

GENERAL LOBBYING RULES FOR NON PROFIT ORGANIZATIONS

When it comes to lobbying, there are common misconceptions about what 501(c)(3) organizations can and cannot do. Because of this lack of clarity, many organizations simply avoid lobbying altogether. But 501(c)(3) organizations have every right to express their views through lobbying legislators and mobilizing their supporters. In fact, if they do NOT express their views, an important voice will be missing when policy is formed. For afterschool in particular, the voices of non-profit providers are absolutely indispensable. The information below is meant to help your organization figure out how you can lobby for your program, and all afterschool programs, within the bounds of the law.

What is lobbying?

There are 2 types of lobbying **Direct Lobbying** and **Grassroots Lobbying**.

Direct lobbying is defined as *communication* with a *legislator*, an employee of a legislator or legislative body, or any covered executive branch or other government employee who may participate in the formulation of legislation. The communication refers to **a specific piece of legislation and expresses a view on that legislation**.

For example:

- You call your Senator to say that you'd like her to increase the amount of funding in the new appropriations bill for the 21st Century Community Learning Center Program;
- You write an email to your Representative urging him to support a change in the No Child Left Behind Act that would make Supplemental Education Service funds more accessible to afterschool programs;
- You attempt to influence a legislator on a confirmation vote;
- You meet with officials of the executive branch to influence testimony on a legislative proposal.

Grassroots Lobbying is defined as an attempt to **influence specific legislation** by encouraging the *public* to contact legislators about that legislation. A communication constitutes grassroots lobbying if it refers to specific legislation, reflects a view on that specific legislation and encourages the recipient of the communication to take lobbying action. This type of communication is known as a call to action.

For Example:

- You send a letter to afterschool supporters in your community asking them to contact their state representative to encourage him to support a bill that would provide new state funds for afterschool programs;
- You send an email to afterschool supporters in your community asking them to contact their Members of Congress and urge her to sign on to a letter to the President asking him to increase funding for afterschool programs in his budget;
- You send an email to the afterschool community encouraging them to ask their legislators to vote for or against a bill.

Lobbying is NOT: *nonpartisan analysis, study or research, examinations and discussions of broad social, economic and similar problems, promoting and touting the*

success of your program, requests for technical advice or assistance, or “self-defense” communications.

For Example (these would NOT be considered lobbying):

- Sending an email to the afterschool community with an update on or summary of legislation that does not include a call to action (such as a monthly legislative update);
- Making the results of an independent and objective nonpartisan analysis, study, or research on a legislative issue available to the public;
- Responding to verbal or written requests from a legislative body, committee, or subcommittee for technical advice on pending legislation;
- Participating in a discussion of policy issues where the resolution might require legislation, as long as the discussion does not address the merits of specific legislative measures;
- Meeting with your Member of Congress to discuss your program, as well as the general need for and benefits of afterschool programs in your community, without referring to a specific legislative proposal;
- Planning and hosting a briefing on the unique needs of rural communities when it comes to afterschool programs.

Defining Terms

What is *communication*? Communication can be a phone call, letter, email, fax or some other mechanism for conveying a message.

Who is a *legislator*? A legislator is a member of a legislative body OR his or her staff. Members of administrative bodies, such as school boards, housing authorities, zoning boards or other bodies for special purposes, whether elected or appointed, are generally not considered legislators.

Who is the *public*? The public can be defined as anyone except for a legislator or member of an organization. Communication to the members of your organization asking them to contact legislators and express an opinion about a specific bill is considered direct lobbying. Communication to the public is considered grassroots lobbying. A member of your organization is someone who has given more than a small amount of time or money to the organization. For example, you pass an email to your staff or organization members that encourage them to contact their Member of Congress about a specific bill. Though you have not contacted the Member of Congress yourself, this is considered direct lobbying.

What is *nonpartisan analysis, study or research*? Nonpartisan analysis, study or research is a study or research that provides information on all sides of the issue and is made available to at least a segment of the general public or to governmental bodies and employees. It may also be distributed, in part, to Members of Congress as long as it is widely distributed.

What are *examinations and discussions of broad social, economic and similar problems*? Examinations and discussions of broad social, economic and similar problems are communications that do not refer to specific legislation or directly encourage the recipients to take action.

What are requests for technical advice or assistance? Requests for technical advice or assistance are not considered lobbying if a legislative body or committee requests in writing that you respond or provide information about a certain piece of legislation.

What are “self-defense” communications? “Self-defense” communications are communications from your agency to a legislative body concerning specific legislation that could affect your organization’s existence, powers, duties, tax-exempt status, or the deductibility of contributions to the organization’s existence, powers, duties, tax-exempt status, or the deductibility of contributions to the organization

How do you measure lobbying?

501(c)(3) organizations can choose one of two methods to measure their lobbying:

The “Insubstantial Part” Test is the default method. This test requires that lobbying be limited to an insubstantial part of an organization’s overall activity. There are no clear definitions or guidelines as to what constitutes lobbying, what an “insubstantial part” is, or how to measure activities. An organization is subject to this test unless and until it elects otherwise.

The 501(h) Expenditure Test is the second method of measuring lobbying activity. This test provides clearer guidelines, defining lobbying, providing an exact dollar-based lobbying limit and measuring lobbying based upon an organization’s expenditures. Under 501(h) rules, you can calculate the overall lobbying limit of your organization as follows: you can spend 20% of the first \$500,000 of your budget on lobbying. You can spend 15% of the next \$500,000, 10% of the next \$500,000 and 5% of the remaining. Of the total amount that you spend on lobbying, only 25% can go towards grassroots lobbying. Be sure to keep track of all lobbying expenditures, differentiating between direct and grassroots lobbying.

If you plan to engage in lobbying, **we strongly advise you to consider the 501(h) election**. It provides much clearer guidelines for how much and what sorts of lobbying you may engage in and the penalties for violating the lobbying limits are less severe under the 501(h) test.

What are considered 501(c)(3) organizations?

They are organizations organized and operated for religious, charitable, scientific, testing or public safety, literacy or educational purposes, or for the prevention of cruelty to children or animals. These organizations must file for and receive 501(c)(3) status by filing Form 1023 with the IRS.

Which 501(c)(3) organizations can elect to lobby under 501(h)

Those that relate to educational institutions, hospitals and medical research organizations, organizations supporting government schools, organizations publicly supported by charitable contributions or admissions, sales, etc. and organizations supporting certain types of public charities. This does NOT include organizations relating to churches, an integrated auxiliary of a

church or of a convention or association of churches, or a member of an affiliated group of organizations.

What about State and Federal lobbying disclosure laws?

In addition to the IRS limitations on lobbying activities, charities are also governed by state and federal lobby disclosure laws which require certain organizations and individuals to register when they begin to engage in lobbying and to file periodic reports on their lobbying activities. If your organization pays anyone—be it a staff member, outside lobbying firm or a volunteer who is reimbursed for expenses—to influence legislation or administrative rules, you should explore the extent to which these laws apply to you.

For further information on the thresholds and requirements for registering and filing quarterly lobbying reports under the Federal Lobbying Disclosure Act, please see this website: http://www.senate.gov/legislative/Public_Disclosure/new_thresholds.htm

This document is intended to provide guidance on federal lobbying laws but is not legal advice and we would advise you to consult an attorney if you have specific concerns.

This information was adapted from the Alliance for Justice's series on non-profit and foundation lobbying and advocacy. Visit www.afj.org for more information.