Lobbying Rules and 501(c)3 Organizations

501(c)3 organizations may lobby to affect government policy outcomes but they must follow federal and state regulations.

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Introduction

Lobbying, attempting to influence legislation, either through direct contact with legislators and government employees who participate in the formulation of legislation, or by urging others to do the same, is an important tool by which nonprofits can effect positive change. If engaging in lobbying, nonprofit organizations who hold 501(c)3 status under the federal tax code should be aware of three sets of rules:

- Federal tax code rules that dictate how much 501(c)3 organizations may spend on lobbying without penalty or risking the loss of their favorable tax status. Organizations may choose from two alternatives under the tax code, but nonprofit advocacy experts recommend choosing the "501(h) election" alternative because it gives nonprofits clear definitions of what activities constitute lobbying and how much organizations may spend on these activities.
- **Federal Lobbying Disclosure Act rules.** If an organization has at least one employee who makes more than one lobbying contact and meets a minimum threshold of time and money spent on lobbying, the organization must register and file reports.
- **State rules.** Each state has its own definitions of what constitutes lobbying, the rules governing lobbying, and the thresholds at which organizations must register and report their activities.

As a convenient shorthand, this guide will use the term "nonprofit" to describe the subset of nonprofits who have been granted exemption from federal income tax under section 501(c)3 of the Internal Revenue Code.

Federal Tax Code Rules

Lobbying is attempting to influence legislation, either through direct contact with legislators and government employees who participate in the formulation of legislation, or by urging others to do the same. The exact definition of lobbying is dependent upon how the nonprofit registers with the IRS.

The Internal Revenue Code (IRC) provides two options under which nonprofits may lobby. The first is the "no substantial part" rule. Section 501(c)3 of the Internal Revenue Code allows for lobbying, provided the lobbying is not a substantial part of a nonprofit's overall activities. The limitations established under this rule are ambiguous, creating a level of uncertainty for those relying on it. The second option, the 501(h) election, provides specific definitions of lobbying and clear spending ceilings for how much a nonprofit can spend on lobbying. By default, nonprofits fall under the no substantial part rule unless they voluntarily take the 501(h) election by filing IRS form 5768.

No Substantial Part Rule

Under the no substantial part rule, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation..." may be part of a nonprofit's activities. Nonprofit advocacy experts generally recommend that nonprofits avoid the no substantial part rule because of the ambiguity of its rules and the penalties for violating the rules can be more severe than the violations for nonprofits that take the 501(h) election (electing organizations). There are no clearly stated limits on either time or money spent lobbying, leaving what defines substantial as vague. There are also no clear delineations between time spent by paid employees, contractors and by volunteers. Time spent lobbying by volunteers must be reported. According to the Center for Lobbying in the Public Interest, the IRS may consider the importance of an issue to an organization in determining if lobbying on it is permissible, but there are no set guidelines for how this is done.

Recording and Reporting Expenses

Under the no substantial part rule, all lobbying expenditures must be reported on IRS form 990. Nonprofits must give a detailed description of all lobbying activities (including both staff and volunteer efforts) and the type of activity (such as media advertisements, legislator meetings and rallies). The detailed description must include information on the amount of non-compensated and compensated expenses incurred for each activity. If audited, organizations must have records to substantiate what is reported on Form 990.

Organizations with annual gross receipts of less than $50,000 are required to file only IRS form 990-N (e-postcard), which means they do not have to report lobbying expenses to the IRS. However, they must keep track of lobbying activities and expenses in case of an audit or an accusation of excessive lobbying.

Nonprofits will need a system for recording lobbying expenditures. The IRS will accept any reasonable method. Nonprofits may use time sheets or they may use a sampling method to estimate expenditures. For example, an employee whose 2-week periods are generally representative of how they use their time could record lobbying expenditures for a 2-week period in 30-minute intervals. This 2-week analysis could then be used to estimate lobbying costs for the entire quarter. All calculation methods must include a calculation of overhead costs. For a sampling method to be reasonable, the employee must be able to make reasonably close estimates from that assessment.

Penalties

Under the no substantial part rule, a nonprofit that conducts excessive lobbying in any single year may lose its tax-exempt status, resulting in all of its income being subject to tax. Organizations that lose their 501(c)(3) status generally are subject to an excise tax of 5% of the lobbying expenditures for the year in which they cease to qualify for exemption.

