

(i) No grant funds have been diverted to any use not in furtherance of a purpose specified in the grant;

(ii) The grant making procedures instituted would have been approved if advance approval of such procedures had been properly requested; and

(iii) Where advance approval of grant making procedures is subsequently required, such approval will be properly requested.

(e) *Certain periods*—(1) *Taxable period.* For purposes of section 4945, the term “taxable period” means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed on taxable expenditures by section 4945(a)(1); or

(ii) The date on which the tax imposed by section 4945(a)(1) is assessed.

(2) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963(e), see section 4961(a) and the regulations thereunder.

[T.D. 7215, 37 FR 23161, Oct. 31, 1972, as amended by T.D. 7299, 38 FR 35305, Dec. 27, 1973; T.D. 7527, 42 FR 64625, Dec. 27, 1977; T.D. 8084, 51 FR 16303, May 2, 1986]

§ 53.4945-2 Propaganda influencing legislation.

(a) *Propaganda influencing legislation, etc.*—(1) *In general.* Under section 4945(d)(1) the term “taxable expenditure” includes any amount paid or incurred by a private foundation to carry on propaganda, or otherwise to attempt, to influence legislation. An expenditure is an attempt to influence legislation if it is for a direct or grass roots lobbying communication, as defined in § 56.4911-2 (without reference to §§ 56.4911-2(b)(3) and 56.4911-2(c)) and § 56.4911-3. See, however, paragraph (d) of this section for exceptions to the general rule of this paragraph (a)(1).

(2) *Expenditures for membership communications.* Section 56.4911-5, which provides special rules for electing public charities’ communications with their members, does not apply to private foundations. Thus, whether a private foundation’s communications with its members (assuming it has any)

are lobbying communications is determined solely under § 56.4911-2 and without reference to § 56.4911-5. However, where a private foundation makes a grant to an electing public charity, § 56.4911-5 applies to the electing public charity’s communications with its own members. Therefore, in the limited context of determining whether a private foundation’s grant to an electing public charity is a taxable expenditure under section 4945, the § 56.4911-5 membership rules apply. For example, if the grant is specifically earmarked for a communication from the electing public charity to its members and the communication is, because of § 56.4911-5, a nonlobbying communication, the grant is not a taxable expenditure under section 4945.

(3) *Jointly funded projects.* A private foundation will not be treated as having paid or incurred any amount to attempt to influence legislation merely because it makes a grant to another organization upon the condition that the recipient obtain a matching support appropriation from a governmental body. In addition, a private foundation will not be treated as having made taxable expenditures of amounts paid or incurred in carrying on discussions with officials of governmental bodies provided that:

(i) 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,

(ii) The discussions are undertaken for the purpose of exchanging data and information on the subject matter of the programs, and

(iii) 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.

(4) *Certain expenditures by recipients of program-related investments.* Any amount paid or incurred by a recipient of a program-related investment (as defined in § 53.4944-3) in connection with

an appearance before, or communication with, any legislative body with respect to legislation or proposed legislation of direct interest to such recipient shall not be attributed to the investing foundation, if:

(i) The foundation does not earmark its funds to be used for any activities described in section 4945(d) (1) and

(ii) A deduction under section 162 is allowable to the recipient for such amount.

(5) *Grants to public organizations*—(i) *In general.* A grant by a private foundation to an organization described in section 509(a) (1), (2) or (3) does not constitute a taxable expenditure by the foundation under section 4945(d), other than under section 4945(d)(1), if the grant by the private foundation is not earmarked to be used for any activity described in section 4945(d) (2) or (5), is not earmarked to be used in a manner which would violate section 4945(d) (3) or (4), and there does not exist an agreement, oral or written, whereby the grantor foundation may cause the grantee to engage in any such prohibited activity or to select the recipient to which the grant is to be devoted. For purposes of this paragraph (a)(5)(i), a grant by a private foundation is earmarked if the grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes. For the expenditure responsibility requirements with respect to organizations other than those described in section 509(a) (1), (2), or (3), see § 53.4945-5. For rules for determining whether grants to public charities are taxable expenditures under section 4945(d)(1), see paragraphs (a)(2), (a)(6) and (a)(7) of this section.

(ii) *Certain “public” organizations.* For purposes of this section, an organization shall be considered a section 509(a)(1) organization if it is treated as such under subparagraph (4) of § 53.4945-5(a).

(6) *Grants to public organizations that attempt to influence legislation*—(i) *General support grant.* A general support grant by a private foundation to the organization described in section 509(a) (1), (2), or (3) (a “public charity” for purposes of paragraphs (a) (6) and (7) of this section) does not constitute a taxable expenditure under section

4945(d)(1) to the extent that the grant is not earmarked, within the meaning of § 53.4945-2(a)(5)(i), to be used in an attempt to influence legislation. The preceding sentence applies without regard to whether the public charity has made the election under section 501(h).

