



NYLPI NONPROFIT TOOLKIT



ADVOCACY AND LOBBYING

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**JUSTICE THROUGH
COMMUNITY POWER**

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INTRODUCTION

This guide outlines the restrictions on lobbying and political campaign activity that apply to organizations that are exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”).

This guide refers generally to Code section 501(c)(3) organizations as “charities,” but differences between the rules applicable to private foundations and those applicable to public charities are discussed where relevant. The final section of the guide also provides a brief discussion of lobbying and political campaign activity by Code section 501(c)(4) organizations.

Given the significant penalties — including excise taxes and, in certain circumstances, loss of exemption — that may be imposed for violations, charities should understand these restrictions and take steps to ensure ongoing compliance with the applicable rules. This guide aims to provide an overview for organizations and professionals unfamiliar with the political activity and lobbying rules, which is one of the most complex areas of federal law applicable to charities.

This document is not exhaustive or all-inclusive and is intended for general guidance only. For more information, please consult qualified legal counsel.

PRACTICAL GUIDANCE

To help you digest these complex rules, these inset boxes will include practical tips, explanations, and examples.



POLITICAL CAMPAIGN ACTIVITIES

This Part II provides an overview of the prohibition on political campaign activity by charities, which applies equally to public charities and private foundations. Section A provides the general rule, Section B provides explanatory

definitions of the terms needed to understand the general rule, and Section C summarizes certain permitted activities that are not considered political campaign intervention.

GENERAL RULE

Charities are prohibited from directly or indirectly participating or intervening in a political campaign on behalf of, or in opposition to, any candidate for public office.

WHO IS A CANDIDATE?

Campaign finance rules often cause individuals to declare their “official” candidacy well after they are widely known to be running for a particular office. Mere speculation that someone will run does not make him or her a candidate, but charities should generally treat “expected” candidates the same as official candidates.



DEFINITIONS

A “candidate for public office” is an individual who offers himself or herself, or is proposed by others, as a contestant for an elective public office, whether the office is national, state, or local.

“Participating or intervening in a political campaign” includes, but is not limited to, the publication or distribution

of written or printed statements on behalf of or in opposition to a candidate; making oral statements on behalf of or in opposition to a candidate; or making contributions of money, goods, or services to a candidate’s campaign or to a political party.

PERMITTED ACTIVITIES

The following activities will generally not be considered political campaign intervention.

Issue Advocacy

Charities may take positions on public policy issues, including issues that divide candidates in an election for public office. However, charities must avoid issue advocacy that effectively functions as political campaign intervention. All of the facts and circumstances need to be considered to determine if advocacy engaged in by a charity is political campaign intervention.

Key factors in determining whether an advocacy communication results in political campaign intervention include the following:

- Whether the statement identifies one or more candidates for a given public office (e.g., by showing a picture of the candidate, referring to the candidate’s party affiliation, or referring to a distinctive feature of the candidate’s platform or biography);



- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- Whether the statement is delivered close in time to the election;
- Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing the candidates for a given office;
- Whether the communication is part of an ongoing series of communications by the charity on the same issue, independent of the timing of any election; and
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

PRACTICAL IMPLICATIONS OF POLITICAL CAMPAIGN RESTRICTIONS

Charities may not endorse or oppose a candidate and may not take actions to support or defeat a candidate's campaign. While it is relatively easy to comply with the general rule, more challenging questions for charities can arise when activities undertaken in the ordinary course may involve a candidate or a campaign issue, as discussed below in connection with permitted activities.

Candidate Appearances

Candidates for office may appear or speak at a charity's event in a non-candidate capacity. For example, a political candidate may be a public figure who is invited to speak

because he or she currently holds (or formerly held) public office, is considered an expert in a non-political field, has led a distinguished military, legal, or public service career,



or is otherwise a celebrity or well-known personality. A candidate may also freely choose to attend an event that is open to the public.

The candidate’s presence at a charity-sponsored event does not, by itself, cause the charity to be engaged in political-campaign intervention. However, if the candidate is invited to speak or if the candidate is publicly recognized by the charity, factors in determining whether the candidate’s appearance results in political-campaign intervention include the following:

- Whether the individual is chosen to speak solely for reasons other than his or her candidacy for public office;
- Whether the individual speaks only in a non-candidate capacity;
- Whether either the individual or any representative of the charity makes any mention of the individual’s political candidacy or the election;
- Whether any campaign activity occurs in connection with the candidate’s attendance;
- Whether the charity maintains a non-partisan atmosphere on the premises or at the event where the candidate is present; and
- Whether, in the communications announcing the candidate’s attendance at the event, the charity clearly indicates the capacity in which the candidate is appearing and does not mention the individual’s political candidacy or the upcoming election.

ISSUE ADVOCACY OR CAMPAIGN INTERVENTION?

This type of legalistic “facts and circumstances” test can be difficult for an organization to apply in practice without assistance of counsel. For most charities, though, factor (vi) provides the clearest guidepost: A charity that has a history of public advocacy communications on an issue may continue to deliver the same message in the same manner (without reference to the campaign or any candidate) notwithstanding the fact that the issue has become a focus in a campaign.

Charities that wish to advocate for the first time about a topic at a time when it is also a divisive campaign issue may do so but should proceed with caution and generally after consultation with counsel.



REALITY CHECK

Experienced charity leaders may find these guidelines disconnected both from how charities think and how candidates act. In reality, charities want to form or reinforce relationships with current and potential future leaders, while candidates tend to abide by the adage (to misquote Glenn Garry Glen Ross) “Always Be Campaigning.” While a candidate’s appearance at a charity event will always bear some risk of being deemed campaign activity, a charity can minimize this risk by taking affirmative action on the aspects of the appearance within its control.

Other Activities

Charities are permitted to conduct: certain voter education activities, such as the presentation of candidate forums and the publication of voter education guides¹; voter registration drives; and get-out-the-vote activities.

Any such activities must be conducted in a non-partisan manner. If these activities are instead conducted in a biased manner that favors (or opposes) one or more candidates, they will be considered prohibited intervention in a political campaign.

CANDIDATES AS SPEAKERS: SETTING EXPECTATIONS

For speakers, the charity should clearly communicate expectations from the outset and in writing. The initial invitation and subsequent communications should (i) specify the non-candidate capacity in which the individual is invited (e.g., for your focus on issues facing low income families); (ii) identify the topics about which the candidate is encouraged to speak; (iii) explain that federal tax rules prohibit the charity from hosting a campaign event; and (iv) ask that the candidate refrain from discussing his or her campaign, platform, or opponent.



