

Non-Profits & Political Advocacy: Staying Out of Trouble!

Southern Early Childhood Association



SECA Policy Brief

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Our Information Source



Navigating the IRS rules and regulations concerning non-profits can be a daunting task and we have deferred to those whose expertise far exceeds ours in putting together this informational guide. Information for this policy brief was excerpted from [Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities](#), Alliance for Justice (Authors: Harmon, Ladd, & Evans, 2011). Content from the publication is referenced by the page where more detailed and comprehensive information appears.

The original version of *Being a Player* was published in 1991 and was updated in 1995, 2000 and again in 2011. It is a comprehensive guide to IRS regulations and provides examples to illustrate how the rules and regulations would be applied to a fictional non-profit, DARE (Dragon Lovers Association for Research and Education). It is not designed to provide legal advice but simply to provide guidance as non-profit organizations begin to develop lobbying/advocacy programs.

The Alliance for Justice (www.afj.org) is a national organization of more than 100 organizations dedicated to advancing justice and democracy and is the leading expert on the legal framework for nonprofit advocacy efforts, providing definitive information, resources and technical assistance that encourages organizations and their funding partners to fully exercise their right to be active participants in the democratic process.

This policy brief will provide you basic information on:

- The legalities of lobbying for a 501(c)(3) organization.
- Definitions (legislation, direct lobbying, grassroots lobbying, what lobbying is NOT) that will help you to understand rules and regulations.
- Links to IRS publications that can further assist you in your research.

The 501(c)(3) Organization: The Legalities

- The **Internal Revenue Service** (IRS) is the government agency responsible for ensuring that agencies that operate as 501(c)(3) (non-profit) organizations meet the guidelines established for those organizations.
- Being a non-profit means that your organization has applied to the IRS for this tax-exempt status and that status has been granted by the IRS. **If you are legally a non-profit, you will have a determination letter from the IRS granting that tax-exempt status.** You may claim non-profit status only if you have applied and been awarded that status by the IRS. *NOTE: Having an EIN (employer identification number) does not grant you non-profit status.*
- In some cases, a parent organization will allow “subordinate” organizations to claim tax-exempt status under that **parent’s umbrella**. If that structure is chosen, the parent organization is responsible for reporting to the IRS each year which organizations are counted as “subordinate” organizations and those organizations must meet certain criteria. The IRS requires that certain standards be met in order for “subordinate” organizations to qualify.
- Operating as a 501(c)(3) organization places **some restrictions** on your organization:
 1. You have a **limit of total expenditures** that can be made each year to support lobbying. You can choose to “elect” or “not to elect” under the IRS code and this decision determines how you will be assessed by the IRS to determine your limits on lobbying expenditures.
 2. One standard is the “**insubstantial part test**” (or “not to elect”) that means that “no substantial part of a charity’s activities....be carrying on propaganda or otherwise attempting to influence legislation.” This is a vague standard and the determination of whether a non-profit is meeting this standard will be determined by the IRS. (p. 3)
 3. The other standard, the **section 501(h) expenditure test** (“elect”) sets specific dollar limits, calculated as a percentage of an organization’s total exempt

expenditures. If a non-profit is going to engage in significant lobbying activities, this is the safer way to ensure that it is staying within the legally allowed expenditure limits. **If this option is chosen, the organization is considered to have “elected” under the 501(h) standard.** (p. 3)

- If you have **subordinate organizations**, their lobbying expenditures are counted in your total. This means that you need to be careful in ensuring that all the entities (yours and your subordinates) don't exceed your allowable limit.
- **501(c)(3) organizations are PROHIBITED from endorsing political candidates or participating in a political campaign.**
- **Keeping detailed and complete** records regarding any lobbying expenditures is the key to avoiding problems with your tax-exempt status. The organization should keep detailed records on any expenditures related to lobbying activities, and anyone in your agency or organization that participates in such activities should keep comprehensive records about the amount of time spent and the type of activity. This information will be utilized to file the required tax documents (Form 990) that a non-profit files each year.

SECA's Example

Originally, SECA served as the “parent” organization for the 13 state affiliate organizations that formed under its umbrella. That scenario has changed over the last decade and now counts only four of the affiliates (Arkansas Early Childhood Association (AECA), Louisiana Early Childhood Association (LAECA), Mississippi Early Childhood Association (MsECA) and South Carolina Early Childhood Association (SCECA) as “subordinates” for the purposes of tax-exemption. (The states that are dually affiliated with SECA and NAEYC have gained independent non-profit status.)

SECA signs a declaration each year that confirms that these affiliates still qualify as subordinates and they are allowed to claim non-profit status under SECA's umbrella. For the purposes of lobbying expenditures, any expenditure by these four affiliates for lobbying activities will be counted in SECA's total allowable expenditures. SECA has “elected” under the 501(h) standard.

The Definitions

- **Legislation** is defined by IRS regulations as “action by a legislative body, including the introduction, amendment, enactment, defeat or repeal of Acts, bills, resolutions, or similar items.” Legislation includes actions by Congress, a state legislature, a local legislative body, or any actions by the general public in a referendum question, initiative petitions, or proposed constitutional amendment. (p. 10)
- There are two types of **lobbying**: direct and grassroots.
- A **direct lobbying communication** is one which is made either to a legislator, an employee of a legislative body, or any other government employee who may participate in the formulation of the legislation (but only if the principal purpose of the communication is to influence legislation) and:
 - Refers to a specific piece of legislation. (A description of a bill may be sufficient to refer to specific legislation, regardless of whether a bill number is cited.)
 - Expresses a view on that legislation. (It is considered direct lobbying when an organization asks its members to contact legislators in support of or in opposition to legislation.) (p. 11)
- A **grassroots lobbying communication** is an attempt to influence specific legislation by encouraging the public to contact legislators about that legislation. In order to constitute grassroots lobbying, a communication must:
 - Refer to specific legislation.
 - Reflect a view on that specific legislation, and
 - Encourage the recipient of the communication to take lobbying action with respect to the specific legislation. (p. 11)
- **Lobbying is NOT:**
 - **“Nonpartisan Analysis, Study or Research”**—Although this type of communication may reflect a viewpoint, it must meet two tests in order to be considered outside the lobbying definition. It must provide information on all side of the issue in an objective and nonpartisan manner and must be made available to the general public, a segment of the general public or to governmental bodies and employees. It may be distributed, in part, to members

of Congress so long as it is distributed widely and not limited to only those people who are interested in one side of the issue. This exception provides you with an opportunity to distribute educational materials which inform the public and reflect a view on legislation but the materials must be prepared carefully to meet the standards for the nonpartisan analysis, study or research definition.

- ***Examinations and Discussions of Broad Social, Economic, and Similar Problems***--Communications that address the public, members of legislative bodies, or governmental employees on general topics that are also the subject of specific legislation can qualify under this exception; however, the communication must not refer to specific legislation or directly encourage the recipients to take action.
- ***Requests for Technical Advice or Assistance***—If a legislative body or committee request in writing that you respond or provide information about a certain piece of legislation, your response is not considered lobbying. Your response must be disseminated to the entire body requesting the response.
- ***Self-Defense Communications***—Communication from your agency to a legislative body concerning specific legislation that could affect your organization’s existence, powers, duties, tax-exempt status, or the deductibility of contributions to the organization is not considered lobbying.” (pp. 13-15)

IRS Resources

Click on these links to access information on issues outlined in this brief.

[How to Apply to be Tax-Exempt](#)

[Group Exemptions](#)

[Political Activity for Non-profits](#)

[How to Make the 501\(h\) Election](#)