



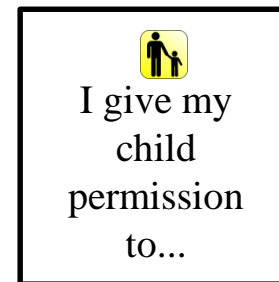
Careful Lobbying Compliance

Laura Abel
Senior Policy Counsel
label@lawyersalliance.org
(212) 219-1800 x283

December 1, 2021

What Lawyers Alliance Does

- Negotiate or review a contract
- Update bylaws & conflict of interest policy
- Protect intellectual propertyTM
- Rent an office or buy a building
- Draft waivers and releases





Is It Advocacy or Lobbying?

- Doesn't matter what words you use to describe your work – *actions* matter
- You may be lobbying if you're trying to ...
 - influence legislation
 - change agency rules
 - get government funding
 - and more



You may need to report lobbying to...

- Internal Revenue Service
- House/Senate
- NYS Joint Commission on Public Ethics (JCOPE)
- NYC Clerk's Lobbying Bureau



How do I find out which activities each regulator counts as lobbying?

- Lawyers Alliance: FAQ's on Nonprofits and Lobbying, https://lawyersalliance.org/userFiles/uploads/legal_alerts/Nonprofits_and_Lobbying_FAQ_Sept_2021.pdf
- Federal Lobbying Disclosure Act guidance: http://lobbyingdisclosure.house.gov/amended_lda_guide.html
- NYS Lobbying Act, regulations & guidance: <http://www.jcope.ny.gov>
- NYC Lobbying Law, regulations & guidance: https://www.cityclerk.nyc.gov/html/lobbying/lobbying_bureau.shtml



Advocate with confidence

With this easy 4-step plan:

- Step 1: Track Lobbying Expenses
- Step 2: Report to the IRS
- Step 3: Do you meet federal registration threshold?
- Step 4: Do you meet NYS/NYC registration threshold?



Step 1: Track Lobbying Expenses

- Staff time
 - overhead
 - prep time – including research or strategy planning if the primary purpose is lobbying
- Photocopying or mailing costs
- Travel, lodging & food (but in NYC & NYS: not for registered lobbyists)
- Outside vendors



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 | |



Step 2: Report to the IRS



*Veto
House
Bill 293*

If you conduct any legislative lobbying, your organization must report lobbying on its IRS 990.



*Pass the Safe Toys
Act!*



*Amend the
Affordable
Care Act*

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)? If "Yes," complete Schedule A | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 Is the organization required to complete Schedule B, Schedule of Contributors (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? If "Yes," complete Schedule C, Part I | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? If "Yes," complete Schedule C, Part II | <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? If "Yes," complete Schedule C, Part 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? If "Yes," complete Schedule C, Part II | <input checked="" type="checkbox"/> | <input type="checkbox"/> |



IRS

Two ways to track and report:

- 1) Substantial Part Method
 - This is the default method
 - Problem – how much is too much?
- 2) Lobbying Expenditures Method
 - File a one-time form to choose this method
 - You get a precise \$ ceiling on the amount you can spend on lobbying

IRS – No Substantial Part Test

Schedule C (Form 990) 2021

Page **3**

Part II-B Complete if the organization is exempt under section 501(c)(3) and has NOT filed Form 5768 (election under section 501(h)).

For each "Yes" response on lines 1a through 1i below, provide in Part IV a detailed description of the lobbying activity.

| | | (a) | | (b) |
|-----------|--|-----|----|--------|
| | | Yes | No | Amount |
| 1 | During the year, did the filing organization attempt to influence foreign, national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of: | | | |
| a | Volunteers? | | | |
| b | Paid staff or management (include compensation in expenses reported on lines 1c through 1i)? | | | |
| c | Media advertisements? | | | |
| d | Mailings to members, legislators, or the public? | | | |
| e | Publications, or published or broadcast statements? | | | |
| f | Grants to other organizations for lobbying purposes? | | | |
| g | Direct contact with legislators, their staffs, government officials, or a legislative body? | | | |
| h | Rallies, demonstrations, seminars, conventions, speeches, lectures, or any similar means? | | | |
| i | Other activities? | | | |
| j | Total. Add lines 1c through 1i | | | |
| 2a | Did the activities in line 1 cause the organization to be not described in section 501(c)(3)? | | | |
| b | If "Yes," enter the amount of any tax incurred under section 4912 | | | |
| c | If "Yes," enter the amount of any tax incurred by organization managers under section 4912 | | | |
| d | If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year? | | | |

IRS – Lobbying Expenditures Method

Schedule C (Form 990 or 990-EZ) 2014

Page **2**

Part II-A Complete if the organization is exempt under section 501(c)(3) and filed Form 5768 (election under section 501(h)).

