

Private Foundations Engaging in Direct Advocacy Amid Disaster

As health officials around the globe work to contain the spread of the coronavirus, policy makers are responding to the economic crisis left in its wake. It is essential that our elected officials and business leaders seek public input from the communities hardest hit. Now is the time for bold voices and bold solutions.

Many foundations are already [supporting](#) the efforts of their grantees to ensure those communities hardest hit are heard by our leaders. At the same time, many foundations themselves want to weigh in on policy matters. This resource is geared to support and encourage those who want to engage in direct advocacy themselves during this time.

Although private foundations cannot lobby themselves (but of course their grantees can!), they can engage in many policy activities that do not meet the definition of lobbying. Here are a few tips for those private foundations¹ that want to join sign-on letters, leverage relationships with decision-makers, and speak out publicly on relief efforts that lift up solutions your grantees and their communities have developed.

Express Public Support for Legislative Solutions

Private foundations may use private (non-government) dollars to express public support or opposition for legislation or legislative solutions.

Some examples:

A private foundation could post on **Twitter, Instagram**, or other social media:

“Restaurant and retail workers, who have lost their jobs need our help. Lawmakers need to halt evictions, late fees & utility shut-offs, and expand the eligibility of those who qualify for unemployment benefits.”

Likewise, a private foundation could pen or post **a public blog post or a letter to the editor** that said:

“Medicaid reform is missing in the coronavirus relief plan. We urge Congress to raise Medicaid’s federal match rate by at least 12 points as sought by a majority of governors, make it easier for people to enroll and stay on Medicaid.”

As long as these statements are directed and disseminated to the public and not to lawmakers, the IRS does not consider a private foundation to have lobbied.²

Notes

- 1 Unlike private foundations, public foundations CAN lobby themselves and fund a limited amount of lobbying. See [Public Foundations and Advocacy](#)
- 2 The rules may be different for public charities and public foundations depending upon the way they track their lobbying. See [Public Foundations Can Lobby](#) for an explanation of the two ways to track and define lobbying for public foundations and public charities.

Communicate with Government Officials

Private foundations may communicate directly with elected and appointed officials in a number of ways that do not constitute lobbying.

EXPRESS SUPPORT FOR REGULATORY CHANGE

Private foundations are free to express support or opposition for regulatory changes directly with executive branch officials, administrative agencies, boards and commissions—provided they follow a few simple rules. Private foundations should refrain from using government funds to engage in this type of advocacy. If legislative approval is needed for the policy change, then the communication becomes a lobbying communication.

Example of a permissible tweet:

A private foundation could **tweet** directly to the **Indiana Department of Insurance**:

“Medical providers struggling to provide care to their patients amid coronavirus concerns need IDOI to relax regulatory and reimbursement rules to ease path to safer telehealth options.”

Example of an impermissible tweet:

A private foundation should NOT **tweet** the following as it constitutes “lobbying” for IRS purposes:

“@SenMajLdr McConnell-Hospitals need emergency appropriations for personal protective equipment and ventilators and need Congress to grant @HHS authority to approve Medicaid payments for telehealth visits.”

If a written communication expresses a view on both regulatory and legislative solutions and is directed at lawmakers, it is probably considered a lobbying communication.

EXPRESS SUPPORT OR OPPOSITION FOR EXECUTIVE ORDERS

At every level of government, we are seeing the President, governors, and mayors adopt **executive orders** in an effort to slow the spread of the virus, keep open essential businesses, limit travel, extend elections and change election procedures. Federal tax law permits private foundations to publicly praise or critique these executive orders as well as engage directly with executive officials to craft or amend these orders, provided they do not use federal funds for this type of advocacy. Commenting on or influencing executive orders is not lobbying, presuming no legislative action is needed.

REQUEST RELIEF FROM GOVERNMENT CONTRACT DELIVERABLES

The pandemic has made it difficult if not impossible for some nonprofits to fulfill their grants under a government contract. Private foundations can contact administrative agencies to seek relief for their grantees to continue receiving payments, provided that the agency has authority to revise contracts without legislative action.

ENGAGE IN NON-LOBBYING COMMUNICATIONS WITH LAWMAKERS

Private foundations can legally and safely engage in certain communications with lawmakers that might aid efforts toward equitable solutions but do not rise to the IRS’ definition of lobbying. The

law has carved out several lobbying exceptions:

1. [Share Nonpartisan, Analysis, Research and Study Reports](#)
2. Discuss the need for solutions generally without reference to specific legislation
3. [Provide responses to written requests for technical assistance from a legislative committee](#)
4. Engage in communications with lawmakers that affect the foundation's tax-exempt status, powers, duties and tax deductibility.

For more information on each of these, see pages 7-8 of [Investing in Change: A Funder's Guide to Supporting Advocacy](#).

Technical Assistance Hotline: Thanks to the generous support from our supporters, our legal and evaluation team at Bolder Advocacy maintain a robust library of resources, available on our [website](#), and are available to answer questions from private foundations about their own advocacy efforts. Call 1-866-NP-LOBBY or email us at advocacy@afj.org.



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