

Lobbying by Nonprofit Organizations

The following information is from the Center for Nonprofit Advancement.

Nonprofit Lobbying Yes You Can!

Nonprofit organizations can and should lobby! It's not difficult, it's not expensive and it is a proper role for nonprofits. You might ask, why lobby? Lobbying helps people. Everything that goes into a lobbying campaign - the research, the strategic planning, the phone calls and visits - will help fulfill your goal whether it is finding affordable housing, developing more afterschool programs, or some other cause that helps people.

What is lobbying?

Lobbying is defined by federal tax law as any attempt to influence specific legislation. Legislation means a bill that has been introduced, or a draft bill that may be introduced in any legislative body such as a city council, state legislature or Congress.

The 501(h) Election

Prior to 1976, there was enormous ambiguity over the amount of lobbying that nonprofits could do. The IRS rules required that tax-exempt nonprofits could lose their tax-exempt status if they did more than an "insubstantial" amount of lobbying. This "insubstantial-lobbying test" was never specifically defined in IRS rules, and individual IRS agents had no guidance in what constituted "too much lobbying."

The 1976 Lobby Law, however, established clear guidelines for lobbying expenditures. The Lobby Law allows nonprofits to choose to be covered by a clearly defined set of lobbying rules. This law clarifies that 501(c)(3) nonprofits that elect to fall under these rules can spend up to a defined percentage of their budget for lobbying without threatening their tax-exempt status. In 1990, the IRS published final rules on implementing the Lobby Law that make it quite clear that nonprofits should elect to be covered by the lobbying-expenditure test and not fall under the vague insubstantial lobbying test.

What are some of the benefits of taking the 501(h) election versus not electing?

- No limit on lobbying activities that do not require expenditures, such as un-reimbursed activities conducted by bona fide volunteers.
- Clear definitions of various kinds of lobbying communications, enabling electing charities to control whether they are lobbying or not.
- Higher lobbying dollar limits and fewer items which count toward the exhaustion of those limits.
- Less likely to lose exemption because the IRS may only revoke exempt status from electing organizations that exceed their lobbying limits by at least 50 percent averaged over a four-year period.
- No personal penalty for individual managers of an electing charity that exceeds its lobbying expenditure limits.

In order to be covered by the rules, your organization must file IRS Form 5768 with the IRS. This simple one-page form can be filed at any time. The IRS has provided clear documentation to nonprofit organization that filing this form is favored by the IRS and will not trigger an audit. You can download the form from the [IRS website](#) (this is a PDF document).

What does not count as lobbying?

There are five activity categories that are excluded from the term "influencing legislation." They are:

1. **Self-defense:** communication on any legislation that would affect an organization's existence, powers and duties, tax-exempt status, or deductibility of contributions.
2. **Technical advice:** providing technical advice to a governmental body in response to a written communication.
3. **Non-partisan analysis or research:** studying community problems and their potential solutions is considered non-partisan if it is "an independent and objective exposition of a particular subject matter...(which) may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of pertinent facts to enable the public or an individual to form an independent opinion or conclusion."
4. **Examinations and discussions of broad social, economic and similar problems:** communication with the organization's own members with respect to legislation which is of direct interest to them, so long as the discussion does not address the merits of a specific legislative proposal and make no call for action.
5. **Regulatory and administrative issues:** communication with governmental officials or employees on non-legislative (i.e. administrative) matters such as rule-making.

Lobbying Limits

If your organization has **not** taken advantage of the 501(h) election then "no substantial part" of your organization's activities can be devoted to lobbying. Clearly, this is a very vague guideline. Therefore, in 1976, specific expenditure guidelines were established, known as the "section 501(h) expenditure test." However, in order to be protected by these guidelines, **your organization must take formal steps to fall under these guidelines.**

The **total** lobbying expenditure limits under the 501(h) election are:

- 20% of the first \$500,000 of exempt purpose expenditures, plus
- 15% of the next \$500,000 of exempt purpose expenditures, plus
- 10% of the next \$500,000 of exempt purpose expenditures, plus
- 5% of the remaining exempt purpose expenditures up to a total cap of \$1 million. (*Exempt purpose expenditures are all payments you make in a year except investment management, unrelated businesses, and certain fundraising costs.*)

Direct vs. Grassroots Lobbying

Under the 501(h) election, the IRS distinguishes between direct and grassroots lobbying.

Direct lobbying is when you state your position on specific legislation to legislators or other government employees who participate in the formulation of legislation, or urge your members to do so. In order to count as direct lobbying it must refer to specific legislation and express a view on it.

Grassroots lobbying is when you state your position on specific legislation to the general public AND ask the general public to contact legislators or other government employees who participate in the formulation of legislation. If you do not include a call to action in your communication to the general public, it is not lobbying. Remember, urging your members to lobby counts as direct lobbying not grassroots lobbying.

The distinction between direct and grassroots lobbying is important under the 501(h) election because the 1976 Lobby Law specifies different expenditure limits for grassroots and direct lobbying activity. An organization may spend only one-fourth as much on grassroots lobbying, as on direct lobbying. For example, if an organization's annual permissible lobbying expenditures were \$100,000, it could spend only \$25,000 on grassroots lobbying. But it could spend the remaining \$75,000 on direct lobbying.

Reporting Lobbying Expenditures

All 501(c)(3) organizations (except churches, association of churches, and integrated auxiliaries) must report lobbying expenditures to the IRS. For those nonprofits that do not elect to fall under the 1976 Lobby Law (for information on the 501(h) election, the IRS requires detailed descriptions of a wide range of activities related to lobbying. For organizations that take the 501(h) election, the only requirement is to report how much was spent on lobbying and how much of the total amount for the year was spent on grassroots lobbying.

Sources for some of this subject came from The Minnesota Council of Nonprofits and the Alliance for Justice.