

Advocacy and Lobbying Guidelines

Alice Warner, Director of Policy

Annie Sherzer, Grants & Contracts Manager/Staff Attorney



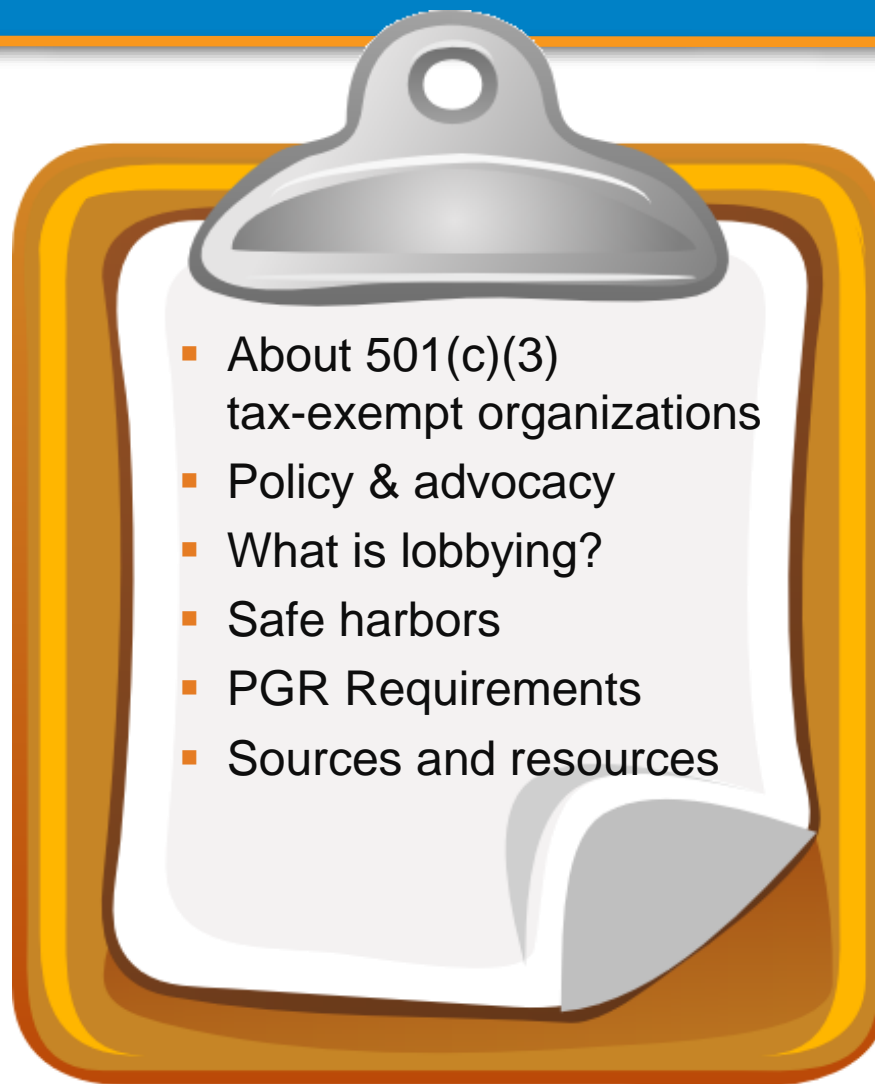
W.K.
KELLOGG
FOUNDATION™

Some Legal Considerations

- Federal tax code
- State lobbying laws
- Lobbying Disclosure Act



Today's Presentation



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)

	Public Charities	 W.K. KELLOGG FOUNDATION™
Partisan political advocacy	No	No
Lobbying	Yes Subject to limits	No
Nonpartisan political and other advocacy	Yes	Yes – special rules for voter registration

