FAQ’s About Nonprofit Organizations and Legislative Lobbying

Nonprofit organizations serving low-income communities in New York are affected by the legislative process in multiple ways. The work of nonprofit organizations can be enhanced or complicated by legislation and regulatory action that directly impacts their program services. Their missions can be advanced or thwarted by legislative or administrative agency action that assists the beneficiaries of their services or makes their lives more precarious. Their financial health and even continued existence can depend upon government funding contracts to provide services.

Nonprofits that engage in lobbying in New York must pay attention to federal limits on lobbying activity and to federal, state and local lobbying disclosure requirements. The Internal Revenue Code limits the amount of lobbying a tax exempt organization can undertake consistent with its tax exempt status. Lobbying before Congress may require registration and reporting of that activity. Lobbying before the state legislature or City Council may trigger separate registration and disclosure obligations under the state or city lobbying laws. Lobbying activity may also trigger campaign finance laws, to the extent that individuals who lobby are also active in the political process.

This document provides an introduction to the many ways that legislative advocacy by nonprofit organizations is regulated at the federal, state, and city level. It is intended for use by nonprofit managers and by attorneys who represent them but may not be familiar with this complex area. This document does not attempt to exhaustively cover all of the particulars in this complex and changing area of the law. Rather, it is intended only as an introduction, and, as always, attorneys and nonprofit managers are encouraged to contact Lawyers Alliance with any questions that you have about any legal issue affecting nonprofits in New York.

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Introduction

1. What is lobbying?

Lobbying is an attempt to influence legislation. Regardless of whether an organization describes its activities as advocacy, community education or legislative policy, if it is trying to influence legislation – meaning supporting or opposing proposed or existing legislation, the organization should familiarize itself with applicable lobbying regulations.

How “legislation” is defined depends on which body of regulations applies. The federal government, New York State and New York City have each enacted statutes and regulations that govern lobbying activity, and what counts as lobbying is different for each regulatory body.

2. Can a nonprofit organization lobby?

Yes! Nonprofit organizations, including nonprofits with 501(c)(3) tax exempt status, may engage in lobbying – but the amount of permissible lobbying varies depending on their tax exempt status. Organizations with 501(c)(3) status are subject to the most restrictive regulations on how much lobbying activity in which they can engage. Other types of tax exempt organizations can engage in as much lobbying as is necessary or desirable to accomplish their tax exempt purpose. In order to ensure that their advocacy efforts are as effective as possible without jeopardizing its tax exempt status, 501(c)(3) organizations in particular should become familiar with how much lobbying is permissible under Internal Revenue Service (IRS) rules.

3. What bodies regulate lobbying by nonprofits?

The IRS limits how much lobbying 501(c)(3) organizations may engage in.

The other applicable regulatory bodies do not limit how much lobbying an organization may engage in but do require that lobbying activity be reported under certain circumstances. The Federal Lobbying Disclosure Act requires disclosure of federal lobbying activity, the New York State Lobbying Act requires disclosure of lobbying activity within New York State (including municipal and county level activity), and the New York City Lobbying Act requires disclosure of lobbying activity within New York City.

Internal Revenue Code Lobbying Regulation

4. What is the Internal Revenue Code definition of lobbying?

The Internal Revenue Code (IRC) defines lobbying as supporting or opposing the passage of legislation. Lobbying may be performed by directly contacting legislators (direct lobbying), or by encouraging people outside the organization to contact legislators (grassroots lobbying). It is important to understand what counts as legislation for IRC purposes:
• Legislation includes actions by Congress, state legislative bodies, local legislative authorities, as well as public votes in regard to referenda, ballot initiatives, and constitutional amendments.¹

• Legislation includes confirmation of a federal judicial nominee by the U.S. Senate, as "resolutions" or "similar items."²

• Legislation includes proposals for the enactment or amendment of international law.³

The legislation in question must be specific. For example, a policy stance of eliminating hunger would not count as lobbying unless the organization was support or opposing specific laws that would have impact on hunger. However, that specific legislation could be proposed by the organization itself.

Legislation excludes administrative rulemaking or other action, executive action not subject to federal or state legislative approval, and local actions by special bodies such as zoning or school boards. A number of other exceptions to the definition of lobbying are discussed in question 11 below.

5. What restrictions are placed on 501(c)(3) organizations?

Organizations with 501(c)(3) status are prohibited from engaging in lobbying activity that would constitute a “substantial part” of its activities.⁴ If the IRS determines that lobbying constitutes a substantial part of the organization’s activities, the organization may be subject to excise taxes, or it may lose its tax exempt status altogether.

