

A Nonprofit's  
Guide to  
Lobbying  
and  
Political Activity

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## **501(c)(3) Organizations: A Guide to Lobbying**

### **I. Introduction**

There are many common misconceptions about what 501(c)(3) organizations can and cannot do when it comes to lobbying and political activities. While there is an absolute prohibition against 501(c)(3)s intervening in political campaigns, nonprofits can engage in lobbying as long as it does not constitute a substantial part of the organization's activities.

If a nonprofit engages in any political activity, the organization is at risk of losing its tax-exempt status. However, only if the organization engages in excessive lobbying (meaning, more than an insubstantial part of its activities) does it put itself at risk of having to pay a tax and forfeiting its 501(c)(3) status.

Knowing what constitutes lobbying, and what the limits on it are, is the key to lobbying safely. Lobbying is possible and it can be very beneficial to your organization's mission, but it requires careful tracking of the time and money spent on lobbying. This brochure is a simplified summary of some of the federal laws and regulations governing lobbying by 501(c)(3) organizations.

#### **Why should you lobby?**

Lobbying can have a vital role in fulfilling a 501(c)(3) organization's mission. High-impact nonprofits not only provide services but also engage in advocacy on behalf of their clients. Nonprofits serving vulnerable communities may be the only voice those communities have in policy discussions and the legislative process. Their input is crucial in making sure legislators enact policies that reflect the communities' needs and concerns. Organizations serving a particular community or solving a specific issue intimately know the problems facing that community or the difficulty in addressing that issue and may be in the best position to suggest solutions or educate policy makers. Nonprofits that do not take advantage of their ability to lobby might miss an opportunity to create or affect policies that improve the lives of the people they are serving.

#### **What is lobbying?**

Lobbying is defined as "attempting to influence legislation." Attempting to influence legislation includes contacting or urging the public to contact a legislative body for the purpose of supporting the adoption or rejection of legislation. Legislation includes:

- Actions by Congress, state legislatures, city councils, or other elected bodies with respect to bills or resolutions
- Confirmation of an individual for office
- Ballot initiatives.

It does not include actions taken by courts, administrative agencies, or other executive branch bodies.

To be considered lobbying, a communication must refer to and reflect a view on a specific legislative proposal or legislation that has been introduced before a legislative body (international,

federal, state, or local). If the communication does not refer to specific legislation, it may be considered issue advocacy.

Finally, keep in mind that federal funds, whether received as part of a grant or contract, cannot be used for any type of lobbying. For example, if an employee's salary is paid out of a federal grant, that employee cannot take part in any lobbying activities.

### **What is political campaign activity?**

Section 501(c)(3) organizations are absolutely not permitted to “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” Therefore, these organizations cannot support or oppose any candidate for public office (international, federal, state, or local). This includes endorsing a candidate or making a donation to the candidate. It also includes general statements of support or opposition to a candidate, as well as the use of the organization's resources (staff, volunteers, office space, communication platforms such as a newsletter or Twitter feed, etc.) to support or oppose a particular candidate or party.

Keep in mind that even if a statement does not expressly state to vote for a specific candidate, the organization's statement may still be considered campaign intervention if the message favors or opposes a certain candidate. Also, a statement can identify a candidate not only by stating his or her name but also by providing other identifying information such as referring to his or her political party, showing a picture of the candidate, or describing other distinctive features of the candidate's campaign or biography.

Nonpartisan voter education activities or activities encouraging people to vote, such as organizing a public forum, publishing voter education guides, or conducting get-out-the-vote drives, are not considered campaign intervention. Organizations have to be extremely careful not to favor or oppose any candidate or party while educating the public. For example, if an organization wants to hold a candidate forum, it must invite all the candidates. Moreover, even if an organization invites all candidates from all parties to a forum, if the organization asks more difficult questions to certain candidates or only focuses on issues contested by one candidate, that debate may be considered campaign intervention. A public forum or debate where all candidates are invited, treated equally, and asked unbiased questions would not be considered campaign intervention.

