Advocacy and Lobbying Guidelines

Alice Warner, Director of Policy
Annie Sherzer, Grants & Contracts Manager/Staff Attorney
Some Legal Considerations

- Federal tax code
- State lobbying laws
- Lobbying Disclosure Act
Today’s Presentation

- About 501(c)(3) tax-exempt organizations
- Policy & advocacy
- What is lobbying?
- Safe harbors
- PGR Requirements
- Sources and resources
About 501(c)(3)
Tax-Exempt Organizations
501(c)(3) Tax-Exempt Organizations

Private Foundations
- W.K. Kellogg Foundation
- McKnight Foundation
- Robert Wood Johnson Foundation
- Con Alma Health Foundation

Public Charities
- Schools/Universities
- Hospitals
- Community foundations
- Publicly supported organizations (e.g. community-based organizations)
<table>
<thead>
<tr>
<th>Public Charities</th>
<th>W.K. KELLOGG FOUNDATION™</th>
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<tbody>
<tr>
<td>Partisan political advocacy</td>
<td>No</td>
</tr>
<tr>
<td>Lobbying</td>
<td>Yes</td>
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<tr>
<td>Nonpartisan political and other advocacy</td>
<td>Yes</td>
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Methods for Tracking/Reporting Lobbying Expenditures

501(h) Expenditure Tests

- Clear definitions of lobbying
- Lobbying limits up to 20% of annual expenditures
- Elect method by filing IRS Form 5768

Discuss with your legal counsel/accountant as to the best method for your organization.

Insubstantial Part Test

- Default method
- Subjective test, no clear definition of lobbying
- Lobbying restricted to approximately 5% of activities/expenditures
Policy & Advocacy
Types of Policy

Organizational
- Policy manual & standards
- Codes of ethics
- Tenure & appointments
- Articulation agreements

Regulatory
- Administrative rules
- Regulations
- Executive orders
- Court decisions

Judicial
- Bills
- Laws
- Referenda
- Constitution
- Court decisions

Legislative
- Appropriations
- Federal or state budgets

Fiscal
(WKKF Funds are NOT Earmarked for Lobbying)
What Is Lobbying?
Two Types of Lobbying

1. Direct
   Communication with a legislator expressing a view about specific legislation

2. Grassroots
   Communication with the general public expressing a view about specific legislation that includes a call to action
Communication

- Phone calls
- Emails
- Meetings
- Letters
- Listserv messages
- Websites
- Paid advertisements
- Newsletters
- E-newsletters
- News releases

- Broadcasts
- Podcasts
- Op-ed columns
- Blogs
- Presentations
- Interviews by media
- Public service announcements
- Webinars
Legislators

Most elected officials and staff

- City councils
- County commissioners
- Governors
- Tribal council members
- State representatives and senators
- U.S. representatives and senators
- General public (ballot measures)
Not Legislators

- Executive branch departments
  - Department of Education
  - Department of Labor
  - Department of Agriculture
- Administrative agencies
  - Food and Drug Administration
  - Environmental Protection Agency
- School boards
- Zoning commissions
- Ad hoc special-purpose bodies
Specific Legislation

• Anything on which a legislature or committee can vote
• Bills, resolutions, appointments and vetoes
• Legislation that has been introduced
• Specific legislative proposals not yet introduced
  – Proposing “the” solution or “a” model
• Ballot initiatives and referenda

• …not issues of broad social concern
• …not actions by administrative bodies
Calls to Action

- Urging recipient to contact legislator or staffer ("Tell Congress what you think" or "Call your state representative")
- Providing address or telephone number of legislator
- Providing petition or tear-off postcard addressed to a legislator
- Identifying legislator’s position (opposed, in favor, undecided) on legislation your organization supports or opposes
- Website links – “two click rule”
Mass Media Rule

Must meet all of the following:

- Paid mass media communication
- Highly publicized legislation
- Within two weeks of a vote
Lobbying Exceptions

- Examinations and discussions of broad social, economic or similar problems
- Nonpartisan analysis, study or research
- Technical advice or assistance
- Self defense
Technical Assistance

- Testimony or other assistance in response to
  - a *written* invitation
  - from a *governmental body* or *committee* (not from an individual legislator, staff member or informal body, e.g., caucus)
It Isn’t Lobbying If You…

- Comment on rules and regulations
- Litigate
- Ask for an executive order
- Ask for enforcement of existing laws
- Leave out one of the elements needed to constitute lobbying

And for grassroots lobbying…

- Leave out the call to action
About Safe Harbors
Safe Harbors for Private Foundations

WKKF can fund grantees that lobby as well as projects that include lobbying

**General Support Grants**
- Mission based
- Operating support
- Funds not designated for specific projects

**Specific Project Grants**
- Identifiable project (project accounting)
- More than one funding source
- WKKF can fund up to non-lobbying limits
PGR Requirements
PGR Requirements

Project Grant Rule (PGR) essentials:

• Specific Project that includes a lobbying component
• Multiple funders
• Fund Accounting – no tracking of each funder’s contribution
• Reliable accounting systems and lobbying tracking mechanisms
• Annual Report includes:
  – Update on the progress of the Project
  – No reference to what was accomplished with WKKF funding
  – Financial report is a summary of expenditures for the Project per year
  – Evaluation of Project addresses global metrics that is not specific to the funder
PGR Requirements

Do’s and Don’t

• **Do** talk about the project when speaking to funders
• **Do** discuss and hold separate meetings for PGR grantees
• **Don’t** mix PGR discussions or meetings with standard commitment grantees and contractors of WKKF.
• **Don’t** send WKKF staff lobbying communications/emails and expect a response
A Reminder

• This presentation was prepared to provide guidance to WKKF grantees on WKKF funding policy regarding advocacy work. It is not a comprehensive review of all of the laws and regulations concerning lobbying by foundations and other charitable organizations.

• This presentation does not contain legal advice and should not be relied upon as such. For legal advice regarding advocacy and lobbying regulations, grantees should consult their own counsel.

• As a tax-exempt private foundation, the W.K. Kellogg Foundation is prohibited from supporting any direct or grassroots lobbying.

• With that understanding, we encourage grantees and potential grantees to use every public advocacy tool at their disposal.
Questions?