Making Your Voice Heard: Lobbying & Advocacy for Nonprofits
Our Speakers

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Our goals

- Understand legal definitions of advocacy and lobbying
- Know what activities do and don’t count as lobbying
- Tips for tracking lobbying & advocacy activities
- Understand rules regarding civic engagement during election season
Disclaimer: This is Not Legal Advice
What is advocacy?
Advocacy has a broad definition

- is taking a position on an issue and sharing it with someone who can do something about it to bring about systemic, lasting change.
- A tool to accomplish your mission and ensure that underserved communities have a voice in the policies that impact their lives.
- Encompassing a broad range of activities to influence public policy.
What kinds of activities comprise advocacy?

- **Organizing**
  Build power in a community, mobilize, showcase people power.

- **Public Education**
  Educational conferences, leadership training, bipartisan voter education.

- **Nonpartisan Research**
  Conduct or publish a study, collect data or information about a particular issue.

- **Lobbying**
  Advocate on specific legislation, communicate with a legislator.

- **Educating Legislators**
  Sharing expertise, highlight proven strategies, site visits.

- **Influence Regulations**
  Take action at agency level, implementation advocacy.

- **Litigation**
  Legal action, file court case for your cause or community.

- **Partisan Politics**
  Directly/indirectly participate in, contribution to or support political campaign.
What is lobbying?
The IRS defines lobbying as the attempt to influence the passage, defeat, introduction or amendment of legislation. Including:

- Laws, referenda, ballot initiatives and constitutional amendments
- Judicial nominations
- Adoption of international law
Yes, nonprofits can & should lobby!

- 501(c)(3) public charities *can* engage in limited lobbying, but must comply with generous lobbying limits.
  - Internal Revenue Code *does not* prohibit lobbying, it does set limits.
  - State & city registration and disclosure laws *do not* limit lobbying, only require reporting.
- If nonprofits aren’t speaking up for their communities, chances are nobody else is either.
IRS definition of direct lobbying

- Direct lobbying targets legislators:
  - Refer to specific legislation *and*
  - Take a position on it
- *Legislators* includes federal, state or local representatives AND staff.
IRS definition of grassroots lobbying

- Grassroots lobbying targets the general public:
  - Refer to specific legislation,
  - Take a stand on that specific legislation, and
  - Issue a “call to action” that explicitly or implicitly asks the recipient to contact legislators

- Without a call to action, it is NOT lobbying.
NYS - What is Lobbying

- Attempting to influence City or State:
  - legislation (and introduction of legislation) – budget legislation, member items count!
  - agency rules, regulations, and procurement
  - administrative agency action (“having the force and effect of law”)

- Applies to:
  - direct lobbying and grassroots lobbying
  - approval or veto of any legislation by the governor
  - Executive order by Governor or Mayor
NYS – What is NOT Lobbying

- Talking to a public official **without an “ask”** – even if you discuss legislation, rules or procurement.
- Participating in the **public proceedings of a government agency**.
- Responding to a **request for information** (including legislative testimony if you were specifically invited by the committee).
NYS - Lobbying on Social Media

Lobbying
- direct message to official
- post on official's page
- tagging a public official
- asking readers to lobby

Not Lobbying
- referring to but not tagging official (even if official is a follower) without call to action
How much lobbying can you do?
There are two ways to determine how much lobbying you can do

- **The default “Substantial Part” test**
  - Activity based limit
  - Qualitative, not clear what’s measured under test
  - Severe penalties for exceeding limit

- **The optional “Lobbying Expenditure” test**
  - Precise $ ceiling on the amount you can spend on lobbying
  - Often more generous
  - File a one-time form to choose this test
  - Less severe penalty for exceeding limit
How to measure lobbying activities with “Lobbying Expenditures” test

<table>
<thead>
<tr>
<th>Organization’s Annual Expenditures</th>
<th>Overall Lobbying Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>$500,000 or less</td>
<td>20%</td>
</tr>
<tr>
<td>$500,000 to $1 million</td>
<td>$100,000 + 15% of excess over $500,000</td>
</tr>
<tr>
<td>$1 million to $1.5 million</td>
<td>$175,000 + 10% of excess over $1 million</td>
</tr>
<tr>
<td>$1.5 million to $17 million</td>
<td>$225,000 + 5% of excess over $1.5 million</td>
</tr>
<tr>
<td>Over $17 million</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

- Grassroots lobbying limit is 25% of overall limit
### IRS 990

**Part IV Checklist of Required Schedules**

1. **Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)?** If "Yes," complete Schedule A.
2. **Is the organization required to complete Schedule B, Schedule of Contributors (see instructions)?**
3. **Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office?** If "Yes," complete Schedule C, Part I.
4. **Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year?** If "Yes," complete Schedule C, Part II.

### IRS 990-EZ

**Part VI**

- **Did the organization engage, directly or indirectly, in political campaign activities on behalf of or in opposition to candidates for public office?**
- **Section 501(c)(3) organizations only**
  - All section 501(c)(3) organizations must answer questions 47-49b and 52, and complete the tables for lines 50 and 51.
  - Check if the organization used Schedule O to respond to any question in this Part VI.

- **Did the organization engage in lobbying activities or have a section 501(h) election in effect during the tax year?** If "Yes," complete Schedule C, Part II.
Reporting laws & tracking
NYS & NYC disclosure and reporting

**NEW YORK STATE**
- Applies to all lobbying organizations spending, and lobbyists receiving, $5,000+ annually
- NYS or NYC lobbying activities both count (not federal).

