



# Am I Lobbying?

## Understanding the Activities NY Nonprofits Should Track for Lobbying Reporting Purposes

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## Disclaimer

**Please note:** Today's presentation is informational only and is not intended to constitute legal advice. This presentation references both federal and state laws and regulations but primarily focuses on New York law. Please consult with appropriate counsel for guidance pertinent to your organization or situation.



## Today's Webinar

- What types of activities might count as lobbying?
- Who are the regulators?
- The law is complicated, but compliance can be simple
- Where to find more information



# Four Different Regulators

Regulator	Says you are lobbying if you are trying to affect...	Requires
IRS	legislation at any level of government (incl. ballot initiative)	Public Charity must stay within lobbying limit & report lobbying on IRS 990
Federal Lobbying Disclosure Act	federal administrative or legislative action	Register & report if exceed threshold: \$14k/20% of an employee's time in a quarter
NYS CELG	NYS, or action by county or municipality pop. 5k+, regarding legislation, executive order, agency rule or regulation, procurement	Register & report if you hit \$5k expenditure threshold
NYC Clerk	NYC legislation, executive order, rule, regulation, procurement, zoning, land use	Register & report if you hit \$5k expenditure threshold



## Poll

My organization is (please select all that apply):

- a 501(c)(3) public charity
- a 501(c)(3) private foundation
- a 501(c)(4) social welfare organization
- a 501(c)(6) association
- registered as a lobbyist with NY State or NYC
- none of the above



# IRS Lobbying Limit (for public charities)

## Two ways to calculate your limit:

- 1) Substantial Part Method
  - This is the default method
  - Problem – how much is too much?
- 2) Lobbying Expenditures Method
  - You get a precise \$ ceiling on the amount you can spend on lobbying, based on total expenditures



# IRS Lobbying Expenditures Test

If exempt purpose expenditures are:	Organization can spend this much on lobbying:
≤\$500,000	20% of exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 + 15% of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 + 10% of exempt purpose expenditures over \$1 million

- Organization with \$500k in expenditures in a tax year can spend up to \$100k on lobbying
- To use this test, file IRS Form 5768 (one-time, ½-page filing, no fee)
- More information: <https://www.irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test>

# IRS – Reporting Lobbying Expenditures

## IRS 990

Form 990 (2014)

Page **3**

### Part IV Checklist of Required Schedules

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? <i>If "Yes," complete Schedule A</i> . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
2 Is the organization required to complete <i>Schedule B, Schedule of Contributors</i> (see instructions)? . . .	<input type="checkbox"/>	<input type="checkbox"/>
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? <i>If "Yes," complete Schedule C, Part I</i> . . . . .	<input type="checkbox"/>	<input type="checkbox"/>
4 <b>Section 501(c)(3) organizations.</b> Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? <i>If "Yes," complete Schedule C, Part II</i> . . . . .	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## IRS 990-EZ

Form 990-EZ (2013)

Page **4**

	Yes	No
46 Did the organization engage, directly or indirectly, in political campaign activities on behalf of or in opposition to candidates for public office? <i>If "Yes," complete Schedule C, Part I</i> . . . . .	<input type="checkbox"/>	<input type="checkbox"/>

### Part VI Section 501(c)(3) organizations only

All section 501(c)(3) organizations must answer questions 47–49b and 52, and complete the tables for lines 50 and 51.

Check if the organization used Schedule O to respond to any question in this Part VI . . . . . ☐

	Yes	No
47 Did the organization engage in lobbying activities or have a section 501(h) election in effect during the tax year? <i>If "Yes," complete Schedule C, Part II</i> . . . . .	<input checked="" type="checkbox"/>	<input type="checkbox"/>