Further, a 5% tax on the lobbying expenditures for the year may be imposed against an organization's managers who agree to the making of the expenditures knowing that the expenditures would likely result in the loss of tax-exempt status. No tax will be imposed if the manager's agreement is not willful and is due to reasonable cause.

IRC 501(h)

501(h) Benefits

In 1976, Congress supported the ability of public charities to lobby when it enacted the 501(h) expenditure test; related regulations were issued in 1990. Nonprofits that choose to come under the 501(h) rules receive substantial benefits, including:

- The 501(h) rules provide nonprofits with clear definitions of what activities constitute lobbying.
- The rules exempt several types of advocacy from the definition of lobbying.
- Organizations are provided clear limits on how much they can spend on lobbying.
- Nonprofits do not have to record volunteer time.

To Elect

To fall under these rules, nonprofits simply file the one-page Form 5768 with the Internal Revenue Service. A qualifying IRC 501(c)(3) organization will not be denied 501(h) status. The election only needs to be made once. Nonprofits may revoke the election by filing a second Form 5768 noting the revocation.

The following types of organizations, as described in the Internal Revenue Code, qualify to make an election under IRC 501(h):

- Educational institutions (IRC 170(b)(1)(A)(ii));

- Hospitals and medical research organizations (170(b)(1)(A)(iii);
- Organizations that support government schools (170(b)(1)(A)(iv);
- Organizations publicly supported by charitable contributions (170(b)(1)(A)(vi);
- Organizations publicly supported by admissions, sales, etc. related to their exempt purpose (IRC 509(a)(2)); and
- Organizations that are public charities because they are a supporting organization (that is described in IRC 509(a)(3)) of a 501(c)(3) organization (that is described in IRC 509(a)(1) or IRC 509(a)(2)).

The election is effective as of the beginning of the tax year in which Form 5768 is filed. The election can be made at any time, including immediately after filing 501(c)3 status and before that status is granted. If an organization revokes its election, the revocation is effective at the beginning of the tax year *after the year* in which the notice is filed. An organization that revokes its election may make the election again. The new election would be effective the tax year following the year in which the revocation was effective. If an organization ceases to be an eligible organization for IRC 501(h) election, and continues to be described in IRC 501(c)(3), its election will automatically be revoked and it will fall under the no substantial part rule.

The Internal Revenue Manual specifically informs examination personnel that making the election is not a basis for initiating an audit.

What Constitutes Lobbying under IRC 501(h)

In general, lobbying is stating a position on specific legislation to legislators and/or government employees who participate in the formulation of legislation, urging an organization's members to do this, or stating an organization's position to the general public and asking them to contact legislators and/or government employees who participate in the formulation of legislation. According to the IRS, (Reg. § 56.4911–2) (link to library item) legislation "includes action by the Congress, any state legislature, any local council, or similar legislative body, or the by the public in referendum, ballot initiative, constitutional amendment, or similar procedure." Specific legislation

> includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes. In the case of a referendum, ballot initiative, constitutional amendment, or other measure that is placed on the ballot by petitions signed by a required number or percentage of voters, an item becomes "specific legislation" when the petition is first circulated among voters for signature.

Legislation does not include actions by executive, judicial, or administrative bodies. (It includes a "proposed treaty required to be submitted by the President to the Senate for its advice and consent from the time the President's representative begins to negotiate its position with the prospective parties to the signing of the proposed treaty.")

Lobbying only occurs when there is an expenditure of funds for an activity that meets the lobbying criteria. Therefore, any work done by volunteers would not be considered lobbying. However, organizational expenditures related to volunteer work that meets the lobbying criteria are counted as lobbying expenses. This includes reimbursing a volunteer for out-of-pocket expenses, purchasing supplies needed for lobbying, and staff time used to support volunteer work.

There are two kinds of lobbying, direct and grass roots.

Direct Lobbying

Direct lobbying is the attempt to influence any legislation through communication with "any member or employee of a legislative body" or "any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation." (Reg. § 56.4911–2) To qualify as direct lobbying, the communication must refer to specific legislation and reflect a view on such legislation. Legislation may be identified either by its formal name, by a term that has been widely used in connection with specific pending legislation, (e.g. "severance tax"), or merely by its content and effect.

