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Thank you for joining us. The webinar will begin shortly!
Sue Santa
Senior Vice President of Public Policy and Legal Affairs, Council on Foundations
Speakers

Don Snyder
Tax Associate
Federal Policy Group

Katherine LaBeau
Policy Director & Counsel
Council on Foundations

David Thompson
Vice President of Public Policy
National Council of Nonprofits

David Heinen
Vice President for Public Policy & Advocacy
North Carolina Center for Nonprofits
Lay of the Land:
What’s Happening on the Hill in 2016?

Don Snyder, Tax Associate, Federal Policy Group
In 2016, there are 366 days because it is a leap year. Of those days, 251 are work days because of holidays and weekends. The House will be in session for 111 of the 251 work days. The Senate will be in session for 149 of the 251 work days.

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Number of Work Days</th>
<th>House: Days in Session</th>
<th>Senate: Days in Session</th>
<th>House: % of Work Days</th>
<th>Senate: % of Work Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Quarter</td>
<td>62</td>
<td>33</td>
<td>41</td>
<td>53%</td>
<td>66%</td>
</tr>
<tr>
<td>2nd Quarter</td>
<td>64</td>
<td>36</td>
<td>54</td>
<td>56%</td>
<td>84%</td>
</tr>
<tr>
<td>3rd Quarter</td>
<td>64</td>
<td>26</td>
<td>27</td>
<td>41%</td>
<td>42%</td>
</tr>
<tr>
<td>4th Quarter</td>
<td>61</td>
<td>16</td>
<td>24</td>
<td>26%</td>
<td>39%</td>
</tr>
</tbody>
</table>
House

• Speaker Paul Ryan plans to roll out major policy initiatives in five areas:
  • The economy, including energy reform, tax reform and regulatory reform
  • National security policy
  • Policy to combat poverty
  • Healthcare policy addressing Obamacare, Medicare and Medicaid
  • Restoring the Constitution: initiatives to combat the use of executive actions by the President

• Speaker Ryan also plans to pass all twelve appropriations bills through “regular order”
2016 Agenda

Senate

- Majority Leader Mitch McConnell has not publicly indicated he supports an expansive legislative agenda. Rather, it is reported that he intends to focus on “doable” items, such as:
  - Modernizing energy policy
  - Bolstering national security
  - Reducing regulatory morass and restricting executive actions
  - Healthcare policy addressing Obamacare
Relative Congressional “Newness”

Number of Representatives with less than 5 years tenure
- Republican: 141
- Democrat: 68

Number of Representatives with 5 to 10 years tenure
- Republican: 33
- Democrat: 31

Number of Representatives with 10 to 15 years tenure
- Republican: 40
- Democrat: 25

Number of Representatives with more than 15 years tenure
- Republican: 32
- Democrat: 64
The Legal Framework: Overview of Rules for Lobbying & Election-Related Activity

Katherine LaBeau, Policy Director & Counsel, Council on Foundations
Federal Tax Rules:

- **Private Foundations**: lobbying prohibited*
- **Public Charities**: “insubstantial” lobbying permitted
- **Both**: Other types of advocacy generally unlimited

Other state rules regarding reporting/registration may also apply.

*S Self-defense exception for private foundations
### Legal Framework: Lobbying

#### Public Charity Lobbying Tests

<table>
<thead>
<tr>
<th></th>
<th>Insubstantial Part Test</th>
<th>501(h) Expenditure Test</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amount of Lobbying Permitted</strong></td>
<td>Approximately 5% of overall activities</td>
<td>Sliding scale based upon budget ($1 million absolute maximum)</td>
</tr>
<tr>
<td><strong>What Counts Against Limits</strong></td>
<td>Any lobbying activity, including cost-free</td>
<td>Money spent on lobbying</td>
</tr>
<tr>
<td><strong>Consequence of Exceeding Limits</strong></td>
<td>Loss of tax-exempt status</td>
<td>Excise tax</td>
</tr>
<tr>
<td><strong>How to Inform IRS of Choice</strong></td>
<td>Nothing (default test)</td>
<td>Complete IRS Form 5768</td>
</tr>
</tbody>
</table>
Direct Lobbying

1. **Direct Communication,**

2. **With a legislator,**
   - Federal, state, and local level representatives and their staff
   - Executive officials when participating in formulation of legislation
   - The public, if it is a ballot measure
   - **NOT** members of special purpose boards (planning commissions, zoning commissions, school board)

3. **Expressing a view about specific legislation.**
   - **EXCLUDES:**
     - Regulations
     - Litigation
     - Executive Orders
     - Enforcement or Implementation of Laws
Grassroots Lobbying

1. Communication,
2. With the general Public,
3. Expressing a view about specific *legislation*.
4. Includes a “call to action”
   - Urging recipient to contact legislator(s)
   - Providing address, telephone number, and/or other contact information of legislator(s)
   - Providing mechanism to ensure communication with legislator(s)
   - Identifying legislator(s)

Legal Framework: *Lobbying*
Both private and community foundations can fund lobbying, with certain restrictions.