A Check ☐ if the filing organization belongs to an affiliated group (and list in Part IV each affiliated group member's name, address, EIN, expenses, and share of excess lobbying expenditures).

B Check ☐ if the filing organization checked box A and "limited control" provisions apply.

| Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred.) | | (a) Filing organization's totals | (b) Affiliated group totals | | | | | | | | | | | | |
|---|---|--|------------------------------------|--------------------|-------------------------------|---|--|---|--|--|---|-------------------|--------------|--|--|
| 1a | Total lobbying expenditures to influence public opinion (grass roots lobbying) | | | | | | | | | | | | | | |
| b | Total lobbying expenditures to influence a legislative body (direct lobbying) | | | | | | | | | | | | | | |
| c | Total lobbying expenditures (add lines 1a and 1b) | | | | | | | | | | | | | | |
| d | Other exempt purpose expenditures | | | | | | | | | | | | | | |
| e | Total exempt purpose expenditures (add lines 1c and 1d) | | | | | | | | | | | | | | |
| f | Lobbying nontaxable amount. Enter the amount from the following table in both columns. | | | | | | | | | | | | | | |
| <table border="1"> <thead> <tr> <th>If the amount on line 1e, column (a) or (b) is:</th> <th>The lobbying nontaxable amount is:</th> </tr> </thead> <tbody> <tr> <td>Not over \$500,000</td> <td>20% of the amount on line 1e.</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 15% of the excess over \$500,000.</td> </tr> <tr> <td>Over \$1,000,000 but not over \$1,500,000</td> <td>\$175,000 plus 10% of the excess over \$1,000,000.</td> </tr> <tr> <td>Over \$1,500,000 but not over \$17,000,000</td> <td>\$225,000 plus 5% of the excess over \$1,500,000.</td> </tr> <tr> <td>Over \$17,000,000</td> <td>\$1,000,000.</td> </tr> </tbody> </table> | | If the amount on line 1e, column (a) or (b) is: | The lobbying nontaxable amount is: | Not over \$500,000 | 20% of the amount on line 1e. | Over \$500,000 but not over \$1,000,000 | \$100,000 plus 15% of the excess over \$500,000. | Over \$1,000,000 but not over \$1,500,000 | \$175,000 plus 10% of the excess over \$1,000,000. | Over \$1,500,000 but not over \$17,000,000 | \$225,000 plus 5% of the excess over \$1,500,000. | Over \$17,000,000 | \$1,000,000. | | |
| If the amount on line 1e, column (a) or (b) is: | The lobbying nontaxable amount is: | | | | | | | | | | | | | | |
| Not over \$500,000 | 20% of the amount on line 1e. | | | | | | | | | | | | | | |
| Over \$500,000 but not over \$1,000,000 | \$100,000 plus 15% of the excess over \$500,000. | | | | | | | | | | | | | | |
| Over \$1,000,000 but not over \$1,500,000 | \$175,000 plus 10% of the excess over \$1,000,000. | | | | | | | | | | | | | | |
| Over \$1,500,000 but not over \$17,000,000 | \$225,000 plus 5% of the excess over \$1,500,000. | | | | | | | | | | | | | | |
| Over \$17,000,000 | \$1,000,000. | | | | | | | | | | | | | | |
| g | Grassroots nontaxable amount (enter 25% of line 1f) | | | | | | | | | | | | | | |
| h | Subtract line 1g from line 1a. If zero or less, enter -0- | | | | | | | | | | | | | | |
| i | Subtract line 1f from line 1c. If zero or less, enter -0- | | | | | | | | | | | | | | |
| j | If there is an amount other than zero on either line 1h or line 1i, did the organization file Form 4720 reporting section 4911 tax for this year? | <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | | | | | | | | | |

4-Year Averaging Period Under section 501(h)

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below.

See the separate instructions for lines 2a through 2f.)

Choosing the Expenditures Method

Form **5768**

(Rev. August 2013)

Department of the Treasury
Internal Revenue Service

Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation (Under Section 501(h) of the Internal Revenue Code)

► Information about Form 5768 and its instructions is at www.irs.gov/form5768.

