

# ADVOCACY AND LOBBYING

As a U.S. private foundation, the Ford Foundation is prohibited from funding attempts to “influence legislation” (often referred to as the lobbying prohibition). A violation could result in penalty taxes for the foundation or even the loss of its tax-exempt status. As a result, grantees of the foundation may not use grant funds for lobbying but may conduct advocacy that does not constitute lobbying under U.S. tax law.<sup>1</sup> We hope this guide will help clarify the difference.

## What is the definition of lobbying under U.S. tax law?

**Direct Lobbying** is any attempt to influence legislation through communication that:

- refers to specific legislation or a legislative proposal;
- reflects a view on the legislation or legislative proposal; **and**
- is to any member or employee of a legislative body or any government official or employee who may participate in the formulation of the legislation.

**Grassroots Lobbying** is any attempt to influence legislation through communication with the public that:

- refers to specific legislation or a legislative proposal;
- reflects a view on the legislation or legislative proposal; **and**
- encourages the recipient with a “call to action”, which is defined as:
  - Urging the recipient to contact a legislator, staffer, or other government employee for the purpose of influencing legislation;
  - Stating the address, phone number, or similar information for a legislator or staffer;
  - Providing a petition, tear-off postcard, or email for the purpose of influencing legislation; **or**
  - Identifying one or more legislators who will vote on the legislation as opposed or undecided; as the recipient’s member in the legislature; or as a member of the committee or subcommittee that will consider the legislation.

## What is specific legislation?

**Legislation** is any action by any legislative body in the U.S. or overseas (e.g., the U.S. Congress, a national parliament, a state legislature, a local city council, etc.), including:

- specific legislative proposals (including those not yet introduced or pending in the body)
- authorizing and budget appropriations legislation

<sup>1</sup> If your organization is the recipient of a general support grant or a grant subject to the project grant rule, please refer to the *Ford Foundation Grantee Guide – Lobbying Activity and the Project Grant Rule*, and consult your grants manager.



- legislative confirmation of executive appointees
- legislative resolutions, even if they have no binding effect
- treaties subject to legislative approval
- a ballot initiative or referendum by the public (where the voters = legislative body)
- U.N. resolutions that have binding effect on member states
- model legislation

## What is not specific legislation?

Legislation does **not** include:

- administrative rules or regulations enacted by a government agency or ministry
- executive orders and other actions solely within executive power
- judicial decisions
- budget allocation decisions that do not require legislative approval

## What does not qualify as lobbying?

There are some exceptions that allow foundation funds to be used for communications that would otherwise be considered lobbying:

1. **Technical advice or assistance** provided to a governmental body, committee, or subcommittee in response to a **written** request, if
  - the request is on behalf of the body (as opposed to an individual legislator); **and**
  - the response is made available to all members of the body on a nonpartisan basis, such as at a committee or subcommittee hearing.
2. **Nonpartisan analysis, study, or research** such as a white paper, report, or panel discussion, if
  - it contains a sufficiently full and fair exposition of an issue that would allow someone to form an independent opinion or conclusion; **and**
  - is distributed broadly (including those on both sides of the issue).

