

# How to Fund Lobbying Worksheet



It is important that you are complying with the laws of the land when offering grants. You don't want to run afoul of the Internal Revenue Service (IRS) or any institution that is tracking the legality of your tax-deductible donation. In this lesson, I focus on the United States, but you will find that many countries have laws that are similar because the reasoning for the rules that the United States Congress and the IRS uses is similar to concerns in other countries as well. I also focus this conversation on private family foundations because in the United States these types of institutions have the strictest laws that govern their giving strategies.

Let's first think about the reasoning for the rules and why the United States Congress created the laws that govern grantmaking in the first place. It makes more sense if you think about it in common-sense terms. The U.S. Congress was happy to offer tax-deductible status for donations to nonprofits, religious institutions, and under other specific circumstances; they recognized that the money the United States government has to help people and communities, while sizable, is not always enough.

It is a good thing to offer incentives for people with means to give money to charitable institutions directly. However, Congress did not want to allow this money to be used to lobby Congress, to unjustly enrich oneself, or force private priorities on the policies of the receiving nonprofit. All of the laws described in this lesson focus on these common-sense principles.

Now it's time to examine the four major categories that I consider important in order to be legally savvy about your donations.<sup>1</sup>



Congress does not want to give your donation a tax-deductible status if the intention is to change laws by lobbying Congress.

# 1 ● Lobbying and Electioneering

The rules around electioneering are simple: you can't do it. You are not allowed to use your 501 (c)(3) tax-deductible donation to get someone into elected office.

It is trickier when you consider lobbying. Congress does not want to give your donation a tax-deductible status if the intention is to change laws by lobbying Congress. They want you to help support charities doing work that the public cares about but may not be able to fully fund.

However, it can be confusing when the charities you want to fund are structured in a way that allows them to lobby. For example, if they are a registered public charity, they can lobby as long as it is not a significant part of what they do. So in the proposals you read, you may see reference to lobbying by the group you care about. I offer you a more detailed explanation about how to navigate this below.

## General Support and Lobbying

If you give the organization a **general support grant** it means that your donation goes to the organization with no strings attached. The charity can do whatever it wants with the money. This means that they may decide to lobby with your donation and this is OK—*provided you did not in any way tell them that is what you want them to do with the money*. If you look back on the overall logic of Congress, this should make sense because the public charity has a diverse board of public people who are making decisions about how to spend the donation. You are in no way in charge of how the money is distributed, so you as the grant-giver are not trying to exert undue influence on Congress tax-free.



The project grant, unlike a general support grant, puts strict terms on your donation.

## 2 ● Project Grant and Lobbying

If you give *a project grant*, it is more complex. Even the most experienced nonprofits that I have worked with have bungled this on occasion. The reason: the charity can still lobby but you are not allowed to have any of your donation focus on lobbying.

The project grant, unlike a general support grant, is when you give a donation to a charity but you put strict terms on your donation and you restrict it to only one specific project with tangible outcomes. *You are permitted to fund a project grant, but not if it appears you are funding the project to get the charity to lobby Congress to change certain laws.*

To make sure you are in compliance with the law, it is crucial that the charity gives you a **clear project budget** and—if they are lobbying—it has to be clear in the budget *that you are not funding that aspect of the work*. For example, if the nonprofit has a \$100,000 project budget, and it is spending \$10,000 on lobbying out of that budget, then you can only offer a project grant of up to \$90,000.

### Qualifying for a Tax Deductible Donation

This is the easiest of the four points to navigate. You simply want to be sure that the organization you are giving to does qualify for a tax-deductible donation. You'd be surprised how many groups are not tax-deductible and so it is important to ask this question.

You can check on the status of any organization by typing in their name to [Guidestar Charity Check](#). You can also ask the organization for a copy of its *503 C(3) IRS letter* for your files. <sup>2</sup>

*Note: Governments and others, such as religious institutions, are considered tax exempt and have different requirements to prove official recognition, provided they meet the test of a 503 (c) (3). Check with your lawyer if the group you want to fund does not show up in your Guidestar Charity Check review<sup>3</sup>*



The main thing to keep in mind is that you are not exerting too much influence over the nonprofit.

### 3 • Self-dealing and Conflict of Interest

With both *self-dealing* and *conflict of interest*, the principle is the same: you don't want to enrich yourself personally in any way by giving away money. Not only is it illegal to do this, *it is unethical to condition a gift* on the monetary advantage for yourself in exchange for your support. Self-Dealing is serious because it is an exchange of money in return for favors.

Conflict of interest is when a grant proposal is in front of you but you are also involved with that organization as a volunteer or paid staff. In this case, you are not exchanging money for reward—like in a self-dealing situation—but you are *biased by your affiliation* when funding this organization or effort.

Therefore, if you are sitting on a Foundation as a Trustee that is considering a grant to this organization, *you need to notify everyone of your conflict* (put it in the minutes) and *recuse yourself from voting on the proposal*. Some people even leave the room so as to not show any bias. Note that this is a rule to follow if you are a part of a private family foundation.



# 4 ● Limiting your influence

By now you understand the importance of not exerting too much influence over the nonprofit. This section is going to talk about something called Tipping.

It is the nonprofit that needs to make decisions about their priorities and work plan. Ideally, nonprofits should be getting their support from a diverse array of funding sources, not just a few private donors. There is a debate among experienced funders about how significant a problem this is and whether we even should track it as a part of our evaluations. Nevertheless, it is something that people do track on occasion.

As a rule of thumb, many funders I know have a general policy of only funding nonprofits that receive at least 30% of their support from diverse public donations, and not just a few foundations.

- *I am not an attorney. This lesson is meant to offer you advice about the red flags to avoid. You must hire or contract an attorney to then work through any issues that you feel need review for your own particular circumstance.*
- *If you do not want to worry about a tax deductions, and plan to pay taxes on your donation, then you don't need to worry as much about these requirements. If you do want a deduction, but are concerned about running afoul of the law, there are intermediary institutions like your local Community Foundation, where you can put tax-deductible money into a Donor Advised Fund and then re-grant from there. The intermediary institution can navigate the legalities for you to ensure your donations are all tax-deductible. Regardless of what you ultimately decide to do, it is still important for you to know these rules and the reasoning behind them because no matter how you structure your giving, at some point these questions will arise.*
- *See a handy reference **Tax Guide for Churches and Religious Organizations**, IRS Publication 1828 (Rev. 8-2015) Catalog Number 21096G*

