying and updating IRS charitable lobbying rules is beyond the scope of this toolkit.
- 6 Grants to a narrow class of public charities – certain supporting organizations – from a donor advised fund require a community or public foundation to follow the expenditure responsibility rules. In such cases, consultation with your legal counsel is recommended to determine whether the grant agreement should include a prohibition on the use of grant funds for lobbying or voter registration activity. See www.cof.org/ppa for more information about when expenditure responsibility is required.
- 7 Earmarking means “making a grant with an oral or written agreement that the grant will be used for lobbying.” IRS Letter to CLPI, December 9, 2004 (Appendix B). Under the IRS 501(h) expenditure test, grants to public charities that are not earmarked for lobbying do not count against the foundation’s lobbying limit. A recent private letter ruling (PLR 200943042) issued by the IRS confirmed this approach. While private letter rulings apply only to the organizations to which they were issued, they do provide a good perspective on the IRS thinking on the issue.
- 8 These exceptions are explicitly applicable to public charities that elect the 501(h) expenditure test. The IRS has not made clear whether these exceptions apply to public charities under the current default “substantial part” test. See Glossary (Appendix A).
- 9 As mentioned in the glossary, support to charities working for or against ballot measures is treated by the IRS as direct lobbying with the public serving as the legislative body. Thus, the lobbying rules apply and community and public foundations may directly fund ballot measure work up to the legal limits.
- 10 Grants to a narrow class of public charities – certain supporting organizations – from a donor advised fund require a community or public foundation to follow the expenditure responsibility rules. In such cases, consultation with your legal counsel is recommended to determine whether the grant agreement should include a prohibition on the use of grant funds for lobbying or voter registration activity.
- 11 See Glossary (Appendix A) for more details and special rules when the legislative matter is a ballot measure, referendum or initiative.



Additional Resources

Alliance for Justice. *Investing in Change: A Funders Guide to Supporting Advocacy*. May 2007. Available for purchase at www.afj.org

Center for Lobbying in the Public Interest. *Make a Difference for Your Cause: Strategies for Nonprofit Engagement in Legislative Advocacy*. 2006. [http://www.clpi.org/images/stories/content_img/Make_a_Difference_RG\[1\].pdf](http://www.clpi.org/images/stories/content_img/Make_a_Difference_RG[1].pdf)

Council on Foundations. *What You Need to Know: Getting Involved in Public Policy*. January 2008. <http://www.cof.org/templates/311.cfm?ItemNumber=16207&navItemNumber=14849>

Fei, Rosemary E. and David A. Levitt of Adler & Colvin; and Laurence E. Gold of Lichtman, Trister & Ross. *Rules of the Game: A Guide to Election-related Activities for 501(c)(3) Activities (Second Edition)*. Washington, D.C.: Alliance for Justice, 2010.

Kindell, Judith E. and John Francis Reilly. “Election Year Issues.” IRS Exempt Organization Technical Instruction Program for PY 2002. Available at <http://www.irs.gov/pub/irs-tege/eotopic02.pdf>

Kindell, Judith E., and John Francis Reilly. “Lobbying Issues.” IRS Exempt Organization Technical Instruction Program for FY 1997. Available at <http://www.irs.gov/pub/irs-tege/eotopic97.pdf>

Mayer, Esq., Lloyd H. “The Legal Rules for Public Policy and Civic Impact by Foundations” in Arons, David F. (Ed.) *Power in Policy: A Funder’s Guide to Advocacy and Civic Participation* (pp.169-205). St. Paul, Minn.: Fieldstone Alliance, 2007.

Minnesota Council on Foundations. *Advocacy Toolkit: Strategies for Engaging Foundations in Advocacy*. 2007. http://www.mcf.org/mcf/resource/publicpolicy/advocacy_toolkit.pdf

Northern California Grantmakers. *Public Policy Grantmaking Toolkit*. 2005. <http://www.publicpolicytoolkit.org/home.html>

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Basic Rules for Community Foundations as Advocates

THE FOLLOWING INFORMATION IS INTENDED to provide community and public foundation staff and boards with a brief overview of the basic legal rules for permissible actions by them while representing their foundation and its policy views.¹² The two primary areas of nonprofit advocacy that are regulated by the IRS are lobbying and voter engagement activities. Foundations generally may engage in unlimited advocacy and civic engagement activities that are not prohibited or restricted under the lobbying and political activity rules.

Lobbying

Community foundation officials in representing their foundation may:

- ✓ Engage in direct and grassroots lobbying up to the overall organizational limits in Section 501(c)(3) of the Internal Revenue Code.¹³ Grantmakers should track the time and expenses for their lobbying activity so that the information may be reported on Form 990.
- ✓ Engage in activities that comprise:¹⁴
 - Nonpartisan analysis, study or research;
 - Technical assistance requested in writing by a government body; and
 - Self-defense communications on matters affecting the organization's existence, tax-exempt status, powers and duties, or deductibility of contributions to the organization.

Community foundation officials in representing their foundation may not:

- ✗ Engage in amounts of lobbying that exceed IRS limits without incurring penalties.¹⁵

Voter Engagement Activities

Community foundation officials in representing their foundation may:

- ✓ Engage in a wide range of nonpartisan voter education and engagement activities, including *nonpartisan* voter registration, get-out-the-vote, voter guides, issue advocacy¹⁶ and candidate forums. Depending on the type of activity, foundation officials may be subject to certain conditions to ensure impartiality in the democratic process, such as addressing a wide range of issues and including all candidates for a particular office.

Community foundation officials in representing their foundation may not:

- ✗ Engage in partisan political or voter engagement activities (i.e., supporting or opposing a candidate for public office or political party). The IRS determines whether particular political or voter-related activities are partisan or not by examining the "facts and circumstances" of each case.¹⁷
- ✗ While the IRS has no explicit bright line rules, it is clear that community foundation officials are prohibited from:
 - Making direct or indirect communications for or against a candidate for public office or a political party;
 - Working to support or oppose a candidate for public office or a political party; and
 - Coordinating activities with a candidate for public office or a political party.



General Advocacy is Legal and Unlimited

- Advocacy and civic engagement activities that are not regulated under the law as lobbying or partisan political activity are generally permissible and unlimited for community foundation officials in representing their foundation and its policy views.
- Such permissible activities include public education, community organizing, grassroots organizing (without a legislative call to action¹⁸), issue advocacy (including through media and coalitions), and nonpartisan voter education and engagement.
- Foundation officials can directly influence administrative regulations, judicial decisions and other actions by nonlegislative governmental bodies, or decisions by private actors.
- Provide and receive training and technical assistance on lobbying, voter engagement and general advocacy, and civic engagement rules, strategies and implementation.