A 501(c)(3) organization has a choice between two alternatives for determining whether it satisfies the “substantial part” test:

• 501(h) election: An organization that elects to use the 501(h) test will have its lobbying activity judged solely by its lobbying expenditures.⁵ The amount of lobbying that the organization can undertake depends on the organization’s exempt purposes expenditures:

<table>
<thead>
<tr>
<th>Exempt Purpose Expenditures</th>
<th>Total Lobbying Allowance under 501(h)</th>
</tr>
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<tbody>
<tr>
<td>up to $500,000</td>
<td>20% ($100,000 max)</td>
</tr>
<tr>
<td>$500,000 - $1 million</td>
<td>$100,000 plus 15% of excess over $500,000</td>
</tr>
<tr>
<td>$1 million - $1.5 million</td>
<td>$175,000 plus 10% of excess over $1 million</td>
</tr>
<tr>
<td>$1.5 million - $17 million</td>
<td>$225,000 plus 5% of excess over $1.5 million</td>
</tr>
<tr>
<td>Above $17 million</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

An organization’s total exempt purpose expenditures are all of an organization’s expenditures except the cost of operating a separate fundraising unit, expenses incurred in operating an unrelated trade or business, or any amounts transferred to affiliate
organizations that would cause the organization to remain below the permissible lobbying levels. Additionally, under the 501(h) election, grassroots lobbying is limited to 25% of the organization’s total lobbying allowance.

Any 501(c)(3) organization (other than churches and private foundations) may choose the 501(h) election.

- **Facts and circumstances test:** If an organization does not take the 501(h) election, the organization will be subject to a facts and circumstances test. Under this test, the IRS will look at the overall activities of the organization and may take into account resources other than financial expenditures. Available guidance is not entirely clear on what factors the IRS will consider, but the IRS has refused to adopt the quantitative approach available to exempt organizations that have made the 501(h) election.

**6. What happens if a 501(c)(3) organization exceeds lobbying limits?**

If the organization exceeds its allowance by an average of 150% over a four-year period, even an electing organization risks revocation of its tax exempt status.

If an organization has not taken the 501(h) election and the IRS determines that lobbying constitutes a “substantial part” of its activities, it will lose its tax exempt status, and may not reapply for tax exempt status as a 501(c)(4) organization.

If an organization has taken the 501(h) election and exceeds its lobbying expenditures allowance, it will owe the IRS excise taxes of 25% of the amount by which it exceed the allowance.

**7. Should a 501(c)(3) organization engaged in lobbying always take the 501(h) election?**

In most cases, yes. The 501(h) election offers a clear and reliable way to calculate how much an organization can spend on lobbying before its tax exempt status is jeopardized, and no additional risk of an IRS audit of lobbying activity has been reported.

**8. How are the IRS rules for 501(c)(4) organizations different?**

The IRS does not limit how much lobbying a 501(c)(4) social welfare organization can engage in, so long as the lobbying activity is in furtherance of the 501(c)(4)’s tax exempt purpose. However, keep in mind that a 501(c)(4) organization is not eligible to receive tax deductible donations and cannot engage in partisan political activity as its primary purpose.

**9. What is the difference between grassroots and direct lobbying, and why does it matter?**

It is important to understand the difference between grassroots and direct lobbying because the IRC limits on grassroots lobbying are lower than the overall lobbying limits, even for organizations that have taken the 501(h) election. Grassroots lobbying is limited to 25% of the total lobbying allowance for an organization.
• **Direct lobbying** occurs when an individual designated and compensated by the organization attempts to influence legislation by communicating with legislative officials. In order for activity to count as direct lobbying, there must be:
  a) specific legislation (pending or proposed legislation), and
  b) the organization must take a stand in support of or opposition to that specific legislation.

• **Grassroots lobbying** occurs when an organization encourages others to influence legislation by urging those outside the organization to engage in lobbying. In order for activity to count as grassroots lobbying, there must be:
  a) specific legislation (pending or proposed legislation),
  b) the organization must take a stand in support of or opposition to that specific legislation, and
  c) the activity must include a “call to action,” meaning the organization explicitly asks the public to contact legislators in order to influence the legislation or implicitly encourages them to do so by providing legislators’ names and/or contact information. All three criteria must be met. For example, simply educating the public on the impact of proposed legislation will not count as grassroots lobbying unless the organization also asks the public to contact their legislators in an attempt to influence the legislation.

10. **Are there special rules for membership organizations?**

Yes, with respect to the distinction between grassroots and direct lobbying, in particular. Lobbying activities involving individuals who are bona fide members of an organization will be counted as direct lobbying expenses rather than grassroots lobbying expenses. This is especially helpful for organizations that come close to meeting the cap on grassroots lobbying but not their overall lobbying limit. In order for an individual to qualify as a bona fide member of an organization, he or she must pay dues or make a contribution of more than a nominal amount of time or money, or be one of a limited number of honorary members. An individual will not be considered to be member if the individual has simply signed up for the organization’s email newsletter.