Another example of educational activity that could be either political activity or advocacy depending on how it is conducted are voter guides. If an environmental conservation organization prepares and widely publishes every year a guide with the voting records of all members of Congress on a wide range of issues and with no editorial opinion or show of support or disapproval for any particular member, the preparation and publication of the guide would not be considered campaign intervention. However, if the organization publishes a guide with the voting records of congressional candidates but only on a narrow range of environmental conservation issues, it may be considered partisan voter education and a prohibited campaign activity. Similarly, if the organization gives the candidates grades, or rates the candidates' positions on different issues, it would be considered engaging in prohibited campaign intervention.

Organization leaders or employees are not prohibited from running for office or speaking out about candidates or elections. However, they must do so as private individuals and not as representatives of the organization. They cannot make partisan comments in their official capacity as leader or employee of the organization in the organization's publications or at the organization's meetings or events. For example, an executive director cannot endorse a candidate in his or her official function as executive director at events, or in the organization's newsletter or other publications funded by the organization. This would be prohibited campaign intervention. However, that director or employee can endorse a candidate in his or her personal capacity, but cannot use the organization's publications or resources to do so.

For more information about political activities, see [IRS Revenue Ruling 2007-41](#) and [IRS Revenue Ruling 78-248](#), and the D.C. Bar Pro Bono Center's [legal alert, "Monitoring Your Section 501\(c\)\(3\) Organization's Activities With Respect to Political Campaigns."](#)

### **What is advocacy?**

Issue advocacy consists of trying to influence public opinion. Issue advocacy is different from both political activity (about candidates and elections) and lobbying (about specific legislation), although they often all sound similar. Advocacy consists of actions or statements that are not campaign intervention and that do not fall under the definition of lobbying. A nonprofit organization can do an unlimited amount of advocacy, but the organization must be careful that its advocacy does not cross the line into political activity, or if it crosses the line into lobbying, to track how much of it is done.

Organizations can take positions on important public policy issues, including those that divide candidates for office. For example, advocacy includes educating policy makers and the public about broad social issues or encouraging people to register to vote. Get-out-the-vote drives or voter registration events conducted in an unbiased and nonpartisan manner are considered advocacy. However, voter registration events that promote a certain candidate or party would be impermissible campaign intervention.

Organizations should also be mindful that during an election year, activities that would usually be considered advocacy, such as educating the public on a certain issue, could be considered political campaign intervention if that issue is particularly associated with a candidate or party, is carried out close to an election, or the activity is not part of the usual advocacy communications done by the organization.

For example, suppose an organization annually advocates for increases in a state's education budget. Each fall, when the legislature is in session, the organization sends out letters, purchases radio spots, and speaks before several groups advocating for this cause. This would be considered advocacy, and not electioneering. However, if it were an election year and one of the candidates was strongly pushing for more education spending, any advocacy by the organization could be considered electioneering, unless the organization can demonstrate that it annually engages in such advocacy and the timing and content of its advocacy was determined by the legislature's budget deliberations and not by the election.

## **II. How to Determine How Much Lobbying Your 501(c)(3) Can Do**

Section 501(c)(3) of the IRS Code states that “no substantial part” of the activities of a tax-exempt nonprofit can be for carrying on propaganda or attempting to influence legislation. The Code provides organizations with two tests for determining how much lobbying they are engaged in: the “no substantial part” test and the expenditure test under the 501(h) election.

The “no substantial part” test will apply to all organizations, unless they elect to be judged under the second test by filing a form with the IRS (also referred to as making the 501(h) election). Churches and private foundations are not eligible to make the 501(h) election.

### **1. “Substantial Part” Test**

This is a subjective test. The IRS looks at all the facts and circumstances to determine if lobbying activities are more than an insubstantial part of the organization’s activities and applies the test on a case-by-case basis. Courts and the IRS consider a variety of factors, including the time and expenses devoted by the organization to the lobbying activity in relation to the organization’s overall exempt activities.

Under this test, lobbying is defined broadly as “attempting to influence legislation by propaganda or otherwise” and “proposing, supporting, or opposing of legislation.” Legislation here includes actions by Congress and state and local legislatures. Lobbying under this test would include:

- Attempts to influence legislation
- Presentation of testimony at public hearings held by legislative committees
- Correspondence and conferences with legislators
- Electronic communications with legislators
- Publications advocating specific legislative actions.