Additional Resources

- Alliance for Justice. *Investing in Change: A Funders Guide to Supporting Advocacy*. May 2007. Available for purchase at www.afj.org
- Center for Lobbying in the Public Interest. *Make a Difference for Your Cause: Strategies for Nonprofit Engagement in Legislative Advocacy*. 2006. www.clpi.org/images/stories/content_img/Make_a_Difference_RG11.pdf
- Council on Foundations. *What You Need to Know: Getting Involved in Public Policy*. January 2008. www.cof.org/templates/311.cfm?ItemNumber=16207&navItemNumber=14849
- Council on Foundations and Forum of Regional Associations of Grantmakers. *Foundations on the Hill*. www.foundationsonthehill.com
- Fei, Rosemary E. and David A. Levitt of Adler & Colvin; and Laurance E. Gold of Lichtman, Trister & Ross. *Rules of the Game: A Guide to Election-related Activities for 501(c)(3) Activities (Second Edition)*. Washington, D.C.: Alliance for Justice, 2010.
- Mayer, Esq., Lloyd H. "The Legal Rules for Public Policy and Civic Impact by Foundations" in Arons, David F. (Ed.). *Power in Policy: A Funder's Guide to Advocacy and Civic Participation* (pp.169-205). St. Paul, Minn.: Fieldstone Alliance, 2007.
- Minnesota Council on Foundations. *Advocacy Toolkit: Strategies for Engaging Foundations in Advocacy*. 2007. www.mcf.org/mcf/resource/publicpolicy/advocacy_toolkit.pdf
- Northern California Grantmakers. *Public Policy Grantmaking Toolkit*. 2005. www.publicpolicytoolkit.org/home.html

- 12 On their own time outside of work, community foundation staff and boards retain their individual rights to participate in our democracy. It is important for foundation staff and board members to make clear when they are acting as individuals. This is particularly true for senior staff and board officers, who may be identified closely with the foundation even when not on foundation time.
- 13 Under the 1934 default "substantial part" test, community foundations and other public charities may engage in an insubstantial amount of lobbying as determined by a range of factors. Under Internal Revenue Code Section 501(h), enacted by Congress in 1976, public charities may "elect" an alternative test with bright line rules for permissible lobbying based on an organization's annual expenditures to pursue its exempt purposes. See Glossary (Appendix A) for more detailed information. The issue of simplifying and updating IRS charitable lobbying rules is beyond the scope of this toolkit.
- 14 These exceptions to the IRS charitable lobbying rules are explicitly applicable to public charities that elect the 501(h) expenditure test. The IRS has not made clear whether these exceptions apply to the default "substantial part" test.
- 15 In determining its overall amount of permissible lobbying under current IRS rules, a community foundation must combine its own lobbying with the grants that it has earmarked to grantees for their lobbying. Earmarking means "making a grant with an oral or written agreement that the grant will be used for lobbying." IRS Letter to CLPI, December 9, 2004 (Appendix B).
- 16 As mentioned in the Glossary, support to charities working for or against ballot measures is treated by the IRS as direct lobbying with the public serving as the legislative body. Thus, the lobbying rules apply, and community and public foundations may directly fund ballot measure work up to the foundation's overall legal limits.
- 17 See IRS Revenue Ruling 2007-41 at <http://www.irs.gov/pub/irs-drop/rr-07-41.pdf>. The Supreme Court in its 2010 *Citizens United v. FEC* decision struck down restrictions on political speech by a Section 501(c)(4) nonprofit organization as violating the First Amendment. What impact this decision might have on current IRS rules relating to political or voter engagement activities by Section 501(c)(3) public charities is yet to be determined.
- 18 See Glossary (Appendix A) for more details and special rules when the legislative matter is a ballot measure, referendum or initiative.

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Sample Grantmaking Guidelines

COMMUNITY FOUNDATIONS CAN ENCOURAGE civic engagement by local nonprofits by explicitly including support for policy and advocacy in their program descriptions and proposal guidelines. Below are six examples of helpful language currently being used by community foundations in their grantmaking guidelines or on their websites. These examples may relate to a specific civic engagement program area or simply be integrated into whatever the foundation's issue areas may be. Emphasis has been added to the following excerpts by italicizing text. There are many other foundations and excerpts that could be cited.

1. TRIANGLE COMMUNITY FOUNDATION: CIVIC ENGAGEMENT PROGRAM AREA¹⁹

The Civic Engagement program area focuses on] expanding opportunities for people to engage in their communities to create a vibrant, inclusive and fair society.

Everyone in the community can be a source of knowledge and a full partner in social change and community building. The Foundation *awards civic engagement funding to initiatives supporting local and statewide public policy issues*. Priority is given to projects that focus on integrating diverse community voices and participation in civic life. Supported projects include those that:

- Analyze the impact of state and local policies on Triangle communities.
- Increase community knowledge of critical issues through grassroots education and policy analysis dissemination.
- Improve community understanding of public policy's impact on daily life.
- Expand participation in public policy activities at the neighborhood, local and state levels.

Example grant description within Civic Engagement program area:

Grantee: Project Compassion

Amount: \$10,000

Project: *Finding Your Voice: A Patient Advocacy Workbook*. Development of an advocacy resource designed to increase involvement in health care legislative reform, regional health care system policy change, and personal empowerment within a health care setting.

2. SILICON VALLEY COMMUNITY FOUNDATION: WITHIN ECONOMIC DEVELOPMENT PROGRAM AREA²⁰

Under [the Anti-Payday Lending Policy Advocacy] RFP, the community foundation will support two strategies. The first strategy seeks to *raise the awareness of key stakeholders and the public* concerning the negative effects of payday lending on household financial health *and mobilize public support around the issue*. The second strategy will provide *support for efforts to advocate changes in municipal laws and regulations* that allow for excessive interest and service fees. ...

...With respect to *changing local law*, the focus will be on city ordinances that restrict payday lending or other related measures that would help mitigate the harmful effects of this type of predatory lending on low-income communities of color. *RFP respondents are encouraged to consider local ordinance experiences in Sacramento, Oakland and San Francisco – as well as those of other cities around the country* (e.g., permanent moratorium, special zoning, special permits, and limits on density and/or distance) – *in order to propose lessons that could be applied to Silicon Valley localities*. For example, what are the pros and cons of different ordinance-based approaches for restricting payday lending that have been taken elsewhere? What types of ordinances might be most effective in select localities in this region, and why? Respondents are also encouraged to describe how these policy advocacy efforts are expected to lead to meaningful reform at the local level and build a constituency for state-level reform in the future. The proposal should include a clear description of how the various activities would be coordinated and implemented, including key anticipated milestones and the timeframe for completion.



“expanding open space and parks through advocacy, constituency building, and support of local planning and greening activities”

3. NEW YORK COMMUNITY TRUST: WITHIN ENVIRONMENTAL PROGRAM AREA²¹

Our New York City [Environment] program focuses on four urban environmental issues:

- Promoting a more effective and sustainable solid waste management program through consumer education, research and *advocacy*, with an emphasis on waste reduction and equitable distribution of solid waste facilities.
- Expanding open space and parks through *advocacy*, *constituency building*, and support of local planning and greening activities.
- Reclaiming the waterfront and brownfields through technical assistance, *advocacy*, and partnerships between community development and environmental groups.
- Reducing air pollutants and other environmental toxins through cleaner fuels and engines, mass transit improvements, and elimination of indoor pollutants and the concentration of polluting facilities in poor communities.