(ii) *Specific project grant.* A grant, by a private foundation to fund a specific project of a public charity is not a taxable expenditure by the foundation under section 4945(d)(1) to the extent that—

(A) The grant is not earmarked, within the meaning of § 53.4945-2(a)(5)(i), to be used in an attempt to influence legislation, and

(B) The amount of the grant, together with other grants by the same private foundation for the same project for the same year, does not exceed the amount budgeted, for the year of the grant, by the grantee organization for activities of the project that are not attempts to influence legislation. If the grant is for more than one year, the preceding sentence applies to each year of the grant with the amount of the grant measured by the amount actually disbursed by the private foundation in each year or divided equally between years, at the option of the private foundation. The same method of measuring the annual amount must be used in all years of a grant. This paragraph (a)(6)(ii) applies without regard to whether the public charity has made the election under section 501(h).

(iii) *Reliance upon grantee’s budget.* For purposes of determining the amount budgeted by a prospective grantee for specific project activities that are not attempts to influence legislation under paragraph (a)(6)(ii) of this section, a private foundation may rely on budget documents or other sufficient evidence supplied by the grantee organization (such as a signed statement by an authorized officer, director or trustee of such grantee organization) showing the proposed budget of the specific project, unless the private foundation doubts or, in light of all the facts and circumstances, reasonably should doubt the accuracy or reliability of the documents.

(7) *Grants to organizations that cease to be described in 501(c)(3)*—(i) *Not taxable expenditure; conditions.* A grant to a

public charity (as defined in paragraph (a)(6)(i) of this section) that thereafter ceases to be an organization described in section 501(c)(3) by reason of its attempts to influence legislation is not a taxable expenditure if—

(A) The grant meets the requirements of paragraph (a)(6) of this section,

(B) The recipient organization had received a ruling or determination letter, or an advance ruling or determination letter, that it is described in sections 501(c)(3) and 509(a),

(C) Notice of a change in the recipient organization's status has not been made to the public (such as by publication in the Internal Revenue Bulletin), and the private foundation has not acquired knowledge that the Internal Revenue Service has given notice to the recipient organization that it will be deleted from such status; and

(D) The recipient organization is not controlled directly or indirectly by the private foundation. A recipient organization is controlled by a private foundation for this purpose if the private foundation and disqualified persons (defined in section 4946(a)(1) (A) through (H) with reference to the private foundation, by aggregating their votes or positions of authority, can cause or prevent action on legislative issues by the recipient.

(ii) *Examples.* The provisions of paragraphs (a)(6) and (a)(7) of this section are illustrated by the following examples:

Example 1. W, a private foundation, makes a general support grant to Z, a public charity described in section 509(a)(1). Z informs W that, as an insubstantial portion of its activities, Z attempts to influence the State legislature with regard to changes in the mental health laws. The use of the grant is not earmarked by W to be used in a manner that would violate section 4945(d)(1). Even if the grant is subsequently devoted by Z to its legislative activities, the grant by W is not a taxable expenditure under section 4945(d).

Example 2. X, a private foundation, makes a specific project grant to Y University for the purpose of conducting research on the potential environmental effects of certain pesticides. X does not earmark the grant for any purpose that would violate section 4945(d)(1) and there is no oral or written agreement or understanding whereby X may cause Y to engage in any activity described in section 4945(d) (1), (2), or (5), or to select

any recipient to which the grant may be devoted. Further, X determines, based on budget information supplied by Y, that Y's budget for the project does not contain any amount for attempts to influence legislation. X has no reason to doubt the accuracy or reliability of the budget information. Y uses most of the funds for the research project; however, Y expends a portion of the grant funds to send a representative to testify at Congressional hearings on a specific bill proposing certain pesticide control measures. The portion of the grant funds expended with respect to the Congressional hearings is not treated as a taxable expenditure by X under section 4945(d)(1).

Example 3. M, a private foundation, makes a specific project grant of \$150,000 to P, a public charity described in section 509(a)(1). In requesting the grant from M, P stated that the total budgeted cost of the project is \$200,000, and that of this amount \$20,000 is allocated to attempts to influence legislation related to the project. M relies on the budget figures provided by P in determining the amount P will spend on influencing legislation and M has no reason to doubt the accuracy or reliability of P's budget figures. In making the grant, M did not earmark any of the funds from the grant to be used for attempts to influence legislation. M's grant of \$150,000 to P will not constitute a taxable expenditure under section 4945(d)(1) because M did not earmark any of the funds for attempts to influence legislation and because the amount of its grant (\$150,000) does not exceed the amount allocated to specific project activities that are not attempts to influence legislation (\$200,000 - \$20,000 = \$180,000).