There is a lot of uncertainty under this test as to what would be considered excessive lobbying. The IRS has not offered clear guidance on the amount at which it will deem an organization’s lobbying activities to be more than insubstantial. However, lobbying expenses or activities that represent less than 5 percent of an organization’s overall budget or activities are generally considered to be insubstantial.

Under this test, the organization’s penalty for engaging in excessive lobbying is losing its tax-exempt status. In such case, all of the organization’s income from that year would be subject to tax. Additionally, a 5 percent tax is imposed on the organization for each year that lobbying expenses were spent. In some instances, an additional 5 percent tax can be imposed on the organization’s managers who agreed to make the lobbying expenses, knowing that the expenses would likely result in the loss of the organization’s tax-exempt status.

### **2. 501(h) Election**

In order to deal with the uncertainty of the “substantial part” test, Congress enacted section 501(h). Section 501(h) allows organizations to elect to be covered by a more specific test and set of rules contained in the Internal Revenue Code. For many charitable organizations, electing to have its lobbying determined under the 501(h) provision of the IRS Code can provide many benefits. First, it sets out an objective test that gives clearer guidance as to how much lobbying is acceptable.

Second, filing for 501(h) is free and very simple. In order to be covered by section 501(h), an organization simply submits a one-page [Form 5768](#) at any time during the tax year it wants the election to be effective. It will remain in effect for following years unless it is revoked by the nonprofit organization.

Under this test, the IRS provides a simple dollar formula based on the amount of the organization’s “exempt purpose expenditures,” meaning, how much the organization expends to further its charitable mission. It also provides clearer definitions of lobbying. Under the 501(h) expenditure test, lobbying occurs only when there is an expense of money by the 501(c)(3) organization for the purpose of attempting to influence legislation. Therefore, lobbying activities performed by volunteers would not count as a lobbying expense under this test. However, any expense to publish lobbying materials created or distributed by volunteers would need to be counted toward lobbying expenses.

Lobbying will not be considered “substantial” under this test if an organization does not exceed the expenditure caps below:

<b>If the amount of exempt purpose expenditures is:</b>	<b>Lobbying nontaxable amount is:</b>
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1 million	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1 million but ≤ \$1.5 million	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1 million
>\$1.5 million	\$225,000 plus 5% of the exempt purpose expenditures over \$1.5 million

Note that the absolute limit on lobbying expenses under this test is \$1 million per year.

Although this test is much clearer, it does not mean that every nonprofit should automatically take the 501(h) election. Very large nonprofits may find it advantageous to follow the substantial part test since section 501(h) imposes a \$1 million cap on all lobbying expenditures.

Under the 501(h) expenditure test, there are two different types of lobbying: direct lobbying and grassroots lobbying. Grassroots lobbying expenses can only amount to 25 percent of the overall amount an organization is allowed to expend under the 501(h) caps on its total lobbying activities in a given year. The 25 percent cap is not limited to what the organization actually expends, but rather on what it could expend on lobbying.

Direct lobbying is any attempt to influence legislation through communications with a legislator, an employee of a legislative body, or other government official that:

- 1) Refers to specific legislation, and
- 2) Reflects a view on such legislation.

Grassroots lobbying is any attempt to influence legislation that:

- 1) Refers to specific legislation,
- 2) Attempts to affect the opinions of the general public by reflecting a view on the legislation, and
- 3) Urges the public to take action with respect to the legislation (referred to as a “call to action”) by directly encouraging the public to contact the legislator, providing the legislator’s contact information, or providing a postcard, message, or petition to be sent to the legislator.

For both direct and grassroots lobbying, if one part of the definition is missing in a particular activity, the activity will not count as lobbying. This means, for example, that if a communication refers to a specific legislation but does not reflect a view on it, it is not direct or grassroots lobbying. For both direct and grassroots lobbying, the costs of researching, preparing, planning, drafting, reviewing, copying, publishing, and mailing materials, as well as compensation for employees’ time spent on lobbying, must be included in the lobbying expenditures.