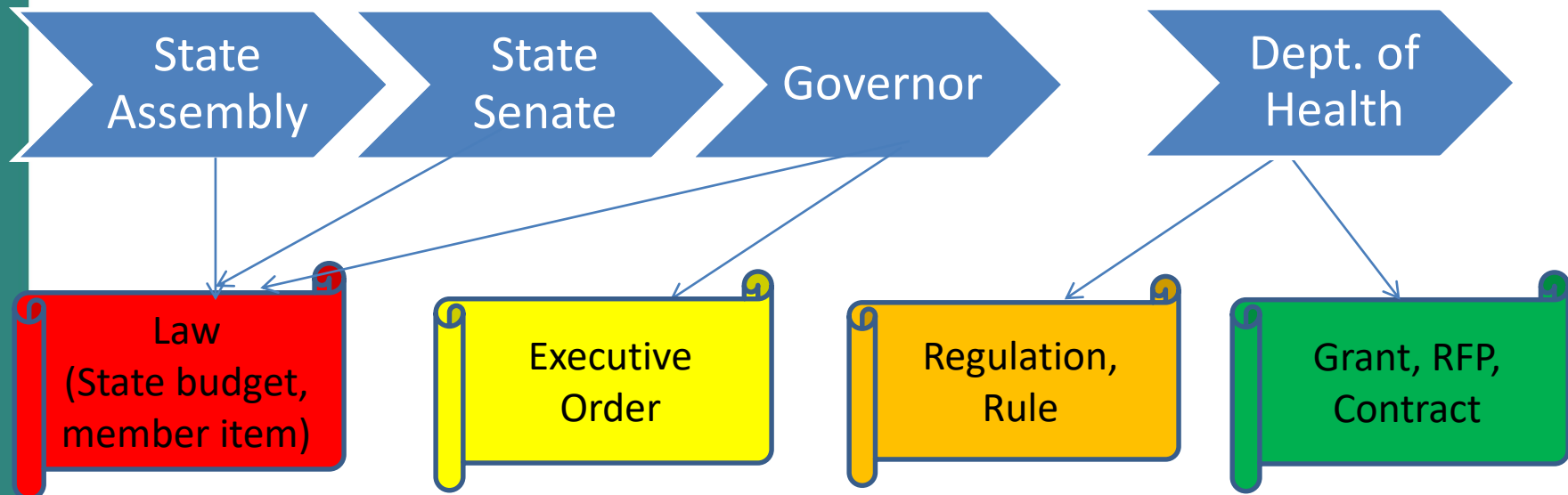


# Activities to Track Because They May Be Lobbying

Attempting to influence:

- legislation (& introduction of legislation) – budget legislation, member items count!
- agency rules & regulations
- procurement

# Regulators' View of the World





# NYC

- zoning, land use, disposition of City's real property
- determination of Board or Commission
- hearings: It's lobbying if you're trying to influence...
  - Agency's decision to hold, or timing of, rate making proceeding
  - Agenda of Board or Commission
  - **Calendaring or scope of City Council oversight hearing**



# Direct & Grassroots Lobbying

## Direct Lobbying

Refer to specific legislation (or other government action) *and* take a position on it

## Grassroots Lobbying

Encourage others to act by:

- referring to specific legislation (or other government action),
- taking a stand on it, *and*
- including a “call to action” that explicitly or implicitly asks the recipient to contact government officials



# Things That Are Not Lobbying

- Communicating with legislator about something other than legislation
- Discussing legislation, agency rule etc. without an “ask”
- Responding to unsolicited written request from a legislative body
- Participating on the record in the public proceedings of a government agency
- Participating in formal government agency notice & comment process



# Don't Get Stuck in the Details



If in doubt, report!



## Poll: What's My Goal?

**Do you care about how much lobbying you report?**

1 We'd do anything to avoid registering

2

3 Will register but only report bare minimum

4

5 Advocacy is our mission & we're OK with reporting alot of lobbying



# Seeking Government Funding

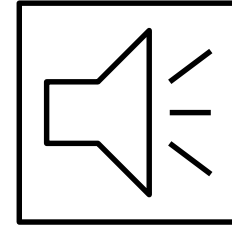
Activity	Is It lobbying?
<b>Formal application:</b> Submitting a grant application or responding to an RFP through a formal process	No
<b>Budget item:</b> Trying to influence inclusion of funding in the State or City budget	Yes
<b>Member item:</b> Contacting legislator about a member item is lobbying	Yes
<b>Grants:</b> Seeking to influence an agency's award of a grant or contract	Sometimes





# Rallies

- Are you speaking?
- Who are you speaking to?
- Is there a call to action?



