

Module 9: Nonprofit Organizations and Political Activities

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Associations that qualify for federal income tax exemption under IRS section 501(c)(3) have the most favorable tax status, but they also have the most restrictions on their activities. In terms of political activity, 501(c)(3) organizations are banned from engaging in political campaign activities and are limited in the conduct of lobbying activities.

Nonprofit Organizations and Lobbying

Because nonprofits often work in partnership with government and serve as advocates for a cause or constituency, many organizations have a legitimate interest in the formation of public policy. Nonprofits often speak out in an attempt to influence public perception and government action on specific issues. For some nonprofits, this advocacy role is the most important service they provide.

One important way to affect public policy is to engage in lobbying, or *direct contact with legislators in an attempt to influence specific legislation*. Private foundations are not permitted to lobby, but charities, social advocacy groups, and trade associations and professional societies are. Charities are allowed to lobby provided the activity is insubstantial in relation to the overall organization, and must report their lobbying expenditures to the IRS. The lobbying activities of social welfare organizations and trade associations are not similarly restricted, although they cannot use funds from government grants or contracts for lobbying activities.

Source: www.BoardSource.org 2006

Ten Reasons to Lobby for Your Cause

1. You can make a difference. It only takes one person to initiate change. The Association for Child Support Enforcement (ACES), which has helped change child support laws across the country, was founded by one person.

2. People working together can make a difference. A group of individuals formed Mothers Against Drunk Driving and convinced dozens of states to toughen up their drunk driving laws.

3. People can change laws. Many people think that ordinary individuals can't make a difference. Indeed, it is difficult to change laws and policies, but it can be done. Our history is full of stories of people and groups that fought great odds to make great changes. Some took decades, and all took the active involvement—the lobbying—of thousands of people who felt something needed to be changed.

4. Lobbying is a democratic tradition. The act of telling our policymakers how to write and change our laws is at the very heart of our democratic system. Lobbying has helped keep America's democracy evolving over more than two centuries.

5. Lobbying helps find real solutions. Services provided directly to people in need, such as soup kitchens, emergency health clinics, and homeless shelters, are essential, but sometimes they are not enough. Many food pantries, for example, needed new laws to enable caterers and restaurants to donate excess food so the kitchens could feed more people. Family service organizations working to place abused children into safe homes needed changes in the judicial system so kids did not have to wait for years for a secure place to grow up. Through advocacy, both changes were implemented. People thinking creatively and asking their elected officials for support can generate innovative solutions that overcome the root cause of a problem.

6. Lobbying is easy. You can learn how to lobby—whom to call, when to call, and what to say—in minutes. While there are a few simple reporting rules your organization needs to follow, they aren't complicated. Lobbying is easier and more effective when many committed people work together; one person does not have to do everything or know everything.

7. Policymakers need your expertise. Few institutions are closer to the real problems of people than nonprofits and community groups. They see problems first-hand and understand the needs of their target populations. They see what works and what doesn't and can make problems real to policymakers. Every professional lobbyist will tell you that personal stories are powerful tools for change. People and policymakers can learn from your story.

8. Lobbying helps people. Some people become concerned that lobbying detracts from their mission, but quite the opposite is true. Everything that goes into a lobbying campaign—the research, the strategy planning, the phone calls and visits—will help fulfill your larger organizational goals.

9. The views of local nonprofits are important. Increasingly, the federal government has been allowing local governments to decide how to spend federal money and make more decisions than in the past. This change gives local nonprofits even more responsibility to tell local policymakers what is needed and what will work. Because more decisions are being made locally, your lobbying can have an immediate, concrete impact on people in need.

10. Lobbying advances your cause and builds public trust. Building public trust is essential to nonprofit organizations and lobbying helps you gain it by increasing your organization's visibility. Just as raising funds and recruiting volunteers are important to achieving your organization's mission, so is lobbying. You miss out on an important opportunity to advance your cause if you don't think as much about relationships with local, state, and federal governments.

Source: Ohio Association of Nonprofit Organizations. 2006.
<http://www.oano.org/policy.asp?page=tenreas>

Lobbying

Federal tax law defines lobbying as any attempt to influence specific legislation. Legislation is a bill that has been introduced, or a draft bill that may be introduced, in any legislative body such as a city council, state legislature or Congress.

What does NOT count as lobbying?

