

## Lobbying by 501(c)(3) Nonprofits

Tax Consequences  
Use of Federal Funds  
Use of Private Grant Funds

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## What is Lobbying?

IRS Definition of Lobbying:

Any attempt to influence **specific  
legislation.**

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## Tax Concerns

Q: How much lobbying can a 501(c)(3)  
organization do before it loses its tax-  
exempt status?

A: That depends on whether the  
organization has selected 501(h) status.

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## “No Substantial Part” Test

- Determines how much lobbying is “too much lobbying” for nonprofits that have not elected 501(h) status
- “No substantial part” of the organization’s activities can be devoted to lobbying
- Very vague and subjective standard
- Looks at all aspects of an organization’s lobbying activities, including volunteer activity and donated resources and materials

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## 501(h) Election

- Recommended for nonprofits who do any significant amount of lobbying
- Must “make the election” under 501(h) by filing a form in order to be covered by these more concrete guidelines
- Benefits
  - Provides specific definitions regarding what activities constitute lobbying
  - Provides specific numerical limits for spending on lobbying activities (set percentage of total exempt purpose expenditures)

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## What is Lobbying for 501(h) Direct Lobbying

- Any attempt to influence legislation that
  - Refers to specific legislation
  - Expresses a position on that legislation
- Directed towards
  - Legislators
  - Government employees who participate in the formation of legislation
  - Citizens who will vote directly on legislation (i.e. referenda)
  - Also includes: urging your organization’s own members to lobby

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## What is Lobbying for 501(h) Grassroots Lobbying

- Stating your position on specific legislation to the general public
- Asking the general public to contact (regarding the specific legislation):
  - Legislators
  - Other government employees who participate in legislative formation
- Does not include talking about specific legislation but not encouraging anyone to act

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## 501(h): What Does Not Constitute Lobbying

- In general: any communication that does not attempt to influence specific legislation
- Self-defense
- Technical assistance
- Non-partisan analysis or research
- Examinations and discussions of broad social, economic, or similar problems
- Regulatory and administrative issues
- Communication with members
- Caution: state lobbying rules may be different

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## Definition of Specific Legislation

- Action by legislative body
  - Includes proposed or pending law or bill
- Act by public
  - Has to be at the point where it is presented in a petition for signatures to qualify for proposal for the ballot to count as legislation
  - I.e. voting on referendum or legislative initiative

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## Non-Lobbying: Self-Defense

- Communication on issues that might affect the nonprofit's
  - Existence (including funding)
  - Powers or duties
  - Tax-exempt status
  - Deductibility of contributions to the organization

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## Non-Lobbying: Technical Assistance

- Technical assistance provided to a legislative or government body is not lobbying if
  - Assistance is provided on written request from the chair of a government body

Note: this allows you to talk about specific legislation with the intent of influencing it, without it constituting lobbying

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## Non-Lobbying: Non-Partisan Analysis or Research

- Includes studying community problems and their potential solutions
- Is not lobbying as long as it does not urge people to take action with respect to specific legislation
- Can take a definite point of view, but must include all facts so the reader can form an independent opinion
- Must be made available to the general public or to governmental bodies

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## Non-Lobbying: Examinations and Broad Discussions

- Should be geared towards social, economic, and similar problems
- Can even discuss these issues with legislatures without it becoming lobbying, as long as the discussion does not affect specific legislation
  - Cannot refer to specific legislation
  - Cannot urge audience to take action

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## Non-Lobbying: Regulatory and Administrative Issues

- Communicating with regulatory and administrative bodies is not lobbying, because these bodies do not legislate
- Therefore, cannot be an attempt to influence specific legislation

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## Non-Lobbying: Communicating With Members

- Not lobbying as long as you do not encourage members to take action
- Can discuss specific legislation as long as 50% of the people receiving the communication are members

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## Direct & Grassroots Lobbying %