11. **Are there exceptions to what must be counted as lobbying activity for IRS purposes?**

Yes. In many cases, it is helpful to keep in mind the definition of lobbying: for an activity to count as lobbying, specific legislation must be identified, and the organization must take a stand in support of or opposition to that legislation. For grassroots lobbying to occur, there must also be a call to action. If the activity in question does not meet these requirements, it is likely that lobbying has not occurred. Below are examples of activity which are explicitly exempted from the IRS definition of lobbying:

• **Nonpartisan analysis, study or research:** In order for an organization’s work to be exempted from the definition of lobbying, the analysis must be full and fair and must allow the public to make a decision on its own about whether to support or oppose the legislation. In addition, the work must be made available to a cross section of the population (i.e., posted on your website) or to a nonpartisan cross section of the applicable legislative body.
• Technical assistance to a governmental body: If a governmental or legislative body asks an organization to testify or provide information on a particular subject, that work will not count as lobbying provided the organization receives a written invitation to provide input. A request from a single legislator will not qualify for this exemption.\textsuperscript{11}

• Self defense exception: Advocacy regarding legislation that would affect an organization’s existence will not be counted towards its lobbying limits. For example, a charter school could lobby without limitation regarding a bill that would disallow charter schools. Simply lobbying on budgetary issues is unlikely to qualify for this self defense exception to lobbying.\textsuperscript{12}

The remaining exemptions set forth by the IRS are helpful as clarifications, but it is also clear that these activities are not lobbying based simply on the IRS’ definition of lobbying:

• Non-legislative communications with governmental officials: Many nonprofits do and should interact with government agencies and officials, and those lines of communications should not be stifled. If the topic of the communication is not legislative in nature, or if the organization does not take a position on the legislation, these interactions are not lobbying.\textsuperscript{13}

• Communications with members that do not include a call to action: An organization can inform its members about specific or proposed legislation and take position on that legislation. That activity is not lobbying unless it also includes a call to action.\textsuperscript{14}

• Communication on issues: Examinations of broad social, economic or similar problems are not lobbying, even if they are directed toward the general public, if there is no call to action.\textsuperscript{15}

\textbf{12. How should an organization count an “advocacy day” at City Hall or in Albany?}

Because the goal of an “advocacy day” usually includes influencing legislation, any expenses with the event should be counted, including staff time and any expenses such as food and buses for staff and volunteers. However, assuming an organization does not compensate volunteers, volunteer time does not need to be reported.

However, to the extent the advocacy day has other goals, a portion of the expense may be allocated to something other than lobbying. For example, if children are involved, and the trip is also intended to serve an educational purpose (i.e., includes a tour of City Hall and a lecture on how laws are passed), some of the cost of the advocacy day may be allocated to educational activities rather than lobbying if the children are not asked to contact their legislators in order to influence legislation.

If the expense of an advocacy day is problematic because the organization is running up against the IRS limits on how much it may spend on grassroots lobbying, the organization should consider whether participants in the advocacy day are members for IRS purposes (in which case expenses related to those members’ activities would be considered direct rather than grassroots expenses).
13. How are an organization’s lobbying activities reported to the IRS?

An organization’s lobbying activities are on Schedule C of the Form 990, which is filed annually by tax exempt organizations with over $50,000 in revenue. Organizations that have made the 501(h) election are required to provide only the monetary value of their activities, while organizations that have not taken the election must provide more information about the activities.16

Organizations engaged in lobbying should implement consistent and reliable means of collecting information about its lobbying expenses, both in order to comply with the 990 disclosure requirements and to facilitate accurate reporting to the federal, state and city regulatory bodies described below. The organization should maintain employee time records, receipts for expenses, and other documentation that would be helpful in supporting the organization’s statements regarding lobbying activity.

**Federal Lobbying Disclosure Act Regulations**

14. Who must register and report under the Lobbying Disclosure Act?

The Lobbying Disclosure Act ("LDA") covers lobbying at the federal level only; state and city level lobbying are not reported under the LDA. Only organizations that meet the following thresholds are required to register and report their lobbying activity under the LDA:

- the organization’s lobbyist has made at least two legislative contacts and has spent at least 20% of his or her time on lobbying activity in a quarterly period; and
- the organization employing the lobbyist spent at least $12,500 on lobbying during that quarterly period.

If one or both of these criteria are not met, the organization does not need to register and report under the LDA, even if it engages lobbying at the federal level.

15. What must be reported under the LDA?

Assuming the thresholds above are met, attempting to influence legislation at the federal level must be reported if lobbying is directed at any of the following:

**Executive Branch**
- President
- Vice President
- Officers and employees of the Executive Office
- Any official serving in an Executive Level I through V position
- Any member of the uniformed services serving at grade O-7 or above
- Schedule C Employees
Legislative Branch

- A member of Congress
- An elected officer of either the House or the Senate (such as the Clerk or chaplain)
- An employee who works for a legislator, committee, or working group or caucus of the legislature

Lobbying includes contacting these individuals in order to influence legislation, and “any efforts in support of such contacts, including preparation or planning activities, research and other background work that is intended, at the time of its preparation, for use in contacts and coordination with the lobbying activities of others.”

16. How does the IRS definition of lobbying interact with the LDA definition of lobbying?

The IRS definition of lobbying is much broader than the LDA definition of lobbying. However, a 501(c)(3) organization has the option of using the IRS’ definition of lobbying when it fills out its LDA reports. This would simplify the organization’s record keeping, but it would result in the organization reporting more activity than it must under the LDA.

17. What is the registration process for LDA lobbying reports?

Registration is required within 45 days of meeting the LDA registration thresholds, and must be performed electronically using prescribed software. Quarterly reports describing the organization’s lobbying activity are due within 20 days after the end of each quarter beginning in January, April, July and October. Reports must be filed with the Clerk of the House of Representatives and Secretary of the Senate.

