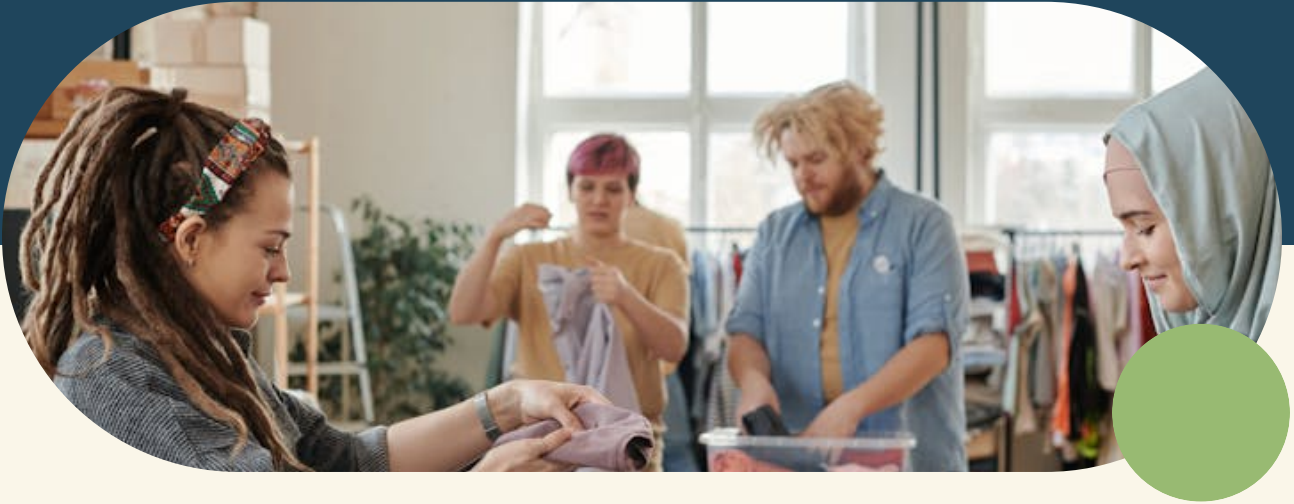


Nonprofit Lobbying Handbook



What is Lobbying?

Lobbying is when people or organizations try to persuade lawmakers or government officials to create, change, or block laws or policies. It can take many forms, such as writing letters, meeting with officials, or presenting research to support a position. While lobbying is legal and an important part of the democratic process, it is closely regulated at both the federal and state levels.

Restrictions on Nonprofit Lobbying

Nonprofits, especially those classified as 501(c)(3) organizations, face specific limits on how much lobbying they can do. This is because they are tax-exempt and expected to focus on charitable, educational, or religious activities, not political ones.

Federal Restrictions

- Limited Lobbying Activities:
 - 501(c)(3) nonprofits can engage in lobbying, but it cannot be a substantial part of their activities. The IRS uses a "facts and circumstances" test to decide what "substantial" means.
- Prohibition on Political Campaign Activities:
 - Nonprofits cannot support or oppose political candidates directly. This is different from lobbying for or against policies or legislation.
- The 501(h) Election:
 - Nonprofits can choose to file a 501(h) election with the IRS.
 - This option provides clearer rules for how much they can spend on lobbying.
 - For example, lobbying expenses are capped based on the organization's budget (e.g., 20% of the first \$500,000).
 - By electing this, nonprofits can avoid the vague "substantial" test and follow defined financial limits.

- Grassroots vs. Direct Lobbying:

- Direct Lobbying: Communicating directly with lawmakers or officials to influence a specific policy.
- Grassroots Lobbying: Encouraging the public to contact lawmakers or take action on an issue.
- Both types count toward lobbying limits under the 501(h) rules.

State-Level Restrictions

State laws also regulate nonprofit lobbying, but they vary widely.

- Most states require nonprofits to register as lobbyists if they engage in direct lobbying.
- Some states impose limits on how much nonprofits can spend or require detailed reporting of lobbying activities.
- Penalties for failing to comply can include fines, loss of tax-exempt status, or other legal actions.

To learn about your state's regulations on nonprofit lobbying please visit: <https://afj.org/bolder-advocacy/state-law-resources-practical-guidance-series/>

How Does the 501(h) Election Help?

The 501(h) election simplifies lobbying rules for nonprofits:

- It replaces the unclear "substantial part" test with clear financial thresholds.
- It provides more freedom for nonprofits to plan and carry out lobbying efforts while staying within legal limits.
- Example: A nonprofit with a budget of \$1 million can spend up to \$225,000 on lobbying (\$100,000 for grassroots lobbying) under the 501(h) election.

Why These Rules Exist

Nonprofits receive tax benefits because they serve the public good. To ensure fairness, they are restricted in how much they can influence laws or politics. These rules aim to:

- Prevent abuse of tax-exempt status for political gain.
- Maintain a focus on charitable and educational missions.
- Promote transparency in lobbying activities.

Understanding these rules helps nonprofits use lobbying to advance their causes legally and effectively.

The 501(h) Election – In Detail

Known as the 501(h) Election, the second set of rules, established by Congress in 1976, provides a clearer definition of lobbying and specifies spending limits based on the size of the organization's budget. Nonprofits must formally choose to operate under these 1976 provisions by filing IRS Form 5768. This more recent set of rules also outlines activities that are not considered lobbying and thus do not count towards the lobbying limits. These include:

- **Executive Branch Contacts:** Interactions with executive branch employees or legislators regarding proposed regulations are not considered lobbying.
- **Volunteer Lobbying:** Expenses related to volunteer lobbying are considered lobbying expenditures only if they involve costs incurred by the organization, such as organizing a rally.
- **Member Communication:** Communicating with your members about legislation is not considered lobbying, as long as you do not encourage them to contact legislators.
- **Technical Advice to a Legislative Body:** Providing written responses or technical advice to legislative bodies is not considered lobbying, allowing you to offer testimony or develop requested materials without it being classified as lobbying.

By submitting IRS Form 5768, a nonprofit establishes lobbying expenditure limits according to a sliding scale based on its annual exempt purpose expenditures. This process sets distinct ceiling limits for both total lobbying activities and grassroots lobbying efforts.

According to the IRS website: “Under the expenditure test, an organization’s tax-exempt status will not be at risk as long as its lobbying expenditures do not typically exceed the amount specified in section 4911. This limit is generally determined by the size of the organization and may not exceed \$1,000,000, as shown in the table below.

Organizations electing to file the 501(h) election must submit Form 5768 at any time during the tax year for which it is to be effective. The election remains in effect for succeeding years unless it is revoked by the organization. Revocation of the election is effective beginning with the year following the year in which the revocation is filed.

Understanding and adhering to these rules is crucial for maintaining compliance and ensuring that your lobbying activities remain within legal limits.

If the amount of exempt purpose expenditures is:	Lobbying nontaxable amount is:
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000 but ≤ \$17,000,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000



The 501(h) Election –Thresholds

If the amount of exempt purpose expenditures is:	Lobbying nontaxable amount is:
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000 but ≤ \$17,000,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000
>\$17,000,000	\$1,000,000