Requesting that executive bodies take an action is not seen as lobbying, except when an organization asks an executive body to support or oppose legislation. Because direct lobbying both refers to specific legislation and reflects a view on it, sending a paper to a state legislator on a general issue that does not reflect a view on specific legislation is not a direct lobbying communication.

Telling your organization's members the organization's position on legislation and asking them to contact their legislators about it is direct lobbying. According to the IRS, a member is one who contributes more than a nominal amount of time or money to the organization. The IRS definition of a member does not change an organization's by-laws, but operates only for the purpose of calculating lobbying expenditures.

Grassroots Lobbying

Grassroots lobbying is the attempt to influence legislation by affecting the opinions of the general public or any segment of the public. According to Reg § 56.4911–2(2), it must include all of the following three elements:

1. Refer to specific legislation
2. Reflect a view on such legislation
3. Encourage the recipient of the communication to take action with respect to such legislation (commonly referred to as the "call to action" requirement).

To be considered a "call to action," a communication must do any one of the following:

1. State that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation.

2. Give the address, telephone number, or similar information of a legislator or an employee of a legislative body;
3. Provide a petition, tear-off postcard or similar material for the recipient to communicate with a legislator or an employee of a legislative body, or with any other government official or employee who may participate in the formulation of legislation; or
4. 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.

When a nonprofit states its position on a legislative proposal specifically to its members, as opposed to the general public, and asks them to contact legislators, it is direct lobbying. This is a helpful distinction as organizations can spend less on grassroots lobbying than they can on direct lobbying. If there is a call to action and the audience is primarily members, but also includes non-members, the cost is divided between direct and grassroots lobbying.

There is a special rule under which a mass media campaign would be grassroots lobbying, even if it does not meet all of the regular qualifications for grassroots lobbying. A mass media advertisement on highly publicized legislation that appears within two weeks before a vote by a legislative body, or a legislative committee (but not a subcommittee) is considered to be a grass roots lobbying if it: (1) reflects a view on the general subject of such legislation; and (2) either refers to the legislation or encourages the public to communicate with legislators on the subject. If the vote does not take place, (for example, public pressure causes the committee to withdraw the bill), this rule would not apply and the mass media communications would not be considered grassroots lobbying. The rule would also not apply if it can be shown that the advertisement is a type of mass media communication regularly made by the organization without regard to the timing of legislation or the timing of the paid advertisement was unrelated to the upcoming legislative action.

Ballot Initiatives/Referendums

When an organization urges the public to vote for or against a ballot initiative, referendum or similar initiative, it is considered direct lobbying, because the general public becomes, in effect, the legislature.

Exemptions to Lobbying

1. **Regulations:** Contacting legislators or executive branch employees in support of or opposition to proposed regulations is not lobbying.
2. **Discussion of Broad Issues:** Discussions of broad social, economic, and similar problems (for example, environmental pollution or population growth) are not lobbying. This exemption applies even if the problems are of the type with which the

government would be expected to ultimately deal with, if the discussion does not address the merits of a specific legislative proposal and does not directly encourage recipients to take action with respect to legislation.

3. **Member Communication Without a Call to Action:** Communication to an organization's members on legislation (including if a position is taken), is not lobbying, if it does not directly encourage its members or others to take action.
4. **Technical Assistance:** Providing technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either (such as a senate committee) in response to a written request from that body, is not lobbying. The request cannot come from an individual of that body, it must be made in the name of that body, and the response must be made available to the entire body. The response can include advice and a position on the legislation if that advice is requested in writing, or is directly related to the requested materials. Appearing in front of a legislative committee to discuss legislation would be considered lobbying if there was no official request to provide testimony.
5. **Self Defense:** A communication is not lobbying if the communication is an appearance before, or communication with, any legislative body with respect to a possible action by the body that might affect the existence of the nonprofit, its powers and duties, its tax-exempt status, or the deductibility of contributions to the organization. Expenditures made to initiate legislation to prevent such actions qualify under the self-defense exemption. This exemption does not include trying to influence the general public. Examples of self-defense actions are communications with legislators on a bill that would cause an organization to lose its exemption from taxation if it engages in certain transactions or lobbying congress in opposition to a proposal to curtail nonprofit lobbying. The following would fall under the self-defense exemption:
    a. If more than 75% of an organization's members are 501(c)3 organizations, communications with any legislative body, where the primary purpose of the communications is to defend one of more of those 501(c)(3) organizations from possible actions which might affect their existence, powers, duties, or tax-exempt status, or the deductibility (under IRC 170) of contributions to them.
    b. A communication that directly encourages a member to engage in work that would fall under the self-defense exemption.