New York State and City Lobbying Regulations

18. How are City and State lobbying regulations different than IRS regulations on lobbying?

Two main differences stand out. First, neither NYC nor NYS lobbying regulations limit how much lobbying an organization (or any other person or entity) may engage in. Instead, each requires disclosure of lobbying activity if a $5,000 expenditure threshold has been met.

Second, under both NYC and NYS laws, the definition of lobbying is broader. In particular, the definition of “legislation” includes administrative rules “having the force and effect of law.” The result is that much more of an organization’s advocacy work may be reportable to NYC and NYS, even though that activity will not count towards the organization’s IRS lobbying limits.
19. Does NYC and NYS lobbying activity need to be counted towards an organization’s Internal Revenue Code limit on lobbying?

Not necessarily. Because the IRC definition of lobbying does not include influencing administrative rule-making but NYS and NYC lobbying definitions do, not all of the lobbying activity that must be reported to NYS and NYC will count towards the IRC limits on lobbying.

If an organization anticipates coming close to the IRC limits on lobbying, it will be important to track whether NYS and NYC level activity needs to be counted for IRC purposes, and it is therefore important that all staff understand the differences between the definitions of lobbying.

20. What must be reported to NYS?

An organization must report all lobbying activity involving legislation within NYS, including municipal or county level lobbying. Federal level lobbying activity should not be included and does not count towards the $5,000 threshold.

Under the NYS Lobbying Act, lobbying is defined as attempting to influence:

\[
\begin{align*}
\text{[state actions]} \\
(i) \textit{law:} & \text{ the passage or defeat of any legislation or resolution by either house of the state legislature including but not limited to the introduction or intended introduction of such legislation or resolution or approval or disapproval of any legislation by the governor;} \\
(ii) \textit{executive order:} & \text{ the adoption, issuance, rescission, modification or terms of a gubernatorial executive order;} \\
(iii) \textit{agency rules & regulations:} & \text{ the adoption or rejection of any rule or regulation having the force and effect of law by a state agency;} \\
(iv) \textit{ratemaking:} & \text{ the outcome of any rate making proceeding by a state agency;} \\
\text{[state or local actions]} \\
(v) \textit{procurement:} & \text{ any determination: (A) by a public official, or by a person or entity working in cooperation with a public official related to a governmental procurement, or (B) by an officer or employee of the unified court system, or by a person or entity working in cooperation with an officer or employee of the unified court system related to a governmental procurement;} \\
(vi) \textit{tribal-state agreements & gaming:} & \text{ the approval, disapproval, implementation or administration of tribal-state compacts, memoranda of understanding, or any other tribal-state agreements and any other state actions related to Class III gaming as provided in 25 U.S.C. § 2701, except to the extent designation of such activities as "lobbying" is barred by the federal Indian Gaming Regulatory Act, by a public official or by a person or entity working in cooperation with a public official in relation to such approval, disapproval, implementation or administration;} \\
\text{[local actions]} \\
(vii) \textit{law or regulation:} & \text{ the passage or defeat of any local law, ordinance, resolution, or regulation by any municipality or subdivision thereof;} \\
(viii) \textit{executive order:} & \text{ the adoption, issuance, rescission, modification or terms of an executive order issued by the chief executive officer of a municipality;} 
\end{align*}
\]
(ix) **agency rule or regulation**: the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law, ordinance, resolution, or regulation; or
(x) **ratemaking**: the outcome of any rate making proceeding by any municipality or subdivision thereof.

### 21. What must be reported to NYC?

Only work on NYC level legislation must be reported to NYC. State and federal level lobbying activity should not be included and do not count towards the $5,000 threshold.

*Current definition*

Under the NYC Lobbying Act, lobbying is defined as attempting to influence:  
(i) **City Council**: the passage or defeat of any local law or resolution by the city council,  
(ii) **Mayor**: the approval or disapproval of any local law or resolution by the mayor,  
(iii) **Procurement**: any determination made by an elected city official or an officer or employee of the city with respect to the procurement of goods, services or construction, including the preparation of contract specifications, or the solicitation, award or administration of a contract, or with respect the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies,  
(iv) **Zoning or land use**: any determination made by the mayor, the city council, the city planning commission, a borough president, a borough board or a community board with respect to zoning or the use, development or improvement of real property subject to city regulation,  
(v) **City’s real property**: any determination made by an elected city official or an officer or employee of the city with respect to the terms of the acquisition or disposition by the city of any interest in real property, with respect to a license or permit for the use of real property of or by the city, or with respect to a franchise, concession or revocable consent,  
(vi) **Agency**: the adoption, amendment or rejection by an agency of any rule having the force and effect of law,  
(vii) the outcome of any rate making proceeding before an agency, or  
(viii) **Board or Commission**: any determination of a board or commission.