Sign Our  
Petition!

Sen. Rojas:  
Pass S.3125

*Susan May*  
*Brad Jones*



# NYS – Social Media

## **Lobbying**

- direct message to official
- post on official's page
- tagging a public official
- asking readers to lobby

@SenSmith Pass the  
Ethics in Government  
Act now!

## **Not direct lobbying- but could be grassroots**

- referring to but not tagging  
official (even if official is  
a follower)

Sen. Smith should  
vote yes on the  
Ethics in Government  
Act now!

*Employee's personal social media posts are only attributed to the organization if employee is specifically retained for such social media activity ("influencer")*

# Is this lobbying?



## Tell State Leaders: Pass COVID Safety Standards to Protect Workers!



New York State has yet to set safety standards to prevent millions of workers from contracting COVID-19 on the job. While New Yorkers are reminded to wear masks and practice social distancing, our state continues to ignore workers on the frontline of this crisis—those who are putting their health at risk in service to our communities. This includes workers who are deemed essential, including health care workers, grocery store clerks and sanitation workers. Many still don't have access to adequate personal protective equipment (PPE), putting themselves, their families and the general public at risk. New York must take action now to prevent a second wave of COVID infections and protect vulnerable communities. As businesses reopen, more workers will be at risk for exposure.

**Send a letter to your legislators now! Tell them to help protect workers from COVID-19 by establishing enforceable health and safety standards.**

ENTER YOUR RETURN  
ADDRESS

We've got your address, Laura!  
Not Laura? [Click here.](#)

HAVE YOU BEEN IMPACTED BY A LACK OF WORKER SAFETY STANDARDS DURING THE PANDEMIC? IF YOU CHECK "YES," SOMEONE FROM OUR ORGANIZING TEAM WILL FOLLOW UP WITH YOU.

- ☐ Yes  
☐ No

START WRITING

You may receive email updates from *Citizen Action of New York*, *ALIGN: Alliance for a Greater New York*, *Teamsters Joint Council 16*, and *New York State Nurses Association*, the sponsors of this letter campaign.

[Edit Subscription Preferences](#)



# Timekeeping

One option: record specific dates & minutes/hours

Date	Topic or Bill #	Description of Activity (include whether grassroots or direct)	Target (individual and/or government body)	Time Spent	Additional Expenses (printing, mailing, travel)	Level of Government		
						Federal	NYS	NYC
9/1/20	Int. 1172	Draft email asking supporters to call Council Members (grassroots)	NYC Council	1 hour	none			X
9/8/20	State Budget	Calls to state legislators (direct)	State Sens. Quincy & Fernandez	2 hours	none		X	



# Timekeeping

Another option: record % of time spent

Date	Topic or Bill #	Description of Activity (include whether grassroots or direct)	Target (individual and/or government body)	% of Time Spent This Week	Additional Expenses (printing, mailing, travel)	Level of Government		
						Federal	NYS	NYC
9/1/20	Int. 1172	Draft email asking supporters to call Council Members (grassroots)	NYC Council	5%	none			X
9/8/20	State Budget	Calls to state legislators (direct)	State Sens. Quincy & Fernandez	10%	none		X	



