

Part 4: Lobbying Regulations For Non-Profit Organizations



Items in this section are essential for entities with a 501(c)3 status, but also provide good practice for other entities.

There is a common misconception that non-profit organizations cannot participate in lobbying activities. THIS IS NOT TRUE! This chapter provides information on what kinds of activities constitute “lobbying” how much lobbying is permitted for non-profit organizations, and details on lobbyist registration requirements.

What is Lobbying?

If an organization is classified as 501(c)3 according to federal tax code, that organization is allowed to engage in lobbying activities.

The current federal tax law simply limits the amount of lobbying activities allowed as discussed below. Lobbying is broken down into two types for purposes of this regulation: direct lobbying and grassroots lobbying.

Direct Lobbying is defined as “any attempt to influence local, state or federal legislation by contacting any member of a legislature, legislative staff or government employee to persuade him or her to propose, support, oppose, change, or otherwise influence legislation.” Examples of direct lobbying are:

- ◆ Writing to state or federal legislators
- ◆ Calling legislators
- ◆ Meeting with legislators in person; and
- ◆ Presenting testimony to a legislative committee or subcommittee.

Grassroots Lobbying is “any attempt to influence local, state, or federal legislation by attempting to influence public opinion and get the public to act.” To be considered grassroots lobbying, an activity must meet both of the following criteria:

1. Express a view for or against a specific piece of legislation; and
2. Encourage the public to take action regarding that legislation.

A communication must do both of these things to be considered grassroots lobbying. Examples of grassroots lobbying include:

- ◆ Legislative alerts that inform readers about pending legislation and urge them to contact legislators about it.
- ◆ Advertisements in newspapers and other media urging the public to take action on legislation.
- ◆ Reports and analyses that support or oppose a specific measure and contain a call to action.
- ◆ Meetings, demonstrations, and other public events to encourage the public to support or oppose legislation.

There is an important note here for membership organizations. If an organization communicates with its members and urges its members to take actions on a particular issue, this is considered direct lobbying. However, if the communication asks its members to urge other people outside of the organization to contact legislators, it is considered grassroots lobbying.

How Much Lobbying is Allowed?

There are two ways to determine how much lobbying your nonprofit is allowed to do.

Substantial Part Test

Under this methodology, the organization is required to show that lobbying does not make up a “substantial part” of its total activities. Unfortunately, the IRS does not provide much guidance on what “substantial part” really means. Most groups interpret this to mean that if lobbying expenditures make up less than 5% of an organization’s total expenditures, then this is not substantial. Under this methodology, grassroots and direct lobbying are included together and not distinguished from one another.

Expenditure Test

This alternative is much more explicit about exactly how much a nonprofit can lobby. In order for an organization to use the expenditure method, the organization must “elect” to do so with the IRS. To elect, the organization simply files with the IRS the one-page IRS Form 5768. Once the organization elects this option, it is entitled to use a special formula to determine its allowable lobbying expenditures. This formula works as follows:

- ◆ Your organization is allowed to spend up to 20% of its first \$500,000 of total yearly expenditures on lobbying activities.
- ◆ Of the next \$500,000 of total expenditures (\$500,000 - \$1,000,000), your organization can spend up to 15% on lobbying activities.
- ◆ Of the next \$500,000 of total expenditures (\$1,000,000 - \$1,500,000), you can spend up to 10% on lobbying activities.
- ◆ Of total expenditures greater than \$1,500,000, you can spend up to 5% on lobbying activities.
- ◆ An organization's total lobbying expenditures cannot exceed \$1 million per year.
- ◆ Only 25% of your organization's total allowable lobbying amount can be used for grassroots lobbying.

Organizations that make this election also receive further clarification about what is and what is not a lobbying activity. For those organizations, the following activities are allowed and not subject to lobbying limits.

- ◆ Contacts with Executive Branch employees or legislators in support of or opposition to proposed regulations are not considered lobbying. For example, if your organization is trying to get a regulation changed, you may contact members of the Executive Branch as well as legislators to urge them to support your position on the regulation. This is not considered lobbying.
- ◆ Lobbying by volunteers is only considered a lobbying expenditure to the extent that the organization incurs expenses associated with volunteers' lobbying activities.
- ◆ An organization's communications to its members on legislation, even if it takes a position on the legislation, is not lobbying as long as the organization does not ask its members to take action.
- ◆ An organization's response to written requests from a legislative body for technical advice on pending legislation is not considered lobbying.

- ◆ Self defense activities, such as lobbying legislators (not the general public) about matters that may impact the organization's existence, powers, tax-exempt status, and other such matters, are not considered lobbying.
- ◆ Making available the results of "nonpartisan analysis, study or research" on a legislative issue that presents a sufficiently full and fair exposition of the pertinent facts to enable the audience to form an independent opinion, is not considered a lobbying activity. Analyses are not required to be neutral or objective nature to qualify for this exclusion. This exclusion is available to research and analyses that take direct positions on legislation, as long as the facts are fully and fairly presented, the material is generally available, and the report does not include a direct call to the reader to contact legislators.
- ◆ Efforts are not considered to be grassroots lobbying if an organization urges the public, through the media or other means, to vote for or against a ballot initiative or referendum. This is considered direct lobbying because the public becomes the legislator in this situation.

For organizations that have not made this election, the distinction between exactly what is and what is not a lobbying activity remains unclear. For this reason, along with the explicit dollar limit provided by the election, it is generally viewed as beneficial for a non-profit to make the election.

Lobbying or Educating

This section applies to persons representing non-profit organizations and/or persons representing governmental organizations.

The line between what is prohibited and what is not is sometimes unclear, so you need to be careful when you make your plans. It is generally a good rule to err on the side of caution.

Allowed

- ◆ Making available the results of nonpartisan analysis or research.
- ◆ Providing technical advice or assistance to a governmental official, body or committee.
- ◆ Appearances before, or testimony and other communications to any legislative body with respect to a possible decision by such body which might effect the existence of the organization, its powers and duties, its tax exempt status, or the deduction of contributions to the organization.
- ◆ Communications between the organization and its bona fide members, with respect to legislation or proposed legislation of direct interest to the organization and such members.
- ◆ Communication with government officials or employees where the nonprofit is not attempting to influence legislation.
- ◆ Examinations and discussions of broad social, economic, and similar problems even if the problems are of the type which government would be expected to deal with at some point.

Not Allowed

- ◆ Supporting or opposing a political candidate, party or office.
- ◆ Formal or informal endorsement of a candidate.
- ◆ Recruiting an individual to run for public office or supporting them before they are a candidate are also prohibited.
- ◆ Publication or distribution of statements or materials in favor or opposition to a candidate.
- ◆ Direct financial contributions or other support to a candidate, political party, or political action committee.
- ◆ In-kind contributions such as office space, mailings, memberships, supplying donor lists, or fundraising.

For more details on lobbying regulations for non-profit organizations, visit

www.muridae.com/nporegulation/lobbying