

Pushing for Change What Your NFP Needs to Know About Lobbying

Pushing for change — whether it's lobbying for more arts in the classroom or advocating for affordable housing — is certainly in the job description of charitable organizations. Indeed, some would say that a nonprofit that isn't spending at least some of its time in advocacy work is probably not doing its job.

Yet, as nonprofits find themselves drawn into debates over public policy, the issue of just how much lobbying a 501(c)(3) organization can legally do comes to the forefront. Misconceptions persist and many nonprofits mistakenly believe they will run afoul of the law.

The truth is that Congress has clearly established that “influencing legislation” is an appropriate and legitimate activity for charitable organizations. Even 501(c)(3) organizations, which are the most restricted type of nonprofit, are legally entitled to lobby their elected representatives.

The Big Picture

Under federal tax law, every charitable nonprofit is allowed to engage in *some* lobbying activities. In fact, the Internal Revenue Code sets a very general limit, establishing that “no substantial part of the activities” may be for “carrying on propaganda, or otherwise attempting to influence legislation.” So in other words, charitable nonprofits may freely engage in lobbying *as long as* that activity amounts to only an “*insubstantial*” amount of their activities.

However, what 501(c)(3) public charities may *not* do is engage in partisan political activities. So, for example, a 501(c)(3) organization could face penalties and risk losing its exempt status by participating in partisan political activities such as:

- Supporting or opposing any candidate for public office.
- Making direct endorsements.
- Using contributions or resources to support or oppose a particular candidate or party.
- Using government funds (i.e., government grants or contracts) to lobby — including the use of federal funds to lobby for federal grants or contracts.

What Lobbying Is

Under federal tax law, lobbying is a specifically defined activity that is broken into general subsets. A nonprofit may participate in either one of two types of lobbying, as long as the activity is an “insubstantial” part of its overall activities (see the article on page 3 for a further discussion on lobbying limits).

1) Direct lobbying – Attempting to influence legislation by communicating with a legislator in reference to specific legislation and reflecting a specific view on the legislation.

For the purposes of the law, a “legislator” is not only an elected government official, but can also be a staff member or employee of a legislative body or any other government employee who may participate in the formation of the legislation. Note that members of administrative bodies (e.g., school boards, housing authorities, zoning boards) are generally not considered to be legislators, regardless of whether they are appointed or elected.

Example: At a chamber of commerce “issues lunch,” the executive director of a 501(c)(3) group that works with homeless veterans urges his Senator to increase funding in a new appropriations bill for substance abuse treatment. The ED follows up with an email urging support for another bill designed to make funds

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Mobilizing for Advocacy It Takes a (Volunteer) Army

When it comes to advocating for change, nonprofits have an incredibly powerful weapon at their disposal — their volunteers. By leveraging this base of supporters, a nonprofit can light up the phones and fill the mailboxes (and email inboxes) of policymakers.

The key, of course, is for the troops to understand clearly what advocacy is ... and isn't. At the nonprofit level, advocacy seeks to inform legislators, policymakers and the community at large how public policy decisions impact service provision. An advocate educates, explains, persuades and informs.

By contrast, lobbying refers to advocacy efforts that attempt to influence specific legislation. So how do you mobilize your army of volunteer advocates?

Building Bridges with Legislators

Effective public policy advocacy doesn't just happen. It starts and ends with active, positive partnerships with your elected officials:

- Put your elected officials on your organization's mailing list (just make sure the data is updated as elections occur).
- The Legislature moves quickly and deadlines are critical, so be sure to learn the nuts and bolts of the legislative process. Read a book, attend a workshop or log on to a webinar.
- Time your meetings with elected officials during the summer and fall when they are not tied up with the legislative calendar.
- Keep an eye out for "Day on the Hill" or other capitol visitation days, where volunteers can meet with their individual legislators face-to-face. ■

- **Consider (all) your allies.**

The trick is to think through *all* of your allies — everyone from staff, board members and volunteers to funders, clients, vendors and friends. As allies, they have a special dedication to your cause — and they work cheap! As an added benefit, using your volunteers for advocacy work creates a powerful opportunity to move these supporters up in their level of commitment to your organization.

