

## IRS GRANT RESTRICTIONS

IRS RESTRICTIONS FOR PRIVATE FOUNDATION GRANT FUNDING. PLEASE REVIEW CAREFULLY.

### **26. U.S.C. § 4945. Taxes on taxable expenditures**

Complete Code: <https://www.govinfo.gov/content/pkg/USCODE-2010-title26/html/USCODE-2010-title26-subtitleD-chap42-subchapA-sec4945.htm>

**(d) Taxable expenditure.** For purposes of this section, the term “taxable expenditure” means any amount paid or incurred by a private foundation

#### **PROHIBITED ACTIVITIES:**

- (1) to carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e),
- (2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,
- (3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),
- (4) as a grant to an organization unless—
  - (A) such organization—
    - (i) is described in paragraph (1) or (2) of section 509(a),
    - (ii) is an organization described in section 509(a)(3) (other than an organization described in clause (i) or (ii) of section 4942(g)(4)(A)), or
    - (iii) is an exempt operating foundation (as defined in section 4940(d)(2)), or
  - (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or
- (5) for any purpose other than one specified in section 170(c)(2)(B).

**(e) Activities within subsection (d)(1).** For purposes of subsection (d)(1), the term “taxable expenditure” means any amount paid or incurred by a private foundation for—

- (1) any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof, and
- (2) any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be), other than through making available the results of nonpartisan analysis, study, or research. Paragraph (2) of this subsection shall not apply to any amount paid or incurred in connection with an appearance before, or communication to, any legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation.

**(f) Nonpartisan activities carried on by certain organizations.** Subsection (d)(2) shall not apply to any amount paid or incurred by any organization—

- (1) which is described in section 501(c)(3) and exempt from taxation under section 501(a),
- (2) the activities of which are nonpartisan, are not confined to one specific election period, and are carried on in 5 or more States,
- (3) substantially all of the income of which is expended directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated,
- (4) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is received from exempt organizations, the general public, governmental units described in section 170(c)(1), or any combination of the foregoing; not more than 25 percent of such support is received from any one exempt organization (for this purpose treating private foundations which are described in section 4946(a)(1)(H) with respect to each other as one exempt organization); and not more than half of the support of which is received from gross investment income, and
- (5) contributions to which for voter registration drives are not subject to conditions that they may be used only in specified States, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or the District of Columbia, or that they may be used in only one specific election period. In determining whether the organization meets the requirements of paragraph (4) for any taxable year of such organization, there shall be taken into account the support received by such organization during such taxable year and during the immediately preceding 4 taxable years of such organization (excluding therefrom any preceding taxable year which begins before January 1, 1970). Subsection (d)(4) shall not apply to any grant to an organization which meets the requirements of this subsection.

**(g) Individual grants.** Subsection (d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that—

- (1) the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii),
- (2) the grant constitutes a prize or award which is subject to the provisions of section 74(b) (without regard to paragraph (3) thereof), if the recipient of such prize or award is selected from the general public, or
- (3) the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

## IRS GRANT RESTRICTIONS CONTINUED

IRS RESTRICTIONS FOR PRIVATE FOUNDATION GRANT FUNDING. PLEASE REVIEW CAREFULLY.

### 26 U.S.C. § 4946. Definitions and special rules

Complete Code: <https://www.govinfo.gov/content/pkg/USCODE-2010-title26/html/USCODE-2010-title26-subtitleD-chap42-subchapA-sec4946.htm>

#### **(a) Disqualified person**

**(1) In general.** For purposes of this subchapter, the term “disqualified person” means, with respect to a private foundation, a person who is—

- (A) a substantial contributor to the foundation,
- (B) a foundation manager (within the meaning of subsection (b)(1)),
- (C) an owner of more than 20 percent of—
  - (i) the total combined voting power of a corporation,
  - (ii) the profits interest of a partnership, or
  - (iii) the beneficial interest of a trust or unincorporated enterprise, which is a substantial contributor to the foundation,
- (D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),
- (E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,
- (F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,
- (G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,
- (H) only for purposes of section 4943, a private foundation—
  - (i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or
  - (ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and
- (I) only for purposes of section 4941, a government official (as defined in subsection (c)).

**(2) Substantial contributors.** For purposes of paragraph (1), the term “substantial contributor” means a person who is described in section 507(d)(2).

**(3) Stockholdings.** For purposes of paragraphs (1)(C)(i) and (1)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

**(4) Partnerships; trusts.** For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

**(b) Foundation manager.** For purposes of this subchapter, the term “foundation manager” means, with respect to any private foundation—

- (1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and
- (2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

**(c) Government official.** For purposes of subsection (a)(1)(I) and section 4941, the term “government official” means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, holds any of the following offices or positions (other than as a “special Government employee”, as defined in section 202(a) of title 18, United States Code):

- (1) an elective public office in the executive or legislative branch of the Government of the United States,
- (2) an office in the executive or judicial branch of the Government of the United States, appointment to which was made by the President,
- (3) a position in the executive, legislative, or judicial branch of the Government of the United States—
  - (A) which is listed in schedule C of rule VI of the Civil Service Rules, or
  - (B) the compensation for which is equal to or greater than the lowest rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code,
- (4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of \$15,000 or more,
- (5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of \$20,000 or more,
- (6) a position as personal or executive assistant or secretary to any of the foregoing, or
- (7) a member of the Internal Revenue Service Oversight Board.

**(d) Members of family.** For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.