CANDIDATES AS GUESTS: BEING PROACTIVE

Sometimes, candidates show up unannounced and/or take the microphone unprompted. While the risk that a charity would be held responsible in such circumstances may be low, charities that invite one candidate, or expect that one candidate might show up, should generally invite all candidates in the race and make efforts to manage any opportunities for them to address the audience to avoid partisan speeches.

LOBBYING

This Part III explains the lobbying restrictions that apply to charities. Section A provides the general rule, Section B provides explanatory definitions of the terms needed to understand the general rule, and Section C summarizes certain activities that are not considered lobbying. Section D discusses special considerations for grantmaking private foundations.

Whether a particular communication constitutes lobbying depends on the specific facts and circumstances, and examples can be very helpful in understanding the application of these rules. Illustrative examples are included in the body of this guide, but Appendix I to this guide provides many more examples taken directly from the applicable Treasury Regulations.

GENERAL RULE

Under federal law, no substantial part of a public charity's activities (and no part of a private foundation's activities) may consist of attempting to influence any legislation.² While

public charities are permitted to conduct an insubstantial amount of lobbying, the lobbying prohibition for private foundations is absolute.³



DEFINITIONS

Upon first reading, the definitions below can be overwhelming, particularly the concepts of direct and grassroots lobbying. For historical and technical reasons, there are really two definitions of lobbying under federal law: a general one (“Attempting to Influence”) and a specific

one (“Direct Lobbying” and “Grassroots Lobbying”). The general definition explains what lobbying is, while the specific definitions enumerate all of the elements that need to be present for a communication to constitute lobbying.⁴

Attempting to Influence (General Definition)

A charity will be considered to be “attempting to influence” legislation when it either:

- contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
- advocates for the adoption or rejection of legislation.⁵

Attempts to influence legislation can consist of either direct lobbying or indirect grassroots lobbying.

EXAMPLE: DIRECT LOBBYING

A letter to Senator Dent asking him to vote “no” on S.B. 42 is a direct lobbying communication.



Direct Lobbying (Specific Definition)

“Direct lobbying” includes any communication that:

- Is addressed to a member or a staff person of a legislative body or any other government official or employee who may participate in the formulation of legislation;⁶
- Refers to specific legislation; and
- Reflects a view on the specific legislation.⁷

Grassroots Lobbying (Specific Definition)

“Grassroots lobbying” includes any communication that:

- is addressed to the public or any part of the general public;
- refers to specific legislation;
- reflects a view on the specific legislation; and
- directly or indirectly encourages recipients of the communication to take action regarding the specific legislation.⁸

In order for a communication to the general public, or any member of the public, to constitute grassroots lobbying, it must include either direct encouragement or indirect encouragement (commonly referred to as a “call to action”):

“Direct encouragement” includes any communication that:

- States that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of urging contact with the government official or employee is to influence legislation);⁹

EXAMPLE: GRASSROOTS LOBBYING

A billboard that reads “H.B. 22 is bad for families. So why is Congressman Yossarian supporting it?” is a grassroots lobbying communication.



- States the address, telephone number, or similar information of a legislator or an employee of a legislative body; or
- Provides a petition, tear-off postcard or similar material for the recipient to communicate with a legislator or an employee of a legislative body, or with any other government official or employee who may participate in the formulation of legislation (but only if the principal purpose of so facilitating contact with the government official or employee is to influence legislation).

“Indirect encouragement” refers to communications that merely identify one or more legislators who will vote on the legislation as:

- opposing the communication’s view on the legislation;
- being undecided about the legislation;
- representing the recipient in the legislature; or

GRASSROOTS LOBBYING: TAKEAWAYS

A communication regarding legislation that is directed to the general public, rather than a government actor, needs “something extra” to constitute lobbying, but this “call to action” is a low bar that can be satisfied simply by identifying relevant legislators or even by the timing of the communication.

- being a member of the legislative committee that will consider the legislation.¹⁰

Communications to the general public that do not include a call to action (i.e., direct or indirect encouragement) generally will not constitute grassroots lobbying. One important exception is that a paid advertisement in mass media, within two weeks before a vote by a legislative body or committee on a highly publicized piece of legislation, will be a grassroots lobbying communication if it:

- reflects a view on the general subject of the legislation;
- either (a) refers to the highly publicized legislation or (b) encourages the public to communicate with legislators on the general subject of the legislation; and
- is not a type of mass media communication that it regularly makes without regard to the timing of the legislation.¹¹



LEGISLATION REQUIRES A LEGISLATIVE BODY

Note that the definition of legislation is focused on the identity of the actor rather than the substance of the action. Thus, treaty ratifications and judicial confirmations are included even though these are not “legislation” in the common sense of the word.

Legislation

- “Legislation” is generally defined as any action (i) by Congress, (ii) by any state legislature, (iii) by any local council or similar governing body, or (iv) by the public in a referendum, initiative, constitutional amendment, or similar procedure.¹²
- The term “legislation” includes:
 - Bills, resolutions, confirmations or similar items to be considered by any federal, state or local legislative body;¹³
 - Proposed treaties required to be submitted by the President to the Senate for its advice and consent;¹⁴
 - The Senate’s confirmation vote on an executive branch nominee;¹⁵
 - Referenda, ballot initiatives, constitutional amendments or similar items that are voted upon by members of the public (who are treated as “legislators” in this context since they are the actors who approve or disapprove the legislation);¹⁶ and
 - Laws of a foreign country.¹⁷



Substantial

Whether a public charity's lobbying activities are "substantial" is determined on a facts and circumstances basis. As an alternative, a public charity may elect to be treated under the expenditure test of Code section 501(h). An electing organization reports its direct and grassroots lobbying expenditures to the IRS each year on a schedule to its Form 990 and will not be deemed to have engaged in substantial lobbying activities so long as these expenditures

remain below a certain percentage of its operating expenses. Most organizations that conduct lobbying activities on a regular basis choose to make the Code section 501(h) election for the certainty it provides.

As noted above, private foundations are prohibited from engaging in even insubstantial amounts of lobbying.

NON-LOBBYING ACTIVITIES

The following activities do not constitute lobbying, either because the activity does not have all of the elements necessary to meet the specific definition of "lobbying" or because the activity is specifically excluded

from the definition of lobbying by the applicable Treasury Regulations.

EXAMPLE: COMMUNICATIONS TO EXECUTIVE OFFICIALS

A letter urging the President or the DOJ to strictly enforce immigration laws will not constitute lobbying.

A letter urging the President to make an existing comprehensive immigration reform bill a top legislative priority will constitute lobbying.