       However, advocating for programs in the organization's general field, (ie: environment, education), is not considered self-defense. For example, a land trust advocating against cuts to a land conservation grant program would not be defined as self-defense.
6. **Nonpartisan Studies:** Engaging in nonpartisan analysis, study or research, and making the results available to the public, is not lobbying. Nonpartisan analysis,

study, or research means an independent and objective exposition of a particular subject matter, including educational material. It 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 reader to form an independent opinion or conclusion, as opposed to the mere presentation of unsupported opinion. The study may be distributed by any suitable means but the communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue. A detailed description with examples of the rules associated with nonpartisan studies can be found on page 302 of "Lobbying Issues: Judith E. Kindell and John Francis Reilly" (Link to Library Item).

Information in the section "Exemptions to Lobbying" was adapted from "Lobbying Issues," written by Judith E. Kindell and John Francis Reilly.

Studies

Study, research, and discussion of matters pertaining to government and even to specific legislation, may, under certain circumstances, be educational activities rather than attempts to influence legislation if the work is not serving merely as a preparatory stage for the advocacy of legislation. If the study is used for lobbying purposes, some, but not all, of the expenses associated with the study should be treated as direct lobbying expenditures. The regulations furnish an example of an organization that researched, prepared, and printed a safety code for electrical wiring. The organization sold the code to the public and it was widely used by professionals in the installation of electrical wiring. A number of states codified all, or part, of the code of standards as mandatory safety standards. On occasion, the organization lobbied state legislators for passage of the code of standards for safety reasons. Because the primary purpose of preparing the code of standards was the promotion of public safety and the standards were specifically used in a profession for that purpose, separate from any legislative requirement, the research, preparation, printing and public distribution of the code of standards are not lobbying expenditures. However, costs, such as transportation, photocopying, and other similar expenses incurred in lobbying state legislators for passage of the code of standards into law are direct lobbying expenditures.

501(h) Lobbying Expenditures

The amount of lobbying expenditures allowed is based on the electing organization's annual exempt-purpose expenditures, as shown in the table below. Exempt purpose expenditures include all expenditures except certain fundraising costs, unrelated business income tax, and capital expenditures.

Annual Exempt-Purpose Expenditures	**Total Lobbying Expenditures Allowable**	**Amount of Total Lobbying Expenditures That Can Be Grassroots Lobbying**

Up to $500,000	20% of exempt-purpose expenditures, up to $100,000	One-quarter of the total direct lobbying expenditure ceiling
>$500,000 - $1 million	$100,000 + 15% of excess over $500,000	$25,000+ 3.75% of excess over $500,000
>$1 million to $1.5 million	$175,000 +10% of excess over $1 million	$43,750 + 2.5% of excess over $1 million
>$1.5 million to $17 million	$225,000 + 5% of excess over $1.5 million	$56,250 + 1.25% of excess over $1.5 million
Over $17 million	$1 million	$250,000

Total lobbying expenditures may not exceed $1,000,000. Grassroots lobbying is limited to one quarter of the overall ceiling permitted for lobbying. So, if an organization's total lobbying limit is $100,000, it may spend the full $100,000 on direct lobbying or it may spend up to $25,000 on grassroots lobbying and the rest on direct lobbying.

Lobbying expenditures include current and deferred compensation for an employee's services as well as the allocable portion of administrative, overhead, and other general expenditures attributable to the direct or grass roots lobbying work. If a nonprofit pays another organization or an individual to do lobbying for it, the payment counts against its direct or grassroots lobbying ceiling according to the character of the work done.

