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 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.”
## 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>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>
<td></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

<table>
<thead>
<tr>
<th>Spending limits</th>
<th>Generous and clear—20 percent of first $500,000 of “exempt purpose expenditures” with decreasing percentages up to a $1 million cap</th>
<th>Subjective and arbitrary—lobbying cannot be “substantial,” but no established limits and “substantial” is not defined</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>What's counted</th>
<th>Only count dollars spent—not volunteer and other cost-free activities</th>
<th>Count volunteer time as well as dollars spent</th>
</tr>
</thead>
</table>

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<thead>
<tr>
<th>Recordkeeping and reporting</th>
<th>Document all lobbying expenses; report numbers only on annual Form 990A</th>
<th>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</th>
</tr>
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<tr>
<th>Penalties for exceeding limits</th>
<th>Organization assessed a 25-percent excise tax on excess over limits in a year; no specific liability for officers/directors</th>
<th>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</th>
</tr>
</thead>
</table>

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<tr>
<th>Revocation of tax exemption</th>
<th>Occurs only if lobbying exceeds 150 percent of limits generally over 4 years</th>
<th>Could happen if “substantial lobbying” occurs in a single year</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Risk of audit</th>
<th>No greater risk of audit</th>
<th>No greater risk of audit</th>
</tr>
</thead>
</table>

Center for Lobbying in the Public Interest  www.clpi.org
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), 501(c)(4), and Political Organizations for more information.
A bill is introduced in at least one chamber of the legislature.

It is then assigned to the committee(s) that oversees the issue addressed by the bill.

Sometimes, a committee refers a bill to a subcommittee for deeper consideration.

The committee decides whether to approve, amend, defeat, or table a bill.

If the bill goes forward (in either its original or amended form), the full chamber considers it.

If both chambers approve the bill, a conference committee works out any differences.

If both chambers approve the final bill, it goes to the executive (i.e., Governor or President) for signature or veto.

Once a bill becomes a law, the executive branch implements it. Nonprofits have additional opportunities to influence how legislation is implemented through administrative advocacy. Remember, for nonprofits that take the 501(h) election, efforts to influence regulations do not constitute lobbying.

In addition to learning the rules and processes for the legislative body that your nonprofit intends to lobby, be aware of the key players in the process:

- Committee chairs and members
- Political caucus leaders
- Legislative staff
- Government agency staff

State legislatures generally follow the federal model for considering legislation:
TAP FUNDING FOR YOUR LEGISLATIVE ADVOCACY EFFORTS

The law allows considerably more latitude to use foundation funds to lobby than commonly understood by many foundations and nonprofits (see the 2004 IRS letter to CLPI at www.clpi.org). Knowing the rules governing foundation support of nonprofit advocacy can help your nonprofit make strategic choices about how to raise funds to support your activities. Know these facts:

- **Use general purpose grant funds from private foundations for lobbying**—While grant funds from a private foundation cannot be earmarked for lobbying, it is perfectly legal for a nonprofit to use unearmarked general support grants to lobby.

- **Use private foundation funds for the non-lobbying portion of a specific project**—A private foundation may make a grant to support a specific project that includes lobbying, as long as the grant is less than or equal to the amount budgeted for the non-lobbying parts of the project and the grant is not earmarked for lobbying. For example, if a specific project has a $200,000 budget, of which $20,000 is to be spent on lobbying, the private foundation can fund up to $180,000—the amount of the project that is allocated to non-lobbying uses. In fact, all funders collectively can cover the full budget, as long as no single grant exceeds the non-lobbying portion of the budget.

- **Use community foundation funds that are earmarked for lobbying**—Community foundations are tax exempt under section 501(c)(3) of the Internal Revenue Code and are not treated as private foundations, so they are permitted the same lobbying latitude as other nonprofits. For example, a community foundation may spend part of its annual expenditures on its own lobbying activities. It may also grant earmarked funds to nonprofits for lobbying up to the limits permitted by law. A community foundation grant, earmarked for lobbying, would count towards the community foundation’s own lobbying ceiling as well as towards the nonprofit grantee’s ceiling.

- **Use foundation funds for non-lobbying activities that influence public policy**—Nonprofits that have elected to come under the 1976 lobbying law can engage in several public policy–related activities that are not considered lobbying (see page 17). These activities can be fully funded by foundations.

- **Nonprofits that receive government funds may lobby so long as they use non-government funds for the lobbying**—Nonprofits may not lobby with government funds. Receiving government funds, however, does not preclude a nonprofit from exercising its legal right to lobby.

Diversify your funding—not only to support your legislative advocacy efforts, but also to sustain your organization for the long term. Effective nonprofits do not depend on any one funding stream or source. In addition to tapping foundations, as described above, for your advocacy activities, also develop these sources of unrestricted support for your advocacy efforts:

- Individual contributions
- Earned income

UNDERSTAND KEY POLICY ISSUES RELATED TO YOUR MISSION

Data gathering and analysis are critical in the process of identifying and understanding key policy issues related to your organizational mission. However, every nonprofit does not need to develop a state-of-the-art research capacity. Most importantly, be sure to access and use research to advance internal understanding as well as to make a strong case on your issue to decision-makers.

If research is not the core work of your nonprofit, tap other groups with this expertise. Some sources include government agencies, legislative staff, non-partisan policy research groups, universities, and national organizations with expertise in a particular field. Also, consider working in coalition with other groups that bring this capacity.