Example 4. Assume the same facts as in example (3), except that M's grant letter to P provides that M has the right to renegotiate the terms of the grant if there is a substantial deviation from those terms. This additional fact does not make M's grant a taxable expenditure under section 4945(d)(1).

Example 5. Assume the same facts as in example (3), except that M made a specific project grant of \$200,000 to P. Part of M's grant of \$200,000 will constitute a taxable expenditure under section 4945(d)(1). The amount of the grant (\$200,000) exceeds by \$20,000 the amount P allocated to specific project activities that are not attempts to influence legislation (\$180,000). M has made a taxable expenditure of \$20,000.

Example 6. Assume the same facts as example (3), except that M made a specific project grant of \$180,000, and received from P an enforceable commitment that grant funds would not be used in connection with attempts to influence legislation. M's grant is not a taxable expenditure under section 4945(d)(1).

Example 7. Assume the same facts as in example (3) except that M directed P to hire A, an individual, to expend \$20,000 from the

grant to engage in direct lobbying (within the meaning of § 56.4911-2(b)) and grass roots lobbying (within the meaning of § 56.4911-2(c)). P does not expend any other grant funds for lobbying activities. The \$20,000 that is earmarked for direct lobbying and grass roots lobbying is a taxable expenditure under section 4945(d)(1).

Example 8. R, a public charity described in section 509(a)(1), requested N, a private foundation, to make a general purpose grant to it to aid R in carrying out its exempt purpose. In making this request, R notified N that it had elected the expenditure test under section 501(h) and that it expected to attempt to influence legislation in areas related to its exempt purpose. Since its formation, R generally has had exempt purpose expenditures (as defined in § 56.4911-4) in excess of \$7,000,000 in each of its taxable years, and has budgeted in excess of \$7,000,000 of exempt purpose expenditures for the year of the grant. N made a grant of \$200,000 to R. N did not earmark the funds for R's attempt to influence legislation. The general purpose grant by N does not constitute a taxable expenditure under section 4945(d)(1).

Example 9. Assume the same facts as in example (8), except that N learns that R has had excess lobbying expenditures (within the meaning of § 56.4911-1(b)) in some prior years. N also learns that in no year has R's lobbying or grass roots expenditures (within the meaning of § 56.4911-2 (a) and (c)) exceeded the corresponding ceiling amount (within the meaning of § 1.501(h)-3(c) (3) and (6)). N then makes the grant to R. After receiving the grant, R spends a large portion of its funds on influencing legislation and, as a consequence, is denied exemption from tax, as an organization described in section 501(c)(3), under section 501(h) and § 1.501(h)-3. No disqualified person with respect to N controlled, in whole or in part, R's attempts to influence legislation. The general purpose grant will not constitute a taxable expenditure under section 4945(d)(1).

Example 10. X, a private foundation, makes a specific project grant to Y, a public charity described in section 509(a). In requesting the grant, Y stated that it planned to use the funds to purchase a computer for purpose of computerizing its research files and that the grant will not be used to influence legislation. Two years after X makes the grant, X discovers that Y has also used the computer for purposes of maintaining and updating the mailing list for Y's lobbying newsletter. Because X did not earmark any of the grant funds to be used for attempts to influence legislation and because X had no reason to doubt the accuracy or reliability of Y's documents representing that the grant would not be used to influence legislation, X's grant is not treated as a taxable expenditure.

Example 11. G, a private foundation, makes a specific project grant of \$300,000 to L, a

public charity described in section 509(a)(1) for a three-year specific project studying child care problems. L provides budget material indicating that the specific project will expend \$200,000 in each of three years. L's budget materials indicate that attempts to influence legislation will amount to \$10,000 in the first year, \$20,000 in the second year and \$100,000 in the third year. G intends to pay its \$300,000 grant over three years as follows: \$200,000 in the first year, \$50,000 in the second year and \$50,000 in the third year. The amount of the grant actually disbursed by G in the first year of the grant exceeds the nonlobbying expenditures of L in that year. However, because the amount of the grant in each of the three years, when divided equally among the three years (\$100,000 for each year), is not more than the nonlobbying expenditures of L on the specific project for any of the three years, none of the grant is treated as a taxable expenditure under section 4945(d)(1).

Example 12. P, a private foundation, makes a \$120,000 specific project grant to C, a public charity described in section 509(a) for a three-year project. P intends to pay its grant to C in three equal annual installments of \$40,000. C provides budget material indicating that the specific project will expend \$100,000 in each of three years. C's budget materials, which P reasonably does not doubt, indicate that the project's attempts to influence legislation will amount to \$50,000 in each of the three years. After P pays the first annual installment to C, but before P pays the second installment to C, reliable information comes to P's attention that C has spent \$90,000 of the project's \$100,000 first-year budget on attempts to influence legislation. This information causes P to doubt the accuracy and reliability of C's budget materials. Because of the information, P does not pay the second-year installment to C. P's payment of the first installment of \$40,000 is not a taxable expenditure under section 4945(d)(1) because the grant in the first year is not more than the nonlobbying expenditures C projected in its budget materials that P reasonably did not doubt.