Example grant description within environmental program area:

Grantee: 1SKY Education Fund

Amount: \$100,000

Project: A multistate field organizing and lobbying campaign to build support for a comprehensive and aggressive national climate change policy.

4. SAN FRANCISCO FOUNDATION: WITHIN HEALTH PROGRAM AREA²²

The goal of the Community Health Program is to improve the health of communities, particularly underserved populations, by expanding access to services, promoting prevention to reduce illness and *advancing health policy reform*.

Objectives:

1. Improve access to health care, services, and treatment for those who are low-income, uninsured and/or underinsured.
2. Foster efforts to prevent poor health status, disease and disability through investments in health promotion and health education.
3. Ensure access to the health services safety net.
4. Support local efforts designed to reduce and/or eliminate disparities in health status due to poverty, disproportionate exposure to environmental agents/hazards, and/or race.
5. *Advance policy reform efforts that improve access to health services.*

Example grant description within health program area:

Grantee: Mental Health Association of San Francisco

Amount: \$30,000

Project: To improve access to and quality of mental health care for low-income and underserved populations through the Public Policy and Advocacy Initiative.

“expanding access to services, promoting prevention of illness and advancing health policy reform”



5. THE CLEVELAND FOUNDATION: GUIDELINE FOR ALL PROGRAM AREAS²³

[The Cleveland Foundation's general grantmaking guidelines state that:] We give priority to programs that:

1. Improve access to services and programs for vulnerable and underserved populations.
2. Strengthen nonprofit organizations.
3. Test new ideas and different partnerships.
4. *Support policy and advocacy.*

In the Foundation's Advanced Energy program], The Cleveland Foundation supports and promotes efforts to develop an advanced energy industry in Ohio through research, grantmaking and public *advocacy*.

[In the Foundation's Public Education Reform program, "*Public Policy*" is one of three main areas of focus]: Particularly at the state level, we aim to create a seamless P-16 (preschool through college) system, improve teacher quality, and raise standards and accountability. [We're] *joining with other foundations to advocate for critical policy changes at the state level.*

6. MARIN COMMUNITY FOUNDATION: GUIDELINES FOR ALL PROGRAM AREAS²⁴

Through its strategic planning process, Marin Community Foundation identified four issues that it will support through Strategic Initiatives. These areas will be supported through a combination of grants, *advocacy efforts*, research and bringing together diverse members of the community. The four areas are:

- Increasing the availability of affordable housing for individuals and families and ensuring that residents receive the services they need to succeed economically and remain healthy;
- Closing the achievement gap between high-achieving students and those who are falling behind;
- Stimulating new approaches and supporting existing efforts to help Marin residents and businesses reduce the environmental effects of climate change; and
- Ending the cycle of poverty experienced by poor and low-income individuals and families.

“The Cleveland Foundation supports and promotes efforts to develop an advanced energy industry in Ohio through research, grantmaking and public advocacy.”

19 Triangle Community Foundation. www.trianglecf.org/page33708.cfm

20 Silicon Valley Community Foundation. www.siliconvalleycf.org/grantmaking-strategies/index.html#ES

21 New York Community Trust. www.nycommunitytrust.org/ForGrant-Seekers/Grant-makingGuidelines/CommunityDevelopmentandtheEnvironment/tabid/204/Default.aspx

22 San Francisco Foundation, The. www.sff.org/programs/community-health

23 Cleveland Foundation, The. www.clevelandfoundation.org/Grantmaking/

24 Marin Community Foundation. www.marincf.org/page10002088.cfm

Legal Disclaimer

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Sample Grant Agreement Letter (without IRS language)

The following is a sample letter for a general operating support or project-specific grant from a community or public foundation to a Section 501(c)(3) charitable organization.²⁵ Many foundations mistakenly believe that they are required to repeat IRS language on lobbying and political activity restrictions that often confuse or intimidate grantees from engaging in a range of civic and policy activities. This is not necessary. See 2004 IRS Letter to CLPI, Appendix B.

The sample grant agreement letter below does not include IRS language on advocacy-related restrictions, just basic grant requirements.²⁶ As with any sample or template, this is designed to serve as a starting place. Foundations should work with their advisers to tailor the template to meet their particular needs.

Dear Ms. Grantee:

I am pleased to inform you that the ABC Foundation approved a general support [or project-specific] grant of \$60,000 to the XYZ charity. The grant period will run from _____ through _____, and the award will be made in a single payment upon the execution of this agreement. By signing this letter, the grantee agrees to the following terms:

- That all grant funds will be used solely for charitable, religious, scientific or educational purposes as described in Section 170(c)(2)(B) of the Internal Revenue Code.
- To continue to qualify as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and not a private foundation as defined in Section 509(a) of the Code, and that it will notify the Foundation immediately if the Internal Revenue Service proposes to revoke or change the grantee's exempt status.
- (Any other desired conditions, such as reporting requirements, repayment of funds not used in compliance with any of the previous conditions or the project, or access to financial records.)

Please indicate your acceptance of these terms by signing and returning this agreement to the Foundation.

Best Wishes,

25 Grants to a narrow class of public charities – certain supporting organizations – from a donor advised fund require a community or public foundation to follow the expenditure responsibility rules. In such cases, consultation with your legal counsel is recommended to determine whether the grant agreement should include a prohibition on the use of grant funds for lobbying or voter registration activity.

26 This letter was adapted with permission from sample letters by Lloyd H. Mayer, Esq., in *Power in Policy: A Funder's Guide to Advocacy and Civic Participation*, Appendix A at pp. 228-231.



Additional Resources

Mayer, Esq., Lloyd H. in Arons, David F. (Ed.). *Power in Policy: A Funder's Guide to Advocacy and Civic Participation* (Appendix A, pp.228-231). St. Paul, Minn.: Fieldstone Alliance, 2007.

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Sample Grant Agreement Letter (with IRS language)



The following is a sample letter for a general operating support or project-specific grants from a community or public foundation to a Section 501(c)(3) charitable organization.²⁷ Some foundation officials – or their boards and counsel – will feel more comfortable with grant agreement letters that include specific legal language relating to lobbying and/or political activity restrictions. At the same time, many of these foundations do not want to unintentionally prohibit or discourage lawful advocacy and civic engagement by their grantees. Indeed, many will want to encourage lawful advocacy to build organizational capacity and leverage impact.

The following sample grant agreement letter is one example of how to include legal language on lobbying and political activity restrictions while minimizing confusion and encouraging civic engagement by grantees.²⁸ This letter assumes that the foundation does not intend to earmark its grant for lobbying, and wants to okay or encourage grantees to engage in permissible lobbying. As discussed elsewhere, community foundations may earmark grants specifically for lobbying within limits. See IRS Letter, Appendix B, question 14.