- **Consider (all) your options.** As a 501(c)(3) nonprofit, you can engage your volunteer army in much more than simply writing letters and working the phones. Your volunteer advocates can directly engage elected officials by:

- ▶ Arranging meetings with lawmakers to learn their views on issues of concern to your constituents.
- ▶ Inviting elected officials to organizational meetings, events and even tours of your facilities and program areas.
- ▶ Sending lawmakers literature on issues of importance to your constituents.
- ▶ Attending town hall meetings with lawmakers.
- ▶ Communicating with policymakers through social media.

- **Consider your message.** Obviously, a personal message has more impact than a cut-and-paste form letter, which can give the impression of an organized pressure campaign (and is often disregarded by the recipient). *Better:* Create a general template for volunteers to follow, but ask them to add their own style and voice. You might simply indicate places in the letter for writers to add a personal anecdote or perspective.



- **Consider your methods.** For best results, you'll want to match the method to the situation. For example, for urgent matters (such as a pending vote), nothing beats the speed and immediacy of a well-thought-out email. Phone calls might make more sense when you need to gather intelligence.

For example, a phone conversation allows the volunteer to better gauge the reaction of a legislator to the issue at hand. Input from the call might provide guidance as to what part of the message is most compelling — or even how to tailor it to turn an unreceptive legislator around. And while letter-writing campaigns are certainly tried and true, a faxed message may be a timelier approach to reaching elected officials at the federal level. Due to the anthrax attacks of 2001, federal postal mail is now delayed significantly for security screening.

- **Consider your reporting obligations.** The good news is that there really are no specific reporting, registration or license requirements for organizations that carry out advocacy work. Of course, any expenses to carry out those activities will need to be accounted for on your organization's annual IRS Form 990 filing and financial accountings.

Mobilize Your Troops

Because advocacy does not endorse or oppose specific legislation, nonprofits can make their voices heard without running afoul of state and federal lobbying laws — or jeopardizing their tax-exempt status. Just make sure that you always emphasize your organization's mission and/or exempt purpose in your advocacy efforts. ■

Lobbying for Change

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more accessible to halfway houses for returning Iraq War veterans. Because it is a specific communication with a legislator about specific legislation, it is legally considered to be direct lobbying.

2) Grassroots lobbying – Attempting to influence specific legislation by directly urging the public to contact legislators about that legislation.

Example: A 501(c)(3) women’s shelter takes out an ad in the local newspaper supporting a proposed domestic violence bill. The ad includes the phone numbers and email addresses of local legislators, as well as a URL for an online petition. Because it communicates to the general public, expresses a view about specific legislation and encourages readers to take lobbying action (i.e., contact their legislators and complete an online petition), it is legally considered to be grassroots lobbying.

What Lobbying Is Not

Activities that do not meet the criteria for either direct or grassroots lobbying are generally regarded as advocacy, which an organization may engage in to achieve its particular goals and serve its constituencies *without limit*. Examples of these activities include:

- Educating policymakers and the public about broad social issues.
- Encouraging people to register to vote.
- Educating voters about candidate positions.
- Discussing policy issues, as long as the merits of specific legislation are not addressed.
- Communicating a position in support of or against legislation to members of the organization, as long as the communication does not ask members to take action.

- Sending an email to constituents with an update on or summary of legislation that does not include a call to action (such as a monthly legislative update).
- Sharing the results of an independent and objective nonpartisan analysis, study or research on a legislative issue with the public.
- Meeting with legislators to discuss specific programs and/or discussing the general need for and benefits of such programs in the community.

Let Your Voice Be Heard

In the end, lobbying is an indispensable tool in our system of participatory democracy. The key is to ensure that your organization plays by the rules when communicating the needs of your community and constituents to legislators — including staying true to your mission and exempt purpose. ■

“So, How Much Lobbying Can We Do?”

