

KNOW THE RULES. USE YOUR VOICE.

A surprising number of people think that nonprofits cannot lobby. This is simply not true. Nonprofits are vehicles for democratic participation and have always had the right to lobby. In 1976, Congress affirmed this right by passing a law that gave nonprofits clear and broad latitude to lobby. When the legislation was passed, Sen. Robert Dole proclaimed, “Charities can be and should be important sources of information on legislative issues.”

This guide covers the basics of the legal issues governing nonprofit advocacy and lobbying. Be sure to consult an attorney for advice specific to your nonprofit’s circumstances and state.

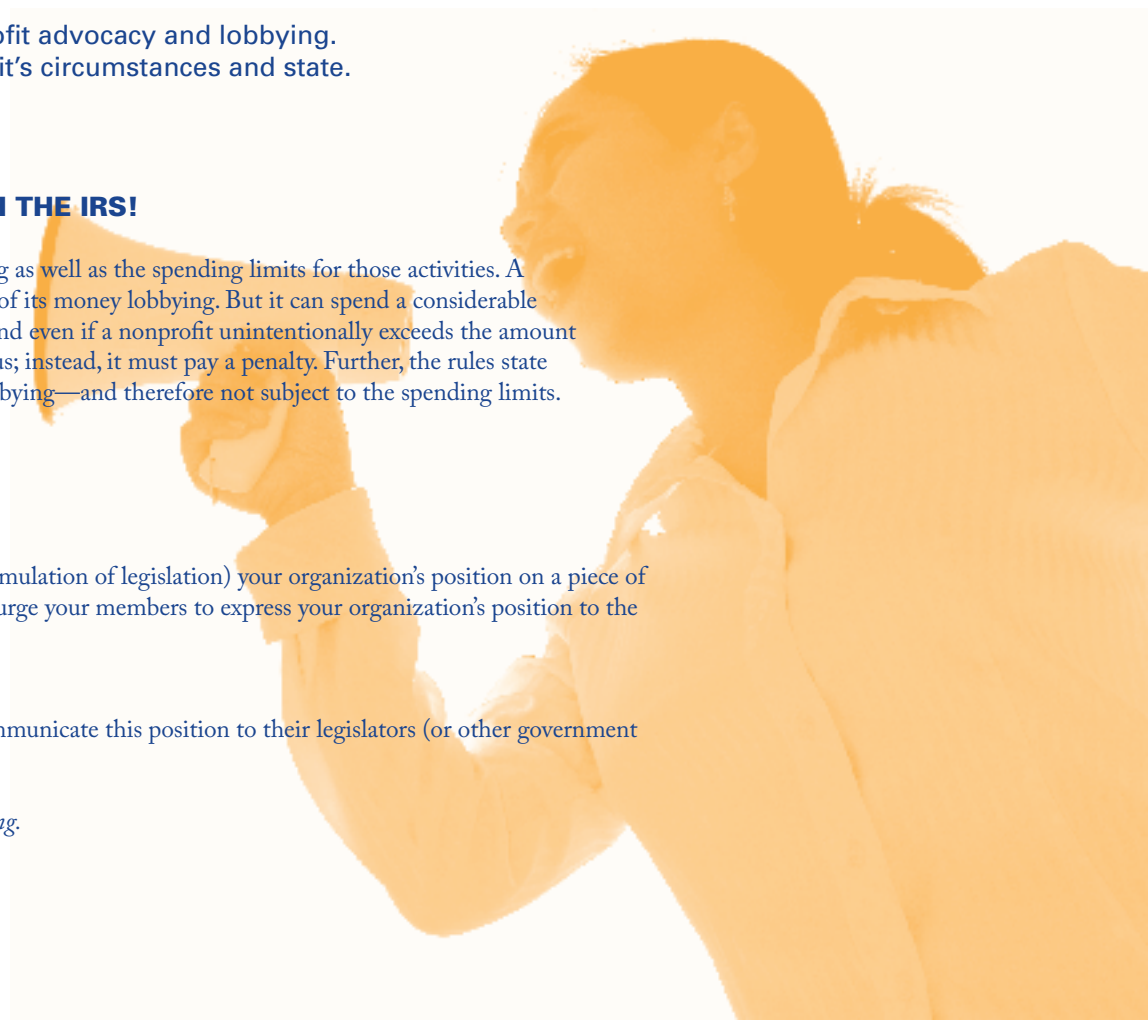
>> LOBBYING BY NONPROFITS IS LEGAL AND OKAY WITH THE IRS!

