

The Project Grant Rule

Private Foundations' Secret Weapon for Funding Public Charity Advocacy

Private foundations *can* fund public charities that lobby.¹ In fact, they can do so in two ways: making general support grants and using the “project grant rule” safe harbor. While general support grants provide the most flexibility for grantees and require little formal due diligence, they cannot always be used. General support grants cannot be used to fund fiscally sponsored projects or even specific programs or initiatives within a larger public charity. This does not mean that private foundations can’t fund designated projects within a larger organization; they simply need to award a specific project grant in lieu of general operating support. Contrary to popular belief, project-specific grants do not need to prohibit the use of grant funds for lobbying—if the project grant rule (PGR) is used.

What is the PGR?

The Project Grant Rule is a safe harbor that allows private foundations to fund a public charity’s specific project, even those that include lobbying.² When making a specific project grant, the private foundation must review the grantee’s project budget and may give a grant in an amount up to the non-lobbying portion of the budget. The public charity must use the grant funds only for the specific project and secure multiple sources of funding. If these conditions are met, the private foundation will not incur a taxable expenditure, even if the grantee subsequently uses some of the grant money for lobbying for the designated project.

When/why is it useful?

PGR can be used when a private foundation wants to fund a public charity’s project that may contain lobbying. General support grants – the most flexible type of funding – cannot be used for funding specific projects or programs. PGR can be used for a particular initiative (such as a project to raise the minimum wage), flexible support for a program within a larger organization (such as a “Healthy Communities” program held within a specific nonprofit) (sometimes referred to as core support), or for a fiscally sponsored project.

Without using the PGR, there is a risk that a project grant could be considered earmarked for lobbying. Therefore, when making grants other than general support grants, many funders explicitly prohibit the grant funds from being used for lobbying. While this lobbying prohibition alleviates the private foundation’s concern of making a taxable lobbying expenditure, it also makes it harder for the grantee to do its work.

¹ Unlike private foundations, public charities can lobby, subject to their lobbying limits determined by the Insubstantial Part Test or the 501(h) Expenditure Test.

² Some funders use the PGR to fund an entire program within a larger organization – a “general support” or “core support” grant to a program. In that case, the program is treated as the project.

The PGR sets out a framework for which private foundations can fund specific projects – even projects that contain lobbying – without 1) making taxable lobbying expenditures and 2) prohibiting the grantee from using the grant funds for lobbying. PGR allows the grantees to use the funds for their charitable purposes (including lobbying) while providing legal protection for the grantor.

How does PGR work?

The regulations do not include a lot of detail, so foundations have been interpreting these rules for themselves for years. The law does not require any particular format for making these grants.

So, what are the legal requirements?

- The grantee must be a 501(c)(3) public charity (or be fiscally sponsored by a public charity);
- The grantee must provide a project budget that designates the amount to be spent on lobbying;
- The grant cannot exceed the non-lobbying amount of the project budget;
- A private foundation cannot be the sole funder of the project;
- The grantee must spend the funds for the designated project; and
- The grant cannot be *earmarked* for lobbying.

What should the private foundation and grantee look out for in PGR applications?

- The specific project must have more than 1 funder (in addition to foundation grants, “funders” can include contributions from individuals, fees for services, or fundraisers).³
- Grantees need to determine how much they will be spending on lobbying, as defined by federal tax law (not state law and not the Federal Lobbying Disclosure Act).
- Grantees must provide the private foundation with a budget that shows how much of the project is not lobbying.

³ A private foundation cannot get around this rule by making multiple grants to the same grantee for the same project. If a private foundation awards more than one grant to a grantee in the same year for the same project, the amount of all grants to that grantee must not exceed the amount budgeted for the project’s non-lobbying amount.

- ✓ The private foundation can rely on the budget unless it has reason to doubt it; one way to demonstrate reliability is to have an officer, director, or trustee attest to the reasonableness of the budget.
- ✓ If the grant is for more than one year, then grantees should provide the budget information for multiple years. Generally, foundations use the same analysis for each year. For more details on multi-year PGR grants, see Bolder Advocacy's [Investing in Change](#), pages 14-15.

What is NOT legally required?

- ✓ Private foundations do not need to prohibit grant funds from being used for lobbying.
- ✓ Grantees do not need to list other funders or types of funding, or attest that they have already secured other funding.
- ✓ The law requires a breakdown of lobbying costs vs. non-lobbying costs. It does not require a breakdown of each expense.
- ✓ A report at the end of the grant is not required. Private foundations do not need to ask/receive a breakdown of which activities were covered by their grant and which were paid by other funding sources.

What is the Model PGR Budget Template?

The Project Grant Rule is a fabulous tool for funding advocacy and it is actually quite simple and easy to use.

Our templates include all legally required information. Each foundation does not need to create its own version. In addition to not needing to recreate the wheel, we hope that using a standardized form will make it easier for grantees, who will not need to learn a new process for each foundation. Much of the information that private foundations have traditionally sought is not legally necessary – and may complicate compliance.

