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

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

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.”
General Instructions

On behalf of the above named organization

Under penalties of perjury, I declare that I am authorized to make this (check applicable box) 

$1 Note: This election must be signed and postmarked before the first day of the tax year to which it applies.

1. This election must be signed and postmarked with the first taxable year to which it applies.

2. Revisions to an Eligible Organization's election to be an eligible organization under section 501(c)(3) of the Code shall take effect for the calendar year following the election year unless the IRS has indicated the election year to which it applies.

Revisor's Signature

Under section 501(c)(3) of the Internal Revenue Code

Form 5768

(Rev. 12-2004)
# A Comparison of the Rules for Nonprofits That Lobby

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

## 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**