Permissible Lobbying for 501(c)(3) Nonprofit Organizations: Three Key Questions

(Courtesy of OMB Watch - www.ombwatch.org)

This fact sheet answers three questions that nonprofits often ask: Is Lobbying by Nonprofits Permitted? Is Discussion of Policy Matters Considered Lobbying? Can Nonprofits that Receive Federal Grants Lobby?

1. IS LOBBYING BY NONPROFITS PERMITTED?

Lobbying by nonprofits is perfectly legal and supported by IRS regulations. There are several categories of nonprofits, including those exempt under 501(c)(3) (charitable, scientific, educational groups) and 501(c)(4) (social welfare or action groups). 501(c)(4)s have no limit on the amount of lobbying they can conduct. Under IRS regulations, 501(c)(3)s do have limitations.

501(c)(3) groups can choose between two sets of guidelines for measuring lobbying: a measure based purely on expenditures, and a general "insubstantial" test. The expenditure test is generally more favorable to nonprofit advocacy. These guidelines are set out under the Internal Revenue Code, Sections 501(h) and 4911.

Under the expenditure test, lobbying only occurs when there is an expenditure of money. 501(c)(3)s that choose to be covered by the expenditure test can spend up to 20% of their exempt purpose budget, up to $1 million, on legislative lobbying. (*see the sliding scale below*). Only 25% of this total lobbying allocation can be spent on grassroots or indirect lobbying. To use this test a group must file a one-page form (IRS Form 5768) notifying the IRS that they have "elected" to use the expenditure test.

Sliding Scale for Nonprofit Lobbying Expenditures		
Exempt Purpose Budget	**Permissible Lobbying Expenditures**	**Total Allowable Grassroots Lobbying**
Up to $500,000	20% of budget	25% of lobby limit
$500K - $1 million	$100K + 15% of excess over $500K	$25K + 3.75% of excess over $500K
$1 - $1.5 million	$175K + 10% of excess over $1 million	$43,750 + 2.5% of excess over $1 million
$1.5 - $17 million	$225K + 5% of excess over $1.5 million	$56,250 + 1.25% of excess over $1.5 million

Over $17 million	$1 million	$250,000

Direct lobbying refers to direct communications with legislators (or communications with your members to encourage them to communicate with legislators) to influence the outcome of legislation at the local, state, or federal level. **Grassroots lobbying** is an attempt to influence legislation through appeals to the public. To be considered grassroots lobbying, the communication must meet a three-part test. It must: (a) refer to specific legislation; (b) reflect a view on that legislation (e.g., oppose or support the bill); and (c) contain a "call to action" with respect to that legislation (e.g., "contact your legislator").

Groups that do not "elect" the expenditure test fall under a "substantial part" test, in which lobbying may not constitute more than an insubstantial part of a charity's activities. However, the term "substantial part" has never been fully defined. The definition of lobbying under the substantial part test, moreover, does not require an expenditure of money. For example, activities of volunteers to influence legislation must be counted as lobbying.

501(c)(3) groups, excluding churches and private foundations, are eligible to utilize the expenditure test-- which in most instances is more favorable to nonprofit lobbying.

2. IS DISCUSSION OF POLICY MATTERS CONSIDERED LOBBYING?

Only those activities associated with attempts to influence legislation would be considered lobbying under tax law and IRS definitions of lobbying. Taking a position on, or discussing a specific piece of legislation, for example, is considered lobbying. There are, however, several types of communications that are excluded from tax law definitions of "lobbying", including:

1.   nonpartisan analyses, which need **not** be neutral or objective, but which present facts fully and fairly, be widely available, and not include a direct call to action (such as requesting that the reader contact his or her legislator)
2.   responses to written requests for information and/or technical assistance from legislators
3.   discussion with government officials concerning legislation impacting an organization's existence, powers, duties, tax-exempt status, or right to receive tax-deductible contributions
4.   discussion of broad policy matters with the general public and government officials-- such as the digital divide-- even if legislation is pending

3. CAN NONPROFITS THAT RECEIVE FEDERAL GRANTS LOBBY?

Nonprofits that receive federal grants **cannot** use any portion of their *federal* funds to lobby. 501(c)(3)s **can** use *private* resources to lobby, under IRS rules (see #1 above). 501(c)(4) organization that receive federal funds may establish an affiliated organization, also exempt under section 501(c)(4), to engage in privately-funded lobbying activities.

OMB Circular A-122, which is a component of grant agreements, places restrictions on lobbying and electioneering. The federal government will not reimburse direct lobbying expenses. Additionally, the grant rules require that no share of the overhead cost pool (used to calculate indirect cost rate) can be spent on lobbying activities. This includes advocating on behalf of a specific awarding and/or renewal of a federal grant.

The definitions of lobbying under Circular A-122 differ slightly from IRS lobbying restrictions that must be followed for any 501(c)(3) organization. Generally, Circular A-122 prohibits lobbying for or against legislation at the federal and state levels. Circular A-122 does not restrict lobbying at the local level, but such activities will only be permitted if they are consistent with the purposes of the grant. There are exceptions to this rule that allow some communications with legislators to be paid for with federal grant funds. (See #2 above).

For more information and assistance, please visit:

Alliance for Justice
http://www.afj.org

Charity Lobbying in the Public Interest
http://www.independentsector.org/clpi

OMB Watch
/

Tax.org
http://www.taxanalysts.com