

Rules of Advocacy & Lobbying: Private Foundations

What is allowed?

For a private foundation, the law **allows advocacy** but **prohibits lobbying** (except in cases of self-defense) and **prohibits funding lobbying**.

What is advocacy?

The Council uses the term “advocacy” as an umbrella term for all types of engagement with policymakers (including elected and appointed officials and their staff) that is not specifically considered lobbying by the IRS. Some activities that are not lobbying include:

- **Sharing information about your foundation’s work.** Your work impacts the lives of elected officials’ constituents. They want to hear from you about the work you are doing to improve and strengthen your shared communities.
- **Discussing broad social, economic, or other issues.** Foundations possess a wide range of expertise across countless issues that impact our society and economy. You are the experts who are working to address these issues in your communities every day. Your policymakers want to hear from you about the status of these issues, and your approach to solving them.
- **Sharing a nonpartisan analysis, study, or research.** Policymakers need fair and balanced information to inform their approach to drafting policies and legislation. If your foundation has commissioned or conducted a study or analysis that includes a sufficiently full and fair discussion of the facts impacting the issue, sharing this work is a permissible advocacy activity.
- **Self-defense communications.** This type of activity is the exception to limitations on lobbying. Private foundations are permitted to attempt to influence specific legislation that would affect your organization’s existence, tax-exempt status, powers and duties, or the deductibility of contributions to your organization.

What is lobbying?

Direct lobbying is the attempt to influence specific legislation by expressing a view on that legislation via direct communication with a Member of Congress, Congressional staff, or any other government official or employee who is involved in the policymaking process. **Grassroots lobbying** is the attempt to influence specific legislation via communication with any segment of the general population, where that communication encourages the recipient to take action with respect to that legislation.

Our rule of thumb: If you are discussing a specific bill or policy issue that the policymaker can influence, **you are probably lobbying**. If you are discussing government funding, **you are probably lobbying**.

Self-defense Lobbying Exception for Private Foundations

Internal Revenue Code § 4945(e) allows private foundations to appear or communicate with a legislative body concerning a decision of that body that might affect the existence of the foundation, its powers and duties, its tax-exempt status, or the deductibility of contributions to it.

What exactly does this mean?

When the exception applies, it allows a private foundation to communicate— through e-mail, phone, letters, or in-person visits—with an entire legislative body (such as Congress or a state legislature), its committees or subcommittees, individual legislators, members of their staffs, or representatives of the executive branch who are involved in the legislative process, to oppose or support specific legislation. It also allows the foundation to spend money to support or oppose the specific legislation, and these expenses will not be taxable expenditures.

When does legislation impact a foundation's existence, powers and duties, tax-exempt status, or the deductibility of charitable contributions?

While the answer will depend on the content of each specific bill, the regulations at § 53.4945-2(d)(3) provide some useful examples including:

- 1) a proposed bill that would require private foundations to make certain amendments to their governing documents, and
- 2) legislation that would result in the loss of tax-exempt status for a private foundation engaging in certain transactions with related parties.

In addition to these examples, legislation that would expand, reduce, or eliminate the available charitable deduction for certain contributions to a private foundation would qualify for self-defense communications.

What is not included under the self-defense exception?

- Appropriations bills, even if directly affecting the funding of a foundation, are generally not considered legislation that would impact the existence, powers and duties, tax-exempt status or the deductibility of charitable contributions.
- The self-defense exception also only applies to direct communications with a legislative body or its committees, individual legislators and their staffs, or executive branch representatives engaged in the legislative process. It does not cover grassroots lobbying, which means that a private foundation may not attempt to influence the general public to take action in support of or against specific legislation, even if that legislation might affect the existence of the foundation, its powers and duties, its tax-exempt status, or the deductibility of contributions to it.
- For more details and examples of these permissible advocacy activities, we encourage you to turn to the Treasury Regulations at § [53.4945-2](#), or [IRS Publication 5590](#).