Dear Ms. Grantee:

I am pleased to inform you that the ABC Foundation approved a general support [or project-specific] grant of \$60,000 to the XYZ public charity. The grant period will be from ____ through ____, and the award will be made in a single payment upon the execution of this agreement. By signing this letter, the grantee agrees to the following terms:

- That all grant funds will be used solely for charitable, religious, scientific or educational purposes as described in Section 170(c)(2)(B) of the Internal Revenue Code.
- To continue to qualify as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code and is not a private foundation as defined in section 509(a) of the Code, and that it will notify the Foundation immediately if the Internal Revenue Service proposes to revoke or change the grantee's exempt status.
- There is no agreement, oral or written, that directs that the grant funds be used for lobbying activities. The grantee has the right to engage in lobbying activities that do not exceed limits imposed by Internal Revenue Code Section 501(c)(3) or, if elected by grantee, Sections 501(h) and 4911.
- The grantee has the right to engage in nonpartisan voter education and engagement activities that are not prohibited by Internal Revenue Code Section 501(c)(3).
- (Any other desired conditions, such as reporting requirements, repayment of funds not used in compliance with any of the previous conditions or the project, or access to financial records.)

Please indicate your acceptance of these terms by signing and returning this agreement to the Foundation.

Best wishes,

²⁷ Grants to a narrow class of public charities – certain supporting organizations – from a donor advised fund require a community or public foundation to follow the expenditure responsibility rules. In such cases, consultation with your legal counsel is recommended to determine whether the grant agreement should include a prohibition on the use of grant funds for lobbying or voter registration activity.

²⁸ This letter was adapted with permission from sample letters by Lloyd H. Mayer, Esq., in *Power in Policy: A Funder's Guide to Advocacy and Civic Participation*, Appendix A at pp. 228-231.

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Grantee Advocacy Capacity & Evaluation Checklist

When considering or evaluating a grant to a nonprofit to engage in advocacy or civic engagement, it is important to be able to assess a nonprofit organization's capacity, experience and commitment in this strategic area. Below is a series of questions that staff, and other relevant organization representatives, can use in discussions and site visits with potential and existing grantees concerning their advocacy capacity and progress.

Not all questions will be applicable, and many qualified grantees will be at varying stages of advocacy activity both within and outside of their organizations. We hope these questions encourage dialogue between you and your grantees, as well as help to identify areas where your support can build grantee advocacy capacity to meet your shared goals for change.

Advocacy Goals and Agenda

- ☐ To what extent is advocacy a clear part of your organization's mission, goals and strategy?
- ☐ Do you have a written advocacy agenda?
 - Is this agenda based on research and policy analysis, including stakeholder interviews?
 - Did you involve your constituency (the community impacted by this policy) in its development?
- ☐ What are your advocacy goals and objectives?
- ☐ Do you have a plan for achieving your advocacy agenda?
- ☐ How will you measure progress?

Leadership and Will

- ☐ To what extent is your board engaged in and committed to advocacy?
 - Is the board's role in advocacy clearly defined?
 - Has it approved your advocacy agenda?
- ☐ To what extent is executive leadership engaged in and committed to advocacy?
 - What role does the executive director play?
- ☐ What organizational structures are in place to support advocacy? (e.g., a public policy committee, an advisory committee, a board committee, etc.)
- ☐ What is your decision-making process for public policy issues?
- ☐ How long has your organization been engaged in policy advocacy efforts?
- ☐ What board, staff and other organizational resources are committed to your advocacy plan?

Management

- ☐ Which employees are responsible for advocacy?
 - What are their qualifications?
- ☐ Are staff advocacy roles clearly defined?
- ☐ Do you have a "rapid response" team in place to make quick decisions in response to rapidly changing conditions?
- ☐ What percentage of your operating budget is designated for policy advocacy?
- ☐ In what ways are you challenged from a staffing or resource standpoint?

Strategy, Strategic Partnerships and Networks

- ☐ What strategic partnerships, networks or coalitions are you involved with?
 - How do these networks help you meet your advocacy goals?
 - What kinds of training, technical assistance and coordination do these networks provide to you?
 - What role does your organization play in these networks?
 - How does your policy agenda fit into the broader goals of these networks?
- ☐ What gives your organization standing to work effectively on this issue?
- ☐ What are your short-term and long-term policy goals?
- ☐ What is your (and your partners') policy strategy to achieve these goals?
- ☐ How do you engage and mobilize your constituents and other members of the community that are affected by or can influence this issue/policy?
- ☐ How do you build and maintain working relationships with relevant policymakers (e.g., legislators and their staff, administrators, etc.)



Technical Knowledge and Skills

- ☐ Do you understand the IRS rules governing Section 501(c)(3) lobbying and reporting?
 - How do you track and monitor this?
 - How do you monitor compliance with these rules?
 - Has your organization, if a nonreligious public charity, elected to use the 501(h) expenditure test to provide a safe harbor for lobbying and simpler tracking and reporting of lobbying based only on expenditures?
- ☐ How do you assess and monitor the policy environment, opportunities, risks, threats and resource needs?
- ☐ What training does staff receive on policy issues, advocacy, lobbying, nonpartisan voter engagement, etc.?
- ☐ What is your knowledge of the policy issue and processes? This includes:
 - Policy change process
 - Issue expertise
 - Political knowledge and skills
 - Policy analysis and research
 - Community mobilization skills
 - Legal knowledge
- ☐ Do you have a media strategy and plan?
 - Which staff person is responsible for carrying out the media plan?

- Have you developed clear messages and a communications plan to advance your advocacy agenda?

Project Specific

- ☐ How was the project identified as a community need?
- ☐ What other organizations are also working on this issue? Are you planning on collaborating with them? If not, why? If so, in what way(s)?
- ☐ What policy options have been proposed for addressing this need, and what, if any, analysis have you done of possible support and opposition to different policy proposals?
- ☐ What are the risks associated with this project?
 - For the grantee
 - For the foundation
 - For your constituents
 - For other stakeholders
- ☐ What will our grant help you accomplish with respect to your advocacy plan?

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Additional Resources

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Avner, Marcia. *The Lobbying and Advocacy Handbook for Nonprofit Organizations: Shaping Public Policy at the State and Local Level*. St. Paul, Minn.: Fieldstone Alliance, 2002. [http://clpi.org/press-publications-sale](http://clpi.org/press-publications/publications-sale)

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Success Stories



The following are just a few stories that exemplify how community foundations have empowered their staffs and grantees to engage in public policy and civic engagement within their communities. Activities range from convening community leaders on policy initiatives to funding policy development in the community. Whether as grantmakers or advocates themselves, these community foundations, along with those cited in the resources, illustrate the tremendous impact that the consistent funding and practice of policy and civic engagement can yield for underserved communities and important causes.