# Calculating Lobbying Expenditures

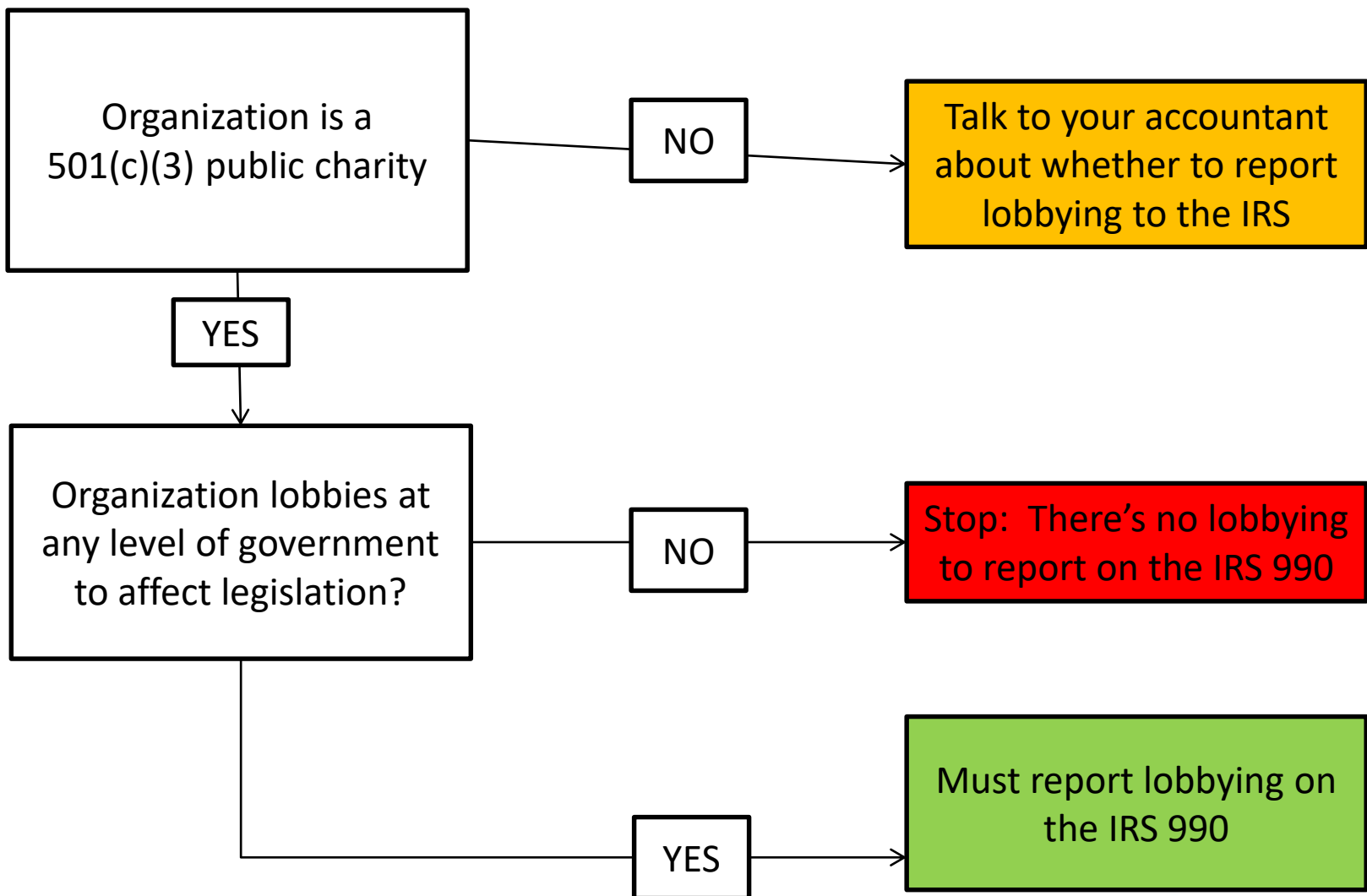
Organizer:  $\$40\text{k}/\text{year} \div 2,080 \text{ hours}/\text{year} = \$19.23/\text{hour}$

Good Jobs campaign	20 hours
City Budget postcard campaign	<u>35 hours</u>
	55 hours

55 hours * \$19.23/hour	\$1,058 staff time
12% overhead	\$ 127
train & hotel	\$ 300
printing & mailing postcards	<u>\$ 500</u>
	\$1,984