For IRS
Use Only ►

| | |
|---|--------------------------------|
| Name of organization | Employer identification number |
| Number and street (or P.O. box no., if mail is not delivered to street address) | Room/suite |
| City, town or post office, and state | ZIP + 4 |

- 1 Election—** As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending _____ and all subsequent tax years until revoked.
(Month, day, and year)

Note: *This election must be signed and postmarked within the first taxable year to which it applies.*

- 2 Revocation—** As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending _____ and all subsequent tax years (until a new election is made).
(Month, day, and year)

Note: *This revocation must be signed and postmarked before the first day of the tax year to which it applies.*

Under penalties of perjury, I declare that I am authorized to make this (check applicable box) ► ☐ election ☐ revocation on behalf of the above named organization.

| | | |
|--|---|-----------------|
| _____ (Signature of officer or trustee) | _____ (Type or print name and title) | _____ (Date) |
|--|---|-----------------|

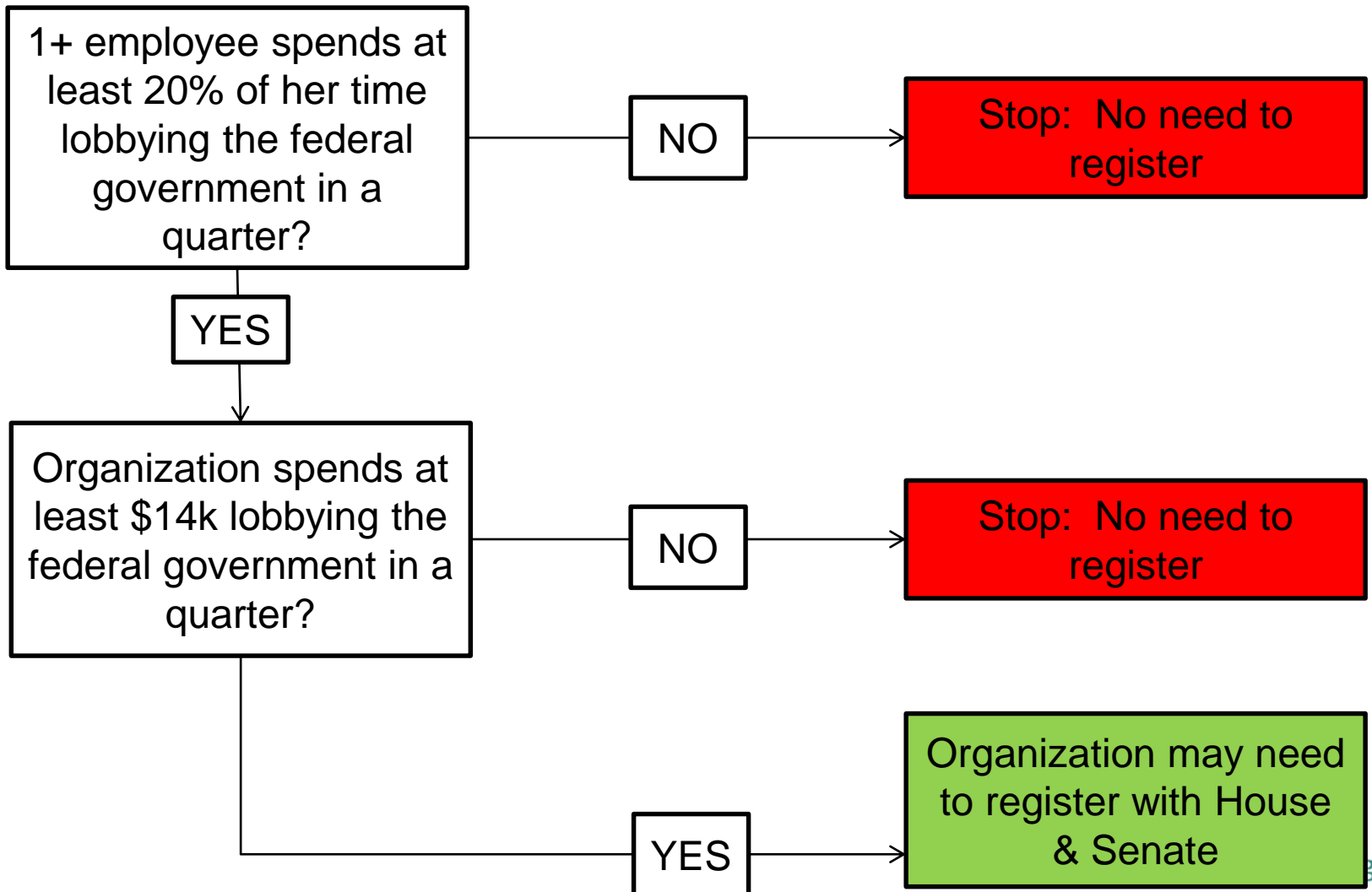
General Instructions

To make or revoke the election, enter the ending date of the tax year to which

b. An integrated auxiliary of a church or of a convention or association of

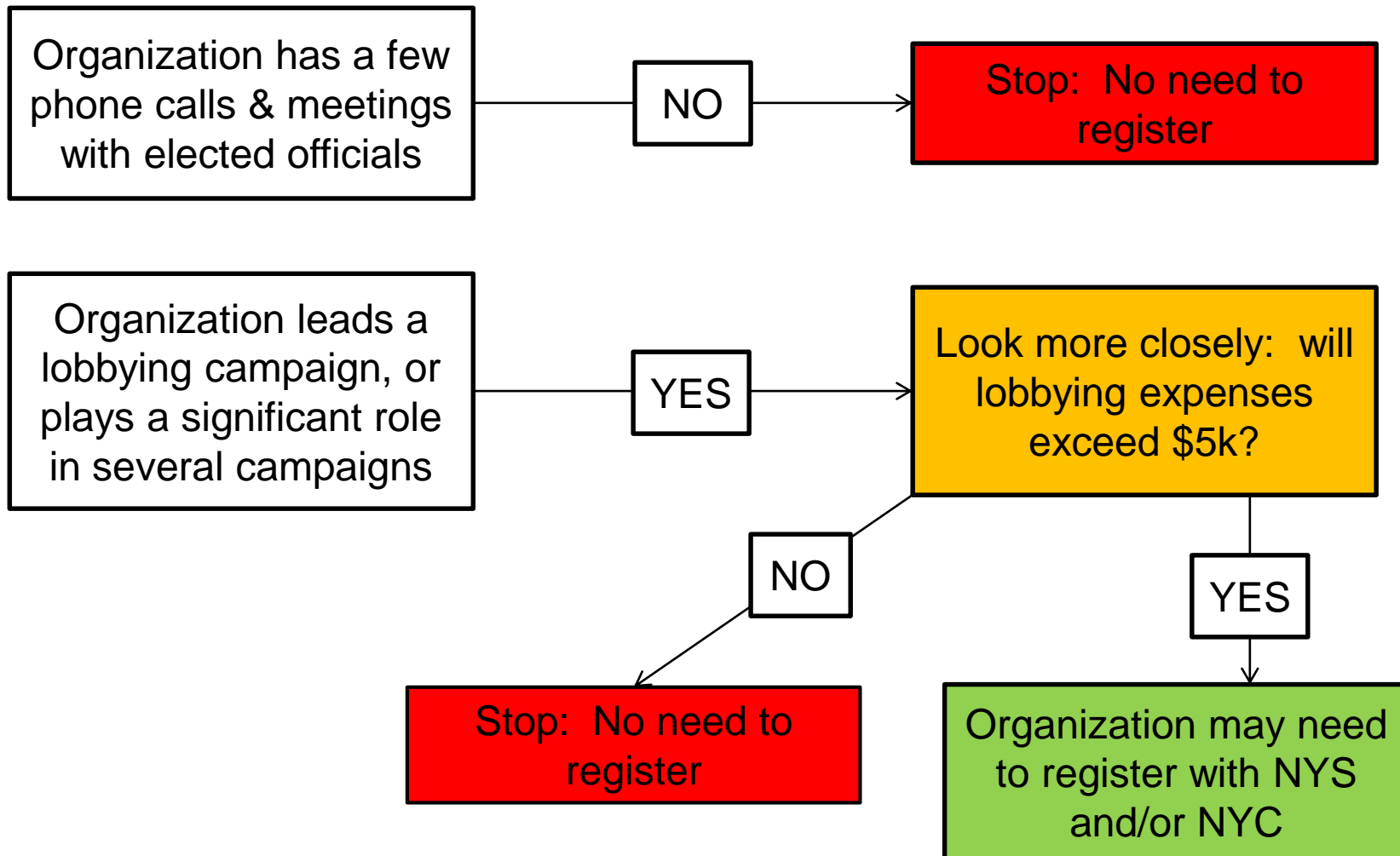


Step 3: Do you meet federal registration threshold?





