

U.S. PRIVATE FOUNDATION FUNDS AND ADVOCACY

Prohibition on Lobbying

The funds or resources of the Bill & Melinda Gates Foundation must not be used to influence legislation (“lobbying”). Violation of this rule subjects the foundation to penalties, public disclosure and possible loss of charitable status.

Lobbying covered by the prohibition can take two forms:

1. **Direct Lobbying** is any **communication**:

- to a **government official** (anyone working for a legislative body or any government official or employee who may participate in the formulation of the legislation)
- that expresses a **view** on a **specific legislative proposal** (see below).

2. **Grassroots Lobbying** is any **communication**:

- that expresses a **view** on a **specific legislative proposal**; AND
- includes a **“call to action”** encouraging the recipient of the communication to share views with government officials (e.g. a mechanism for generating an advocacy email to the recipient’s elected representative, talking points intended to be used in a subsequent lobbying communication, specific input on a lobbying strategy, etc.).

The lobbying prohibition applies to U.S. private foundation funds, including funds granted to other organizations, that are earmarked for attempts to directly influence legislation. The prohibition does not include attempts to influence regulations, administrative actions, or non-legislative policies.

What is a legislative proposal?

Legislation is “action by the Congress, any state legislature, any local council, or similar legislative body, or the public.” These rules apply globally, wherever foundation funds are used. It includes:

- specific legislative proposals (including outlines, drafts, and proposals not yet introduced)
- authorizing and appropriations legislation (legislatively-approved budgets and funding)
- legislative confirmation of administration appointees, where applicable
- legislative resolutions, even if they have no binding effect
- treaties subject to legislative approval
- a ballot initiative or referendum

It does NOT include:

- Broad pledges or public commitments, which do not reference or address specific legislative line-items, proposals or appropriations.
- Administrative rules or regulations enacted by a government agency or department
- Actions solely within executive power
- Judicial decisions or other government activities not subject to legislative vote or approval

Are there any exceptions to the lobbying rules?

Yes, there are three exceptions to the lobbying prohibition that permit foundation funds to be used for communications that would otherwise be considered lobbying. They are:

- **Written Technical Advice or Assistance** - assistance provided in response to a written invitation from and on behalf of a legislative body or a non-legislative government entity (executive office, ministry, or agency), committee, subcommittee or leadership office, describing the scope of meeting/comments. The request must come from the leadership of the entity, on behalf of the entity as a whole.
- **Nonpartisan Analysis, Study, or Research** – an objective analysis of an issue, presenting a full and fair review of pertinent facts, that is distributed broadly (including persons on both sides of the issue). Examples include “white papers,” reports, and panel discussions.
- **Issue Advocacy** - public discussion, or communication with legislative officials, addressing broad social, economic, and similar problems that do not address specific legislation (such as the importance of increasing college completion rates or increase funding generally for global health inequities).

Are all of the exceptions to lobbying the same for public charities and private foundations?

No. The tax rules provide two additional exceptions for private foundations. Foundation staff can discuss legislative proposals or legislative actions with legislators and government officials regarding matters related to **jointly-funded programs**. Examples of programs jointly funded by the foundation and governments include the Global Polio Eradication Initiative, GAVI, the Global Fund to Fight AIDS, TB and Malaria and the Global Financing Facility. Communications conducted under this exception cannot include efforts to influence legislative matters unrelated to the joint program being discussed.

Foundations can also use a narrow exception for “**self-defense**” communications to discuss legislation that impacts the powers, duties or tax-exempt status of the foundation. This exception does not extend to programmatic objectives. *Neither the jointly-funded program or the self-defense exception allows foundation grantees to use earmarked foundation funds to lobby under these exceptions* (and may only be used by contract partners following approval and consultation with the foundation).

What are some examples of lobbying and non-lobbying/use of exceptions?

Lobbying examples	Non-lobbying/use of exceptions examples
<ul style="list-style-type: none">• Drafting, negotiating or providing comments on the terms of a bill• Encouraging support of appropriations that are subject to legislative approval• Expressing support to a legislative official for confirmation of an administrative appointee• Attending a coalition meeting to help plan a lobbying strategy• Emailing an op-ed with legislative recommendations directly to a government official• Urging policymakers to increase funding for a specific program that has a line item in the legislative budget	<ul style="list-style-type: none">• Monitoring the progress of legislation that will impact programmatic objectives• Providing testimony before a congressional committee addressing a broad social issue (e.g., support of better data collection in U.S. education)• Providing written information to a Parliamentary committee in response to a written request for such information from the chair of the committee;• Discussing legislative proposals with the media or other non-government audience• Broadly disseminating a non-partisan report providing a full and fair analysis of the impact of varying tobacco tax rates on cessation rates

Are non-legislative communications impacted by these rules?

A foundation can fund discussions with executive/administrative officials (government heads, governors, agency, ministry and department heads, mayors, staff, etc.) when the subject matter does not include specific legislation or legislative proposals. There is no prohibition against influencing the regulatory process or influencing spending decisions that do not require legislative approval.

Can public charities that lobby receive foundation funding?

Yes, with certain restrictions.

- A foundation may make general support grants of unrestricted funds to public charities that lobby if the grant funds are not earmarked for lobbying AND the grantee has discretion to determine how the grant funds will be used.
- A foundation may make project grants to public charities that lobby, if
 - (i) the grant funds are not earmarked for lobbying AND
 - (ii) the amount to be provided by the foundation is less than the amount budgeted by the grantee to be spent on nonlobbying activities (the foundation cannot be the sole funder of a project that anticipates any lobbying activities).

What about rules governing advocacy during elections?

Similar to public charities, foundations are prohibited from allowing their funds to be used for electioneering activities, which means any communication or other action that in any way that would indicate a preference for one party or candidate over another in an election, or provide to a party or candidate any financial or in-kind support through foundation funding.

Examples of activities that are likely to violate these rules include the following:

- Producing candidate scorecards or websites describing candidate positions on issues
- Seeking candidate pledges on issues
- Providing messaging or polling information to candidates or political parties on issues
- Speaking or appearing at campaign rallies or other events

Can this document be relied on for legal guidance?

No, the information contained in this document should not be construed as legal advice. This document focuses on the federal tax rules applicable to the foundation. It does not, however, address state, local, or other lobbying prohibitions, rules, or requirements. Anyone concerned about legal restrictions on lobbying or other advocacy activities should consult their own legal counsel to determine, as appropriate, the applicable federal, state, and local rules and guidelines. Please note legal restrictions may also apply to lobbying activities conducted outside of the United States. For more information about the advocacy and lobbying rules for private foundations, please visit: www.learnfoundationlaw.org.

This **Foundation Funds and Advocacy** document may be found at the following links:

<http://www.gatesfoundation.org/grantseeker/Documents/advocacy-guidelines.pdf> (English)

<http://www.gatesfoundation.org/grantseeker/Documents/advocacy-guidelines-fr.pdf> (French)

<http://docs.gatesfoundation.org/grantseeker/Documents/advocacy-guidelines-CH.pdf> (Mandarin)

- - -

Any suggestions on how to make this document more helpful for others are welcome. Send your suggestions to feedback_legal@gatesfoundation.org. Note this is a feedback email and specific questions regarding your situation or requests for legal advice will not be answered.