

## Non-Profit Organizations CAN Lobby

Given the many crucial issues facing non-profit organizations and the people they serve, it is more important than ever for charities to become involved in the public policy debate. Yet too many people mistakenly assume that it is illegal for non-profits to lobby. To the contrary, federal laws actually exist to encourage charities to lobby within certain specified limits. Knowing what constitutes lobbying under the law, and what the limits are, is the key to being able to lobby legally and safely. This article represents a vastly simplified summary of some of the federal laws and regulations governing charitable lobbying. The complete laws are much more complex, so consult your attorney or accountant for professional advice, or contact the Center for Non-Profits for more detailed information.

### How much Lobbying is Too Much?

Federal law clearly states that a 501(c)(3) publicly supported charity may devote no more than an “insubstantial” portion of its activities to lobbying. There are two ways in which this can be measured. One is a subjective “substantiality test” based on the facts and circumstances of each case. Because this test can be applied rather arbitrarily, it is often advisable for a charity to file a short form (Form 5768) with the IRS in order to be governed by the “expenditure test,” which is based solely on the amount of money spent for lobbying. The expenditure test lays out specific limits on how much money a charity can spend for lobbying, based on the charity’s own “exempt purpose” expenditures:

<u>Total Annual Exempt Purpose Expenditures</u>	<u>Percent that May be Spent on Lobbying</u>
\$500,000 or less	20%
\$500,000-\$1 million	\$100,000 + 15% of budget over \$500,000
\$1 million-\$1.5 million	\$175,000 + 10% of budget over \$1 million
\$1.5 million and over	\$224,000 + 5% of budget over \$1.5 million

*Note:* Total lobbying expenditures may not exceed \$1 million. “Grassroots lobbying” expenditures may comprise no more than 25% of an organization’s total allowable lobbying ceiling.

### What is Lobbying?

Generally speaking, the IRS defines lobbying as the attempt to influence the passage, defeat, introduction or amendment of legislation, including bills introduced by a federal, state or local legislative body, bond issues, referenda, constitutional amendments, and Senate confirmation votes on Executive branch nominees. For charities that elect to be governed by the expenditure test by filing IRS Form 5768 (also known as taking the “501(h) election”), IRS regulations define two types of lobbying communications: *direct lobbying* and *grassroots lobbying*.

*Direct lobbying* -- In general, any attempt to influence any legislation through communication with a legislator, an employee of a legislative body or other government official, which:

- (1) refers to specific legislation; and
- (2) reflects a view on such legislation.

*Grassroots lobbying* -- any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof. A grassroots lobbying communication is one that:

- (1) refers to specific legislation;
- (2) reflects a view on that legislation; and
- (3) encourages the recipient to take action with respect to the legislation, either by
  - (a) directly urging the recipient to contact legislators or other government officials in order to influence legislation;
  - (b) including the address, phone number or similar information about a legislator or government official;
  - (c) providing a petition, postcard or other prepared message to send to a legislator or government official in order to influence legislation; or
  - (d) identifying one or more legislators who will vote on the legislation as opposing the organization's view; being undecided; being the recipient's representative in the legislature; or being a member of the legislative committee that will consider the legislation. Encouraging the recipient to take action does not include naming the main sponsor(s) for the purposes of identifying the legislation.

The IRS does allow for certain exceptions to the definitions of lobbying, such as nonpartisan analysis or research, or "self-defense lobbying." In addition, the regulations allow a charity to count certain communications as direct lobbying if they encourage the charity's members to take action. Communications to influence the public's vote on public questions, bond issues, referenda and the like are also considered to be direct lobbying.

Any activity that does not meet the above criteria is regarded as *advocacy*, which charities may conduct without limit. The IRS does not view attempts to influence administrative rules, regulations or other executive branch actions as lobbying. Be advised, however, that if your organization engages in these activities, whether at the federal or state level, it may be subject to other federal and/or state registration and reporting requirements (see below).

### **Some Examples of Advocacy and Lobbying (IRS Definitions)**

It's easy for an organization that is trying to comply with the law to become confused about whether its activities are direct lobbying, grassroots lobbying or advocacy. The IRS has provided some examples of each in order to provide additional clarity with respect to its lobbying regulations of public charities. The following examples are abbreviated versions of those issued by the IRS.

#### **Advocacy**

- 1) Organization M writes to its Congresswoman requesting that she contact an administrative agency regarding a proposed regulation. The communication to the Congresswoman is not lobbying because administrative rules are not "legislation" as defined in and limited by the IRS lobbying regulations.
- 2) Organization Z prepares a paper on a particular state's environmental problems. The paper does not reflect a view on any specific pending legislation nor on any specific legislative proposal which Z supports or opposes. Z's paper is not a lobbying communication, even if it is sent to a legislator.
- 3) Organization B researches, prepares and prints a code of standards booklet of minimum safety requirements for electrical wiring. B sells the booklet to the public and it is widely used by professionals in the installation of electrical wiring. Occasionally, B lobbies state legislators for passage of the code of standards for safety reasons. Because the primary purpose of creating the code was to promote 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. Costs, such as transportation, photocopying, and other similar expenses,

incurred in lobbying state legislators in support of the code are expenditures for direct lobbying communications.

