



## LOBBYING AND POLITICAL ACTIVITY GUIDELINES

*Effective as of November 14, 2009*

Federal tax laws regulate what nonprofit political activities are permissible. The penalties for violating these regulations range from taxes to fines, and even revocation of tax exemption. Federal law defines actions designed to influence or affect legislation as lobbying, and actions designed to affect elections as electioneering.

The nature of an organization's tax exemption determines what it may and may not do. Public charities (501(c)(3)s) may engage in lobbying, within limits, but not electioneering. Use of federal grant funds for lobbying activities is not permitted by any nonprofit organization.

If a public charity engages in lobbying, it should distinguish grass-roots from direct lobbying. Grass-roots lobbying includes activities designed to influence legislation by encouraging the general public, or a segment of it, to contact legislators.

Direct lobbying includes communicating directly with legislators involved in formulating the legislation. Federal tax law allows 501(c)(3) public charities to engage in lobbying within certain limits. An organization may choose one of two tests when determining the extent of its lobbying activities: 1) the "no substantial part" test, which the IRS does not define explicitly; and 2) the expenditures test, also known as the 501(h) election, which sets specific dollar limits based on the organization's total expenses.

### **Lobbying Expenditures**

- If BSF engages in lobbying, the organization will only engage in limited lobbying and only to advance the mission. It is BSF policy to adhere strictly to limitations on lobbying expenditures imposed by the Internal Revenue Service. Lobbying expenditures will be reported annually to the IRS on Form 990.
- To ensure adherence to this policy, lobbying expenditures will be included in the approved annual budget or authorized in advance by the Executive Director to ensure compliance with the limits on direct and grass-roots lobbying expenditures.

### **Definition of Lobbying**

- Lobbying is generally defined as communicating, directly or indirectly, with policymakers for the purpose of trying to influence legislation, whether federal, state, local, or foreign (non-U.S.).
- U.S. law divides lobbying into two principal categories: "direct" lobbying and "grass-roots" lobbying.
- *Direct lobbying* involves communications that
  - Are directed towards government officials;
  - Refer to specific legislation; and
  - State or strongly imply a position on it.
- *Grass-roots lobbying* involves communications that
  - Are directed to segments of the general public;
  - Refer to specific legislation;
  - State or strongly imply a position on the legislation; and
  - Encourage the recipient of the communication to contact government officials with respect to the specific legislation. (This is sometimes called a "call to action.")
- In order to be considered lobbying, an activity must generally meet all the parts of either one definition or the other. In addition, there are certain exceptions to the definitions of lobbying that may apply.
- When recording lobbying expenditures, it is critical to specify whether the spending was for direct lobbying or for grass-roots lobbying.

### **Lobbying with Foundation Funds**

- In general, foundation grant funds may not be used for lobbying.
- If a project gets only part of its funding from a foundation, the project can include lobbying, so long as the lobbying expenditures are funded by sources that do not exclude lobbying.
- When designing a project that will include funding from a foundation, any lobbying must be paid for out of general funds or other non–foundation funds that can be used for lobbying.

### **Lobbying with Government Funds**

- In general, using any government funds for lobbying, including using government funds to hire consultants or make grants that involve lobbying is prohibited.

### **Responsibility for Lobbying Expenditures**

- In each year’s budget request, the Executive Director is responsible for identifying and labeling any proposed expenditures for lobbying.
- In carrying out the approved budget, the Executive Director is responsible for accurately recording the actual allocation of staff time and other expenditures for lobbying.

In addition to reporting lobbying expenses annually to the IRS, nonprofits are required to report to Congress twice yearly on lobbying activities (by staff or consultants) that involve trying to influence U.S. federal programs, policies, and practices through communications with congressional employees and certain high-ranking agency employees.

### **Political Contributions**

As a charitable organization, BSF may not make contributions to any candidate for public office or political committee and may not intervene in any political campaign on behalf of or in opposition to any candidate for public office.

Therefore, the organization will:

- Refrain from making any contributions to any candidate for public office or political committee on behalf of BSF.
- Refrain from making any contributions to any candidate for public office or political committee in a manner that may create the appearance that the contribution is on behalf of BSF.
- Refrain from using any organizational financial resources, facilities, or personnel to endorse or oppose a candidate for public office.
- Clearly communicate that we are not acting on behalf of the organization, if identified as an official of BSF while engaging in political activities in an individual capacity.
- Refrain from engaging in political activities in a manner that may create the appearance that such activity is by or on behalf of BSF.

When working with members of the staff of a congressperson, a state legislator, or a local elected official, it is imperative that the staff member is *not* working for the official’s election-campaign committee, but is, indeed, on the official’s government-paid staff.

Excerpted from [The Nonprofit Policy Sampler, Second Edition](#) by Barbara Lawrence and Outi Flynn, a publication of BoardSource, formerly the National Center for Nonprofit Boards.