There are five activity categories that are excluded from the term "influencing legislation." They are:

1. **Self-defense:** Communication on any legislation that would affect an organization's existence, powers and duties, tax-exempt status, or deductibility of contributions is not considered lobbying.
2. **Technical advice:** Providing technical advice to a governmental body in *response* to a written communication is not considered lobbying.
3. **Non-partisan analysis or research:** Studying community problems and their potential solutions is considered non-partisan if it is "an independent and objective exposition of a particular subject matter...(which) may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of pertinent facts to enable the public or an individual to form an independent opinion or conclusion."

4. **Examinations and discussions of broad social, economic and similar problems:** Communication with the organization's own members with respect to legislation which is of direct interest to them is not considered lobbying, so long as the discussion does not address the merits of a specific legislative proposal and makes no call for action.
5. **Regulatory and administrative issues:** Communication with governmental officials or employees on non-legislative (i.e. administrative) matters such as rule-making is not considered lobbying.

Source: Minnesota Council of Nonprofits. <http://www.mncn.org/lobbylaw.htm> 2006.

The 501(h) Election

Prior to 1976, there was enormous ambiguity over the amount of lobbying that nonprofits could do. The IRS rules required that tax-exempt nonprofits could lose their tax-exempt status if they did more than an "insubstantial" amount of lobbying. This "insubstantial-lobbying test" was never specifically defined in IRS rules, and individual IRS agents had no guidance in what constituted "too much lobbying."

The 1976 Lobby Law, however, established clear guidelines for lobbying expenditures. The Lobby Law allows nonprofits to *choose* to be covered by a clearly defined set of lobbying rules. This law clarifies that 501(c)(3) nonprofits that elect to fall under these rules can spend up to a defined percentage of their budget for lobbying without threatening their tax-exempt status. In 1990, the IRS published final rules on implementing the Lobby Law that make it quite clear that nonprofits should elect to be covered by the lobbying-expenditure test and not fall under the vague insubstantial lobbying test.

What are some of the benefits of taking the 501(h) election, versus not electing?

- No limit on lobbying activities that do not require expenditures, such as unreimbursed activities conducted by bona fide volunteers.
- Clear definitions of various kinds of lobbying communications, enabling electing charities to control whether they are lobbying or not.
- Higher lobbying dollar limits and fewer items which count toward the exhaustion of those limits.
- No personal penalty for individual managers of an electing charity that exceeds its lobbying expenditure limits.

In order to be covered by the rules, your organization must file **IRS Form 5768** with the IRS. This simple one-page form can be filed at any time, and you can download the form from the IRS website at www.irs.gov.

Source: Minnesota Council of Nonprofits. <http://www.mncn.org/lobbylaw.htm> 2006.

Lobbying Limits

If your organization has **not** taken advantage of the 501(h) election, then "no substantial part" of your organization's activities can be devoted to lobbying. Clearly, this is a very vague guideline. Therefore, in 1976, specific expenditure guidelines were established, known as the "section 501(h) expenditure test." However, in order to be protected by these guidelines, your organization must take the formal steps to fall under these guidelines.

The **total** lobbying expenditure limits under the 501(h) election are:

- 20% of the first \$500,000 of exempt purpose expenditures, plus
- 15% of the next \$500,000 of exempt purpose expenditures, plus
- 10% of the next \$500,000 of exempt purpose expenditures, plus
- 5% of the remaining exempt purpose expenditures up to a total cap of \$1 million.

(Exempt purpose expenditures are all payments you make in a year except investment management, unrelated businesses, and certain fundraising costs.)

Source: Minnesota Council of Nonprofits. <http://www.mncn.org/lobbylaw.htm> 2006.

Direct vs. Grassroots Lobbying

The distinction between direct and grassroots lobbying is important under the 501(h) election because the 1976 Lobby Law specifies different expenditure limits for grassroots and direct lobbying activity. An organization may spend only one-fourth as much on grassroots lobbying as on direct lobbying. For example, if an organization's annual permissible lobbying expenditures were \$100,000, it could spend only \$25,000 on grassroots lobbying. But it could spend the remaining \$75,000 on direct lobbying.

Direct lobbying is when you state your position on specific legislation to legislators or other government employees who participate in the formulation of legislation, or urge your members to do so. In order to count as direct lobbying it must refer to specific legislation and express a view on it.

Grassroots lobbying is when you state your position on specific legislation to the general public AND ask the general public to contact legislators or other government employees who participate in the formulation of legislation. If you do not include a call to action in your communication to the general public, it is not lobbying. Remember, urging your members to lobby counts as *direct lobbying* not *grassroots lobbying*.

Source: Minnesota Council of Nonprofits. <http://www.mncn.org/lobbylaw.htm> 2006.