Some activities are expressly excluded from the definition of lobbying, including:

- Providing technical assistance or advice to a government body or committee in response to an unsolicited request
- Communications concerning legislation that may affect the organization’s existence, powers, duties, 501(c)(3) status, or deductibility of contributions (referred to as “self-defense” activities)
- Nonpartisan analysis, study, or research.

The penalty for violating the 501(h) expenditure limits is more favorable to the nonprofit than the alternative test. Under this test, the penalty for exceeding the dollar limits is a 25 percent tax on the excess expenditures in that year. Organizations may also lose their exempt status if their lobbying expenditures exceed the permitted amounts by at least 50 percent averaged over a four-year period.

### **III. Registration**

In addition to the IRS limitations on lobbying activities, charities are also governed by state and federal lobbying disclosure laws that require certain organizations and individuals to register and file periodic reports on their lobbying activities.

The state and federal lobbying laws do not place any limit on the amount of lobbying an organization can do. These laws focus on information disclosure to allow the public to know which organizations are lobbying and how much they are spending on lobbying activities.

#### **1. Federal: Lobbying Disclosure Act**

Nonprofits that lobby are required to register under the Lobbying Disclosure Act (LDA) if one or more of their employees spend more than 20 percent of their time on lobbying activities at the

federal level. Registered organizations will then need to submit quarterly reports to Congress regarding their lobbying activities, including the amount spent on lobbying.

For more information, please see the [Senate Lobbying Disclosure Act Guidance](#) and the Association of Corporate Counsel and Venable LLP's legal alert, "[Lobbying: What Does It Mean for 501\(c\)\(3\) Organizations?](#)"

## **2. D.C. Registration**

For organizations lobbying in the District of Columbia., the person(s) performing the lobbying, and often the organization as well, may have to file an online Lobbyist Registration Form with the D.C. Board of Ethics and Government Accountability (BEGA). Persons, whether they are an employee of the 501(c)(3) organization, a volunteer, or the organization itself, must register if they receive compensation of \$250 or more for lobbying in any three consecutive calendar months (whether from one or more sources combined), or if they spend funds of \$250 or more on lobbying in any three consecutive calendar months.

Lobbying under the D.C. rules means communicating directly with any official in the legislative or executive branch of the D.C. government with the purpose of influencing any legislative action or administrative decision. The registration fee for entities or individuals lobbying solely on behalf of nonprofit entities is \$50. The electronic form is due no later than 15 days after becoming a lobbyist (meaning, receiving or spending \$250 or more on lobbying in any three consecutive months), and then on January 15<sup>th</sup> of each following year.

There is, however, an exemption for certain nonprofit entities. Civic leagues or organizations and municipal associations that are devoted exclusively to charitable, educational, or recreational purposes, and whose activities do not consist of lobbying, the result of which shall inure to the financial gain or benefit of the entity, are not required to register under the D.C. rules.

All registration forms must be submitted electronically through BEGA's [Electronic Filing System](#). First-time registrants must obtain log-in credentials by emailing [beqa.lobby@dc.gov](mailto:beqa.lobby@dc.gov) or by calling 202-481-3411.

Registered lobbyists in DC must also file semi-annual Lobbyist Activity Reports with BEGA, disclosing all lobbying activities and expenditures for the prior six-month period. Lobbyist Activity Reports are due on January 10th and July 10th each year, and are filed using the BEGA Electronic Filing System.

BEGA has created a [step-by-step Powerpoint presentation](#) for using the Electronic Filing System which describes the filing process for both lobbyist registration and activity reports.

For more information on lobbyist registration in the District, please see BEGA's "[Lobbyist Filing Requirements: Frequently Asked Questions](#)."

## **IV. Additional Resources**

The following resources may be helpful to find more detailed information:

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- [IRS Fact Sheet 2006-17: Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501\(c\)\(3\) Organizations](#)
- [Lobbying and Political Activity: A Webinar for 501\(c\)\(3\) Organizations](#)
- [IRS Revenue Ruling 2007-41](#)
- [Legal Alert: The D.C. Government Rules Regarding the Registration of Lobbyists](#)