- Matters for nonprofits who have elected 501(h) status
- Out of your total lobbying allowance:
  - Only 25% can be spent on grassroots lobbying
  - Remaining expenditure can go towards direct lobbying

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## Expenditure Limitations

- Amount you can spend on lobbying under 501(h) is a percentage of your **exempt purpose expenditures**
- Exempt purpose expenditures: all payments in furtherance of your tax-exempt purpose
  - Includes:
    - Lobbying
    - Depreciation and amortization of assets
    - In-house fundraising
  - Does not include:
    - Investment management
    - Expenditures on unrelated businesses
    - Fundraising costs for a separate fundraising unit or an outside fundraising consultant

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## 501(h) Numerical Limits

- First \$500k of exempt purpose expenditures:
  - 20% can be spent on lobbying
    - Grassroots expenditures can only be \$25k (1/4) of that total amount
- Next \$500k (\$500k-\$1 million total expenditures)
  - 15% can be spent on lobbying
    - Grassroots: 3.75% of excess over \$500k
- Next \$500k (\$1 million-\$1.5 million total expenditures)
  - 10% total spent on lobbying
    - Grassroots: 2.5% of excess over \$1 million
- Next \$500k (\$1.5 million-\$17 million total expenditures)
  - 5% total spent on lobbying
    - Grassroots: 1.25% of excess over \$1.5 million
- Total lobbying expenditures can go up to \$1 million under 501(h)

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## Political Activity

- Unlike lobbying, 501(c)(3) nonprofits are absolutely barred from engaging in political activity
- Political activity includes
  - Participating in a campaign for elective office, including endorsing or opposing a candidate
- Political activity does not include
  - Endorsing candidates for appointment to public office (e.g., Supreme Court justices)
  - This does, however, constitute lobbying

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## Restrictions on Use of Federal Funds for 501(c)(3) Nonprofits

- Basic Restriction on Grant Use
  - Cannot use grant funds that come directly from the federal government for lobbying or political activities
- Restriction applies to:
  - Influencing the introduction, enactment, or modification of legislation by
    - Communication with government representatives or employees
    - Publicity or propaganda (either directly or through the public)
  - Legislative liaison activities

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## Restrictions on Use of Federal Funds for 501(c)(3) Nonprofits

- Restriction does not apply to
  - Activities authorized by Congress
  - Disseminating technical/factual information
- Funds From Private Sources
  - Restrictions apply to what nonprofits may do with federal funds
  - Do not apply to what a nonprofit may do with private funds: Engaging in lobbying activities with private funds will not make a nonprofit ineligible to receive federal funds
  - Some private sources – especially foundations – may also prohibit use of their funds for lobbying

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## Restrictions on Lobbying for Grant Funds

- Byrd Amendment: cannot lobby for a grant for your own organization
  - Applies only to awarding of grants
  - Does not apply to:
    - Legislation aimed at program activities generally
    - Specific legislation not related to grants for which nonprofit would be eligible

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## Private Foundations May Fund 501(c)(3) Nonprofits That Lobby

- Grants from private foundations may be used for lobbying if they follow specific rules
- Funds usually cannot be earmarked for lobbying
  - If they are, then they create a taxable expenditure to the foundation

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## General Support v. Specific Project Grants From Private Foundations

- General support grants
  - Used by 501(c)(3) for any purpose, including lobbying
    - Cannot be earmarked for any purpose, including lobbying
    - Even if used for lobbying, foundation will not incur a taxable expenditure
- Specific project grants
  - Used by 501(c)(3) for specific project
    - Can be used to fund specific projects that include lobbying
    - Total amount of foundation grant cannot exceed non-lobbying portion of project budget
    - However, grantee subsequently may use some of foundation grant money for lobbying under designated project

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## Sources

- *Nonprofit Lobbying: Yes You Can!*, Center for Nonprofit Advancement, available at [www.nonprofitadvancement.org](http://www.nonprofitadvancement.org).
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