Regulations issued by the IRS in 1990 confirm which activities constitute lobbying as well as the spending limits for those activities. A nonprofit that elects to be covered by the 1976 law cannot spend all or even most of its money lobbying. But it can spend a considerable amount, up to \$1 million a year for a large nonprofit (see the chart on page 18). And even if a nonprofit unintentionally exceeds the amount it may spend on lobbying in one year, it will not lose its 501(c)(3) tax-exempt status; instead, it must pay a penalty. Further, the rules state that many activities that might influence public policy are not even considered lobbying—and therefore not subject to the spending limits.

What your nonprofit can do:

- **Direct lobbying**
You can tell legislators (or other government officials who participate in the formulation of legislation) your organization’s position on a piece of legislation and/or urge them to support or oppose the legislation. You can also urge your members to express your organization’s position to the legislators.
- **Grassroots lobbying**
You can tell the general public your position on legislation and ask them to communicate this position to their legislators (or other government officials who participate in the formulation of legislation).

The chart on page 18 spells out the amount you can spend on direct and grassroots lobbying.



>> MORE PUBLIC POLICY ACTIVITIES YOUR NONPROFIT CAN DO

In addition to direct and grassroots lobbying, nonprofits that elect to come under the 1976 law can do many things that might influence public policy but are not considered lobbying and thus not subject to these limits. For example:

- Contacting government officials or legislators to try to change *regulations* (as opposed to laws).
- Communicating with your members about legislation—even taking a position on that legislation—as long as your communication does not directly ask your members or others to lobby.
- Testifying on legislation at a hearing, as long as the legislative body asked your organization, in writing, for its technical advice.
- Discussing broad social or economic issues—the need to do something about drunk driving, or the need to invest more money in finding a cure for Alzheimer’s disease, for example—as long as you don’t take a position on specific legislation.

- Making available results of non-partisan analysis, study, or research on a legislative issue—even if you take direct positions on the merits of specific legislation—as long as there is a sufficiently full and fair exposition of the pertinent facts that allows the public or an individual to form an independent opinion, and as long as the paper or materials do not directly encourage the recipient to take action or contact their legislators.
- Conducting self-defense activity—lobbying legislators about your nonprofit’s own existence, powers, or tax-exempt status. It would become lobbying if you ask the general public for support. Note: Lobbying for your nonprofit’s inclusion in a government budget is not self-defense—and thus it is lobbying and subject to the spending limits.

Furthermore, to constitute lobbying, a nonprofit must spend money on an activity. If a nonprofit’s volunteers organize a large rally at the state Capitol to call attention to an issue, only the amount spent by the nonprofit on the rally, such as printing a flyer, would count as lobbying. ♦

>> WHAT YOUR NONPROFIT CANNOT DO

One reason many people think nonprofits cannot lobby is that they confuse lobbying with partisan political activities, such as supporting a candidate, which nonprofits are strictly prohibited from doing.

- **Nonprofits cannot endorse or oppose political candidates nor mobilize supporters to elect or defeat candidates.**
- **Nonprofits cannot align themselves with political parties. Nonprofits cannot contribute to candidates or parties.**

However, even during election seasons, nonprofits can do certain activities. Your nonprofit can educate voters about important issues, thus possibly influencing a campaign’s issues. You can register voters and urge them to vote. ♦



LOBBYING CEILINGS UNDER THE 1976 LAW

If Your Total Budget for Exempt Purpose Expenditures Is...	Then, Your Total Ceiling For All Lobbying Activities Is...	And Your Grassroots Lobbying Ceiling Is... (one quarter of total ceiling)
Up to \$500,000	20%	5%
\$500,000 to \$1,000,000	\$100,000 + 15% of excess over \$500,000	\$25,000 + 3.75% of excess over \$500,000
\$1,000,000 to \$1,500,000	\$175,000 + 10% of excess over \$1,000,000	\$43,750 + 2.5% of excess over \$1,000,000
\$1,500,000 to \$17,000,000	\$225,000 + 5% of excess over \$1,500,000	\$56,250 + 1.25% of excess over \$1,500,000
Over \$17,000,000	\$1,000,000	\$250,000