*Definition as of May 2014*

On May 16, 2014, the NYC definition of lobbying will be expanded in the following ways:

- **Timing**: Activity will be considered lobbying even before a bill or rule has been introduced. Lobbying will include an attempt to affect the introduction or amendment of legislation, the mayor’s decision to support or oppose legislation, and an agency’s decision to propose a rule.
- **Decision to hold a hearing**: Lobbying will include an attempt to influence an agency’s decision to hold or the timing of a rate making proceeding, the agenda of a board or commission, and a determination regarding the calendaring or scope of any city council oversight hearing.
- **State or federal legislation**: Lobbying will include an attempt to influence “any determination made by an elected city official or an officer or employee of the city to
support or oppose any state or federal legislation, rule or regulation.” This applies even if the legislation or rule has not yet been formally introduced or proposed. 22

22. What exactly counts as influencing legislation? Do planning and preparation sessions for lobbying need to be reported?

In general, any work the organization does with the goal of influencing legislation should be reported. This includes planning and strategy sessions and coordination meetings. It also includes work drafting legislation that does not yet exist, if the organization then pushes for the law to be enacted.

However, advocacy planning that does not involve specific or proposed legislation is not lobbying. For example, a meeting of coalition members to decide which policies to focus on for the year would not be lobbying until those policies are identified and the decision is made that the policy changes require legislative solutions. Keep in mind that under the NYS and NYC definitions of legislation, agency level rules and regulations are considered legislation, so that advocating for them is considered lobbying.

23. What if only part of a meeting or other activity involves lobbying?

Only that portion of a meeting or activity that is aimed at influencing legislation needs to be reported. However, differentiating between the different portions of a particular meeting will require careful record keeping, as the organization should be able to justify the split between lobbying and non-lobbying activities by referring to its records.

24. What are the exceptions to the City/State definitions of lobbying?

There are numerous specific exceptions, which include:

- **Drafting & opinions:** Drafting or offering an opinion on legislation is not lobbying so long as the person does not conduct other lobbying activity with respect to the legislation.
- **Agency proceedings:** Participation in the public proceedings of a government agency is not lobbying, with respect to participation that is part of the public record and preparation for such participation.
- **Adjudication:** Participation in an adjudicatory proceeding is not lobbying.
- **Responding to a request for information:** Responding to a request for information from a government official or government body is not lobbying. However, the activity will be considered lobbying if:
  a) The informant volunteered more information than was sought in the request;
  b) The informant provided requested information in a manner that clearly attempted to influence the passage or defeat of legislation, rules, or regulations;
  c) The informant instigated the request from the government official; or
  d) The informant “otherwise engaged in lobbying” on the subject matter in question.
- **Procurement:** NY State and NYC each have specific rules about when contacts with legislators and agency officials must be reported as lobbying. In general, it is not lobbying to respond to an RFP or to use an officially sanctioned means of
communications such as bidders conferences or questions submitted to a designated forum.

Keep in mind that in order for an activity to be defined as lobbying, it must refer to specific legislation (including proposed legislation), and it must take a stand in opposition to or support of that legislation. NYS treats an appeal to the public as indirect (grassroots) lobbying only if it also includes a call to action: a request that the audience contact the relevant legislators to voice support or opposition to the legislation. It is likely that NYC adheres to this approach as well.

25. Does an organization’s lobbying with volunteers need to be reported? What about board members?

In general, volunteer time does not need to be reported. All of the regulatory bodies monitor the expenditures related to lobbying, and because volunteers are uncompensated, in most cases the organization will incur no reportable expenses.

However, there is an exception for board members of the organization that lobby at the city level, even if those activities are uncompensated. Because the City Clerk views board members as being designated as lobbyists by the organization by virtue of their official role, board members’ activities must be reported if the organization is already registered. If the organization is not registered as a lobbyist, board member activities need not be reported.

26. Do appearances at public hearings count as lobbying?

Testimony before the City Council or State legislature (and the preparation time for that testimony) is not considered lobbying if comes in response to a written invitation from the legislative body itself. If the person is testifying before a legislative committee, the invitation can come from that committee but not from an individual legislator.

In most cases, testimony before a public agency (and the preparation time for that testimony) would not be reported as lobbying activity, even absent an invitation to testify.

27. Is every interaction with an elected official considered lobbying?

No. Remember that in order for an activity to count as lobbying, there must be specific or proposed legislation, and an attempt to support or oppose that legislation. Many nonprofit organizations work with government staff on a regular basis, for example when carrying NYS or NYC contracts, and by necessity interact with government or elected officials on a regular basis. Those interactions only become lobbying if the organization is seeking to influence legislation.

28. How do the lobbying regulations affect requests for member item money?

Because member items are designated in City and State budgets, and the budget is a piece of legislation, attempting to influence the disbursement or award of member item money should be reported as lobbying.
29. How should an organization report an “advocacy day” at City Hall or in Albany?

Because the goal of an “advocacy day” usually includes influencing legislation, staff time should be reported to NYS and NYC as lobbying. However, assuming an organization does not compensate volunteers, most volunteer time does not need to be reported. The exceptions are that lobbying by volunteer board members must be reported to NYC, and lobbying by a volunteer must be reported to NYS if the volunteer is listed as an “additional lobbyist” on a lobbying report filed by another organization. Unlike with the IRS lobbying limits, it is not necessary to report to either NYS or NYC regarding expenses for food, lodging and transportation (such as buses) that your organization provides for staff and volunteers.