Step 4: Do you meet NYS/NYC registration threshold?





NYS/NYC: Closer look

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 35 hours

55 hours

55 hours * $\$19.23/\text{hour}$ \$1,057 staff time

12% overhead \$ 127

printing & mailing postcards \$ 500

total lobbying expenditures \$1,684

Result: lobbying expenditures will be under \$5,000

No need to register with NY State or NY City



NYS/NYC: Closer look

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 35 hours

55 hours

55 hours * $\$19.23/\text{hour}$ \$1,057 staff time

12% overhead \$ 127

printing & mailing postcards \$ 500

buses to Albany \$4,400

total lobbying expenditures \$5,684

Result: lobbying expenditures over \$5,000

This group may need to register with NY State or NY City



NYS – Reporting Lobbying Expenditures

- Lobbyists and clients register online when they reasonably anticipate exceeding \$5,000 in expenses for state and local lobbying.
 - *Register at beginning of year if you can*
- Most nonprofits whose employees lobby register as both client and lobbyist
- Start by setting up User and Organization profiles in JCOPE's online Lobbying Application
<https://jcope.ny.gov/user-and-organization-profiles>

*****Register with & report to JCOPE*****



NYS – Reporting Lobbying Expenditures (cont’d)

Lobbyists

- Register every 2 years:
 - List organization as “lobbyist” & employees as “individual lobbyists.”
 - \$200 fee
 - 2021-2022 registration was due 1/1/21, or within 15 days of when lobbying starts
- Report: Lobbyist Bi-Monthly report is due every 2 months.
 - next report due 1/15/22



NYS – Reporting Lobbying Expenditures (cont'd)

Clients of Outside Lobbyists

- Set up User profile in JCOPE's online Lobbying Application
<https://jcope.ny.gov/user-and-organization-profiles>
- File Client Semi-Annual Report
January 15 and July 15



NYC Lobbying Act

- \$5,000 annual filing threshold: only NYC activities count (not state & federal)
- Most nonprofits whose employees lobby register as client-lobbyist
- Start by enrolling in e-Lobbyist
<https://www1.nyc.gov/elobbyist/>

*Register with & report to
NYC Clerk Lobbying Bureau*



NYC – Reporting Lobbying Expenditures

Clients of Outside Lobbyists

- **Enroll** in e-Lobbyist before lobbying starts
- **File** annual report by Jan. 15

Lobbyists and Client-Lobbyists

- **Register** by Jan. 15 (or whenever you reasonably anticipate exceeding \$5k threshold)
- **Report** every 2 months



Coalitions

General rule: Report all expenses incurred by your own organization.

- Federal government, NYS & NYC each have very specific rules about how to report lobbying in a coalition
- Rules vary depending on whether the coalition is a legally separate organization, has its own name, retains an outside lobbyist, or members do all the lobbying

New NYS Rules:

https://lawyersalliance.org/userFiles/uploads/legal_alerts/JCOPE_Regs_Legal_Alert_January_2021.pdf



NYS & NYC – Enforcement & Penalties

- Late fees of up to \$10/\$25 per day for each report due (can be reduced/waived)
- Civil penalties for knowing and willful violation can reach \$50,000 for state; \$30,000 + misdemeanor penalties for NYC
- *Tip:* Better to file and amend than to file late because you're waiting for information

NYS - Reportable Business Relationships

Client or lobbyist (including directors & executive management)



- State official/employee, or
- Nongovernmental entity – if client/lobbyist knows/has reason to know that a state official/employee is a proprietor, partner, director, officer or manager, or owns or controls 10%+ of stock (1% for publicly traded companies), or
- Third party at the direction of a state official or state employee




Reportable Business Relationships

What must clients & lobbyists do?

- Track
- Survey executive staff & board
- Disclose

*Lobbyists disclose on biennial registrations;
clients disclose on semi-annual reports*

*Amend if you learn of a reportable
relationship later*



Reportable Business Relationship Questionnaire

| | |
|--|--|
| <i>Name</i> | |
| <i>Title</i> | |
| <i>Address of Primary Work Location(s)</i> | |

- 1.(a) Do you currently have any business relationships in which you personally purchased or will purchase goods, services, or anything valued at more than \$1,000 annually from a person or entity located within the State of New York?

