

Knowing the Rules for Nonprofit Lobbying

Please note that the information in this section comes from The Nonprofit Lobbying Guide by Bob Smucker (second edition, 1999) and the Internal Revenue Service's website.

Nonprofit lobbying is designed to instigate policy change. Staff members at nonprofit organizations have a unique perspective about the needs of the people they serve, making them skilled problem-solvers who play a valuable role in shaping public policy. Unfortunately, myths about lobbying and advocacy prevent many nonprofit organizations from taking part in the public policy process. Contrary to what many people think, not only is nonprofit lobbying legal, Congress has recognized that lobbying efforts by nonprofit organizations represent a legitimate and important activity.

Because nonprofit organizations have such expertise on the issue of homelessness, who it affects, its causes, and its solutions, it is imperative that they be involved in the federal policy process and help to shape public policy. The only way to achieve this type of involvement is through advocacy and lobbying. As a result, you and your organization have a key role to play. Unfortunately, the rules and regulations governing lobbying can seem confusing and overwhelming to many people. This section of the toolkit is designed to help nonprofit organizations, designated as 501(c)(3) organizations by the Internal Revenue Service (IRS), understand what constitutes lobbying and how to measure and report on lobbying activities.

Lobbying vs. Advocacy

Lobbying and advocacy are commonly confused with each other. One thing to keep in mind is that lobbying is a type of advocacy, but advocacy activities are not always lobbying.

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 IRS, which oversees lobbying activities, **lobbying involves an attempt 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. There are two main types of advocacy: non-lobbying advocacy and lobbying.

LOBBYING ACTIVITIES MAY INCLUDE THE FOLLOWING:

- 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, such as the McKinney-Vento program;
- Calling congressional staff to ask a Member of Congress (Member) to write a letter to the chair of a key committee in support of passage of a specific bill; and
- Sending out an action alert to a coalition of homeless service providers asking recipients to write to their Member in support of a proposed increase in funding for a specific federal program.

Advocacy, however, is focused on education about a specific issue on behalf of the people your organization serves.

Lobbying is a small portion of the total amount of advocacy efforts made by many nonprofits. Most lobbying efforts are successful only when they are coupled with many other advocacy activities that allow policymakers to make informed decisions.

Many homelessness assistance programs rely on funding through numerous federal programs. In order to increase the amount and type of federal resources available, they work year-round on both lobbying efforts and non-lobbying advocacy efforts on behalf of the individuals they serve.

NON-LOBBYING ADVOCACY ACTIVITIES INCLUDE THE FOLLOWING:

- Distributing materials to congressional offices that describe the success of a federally funded program;
- Disseminating an analysis of a specific piece of legislation on your website or elsewhere with details of how it would affect people experiencing or at risk of homelessness;
- Inviting Members to visit a program so they can see first-hand how federal funding is used to end homelessness;
- Sharing with congressional offices how your organization uses federal funding and what it is able to accomplish with that funding; and
- Meeting with Members or their staff 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 homeless people and local programs.

Providing technical assistance or advice in response to official written questions or inquiries from a congressional body (committee or subcommittee) is not considered lobbying, even if they ask for your position on a particular piece of legislation. For example, if the Senate Banking, Housing, and Urban Affairs Committee requests that your organization submit written or oral testimony about the impact of a piece of legislation on homelessness, that testimony will not constitute lobbying. However, responses to informal requests from the offices of Members of Congress are considered lobbying activities if you take a position on the legislation.

Determining Lobbying Limits

While lobbying is an important activity for nonprofit organizations to undertake, federal tax law places limits on the amount of lobbying that an organization can do.

There are two main ways in which tax-exempt organizations can determine lobbying limits. The descriptions of each option below can help you assess which one might be the best fit for your organization. More information on both options can be found on the IRS website at <http://www.irs.gov/charities/article/0,,id=163394,00.html>.

Making an informed decision about which federal tax law your organization should use to track lobbying activities will help you to better understand what constraints and limits your organization must abide by in lobbying.

OPTION ONE: "SUBSTANTIAL PART" TEST

Unless a nonprofit organization specifically elects to fall under different lobbying regulations, it must abide by federal tax law, which requires that no "substantial part" of a 501(c)(3) organization's overall activities consists of lobbying. This is commonly called the **substantial part test**.

The substantial part test **measures both your organization's time and expenditures** devoted to lobbying on behalf of your mission. This includes time and expenditures 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."

TIP A common rule suggested by some lawyers and practitioners for organizations operating under this option is to **limit lobbying activities to 5 percent** of the organization's total amount of activities. However, be aware that the IRS has not officially backed the 5-percent rule.

