

Public Health Law Basics

Advocacy and Lobbying for Nonprofit Organizations

Q “I’m a member of a public health coalition. Could you please give us some basic pointers about lobbying by nonprofit organizations?”

A: It’s best not to rely on bright-line tests or rules of thumb when analyzing lobbying situations. The laws that govern lobbying activities are highly context-specific. Different rules govern different situations, depending on where you work (for example, government, private business, or nonprofit organization) and who or what you are attempting to influence (for example, federal, state, or local legislation). You may be subject to several different sets of laws at the same time, and they may all use different standards and terminology.

Each lobbying situation should be analyzed on a case-by-case basis, depending on the specific facts at hand. That said, what follows is some general guidance about lobbying by non-profit organizations.

What’s the difference between advocacy and lobbying?

Although people often use these terms interchangeably, there are important distinctions between “advocacy” and “lobbying” that nonprofit organizations need to understand.

- “Advocacy” is the promotion of an idea or a cause through education, outreach, and grassroots organizing. Advocacy can be viewed as the act of mobilizing individuals to spur changes in practices, programs, and policies. The missions of nonprofit organizations are often focused on promoting change in some aspect of society, whether by appealing to individuals to change their behavior, private entities to change their policies, or the government to change its laws. Such activities may, but do not always, constitute lobbying.
- “Lobbying” is one specific type of advocacy. Lobbying refers to advocacy efforts aimed at attempting to influence legislation. Essentially, you are lobbying when you ask an elected or appointed official to take a particular position or vote a certain way on a specific piece of pending or proposed legislation.

How does federal law define “lobbying”?

Federal tax regulations governing nonprofit organizations divide lobbying communications into two types: direct and grassroots.

- “Direct lobbying” is defined as communications with a legislator that express a view about specific legislation. It includes contacting legislators and executive branch employees or their staff who participate in the formulation of legislation and attempting to influence proposed or pending legislation. It also includes urging members of your coalition to engage in communications with legislators about specific legislation. In addition, if an issue is to be decided through a ballot measure (such as an initiative or referendum), efforts calling on the public to support or oppose such measures are considered direct lobbying, because the voting public in this instance acts as the legislature.
- “Grassroots lobbying” is defined as communications with the general public that express a view about specific legislation and include a “call to action” – in other words, appealing to members of the public to contact their legislators about a pending legislative proposal. Note that “calls to action” can be direct

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(i.e., a communication overtly telling the public to contact their legislator and providing the legislator's contact information or a mechanism to contact the legislator) or indirect (i.e., a communication listing the recipient's legislator, the names of legislators voting on a bill, or those undecided or opposed to an organization's view on specific legislation).

- “Specific legislation” is a bill or resolution that has been introduced in a legislative body or proposed legislation that identifies a problem and presents a specific legislative solution to that problem. Note that proposed legislation may qualify as specific legislation, even if it has not been introduced or reduced to writing. Under federal regulations, specific legislation does not include federal agency rulemaking or promulgation of regulations, enforcement of existing laws, executive orders, or litigation. (But state laws may define lobbying as including attempts to influence state agency rulemaking or other administrative action, and your organization may be subject to those laws as well.)

What activities are not considered “lobbying” under federal law?

Federal regulations identify four categories of exceptions to the definitions of direct and grassroots lobbying. A communication that refers to and reflects a view on specific legislation is nevertheless not lobbying if it constitutes: (1) nonpartisan analysis, study, or research; (2) examination and discussion of broad, social, economic, and similar problems; (3) a request for technical advice or assistance; or (4) “self-defense,” such as communications affecting an organization's legal rights or tax-exempt status. Very specific conditions must be met to qualify for one of these lobbying exemptions.

Can a nonprofit organization engage in lobbying?

Generally, yes. Nonprofit organizations are legally allowed to engage in lobbying activities, subject to certain limits. Federal tax law governs the amount of lobbying in which 501(c)(3) public charities can engage. The Internal Revenue Code sets forth two tests under which public charities can measure their lobbying expenditures: the “section 501(h) expenditure test” and the “insubstantial part test.” Public charities that want to be subject to the more certain expenditure test must take the affirmative step of filing an election; organizations that do not file such an election are subject to the insubstantial part test. Regardless of which test is used, it is important that 501(c)(3) public charities understand that staff preparation and research time spent in anticipation of lobbying also counts as reportable lobbying activity.

Although 501(c)(3) public charities are allowed to lobby under federal law, the analysis does not stop there. Nonprofit organizations may also be subject to restrictions in grants or contracts that fund their activities. A nonprofit organization's funding sources may restrict lobbying or prohibit it altogether. Further, nonprofit organizations may be subject to state or local lobbying laws. Therefore, it is important that nonprofit organizations not only look at how lobbying is defined under federal tax law, but also understand their obligations to report lobbying expenditures under state and local law and any lobbying restrictions imposed by their funders.

For more information on lobbying by nonprofit organizations, consult the Alliance for Justice's materials on Nonprofit Advocacy and Lobbying.

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