Reporting Lobbying Expenditures

All 501(c)(3) organizations (except churches, association of churches, and integrated auxiliaries) must report lobbying expenditures to the IRS. For those nonprofits that do not elect to fall under the 1976 Lobby Law, the IRS requires detailed descriptions of a wide range of activities related to lobbying. For organizations that take the 501(h) election, the only requirement is to report how much was spent on lobbying and how much of the total amount for the year was spent on grassroots lobbying.

Under IRS Code Section 501(h), detailed disclosure as part of the annual Form 990 filing and thorough record keeping are required. It is the responsibility of the association to maintain documentation of its direct and grassroots lobbying expenditures. If an activity has mixed (direct and grassroots) lobbying or both lobbying and nonlobbying aspects, the association will be expected to allocate the expenditures, pursuant to IRS regulations. Employee time records, financial reports, invoices from outside suppliers (e.g., printing bills), postage receipts, and other documentation of expenditures should identify those spent on direct and grassroots lobbying, and should allocate expenditures for mixed lobbying (direct and grassroots) and mixed purpose (lobbying and nonlobbying). Grassroots lobbying is more limited than direct lobbying.

Sources: Minnesota Council of Nonprofits. <http://www.mncn.org/lobbylaw.htm> 2006. Jeffrey Tenenbaum. Association Tax Compliance Guide. Washington, DC: American Society of Association Executives, 2000.

Association Political Action Committees

Federal laws passed since 1971 have outlined the nature and extent of allowable association participation in the federal election process. One method provided in the laws is through association sponsorship of political action committees (PACs) to solicit funds and make contributions to candidates for federal office. PACs are effective vehicles through which associations channel their members' campaign contributions to candidates for federal office most sympathetic to association objectives. PACs have shown themselves to be effective in advancing the interests of associations.

Federal legislation, agency regulations, and advisory opinions provide detailed guidelines for establishing and administering PACs. Any association seeking to form a PAC, or already operating one, should be closely advised by legal counsel familiar with this specialized area.

It remains illegal today for incorporated associations to use their own funds for contributions to federal candidates. However, association funds may be used to establish and administer PACs that solicit political campaign contributions from association members and direct the funds to candidates. The only qualifications on this use of funds are those provided in federal election and tax laws.

Reasons for Forming an Association PAC

- ❖ To direct campaign funds to candidates for federal office
- ❖ To help effectively present positions on legislative matters important to the association
- ❖ To counterbalance the influence of campaign funding and lobby groups already taking strong positions on federal legislative matters
- ❖ To take advantage of higher limits on PAC contributions to candidates than are permitted individual contributors
- ❖ To involve association members in the political process

Source: Jerald Jacobs. Association Law Handbook, 3rd edition. Washington, DC: American Society of Association Executives, 1996.



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Questions for Discussion

1. In what types of political activities does your organization typically engage? Who participates in these activities? In what areas of political activity do you feel your association should take a greater role? How might it do this?
2. Are you aware of any restrictions placed upon your organization's political activities because it is classified by the IRS as a charitable or educational organization? Who in your organization is responsible for ensuring compliance in this area?
3. What is your organization's view on lobbying? How active has it been in the past in terms of lobbying? Do you think your organization should be placing more or less emphasis on this type of political activity in the future?
4. Looking at your association's past activities, what initiatives or events count as lobbying, based on the definition provided by the IRS? Does your organization have a clear understanding of what constitutes lobbying?
5. If your organization is currently classified as a 501(c)(3) organization by the IRS, has it officially filed for the 501(h) election? If not, why might it be a good idea for your organization to file this paperwork?
6. In examining your association's past political activities, which activities would be defined as "grassroots" lobbying, and which would be considered to be instances of "direct" lobbying? On what evidence are you basing this distinction?
7. Who within your organization is in charge of reporting your lobbying expenditures to the IRS? Is this requirement adequately fulfilled, or is there confusion regarding the reporting process?
8. If your association does not already have a political action committee, why might it want to form one? Who in your organization has the authority to make the decision regarding PAC formation? Does everyone clearly understand the regulations placed on PACs by the federal government?

Additional Resources

Alliance for Justice. Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities. www.afj.org

Alliance for Justice. The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations. www.afj.org.

Nancy Amidei. So You Want to Make A Difference: Advocacy is the Key. OMB Watch. www.ombwatch.org.

Independent Sector. Lobby? You? Yes, Your Organization Can and It Should! www.indepsec.org.

Internal Revenue Service. www.irs.gov.

Bob Smucker. The Nonprofit Lobbying Guide -- Advocating Your Cause and Getting Results. Independent Sector. www.indepsec.org.