Example 13. Assume the same facts as in Example (12), except that P pays the second-year installment of \$40,000 to C. In the project's second year, C once again spends \$90,000 of the project's \$100,000 annual budget in attempts to influence legislation. Because P doubts or reasonably should doubt the accuracy or reliability of C's budget materials when P makes the second-year grant payment, P may not rely upon C's budget documents at that time. Accordingly, although none of the \$40,000 paid in the first installment is a taxable expenditure, only \$10,000 (\$100,000 minus \$90,000) of the second-year grant payment is not a taxable expenditure.

The remaining \$30,000 of the second installment is a taxable expenditure within the meaning of section 4945(d)(1).

Example 14. B, a private foundation, makes a specific project grant to C, a public charity described in section 509(a), of \$40,000 for the purpose of conducting a study on the effectiveness of seat belts in preventing traffic deaths. B did not earmark any of the grant for attempts to influence legislation. In requesting the grant from B, C submitted a budget of \$100,000 for the project. The budget contained expenses for postage and mailing, computer time, advertising, consulting services, salaries, printing, advertising, and similar categories of expenses. C also submitted to B a statement, signed by an officer of C, that 30% of the budgeted funds would be devoted to attempts to influence legislation within the meaning of section 4945. B has no reason to doubt the accuracy of the budget figures or the statement. B may rely on the budget figures and signed statement provided by C in determining the amount C will spend on influencing legislation. B's grant to C will not constitute a taxable expenditure under section 4945(d)(1), because the amount of the grant does not exceed the amount allocated to specific project activities that are not attempts to influence legislation.

(b)-(c) [Reserved]

(d) *Exceptions—(1) Nonpartisan analysis, study, or research—(i) In general.* A communication is not a lobbying communication, for purposes of § 53.4945-2(a)(1), if the communication constitutes engaging in nonpartisan analysis, study or research and making available to the general public or a segment or members thereof or to governmental bodies, officials, or employees the results of such work. Accordingly, an expenditure for such a communication does not constitute a taxable expenditure under section 4945(d)(1) and § 53.4945-2(a)(1).

(ii) *Nonpartisan analysis, study, or research.* For purposes of section 4945(e), “nonpartisan analysis, study, or research” means an independent and objective exposition of a particular subject matter, including any activity that is “educational” within the meaning of § 1.501(c)(3)-1(d)(3). Thus, “nonpartisan analysis, study, or research” may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. On the other hand, the mere presentation of unsup-

ported opinion does not qualify as “nonpartisan analysis, study, or research”.

(iii) *Presentation as part of a series.* Normally, whether a publication or broadcast qualifies as “nonpartisan analysis, study, or research” will be determined on a presentation-by-presentation basis. However, if a publication or broadcast is one of a series prepared or supported by a private foundation and the series as a whole meets the standards of subdivision (ii) of this subparagraph, then any individual publication or broadcast within the series will not result in a taxable expenditure even though such individual broadcast or publication does not, by itself, meet the standards of subdivision (ii) of this subparagraph. Whether a broadcast or publication is considered part of a series will ordinarily depend on all the facts and circumstances of each particular situation. However, with respect to broadcast activities, all broadcasts within any period of 6 consecutive months will ordinarily be eligible to be considered as part of a series. If a private foundation times or channels a part of a series which is described in this subdivision in a manner designed to influence the general public or the action of a legislative body with respect to a specific legislative proposal in violation of section 4945(d)(1), the expenses of preparing and distributing such part of the analysis, study, or research will be a taxable expenditure under this section.

(iv) *Making available results of analysis, study, or research.* A private foundation may choose any suitable means, including oral or written presentations, to distribute the results of its nonpartisan analysis, study, or research, with or without charge. Such means include distribution of reprints of speeches, articles, and reports (including the report required under section 6056); presentation of information through conferences, meetings, and discussions; and dissemination to the news media, including radio, television, and newspapers, and to other public forums. For purposes of this

paragraph (d)(1)(iv), such communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue.

(v) *Subsequent lobbying use of certain analysis, study, or research*—(A) *In general.* Even though certain analysis, study or research is initially within the exception for nonpartisan analysis, study, or research, subsequent use of that analysis, study or research for grass roots lobbying may cause that analysis, study or research to be treated as a grass roots lobbying communication that is not within the exception for nonpartisan analysis, study, or research. This paragraph (d)(1)(v) of this section does not cause any analysis, study, or research to be considered a direct lobbying communication. For rules regarding when analysis, study, or research is treated as a grass roots lobbying communication that is not within the scope of the exception for nonpartisan analysis, study, or research, see § 56.4911-2(b)(2)(v).