The IRS has provided, at best, hazy guidance on the limits allowed for a nonprofit’s lobbying activities — in short, that it be limited to an “insubstantial” part of its overall activity, as our lead article details. Tax practitioners typically take this to mean that lobbying activity totaling less than 5 percent of an organization’s overall activities can safely be considered “insubstantial.”

Unless your organization specifies otherwise, the “insubstantial” test is the default test that you will be subject to. You’ll need to provide a written description of lobbying activities on your organization’s Form 990 — as well as more detailed information on your Schedule C — including accounting for any time that unpaid volunteers have spent lobbying on your behalf.

To opt out of the vague “insubstantial” activity test, nonprofits may make a so-called “501(h) election” by filing IRS Form 5768, *Election/Revocation of*

Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation.

Under the 501(h) election, your organization will then know upfront the specific dollar limits, calculated as a percentage of total exempt purpose expenditures, that you may spend to influence legislation. The total lobbying expenditure limits under the 501(h) election are:

- 20 percent of the first \$500,000 of exempt purpose expenditures
- 15 percent of the next \$500,000 of exempt purpose expenditures
- 10 percent of the next \$500,000 of exempt purpose expenditures
- 5 percent of the remaining exempt purpose expenditures

Note that there is a total cap of \$1 million for lobbying expenditures.

The 501(h) election provides much clearer guidelines for how much and

what types of lobbying you may engage in. The election also carries with it less burdensome reporting requirements. You don’t need to provide a detailed written description of your lobbying activities on Form 990 or count the time of volunteers lobbying on your behalf — just how much you are spending on lobbying per tax year.

In addition, penalties for violating lobbying limits are less severe under the 501(h) election. In fact, the Council of Nonprofits suggests that filing the 501(h) election is, “for the vast majority of nonprofits, the easiest, most effective ‘insurance’ a nonprofit can secure to protect itself from overstepping IRS limitations on lobbying activities.” ■

Do you have questions about properly accounting for lobbying expenditures? Contact our office for guidance.

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Benchmark Your Performance

It's as true for nonprofits as it is for athletes: Measurement improves performance. To help you measure, consider these financial benchmarks suggested by The Center for Nonprofit Management:

- **Quick Ratio** – This ratio indicates your organization's ability to meet short-term obligations. Formula: $\text{Current assets} - \text{Inventories} / \text{Current Liabilities}$. As a general rule, a quick ratio of 1 or more is good.
- **Debt Ratio** – This ratio indicates the proportion of debt relative to your assets. Formula: $\text{Total Debt} / \text{Total Assets}$. A debt ratio of more than 1 can suggest liquidity problems.

- **Defensive Interval Ratio** – This is a measure of the number of days your organization can operate without having to tap into long-term (fixed) assets. Formula: $(\text{Cash} / \text{Operational Expenses}) / 365$. Most experts recommend maintaining enough cash to cover three to six months of operating expenses.

In addition, consider monitoring performance in these three key areas:

- 1. Program Efficiency** – Quantify how much your organization is spending on its primary mission versus administrative costs using this formula: $\text{Program Service Expenses} / \text{Total Expenses}$. Ideally, this ratio would be at least 0.8 (80 percent), which reflects an appro-

appropriate level of expenses for infrastructure/administrative and fundraising.

- 2. Operating Reliance** – Determine whether or not your organization could cover all of its expenses from program revenues alone with this formula: $\text{Unrestricted Program Revenue} / \text{Total Expenses}$. A good outcome for this measure is 1 and, in some cases, more than 1.

- 3. Fundraising Efficiency** – Take a look at how many dollars you are able to collect for every \$1 of fundraising expense by using this formula: $\text{Unrestricted Contributions} / \text{Unrestricted Fundraising Expenses}$. The higher the ratio, the more efficient the fundraising efforts. ■



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