30. What is the registration process for NYC and NYS lobbying compliance?

If an organization anticipates that it will meet or exceed the $5,000 threshold for registration at the State and/or City levels, it should register and report its lobbying activity:

- **NYS:** Register and report online to the New York Joint Commission on Public Ethics (http://www.jcope.ny.gov).
- **NYC:** Register and report online to the City Clerk (http://www.cityclerk.nyc.gov/html/lobbying/lobbying_bureau.shtml)

For each reporting system, an organization that employs the lobbyists itself must register as a client (requiring 2 semi-annual reports at the NYS level and annual filings at NYC level) and as a lobbyist (both NYS and NYC require bi-monthly reports; NYC also requires an annual lobbyist filing). At some point before December 17, 2015, NYC will permit organizations that spend between $5,000 and $10,000 on their own lobbying to file just two semi-annual lobbyist reports, in addition to the annual client filing, but that that provision is not yet in effect.

*Please note: there is no minimum threshold for filing a lobbyist bi-monthly report under the NYS and NYC lobbying laws once an organization is registered. Even if no lobbying has occurred during a reporting period, a report MUST be filed.*

31. What are the consequences of being a registered lobbyist?

- **Disclosure of Registration Information:** Both NYS and NYC make lobbying reports available online, so anyone registered as a lobbyist under either system will be publicly identified as such. In addition, home address and spouse must be reported to JCOPE and the City Clerk, although this information is not public. Unemancipated children must also be listed on the NYC registration forms if those children are making campaign contributions.

- **NYC Campaign Contributions Limited:** Contributions of NYC-registered lobbyists to NYC political campaigns are not matched by the NYC Campaign Finance Board, and are
subject to lower contribution limits than other individuals. In addition, lobbyists are prohibited from giving gifts to NYC officials.  

- **NYC Political Fundraising and Paid Political Consulting Must Be Reported**: Political fundraising and paid political consulting must be reported for all individuals who are registered as lobbyists with NYC. Political fundraising is defined as “solicitation or collection of contributions of a candidate” in NYC, and would include house parties and sending emails to encourage others to donate to a candidate, even when that activity is voluntary and uncompensated. Political consulting is only reportable if the lobbyist receives compensation for the consulting. Registered lobbyists must report even those activities that they conduct in their private lives during off-work hours.  

- **Volunteer Lobbying**: While volunteer lobbyists usually are not required to register as a lobbyist, NYS may require a person listed as an additional lobbyist on one organization’s registration to register and report regarding any lobbying he does on a volunteer basis for any other organization.  

32. **Do lobbying activities of family members living in the same household need to be reported?**  

Although the spouse of a registered lobbyist is listed for purposes of registration, that spouse’s lobbying activity (if any) does not need to be reported. However, if the spouse’s partner or unemancipated children engage in political fundraising or in paid political consulting, that activity must be reported.  

33. **Can an organization that has registered as a lobbyist invite public officials to attend fundraising events at no cost?**  

The general rule is that lobbyists may not give anything of more than nominal value to public officials under the NYC Conflict of Interest Rules and NYS Lobbying Act. However, both NYS and NYC do permit certain types of gifts, including:  

- complimentary tickets to an organization’s charitable events  
- complimentary attendance at a conference widely attended by people other than public officials, so long as the event is related to the official’s job  
- awards, plaques and other ceremonial items that are publicly presented  
- pens, t-shirts and the like that promote the organization and have little resale value  

34. **Do appearances at public rallies count as lobbying?**  

Public rallies may count as lobbying activity if an organization uses the rally to conduct grassroots lobbying (i.e., encouraging the public to take action in support of or opposition to a piece of legislation). If those criteria are not met, and there is no direct contact with the legislators at the rally, the rally will not count as lobbying.
35. How should an organization track its lobbying activity?

In order to file timely reports, an organization should put in to place a system that captures the lobbying activity of all employees, and these records must be turned in to the person who will be filing the reports with enough lead time before the deadline for that person to process and input the necessary information.

While the records of the organization need not be detailed time sheets, the records should be an accurate reflection of the organization’s activities, and should include the following:

- subject, including bill number if applicable;
- target, including specific individuals (e.g., City Council members) if applicable;
- time spent;
- additional expenses (e.g., printing costs);
- level of legislation (i.e., federal, state or local); and
- grassroots or direct lobbying

For organizations reporting under multiple systems (IRS, Federal Lobbying Disclosure Act, NYS and/or NYC), records should also reflect whether the activity is lobbying for IRS purposes (e.g., administrative rulemaking that is NOT considered lobbying for IRS purposes but must be reported for NYS and NYC purposes, or volunteer transportation costs, which ARE considered lobbying for IRS purposes but need not be reported for NYS and NYC purposes).

36. What are the penalties for failing to register or file a form, or for doing so late?

When an organization fails to register as a lobbyist in a timely fashion, or to file a report as a lobbyist or client, the City Clerk and JCOPE are authorized to charge first time filers up to $10/day, and to charge everyone else up to $25/day. However, JCOPE has adopted a late fee schedule that sets flat rates at a substantially lower level and has discretion to reduce or waive late fees in appropriate circumstances. The City Clerk will have similar discretion to reduce or waive fees as of May 2014. Leniency is most likely to be exercised for newly registered organizations, organizations that lobby solely on their own behalf, and those with reasonable explanations for the late filings.