(B) *Special rule for grants to public charities.* This paragraph (d)(1)(v)(B) of this section applies where a public charity uses a private foundation grant to finance, in whole or in part, a non-lobbying communication that is subsequently used in lobbying, causing the public charity's expenditures for the communication to be treated as lobbying expenditures under the subsequent use. In such a case, the private foundation's grant will ordinarily not be characterized as a lobbying expenditure by virtue of the subsequent use rule. The only situations where the private foundation's grant will be treated as a lobbying expenditure under the subsequent use rule are where the private foundation's primary purpose in making the grant to the public charity was for lobbying or where, at the time of making the grant, the private foundation knows (or in light of all the facts and circumstances reasonably should know) that the public charity's primary purpose in preparing the communication to be funded by the grant is for use in lobbying.

(vi) *Directly encouraging action by recipients of a communication.* A communication that reflects a view on specific legislation is not within the non-

partisan analysis, study, or research exception of this § 53.4945-2(d)(1) if the communication directly encourages the recipient to take action with respect to such legislation. For purposes of this section, a communication directly encourages the recipient to take action with respect to legislation if the communication is described in one or more of § 56.4911-2(b)(2)(iii)(A) through (C). As described in § 56.4911-2(b)(2)(iv), a communication would encourage the recipient to take action with respect to legislation, but not *directly* encourage such action, if the communication does no more than specifically identify one or more legislators who will vote on the legislation as: opposing the communication's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee or subcommittee that will consider the legislation.

(vii) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. M, a private foundation, establishes a research project to collect information for the purpose of showing the dangers of the use of pesticides in raising crops. The information collected includes data with respect to proposed legislation, pending before several State legislatures, which would ban the use of pesticides. The project takes favorable positions on such legislation without producing a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion on the pros and cons of the use of pesticides. This project is not within the exception for nonpartisan analysis, study, or research because it is designed to present information merely on one side of the legislative controversy.

Example 2. N, a private foundation, establishes a research project to collect information concerning the dangers of the use of pesticides in raising crops for the ostensible purpose of examining and reporting information as to the pros and cons of the use of pesticides in raising crops. The information is collected and distributed in the form of a published report which analyzes the effects and costs of the use and nonuse of various pesticides under various conditions on humans, animals, and crops. The report also presents the advantages, disadvantages, and economic cost of allowing the continued use of pesticides unabated, of controlling the use of pesticides, and of developing alternatives to pesticides. Even if the report sets forth

conclusions that the disadvantages as a result of using pesticides are greater than the advantages of using pesticides and that prompt legislative regulation of the use of pesticides is needed, the project is within the exception for nonpartisan analysis, study or research since it is designed to present information on both sides of the legislative controversy and presents a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion.

Example 3. O, a private foundation, establishes a research project to collect information on the presence or absence of disease in humans from eating food grown with pesticides and the presence or absence of disease in humans from eating food not grown with pesticides. As part of the research project, O hires a consultant who prepares a "fact sheet" which calls for the curtailment of the use of pesticides and which addresses itself to the merits of several specific legislative proposals to curtail the use of pesticides in raising crops which are currently pending before State legislatures. The "fact sheet" presents reports of experimental evidence tending to support its conclusions but omits any reference to reports of experimental evidence tending to dispute its conclusions. O distributes 10,000 copies to citizens' groups. Expenditures by O in connection with this work of the consultant are not within the exception for nonpartisan analysis, study, or research.

Example 4. P publishes a bi-monthly newsletter to collect and report all published materials, ongoing research, and new developments with regard to the use of pesticides in raising crops. The newsletter also includes notices of proposed pesticide legislation with impartial summaries of the provisions and debates on such legislation. The newsletter does not encourage recipients to take action with respect to such legislation, but is designed to present information on both sides of the legislative controversy and does present information fully and fairly. It is within the exception for nonpartisan analysis, study, or research.

Example 5. X is satisfied that A, a member of the faculty of Y University, is exceptionally well qualified to undertake a project involving a comprehensive study of the effects of pesticides on crop yields. Consequently, X makes a grant to A to underwrite the cost of the study and of the preparation of a book on the effect of pesticides on crop yields. X does not take any position on the issues or control the content of A's output. A produces a book which concludes that the use of pesticides often has a favorable effect on crop yields, and on that basis argues against pending bills which would ban the use of pesticides. A's book contains a sufficiently full and fair exposition of the pertinent facts, including known or potential disadvantages of the use of pesticides, to enable the public or

an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. The book does not directly encourage readers to take action with respect to the pending bills. Consequently, the book is within the exception for nonpartisan analysis, study, or research.