## What are some examples?

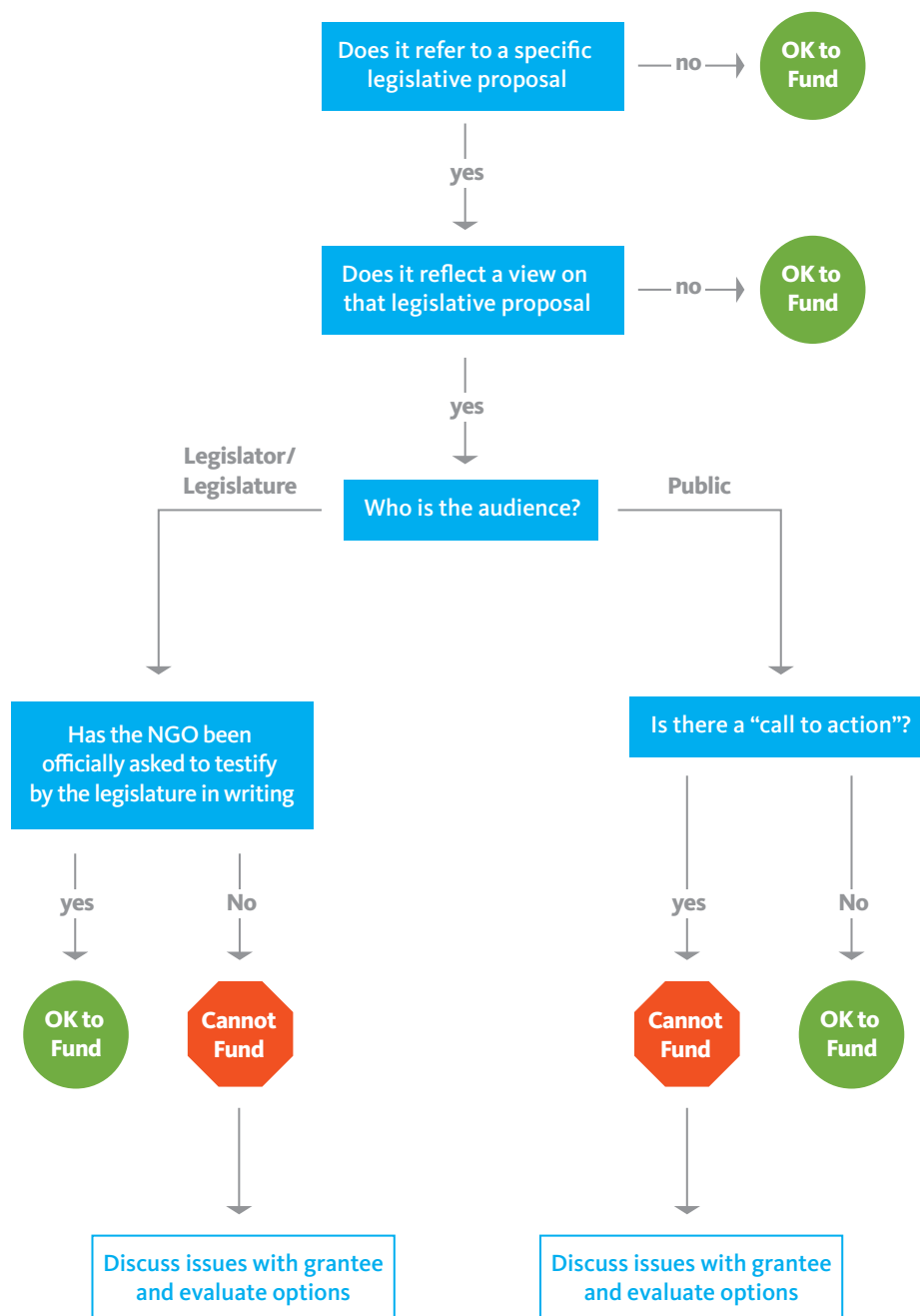
Some examples of prohibited lobbying include:

- drafting, negotiating, or providing comments or other assistance on a pending or proposed bill;
- meeting with legislative staff members to ask them to increase funding for a program that requires a legislative budget appropriation;
- asking the organization's members to write to their legislators to confirm a judicial appointee; and
- asking the public to vote a particular way on a ballot initiative.

Some examples of permissible advocacy include:

- monitoring the progress of pending legislation and sharing the results on the organization's website;
- providing testimony at a congressional hearing in response to a letter from the committee;
- expressing a view on a bill in an op-ed article that does not ask the public to take any action;
- educating legislators on a particular issue without addressing specific legislation;
- meeting with staff of a governmental agency to advocate for specific implementing regulations under an existing law; and
- filing a lawsuit to overturn a law.

## The Advocacy and Lobbying Flow Chart



## Are there any additional laws that apply to an organization's lobbying activities?

Even if an activity is not lobbying under U.S. tax law, it may be lobbying under the Lobbying Disclosure Act (LDA), a federal statute requiring registration and reporting of certain lobbying activities with the Clerk of the U.S. House of Representatives and the Secretary of the U.S. Senate. The LDA requires an organization to register if its total lobbying expenses exceed or are expected to exceed \$13,000 during a quarterly reporting period, **and** the organization has an employee who makes at least two **lobbying contacts** and spends at least 20% of his or her time on **lobbying activities** over a three-month period.

A **lobbying contact** is any communication with a member of Congress or certain legislative branch officials or employees, or with the President, Vice President, or certain executive branch officials or employees regarding:

1. Federal legislation or a federal rule, regulation, or executive order (including proposals);
2. A federal program, policy, or position (e.g., contracts, grants, loans, permits, licenses, etc.); or
3. Nomination or confirmation of a person for a position subject to Senate confirmation.

**Lobbying activities** include lobbying contacts and related support activities (e.g., preparation and planning, research, and coordination with the lobbying activities of others).

Finally, many states have lobbying registration and reporting requirements, and organizations should review these state-level requirements as necessary.

## Can this guide be relied on as legal advice?

No, this is a general overview and should not be construed as legal advice or shared with anyone else without the foundation's consent. Further guidance and educational resources may be found on the websites of the Internal Revenue Service (Charities and Nonprofits section) at [irs.gov/charities-non-profits](https://www.irs.gov/charities-non-profits), the Bolder Advocacy initiative of the Alliance for Justice at [bolderadvocacy.org/](https://bolderadvocacy.org/), and [learnfoundationlaw.org/](https://learnfoundationlaw.org/). For legal advice, please contact your legal counsel.