

**Q&A Session for
Educating Elected Officials:
Effective Strategies for Prevention and Public Health**

Q: Is advocacy anything we do to try to influence public policy and lobbying anything we do to try to influence legislation?

A: It depends.

Under the insubstantial part test, anything you do to influence public policy or specific legislation could be considered lobbying.

Under the 501(h) expenditure test, only activities that meet the lobbying definition, including influencing specific legislation, would count against our lobbying limits.

Q: Can 501(c)(3)s support or oppose legislation?

A: Yes, absolutely!

Under federal tax law, 501(c)(3)s are clearly permitted to support or oppose legislation. When our support or opposition to legislation meets the definition of lobbying, which will depend on which test we use, it will count against our limits.

Q: When you say that 501(c)(3)s cannot support or oppose a candidate, do you mean financially support and/or verbally supporting/opposing a candidate? What does support refer to?

A: No support or opposition for candidates means no support or opposition whatsoever.

We cannot as 501(c)(3)s endorse candidates or even do anything that would inadvertently show support or opposition to any candidates for public office.



Q: Is calling on elected officials to restore funding considered lobbying?

A: Yes. Funding and appropriations bills are considered legislation and would be considered lobbying

Q: I am surprised that this webinar is connecting lobbying with educating elected officials. Aren't they 2 different things?

A: Lobbying is a form of education. All lobbying is education but not all education is lobbying. The difference is whether or not you urge elected officials to take action on a specific piece of legislation.

Q: Can interest groups lobby?

A: Federal tax rules govern how much an organization can lobby; so the tax status of an organization defines its lobbying limits.

501(c)(3)s can engage in limited lobbying and are prohibited from engaging in partisan political activity. Whereas, 501(c)(4)s can engage in unlimited lobbying activities.

Q: Are researchers or academics allowed to lobby and still be seen as objective and non-partisan?

A: The degree to which researchers or academics can lobby will depend first on whether they are lobbying as individuals or as representatives of a college or university. As individuals, researchers and academics can lobby without limit under federal tax law. If they lobby on behalf of a college or university that is a 501c3 (as most colleges and universities are), then their lobbying will count against the college or university's annual lobbying limits under federal tax law.

If it is a public college or university, then the researchers or academics would also want to see whether the state funds to the school come with lobbying restrictions. This is not a federal tax law concern, but relates to the contract between the state and the school.



Q: As a state employee, am I allowed to lobby?

A: Your right to petition your government (lobbying) is guaranteed under the First Amendment of the Constitution. The Supreme Court has also upheld this right and that you don't give up your right because you're a public employee.

If you do engage in lobbying, you simply must not do it as a "representative" of employer.

Q: Can you clarify what activities state and government employees can do to advocate or lobby?

A: Federal tax law does not regulate advocacy or lobbying by state government officials, including public health employees, but state law may. It will depend on the state law.

Q: How does the Hatch Act affect lobbying activities for civil service employees?

A: The Hatch act does not address lobbying, but it prohibits all partisan political activity by civil service employees, even in their individual capacities. Civil service employees are not barred from lobbying under the Hatch Act, but they generally will not be permitted to lobby *at work* because federal funds pay for their salaries. However, these employees would still be permitted to lobby in their individual capacities, as long as it does not cross the line into partisan political activity.

Q: Can you give an example of grassroots lobbying? For example, does this include sending out a mass letter/email about budget cuts and who to call?

A: Yes. Urging people to contact elected officials to support/oppose legislation is lobbying.

Q: Would all the staff hours involved in crafting a call to action (from policy staff to communications team) be part of the accounting for the time spent lobbying?



A: Yes. Time spent preparing for a lobbying action, whether direct or grassroots, counts against your organization's lobbying limit.

Q: Are regulations considered legislation under the IRS' definition of lobbying?

A: No. Commenting on regulations or testifying before Congress on regulations is NOT lobbying.

Q: Is working with agency staff regarding drafts of legislation, or advocating with staff regarding implementation of legislation considered lobbying?

A: Working with agency staff after legislation has passed to discuss implementation of the legislation through regulations does not count as lobbying under federal tax law.

Working with agency staff regarding draft legislation that has not yet passed would count as lobbying if the agency staff is participating in the formulation of the legislation (i.e. they are going to influence the legislators who will be deciding on the legislation).

Q: Are community boards in NYC considered legislators under the IRS' definition of lobbying?