Example 6. Assume the same facts as Example (2), except that, instead of issuing a report, X presents within a period of 6 consecutive months a two-program television series relating to the pesticide issue. The first program contains information, arguments, and conclusions favoring legislation to restrict the use of pesticides. The second program contains information, arguments, and conclusions opposing legislation to restrict the use of pesticides. The programs are broadcast within 6 months of each other during commensurate periods of prime time. X's programs are within the exception for nonpartisan analysis, study, or research. Although neither program individually could be regarded as nonpartisan, the series of two programs constitutes a balanced presentation.

Example 7. Assume the same facts as Example (6), except that X arranged for televising the program favoring legislation to restrict the use of pesticides at 8 p.m. on a Thursday evening and for televising the program opposing such legislation at 7 a.m. on a Sunday morning. X's presentation is not within the exception for nonpartisan analysis, study, or research, since X disseminated its information in a manner prejudicial to one side of the legislative controversy.

Example 8. Organization Z researches, writes, prints and distributes a study on the use and effects of pesticide X. A bill is pending in the U.S. Senate to ban the use of pesticide X. Z's study leads to the conclusion that pesticide X is extremely harmful and that the bill pending in the U.S. Senate is an appropriate and much needed remedy to solve the problems caused by pesticide X. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of pesticide X, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. In its analysis of the pending bill, the study names certain undecided Senators on the Senate committee considering the bill. Although the study meets the three part test for determining whether a communication is a grass roots lobbying communication, the study is within the exception for nonpartisan analysis, study or research, because it does not directly encourage recipients of the communication to urge a legislator to oppose the bill.

Example 9. Assume the same facts as in Example (8), except that, after stating support

for the pending bill, the study concludes: "You should write to the undecided committee members to support this crucial bill." The study is not within the exception for nonpartisan analysis, study or research because it directly encourages the recipients to urge a legislator to support a specific piece of legislation.

Example 10. Organization X plans to conduct a lobbying campaign with respect to illegal drug use in the United States. It incurs \$5,000 in expenses to conduct research and prepare an extensive report primarily for use in the lobbying campaign. Although the detailed report discusses specific pending legislation and reaches the conclusion that the legislation would reduce illegal drug use, the report contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent conclusion regarding the effect of the legislation. The report does not encourage readers to contact legislators regarding the legislation. Accordingly, the report does not, in and of itself, constitute a lobbying communication.

Copies of the report are available to the public at X's office, but X does not actively distribute the report or otherwise seek to make the contents of the report available to the general public. Whether or not X's distribution is sufficient to meet the requirement in § 53.4945-2(d)(1)(iv) that a nonpartisan communication be made available, X's distribution is not substantial (for purposes of §§ 53.4945-2(D)(1)(v) and 56.4911-2(b)(2)(v)) in light of all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan reports. X then mails copies of the report, along with a letter, to 10,000 individuals on X's mailing list. In the letter, X requests that individuals contact legislators urging passage of the legislation discussed in the report. Because X's research and report were primarily undertaken by X for lobbying purposes and X did not make a substantial distribution of the report (without an accompanying lobbying message) prior to or contemporaneously with the use of the report in lobbying, the report is a grass roots lobbying communication that is not within the exception for nonpartisan analysis, study or research. Thus, the expenditures for preparing and mailing both the report and the letter are taxable expenditures under section 4945.

Example 11. Assume the same facts as in Example (10), except that before using the report in the lobbying campaign, X sends the research and report (without an accompanying lobbying message) to universities and newspapers. At the same time, X also advertises the availability of the report in its newsletter. This distribution is similar in scope to the normal distribution pattern of similar nonpartisan reports. In light of all of the facts and circumstances, X's distribution

of the report is substantial. Because of X's substantial distribution of the report, X's primary purpose will be considered to be other than for use in lobbying and the report will not be considered a grass roots lobbying communication. Accordingly, only the expenditures for copying and mailing the report to the 10,000 individuals on X's mailing list, as well as for preparing and mailing the letter, are expenditures for grass roots lobbying communications, and are thus taxable expenditures under section 4945.

Example 12. Organization M pays for a bumper sticker that reads: "STOP ABORTION: Vote NO on Prop. X!" M also pays for a 30-second television advertisement and a billboard that similarly advocate opposition to Prop. X. In light of the limited scope of the communications, none of the communications is within the exception for nonpartisan analysis, study or research. First, none of the communications rises to the level of analysis, study or research. Second, none of the communications is nonpartisan because none contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. Thus, each communication is a lobbying communication.