This amount may seem small, but many organizations choose this option because their lobbying activities are very few compared to the many activities that serve other functions of the organization. After recognizing the difference between advocacy and lobbying, you may find that the amount of time and money your organization actually spends on lobbying is extremely insignificant.

OPTION TWO: 501(H) EXPENDITURE TEST

Federal law gives nonprofit organizations a second method for determining limits on their lobbying activity. Unlike the somewhat vague substantial part test, the 501(h) law gives 501(c)(3) organizations the right to lobby with the security of knowing the very specific limitations they face for lobbying expenditures. By filing with the IRS, you can elect to fall under this law; in that case, your organization's lobbying limits are based solely on expenditures.

This option is widely known as the **501(h) expenditure test** and allows your organization to take part in a significant amount of lobbying under the guidance of precise regulations for calculating lobbying limits. Under this option, lobbying limits are calculated **based solely on how much money your organization spends on lobbying**; under this option, **the time your organization spends on lobbying activities is not factored in.**

Under the 501(h) expenditure test, if an activity does not cost anything, it does not count toward lobbying limits. For example, staff time costs the organization money and would be factored into the total allowance due to salary costs, whereas a volunteer's time would not be, because it does not cost anything.

The 501(h) expenditure test distinguishes between direct and grassroots lobbying activities. Organizations can spend as much as **20 percent of their entire budget on lobbying** (including direct lobbying, where you are the one taking action), and up to a **quarter of that total amount can be spent specifically on grassroots lobbying** (when you ask the public to take action).

TIP

An organization can elect to fall under the 501(h) expenditure test by filling out the IRS Form 5768, which is available at <http://www.irs.gov/pub/irs-pdf/f5768.pdf>.

Under the 501(h) expenditure test, the limit on lobbying expenditures is based on the size of the organization and cannot exceed \$1 million total. The table below indicates the IRS' guidelines on lobbying limits under this option.

EXEMPT-PURPOSE EXPENDITURE	NONTAXABLE LOBBYING AMOUNT
Less than \$500,000	20 percent of exempt-purpose expenditures
Between \$500,000 and \$1 million	\$100,000, plus 15 percent of the excess of the exempt-purpose expenditures over \$500,000
Between \$1 million and \$1.5 million	\$175,000, plus 10 percent of the exempt-purpose expenditures over \$1,000,000
More than \$1.5 million	\$225,000, plus 5 percent of the exempt-purpose expenditures over \$1,500,000

Using this option, a 501(c)(3) organization with an annual budget of, for example, \$600,000 could spend up to \$115,000 on lobbying activities each year (\$100,000 for the first \$500,000 of the organization's budget, plus 15 percent of the remaining \$100,000 of the budget). Up to \$28,750 of that (25 percent of \$115,000) could be for grassroots lobbying.

“Dos and Don’ts” of Lobbying

Below are a few key things that nonprofit organizations should and should not do in regards to lobbying and advocacy.

DO:

- DO advocate. There are no limits on non-lobbying advocacy activities.
- DO lobby. Nonprofit organizations have a unique perspective and experience on the issue of homelessness, and they play a valuable role in shaping federal policy.
- DO determine how to measure your organization’s lobbying activities. Decide whether the substantial part or 501(h) expenditure test is best for your organization. This will depend on how much time and money your organization spends on lobbying activities.
- DO talk with all of your funders. Public and private foundations can fund lobbying projects but must follow certain rules. Each funder, including government entities, may also operate under more stringent rules than are required by the federal government. Talk with your funders and visit the Alliance for Justice at www.afj.org for more information on foundation advocacy.
- DO conduct voter registration and “get out the vote” activities. People experiencing homelessness often have trouble registering to vote because they may not be familiar with the process or have the necessary documentation easily available. “Get out the vote” and voter registration activities do not count as lobbying, as long as your organization does not participate in a campaign for or against a specific candidate.
- DO work with the Alliance year-round on advocacy and lobbying campaigns.

DON’T:

- DON’T think lobbying can be done only by professional lobbyists. Your lobbying activity can help result in better policy, making it easier for your organization to achieve its mission.
- DON’T use federal funds for lobbying at the state or federal level. A local funding match cannot be used for lobbying purposes either.
- DON’T ever participate as an organization in any political campaign on behalf of or in opposition to any candidate for public office. As a private citizen on your own time, you are perfectly within your rights to participate in such a campaign, as long as you are not representing your organization.

Because policymakers rely on 501(c)(3) organizations’ expertise to make decisions about policy, you can and should lobby. You should make informed decisions about how your organization is tracking its lobbying and advocacy activities and seek training about lobbying rules and regulations. Use the information in this section to help you begin to make these decisions.