

## Provisions for Lobbying by Nonprofit Organizations

This section of the handbook is intended to provide a simple introduction to an extremely complex subject. It is not intended, and should not be taken, as a substitute for professional legal advice.

It is perfectly legal for a nonprofit charitable (501(c)(3)) organization to lobby. It is also legal for such an organization to work for passage of a piece of legislation during a political campaign or any other time.

Prior to 1976, the Internal Revenue Service (IRS) held charitable organizations to a certain standard when engaging in lobbying activities. The standard, which states “no substantial part of an organization’s activities constitute propaganda or otherwise attempting to influence legislation” was vague and did not have set expenditure limits. In 1976, the U.S. Congress enacted the 501(h) election to the IRS code that allows charitable organizations to make an election and have their lobbying activities governed by an expenditure test. The test permits organizations to spend 20 percent of their first \$500,000 of their annual expenditures on lobbying. Organizations with budgets that exceed \$500,000 may spend 15 percent, etc. with an overall cap set at \$1 million. Expenditures for grassroots lobbying are limited to one-quarter of the applicable ceiling for that organizations. A nonprofit that exceeds its ceiling is subject to a 25 percent excise tax on the excess spent on lobbying. Loss of tax exemption is invoked only if spending normally exceeds 150 percent of the limit, aggregated over four years.

Some nonprofits have hesitated to file for a section 501(h) coverage for fear that doing so will threaten their section 501(c)(3) status or prompt an IRS audit. Both fears appear to be groundless. Nonprofits that file do not lose their 501 (c)(3) status. An IRS letter dated February 12, 1999 to Independent Sector states unequivocally that the fact that a nonprofit elects to come under the IRS (h) rules will not prompt an audit.

For organizations that have elected to come under the law, lobbying is defined as the expenditure of money for the purpose of attempting to influence the passage or defeat of a specific piece of legislation. The IRS standard is strictly financial – the only factor is the cost of communications for lobbying which include the cost of preparing the communication (i.e. staff time, facilities, overhead). Lobbying by a volunteer is not counted as lobbying against the organization’s ceiling.

The IRS recognizes two types of lobbying efforts. They include direct lobbying and grassroots lobbying.

**Direct lobbying** is defined as communication with a legislator, a legislative staff member or any other government official that may participate in the formation of legislation by the organization’s staff and its members. The communication must refer to a specific piece of legislation and reflect a point of view. Under the direct lobbying definition, the 501 (h) rule recognized that there are certain types of

activities that may contribute to the formation of public policy but are not considered lobbying. These activities include:

- **Providing research** on a legislative issue. An organization may make public the results of nonpartisan research if it presents a “full and fair” exposition of the facts, even if it takes a position on the legislation, provided the organization does not directly ask its readers to take action.
- **Self defense** – lobbying legislators on matters that may affect the organization’s own existence, such as tax status or exemption. If you ask for the public’s support, then it becomes lobbying. Lobbying in the nonprofit’s own field (i.e. arts, education, museums, historical preservation) is not considered self-defense.
- **Response to written requests** for assistance from committees or other legislative bodies (not a single legislator) for technical advice on pending legislation, even if the testimony provided takes a position.
- **General public education communications** that discuss and take clear positions on broad public policy issues, including issues whose resolution would require legislation so long as specific legislative proposals are not discussed.
- **Communications** with an organization’s members that discuss specific legislation but don’t urge members to take action

**Grassroots lobbying** is defined as communication that encourages the general public, other than an organization’s members, to contact their legislators in support of a particular piece of legislation. Additionally, grassroots communication must ask the participants to take specific action on the particular piece of legislation. Grassroots lobbying does have a separate expenditure limit. Expenditures are limited to 25 percent of an organization’s total lobbying limits. For example: if an organization’s overall annual expenditures are \$100,000 then \$20,000 may be spent on lobbying and \$5,000 of that \$20,000 may be spent on grassroots lobbying.

Federal tax laws do impose some restrictions on lobbying by charitable organizations. These restrictions include endorsing or opposing a political candidate; collecting and distributing funds for political campaigns, use of a charitable organization’s facilities for political fundraising, formation of a political action committee, giving membership or subscription lists to political candidates, and publishing materials that favor one candidate over another.

Staff, board members and the general members of a charitable organization, as individuals, have the right to participate in political campaigns. In doing so, however, it is **critically important that you do not advertise yourself as representing the charitable organization.** Do not send campaign correspondence on the organization’s letterhead, or sign yourself as a representative of the organization, or identify yourself verbally in public speaking or on broadcasts as a representative of the organization.

Nonprofits may also engage, carefully in certain “quasi-political” activities. Remember that anything you do for one candidate you must do for all bona fide candidates. Here are some examples of “quasi-political” activities:

- Printing voting records
- Circulate questionnaires. If not all candidates return the questionnaire, you can use the ones that were returned but you must say the other candidates declined and be able to prove that they did.
- Hold public forums
- Sell mailing lists to candidates but do not give them away because their monetary value means giving them away is a de facto political contribution
- Register voters, so long as the process is nonpartisan

This brief synopsis has focused on the federal 1976 *Public Charity Lobbying Law* and its 1990 regulations. Another law, *Lobbying Disclosure Act of 1995*, applies strictly to lobbying of the federal government, and requires lobbyist to register and abide by its provisions only if an individual lobbyist devotes 20% or more of his/her salaried time to lobbying or is spending at least \$20,000 every six months on lobbying.