OSHKOSH AREA COMMUNITY FOUNDATION

Convening on policy-related planning issues

The Oshkosh Area Community Foundation works with government, businesses and the community to create and sustain a vital and energetic community across a three-county region in Wisconsin. Over the past 10 years, the Foundation has expanded its pool of donors from 200 to 3,500 and almost quadrupled its endowment. This has allowed the Foundation to work with the community and city government in a number of ways that benefit the city and the region as a whole.

Most notably, the Oshkosh Area Community Foundation recently convened a group of diverse stakeholders in the city's first Community Visioning Process. By partnering with individuals, local nonprofits, businesses, the local University of Wisconsin campus and hospitals, the Foundation was able to create a vision for the city's streets, parks, riverfront, jobs, development and stewardship. Through surveys, listening sessions and public meetings, the group produced a report with visions, goals and specific recommendations for community development. The Visioning report even contained draft sample resolutions and zoning/planning language based on the recommendations that came out of the report.

The City Council recently, in a nonbinding resolution, adopted the recommendations of the Visioning process. This Visioning process has helped bring the community together over issues central to all residents.

CALIFORNIA COMMUNITY FOUNDATION

Grantmaking to support education-related organizing and policy

Beginning in 2007, the California Community Foundation of Los Angeles (CCF) has been leading the effort to expand access to early childhood education for all children in the Los Angeles area. After a failed 2006 ballot measure revealed the fractured constituency-base in the area, CCF created a coalition of key

stakeholders to gather input and policy suggestions from direct service providers and advocates. Based on this, the foundation developed a grant-making strategy to fund nonprofits to engage in public policy and increase the level of parent engagement and leadership on early childhood education issues.

After a number of workshops and trainings, parents were able to become their own spokespersons, advocating on behalf of their children in the state legislature. As a result of this empowering advocacy, the legislature passed a bill creating a commission to oversee the quality of pre-K programs, and CCF advocated for the appointment of commission members representing their community and its concerns – they got three. A second bill attempts to create a more streamlined distribution of funds with higher levels of accountability and quality-based reimbursement rates.

Due to the fiscal crisis in California at the time, CCF recognized that legislative change would be slow and that incremental and increased funding is very unlikely. Instead, CCF is leveraging the power of community organizing and focusing on how the state can more efficiently spend existing funds through reform efforts.

THE COMMUNITY FOUNDATION OF GREATER DUBUQUE

Partnering with business, government and residents to create impact

Nancy Van Milligen, president and CEO of the Community Foundation of Greater Dubuque, has always seen the connection between philanthropy and advocacy. In 2005 the Community Foundation of Greater Dubuque partnered with the Chamber of Commerce to launch Envision2010, a project designed to engage the entire community in choosing the 10 projects that would make Dubuque a better place.

The 10 best projects were selected out of 2,332 submitted. Since then, all 10 projects have moved forward, and many have received funding from private donors, the city and grant-



makers who recognize the importance of community involvement. In 2007, Envision2010 helped Dubuque win the National Civic League's All American City award, which is awarded to cities that promote civic engagement and cooperation among the public, private and nonprofit sectors.

The Foundation also gained from policy involvement with the Shared Youth Vision Grant to improve the lives of youth who were in Iowa Child Welfare or Juvenile Justice systems. The Foundation and its partners worked with the housing director to draft policies for post-foster care housing and presented testimony to the housing commission, eventually leading to legislation passed by the City Council to give youth preference points when they aged out of foster care.

Not only did the Foundation help Dubuque become a better place, but it also demonstrated the power each individual in the community has to make a difference. Van Milligen and the Foundation's work stems from a belief that community foundations are leaders with a responsibility to make an impact as well as an understanding of the people they serve.

THE COMMUNITY FOUNDATION FOR GREATER ATLANTA

Empowering foster youth to advocate on their own behalf

The Community Foundation has a strong focus on community leadership around critical and emerging issues in the Greater Atlanta region, acting as a funder, catalyst, partner, nonpartisan convener and knowledge broker. Acting in all of these capacities, The Community Foundation has been centrally involved in Georgia EmpowerMENT, an initiative begun in 2006 to facilitate youth leadership and advocacy concerning the state foster care system. A project of the Multi Agency Alliance for Children (MAAC), EmpowerMENT brings together 14- to 24-year-old current and former foster care youth dedicated to making their voices heard with the assistance of caring adults to achieve their goals.

In the fall of 2007, a team was assembled to address expansion of Medicaid health insurance to age 21. At that time, Georgia opted out of a federal law permitting states to provide Medicaid up to age 21, leaving about 800 18-year-olds without access to health care insurance when they "age out" of the foster care system. An advocacy strategy was implemented in late 2007 and into the 2008 legislative session, including targeted communication with legislators at retreats, testimony at hearings and communication with the Governor's Office, among other efforts. As a result of the dedication and advocacy of EmpowerMENT and partners, the extension of Medicaid insurance benefits to age 21 was officially enacted in Georgia starting July 1, 2008.

Thus, as a funder and advocate, The Community Foundation has partnered to establish a statewide, sustainable youth leadership group to advocate for improvement in the foster care system. An ongoing effort of MAAC, a nonprofit collaborative of five child welfare agencies engaged in a continuum of youth services, EmpowerMENT currently has a statewide board and regional "tribes" that total more than 40 young people in seven out of 17 regions.



Additional Resources

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General Resources

Alliance for Justice. Build Your Advocacy Grantmaking: Advocacy Capacity Assessment Tool. 2005. See www.afj.org for description and purchase information.

Alliance for Justice. *Investing in Change: A Funder's Guide to Supporting Advocacy*. 2007. Available for purchase at www.afj.org

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Appendix A: Glossary of Key Terms

Language is a significant source of confusion for foundations, charities, policymakers and the public. For various reasons, different terms may be used to describe the same activities. Recognizing this limitation, we designed this glossary to provide simple and clear definitions for the most common terms that foundation staff and board members might encounter. Internal Revenue Service (IRS) definitions are used where applicable.

Organizational Terms

Section 501(c)(3) Organizations

Tax-exempt organizations described in Section 501(c)(3)²⁹ of the Internal Revenue Code must be operated “exclusively” for charitable purposes and no net earnings may be used “to the benefit of any private shareholder or individual.” Community and public foundations, and their public charity grantees, all are Section 501(c)(3) organizations.

Public Charities

Public charities are Section 501(c)(3) tax-exempt organizations characterized by broader public financial support and involvement than private foundations. Contributions to public charities that are not made in exchange for goods and services are normally **tax-deductible** to individual donors.³⁰

Because they meet the public support test, community and other public foundations are regulated as public charities. As such, under current law, community and public foundations are permitted to engage in more advocacy-related activities than are private foundations.³¹

Community Foundations

A community foundation is a public charity that makes grants that often, but not always, benefit local charities and community projects. Community foundations receive financial support from multiple sources within the general public, distinguishing them from private foundations.³²

The Community Foundations National Standards Board has adopted a voluntary set of standards, which define a U.S. community foundation as “a tax-exempt, nonprofit, autonomous, publicly supported, nonsectarian philanthropic institution with a long-term goal of building permanent, named component funds established by many separate donors to carry out their charitable interests and for the broad-based charitable interest of and for the benefit of residents of a defined geographic area.”