Advocacy Directed Towards Executive, Administrative, or Judicial Bodies

“Legislation” does not include action by executive, administrative, or judicial bodies.¹⁸

Therefore, the term “lobbying” does generally not include advocacy directed towards executive officials (the President, state governors, etc.), administrative bodies (e.g., the EPA, the SEC, the FTC), or courts that enforce or apply laws. Advocacy of this kind may properly urge that existing laws be enforced or implemented and/or that they be

enforced or implemented in a particular way. However, if a communication to an executive official advocates a position with respect to specific legislation and the executive official participates in the formulation of the legislation, the communication may be considered lobbying.

Sometimes, a law will authorize a governmental department or agency to promulgate rules or regulations in order to implement the law. An organization can properly advocate

EXAMPLE: COMMUNICATIONS TO ADMINISTRATIVE BODIES

Letters, calls, meetings, and public communications making specific recommendations to the SEC in issuing regulations under Dodd-Frank are not lobbying communications.

EXAMPLE: EXAMINATIONS AND DISCUSSIONS OF BROAD SOCIAL, ECONOMIC, AND SIMILAR PROBLEMS

A publication that highlights the harms of gun violence or the plight of the uninsured does not constitute lobbying even if gun control or health care legislation is being publicly debated at that time, so long as the publication does not address the merits of the bill or encourage action with respect to the bill.



for or against specific proposed rules or regulations in this context, and its activity will not be regarded as lobbying activity.

Advocacy before courts or other judicial bodies does not constitute lobbying, even if the advocacy urges that a particular law be stricken on constitutional or other grounds. A class action law suit or other public interest litigation is not lobbying.

Examinations and Discussions of Broad Social, Economic, and Similar Problems

Examinations and discussions of broad social, economic, and similar problems are neither direct nor indirect lobbying communications, even if the problems are of the type with which government ultimately would be expected to deal. Thus, lobbying communications do not include public discussions or communications with legislators or

government employees, the general subject of which is also the subject of pending legislation, so long as the discussion does not address itself to the merits of the specific legislative proposal and does not directly encourage specific recipients to take action with respect to legislation.¹⁹

EXAMPLE: PUBLIC EDUCATION OR ADVOCACY

A charity believes pesticide X is harmful to humans and publishes a paper expressing its concerns and recommending the passage of a bill currently pending the state legislature that would ban Pesticide X. However, the article does not encourage readers to take action with respect to the legislation and therefore is not a grass roots lobbying communication.



EXAMPLE: NONPARTISAN RESEARCH

A charity researches, writes, prints and distributes a study on the use and effects of pesticide X. A bill is pending in the U.S. Senate to ban the use of pesticide X. The charity's study leads to the conclusion that pesticide X is extremely harmful and that the bill pending in the U.S. Senate is an appropriate and much needed remedy to solve the problems caused by pesticide X. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of pesticide X, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. In its analysis of the pending bill, the study names certain undecided Senators on the Senate committee considering the bill.

Although the study meets the three part test for determining whether a communication is a grass roots lobbying communication, the study is within the exception for nonpartisan analysis, study or research, because it does not directly encourage recipients of the communication to urge a legislator to oppose the bill.

Public Education or Advocacy

Efforts to educate the public and mobilize it to respond to a particular social problem do not generally constitute lobbying, so long as such efforts do not include a call to action regarding specific legislation. Accordingly, a nonprofit organization may engage in educational efforts regarding

particular social problems — even if pending legislation exists that may address such social problems — so long as the organization's educational efforts do not include a call to action.



Nonpartisan Analysis, Study, or Research

Preparation and distribution of nonpartisan analysis, study, or research will not constitute lobbying. “Nonpartisan analysis, study, or research” means an independent and objective exposition of a particular subject matter. Thus, nonpartisan analysis, study or research may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. The nonpartisan analysis, study or research may identify legislators and their positions on

the issue examined but may not directly encourage the recipient to take action with respect to such legislation.

Even though certain advocacy communications or research materials are initially not grassroots lobbying communications, note that the subsequent use of advocacy communications or research materials for grassroots lobbying may cause them to be treated as grassroots lobbying communications.

Communications between an Organization and its Members

Certain communications between a public charity (i.e., not a private foundation) and its members are treated more leniently than are communications to non-members. A communication will not be considered lobbying if the communication:

- Is directed only to members of the organization;
- Refers to and reflects a view on specific legislation that is of direct interest to the organization and its members; and

- Does not “directly encourage” the member to engage in direct or grassroots lobbying (whether individually or through the organization).²⁰

For purposes of this exception, members are limited to those who pay dues or make a contribution of more than a nominal amount, contribute more than a nominal amount of time, or are one of a limited number of “honorary” or “life” members who have more than a nominal connection with the organization and who have been chosen for a valid reason unrelated to the organization’s dissemination of information to its members.



Response to Request for Technical Advice

A communication is not a direct lobbying communication if the communication merely provides technical advice or assistance to a governmental body, committee, or subdivision in response to a written request.²¹ “Technical advice or assistance” may be given as a result of knowledge or skill in a given area. The oral or written presentation of technical advice or assistance need not qualify as nonpartisan analysis, study or research.

Under this exception, the request for assistance or advice must be made in the name of the requesting governmental body, committee, or subdivision rather than an individual member of the requesting body. A charity may respond to a request from a member of the Senate Finance Committee, so long as the request is made in the name of the Committee and not on the individual Senator’s behalf. Similarly, the response must be available to every member of the requesting body, committee, or subdivision.

PUBLIC CHARITY MEMBER COMMUNICATIONS

A public charity with bona fide members has somewhat more flexibility in communicating with its members with respect to specific legislation that relates to the public charity’s mission, so long as the public charity does not “directly encourage” its members to engage in lobbying.

EXAMPLE: SELF DEFENSE LOBBYING

Lobbying activities by hospitals with respect to the charitable care requirements established under the Affordable Care Act qualified under this exception because those provisions imposed additional requirements on tax exempt hospitals in order to maintain their tax-exempt status.



“Self Defense” Lobbying

An organization’s communication with any legislative body (or any member or employee thereof) with respect to a possible action by the body that might affect the

organization’s existence, powers, duties, or tax-exempt status will not be regarded as a lobbying communication.²²

STRUCTURING GRANT AGREEMENTS TO COMPLY WITH THE LOBBYING RULES

Private foundations also must take care to comply with the lobbying prohibition in connection with their grantmaking programs. Private foundations are permitted to make grants to public charities that lobby, but may not earmark grant funds for lobbying activity.

Grant funds will be deemed “earmarked” for a particular purpose if the funds are given pursuant to a written or oral agreement that the funds will be used for the particular purpose.²³ Thus, even if the written grant application

or the written grant agreement makes no reference to lobbying activity, the grant will be deemed earmarked for lobbying if there is an oral understanding between the private foundation and its grantee that the funds are to be used for lobbying. Project grant funds also will be deemed earmarked for lobbying activity if the amount of the grant exceeds the non-lobbying project expenditures reflected in the project budget.