As you'll see, the law does not require a lot of detail. Most lawyers want to include only the minimum required information. However, there is a general good-faith disagreement about what that means – some want to see the “answer” only while others want to see “the work” behind the project. Therefore, we created two versions, either of which could be used.

We're a private foundation. How should we approach the Model PGR Budget Templates?

As described above, the law does not require private foundations to require a lot of budget detail or information about other funders. Foundations may have their own

internal reasons for wanting more information or for imposing other limitations on the use of PGR. We encourage foundations to consider the questions below to determine how to use the PGR Budget Template, and which one is right for you.

Before Using the PGR Budget Template, Ask Yourself:

How much information about other funders do you want? You only *need* to know the grantee has enough funding from other sources to cover the lobbying expenditures. Why do you need/want revenue broken down by source (foundations, fee for service, special events, etc.)? Why do you need/want to know what other funding is secured?

Do you prohibit the funds from being used for lobbying? If so, why? This is overly restrictive and eliminates the benefits of the safe harbor.

How much information about the expenses do you want? For each expense category, do you want to know how much is lobbying vs. non-lobbying? Alternatively, do you want to know only the total expenses? How do you use the information?

How do you determine whether you can reasonably rely on the budget?

Will you make a grant up to the non-lobbying expenditures, or do you want a cushion (maybe up to 85% of the non-lobbying expenditures, etc.)?

In the proposal or grant award letter, will you ask the grantee to certify the accuracy of the budget or sign a statement in the grant award letter certifying the proposed budget for the specific project and that the project's budgeted non-lobbying expenses are less than the amount of the grant?

Do you want a report at the end of the grant? If so, do you want a description (and budget breakdown) of the entire project, or of how your money was spent only? If so, why? You do not *need* to know how your funds were allocated across the project.

Appendix A: The Law

What does the law say about specific project grants?

The tax code regulations allow private foundations to fund projects that include lobbying carried out by public charities. They do not provide a lot of detail about what is required.

26 CFR § 53.4945-2(a)(6)(ii) states:

“A grant, by a private foundation to fund a specific project of a public charity is not a taxable expenditure by the foundation under section 4945(d)(1) to the extent that –

- 8) The grant is not earmarked...to be used in an attempt to influence legislation, and
- 9) The amount of the grant, together with other grants by the same private foundation for the same project for the same year, does not exceed the amount budgeted, for the year of the grant, by the grantee for activities of the project that are not attempts to influence legislation. If the grant is for more than one year, the preceding sentence applies to each year of the grant with the amount of the grant measured by the amount actually distributed by the private foundation in each year or divided equally between years, at the option of the private foundation. The same method of measuring the annual amount must be used in all years of a grant. This paragraph...applies without regard to whether the public charity has made the election under section 501(h).”

The regulations goes on to say that “[f]or purposes of determining the amount budgeted by a prospective grantee for specific project activities that are not attempts to influence legislation..., a private foundation may rely on budget documents or other sufficient evidence supplied by grantee (such as signed statement by an authorized officer, director, or trustee of grantee) showing the proposed budget of the specific project, unless the private foundation, based on all the facts and circumstances, reasonably should doubt the accuracy or reliability of the documents.”

IRS Guidance

In a [2004 letter](#) to Charity Lobbying in the Public Interest, the IRS responded to a list of questions to “assist in correcting misconceptions” about lobbying and influencing public policy by private foundations. Among the questions answered:

- 5) **Is a foundation required to include a specific provision in its grant agreements that no part of the grant funds may be used for lobbying?**

A specific provision is required only if the grantee organization is not a public charity, or if the private foundation earmarks the grant for use by an organization that is not a public charity.

6) **Under what circumstances can a foundation make a grant to a public charity for a specific project that includes lobbying?**

A private foundation can make a grant to a public charity for a specific project that includes lobbying pursuant to sections 53.4945-2(a)(6)(ii) and (iii) of the regulations if (1) no part of the grant is earmarked for lobbying, (2) the private foundation obtains a proposed budget signed by an officer of the public charity showing that the amount of the grant, together with other grants by the same private foundation for the same project and year, does not exceed the amount budgeted, for the year of the grant, by the public charity for activities of the project that are not lobbying, and (3) the private foundation has no reason to doubt the accuracy of the budget.

7) **In the response to the preceding question, does it matter that the public charity's proposal indicates that it will be seeking funds for the specific project from other private foundations without referring to other, additional sources of funds?**

No, the specific project grant rules in section 53.4945-2(a)(6)(ii) of the regulations do not require the private foundation to concern itself about the other sources of funding for the project in such situations.

8) **What if, in the conduct of the project, the public charity actually makes lobbying expenditures in excess of its estimate in the grant proposal?**

If the requirements . . . are met (no earmarking, budget shows non-lobbying costs equal to or greater than grant, and no reason to doubt accuracy of budget), then the private foundation will not have made a taxable expenditure under section 4945(d)(1) of the Code for that year, even if the public charity makes lobbying expenditures in excess of the budgeted amount. However, knowledge of the excess may provide a reason to doubt the accuracy of subsequent budgets submitted by the public charity.

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