

## **PRIVATE FOUNDATION LOBBYING EXCEPTION: NONPARTISAN ANALYSIS**

Treas. Reg. Section 53.4945-2(d)(1)

Nonpartisan analysis, study, or research (“NPASR”) is defined as an independent and objective exposition of a particular subject matter that includes a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. Under federal tax law rules applicable to 501(c)(3) charities, NPASR is not direct or grass roots lobbying, even if a particular position or viewpoint is advocated. The mere presentation of unsupported opinion will not qualify. Further, distribution of the communication may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue.

Certain communications classified as grass roots lobbying (directed to the public or a segment of the public) are *not* permitted to use the NPASR exception. It depends on the nature of the “call to action” in the communication. A call to action is any of the following:

1. A statement that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation.
2. A statement of the address, telephone number, or similar information of a legislator or an employee of a legislative body. Apparently, this means that presenting such information about an executive or administrative official is not a call to action.
3. Inclusion of a petition, tear-off postcard, or similar material for the recipient to communicate with a legislator or an employee of a legislative body (or other government official involved in the legislation).
4. Specifically identifying one or more legislators who will vote on the legislation as: opposing the foundation’s view on the legislation, being undecided, being the recipient’s representative in the legislature, or being on the committee or subcommittee that will consider the legislation. Naming the sponsor of the legislation to identify it is not a call to action.

If the grass roots communication contains a Type 1, 2, or 3 call to action, it cannot qualify as NPASR; a Type 4 call to action is permissible.

NPASR may be presented in written, oral, or electronic form, and it may be in summary form, but each type of presentation must credibly acknowledge both sides of the issue in a manner appropriate to the medium used.

**PRIVATE FOUNDATION LOBBYING EXCEPTION:  
TECHNICAL ADVICE**

Treas. Reg. Section 53.4945-2(d)(2)

Providing technical advice or assistance to a governmental body or committee (or a subdivision of either) in response to a written request or invitation by such body is not direct lobbying. The request must be made in the name of the committee, agency, or subdivision, rather than an individual member of the body. The response must be made available to every member of the requesting body, and the foundation's opinions or recommendations may be given only if specifically requested, or directly related to requested materials.

**PRIVATE FOUNDATION LOBBYING EXCEPTION:  
JOINTLY-FUNDED PROJECTS**

Treas. Reg. Section 53.4945-2(a)(3)

Amounts paid or incurred by a private foundation in carrying on discussions with officials of government bodies are not legislative lobbying if the following conditions are met:

1. The subject of such discussions is a program which is jointly funded by the foundation and the government or is a new program which may be jointly funded by the foundation and the government;
2. The discussions are undertaken for the purpose of exchanging data and information on the subject matter of the program; and
3. Such discussions are not undertaken by foundation managers in order to make any direct attempt to persuade governmental officials or employees to take particular positions on specific legislative issues other than such program.

In other words, it is not lobbying for the officers, directors, employees, or other agents of a private foundation to seek governmental support or funding for a foundation's programs, including contacting local, state, or federal officials in support of legislation to fund the same programs that the foundation plans to fund.

The jointly-funded project exception is not available to public charities, whether or not they have elected to be governed by Section 501(h) of the Internal Revenue Code.

**PRIVATE FOUNDATION LOBBYING EXCEPTION:  
“SELF-DEFENSE”**

Treas. Reg. Section 53.4945-2(d)(3)

Amounts paid or incurred by a private foundation in appearing before or communicating with any legislative body are not legislative lobbying if the appearance or communication concerns a possible decision by the body which might affect the existence of the foundation, its powers or duties, its tax-exempt status, or the deductibility of contributions to it. The appearance or communication may be before, or addressed to, the entire legislative body, a committee or subcommittee, individual legislators or members of their staffs, or representatives of the executive branch of government involved in the legislative process, so long as the subject is limited as prescribed.

Although generally referred to as the “self-defense” exception, it may actually be used as a sword as well as a shield – the exception covers initiating legislation that is described within the prescribed limits.

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