The members of an affiliated 501(c)3 group are treated as a single organization for purposes of measuring lobbying expenditures. Only those members of the affiliated group that have made the IRC 501(h) election are subject to the rules of the election; non-electing members remain subject to the no substantial part test. For purposes of the regulations under IRC 4911, two organizations are affiliated if one organization is able to control action on legislative issues by the other organization because of interlocking governing boards or because of provisions in the governing instruments of the controlled organization. Detailed descriptions of the rules governing who are affiliated organizations and the lobbying rules affecting them can be found on page 58 of "Lobbying Issues: Judith E. Kindell and John Francis Reilly" (Link to Library Item).

Exempt Purpose Expenditures

Under the Code of Federal Regulations, 26 CFR 56.4911-4, all expenses except the following are exempt purpose expenditures:

a) costs of a separate fundraising unit (2 or more staff)

b) payments to a fundraising counsel or professional fundraisers

c) capital expenditures (s/l depreciation OK)

d) investment management expenses

e) certain excise taxes

f) certain transfers (see Reg. 56.4911-4(e))

Recording Lobbying Costs

Lobbying expenditures are reported on IRS Form 990. If audited, organizations must have records to substantiate what is reported on Form 990. Organizations with annual gross receipts that are less than $50,000 are required to file only form 990-N, the e-postcard, which does not include a reporting of lobbying costs. However, these organizations must still track lobbying expenses in case of an audit or accusations of excessive lobbying.

Like organizations under the no substantial part rule, electing organizations need a system for recording lobbying expenditures and any reasonable method is allowed. (These methods must distinguish between direct and grassroots lobbying).

Information in the section "501(h) Lobbying Expenditures" was adapted from "Lobbying Issues," written by Judith E. Kindell and John Francis Reilly (link to library item)

Penalties for Excess Lobbying Expenditures

If lobbying expenditures exceed either the total permitted lobbying expenditures or the permitted grassroots amount, an excise tax of 25% is imposed on the excess amounts. If both are exceeded, the tax will be imposed on the higher of the two.

Nonprofits that exceed their lobbying limit by an average of 150% or more for a 4 year period will have their 501(c)3 status revoked. If an organization has exceeded its lobbying limit, it will be required to pay the excise tax regardless of whether it maintains its tax-exempt status. Organizations that lose their exempt status because of excess lobbying can at no time come under 501(c)4 regulations.

Unlike the no substantial part rule, managers do not face a penalty when their organizations exceed spending limits.

Because the members of an affiliated group are treated as a single organization for purposes of measuring lobbying expenditures, if the expenditures of the group as a whole exceed the permitted limits, then each of the electing members is treated as having exceeded the limits and would pay tax on its proportionate share of the group's excess lobbying expenditures.

Calculating Costs of Communications

In general, all costs of preparing a direct or grass roots lobbying communication are counted as expenditures for direct or grass roots lobbying respectively, including both direct costs (current and deferred compensation for employees' services) and an allocable share of overhead expenses. The regulations differ for communications that are only for members, primarily to members (more than half of the recipients are members) and primarily for nonmembers. The regulations § 56.4911–3 (link to library) give 13 examples of different types of communications and how the costs should be allocated.

Nonmember Communications

Communications sent only to non-members or to a group that is less than half members are considered nonmember communications. For nonmember communications that include lobbying, all costs associated with the lobbying portion and all costs associated with the portions of the communication that are on the same specific subject as the lobbying message must be included as lobbying expenditures. It is the same specific subject if it the same subject of the lobbying message or is an issue that would be directly affected by the legislation that is the subject of the lobbying message. It is also the same specific subject if it discusses the background or consequences of the legislation or of an activity or issue affected by the legislation.

Communications Primarily to Members

The rules regarding those costs for communications that are either made only to members or primarily to members (more than half of the recipients are members) are more lenient.

If a communication is made primarily to members and encourages direct lobbying, the costs associated with the preparation and distribution of the lobbying portions of the communication are divided between direct and grassroots expenditures based on the number of non-members receiving it. The grassroots portion is determined by multiplying the total lobbying expenditures by the percentage of non-members receiving the communication. If nonmembers are less than 15% of the distribution list, for the purpose of the allocation, the nonmember percentage is treated as zero. If any part of a communication encourages members to engage in grassroots lobbying (i.e., asks them to encourage nonmembers to lobby), all the costs associated with the preparation and distribution of the lobbying portions of the communications are counted as grassroots expenditures, even if it also includes direct lobbying.