>> A NOTE ABOUT INITIATIVES AND REFERENDA

Communicating to the public about an initiative or referendum is treated as direct lobbying, not grassroots. Under the 1976 lobby law, IRS regulations recognize that in referenda, initiatives, and similar procedures, the public itself is the legislature. Thus, communicating with the public in these situations constitutes direct lobbying. Since the spending ceiling for direct lobbying is four times as much as the ceiling on grassroots lobbying, referenda and initiatives provide a key opportunity for nonprofit lobbying. ♦

>> YOUR NONPROFIT MUST “ELECT” TO BE COVERED BY THESE CLEAR AND GENEROUS IRS RULES

All of these guidelines about nonprofit lobbying apply only to nonprofits that have elected to be covered by these regulations and by the lobbying law passed in 1976. This is often called “taking the 501(h) election.” Nonprofits can elect by filling out a simple, one-page form (IRS Form 5768, available on the following page) and sending it to the IRS. You only need to fill out the form once; it stays in effect unless you choose to revoke the election, using the same form. Electing nonprofits report their lobbying expenditures annually through the Form 990.

If a nonprofit does not elect to come under these rules, it can still lobby. However, its lobbying activities are governed according to the “insubstantial part” test, with vague definitions and no clear limits. If your nonprofit does not elect to be covered by the new rules, it can still lobby, but it cannot be certain how much lobbying it can do.

A June 2000 letter from the IRS to CLPI affirms the definitions of lobbying and generous spending limits (download the letter at www.clpi.org). The letter also clearly states that nonprofits making the 501(h) election do not increase their risk of an audit. In fact, if your nonprofit ever finds itself in an IRS audit, it would benefit from the clear definitions and spending limits that come along with the 501(h) election rather than relying on the subjectivity of the auditor to determine the definition of “substantial.” ♦

**Election/Revocation of Election by an Eligible
Section 501(c)(3) Organization To Make
Expenditures To Influence Legislation**

(Under Section 501(h) of the Internal Revenue Code)

For IRS
Use Only ▶

Name of organization

Employer identification number

Number and street (or P.O. box no., if mail is not delivered to street address)

Room/suite

City, town or post office, and state

ZIP + 4

1 Election—As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending and all subsequent tax years until revoked. (Month, day, and year)

Note: *This election must be signed and postmarked within the first taxable year to which it applies.*

2 Revocation—As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending (Month, day, and year)

Note: *This revocation must be signed and postmarked before the first day of the tax year to which it applies.*

Under penalties of perjury, I declare that I am authorized to make this (check applicable box) ☐ election ☐ revocation on behalf of the above named organization.

(Signature of officer or trustee)

(Type or print name and title)

(Date)

General Instructions

Section references are to the Internal Revenue Code.

Section 501(c)(3) states that an organization exempt under that section will lose its tax-exempt status and its qualification to receive deductible charitable contributions if a substantial part of its activities are carried on to influence legislation. Section 501(h), however, permits certain eligible 501(c)(3) organizations to elect to make limited expenditures to influence legislation. An organization making the election will, however, be subject to an excise tax under section 4911 if it spends more than the amounts permitted by that section. Also, the organization may lose its exempt status if its lobbying expenditures exceed the permitted amounts by more than 50% over a 4-year period. For any tax year in which an election under section 501(h) is in effect, an electing organization must report the actual and permitted amounts of its lobbying expenditures and grass roots expenditures (as defined in section 4911(c)) on its annual return required under section 6033. See Schedule A (Form 990 or Form 990-EZ). Each electing member of an affiliated group must report these amounts for both itself and the affiliated group as a whole.

To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in item **1** or **2**, as applicable, and sign and date the form in the spaces provided.

Eligible Organizations.—A section 501(c)(3) organization is permitted to make the election if it is not a disqualified organization (see below) and is described in:

1. Section 170(b)(1)(A)(ii) (relating to educational institutions),
2. Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),
3. Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),
4. Section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),
5. Section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or
6. Section 509(a)(3) (relating to organizations supporting certain types of public charities other than those section 509(a)(3) organizations that support section 501(c)(4), (5), or (6) organizations).

Disqualified Organizations.—The following types of organizations are not permitted to make the election:

- a. Section 170(b)(1)(A)(i) organizations (relating to churches),

- b. An integrated auxiliary of a church or of a convention or association of churches, or

- c. A member of an affiliated group of organizations if one or more members of such group is described in **a** or **b** of this paragraph.