(2) *Technical advice or assistance*—(i) *In general.* Amounts paid or incurred in connection with providing technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either of the foregoing, in response to a written request by such body, committee, or subdivision do not constitute taxable expenditures for purposes of this section. Under this exception, the request for assistance or advice must be made in the name of the requesting governmental body, committee or subdivision rather than an individual member thereof. Similarly, the response to such request must be available to every member of the requesting body, committee or subdivision. For example, in the case of a written response to a request for technical advice or assistance from a congressional committee, the response will be considered available to every member of the requesting committee if the response is submitted to the person making such request in the name of the committee and it is made clear that the response is for the use of all the members of the committee.

(ii) *Nature of technical advice or assistance.* "Technical advice or assistance" may be given as a result of knowledge

or skill in a given area. Because such assistance or advice may be given only at the express request of a governmental body, committee or subdivision, the oral or written presentation of such assistance or advice need not qualify as nonpartisan analysis, study or research. The offering of opinions or recommendations will ordinarily qualify under this exception only if such opinions or recommendations are specifically requested by the governmental body, committee or subdivision or are directly related to the materials so requested.

(iii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example 1. A congressional committee is studying the feasibility of legislation to provide funds for scholarships to U.S. students attending schools abroad. X, a private foundation which has engaged in a private scholarship program of this type, is asked, in writing, by the committee to describe the manner in which it selects candidates for its program. X's response disclosing its methods of selection constitutes technical advice or assistance.

Example 2. Assume the same facts as Example (1), except that X's response not only includes a description of its own grant-making procedures, but also its views regarding the wisdom of adopting such a program. Since such views are directly related to the subject matter of the request for technical advice or assistance, expenditures paid or incurred with respect to the presentation of such views would not constitute taxable expenditures. However, expenditures paid or incurred with respect to a response which is not directly related to the subject matter of the request for technical advice or assistance would constitute taxable expenditures unless the presentation can qualify as the making available of nonpartisan analysis, study or research.

Example 3. Assume the same facts as Example (1), except that X is requested, in addition, to give any views it considers relevant. A response to this request giving opinions which are relevant to the committee's consideration of the scholarship program but which are not necessarily directly related to X's scholarship program, such as discussions of alternative scholarships programs and their relative merits, would qualify as "technical advice or assistance", and expenditures paid or incurred with respect to such response would not constitute taxable expenditures.

Example 4. A, an official of the State Department, makes a written request in his official capacity for information from founda-

tion Y relating to the economic development of country M and for the opinions of Y as to the proper position of the United States in pending negotiations with M concerning a proposed treaty involving a program of economic and technical aid to M. Y's furnishing of such information and opinions constitutes technical advice or assistance.

Example 5. In response to a telephone inquiry from Senator X's staff, organization B sends Senator X a report concluding that the Senate should not advise and consent to the nomination of Z to serve as a Supreme Court Justice. Because the request was not in writing, and also because the request was not from the Senate itself or from a committee or subcommittee, B's report is not within the scope of the exception for responses to requests for technical advice. Accordingly, B's report is a lobbying communication unless the report is within the scope of the exception for nonpartisan analysis, study or research.

Example 6. Assume the same facts as in Example (5), except that B's report is sent in response to a written request that Senator X sends to B. The request from Senator X is a request from the Senator as an individual member of the Senate rather than from the Senate itself or from a committee or subcommittee. Accordingly, B's report is not within the scope of the exception for responses to requests for technical advice and is a lobbying communication unless the report is within the scope of the exception for nonpartisan analysis, study or research.

Example 7. Assume the same facts as in Example (6), except that B's report is sent in response to a written request from the Senate committee that is considering the nomination for an evaluation of the nominee's legal writings and a recommendation as to whether the candidate is or is not qualified to serve on the Supreme Court. The report is within the scope of the exception for responses to requests for technical advice and is not a lobbying communication.

(3) *Decisions affecting the powers, duties, etc., of a private foundation—(i) In general.* Paragraph (c) of this section does not apply to any amount paid or incurred in connection with an appearance before, or communication with, 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 deductibility of contributions to such foundation. Under this exception, a foundation may communicate with the entire legislative body, committees or subcommittees of such legislative body, individual congressmen or legislators,

members of their staffs, or representatives of the executive branch, who are involved in the legislative process, if such communication is limited to the prescribed subjects. Similarly, the foundation may make expenditures in order to initiate legislation if such legislation concerns only matters which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deductibility of contributions to such foundation.

(ii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example 1. A bill is being considered by Congress which would, if enacted, restrict the power of a private foundation to engage in transactions with certain related persons. Under the proposed bill a private foundation would lose its exemption from taxation if it engages in such transactions. W, a private foundation, writes to the congressional committee considering the bill, arguing that the enactment of such a bill would not be advisable, and subsequently appears before such committee to make its arguments. In addition, W requests that the congressional committee consider modification of the 2 percent de minimis rule of section 4943(c) (2) (C). Expenditures paid or incurred with respect to such submissions do not constitute taxable expenditures since they are made with respect to a possible decision of Congress 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.