For mailings that are primarily to members, the allocation between lobbying and non-lobbying costs must be reasonable. For example, an organization sends out a mailing to its members discussing the need for farmland preservation, which includes the organization's view on farmland preservation legislation and states the reader should contact the legislature regarding this bill. The organization could reasonably determine that the document has a bona fide non-lobbying purpose -- educating its members about the need for farmland preservation. Allocating one-half of the preparation and distribution costs to lobbying would be reasonable. However, allocating only 1% of the costs to lobbying because only 2 out of 200 lines state the reader should contact the legislature would not be reasonable.

Communications Only to Members

Communication that refers to, and reflects a view on, specific legislation will not be considered a lobbying expenditure if the communication satisfies the following four requirements:

1. The communication is directed only to members of the organization;
2. The specific legislation the communication refers to, and reflects a view on, is of direct interest to the organization and its members;

3. The communication does not directly encourage the members to engage in direct lobbying (whether individually or through the organization); and
4. The communication does not directly encourage the member to engage in grass roots lobbying, whether individually or through the organization. Members would be encouraged to engage in grassroots lobbying if the communication urges members to ask the general public to contact legislators; asks the member to provide the general public with contact information for legislators, or provides or asks the member to provide a petition, postcard, or similar material for the nonmember to communicate views.

Information in the section "Calculating Costs of Communications" was adapted from "Lobbying Issues," written by Judith E. Kindell and John Francis Reilly.

Foundations and Grants

Community Foundations

Community foundations are governed under the same federal tax rules for lobbying as other nonprofits under section 501(c)(3). Unlike private foundations that are generally restricted from lobbying, except on "self-defense" issues like legislation affecting their tax-exempt status, community foundations may lobby with the same latitude permitted other 501(c)(3)s. By default, community foundations are subject to the "no substantial part" rule unless they take the 501(h) election.

Community foundations may make general support grants to nonprofits that lobby. They also may make grants to nonprofits earmarked for lobbying. If a community foundation makes a grant for lobbying, the foundation must count it as a lobbying expenditure.

Private Foundations

For private foundations, any expenditures incurred for lobbying activities are treated as taxable expenditures under IRC 4945(d)(1) and subject to the tax imposed by IRC 4945(a). IRC 4945 (link to library item) imposes on the private foundation an initial tax equal to 10 percent of the taxable expenditure and an additional 100 percent tax on taxable expenditures that are not corrected within the taxable period. In addition, an initial tax equal to 2 1/2 percent of the taxable expenditure is imposed on foundation managers who knowingly agreed to the making of the taxable expenditure. Any foundation managers who refuse to agree to all or part of the correction are subject to a tax equal to 50 percent of the taxable expenditure.

Private foundations may make grants to public charities that lobby as long as the grants are not earmarked for lobbying and the grants are either general purpose grants or are specific project grants that meet the requirements of section 53.4945-2(d)(6) of the Foundation Excise Tax Regulations.

Care During Elections

Under the Internal Revenue Code, section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for elective public office. The prohibition applies to all campaigns at the federal, state and local levels. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes. Those section 501(c)(3) organizations that are private foundations are subject to additional restrictions. During an election, nonprofits can continue to lobby but must exercise extreme care that it is done in a non-partisan way that does not interfere, or appear to interfere, with the election. Organizations may lobby incumbent legislators that are running for reelection, but must avoid any reference to the reelection campaign.

For an in-depth look at nonprofits, advocacy work, and elections, including an overview of 501(c)4 organizations and election work, see the WeConservePA guide *Elections and 501(c)3 Organizations*.

Federal Registration and Reporting

Congress has established rules for when a person must register as a lobbyist. These rules are largely independent of the federal tax code rules, applying to both electing and non-electing organizations.

The Lobbying Disclosure Act took effect January 1, 1996. Under this act, if an organization has at least one employee who devotes at least 20% of his or her time to lobbying activities at the federal level and spends $11,500 or more every 3 months (January through March, April through June, July through September, or October through December) on federal lobbying activities, the organization must register and file reports under the act. Lobbying costs include overhead costs. The Clerk of the U.S. House of Representatives and the Secretary of the Senate regularly update the *Lobbying Disclosure Act Guidance* and nonprofits should check the lobbying disclosure web page for the most up to date information.