Grants for General Operating Support

The Treasury Regulations state that a grant for general operating support to a public charity is permissible unless

it is specifically earmarked for lobbying activity. Thus, a general operating grant to an exempt organization will be



legally compliant unless there is some oral or written side agreement with the grantee requiring the funds to be used for lobbying.²⁴ The written grant award agreement does not have to specify that the funds cannot be used for lobbying. Grantmakers are not under any legal duty to scrutinize

the organization’s overall operating budget to ensure that a general operating support grant does not exceed an amount equal to the organization’s overall non-lobbying operating expenditures.

Grants for Project Support

Obviously, if a project or program does not involve any lobbying activity, a grant to support that project or program will not be deemed earmarked for lobbying purposes. Again, there is no requirement that the written grant agreement specifically prohibit the use of grant funds for lobbying activities.

Even if a project or program does involve some lobbying activity, a grant to support that project or program will not be deemed “earmarked” for lobbying unless:

- There is some oral or written understanding that the grant funds will be used to support the lobbying component of the project or program;²⁵ or
- The amount of support that the private foundation provides for the project or program exceeds the organization’s non-lobbying project expenditures (defined as the funds budgeted to be spent by the organization on the project, excluding any funds budgeted for lobbying activities) during any tax reporting year covered by the grant.²⁶

REGISTRATION AND REPORTING REQUIREMENTS

Federal, state, and local governments also impose registration and reporting requirements on individuals and organizations who make lobbying expenditures above a

specified threshold within a designated period of time. While the rules are different in every jurisdiction, the scope of activities covered by these requirements is generally



broader than the Code section 501(c)(3) definition of lobbying and includes, for example, efforts to influence actions by executive officials and administrative agencies.

These requirements are beyond the scope of this guide, but more information is available from the regulatory bodies that manage the registration and reporting process:

Federal

https://lobbyingdisclosure.house.gov/amended_lda_guide.html

New York State

<https://jcope.ny.gov/lobbyist>

New York City:

<https://www.cityclerk.nyc.gov/content/nyc-lobbying-rules>



CODE SECTION 501(C)(4) SOCIAL WELFARE ORGANIZATIONS

More permissive rules apply to lobbying and political campaign activities by social welfare organizations exempt under Code section 501(c)(4). Specifically, a Code section 501(c)(4) organization may engage in (i) an unlimited amount of lobbying, so long as the lobbying relates to its social welfare purposes and (ii) some political campaign activity, so long as political activity is not the organization’s “primary” purpose.²⁷

The pro rata amount of lobbying and political expenditures must be reported to the organization’s dues-paying members, if any, or else the organization will be subject to tax on these amounts.²⁸ The organization will also be subject to tax on its investment income to the extent of its political expenditures. Code section 501(c)(4) organizations engaged in political campaign activity must also comply with campaign finance laws regulating political contributions and election-related expenditures.

Charities, especially those engaged in issue advocacy, often form a related Code section 501(c)(4) organization to engage in lobbying and campaign activities. While this structure is permissible, care must be taken to ensure that the charity’s resources are not used to support these activities:

- The organizations may share office space, personnel, and other resources, but these arrangements must be subject to a reimbursement or cost-sharing agreement, which should be documented in writing.
- The organizations should maintain detailed records, including time sheets for shared employees, to substantiate the appropriate allocation of costs.
- The board of directors of the charity should include some directors who are not also directors of the Code section 501(c)(4) entity who can provide independent oversight of the relationship and these resource-sharing arrangements.



APPENDIX I: EXAMPLES FROM TREASURY REGULATIONS SECTION 56.4911-2

DIRECT LOBBYING COMMUNICATIONS

Example 1

Organization P's employee, X, is assigned to approach members of Congress to gain their support for a pending bill. X drafts and P prints a position letter on the bill. P distributes the letter to members of Congress.

Additionally, X personally contacts several members of Congress or their staffs to seek support for P's position on the bill. The letter and the personal contacts are direct lobbying communications.

Example 2

Organization M's president writes a letter to the Congresswoman representing the district in which M is headquartered, requesting that the Congresswoman write

an administrative agency regarding proposed regulations recently published by that agency. M's president also requests that the Congresswoman's letter to the agency



state the Congresswoman's support of M's application for a particular type of permit granted by the agency.

Example 3

Organization Z prepares a paper on a particular state's environmental problems. The paper does not reflect a view on any specific pending legislation or on any specific

Example 4

State X enacts a statute that requires the licensing of all day care providers. Agency B in State X is charged with preparing rules to implement the bill enacted by State X. One week after enactment of the bill, organization C sends a letter to Agency B providing detailed proposed rules that

Example 5

Organization B researches, prepares and prints a code of standards of minimum safety requirements in an area of common electrical wiring. Organization B sells the code of standards booklet to the public and it is widely used by professional in the installation of electrical wiring. A number of states have codified all, or part, of the code of standards

The letter written by M's president is not a direct lobbying communication.

legislative proposal that Z either supports or opposes. Z's representatives give the paper to a state legislator. Z's paper is not a direct lobbying communication.

organization C suggests to Agency B as the appropriate standards to follow in implementing the statute on licensing of day care providers. Organization C's letter to Agency B is not a lobbying communication.

as mandatory safety standards. On occasion, B lobbies state legislators for passage of the code of standards for safety reasons. Because the primary purpose of preparing the code of standards was the promotion of public safety and the standards were specifically used in a profession for that purpose, separate from any legislative requirement,



the research, preparation, printing and public distribution of the code of standards is not an expenditure for a direct (or grass roots) lobbying communication. Costs, such as transportation, photocopying, and other similar expenses,

Example 6

On the organization’s own initiative, representatives of Organization F present written testimony to a Congressional committee. The news media report on the testimony of

Example 7

Organization R’s monthly newsletter contains an editorial column that refers to and reflects a view on specific pending bills. R sends the newsletter to 10,000 nonmember subscribers. Senator Doe is among the subscribers. The editorial column in the newsletter copy sent to Senator Doe is not a direct lobbying communication because the

Example 8

Assume the same facts as in Example (7), except that one of Senator Doe’s staff members sees Senator Doe’s copy of the editorial and writes to R requesting additional information. R responds with a letter that refers to and

incurred in lobbying state legislators for passage of the code of standards into law are expenditures for direct lobbying communications.

Organization F, detailing F’s opposition to a pending bill. The testimony is a direct lobbying communication but is not a grass roots lobbying communication.

newsletter is sent to Senator Doe in her capacity as a subscriber rather than her capacity as a legislator. (Note, though, that the editorial column may be a grass roots lobbying communication if it encourages recipients to take action with respect to the pending bills it refers to and on which it reflects a view).

reflects a view on specific legislation. R’s letter is a direct lobbying communication unless it is within one of the exceptions set forth in paragraph (c) of this section (such as the exception for nonpartisan analysis, study or research).