**NEW YORK CITY**
- $5,000+ annual filing threshold
- Only NYC activities count.

*Both require registration as lobbyist, file regular reports, retain documents and complete mandatory online ethics training.*
<table>
<thead>
<tr>
<th>NOT LOBBYING ACTIVITIES</th>
<th>LOBBYING ACTIVITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Submitting a grant application</td>
<td>1. Contacting Legislator re: Member Item</td>
</tr>
<tr>
<td>2. Responding to an RFP</td>
<td>2. Trying to influence State, City Budgets</td>
</tr>
<tr>
<td>3. Influencing Agency’s award of Grant FOR NYS (but may have to file disbursement of public monies report)</td>
<td>3. Influencing Agency’s award of Grant FOR NYC</td>
</tr>
<tr>
<td></td>
<td>4. Procurement lobbying</td>
</tr>
</tbody>
</table>
Tracking obligations

- Tracking and reporting requirements include:
  - staff time (time spent lobbying and preparing for lobbying)
  - direct costs (other than staff time)
  - overhead expenses (office rent, utilities, professional fees for accounting services—any cost that is not a "direct cost" or "staff time")
- Create a system to track organization activities such as through timesheets, lobbying incident report or annual questionnaire.
Making the most of election season
What is Partisan Politics?

Any activity that would tend to help or hurt the chances of a particular candidate, regardless of party affiliation, is not permitted by IRS including...

- coordinating with a candidate
- contributing to candidate, political party, or PAC
- in-kind support such as mailing lists and facilities
- systematically praising or criticizing a candidate, grading or rating in voter guide
There are no bright line rules. Factors under consideration include:

- History of organization’s policy campaigns
- Timing
- Focus on one issue or many
- Coordination with other groups
- Target audience
- And more ...
What election-related activity CAN you do?

- Voter registration
- Get out the vote (GOTV)
- Voter guides
- Candidate questionnaires
- Candidate forums & debates
- Candidate education
- Ballot questions
- Issue advocacy campaigns during election season
Personal Activities of Staff & Board

- Everyone has a right to participate in the political process, even if they are affiliated with a nonprofit.
- Use work title for identification purposes only.
- Organization should adopt and disseminate a policy on board & staff participation in campaigns.
- DO NOT use organizational resources (time, mailing list, email computer, copier, letterhead).
Questions?
Survey

https://www.surveymonkey.com/r/K3FRLSG
Contacts

Gabrielle Blavatsky
gabrielle@nyequityadvocates.org
(347)-450-4892

Laura Abel
label@lawyersalliance.org
(212) 219-1800 x283

Lawyers Alliance Resource Call Hotline
(212) 219-1800 x224
Additional Resources
NYC - What is Lobbying

- Covers everything that state covers: legislation, administrative, procurement, Plus...
- zoning, land use, disposition of City’s real property
- determination of Board or Commission
- hearings: It’s lobbying if you’re trying to influence...
  - Agency’s decision to hold, or timing of, rate making proceeding
  - Agenda of Board or Commission
  - Calendaring or scope of City Council oversight hearing
- It’s lobbying if you’re trying to influence decision by city elected official or employee to support/oppose state or federal rule or regulation
Tracking Option 1—timesheets

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject &amp; bill #</th>
<th>Description of Activity (include whether grassroots or direct lobbying)</th>
<th>Target (individual and/or legislative body)</th>
<th>Time Spent</th>
<th>Additional Expenses (printing, mailing, travel)</th>
<th>NYC</th>
<th>NYS</th>
<th>Federal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct. 20-24, 2014</td>
<td>Bill to Reform NYC Lobbying Law (Int 1172)</td>
<td>Draft email asking members to call council members to support law (grassroots)</td>
<td>NYC Council</td>
<td>5%</td>
<td>none</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oct. 27-31, 2014</td>
<td>State Budget – Foster Care</td>
<td>Calls to state legislators (direct)</td>
<td>State Sens. Squadron &amp; Savino</td>
<td>10%</td>
<td>none</td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>
Tracking Option 2—lobbying incident report

<table>
<thead>
<tr>
<th>Employee Name</th>
<th>Date</th>
<th>Time (rounded up to the ½ hour)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jane R. Doe</td>
<td>2/01/2011</td>
<td>1.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Direct Lobbying</td>
</tr>
</tbody>
</table>
Lobbying (and Possible Lobbying) Reporting Form

Please complete this form if you engage in or provide support for an activity that you believe might constitute lobbying. If you are not certain whether or not the activity is lobbying and the activity involves expressing a view on a matter of public policy, complete this form. If you have questions about how to complete this form, contact [NAME].

Your Name: ____________________________ Time Spent (nearest half hour): ____________________________

Date of Activity: ____________________________

For (Check one):  
☐ [NAME OF 501(c)(3)] (501(c)(3))  ☐ [NAME OF 501(c)(4)] (501(c)(4))

Briefly describe the activity (including subject matter, bill number (if applicable), actions taken, individuals contacted, workproduct produced (attach copy if applicable)):

Briefly describe any reimbursable expenditures or payments to outside vendors associated with this work (e.g. travel expenses, printing costs, etc.):

Circle the appropriate answer(s) for the questions below and provide additional information as requested:

1. What type of decision is this work an attempt to influence?
   a. Something voted on by a legislative body
   b. Something decided by an administrative agency or the executive branch, without legislative involvement
Resources

- Lawyers Alliance FAQ’s on Nonprofits and Lobbying: https://lawyersalliance.org/advocacy.php
- NYS Lobbying Act, regulations & guidance: http://www.jcope.ny.gov
Resources