The Lobbying Disclosure Act has different definitions of lobbying than does the IRS. However, organizations that have taken the 501(h) election can use the 501(h) lobbying definitions. Non-electing nonprofits must use the lobbying definitions under the Lobbying Disclosure Act and must report their "lobbying contacts" plus planning, research, and other background activities in support of such contacts. The Lobbying Disclosure Act defines lobbying activities as:

> lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

Lobbying contacts are defined as:

> any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to- (i) the formulation, modification, or adoption of Federal legislation (including legislative proposals); (ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government.

There are 19 exceptions, such as making speeches, publishing articles, and submitting Congressional testimony.

Electing organizations have two options for defining lobbying: They may use the definitions found in the IRC 501(h) rules, in which case, the organization reports would include local, state and federal lobbying expenditures. Alternatively, electing nonprofits may choose to follow the Lobbying Disclosure Act definitions, which include only federal lobbying activities.

Organizations must make a good faith estimate of their time and monetary expenditures. Those organizations close to the reporting threshold may wish to make a more precise calculation of costs.

If an organization's lobbying expenditures require registration under the act, a registration statement must be filed with the Senate and House within 45 days after an employee or lobbyist makes, or is employed to make, a lobbying contact. Afterwards, semi-annual reports must be filed.

The Lobbying Disclosure Act strictly limits the gifts or meals that may be provided to a legislator or staff member. While there are some special rules for charities, the general rule is that lobbyists and organizations that retain or employ lobbyists may not make a gift or provide meals or travel to a member of congress or congressional staff. Certain limited exceptions apply, such as free attendance or a free meal at widely attended events, an honorary degree, awards for public service, or a gift of nominal value, e.g., a baseball hat. A full description of gift rules is beyond the scope of this guide. See the House Ethics Committee and the Senate Ethics Committee for the complete set of rules.

An organization may invite a senator, representative or congressional staff member to speak at an event in an official capacity, and pay for their travel, lodging and related expenses. All provided expenses must be necessary and an integral part of the event. Organizations may not offer honoraria to congressional members or aides, but may contribute to a nonprofit(s) they designate. Both the House and the Senate maintain their own rules for such travel.

Knowingly failing to correct a defective lobbying report or failing to comply with the lobbying disclosure act may result in a fine or jail time.

More information about the federal Lobbying Disclosure Act can be found at the U.S. House of Representatives web page, and the Senate's web page.

Information in the section "Federal Registration and Reporting" was adapted from "The Nonprofit Lobbying Guide, Second Edition," written by Bob Smucker.

State Registration and Reporting

States in General

In addition to the federal requirements, each state has its own lobbying registration and reporting requirements. These laws have a variety of definitions of what constitutes lobbying and the thresholds at which organizations must register and report their activities. In general, they do not exempt 501(c)(3) organizations. Nonprofits should read the applicable state rules regarding their lobbying activities.

Pennsylvania

Pennsylvania's regulations governing the disclosure of lobbying activities are found in Act 134 of 2006, the Lobbying Disclosure Act. Under this act, the term "lobbyist" includes any individual, firm, association, corporation, partnership, business trust or business entity that engages in lobbying on behalf of a principal for economic consideration. Lobbying is defined as an effort to influence legislative action or administrative action in the Commonwealth. The term includes:

- Direct or indirect communication;
- Office expenses; and
- Providing any gift, hospitality, transportation or lodging to a state official or employee for the purpose of advancing the interest of the lobbyist or principal.

The act differentiates between two kinds of lobbying; direct and indirect communications. Direct communications are "an effort, whether written, oral or by any other medium, made by a lobbyist or principal, directed to a State official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action." Indirect communications are an "effort, whether written, oral or by any other medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action." The term includes letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues. The term does not include regularly published periodic newsletters primarily designed for, and distributed to, a nonprofit's members.