YES: ____ NO: ____

- (b) In addition to anything you personally purchased or will purchase, *if you are considered a High-Level Individual*, did you direct or request another entity to purchase goods, services or anything valued at more than \$1,000 annually from a person or entity located within the State of New York?

YES: ____ NO: ____

<https://jcope.ny.gov/system/files/documents/2019/01/rbr-questionnaire-final-1219.pdf>



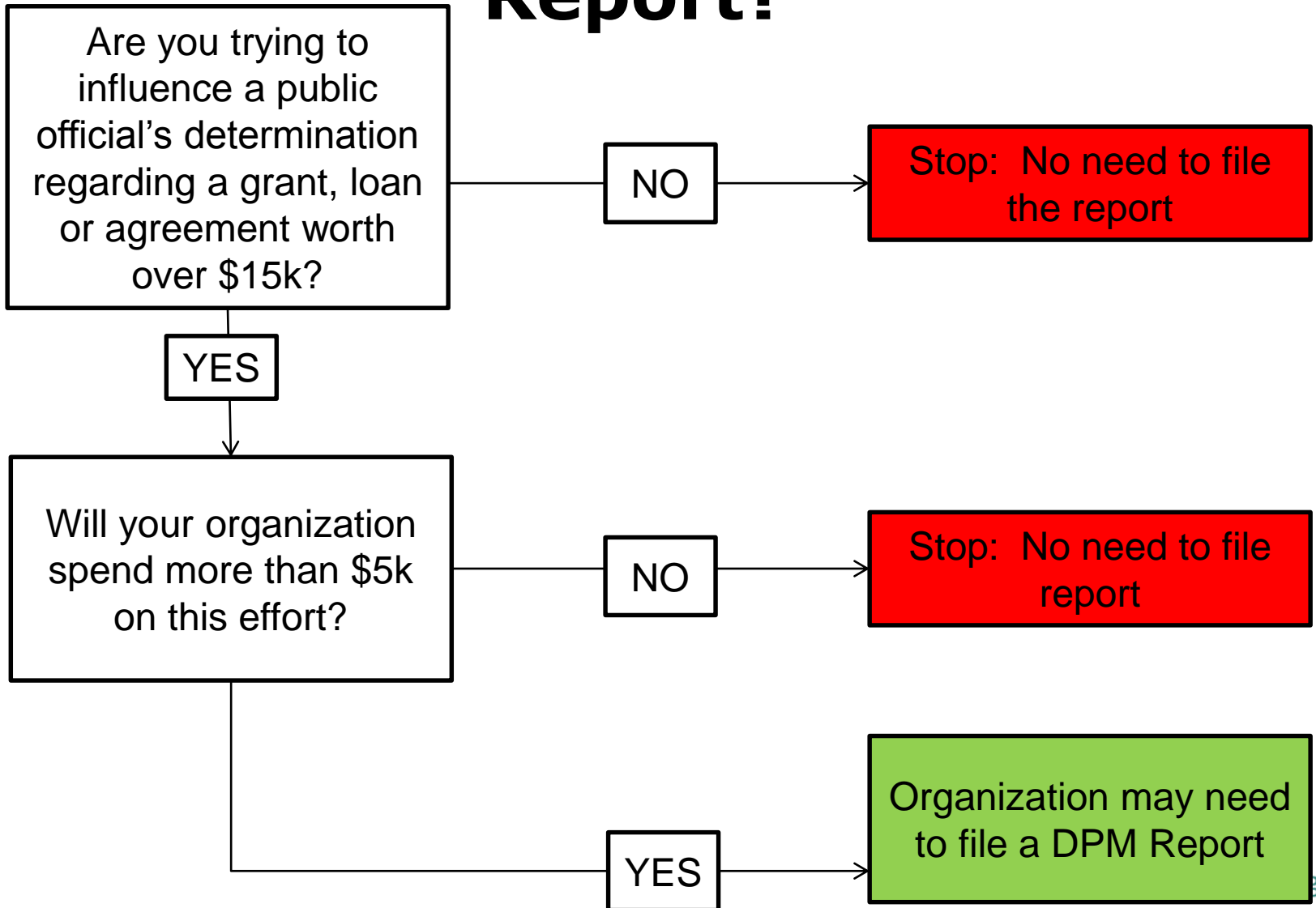
Disbursement of Public Monies Report

A registered lobbyist must file this report if:

- (1) the lobbyist anticipates spending over \$5k,
- (2) to influence a decision by a public official regarding the solicitation, award or administration of a grant, loan or agreement of over \$15k,
- (3) where the source of the funding is a budget item designated for programs, grants or discretionary funds not allocated to a particular recipient (“lump sum appropriation”).