Public Foundations

The term “public foundation” typically is used to describe a public charity, other than a community foundation, that is primarily engaged in grantmaking.³⁴

Supporting Organizations

“Supporting organizations”³⁵ are public charities that carry out their exempt purposes by having a specific relationship with and activities that support other tax-exempt organizations, usually other public charities such as hospitals, universities and community foundations as noted in the toolkit, grants to sup-

²⁹ http://www.law.cornell.edu/uscode/26/usc_sec_26_00000501----000-.html

³⁰ <http://www.irs.gov/pub/irs-pdf/p526.pdf> Some contributions may be partly deductible where, for example, part but not all of a contribution is used to pay for food or drink at a charity event.

³¹ The issue of possible reforms that could simplify or update charitable advocacy rules is beyond the scope of this toolkit.

³² Community foundations, both trust and corporate forms, are typically defined, in part, by qualifying as publicly supported charities under Sections 509(a)(1) and 170(b)(1)(A)(vi). See http://www.law.cornell.edu/uscode/26/usc_sec_26_00000509----000-.html and http://www.law.cornell.edu/uscode/26/usc_sec_26_00000170----000-.html

³³ http://www.cfstandards.org/About_us/all_NS.asp

³⁴ Public foundations may take the form of any type of public charity as set forth in the Internal Revenue Code. This includes publicly supported charities under Sections 509(a)(1) and 170(b)(1)(a)(vi), Section 509(a)(2) organizations or 509(a)(3) supporting organizations. Section 509(a)(2) public charities are supported primarily from income or fees generated by performing their exempt purposes. http://www.law.cornell.edu/uscode/26/usc_sec_26_00000509----000-.html

³⁵ <http://www.cof.org/templates/41.cfm?ItemNumber=17117&navItemNumber=14859>



porting organizations from donor advised funds require special attention. See www.cof.org/ppa for additional information.

Donor Advised Funds

Generally, this is a form of charitable giving where a donor establishes a fund at a public charity through charitable contributions. The public charity holding the donor advised fund has legal control over the contributed funds, but the donor has the privilege of recommending which charities receive the funds.³⁶ For information on the impact of donor advised funds on community foundations, please see the results of this [survey](#) by Council on Foundations.³⁷

Lobbying Terms Under IRS Rules

Because the general statutory description of lobbying for Section 501(c)(3) organizations uses sweeping language that restricts “propaganda” or “attempting to influence legislation,” it is understandable that many community foundations and charities are confused and cautious about policy involvement and support.³⁸

However, the specific IRS lobbying rules for public charities – including community foundations and many of their grantees – permit a wide range of policy-related activities, including lobbying within certain limits. This is why the language that community foundations use in their guidelines, grant agreements and other communications is so important.

Direct Lobbying

As defined by Congress in Section 501(h), direct lobbying is any attempt to influence legislation through communication with a member or employee of a legislative body.³⁹ It also includes communication with the public if the legislation at issue is a ballot initiative or referendum since the public is deemed to serve as the “legislature” in such circumstances. The communication must refer to a specific piece of legislation and reflect a view on such legislation to be considered direct lobbying.

Grassroots Lobbying

Under Section 501(h), grassroots lobbying is defined as an attempt to influence legislation by encouraging the general public or any segment thereof to take action. A communication will be treated as grassroots lobbying if it refers to specific legislation, reflects a view on such legislation, and directly encourages the recipient of the communication to take action with respect to such legislation. Direct encouragement includes providing the names of legislators, their contact information or a mechanism to contact legislators.

Substantial Part Test

Also referred to as the “**insubstantial part test**,”⁴⁰ this 1934 test still serves as the default standard for all public charities and states that lobbying may not constitute a “substantial part” of a charity’s activities. In determining what is “substantial,” the IRS considers all relevant facts and circumstances, including the work of staff, board and volunteers, as well as a range of organizational activities from publications to speeches and mailings. This test does not include a specific definition of lobbying. The definitions of direct and grassroots lobbying described above are good guidelines for determining what is lobbying under this test, but they are not necessarily determinative. For more information on problems with the substantial part test, please visit [CLPI](#).⁴²

Expenditure or 501(h) Test

In response to the vagueness and uncertainty of the 1934 substantial part test, in 1976 Congress enacted an expenditure test to provide a simple, objective alternative for non-church, public charities.⁴³ Such charities may elect (opt in) to determine and report permissible lobbying activity under the section 501(h) expenditure test. Organizations can elect this test by filing [Form 5768](#) at any time during the tax year.

Under this alternative test, public charities need to focus only on their actual lobbying expenditures and ensure that they fall within the safe harbor expenditure limits. There is an overall annual cap of \$1 million in lobbying expenditures, which may serve as a disincentive for some larger charities from mak-

³⁶ Donor advised funds were legally defined in the Pension Protection Act of 2006. More information on the definition and its exceptions may be found at www.cof.org/ppa

³⁷ <http://www.cof.org/files/Bamboo/programsandservices/research/documents/dafjuly09.pdf>

³⁸ http://www.law.cornell.edu/uscode/26/usc_sec_26_00000501----000-.html

³⁹ In limited circumstances, communication with a high-level administrative official about legislation also may be considered by the IRS as direct lobbying.

⁴⁰ <http://www.irs.gov/charities/article/0,,id=163393,00.html>

⁴¹ See IRS Form 990, Schedule C, Part II-B, at <http://www.irs.gov/pub/irs-pdf/f990sc.pdf>

⁴² <http://www.clpi.org/protect-advocacy-rights/help-protect-your-rights>

⁴³ At the time, some religious institutions moved not to be covered by the reforms in part so as not to set a precedent in terms of government regulation of religion. In addition, supporting organizations that are established to support Section 501(c)(4), 501(c)(5) or 501(c)(6) organizations are also ineligible to elect the 501(h) expenditure test.



ing the Section 501(h) election.⁴⁴ Charities must track their **direct and grassroots lobbying**,⁴⁵ as grassroots lobbying may not exceed one-fourth of the total permissible lobbying limit. For more information on Section 501(h) and its advantages for small to mid-sized public charities, please visit **CLPI**⁴⁶ and **Council on Foundations**.⁴⁷

Lobbying Exceptions for Public Charities

The IRS regulations under the Section 501(h) expenditure test define a number of specific exceptions to lobbying restrictions. Such exceptions permit unlimited nonpartisan analysis, study or research and unlimited self-defense work.⁴⁸ These exceptions are addressed elsewhere in this toolkit but should not be overlooked.

Voter Engagement and IRS Rules

As described in this toolkit, community and public foundations, like their charitable grantees, may engage in a wide range of *nonpartisan* election-related activities. These activities are sometimes referred to by funders broadly as voter engagement and then broken down as either voter education or voter participation.