(R's letter is not within the scope of the exception for responses to written requests from a legislative body or committee for technical advice (see paragraph (c)(3) of this

section) because the letter is not in response to a written request from a legislative body or committee).

GRASS ROOTS LOBBYING COMMUNICATIONS

Communications that are not grass roots lobbying communications.

Example 1

Organization L places in its newsletter an article that asserts that lack of new capital is hurting State W's economy. The article recommends that State W residents either invest more in local businesses or increase their savings so that funds will be available to others interested in making investments. The article is an attempt to influence opinions with respect to a general problem that might

receive legislative attention and is distributed in a manner so as to reach and influence many individuals. However, the article does not refer to specific legislation that is pending in a legislative body, nor does the article refer to a specific legislative proposal the organization either supports or opposes. The article is not a grass roots lobbying communication.

Example 2

Assume the same facts as Example (1), except that the article refers to a bill pending in State W's legislature that is intended to provide tax incentives for private savings. The article praises the pending bill and recommends that it be

enacted. However, the article does not encourage readers to take action with respect to the legislation. The article is not a grass roots lobbying communication.

**Example 3**

Organization B sends a letter to all persons on its mailing list. The letter includes an update on numerous environmental issues with a discussion of general concerns regarding pollution, proposed federal regulations affecting the area, and several pending legislative proposals. The letter endorses two pending bills and opposes another pending

bill, but does not name any legislator involved (other than the sponsor of one bill, for purposes of identifying the bill), nor does it otherwise encourage the reader to take action with respect to the legislation. The letter is not a grass roots lobbying communication.

Example 4

A pamphlet distributed by organization Z discusses the dangers of drugs and encourages the public to send their legislators a coupon, printed with the statement “I support a drug-free America.” The term “drug-free America” is not widely identified with any of the many specific pending

legislative proposals regarding drug issues. The pamphlet does not refer to any of the numerous pending legislative proposals, nor does the organization support or oppose a specific legislative proposal. The pamphlet is not a grass roots lobbying communication.

Example 5

A pamphlet distributed by organization B encourages readers to join an organization and “get involved in the fight against drugs.” The text states, in the course of a discussion of several current drug issues, that organization B supports a specific bill before Congress that would establish an

expanded drug control program. The pamphlet does not encourage readers to communicate with legislators about the bill (such as by including the names of undecided or opposed legislators). The pamphlet is not a grass roots lobbying communication.



Example 6

Organization E, an environmental organization, routinely summarizes in each edition of its newsletter the new environment-related bills that have been introduced in Congress since the last edition of the newsletter. The newsletter identifies each bill by a bill number and the name of the legislation's sponsor. The newsletter also reports on the status of previously introduced environment-related bills. The summaries and status reports do not encourage

Example 7

Organization B prints in its newsletter a report on pending legislation that B supports, the Family Equity bill. The report refers to and reflects a view on the Family Equity bill, but does not directly encourage recipients to take action. Nor does the report specifically identify any legislator as opposing the communication's view on the legislation, as being undecided, or as being a member of the legislative committee or subcommittee that will consider the legislation. However, the report does state the following: Rep. Doe (D–Ky.) and Rep. Roe (R–Ma.), both ardent supporters of the Family Equity bill, spoke at B's annual convention last week. Both encouraged B's efforts to get the Family Equity bill enacted and stated that they thought the bill could

recipients of the newsletter to take action with respect to legislation, as described in paragraphs (b)(2)(iii) (A) through (D) of this section. Although the summaries and status reports refer to specific legislation and often reflect a view on such legislation, they do not encourage the newsletter recipients to take action with respect to such legislation. The summaries and status reports are not grass roots lobbying communications.

be enacted even over a presidential veto. B's legislative affairs liaison questioned others, who seemed to agree with that assessment. For example, Sen. Roe (I–Ca.) said that he thinks the bill will pass with such a large majority, "the President won't even consider vetoing it."

Assume the newsletter, and thus the report, is sent to individuals throughout the U.S., including some recipients in Kentucky, Massachusetts and California. Because the report is distributed nationally, the mere fact that the report identifies several legislators by party and state as part of its discussion does not mean the report specifically identifies the named legislators as the Kentucky, Massachusetts and



California recipients' representatives in the legislature for purposes of paragraph (b)(2)(iii) of this section. The report is not a grass roots lobbying communication.

Example 1

A pamphlet distributed by organization Y states that the “President’s plan for a drug-free America,” which will establish a drug control program, should be passed. The pamphlet encourages readers to “write or call your senators and representatives and tell them to vote for the President’s plan.” No legislative proposal formally bears the name “President’s plan for a drug-free America,” but that

Example 2

Assume the same facts as in Example (1), except that the pamphlet does not encourage the public to write or call representatives, but does list the members of the committee

Example 3

Assume the same facts as in Example (1), except that the pamphlet encourages readers to “write the President to urge him to make the bill a top legislative priority” rather than encouraging readers to communicate with

(ii) Communications that are grass roots lobbying communications.

and similar terms have been widely used in connection with specific legislation pending in Congress that was initially proposed by the President. Thus, the pamphlet refers to specific legislation, reflects a view on the legislation, and encourages readers to take action with respect to the legislation. The pamphlet is a grass roots lobbying communication.

that will consider the bill. The pamphlet is a grass roots lobbying communication.

members of Congress. The pamphlet is a grass roots lobbying communication.

**Example 4**

Organization B, a nonmembership organization, includes in one of three sections of its newsletter an endorsement of two pending bills and opposition to another pending bill and

also identifies several legislators as undecided on the three bills. The section of the newsletter devoted to the three pending bills is a grass roots lobbying communication.

Example 5

Organization D, a nonmembership organization, sends a letter to all persons on its mailing list. The letter includes an extensive discussion concluding that a significant increase in spending for the Air Force is essential in order to provide an adequate defense of the nation. Prior to a concluding

fundraising request, the letter encourages readers to write their Congressional representatives urging increased appropriations to build the B-1 bomber. The letter is a grass roots lobbying communication.

Example 6

The President nominates X for a position in the President's cabinet. Organization Y disagrees with the views of X and does not believe X has the necessary administrative capabilities to effectively run a cabinet-level department.

Accordingly, Y sends a general mailing requesting recipients to write to four Senators on the Senate Committee that will consider the nomination. The mailing is a grass roots lobbying communication.

