



INDEPENDENT SECTOR

A vital voice for us all

Advocacy Rules for Nonprofits

In general, nonprofit organizations described under Section 501(c)(3) of the tax code may engage in lobbying and other advocacy activities within certain limits. Specifically, the code provides that “no substantial part” of the activities of such organizations can involve “carrying on propaganda, or otherwise attempting, to influence legislation,” and that such organizations cannot “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf (or in opposition to) any candidate for public office.” Outlined below are key federal advocacy rules that apply to public charities and private foundations. Nonprofits must also be sure to comply with their state and local election and lobbying laws.

Lobbying Rules for Public Charities

Under federal law, public charities may engage in a limited amount of legislative lobbying at the federal, state and local level, under either the vaguely defined “no substantial part of its activities” test or, except for churches, by electing to operate such activities under the Section 501(h) of the tax code.

The IRS measures compliance with the “no substantial part” test on the basis of “all the pertinent facts and circumstances of each case,” determined under a variety of factors such as the time devoted (by both paid and volunteer workers) and the expenditures devoted to the activity by the organization. Courts have interpreted this test in a variety of ways, from a 5% safe harbor (1955) to a ruling that percentages test are inappropriate (1972).

Under the 501(h) expenditure tests public charities may spend:

<p>On Direct Lobbying: 20% of the first \$500,000 of its exempt purpose expenditures; 15% of the amount between \$500,000 and \$1 million, 10% of the amount between \$1 million and \$1.5 million, and 5% of amounts over \$1.5 million, up to one million dollars a year in total lobbying expenditures.</p>	<p>On Grassroots Lobbying: 5% of the first \$500,000 of its exempt purpose expenditures; 3.75% of the amount between \$500,000 and \$1 million, 2.5% of the amount between \$1 million and \$1.5 million, and 1.25% of amounts over \$1.5 million, up to \$250,000 a year in grassroots expenditures.</p>
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Direct lobbying is defined as stating a position on specific legislation to legislators or other government employees who participate in the formulation of legislation, or urging your members to do so.

Grassroots lobbying is defined as stating a position on specific legislation to the general public and asking it to contact legislators or other government employees who participate in the formulation of legislation.

The term "lobbying" does *not* include the following activities:

- providing technical assistance or advice to legislative body or committee in response to a written request;
- making available nonpartisan analysis, study or research;
- providing examinations and discussions of broad, social, economic and similar problems;
- communicating with a legislative body regarding matters which might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deduction of contributions to the organization (the "**self-defense**" exception); and,
- updating the members of your own organization on the status of legislation, without a call to action.

Registering as a Federal Lobbyist

Organizations that lobby on their own behalf must register with the Clerk of the House and the Secretary of the Senate if their lobbying expenses are over \$10,000 in a quarter. Lobbying firms (entities that employ one or more lobbyists on behalf of a client) must register if their income related to lobbying activities exceeds \$2,500 per quarter per client.

Reporting Lobbying Expenditures

Public charities must report their federal, state and local lobbying expenditures on their Form 990. In addition, the Lobbying Disclosure Act (LDA), as amended in 2007, requires organizations that employ lobbyists and spend in excess of \$10,000 in federal lobbying-related expenses during any three-month reporting period to register with Congress and file disclosure reports electronically with Congress on a quarterly basis. * The reports must include the organization name; a list of the specific issues lobbied on during the filing period, including bill numbers and references to executive branch actions; and a good faith estimate of the total expenses the organization incurred in connection with lobbying activities. Organizations that have made the 501(h) election may opt to use the Form 990 definitions of lobbying to estimate their lobbying expenditures for the LDA report.

Election-Related Activities for Public Charities

Under current law, 501(c)(3) organizations *may* engage in the following:

- Conduct voter registration and nonpartisan get-out-the vote efforts.
- Educate the public on issues and encourage participation in the political process.
- Educate all candidates and political parties on your issues.
- Conduct or participate in a nonpartisan candidate forum.
- Make presentations on your organization's issue to platform committees, campaign staff, candidates, media, and the general public.
- Work on behalf of a ballot measure.
- Continue normal lobbying on issues.
- Rent or sell mailing lists to candidates at fair market value, if made available to all candidates, making available nonpartisan analysis, study or research;

501(c)(3) organizations *may not* engage in the following:

- Endorse or oppose a candidate—implicit or explicit.
- Coordinate activities with a candidate.
- Contribute money, time, or facilities to a candidate.
- Set up, fund, or manage a PAC.

Lobbying Rules for Foundations

In general, foundations may not express views on specific legislation in communications with legislators, or with the general public if the communication includes a “call to action.”

However, private foundations (as well as public charities) may:

- provide technical assistance or advice to a legislative body or committee in response to a written request;
- making available nonpartisan analysis, study or research; and,
- under the “self-defense” exception, communicate with a legislative body regarding matters which might affect the existence of the foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to the foundation.

Restrictions on Grants

In general, private foundations may not earmark a grant to a nonprofit for lobbying. However, lobbying is permitted under foundation grants in two circumstances:

- 1) Under general support grants, nonprofits may pay for lobbying expenses; and,
- 2) Under grants for specific projects with a lobbying component, nonprofits may pay for lobbying expenses under the project but not with the foundation's grant funds.

Election-Related Activities for Private Foundations

Private foundations may support nonpartisan election-related activities such as candidate forums, voter education

* Different thresholds apply for the remainder of 2007.

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projects, nonpartisan get-out the vote drives, and public surveys on issues.

However, with respect to voter registration drives, foundations are subject to specific restrictions which in effect inhibit such activities. Specifically, such drives must be carried out in at least five states, and the foundation may not exert any control over the project.

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