- 4) Organization R's monthly newsletter contains an editorial column that refers to and reflects a view on specific pending bills, but does not encourage readers to take action with respect to these bills. R sends the newsletter to 10,000 nonmember subscribers, including Senator Doe. The editorial column in the newsletter sent to Senator Doe is not a direct lobbying communication because the newsletter is sent to Senator Doe in her capacity as a subscriber rather than her capacity as a legislator.
- 5) A pamphlet distributed by organization L discusses the dangers of drugs and encourages the public to send their legislators a coupon printed with the statement, "I support a drug-free America." The term "drug-free America" is not widely identified with any of the many specific legislative bills regarding drug issues. The pamphlet does not refer to any of these bills, nor does the organization support or oppose a specific legislative proposal. The pamphlet is not a grassroots lobbying communication.
- 6) In each edition of its newsletter, Organization E, an environmental organization, routinely summarizes and reports on the status of environment-related bills pending in Congress. The newsletter identifies each bill by a bill number and the sponsor's name. Although the summaries and status reports refer to, and often reflect a view on, specific legislation, they do not encourage readers to take action with respect to any of the bills. The summaries and status reports are not grassroots lobbying communications.

### **Lobbying**

- 1) A pamphlet distributed by organization Y states that the "President's plan for a drug-free America" should be passed, and encourages readers to "write or call your senators and representatives and tell them to vote for the President's plan." No legislative proposal formally bears the name "President's plan for a drug-free America," but that and similar terms have been widely used in connection with specific legislation pending in Congress which was initially proposed by the President. Thus, the pamphlet refers to, and reflects a view on, and encourages readers to take action with respect to specific legislation. The pamphlet is a grassroots lobbying communication.
- 2) Assume the same facts as above except that the pamphlet encourages readers to "write the President to urge him to make the bill a top legislative priority" rather than encouraging readers to communicate with members of Congress. The pamphlet is a grassroots lobbying communication.
- 3) Assume the same facts as above, except that the pamphlet does not encourage the public to write or call legislators or the President, but does list the members of the committee that will consider the bill. The pamphlet is a grassroots lobbying communication.
- 4) The President nominates X for a position in the President's cabinet. Organization Y opposes this nomination and sends a general mailing requesting recipients to write to four Senators on the Senate Committee that will consider the nomination. The mailing is a grassroots lobbying communication.
- 5) T Organization places an advertisement that specifically identifies and opposes a bill that T asserts would harm the farm economy. The ad is not a mass media communication described in the special rules for certain mass media advertisements, but it does state that Senator Y favors the bill. Because it refers to and reflects a view on specific legislation, and also encourages the readers to take action by specifically identifying a legislator who opposes T's views on the bill, the advertisement is a grassroots lobbying communication.
- 6) Assume the same facts as above except that instead of identifying Senator Y by name, the advertisement identifies the "junior Senator from State Z" as favoring the legislation. The advertisement is a grassroots lobbying communication.

**Prohibited Activities**

Charities are expressly prohibited from intervening in a political campaign of any candidate for public office, and from engaging in partisan activity of any kind. In addition, under most circumstances charities may not use government funds, such as government grants or contracts, to lobby, including the use of federal funds to lobby for federal grants or contracts.

**Registration and Reporting Requirements**

In addition to the IRS limitations on lobbying activities, charities are also governed by state and federal lobby disclosure laws which require certain organizations and individuals to register and file periodic reports on their lobbying activities. If your organization pays anyone -- be it a staff member, outside lobbying firm or a volunteer who is reimbursed for expenses -- to influence legislation, administrative rules, or governmental processes, you should explore the extent to which these laws apply to you.

**A Word about Private Foundations and Lobbying**

Under federal law and regulations, with narrowly drawn exceptions, private foundations are prohibited from lobbying and can incur severe tax penalties and possible loss of tax-exempt status for doing so. However, foundations may communicate with government officials in ways that do not constitute lobbying. IRS lobbying regulations also allow private foundations, without penalty, to make general support grants to publicly supported charities that do some lobbying, provided the grant is not earmarked for lobbying purposes; and private foundations need not include special restrictions barring their public charity grantees from using their general support grants for lobbying. A private foundation may also make special purpose grants for projects that involve lobbying as long as the grant is not earmarked for lobbying purposes, and the grant does not exceed the nonlobbying amount of the project budget. IRS regulations also provide protection for foundations that make grants in accordance with IRS guidelines to charities that later lose their tax exemption because of excess lobbying.