Example 7

Organization F mails letters requesting that each recipient contribute money to or join F. In addition, the letters express F's opposition to a pending bill that is to be voted upon by the U.S. House of Representatives. Although the

letters are form letters sent as a mass mailing, each letter is individualized to report to the recipient the name of the recipient's congressional representative. The letters are grass roots lobbying communications.



Example 8

Organization C sends a mailing that opposes a specific legislative proposal and includes a postcard addressed to the President for the recipient to sign stating opposition to the proposal. The letter requests that the recipient send to C a contribution as well as the postcard opposing the

proposal. C states in the letter that it will deliver all the postcards to the White House. The letter is a grass roots lobbying communication.

(iii) Additional examples.

Example 1

The newsletter of an organization concerned with drug issues is circulated primarily to individuals who are not members of the organization. A story in the newsletter reports on the prospects for passage of a specifically identified bill, stating that the organization supports the bill. The newsletter story identifies certain legislators as

undecided, but does not state that readers should contact the undecided legislators. The story does not provide a full and fair exposition sufficient to qualify as nonpartisan analysis, study or research. The newsletter story is a grass roots lobbying communication.

Example 2

Assume the same facts as in Example (1), except that the newsletter story provides a full and fair exposition sufficient to qualify as nonpartisan analysis, study or research. The newsletter story is not a grass roots lobbying

communication because it is within the exception for nonpartisan analysis, study or research (since it does not directly encourage recipients to take action).



Example 3

Assume the same facts as in Example (2), except that the newsletter story explicitly asks readers to contact the undecided legislators. Because the newsletter story directly encourages readers to take action with respect to the

legislation, the newsletter story is not within the exception for nonpartisan analysis, study or research. Accordingly, the newsletter story is a grass roots lobbying communication.

Example 4

Assume the same facts as in Example (1), except that the story does not identify any undecided legislators. The story is not a grass roots lobbying communication.

Example 5

X organization places an advertisement that specifically identifies and opposes a bill that X asserts would harm the farm economy. The advertisement is not a mass media communication described in paragraph (b)(5)(ii) of this section and does not directly encourage readers to take action with respect to the bill. However, the advertisement

does state that Senator Y favors the legislation. Because the advertisement refers to and reflects a view on specific legislation, and also encourages the readers to take action with respect to the legislation by specifically identifying a legislator who opposes X’s views on the legislation, the advertisement is a grass roots lobbying communication.

Example 6

Assume the same facts as in Example (5), except that instead of identifying Senator Y as favoring the legislation, the advertisement identifies the “junior Senator from State

Z” as favoring the legislation. The advertisement is a grass roots lobbying communication.



Example 7

Assume the same facts as in Example (5), except that instead of identifying Senator Y as favoring the legislation, the advertisement states: “Even though this bill will have a devastating effect upon the farm economy, most of the Senators from the Farm Belt states are inexplicably in favor of the bill.” The advertisement does not specifically identify

one or more legislators as opposing the advertisement’s view on the bill in question. Accordingly, the advertisement is not a grass roots lobbying communication because it does not encourage readers to take action with respect to the legislation.

Example 8

Organization V trains volunteers to go door-to-door to seek signatures for petitions to be sent to legislators in favor of a specific bill. The volunteers are wholly unreimbursed for their time and expenses. The volunteers’ costs (to the extent any are incurred) are not lobbying or exempt purpose expenditures made by V (but the volunteers may not deduct their out-of-pocket expenditures (see section 170(f) (6)). When V asks the volunteers to contact others and urge

them to sign the petitions, V encourages those volunteers to take action in favor of the specific bill. Accordingly, V’s costs of soliciting the volunteers’ help and its costs of training the volunteers are grass roots expenditures. In addition, the costs of preparing, copying, distributing, etc. the petitions (and any other materials on the same specific subject used in the door-to-door signature gathering effort), are grass roots expenditures.



MASS MEDIA ADVERTISEMENTS REGARDING HIGHLY PUBLICIZED LEGISLATION

Example 1

Organization X places a television advertisement advocating one of the President's major foreign policy initiatives, as outlined by the President in a series of speeches and as drafted into proposed legislation. The initiative is popularly known as "the President's World Peace Plan," and is voted upon by the Senate four days after X's advertisement. The advertisement concludes: "SUPPORT THE PRESIDENT'S WORLD PEACE PLAN!" The President's plan and position are highly publicized during the two weeks before the Senate vote, as evidenced by: coverage of the plan on several nightly television network news programs; more

than one article about the plan on the front page of a majority of the country's ten largest daily general circulation newspapers; and an editorial about the plan in four of the country's ten largest daily general circulation newspapers. Although the advertisement does not encourage readers to contact legislators or other government officials, the advertisement does refer to specific legislation and reflect a view on the general subject of the legislation. The communication is presumed to be a grass roots lobbying communication.

Example 2

Assume the same facts as in Example (1), except that the advertisement appears three weeks before the Senate's vote on the plan. Because the advertisement appears more than two weeks before the legislative vote, the advertisement is not within the scope of the special rule for mass media communications on highly publicized legislation. Accordingly, the advertisement is a grass roots

lobbying communication only if it is described in the general definition contained in paragraph (b)(2) of this section. Because the advertisement does not encourage recipients to take action with respect to the legislation in question, the advertisement is not a grass roots lobbying communication.



Example 3

Organization Y places a newspaper advertisement advocating increased government funding for certain public works projects the President has proposed and that are being considered by a legislative committee. The advertisement explains the President's proposals and concludes: "SUPPORT FUNDING FOR THESE VITAL PROJECTS!" The advertisement does not encourage readers to contact legislators or other government officials nor does it name any undecided legislators, but it does name the legislation being considered by the committee. The President's proposed funding of public works, however, is not highly publicized during the two weeks before the vote: there has been little coverage of the issue on nightly television network news programs, only one front-page article on the issue in the country's ten largest daily

Example 4

Organization P places numerous advertisements in the mass media about a bill being considered by the State Assembly. The bill is highly publicized, as evidenced by numerous front-page articles, editorials and letters to the editor published in the state's general circulation daily newspapers, as well as frequent coverage of the bill by the television and radio

general circulation newspapers, and only one editorial about the issue in the country's ten largest daily general circulation newspapers. Two days after the advertisement appears, the committee votes to approve funding of the projects. Although the advertisement appears less than two weeks before the legislative vote, the advertisement is not within the scope of the special rule for mass media communications on highly publicized legislation because the issue of funding for public works projects is not highly publicized. Thus, the advertisement is a grass roots lobbying communication only if it is described in the general definition contained in paragraph (b)(2) of this section. Because the advertisement does not encourage recipients to take action with respect to the legislation in question, the advertisement is not a grass roots lobbying communication.

stations serving the state. The advertisements run over a three week period and, in addition to showing pictures of a family being robbed at gunpoint, say: "The State Assembly is considering a bill to make gun ownership illegal. This outrageous legislation would violate your constitutional rights and the rights of other law-abiding citizens. If this



legislation is passed, you and your family will be criminals if you want to exercise your right to protect yourselves.” The advertisements refer to and reflect a view on a specific bill but do not encourage recipients to take action. Sixteen

Example 5

Assume the same facts as in Example (4), except that it is publicly announced prior to the advertising campaign that the committee vote is scheduled for five days after the last advertisement runs. Because of public pressure resulting

days after the last advertisement runs, a State Assembly committee votes to defeat the legislation. None of the advertisements is a grass roots lobbying communication.

from the advertising campaign, the bill is withdrawn and no vote is ever taken. None of the advertisements is a grass roots lobbying communication.