501(h) Expenditure Tests

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

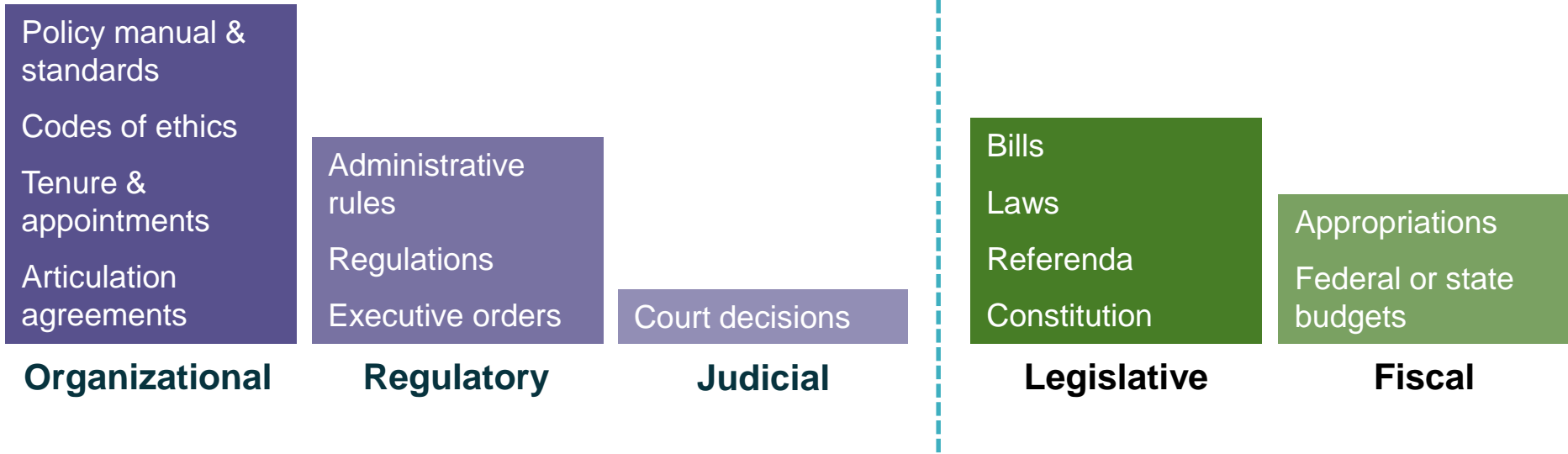
*Discuss with your legal counsel/
accountant as to the best method for
your organization.*