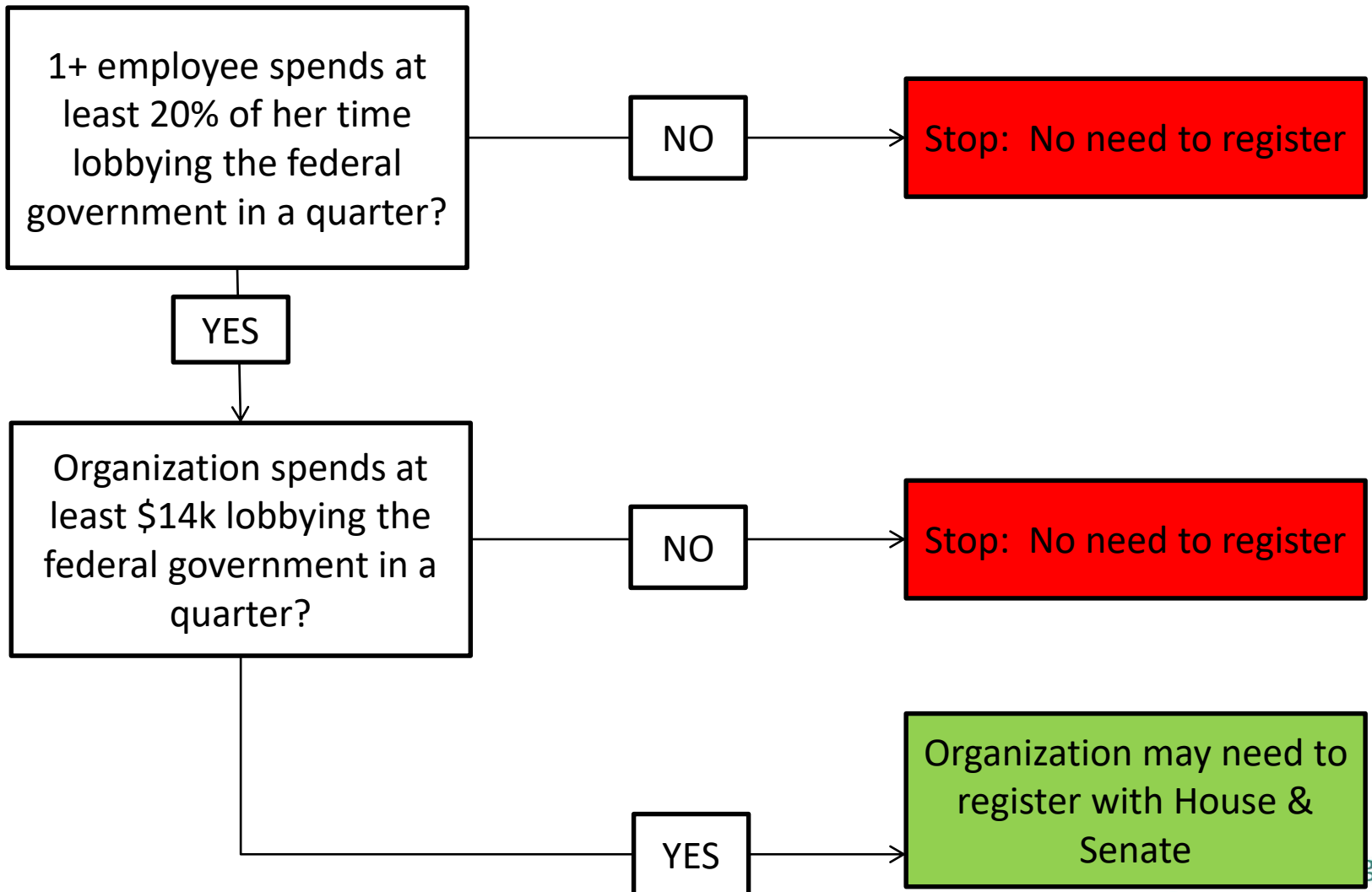
# Step 1: Do you need to report lobbying to the IRS on Form 990?