Example 2. A bill being considered in a State legislature is designed to implement the requirements of section 508(e) of the Internal Revenue Code of 1954. Under such section, a private foundation is required to make certain amendments to its governing instrument. X, a private foundation, makes a submission to the legislature which proposes alternative measures which might be taken in lieu of the proposed bill. X also arranges to have its president contact certain State legislators with regard to this bill. Expenditures paid or incurred in making such submission and in contacting the State legislators do not constitute taxable expenditures since they are made with respect to a possible decision of such State legislature 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.

Example 3. A bill is being considered by a State legislature under which the State would assume certain responsibilities for nursing care of the aged. Y, a private founda-

tion which hitherto has engaged in such activities, appears before the State legislature and contends that such activities can be better performed by privately supported organizations. Expenditures paid or incurred with respect to such appearance are not made with respect to possible decisions of the State legislature 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, but rather merely affect the scope of the private foundation's future activities.

Example 4. A State legislature is considering the annual appropriations bill. Z, a private foundation which had hitherto performed contract research for the State, appears before the appropriations committee in order to attempt to persuade the committee of the advisability of continuing the program. Expenditures paid or incurred with respect to such appearance are not made with respect to possible decisions of the State legislature 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, but rather merely affect the scope of the private foundation's future activities.

(4) *Examination and discussions of broad social, economic, and similar problems.* Examinations and discussions of broad social, economic, and similar problems are neither direct lobbying communications under § 56.4911-2(b)(1) nor grass roots lobbying communications under § 56.4911-2(b)(2) even if the problems are of the type with which government would be expected to deal ultimately. Thus, under §§ 56.4911-2(b)(1) and (2), lobbying communications do not include public discussion, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body, so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take action with respect to legislation. For example, this paragraph (d)(4) excludes from grass roots lobbying under § 56.4911(b)(2) an organization's discussions of problems such as environmental pollution or population growth that are being considered by Congress and various State legislatures, but only where the discussions are not directly addressed to specific legislation being considered, and only where the

discussions do not directly encourage recipients of the communication to contact a legislator, an employee of a legislative body, or a government official or employee who may participate in the formulation of legislation.

[T.D. 7215, 37 FR 23161, Oct. 31, 1972; 37 FR 23918, Nov. 11, 1972, as amended by T.D. 8308, 55 FR 35594, Aug. 31, 1990]

§ 53.4945-3 Influencing elections and carrying on voter registration drives.

(a) *Expenditures to influence elections or carry on voter registration drives—(1) In general.* Under section 4945(d) (2), the term “taxable expenditure” includes any amount paid or incurred by a private foundation to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive, unless such amount is paid or incurred by an organization described in section 4945(f). However, for treatment of non earmarked grants to public organizations, see § 53.4945-2(a) (5) and for treatment of certain earmarked grants to organizations described in section 4945(f), see paragraph (b) (2) of this section.

(2) *Influencing the outcome of a specific public election.* For purposes of this section, an organization shall be considered to be influencing the outcome of any specific public election if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term *candidate for public office* means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to:

(i) Publishing or distributing written or printed statements or making oral statements on behalf of or in opposition to such a candidate;

(ii) Paying salaries or expenses of campaign workers; and

(iii) Conducting or paying the expenses of conducting a voter-registration drive limited to the geographic area covered by the campaign.

(b) *Nonpartisan activities carried on by certain organizations—(1) In general.* If an organization meets the requirements described in section 4945(f), an amount paid or incurred by such organization shall not be considered a taxable expenditure even though the use of such amount is otherwise described in section 4945(d) (2). Such requirements are:

(i) The organization is described in section 501(c) (3) and exempt from taxation under section 501(a);

(ii) The activities of the organization are nonpartisan, are not confined to one specific election period, and are carried on in five or more States;

(iii) The organization expends at least 85 percent of its income directly for the active conduct (within the meaning of section 4942(j) (3) and the regulations thereunder) of the activities constituting the purpose or function for which it is organized and operated;

(iv) The organization receives at least 85 percent of its support (other than gross investment income as defined in section 509(e)) from exempt organizations, the general public, governmental units described in section 170(c) (1), or any combination of the foregoing; the organization does not receive more than 25 percent of its support (other than gross investment income) 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 the organization is received from gross investment income; and

(v) Contributions to the organization 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.

(2) *Grants to section 4945(f) organizations.* If a private foundation makes a grant to an organization described in section 4945(f) (whether or not such grantee is a private foundation as defined in section 509(a)), such grant will not be treated as a taxable expenditure