In most cases, the single most important factor for avoiding penalties is the timely filing of reports. However, NYC can impose penalties of up to $30,000 and NYS can impose penalties of up to $50,000 for knowing and willful violations of the applicable lobbying statute.

37. What if a lobbying report needs to be changed?

In general, there is no penalty for amending a lobbying report if an organization realizes that changes need to be made. However, it is possible that penalties could be assessed in instances in which a willful violation of the lobbying laws has occurred.
38. What is procurement lobbying, and why does it matter?

Procurement lobbying is lobbying for the award of government contracts for goods or services. NYC and New York State both require certain activities around the procurement process to be reported as lobbying and exempt others.

In addition, NYS imposes special restrictions on lobbying regarding NYS procurements (these restrictions do not apply to lobbying regarding NYC procurements). Reportable lobbying activity takes place after a state agency has made a “determination of need” regarding a particular funding program but before the agency issues a request for proposals or other announcement inviting applications for funding. After that time, the NYS procurement lobbying laws impose a restricted period during which no lobbying is permissible. The restricted period begins once a NYS agency issues the earliest written notice or advertisement of an RFP or any other method of soliciting a response. Lobbying, or attempting to influence the award of the contract, is absolutely prohibited during this restricted period until the contract is awarded. Failure to comply with the restriction can result in penalties up to $50,000 and a ban on lobbying activity in NYS.

The procurement lobbying rules do not ban responses to RFPs or officially sanctioned means of communications such as bidders’ conferences or questions submitted to a designated forum.

39. What are the reporting requirements for NYS procurement lobbying?

Any registered lobbyist that anticipates spending $5,000/year or more in the pursuit of NYS solicitations, award or administration of a grant, loan, or agreement involving the disbursement of public monies in excess of $15,000 must file a NYS Lobbyist Disbursement of Public Monies Report. This is a separate reporting requirement from the NYS client and lobbyist reports described above. Also, unlike the client and lobbyist reports, this report only needs to be filed in periods when procurement lobbying has occurred.

40. Do the procurement lobbying regulations apply to NYC lobbying?

No. The procurement rules in the New York State lobbying law apply only to NYS funding. The New York City lobbying law requires reporting on NYC procurement activity, but it does not impose a restricted period during which procurement lobbying may not occur.

NYC Campaign Finance Rules and Nonprofits

41. What regulations apply to ballot initiative work?

Although the IRS definition of lobbying includes ballot initiative work, neither the NYS nor the NYC definitions of lobbying require reporting of lobbying activity for ballot initiatives. However, in 2012 the NYC Campaign Finance Board implemented regulations applicable to all organizations seeking to influence ballot proposals, as well as 501(c)(4) (and other all entities
other than 501(c)(3) organizations) making independent expenditures to influence NYC elections.

42. Which organizations must report ballot-related activity?

Both 501(c)(3) and 501(c)(4) organizations are required to report ballot related independent expenditures for two specific types of spending: “express advocacy communications,” which contain phrases that can have no reasonable meaning other than to advocate for or against a ballot proposal; and “electioneering communications,” which refer to a ballot proposal within 30 days of a primary election or within 60 days of a general election.

43. What are the reporting requirements for independent expenditures?

If an organization spends $1,000 or more to influence an election (501(c)(4)s only) or a ballot initiative (both 501(c)(4)s and 501(c)(3)s) in NYC, that organization must:

- Report all expenditures of $100 or more to the NYC Campaign Finance Board,
- Clearly label certain communications as “paid for by” the organization or individual, and
- Once cumulative spending reaches $5,000, disclose all contributions from other organizations and contributions of $1,000 or more from individuals.

Reports must be filed electronically with the Campaign Finance Board, and only in election years. Reports are due approximately every two months during elections, and more frequently just before and after an election. 44
Lobbying Reporting Schedule

**IRS**

Form 990: Lobbying activity must be reported annually on Schedule C

**Federal Lobbying Disclosure Act**

Registration: Within 45 days of when thresholds are met

Quarterly Activity:
- April 20
- July 20
- October 20
- January 20

Contribution Reports:
- July 30
- January 30

**NYS Lobbying Act**

Registration: January 1, or when lobbying expenditures are anticipated to reach $5,000 for the calendar year

Client Report:
- July 15
- January 15

Lobbyist Report:
- March 15
- May 15
- July 15
- September 15
- November 15
- January 15

Disbursement of Public Monies Reports:
- Only in periods where procurement lobbying has occurred -
  - March 15
  - May 15
  - July 15
  - September 15
  - November 15
  - January 15
NYC Lobbying Act

Registration: January 15, or when lobbying expenditures are anticipated to reach $5,000 for the calendar year

Client Report: January 15

Lobbyist Report: March 15
May 15
July 15
September 15
November 15
January 15

Political Fundraising and Consulting Report: Only in periods when registered lobbyists have engaged in political fundraising or paid political consulting:
March 15
May 15
July 15
September 15
November 15
January 15
Helpful websites:

IRS Nonprofit Lobbying Publication

Guidelines to the Lobbying Disclosure Act Guidance

JCOPE, Instructions for Lobbyists Filing Online
http://www.jcope.ny.gov/forms/lob/lob_online.html