Do you have to file a Disbursement of Public Monies Report?





NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS
540 Broadway, Albany NY 12207
helpdesk@jcope.ny.gov

2021-2022 DISBURSEMENT OF PUBLIC MONIES REPORT

| REPORTING PERIOD | | FOR OFFICE USE ONLY |
|---|--------------------------------------|---------------------|
| Year | | |
| Bi-Monthly Period | | |
| <input type="checkbox"/> Jan/Feb | <input type="checkbox"/> March/April | |
| <input type="checkbox"/> July/August | <input type="checkbox"/> Sept/Oct | |
| <input type="checkbox"/> May/June | <input type="checkbox"/> Nov/Dec | |
| <input type="checkbox"/> Check if amendment | Amendment effective date of change | |

NOTE: Before submitting a Disbursement of Public Monies report, please note the Principal Lobbyist must have at least one active Registration for a Client on file. This report is only required if Attempts to Influence the disbursement have occurred during the relevant filing period.

SECTION I - PRINCIPAL LOBBYIST INFORMATION

Report the Principal Lobbyist name and contact information.

PRINCIPAL LOBBYIST NAME

This is a separate filing, required bi-monthly for any period during which covered activities are conducted or compensation is paid



Source of Funding Disclosure Report

Who does it apply to?

- Lobbyist that lobbies on its own behalf, or a client
- that spends at least \$15k and 3% of its total expenditures on lobbying in NYS in a 12-month period

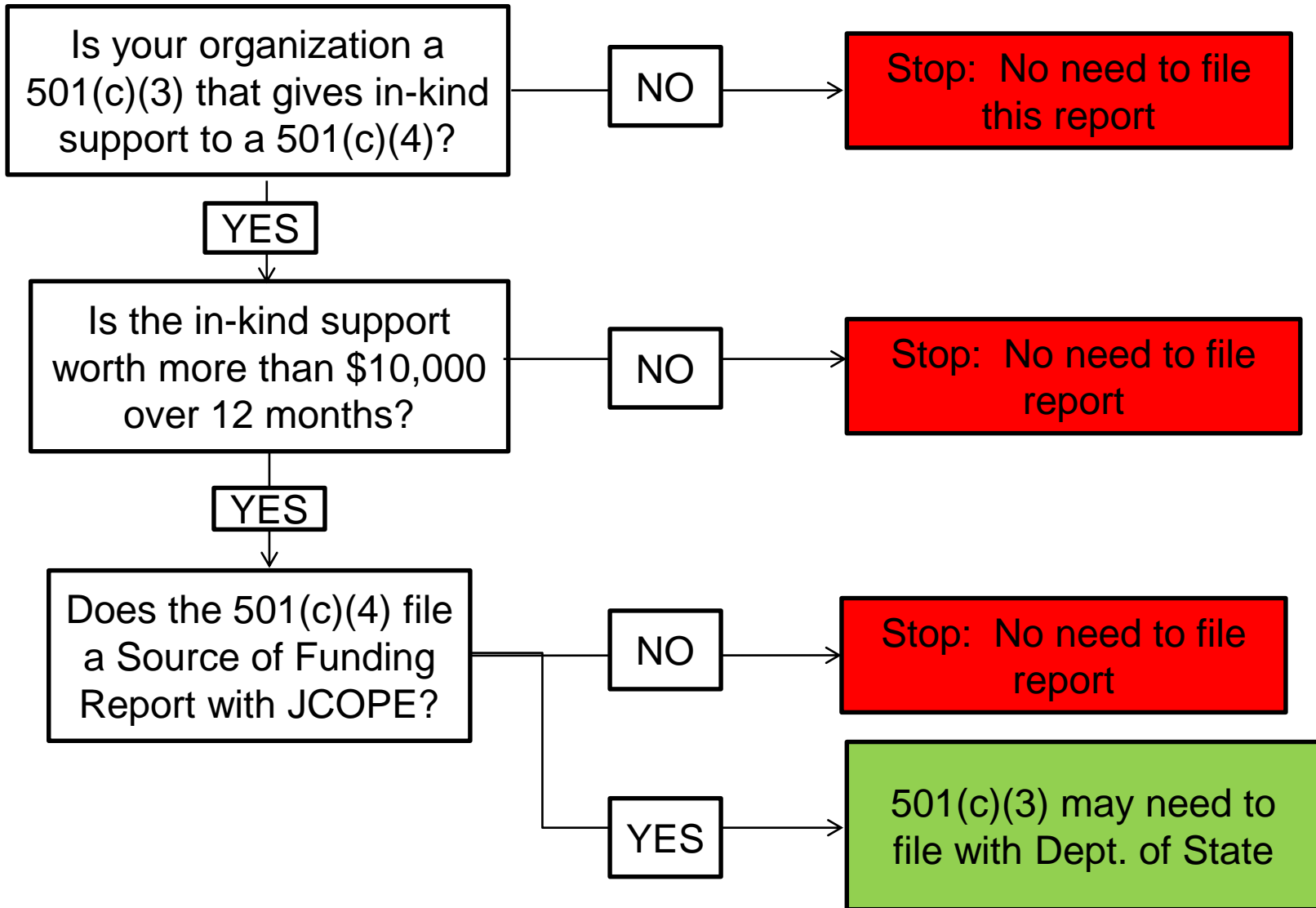
How do I comply?