A: I cannot say for certain, but based on my cursory understanding of NYC community boards, they would appear to be "special purpose boards" under federal tax law, as opposed to legislators. My understanding is that community boards do not have broad authority to enact policies affecting constituents, but rather have a more administrative role dealing with land use and zoning issues, and other community concerns.

<http://www.nyc.gov/html/cau/html/cb/about.shtml#govt>

Q: Do government agencies fall under the 501(h) election?

A: No. The 501(h) election applies only to 501(c)(3) organizations.



If you work for a government agency, the rules that apply will be based on state law.

Q: What are some examples of methods of education for elected officials? How are the messages best received?

A: It depends. The vehicle and the message depend on your audience. In-person interaction is always the most effective.

Q: When calculating annual expenditures under the 501(h) election, does this refer to calendar year or the organization's fiscal year?

A: Annual expenditures should be calculated by the organization's fiscal year.

Q: What if our non-profit forwards these calls to action from other organizations to our members/listservs?

A: Forwarding a grassroots lobbying communication made by another organization to additional members of the public (i.e. non-legislators) qualifies as lobbying under either the insubstantial part test or the 501(h) expenditure test. It would be grassroots lobbying under 501(h). The cost to the organization of forwarding these communications are, of course, likely to be very minimal.

Q: How are costs determined for tax purposes? If staff is doing everything electronically, then the only cost is staff member's time. In other words, how does an organization "monetize" action alerts according to the 501(h) test?

A: Under 501(h), lobbying costs generally include: (1) direct costs; (2) some portion of staff time costs; and (3) some portion of overhead costs. With an electronic communication, there are likely to be few – if any – direct costs, but the staff time dedicated to making the communication should be translated into a dollar figure for what the organization paid staff for the time required to draft the communication, and a small proportion of office



overhead (e.g. rent, the computer used to draft the message, Internet, etc.) should also be allocated as a lobbying cost.

For figuring out what percent of office overhead should be considered a lobbying cost on the annual 990, we recommend first figuring out the percentages of time that staff dedicated to lobbying overall, and to grassroots lobbying, and taking these percentages and applying them to the organization's annual overhead costs.

Q: If you are a volunteer organization, how do you determine how much money is spent on a lobbying effort?

A: Work by volunteers does not count against your lobbying limit under the 501(h) election.

Q: Is there any difference between having private grant monies versus government funding?

Can you explain the difference in lobbying restrictions for federal, state, and municipal funding?

A: Private grant funding generally does not have restrictions on lobbying activities but ultimately depends on the specific language of the funding agreement.

Federal grants generally prohibit any lobbying activities to be done with federal funding.

For state and municipal funding, it depends on the particular state or municipality. Please contact Alliance for Justice directly for assistance in determining what restrictions may exist for your state or locality.

Q: Can you define federal spending? What does it cover?

A: Federal spending includes two components: mandatory and discretionary.



Mandatory spending includes entitlements like Medicare, Medicaid, and Social Security. They're called mandatory because the benefits are defined in law and are guaranteed.

Discretionary spending includes everything else: Defense, Health, Education, Homeland Security, Transportation, etc. It's called "discretionary" because the funding is at the discretion of Congress each year during the appropriations process.

Q: What expected from the Joint Select Committee on Deficit Reduction by the November 23 deadline? A bill?

A: Yes, it will be a bill. The committee will vote on a bill containing recommendations by November 23. Congress will then have to vote on the committee's recommendations, and the President has to sign the final legislation by December 23 in order to avoid mandatory, across the board cuts (referred to as sequestration)

Q: What resources are available to help formulate lobbying and other advocacy activities?

A:

Alliance for Justice's Factsheet on Lobbying Definitions under the 501(h) expenditure test:

<http://www.afj.org/assets/resources/nap/lobbying-defs.pdf>

Prevention Institute's Media Advocacy Toolkit:

http://preventioninstitute.org/images/stories/Documents/PI_Media_Advocacy_Toolkit_8.2011.pdf

Trust for America's Health's "Protecting the Prevention and Public Health Fund" webpage:

<http://healthyamericans.org/health-issues/category/protecting-the-prevention-and-public-health-fund>

APHA's Guide to Capitol Hill Visits:

<http://www.apha.org/NR/exeres/358E434F-1E8F-43C8-991B-EE50B30DBDD5,frameless.htm>



If you have additional questions about nonprofit advocacy, please feel free to contact Alliance for Justice: <http://www.afj.org>

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If your 501(c)(3) organization would like to make the one-time 501(h) election, your organization needs to complete and submit IRS Form 5768, available here:

<http://www.irs.gov/pub/irs-pdf/f5768.pdf>