NYC Clerk, Law Governing Lobbying

NYC Campaign Finance Board, Guide to the CFB Independent Expenditure Disclosure Rules

NYC Conflicts of Interest Board

Alliance for Justice – General and State by State Lobbying Information
http://bolderadvocacy.org/navigate-the-rules

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1 IRC§ 4911(e)(2); Treas. Reg. §53.4945-2(d)(2)(iii)(defining the term for purposes of the "expenditure" test); Treas. reg. §1.501(c)(3) - 1(c)(3)(ii) (defining the term for purposes of the "substantial part" test).
2 IRC §4911(e)(2); Treas. Reg. §56.4911-2(b)(4)(ii)(B).
4 In considering amendments adding the expenditure test, one Congressional Committee reported, "Many believe that the standards as to the permissible level of activities under present law are too vague and thereby tend to encourage subjective and selective enforcement." S. Rep. No. 94-938 (Part 2), 94th Cong., 2d Sess. (1976), at 80.
5 IRC §501(h).
6 IRC §4911 (e)(1)(C); Treas. Reg. §56.4911-4(c).
7 Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 855 (10th Cir. 1972), cert. denied 414 U.S. 864 (1973); but see Seasongood v. Commissioner, 227 F.2d 907, 912 (6th Cir. 1955) (five per cent of an organization’s “time and effort” devoted to lobbying did not constitute a substantial part of its activities).
8 IRC §4911(d)(3).
10 IRC §4911(d)(2)(A); Treas. Reg. §56.4911-2(c)(1). However, the expense of preparing materials subsequently used in lobbying activities will not be counted if the primary purpose of the materials was not for lobbying or the expenditures were paid more than six months before the subsequent use. In those instances where the subsequent lobbying use is by an independent organization, there must also be “clear and convincing evidence” of collusion between the two groups to prepare and disseminate the materials for lobbying purposes or the expenditures incurred in preparation will not be counted as lobbying expenditures. Treas. Reg. §56.4911-2(b)(2)(v).
11 IRC §4911(d)(2)(B); Treas. Reg. §56.4911-2(c)(3).
12 IRC §4911(d)(2)(C); Treas. Reg. §56.4911-2(c)(4).
13 IRC §4911(d)(2)(E).
IRC §4911(d)(2)(D). The communication would be considered direct lobbying or grass roots lobbying depending upon which of the latter two requirements were not satisfied. Treas. Reg. §56.4911(c) and (d). Generally, an individual is considered to be a bona fide member if he or she contributes more than a nominal amount of time or money to the organization, and communications “primarily” to those members would include communications of which at least 50% are directed to members. See Treas. Reg. §56.4911-5(f)(1)-(4).


Lobbying Disclosure Act § 15.

N.Y. Leg. Law § 1-c(c) (“NYS Lobbying Act”).

NY Admin. Code Title 3, §3-211 et seq.


NYC Lobbying Act § 1-c(A)-(Q); NY Admin. Code § 3-211(c)(2), (3).

NY Lobbying Act § 1-c(E); NY State Temporary Commission on Lobbying, Op. 41 (99-1).

NY State Joint Commission on Public Ethics, Op. 49 (02-4).

NYC Clerk Advisory Op. 1990-1 (“The publication of a newsletter directed to a specific segment of the public which seeks to create and stimulate a letter-writing campaign or telephone call campaign on the part of that readership directed toward their legislators in response to specific legislation targeted by the newsletter constitutes lobbying.”), http://cityclerk.nyc.gov/html/lobbying/1990-1.shtml.


NY Lobbying Act § 1-c(E); NY Admin. Code § 3-211(c)(3)(v).

NY Lobbying Act § 1-c(C); NY Admin. Code § 3-211(c)(3)(iii).


NY Lobbying Act § 1-h(b)(5)(iii)(A) (“expenses shall not include: ... personal sustenance, lodging and travel disbursements of such lobbyist”); NY Admin. Code § 3-216(b)(5)(iii) (same). See also NYS Temporary State Commission on Lobbying, Op. No. 10 (78-10), http://jcope.ny.gov/advice/lob/opinio10.htm (holding that “unpaid volunteers of public interest and private interest organizations are not required to register” even if the organization reimburses some of their travel expenses, because “[p]ersonal sustenance, lodging, and travel disbursements are not deemed ‘reportable expenses’ within the statute”).

NYC Campaign Finance Law §3-702(3), available at http://www.nyccfb.info/act-program/CFACT.htm#716

NYC Lobbying Act § 3-216.1 Fundraising and political consulting reports.


Rules of the NYC Conflicts of Interest Board § 1-16 et seq.


NYC Lobbying Act § 1-c(j)(ii); NYC Conflict of Interest Board Rules § 1-16(c)(6), (8), (9).

NYC Lobbying Act § 1-c(j)(iii); NYC Conflict of Interest Board Rules § 1-16(c)(3).

NY Lobbying Act § 1-c(j)(v); NYC Conflict of Interest Board Rules § 1-16(c)(1).


NYC Local Law 129 of 2013, Intro. 1172-a.