- On Client Semi-Annual Report, disclose each source of funding over \$2,500

*****Doesn't apply to 501(c)(3)'s*****



Do you have to file a Dept. of State Exec. Law 172-e report?





Interacting with NYC Candidates

Contributions

- **Lower limits** on contributions by NYC lobbyists
 - For organizations, includes contributions by CEO, CFO and/or COO, and any person employed in a senior managerial capacity
- NYC Campaign Finance Board **won't match** contributions of
 - NYC lobbyist,
 - spouse or domestic partner, or
 - unemancipated child of lobbyist, spouse or domestic partner
- Must **amend NYC lobbyist registration** if an unemancipated child of lobbyist, spouse or domestic partner makes a contribution



Interacting with NYC Candidates

Fundraising & Paid Political Consulting Periodic Report

Lobbyist who engages in political fundraising or paid political consulting must file a special report in e-Lobbyist

- *Rule applies even if activity is performed in the lobbyist's personal capacity*



Interacting with Government Officials & Employees

NYS & NYC Gift Bans

General rule: Lobbyists, clients & their families cannot give anything of more than minimal value to public officials & employees & their families



Interacting with Government Officials & Employees

NYS Gift Ban

Applies to:

- Gift *from* NYS lobbyist or client
- Gift of \$15+ *to*:
 - NYS & municipal officials & employees, or
 - 3rd party, *including charitable organization*, on behalf of or at direction of public official, if the gift couldn't be given to the official



Interacting with Government Officials & Employees

NYS Gift Ban - Relatives

Gift from spouse/unemancipated child of lobbyist or client, or

Gift to spouse/unemancipated child of public official,

Is **presumptively OK** unless:

- it is reasonable to infer that gift was given with intent to influence, or to reward, or
- gift could reasonably be expected to influence



Interacting with Government Officials & Employees

NYC Gift Ban

- Covers lobbyist *but not client*
- Covers lobbyist's spouse, domestic partner, unemancipated child
 - When lobbyist is an organization, also includes employees & officers who engage in lobbying & their families
- Gift from family member or close personal friend **is OK**, *if* it is of the sort customarily given on family or social occasions and won't create appearance of impropriety



Interacting with Government Officials & Employees

NYS & NYC Gift Bans

Not “gifts”

- complimentary tickets to an organization’s charitable event;
- 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 etc. that promote the organization and have little resale value.

****** *Specific definitions – so check the rules*



NYC Ethical Obligations

Lobbyists must not:

- put a government decisionmaker under obligation to you
- deceive a government decisionmaker about a pending matter
- create a false appearance of public favor or disfavor for local law or resolution (can't send letter from fake person, or without a person's consent)
- claim to be able to control or obtain the vote of or action by a government decisionmaker

***For more, see NYC Admin. Code 3-219*



What Else Must Lobbyists Do?

- Report lobbying that **board members** perform on behalf of organization (NYS & NYC)
- **Training**
 - **NYC:** new lobbyists designate 1 officer or employee to complete training w/in 15 days of 1st registration; 1 officer/employee must complete training every 2 years
 - **NYS:** principal & additional lobbyists complete training 1x every 3 years – phase-in period see <https://jcope.ny.gov/ethics-lobbyists-training>



Lawyers Alliance for New York

Resource Call Line (212) 219-1800 x224
resourcecall@lawyersalliance.org