

Tips for Public Charities That Make Grants to Advocacy Groups

Does your 501(c)(3) organization help other advocacy groups by fiscally sponsoring them or providing grants to them? If so, your fiscal sponsorship or grant agreements must be written carefully so that their advocacy is not attributed to your organization.

If your 501(c)(3) organization...	Then...
Provides funding to an organization that is a 501(c)(4) or other noncharity	The agreement should state that the funding will be used only for charitable or educational activities that are permissible for 501(c)(3) organizations, and you should require the recipient to report to you on how the funds are used. ¹
<i>If the recipient lobbies for or against legislation and if you don't want the expenditure to count towards your organization's IRS lobbying limit</i>	The agreement should state that the grant is limited to a specific nonlobbying project and should require the recipient to document that the grant is used in that way. ² (If you don't mind the expenditure counting towards your organization's IRS lobbying limit, then you do not need to include such a clause).
<i>If the recipient engages in partisan political activity</i>	The agreement should state that the funding will not be used for partisan political activity within the meaning of section 501(c)(3) of the Internal Revenue Code. ³
Provides funding to a public charity that engages in lobbying	
<i>If your organization does not want the lobbying to be attributed to it</i>	You have two options: 1) give the funding for general operating support, ⁴ or 2) earmark the funding for a specific project and review the recipient's project budget to ensure that it includes non-lobbying activity in an amount at least equal to the full amount of the funding you provide. ⁵
<i>If your organization is willing to have the recipient's lobbying expenditures count towards your organization's IRS lobbying limit</i>	The funding may be earmarked for lobbying. The agreement should specify whether the funding may be used for direct or grassroots lobbying or both (and if so how much may be used for each). ⁶ Draft this provision carefully to avoid triggering lobbying registration and reporting obligations that might apply to your organization. ⁷

This fact sheet is meant to provide general information only, not legal advice. Lawyers Alliance staff are available to help qualifying nonprofits draft and negotiate grant and subgrant agreements, and to provide other business and transactional legal assistance. Please contact Senior Policy Counsel Laura Abel at (212) 219-1800 x283 or visit www.lawyersalliance.org for further information.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, strengthen urban health, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers.

¹ Treas. Reg. 53.4942(a)-3 (describing expenditure responsibility for private foundations).

² Treas. Reg. 56.4911-3(c)(3)(B), 56.4911-4(f)(3).

³ 26 U.S.C. 501(c)(3).

⁴ Treas. Reg. 53.4945-2(a)(6)(i) (regarding general operating support grants made by private foundations); IRS Priv. Ltr. Ruling 200943042 (2009) (“general support grants from you to another public charity may be treated as non-lobbying expenditures so long as they are not earmarked for lobbying, even if some or all of the funds are ultimately expended by the recipient charity for lobbying”).

⁵ Treas. Reg. 53.4945-2(a)(6)(ii) (regarding project specific grants by private foundations); IRS Priv. Ltr. Ruling 200943042 (2009) (“Your grants to a public charity for a specific program will not be considered earmarked for lobbying so long as the grant, combined with all other grants by you for that program during the year, do not exceed the amounts budgeted for non-lobbying activities.”).

⁶ Treas. Reg. 56.4911-3(c) (explaining when grants to public charities and other types of entities that engage in lobbying will count against the grantor’s direct and grassroots lobbying limits).

⁷ See, e.g., N.Y.C. Admin. Code § 3-211(b) (defining a lobbying client as any “person or organization who retains, employs or designates any person or organization to carry on lobbying activities on behalf of such client”).