NONPARTISAN ANALYSIS, STUDY, OR RESEARCH EXCEPTION

Example 1

Organization M establishes a research project to collect information for the purpose of showing the dangers of the use of pesticides in raising crops. The information collected includes data with respect to proposed legislation, pending before several State legislatures, which would ban the use of pesticides. The project takes favorable positions on such legislation without producing a sufficiently full and fair

exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion on the pros and cons of the use of pesticides. This project is not within the exception for nonpartisan analysis, study, or research because it is designed to present information merely on one side of the legislative controversy.



Example 2

Organization N establishes a research project to collect information concerning the dangers of the use of pesticides in raising crops for the ostensible purpose of examining and reporting information as to the pros and cons of the use of pesticides in raising crops. The information is collected and distributed in the form of a published report which analyzes the effects and costs of the use and nonuse of various pesticides under various conditions on humans, animals and crops. The report also presents the advantages, disadvantages, and economic cost of allowing the continued use of pesticides unabated, of controlling

the use of pesticides, and of developing alternatives to pesticides. Even if the report sets forth conclusions that the disadvantages as a result of using pesticides are greater than the advantages of using pesticides and that prompt legislative regulation of the use of pesticides is needed, the project is within the exception for nonpartisan analysis, study, or research since it is designed to present information on both sides of the legislative controversy and presents a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion.

Example 3

Organization O establishes a research project to collect information on the presence or absence of disease in humans from eating food grown with pesticides and the presence or absence of disease in humans from eating food not grown with pesticides. As part of the research project, O hires a consultant who prepares a “fact sheet” which calls for the curtailment of the use of pesticides and which addresses itself to the merits of several specific legislative proposals to curtail the use of pesticides in raising crops

which are currently pending before State Legislatures. The “fact sheet” presents reports of experimental evidence tending to support its conclusions but omits any reference to reports of experimental evidence tending to dispute its conclusions. O distributes ten thousand copies to citizens’ groups. Expenditures by O in connection with this work of the consultant are not within the exception for nonpartisan analysis, study, or research.



Example 4

P publishes a bi-monthly newsletter to collect and report all published materials, ongoing research, and new developments with regard to the use of pesticides in raising crops. The newsletter also includes notices of proposed pesticide legislation with impartial summaries of the provisions and debates on such legislation. The newsletter

does not encourage recipients to take action with respect to such legislation, but is designed to present information on both sides of the legislative controversy and does present such information fully and fairly. It is within the exception for nonpartisan analysis, study, or research.

Example 5

X is satisfied that A, a member of the faculty of Y University, is exceptionally well qualified to undertake a project involving a comprehensive study of the effects of pesticides on crop yields. Consequently, X makes a grant to A to underwrite the cost of the study and of the preparation of a book on the effect of pesticides on crop yields. X does not take any position on the issues or control the content of A's output. A produces a book which concludes that the use of pesticides often has a favorable effect on crop yields, and on that basis argues against pending bills which would ban

the use of pesticides. A's book contains a sufficiently full and fair exposition of the pertinent facts, including known or potential disadvantages of the use of pesticides, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bills. The book does not directly encourage readers to take action with respect to the pending bills. Consequently, the book is within the exception for nonpartisan analysis, study, or research.

Example 6

Assume the same facts as Example (2), except that, instead of issuing a report, X presents within a period of 6 consecutive months a two-program television

series relating to the pesticide issue. The first program contains information, arguments, and conclusions favoring legislation to restrict the use of pesticides. The second



program contains information, arguments, and conclusions opposing legislation to restrict the use of pesticides. The programs are broadcast within 6 months of each other during commensurate periods of prime time. X's programs

Example 7

Assume the same facts as in Example (6), except that X arranged for televising the program favoring legislation to restrict the use of pesticides at 8:00 on a Thursday evening and for televising the program opposing such legislation at

Example 8

Organization Z researches, writes, prints and distributes a study on the use and effects of pesticide X. A bill is pending in the U.S. Senate to ban the use of pesticide X. Z's study leads to the conclusion that pesticide X is extremely harmful and that the bill pending in the U.S. Senate is an appropriate and much needed remedy to solve the problems caused by pesticide X. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of pesticide X, to enable the public or an individual to form an independent opinion

are within the exception for nonpartisan analysis, study, or research. Although neither program individually could be regarded as nonpartisan, the series of two programs constitutes a balanced presentation.

7:00 on a Sunday morning. X's presentation is not within the exception for nonpartisan analysis, study, or research, since X disseminated its information in a manner prejudicial to one side of the legislative controversy.

or conclusion as to whether pesticides should be banned as provided in the pending bills. In its analysis of the pending bill, the study names certain undecided Senators on the Senate committee considering the bill. Although the study meets the three part test for determining whether a communication is a grass roots lobbying communication, the study is within the exception for nonpartisan analysis, study or research, because it does not directly encourage recipients of the communication to urge a legislator to oppose the bill.



Example 9

Assume the same facts as in Example (8), except that, after stating support for the pending bill, the study concludes: “You should write to the undecided committee members to support this crucial bill.” The study is not within the

exception for nonpartisan analysis, study or research because it directly encourages the recipients to urge a legislator to support a specific piece of legislation.

Example 10

Organization X plans to conduct a lobbying campaign with respect to illegal drug use in the United States. It incurs \$5,000 in expenses to conduct research and prepare an extensive report primarily for use in the lobbying campaign. Although the detailed report discusses specific pending legislation and reaches the conclusion that the legislation would reduce illegal drug use, the report contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent conclusion regarding the effect of the legislation. The report does not encourage readers to contact legislators regarding the legislation. Accordingly, the report does not, in and of itself, constitute a lobbying communication. Copies of the report are available to the public at X’s office, but X does not actively distribute the report or otherwise seek to make the contents of the report available to the general public. Whether or not X’s distribution is sufficient to meet

the requirement in § 56.4911–2(c)(1)(iv) that a nonpartisan communication be made available, X’s distribution is not substantial (for purposes of § 56.4911–2(b)(2)(v)(E)) in light of all of the facts and circumstances, including the normal distribution pattern of similar nonpartisan reports. X then mails copies of the report, along with a letter, to 10,000 individuals on X’s mailing list. In the letter, X requests that individuals contact legislators urging passage of the legislation discussed in the report. Because X’s research and report were primarily undertaken by X for lobbying purposes and X did not make a substantial distribution of the report (without an accompanying lobbying message) prior to or contemporaneously with the use of the report in lobbying, the report is a grass roots lobbying communication that is not within the exception for nonpartisan analysis, study or research.