Community foundations can fund lobbying up to their own lobbying limit ("insubstantial part" or 501(h) limit)
  - Community foundations selecting 501(h) can follow private foundation safe harbors for general support or project-specific grants.

Private foundations can make two types of grants to avoid a taxable expenditure:
  - General Support
  - Project-Specific
Legal Framework: *Lobbying*

**Funding Lobbying – Private Foundations & 501(h) Community Foundations**

- **General Support Grants:**
  - Permissible, even if grantee has lobbying activities
  - No written or oral agreement that it will be used for lobbying (earmarking)

- **Project-Specific Grants:**
  - May fund up to the *non-lobbying amount*
  - May rely on grantee budget if reasonable
  - No earmarking

---

**Project Budget Example**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Anti-hunger project</td>
<td>$100,000</td>
</tr>
<tr>
<td>Lobbying</td>
<td>$10,000</td>
</tr>
<tr>
<td>Grant Request</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

*Can fund up to $90,000, so a $50,000 grant for the non-lobbying activity is permissible*
“Participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”
Facts and circumstances test, with some clearly impermissible activities, including (but not limited to):

- Endorsing candidates;
- Making any campaign contributions;
- Making expenditures on behalf of candidates;
- Asking candidates to sign pledges on any issue;
- Communications that explicitly or implicitly favor or oppose a candidate;
- Making a positive or critical reference to a candidate.
Despite these rules, there is **A LOT** that foundations **can do** to engage with lawmakers.
It Can be Done!

Hypothetical Scenarios of Permissible Foundation Engagement

David Thompson, VP of Public Policy, National Council of Nonprofits

David Heinen, VP for Public Policy & Advocacy, N.C. Center for Nonprofits

Katherine LaBeau, Policy Director & Counsel, Council on Foundations
Situation #1

Several nonprofits in [North Carolina] come to you seeking advice on setting up coordinated voter registration efforts across the state.
Situation #2

Joe is a well-known E.D. of a respected community foundation. Jane is a board member. Both Joe and Jane have a lot of political opinions, and seize every opportunity to bad-mouth Candidate X—including…

► At your foundation’s board meeting?
Situation #2

Joe is a well-known E.D. of a respected community foundation. Jane is a board member. Both Joe and Jane have a lot of political opinions, and seize every opportunity to bad-mouth Candidate X—including…

► At a public gathering hosted by your foundation?
Situation #2

Joe is a well-known E.D. of a respected community foundation. Jane is a board member. Both Joe and Jane have a lot of political opinions, and seize every opportunity to bad-mouth Candidate X—including…

► Via email from Jane to a donor, who agrees with Jane’s views on Candidate X?
Situation #2

Joe is a well-known E.D. of a respected community foundation. Jane is a board member. Both Joe and Jane have a lot of political opinions, and seize every opportunity to bad-mouth Candidate X—including…

▶ In an op-ed that Joe publishes in a local paper? (Note: the by-line identifies him as E.D. of the foundation, and he references the foundation’s work)
Situation #2

Joe is a well-known E.D. of a respected community foundation. Jane is a board member. Both Joe and Jane have a lot of political opinions, and seize every opportunity to bad-mouth Candidate X—including…

► In an op-ed that Joe publishes in a local paper? (Note: the op-ed includes a footnote stating that Joe’s comments are not representative of foundation views)
The November elections are fast approaching. You see that there is a pattern in several ballot measures in multiple states. Some would amend state constitutions to restrict state spending; others would repeal the property tax exemption for 501(c)(3)s; and some would earmark a percentage of sales tax revenue to fund nonprofit arts activities.
Situation #4

You’re hosting (or considering funding) a town hall meeting where candidates would be invited to participate.

► What if only one candidate shows up?
► What information would you want from the grantee prior to funding this?
► What are some other rules and considerations to keep in mind?
Situation #5

The Governor’s spouse is nationally known for his/her work in early childhood literacy—which happens to be one of your program areas. You have an event coming up and a board member suggests asking the Governor’s spouse to come for a speech and photo-op in front of your logo.
For More Information:

• **Mastering Foundation Law:** The Council on Foundations Compendium of Legal Resources
  - Coming soon… Stay tuned!

• **Learn Foundation Law courses for:**
  - Advocacy and Lobbying
  - Expenditure Responsibility
  - Electioneering Prohibition
  - Program-Related Investments
  - Working with Government Officials
  - Visit: [www.learnfoundationlaw.org](http://www.learnfoundationlaw.org)

• **Nonprofit VOTE:** [www.nonprofitvote.org](http://www.nonprofitvote.org)
  - Nonprofit Votes Count: [www.nonprofitvotescount.org](http://www.nonprofitvotescount.org)
Questions?

To sign up for our *Washington Snapshot* newsletter, e-mail [govt@cof.org](mailto:govt@cof.org)