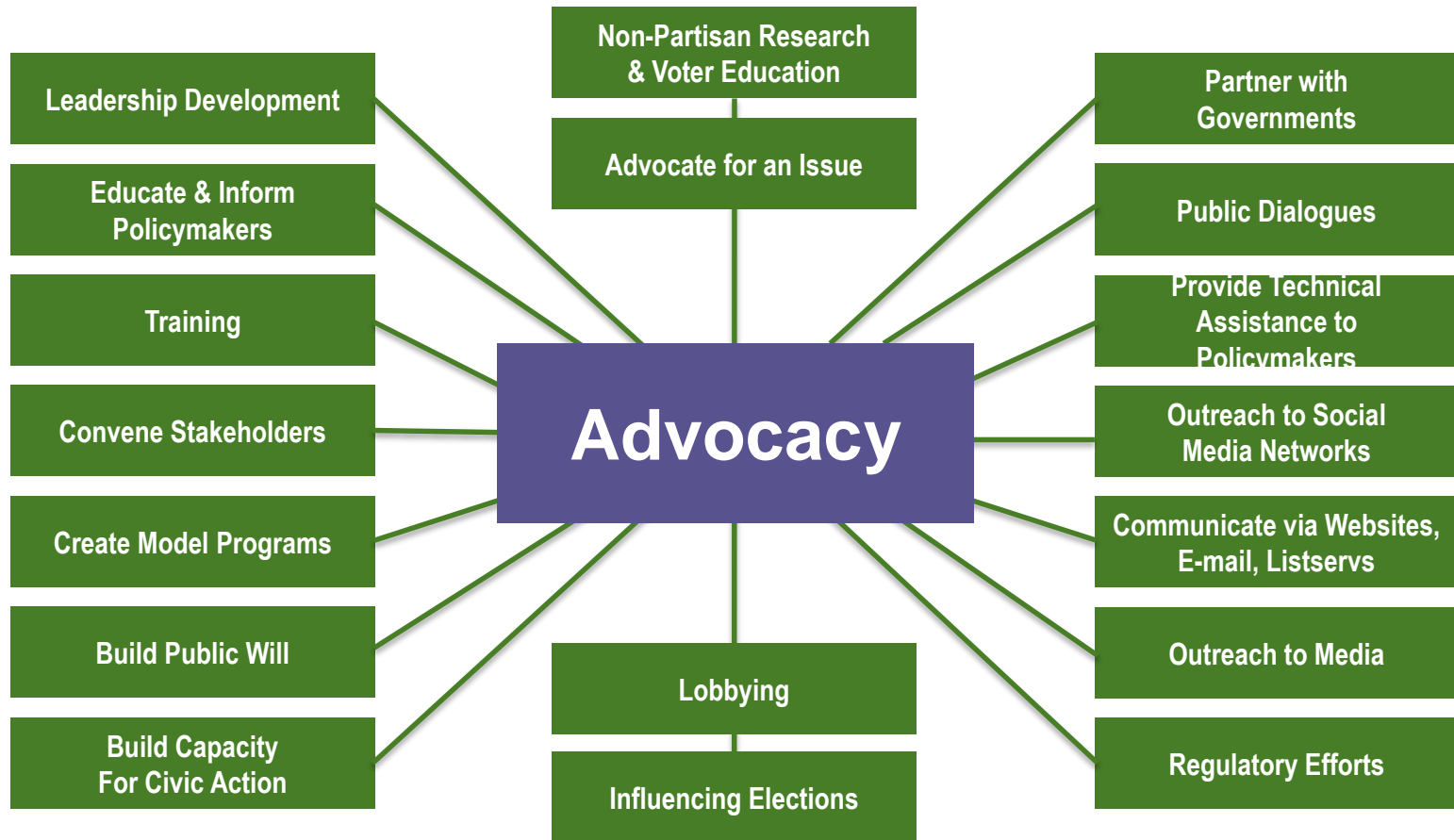
Insubstantial Part Test

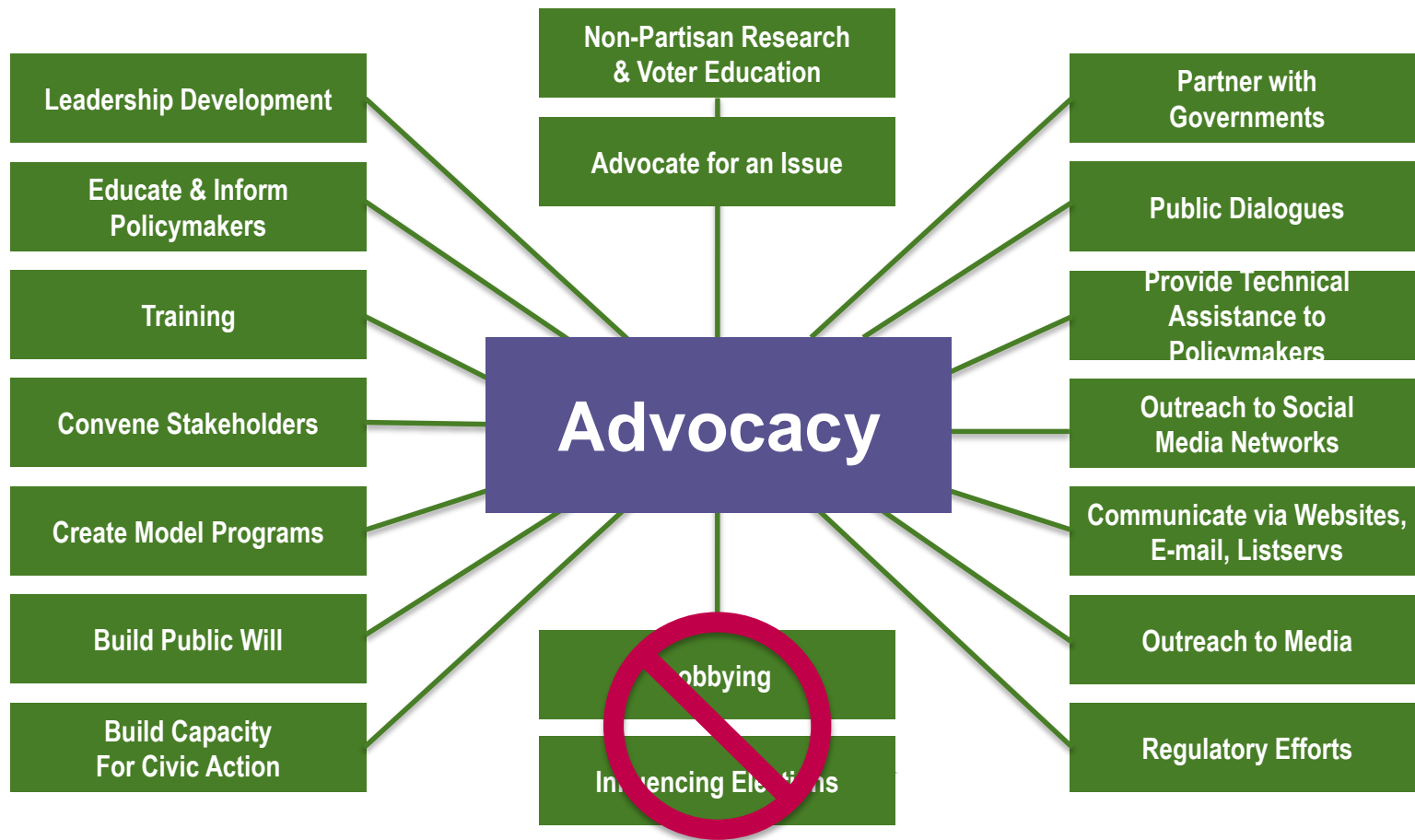
- Default method
- Subjective test, no clear definition of lobbying
- Lobbying restricted to approximately 5% of activities/expenditures

Policy & Advocacy


Types of Policy







(WKKF Funds are NOT Earmarked for Lobbying)

A man in a grey suit and white shirt is speaking at a podium. He is looking to his right. A microphone is positioned in front of him. The background is a blurred indoor setting with green and yellow panels.