Example 11

Assume the same facts as in Example (10), except that before using the report in the lobbying campaign, X sends the research and report (without an accompanying lobbying message) to universities and newspapers. At the same time, X also advertises the availability of the report in its newsletter. This distribution is similar in scope to the normal distribution pattern of similar nonpartisan reports. In light of all of the facts and circumstances, X's distribution of the

report is substantial. Because of X's substantial distribution of the report, X's primary purpose will be considered to be other than for use in lobbying and the report will not be considered a grass roots lobbying communication. Accordingly, only the expenditures for copying and mailing the report to the 10,000 individuals on X's mailing list, as well as for preparing and mailing the letter, are expenditures for grass roots lobbying communications.

Example 12

Organization M pays for a bumper sticker that reads: "STOP ABORTION: Vote NO on Prop. X!" M also pays for a 30-second television advertisement and a billboard that similarly advocate opposition to Prop. X. In light of the limited scope of the communications, none of the communications is within the exception for nonpartisan analysis, study or research. First, none of

the communications rises to the level of analysis, study or research. Second, none of the communications is nonpartisan because none contains a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. Thus, each communication is a direct lobbying communication.



DEFINITIONS OF “LEGISLATION” AND “SPECIFIC LEGISLATION”

Example 1

A nonmembership organization includes in its newsletter an article about problems with the use of pesticide X that states in part: “Legislation that is pending in Congress would prohibit the use of this very dangerous pesticide. Fortunately, the legislation will probably be passed. Write

your congressional representatives about this important issue.” This is a grass roots lobbying communication that refers to and reflects a view on specific legislation and that encourages recipients to take action with respect to that legislation.

Example 2

An organization based in State A notes in its newsletter that State Z has passed a bill to accomplish a stated purpose and then says that State A should pass such a bill. The organization urges readers to write their legislators in favor of such a bill. No such bill has been introduced into the

State A legislature. The organization has referred to and reflected a view on a specific legislative proposal and has also encouraged readers to take action thereon.

ADMINISTRATIVE BODIES

For purposes of section 4911, the term “any attempt to influence any legislation” does not include attempts to persuade an executive body or department to form, support the formation of, or to acquire property to be used for the

formation or expansion of, a public park or equivalent preserves (such as public recreation areas, game, or forest preserves, and soil demonstration areas) established or to be established by act of Congress, by executive



action in accordance with an act of Congress, or by a State, municipality or other governmental unit described in section 170(c)(1), as compared with attempts to persuade a legislative body, a member thereof, or other governmental official or employee, to promote the appropriation of funds for such an acquisition or other legislative authorization of such an acquisition. Therefore, for example, an organization would not be influencing legislation for purposes of section 4911, if it proposed to a Park Authority that it purchase a particular tract of land for a new park, even though such

an attempt would necessarily require the Park Authority eventually to seek appropriations to support a new park. However, in such a case, the organization would be influencing legislation, for purposes of section 4911, if it provided the Park Authority with a proposed budget to be submitted to a legislative body, unless such submission is described by one of the exceptions set forth in paragraph (c) of this section.



ENDNOTES

1. Private foundations may not conduct voter registration drives and only may fund voter registration drives if they follow special rules that are beyond the scope of this guide.
2. Code section 501(c)(3).
3. Any amount paid or incurred by a private foundation “to carry on propaganda, or otherwise to attempt to influence legislation” will constitute a taxable expenditure, subject to a 20% tax. Code section 4945(d)(1), (e).
4. As a technical matter, the specific definitions apply only to private foundations and to public charities who make the Code section 501(h) election discussed below. Treas. Reg. section 53.4945-2(a)(1); Treas. Reg. section 56.4911-2. However, public charities that engage in lobbying without electing to use the Code section 501(h) expenditure test nevertheless look to these guidelines when determining whether their activities may constitute lobbying.
5. Treas. Reg. section 1.501(c)(3)-1(c)(3)(ii).
6. If the communication refers to a referendum or ballot initiative, the general public constitutes the legislative body. Treas. Reg. section 56.4911-2(b)(1)(iii).
7. Treas. Reg. section 56.4911-2(b)(1).
8. Treas. Reg. section 56.4911-2(b)(2).
9. Treas. Reg. section 56.4911-2(b)(2)(iii) & (iv).
10. Treas. Reg. section 56.4911-2(b)(2)(iii) & (iv).
11. Treas. Reg. section 56.4911-2(b)(5).
12. Code section 4911(e)(2).
13. Treas. Reg. section 56.4911-2(d)(1)(i).
14. Treas. Reg. section 56.4911-2(d)(1)(i).
15. Treas. Reg. section 56.4911-2(b)(4)(11)(B) Example (6); see also IRS Notice 88-76, 1988-2 CB 392 (1988).
16. Treas. Reg. section 56.4911-2(d)(1)(i).
17. Rev. Rul. 73-440, 1973-2 CB 177. Revenue rulings are precedential authority.
18. Treas. Reg. section 56.4911-2(d)(3).
19. Treas. Reg. section 56.4911-2(c)(2).
20. Treas. Reg. section 56.4911-5(b).
21. Treas. Reg. section 56.4911-2(c)(3).
22. Treas. Reg. section 56.4911-2(c)(4).
23. Treas. Reg. section 53.4945-2(a)(5)(i).
24. Treas. Reg. section 53.4945-2(a)(6)(i).
25. Treas. Reg. section 53.4945-2(a)(6)(ii)(A).
26. Treas. Reg. section 53.4945-2(a)(6)(ii)(B).
27. Recently proposed IRS guidance would have clarified how to determine if political campaign activity is the “primary activity” of an organization, but the guidance was withdrawn following widespread criticism of the proposed rules. It is unclear if or when revised guidance might be proposed by the IRS.
28. This is to ensure compliance with Code section 162(e), which prohibits the member from taking a business expense deduction for the portion of its dues used for these activities.



For their invaluable contributions to the drafting and preparation of this guide, New York Lawyers for the Public Interest wishes to thank: Kevin E. Roe and John N. Bennett.

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