

ASK THE NONPROFIT SPECIALIST
ADVOCACY AND LOBBYING

In order to address questions in this portion of the nonprofit's activity it is first necessary to address three definitions.

1. What is advocacy?

Advocacy is intentional and explicit support on behalf of an idea or issue. This can include a wide variety of activities including writing letters to the editor, contacting political representatives, organizing community meetings, distributing public education materials, participating in a public protest, or other means to communicate one's view for the purpose of policy and social change. Overall, advocacy covers a much broader range of activities that might, or might not, include lobbying. One way of differentiating between the two terms is to understand that lobbying always involves advocacy but advocacy does not necessarily involve lobbying. Advocacy is a legally allowed activity for nonprofits.

2. What is lobbying?

Lobbying is advocating a point of view in attempting to influence legislation through a member or employee of a legislative body or government official. Lobbying is a legal activity for nonprofits. Contrary to advocacy there are restrictions that a nonprofit should take into account.

The IRS further clarifies lobbying by dividing into two categories: direct lobbying and grassroots lobbying. Direct lobbying is communication about legislation with 1) legislators or government officials who assist in the formulation of legislation and 2) with its own members.

Unless specified this article is about direct lobbying.

Grassroots lobbying is attempting to influence legislation by influencing the opinion of the general public. Grassroots lobbying reaches beyond a nonprofit's own membership.

3. What is political activity?

Political activity involves the support or opposition of an individual or political party seeking election to public office. Political activity on behalf of or opposition to a candidate or party for a public office is **not** a legal activity for nonprofits.

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4. What is the advocacy and lobbying role in nonprofits?

There are no restrictions on an organization's advocacy activity or expenses. This expression of opinion is regarded as simply part of the democratic process and aids in public policy formation.

Lobbying, on the other hand, has some restrictions. Nonprofit lobbying activities were clarified and liberalized under legislation passed by Congress in 1996. Internal Revenue Policy issued in 1990 further clarifies the amount of financial resources a nonprofit may utilize for such activities. (See Section 6.)

5. What are acceptable advocacy activities?

Advocacy:

- Issue identification, research and analysis;
- Education of the public on crucial issues;
- Voter registration and education;
- Testifying before governmental bodies to provide information on an issue.

Lobbying

- Distribution of letters to legislators stating the nonprofit organization's position on proposed legislation.
- Sponsoring a "meet the candidates" forum making sure that ALL serious candidates are simultaneously invited with identical language.
- Participating in a consortium that proposes a new initiative, such as a 'no smoking ban'.

6. How much can a nonprofit spend on advocacy and lobbying?

There are no limits on how much any nonprofit organization may spend on advocacy.

Conversely, there are limits placed by the IRS on how much some types of nonprofits may spend on lobbying. Thus, all expenses for lobbying activities need to be identified for accounting and spending limit purposes.

The current laws governing lobbying activities and expenses were created in 1976. These laws state that "no substantial part" of the organization's activities may be lobbying. To further clarify this somewhat ambiguous statement, Section 501(h) was added in which specific limits were identified. Nonprofit may 'elect' to adopt the Section 501(h) limits, an action most nonprofits are urged to do. See Section 7.

In order to fully explain this question we must first address the complexity of the nonprofit classification system. In all, there are over 30 different nonprofit classification codes, e.g. 501(c)(3), 501(c)(4), 501(c)(5), 501c(6), and 527. The classification for a nonprofit is awarded based on that organizations purpose. Some nonprofits are created

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for the sole purpose of advocacy/lobbying and those follow a different set of rules than others (and are classified as 501(c)(4)s).

In the case of the most common nonprofits [501(c)(3)'s] the rules are as follows: Most generally, a nonprofit can spend up to 20% of its revenues on lobbying activities. This amount limit is based on a sliding scale keyed to annual expenditures. This is done by making the 501(h) election, a technical term for nonprofit allocating money toward lobbying. Under the 1976 Lobbying Law, nonprofits may spend 20% (\$100,000) of the first \$500,000 of their annual expenditures on lobbying; 15% of the next \$500,000; and so on, up to \$1 million with no penalty. Most experts believe that this monetary cap leaves organizations a more than adequate amount of money for such activities.

Please note that spending limits for grassroots lobbying differ from those for direct lobbying in that they are 25% of the total allowable lobbying expenditures.