Affiliated Organizations.—Organizations are members of an affiliated group of organizations only if (1) the governing instrument of one such organization requires it to be bound by the decisions of the other organization on legislative issues, or (2) the governing board of one such organization includes persons (i) who are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and (ii) who, by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

For more details, see section 4911 and section 501(h).

Note: *A private foundation (including a private operating foundation) is not an eligible organization.*

Where To File.—Mail Form 5768 to the Internal Revenue Service Center, Ogden, UT 84201-0027.



Kids COUNT TOO

A COMPARISON OF THE RULES FOR NONPROFITS THAT LOBBY

	Nonprofit that takes the 501(h) Election	Nonprofit subject to “insubstantial part” test
What’s considered lobbying?	Clear definitions with specific exclusions for public policy activities that are not considered lobbying and therefore not subject to the spending limits	Not defined and no activities specifically excluded; therefore, a non-electing nonprofit would need to track and account for all public policy activities
Spending limits	Generous and clear—20 percent of first \$500,000 of “exempt purpose expenditures” with decreasing percentages up to a \$1 million cap	Subjective and arbitrary—lobbying cannot be “substantial,” but no established limits and “substantial” is not defined
What’s counted	Only count dollars spent—not volunteer and other cost-free activities	Count volunteer time as well as dollars spent
Recordkeeping and reporting	Document all lobbying expenses; report numbers only on annual Form 990A	Document all lobbying activities and expenses; provide detailed descriptions of the legislative activities and a classified schedule of the expenses paid or incurred on the annual Form 990A
Penalties for exceeding limits	Organization assessed a 25-percent excise tax on excess over limits in a year; no specific liability for officers/directors	Organization assessed a 5-percent excise tax on all lobbying expenses if “substantial lobbying” results in revocation; officers/directors subject to 5 percent if “substantial lobbying” deemed willfully or unreasonably authorized
Revocation of tax exemption	Occurs only if lobbying exceeds 150 percent of limits generally over 4 years	Could happen if “substantial lobbying” occurs in a single year
Risk of audit	No greater risk of audit	No greater risk of audit

IN A NUTSHELL

Taking the 501(h) election is easy to do and provides many benefits to nonprofits that lobby:

- Generous and easy-to-calculate spending limits
- Clear definitions
- Easy recordkeeping and reporting—track expenditures only
- No single-year penalty for excessive lobbying
- Protection for officers and directors
- No increased risk of audit

>> ADDITIONAL RULES GOVERNING NONPROFIT LOBBYING

State Rules

In addition to federal rules, be aware of state requirements that affect your nonprofit. The rules can vary widely from state to state. Contact the state association of nonprofits and/or the state Attorney General and Secretary of State to learn about lobbyist registration and reporting requirements in your particular state.

Lobbying at the Federal Level

Nonprofits that conduct a high level of lobbying at the federal level should be familiar with the “Lobbying Disclosure Act of 1995.” A summary can be found at www.clpi.org.

Nonprofits Receiving Government Funds

With few exceptions, nonprofits may not lobby with government funds. As a condition of obtaining federal grants, nonprofits must ensure that none of those funds are used for lobbying or political activity as defined by the federal Office of Management and Budget (OMB). These rules are similar to the IRS rules, but have several differences. Note that nonprofits that receive government funding can lobby with their non-government funds. See OMB Circular A-122, Cost Principles for Nonprofit Organizations, available at www.clpi.org.

Election Season Activities

As mentioned above, 501(c)(3) nonprofits cannot endorse, contribute to, coordinate with, or align in any way with candidates or political parties. However, even in elections, nonprofits can participate in many activities including candidate forums, candidate surveys/questionnaires, and non-partisan voter registration. You can learn more from CLPI’s “*Voter Education by Nonprofits During a Political Campaign*” (available at www.clpi.org) as well as the Alliance for Justice’s book *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations* (www.afj.org).

501(c)(4) Nonprofits and PACs

CLPI focuses on 501(c)(3) nonprofit organizations. Different rules apply for 501(c)(4) organizations and political action committees. Contact the Alliance for Justice (www.afj.org) and see its publication *The Connection: Strategies for Creating and Operating 501(c)(3)s, 501(c)(4)s, and Political Organizations* for more information.