Under Pennsylvania regulations, lobbyists, lobbying firms (an entity that engages in lobbying for economic consideration on behalf of a principal other than the entity itself) and principals (any individual, association, corporation, partnership, business trust or other entity on whose behalf a lobbying firm or lobbyist engages in lobbying or that engages in lobbying on the principal's own behalf) must register with the state. (Exemptions are discussed below.) They must register within 10 days of serving in that capacity. Registrations must be renewed on a biennial basis. The biennial cycles run from January 2011 to December 2012, January 2013 to December 2014 and so on. Qualifying lobbyists should go to the Pennsylvania Department of State's web

page to register. As of January 2011, there is a $200 fee to register as a lobbyist, lobbying firm or principal.

All registered lobbyists, lobbying firms and principles must file quarterly statements of lobbying costs. (Exemptions are discussed below.) Quarters are defined as January through March, April through June, July through September, and October through December. These reports require a breakdown of lobbying costs between direct and indirect communications.

As stated in section 1306-A of the Act, the following persons and activities are exempt from registration and reporting:

1. An individual who limits lobbying activities to preparing testimony and testifying before a committee of the legislature or participating in an administrative proceeding of an agency.
2. An individual who is an employee of an entity engaged in the business of publishing, broadcasting or televising while engaged in the gathering and dissemination of news and comment thereon to the general public in the ordinary course of business.
3. An individual who does not receive economic consideration for lobbying.
4. An individual whose economic consideration for lobbying, from all principals represented, does not exceed $2,500 in the aggregate during any reporting period.
5. An individual who engages in lobbying on behalf of the individual's employer if the lobbying represents less than 20 hours during any reporting period.
6. Except as required under section 1305-A(d), a principal whose total expenses for lobbying purposes do not exceed $2,500 during any reporting period.
7. An elected State official who acts in an official capacity.
8. An appointed State official acting in an official capacity.
9. An elected or appointed official of a political subdivision who is acting in an official capacity for the political subdivision.
10. An employee of the Commonwealth or an agency of the Commonwealth who is acting in an official capacity for the Commonwealth or agency.
11. An individual representing a bona fide church or bona fide religious body of which the individual is a member where the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion.
12. An individual who is not a registered lobbyist and who serves on an advisory board, working group or task force at the request of an agency or the General Assembly.
13. Participating as a party or as an attorney at law or representative of a party, case or controversy in any administrative adjudication pursuant to 2 Pa.C.S. (relating to administrative law and procedure).
14. Expenditures and other transactions subject to reporting under Article XVI of the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code.

15. Vendor activities under 62 Pa.C.S. §§ 514 (relating to small procurements), 516 (relating to emergency procurements) and efforts directly related to responding to publicly advertised invitations to bid and requests for proposals.

Failure to comply with Pennsylvania's Lobbying Disclosure Law will result in notification from the State Ethics Commission. Failure to register or report as required by the law may result in a penalty of up to $50/day. Failure to comply after notification by the State Ethics Commission can result in a fine and a prohibition to lobby for economic consideration for 1-5 years.

Federal Grants

Public charities that receive federal grants are allowed to lobby with their private funds. However, organizations must be careful not to use federal grant funds for lobbying, except when specifically authorized to do so.

Literature Referenced and Adapted for this Guide

Lobbying Issues: Judith E. Kindell and John Francis Reilly, U.S. Internal Revenue Service, 1997.

This IRS publication is an in-depth review of the laws governing lobbying by non-profit organization, including extensive definitions of terms, discussions of the different IRS rules, and a history of the regulations.

The Nonprofit Lobbying Guide, Second Edition: Bob Smucker, Independent Sector, 1999.

A good overview of the regulations guiding nonprofit lobbying. It also includes an extensive section on why nonprofits should engage in lobbying and strategies for how they can be successful advocates.

Other Resources

National Council for Nonprofits: Everyday Advocacy

This website provides a variety of how-to guides on nonprofit advocacy and an overview of the IRS laws governing this work.

Alliance for Justice

The Alliance for Justice has compiled multiple resources on how to lobby and the laws regulating lobbying by nonprofit lobbying.

Researched and written by Elana Richman. As noted in particular sections, portions of the guide were adapted from the following publications: *Lobbying Issues* by Judith E. Kindell and John Francis Reilly, U.S. Internal Revenue Service, 1997; and *The Nonprofit Lobbying Guide, Second Edition*: Bob Smucker, Independent Sector, 1999. Edited by Andrew M. Loza.

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