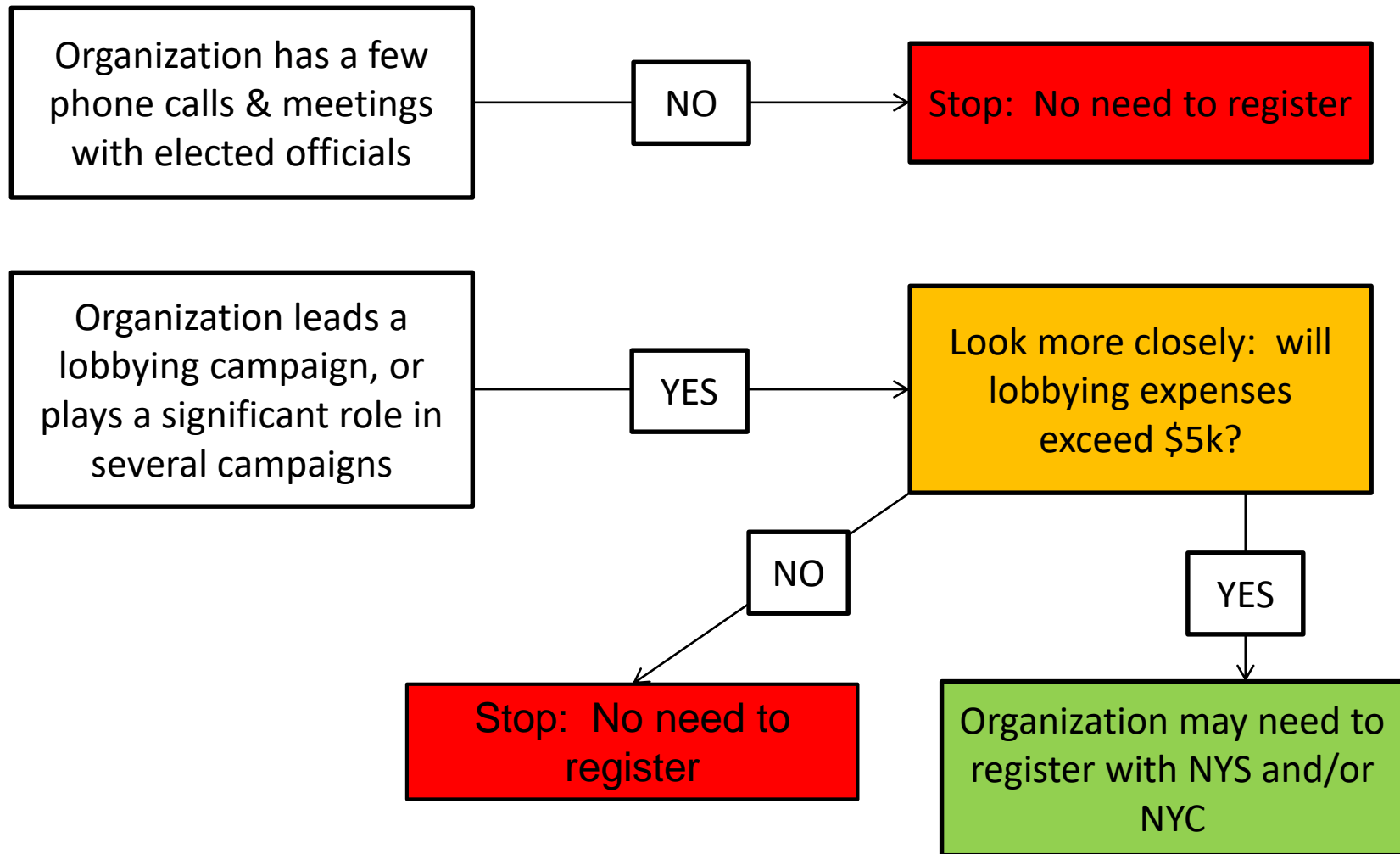


## Step 2: Do you meet federal registration threshold?





## Step 3: Do you meet NYS/NYC registration threshold?





# Resources

- FAQs on Nonprofits & Lobbying  
[https://lawyersalliance.org/userFiles/uploads/legal\\_alerts/Nonprofits\\_and\\_Lobbying\\_FAQ.pdf](https://lawyersalliance.org/userFiles/uploads/legal_alerts/Nonprofits_and_Lobbying_FAQ.pdf)
- "Careful Lobbying Compliance: Keeping Track of the Required Reports and Restrictions on Lobbyists' Activities" on-demand: <https://lawyersalliance.org/recorded-webinars>
- Advocacy Compliance Resources  
<https://lawyersalliance.org/advocacy>
- Democracy Capacity Project: Practical Guidance-NY  
<https://www.democracypcapacity.org/ny-lobbying>



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