For more specific information on spending limits, please go to the following website: http://www.independentsector.org/programs/gr/lobby_tax_rules.htm

7. What is an “H Election”?

The “H Election,” or more technically the 501(h) section of the Internal Revenue Code is the legal route most nonprofits take to establish themselves as expending financial resources on lobbying. By filling out the simple 501(h) form the nonprofit is allowed to engage in lobbying so long as it records such spending and reports it to the IRS on the annual 990 report. To make this election a 501(c)(3) organization must complete IRS Form 5768, "Election to Make Expenditures to Influence Legislation."

<http://www.irs.gov/pub/irs-pdf/f5768.pdf>. The IRS has made it clear to nonprofits that the completion of Form 5768 does not flag the organization for an automatic audit.

8. Should a nonprofit participate in advocacy?

It is widely agreed upon that advocacy plays a key role in the nonprofit sector, but whether or not a nonprofit wants to enter the realm of public policy is another question. While many nonprofits have advocacy as inherently part of their mission, other nonprofits are committed to simply providing direct client services. Due to the variation in size, purpose and function of each organization, advocacy is a matter of having the right resources and following the right steps. On the whole, advocacy by all nonprofits is widely believed to be central to the mission of all nonprofits. Read more about the support for advocacy by nonprofits in “10 Reason’s To Lobby,” a document published by Independent Sector.

http://www.independentsector.org/programs/gr/advocacy_lobbying.htm

9. Should a nonprofit participate in lobbying?

As stated earlier, the various classifications of nonprofits have different rules related to lobbying. However, if the nonprofit is a 501(c)(3) the rules are quite specific ... and

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provide for considerable activity. Whether to engage in lobbying – and thus applicable accounting and tracking practices – is a policy decision the governing board should determine, keeping in mind impact on clients, volunteers and funders.

10. What should be considered by a nonprofit’s board and funders when considering advocacy?

Any organization seeking to enter into these activities should consult with its legal counsel especially when the source of funding for the nonprofit may prohibit the use of its funds for advocacy and/or lobbying. Examples include many federal, state and foundation grants

One suggestion to avoid conflict would be to create guidelines for acceptable funding sources. Often, financial supporters can have “strings” attached to their money. Because of this, clearly articulating to funders the ultimate advocacy goals of an organization can be beneficial. In addition, conflict can be avoided by not relying solely on one financial backing. By diversifying funders, it may be easier to gain support for advocacy issues.

11. What should nonprofits be aware of regarding support of a party or candidate for public office?

First, it is not legal for the nonprofit or any employee or volunteer when representing the organization to engage in political activity. (See question 3) That seems clear but nonprofits often step over this important line. Cautions:

- The Chief Executive Officer/Executive Director generally has great difficulty in separating his/her identity from the organization and therefore often refrains from openly participating in a party or a candidate’s campaign.
- Quite often a letter of endorsement goes out on the nonprofit’s letterhead or a person endorses someone after being identified by position.

Policy regarding political activity should be written out and regularly reviewed by the board and staff to assure compliance.

12. What are additional resources available to nonprofits regarding advocacy and lobbying?

Websites:

- The Center for Lobbying in Public Interest (CLPI) has as its mission “promoting, supporting and protecting nonprofit advocacy and lobbying.”
www.clpi.org
- “Speak Out Speak Up – When, Where, How” (Paper developed on advocacy and lobbying from the 2007 Lodestar Center’s Annual Forum on Nonprofit Effectiveness.) Click on Research That Matters, then Forum Proceedings.
<http://nonprofit.asu.edu>

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- Independent Sector is the most comprehensive association of national nonprofits in the United States.
www.independentsector.org
- The idealist.org. <http://www.idealists.org/if/i/en/npofaq>

Books:

- The following books are among those cited by CLPI: *The Nonprofit Lobbying Guide* by Bob Smucker; *Lobbying and Advocacy Handbook for Nonprofit Organizations* by Marcia Avner; *Teaching Nonprofit Advocacy* by David Arons.

(This list of questions regarding Advocacy and Lobbying has been developed by the many persons and organizations seeking assistance from the ASU Lodestar Center. We invite you to add your questions and reactions through the "Ask the Nonprofit Specialist" section of the center's website so that we might improve and expand these FAQ.)