

Nonprofits CAN Lobby Rules for Nonprofit Lobbying

Tax-exempt organizations are legally allowed to lobby under the guidance of federal tax law, which defines lobbying activities and sets limitations. Therefore, it is very important to know the difference between lobbying and advocacy so that you can properly report activities and expenditures. **There is no federal limit on how much non-lobbying advocacy your nonprofit organization can do.**

According to the Internal Revenue Service (IRS), lobbying involves attempts to influence specific legislation at the local, state, or federal level. Lobbying activities include contacting any legislative member, legislative staff, or government employee to influence him or her to propose, support, or oppose specific legislation, as well as trying to persuade the public to share your views on a particular legislative proposal.

Advocacy, however, is focused on education about a specific issue on behalf of the people your organization serves. This includes a broad range of activities which allow nonprofit organizations to carry out their missions. Lobbying is a small portion of the total amount of advocacy efforts by many nonprofits. Most lobbying efforts are only successful when they are coupled with many other advocacy activities that allow policymakers to make informed decisions.

For example, many of the organizations that work with the Alliance rely on federal funding through key programs. They work year-round on non-lobbying advocacy efforts on behalf of those they serve. Their **non-lobbying advocacy activities** include:

- Distributing materials to congressional offices about a federally funded program's success;
- Disseminating analyses of specific pieces of legislation on their website with details of how it would affect people experiencing or at risk of homelessness;
- Inviting Members of Congress to visit a program so they can see first-hand how federal funding is used to end homelessness;
- Sharing with congressional offices how their organization uses federal funding and what it is able to accomplish with that funding; and
- Meeting with congressional offices in response to a written request for technical assistance from a congressional body to provide information on how a particular piece of legislation will affect people experiencing homelessness.

Each year, these same organizations take part in lobbying efforts to increase funding for the same key federal programs during the federal appropriations process. These **lobbying activities** may include:

- Meeting with members of the Appropriations Committee in Washington, DC to ask them to support a proposed increase in funding for a specific federal program;
- Calling congressional staff to ask a Member of Congress to write a letter to the Chair of the Appropriations Committee in support of an increase in funding for a specific federal program; and
- Sending out a "Call to Action" to a coalition of homeless service providers asking them to write a Member of Congress in support of a proposed increase in funding for a specific federal program.

Unless they elect to fall under different lobbying regulations, nonprofit organizations must abide by federal tax law which requires that no “substantial part” of a 501(c)(3) organization’s overall activities consist of lobbying. This is commonly called the “substantial part” test. This test measures both an organization’s time and expenditures devoted to lobbying on behalf of the mission of the organization (by both paid and volunteer workers). Unfortunately, the IRS has not been clear about defining how much time and money spent lobbying counts as “substantial.” A common rule suggested by some lawyers and practitioners is to limit lobbying activities to 5 percent of the organization’s total amount of activities.

That amount might seem small, but many organizations that work with the Alliance choose this option, because – compared to the many activities that serve other functions of the organization – lobbying activities are few. **After recognizing the difference between advocacy and lobbying, you may find that the amount of time and money your organization actually spends lobbying is extremely insignificant.**

An Alternative: 501(h) Expenditure Test

Congress recognizes that influencing legislation is an appropriate activity for nonprofit organizations to take part in and, in 1976, passed the 501(h) bill, which gives nonprofit organizations the right to lobby under the security of defined limitations. By filing with the IRS, a 501(c)(3) organization can elect to fall under the 1976 law, meaning the amount of an organization’s legislative activity is based solely on its expenditures (things like paid staff time or mailing and printing expenses). This option is widely known as the 501(h) expenditure test, which can be elected by filling out the IRS 5768 form available at <http://www.irs.gov/pub/irs-pdf/f5768.pdf>. By submitting this form, an organization will be eligible to take part in a significant amount of lobbying under the guidance of precise regulations for calculating lobbying limits. The 501(h) distinguishes between direct and grassroots lobbying. Organizations can spend as much as 20 percent of their entire budget on lobbying, and up to a quarter of that amount can be spent on grassroots lobbying via the 501(h) election.

- Direct lobbying is communication that is directed toward a legislator or staff of a legislator, refers to specific legislation, and expresses the organization’s view on the legislation.
- Grassroots lobbying refers to communication that is directed to the general public, refers to specific legislation, reflects a view of the legislation, and encourages the recipient to take action with respect to the legislation.

Advocacy-oriented nonprofits elect to come under the 501(h) for a variety of reasons:

- Lobbying limits are based on how much a 501(c)(3) spends on lobbying activities, as opposed to the number of lobbying activities in which the organization takes part. Thus, if it did not cost anything, it does not count. For example, staff’s time costs the organization money and will be factored into the total allowance, whereas a volunteer’s time will not be, because it does not cost anything.
- Electing the 501(h) allows an organization to expend 20 percent of the first \$500,000 of its total budget on lobbying activities.
- The 501(h) election clearly defines what activities constitute lobbying (and which kind of lobbying), so the type of activities an organization is taking part in can easily be tracked.

How to Choose?

It is important to make an informed decision about which federal tax law your organization should choose to track lobbying activities. To get started:

- Seek training about and/or research both options via two expert organizations, the Center for Lobbying in the Public Interest, www.clpi.org, and the Alliance for Justice, www.afj.org.
- Contact Kate Seif at the Alliance at cseif@naeh.org or 202-942-8256 for additional information.