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

- 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

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



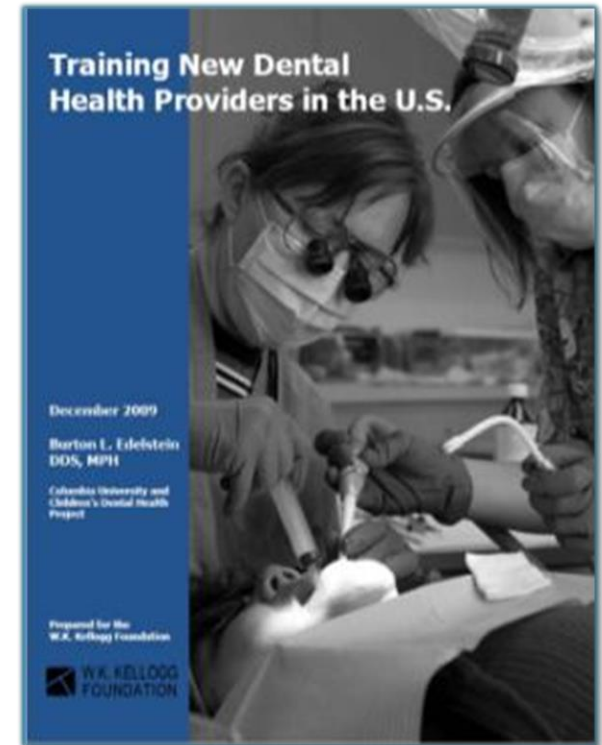
Detroit Free Press

The New York Times

The Washington Post

Lobbying Exceptions

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



- 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

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

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?