Voter and Candidate Education

In order to create a more informed electorate, Section 501(c)(3) organizations may engage in a wide range of unlimited, nonpartisan activities to educate the public on how public officials stand on substantive policy issues of importance to their organizations' missions. Examples of such activities include candidate forums, guides, questionnaires and scorecards. So long as such activities are strictly nonpartisan, community foundations may provide unlimited grants for voter education activities, and foundation officials may participate in these activities directly.

In addition, since ballot initiatives or referendums are treated as lobbying, community foundations also may fund or advocate for or against ballot initiatives up to the lobbying limits under Section 501(c)(3), for non-electing community foundations, or Section 501(h), for electing community foundations.

Candidate education is where a foundation or charity informs all candidates about its policy positions in an effort to get the candidates to adopt or promote these positions.

Voter Participation (including Voter Registration)

Voter participation activities seek to facilitate citizen participation in elections through, for example, voter registration and get-out-the-vote activities. As with voter education, these activities must be strictly nonpartisan.

Political Campaign Intervention

The IRS uses the term political campaign intervention to describe partisan expenditures or activities "on behalf of (or in opposition to) any candidate for elective public office."⁴⁹ Sometimes referred to simply as "political intervention" or "political activities," such partisan expenditures or activities are prohibited for public charities under Section 501(c)(3).

General Nonprofit Civic Engagement Terms

Civic Engagement (Civic Participation)

Civic engagement most often refers to the broadest range of activities that involve the public in civic life in order to advance a charitable or public purpose. Such activities include volunteering, public education, research, community organizing, lobbying, policy implementation, litigation and nonpartisan voter engagement. Some within the nonprofit sector use the term civic engagement more narrowly to describe permissible nonpartisan voter engagement activities.

Advocacy (Public Policy)

Advocacy is often defined as a wide range of activities that seek to influence policy decisions by public or private actors. Thus, lobbying and nonpartisan voter engagement are subsets of advocacy. When focused just on educating or influencing government officials and actions, advocacy is a term often used to describe the influencing of public policy. Because of its link to policy change, advocacy is sometimes defined more narrowly as involving systemic or institutional reform, as in social justice philanthropy (see below). For information on why organizations should advocate, please see **CLPI**.⁵⁰

44 The lobbying limits and overall cap were not indexed for inflation, and have lost about two-thirds of their value since 1976. The test also treats grassroots lobbying differently and less favorably than direct lobbying.

45 <http://www.clpi.org/images/pdf/DifferenceGrassroots&Direct.pdf>

46 <http://www.clpi.org/images/pdf/1976law.pdf>

47 <http://www.cof.org/templates/311.cfm?ItemNumber=16207&navItemNumber=14849>

48 The IRS has not made clear whether the 501(h) lobbying exceptions are applicable to public charities under the default substantial part test.

49 <http://www.irs.gov/charities/charitable/article/0,,id=163395,00.html>

50 <http://www.clpi.org/why-advocacy>



Some within the nonprofit sector use the term advocacy to modify different types of activities based on the locus of activity. Thus, legislative advocacy may be used to describe lobbying or policy development, administrative advocacy for policy implementation, judicial advocacy for litigation and electoral advocacy for nonpartisan voter engagement.⁵¹ Even in its broad use, advocacy normally does not include individual direct service-only activity. Many foundations and charities increasingly recognize the advantages and leverage of combining service and advocacy in their work.⁵²

Social Justice Philanthropy (also Social Change)

Social justice grantmaking has been defined as making charitable contributions to nonprofit organizations that work for structural change in order to increase the opportunity of those who are the least well-off politically, economically and socially.⁵³ Social justice philanthropy includes social justice grantmaking and adds the use of foundation investments and direct actions by foundation personnel toward these same ends.⁵⁴

The term social change philanthropy is often used to describe foundation attempts to bring about systemic or institutional reform through organizing and policy. While some use the terms social change and social justice interchangeably, the latter generally focuses on systemic change for poor, marginalized, underserved or vulnerable populations.

Community Organizing

This is the process of bringing people together, identifying issues and mobilizing them to act in the pursuit of a common self-interest. Community organizing often is distinguished from grassroots organizing, grassroots lobbying and grassroots advocacy by how and where decisions are made.⁵⁵ For more information, please see the [approach](#) of the community foundation field to community leadership.⁵⁶

Legal Disclaimer

This toolkit provides helpful legal information and guidance, but should not be construed as providing specific legal advice. You should consult with your foundation's legal counsel about specific activities or questions.

51 <http://www.clpi.org/why-advocacy>

52 See Crutchfield and Grant, *Forces for Good: The Six Practices of High-Impact Nonprofits* (Jossey-Bass 2008). The authors argue through research and examples that the highest-impact nonprofits combine service and advocacy in a "virtuous cycle."

53 <http://www.foundationcenter.org/gainknowledge/research/pdf/socialjustice.pdf>

54 Korten, Alicia Epstein. *Change Philanthropy: Candid Stories of Foundations Maximizing Results Through Social Justice* (Sponsored by Center for Community Change and published by Jossey-Bass 2009).

55 See introduction to any of National Committee for Responsive Philanthropy's state-based reports titled *Strengthening Democracy, Increasing Opportunities: Impacts of Advocacy, Organizing and Civic Engagement*, at www.clpi.org

56 http://www.cfleads.org/resources/commleadership_pubs/docs/CF_framework_OV_120408.pdf See also the National Committee for Responsive Philanthropy's *Grantmaking for Community Impact Project* and its definition and discussion of community organizing in reports from Los Angeles, Minnesota, New Mexico and North Carolina. <http://www.ncrp.org/campaigns-research-policy/communities/gcip>

Appendix B: IRS Letter to CLPI on Foundations & Advocacy



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: **DEC 09 2004**

Charity Lobbying in the Public Interest
2040 S Street NW
Washington, DC 20009

Contact Person:
Ward L. Thomas
Identification Number:
50-09822
Contact Number:
(202) 283-8913

Dear Sirs:

We have considered your request dated February 10, 2003 on behalf of a public charity involved in educating other charities about the role of lobbying as a means to achieving their philanthropic missions. You request information on lobbying and influencing public policy by private foundations. The public charity has compiled a list of recurring questions that, if answered by the IRS, would assist in correcting misconceptions in this area. The questions are addressed below.

1. May private foundations make general support grants, other than program-related investments, to "public charities" that lobby?

Yes, private foundations may make grants, other than program-related investments, to public charities (i.e., organizations described in sections 509 (a)(1), (2), or (3) of the Internal Revenue Code) that lobby, with restrictions. The tax rules include explicit safe harbors for general support grants that meet the requirements of sections 53.4945-2(a)(6)(i) of the Treasury Regulations. Provided that such grants are not earmarked in whole or part for lobbying, they will not be taxable expenditures.

2. Does the same answer apply whether or not the public charity has made the election under section 501(h) of the Code governing its own lobbying expenditures?

Yes.

3. What constitutes "earmarking" of a grant for lobbying?

"Earmarking" a grant for lobbying is making a grant with an oral or written agreement that the grant will be used for lobbying.

4. Absent any specific agreement to the contrary, will the recitation in a grant agreement that "there is no agreement, oral or written, that directs that the grant funds be used for lobbying activities" be sufficient to establish to the satisfaction of the IRS that there has been no earmarking for lobbying?

Yes, absent evidence of an agreement to the contrary.

5. Is a foundation required to include a specific provision in its grant agreements that no part of the grant funds may be used for lobbying?

A specific provision is required only if the grantee organization is not a public charity, or if the private foundation earmarks the grant for use by an organization that is not a public charity.



6. Under what circumstances can a foundation make a grant to a public charity for a specific project that includes lobbying?

A private foundation can make a grant to a public charity for a specific project that includes lobbying pursuant to sections 53.4945-2(a)(6)(ii) and (iii) of the regulations if (1) no part of the grant is earmarked for lobbying, (2) the private foundation obtains a proposed budget signed by an officer of the public charity showing that the amount of the grant, together with other grants by the same private foundation for the same project and year, does not exceed the amount budgeted, for the year of the grant, by the public charity for activities of the project that are not lobbying, and (3) the private foundation has no reason to doubt the accuracy of the budget.

7. In the response to the preceding question, does it matter that the public charity's proposal indicates that it will be seeking funds for the specific project from other private foundations without referring to other, additional sources of funds?

No, the specific project grant rules in section 53.4945-2(a)(6)(ii) of the regulations do not require the private foundation to concern itself about other sources of funding for the project in such situations.

8. What if, in the conduct of the project, the public charity actually makes lobbying expenditures in excess of its estimate in the grant proposal?

If the requirements in section 53.4945-2(a)(6)(ii) and (iii) of the regulations are met (no earmarking, budget shows non-lobbying equal to or greater than grant, and no reason to doubt accuracy of budget), then the private foundation will not have made a taxable expenditure under section 4945(d)(1) of the Code for that year, even if the public charity makes lobbying expenditures in excess of the budgeted amount. However, knowledge of the excess may provide a reason to doubt the accuracy of subsequent budgets submitted by the public charity.

Section 53.4945-2(a)(7)(ii) of the regulations, Example (13), illustrates the situation where a private foundation makes a second-year grant payment after the public charity exceeded its lobbying budgeted amount in the first year of the grant. In that case, although the private foundation did not have a taxable expenditure in the first year, it did have a taxable expenditure in the second year when the public charity again exceeded its lobbying budgeted amount. Similarly, if the public charity's exemption is revoked for excess lobbying after receiving the grant, there is no adverse consequence to the private foundation unless it directly or indirectly controls the public charity or has knowledge of the change in status before making the grant.

9. In determining whether a foundation grant has been earmarked for lobbying, do the definitions of lobbying in sections 56.4911-2 and 3 of the regulations govern?

Section 53.4945-2(a)(1) of the regulations provides that the definitions of section 56.4911-2 and section 56.4911-3 apply without regard to the exceptions contained in section 56.4911-2(b)(3) and section 56.4911-2(c). Instead, similar exceptions are provided in section 53.4945-2(d). Note that the special rules for membership communications under section 56.4911-5 do not apply to private foundations.

10. Private foundations are required to make "all reasonable efforts" under section 4945(h) of the Code to ensure that grant funds subject to expenditure responsibility (for example, a grant to a section 501(c)(4) organization) are not used for lobbying. Assuming grant records reflect that a grantee has been made aware of the applicable lobbying definitions and the grantee's report on the use of grant funds reflects activities that are legislation-related, but, as reported, lack one or more of the elements of lobbying under sections 53.4911-2 and 3 of the regulations, is the foundation required to investigate further to discharge its responsibilities?

Section 53.4945-5(c)(1) of the regulations provides that a grantor private foundation is not required to conduct any independent verification of reports from grantees unless it has reason to doubt their accuracy or reliability.

11. May private foundations directly engage in any policy-related activities without incurring liability for private foundation excise taxes?

Yes. Private foundations may engage directly in a wide range of educational activities that influence the formation of public policy but are not lobbying so long as the foundation does not (1) reflect a view on specific legislation in communications with legislators, legislative staff, or executive branch personnel participating in the formulation of legislation, or (2) reflect a view on specific legislation and make a call to action in communications with the general public (and the rule for certain "mass media" communications does not apply). Some communications that may otherwise qualify as lobbying are excepted as nonpartisan analysis, technical advice to a legislative body, or self-defense.



12. What other policy-related activities may foundations fund?

Private foundations may fund discussions of broad social problems, as well as certain public charity membership communications that are not treated as lobbying communications. Further, the special restrictions on lobbying have no effect on contact with executive branch officials in order to influence the development of regulations (and other non-legislative policy positions). “Lobbying” is limited to attempting to influence action by a legislative body.

13. May community foundations engage in or fund lobbying activities?

Community foundations that are public charities may, if they have elected under section 501(h) of the Code, engage in or fund lobbying activities subject to the limitations of section 501(h) and section 4911 or, if they have not, to the extent that the lobbying activity does not constitute more than an insubstantial part of the community foundation’s activities.

14. May community foundations make grants to other public charities that are earmarked for lobbying without adverse federal tax consequences?

Community foundations that are public charities may make grants to other public charities earmarked for lobbying so long as the amounts actually earmarked for lobbying are taken into account under the applicable limitation on lobbying expenditures by the community foundation notes in the response to Question 13.

15. May community foundations engage in nonpartisan election-related activities (activities that do not constitute political campaign intervention within the meaning of section 1.501(c)(3)-1(c)(3)(iii) of the regulations) including voter registration, “Get Out the Vote” drives, voter education projects and candidate forums?

Community foundations may engage in non-partisan election-related activities such as voter registration, “Get Out the Vote” drives, voter education projects and candidate forums, provided they do not constitute political campaign intervention under section 501(c)(3) of the Code. Regarding voter registration activities in particular, community foundations that are not private foundations are not required to meet the standards of section 4945(f).

16. In contrast to public charities, private foundations are subject to limitations under section 4345(d)(2) of the Code on funding nonpartisan “voter registration drives.” For purposes of the limitations, does the phrase “voter registration drive” include non-partisan election-related activities other than registering voters, including “Get Out the Vote” activities, voter education projects and candidate forums?

No.

We believe this general information will be of assistance to you. This letter, however, is not a ruling and may not be relied on as such. If you have any questions, please feel free to contact the person whose name and telephone number are listed in the heading of this letter.

Sincerely,

Joseph J. Urban
Manager, Exempt Organizations
Technical Guidance & Quality Assurance

cc: Thomas A. Troyer
Marcus S. Owens
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One Thomas Circle, NW, Suite 1100
Washington, DC 20005