



Careful Lobbying Compliance

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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 (includes city or state budget, discretionary funds)
 - change agency rules, regulations
 - affect government procurement
 - and more

2

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You may need to report lobbying to...

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

3

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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?

4

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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

5

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Timekeeping


One option: record specific dates & minutes/hours

Lobbyist Name: _____

Date	Subject & bill #	Description of Activity (grassroots or direct)	Target	Time Spent	Additional Expenses (printing, mailing, travel)	NYC	NYS	Federal
12/1/14	Bill to Reform NYC Lobbying Law (the 1172)	Draft email asking members to call council members to support law (grassroots)	NYC Council	1 hour	none	X		
4/13/14	State Budget – Foster Care	Calls to state legislators (direct)	State Sen. Squadron & Savino	2 hours	none		X	

6

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Timekeeping

Another option: record % of time spent

Lobbyist Name: _____

Date	Subject & bill #	Description of Activity (include whether grassroots or direct lobbying)	Target (individual and/or legislative body)	Time Spent	Additional Expenses (printing, mailing, travel)	NYC	NYS	Federal
Oct. 20-24, 2014	Bill to Reform NYC Lobbying Law (Int 1172)	Draft email asking members to call council	NYC Council	5%	none	X		
Oct. 27-31, 2014	State Budget - Foster Care	Call to state legislators (direct)	State Sen. Squadron & Savino	10%	none		X	

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Step 2: Report to the IRS


Veto House Bill 293

Amend the Affordable Care Act

Pass the Safe Toys Act!

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

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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 G, 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


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

Part III 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

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

	Yes	No
47	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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IRS

Two ways to track and report:

- Substantial Part Method
 - This is the default method
 - Problem – how much is too much?
- 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

10

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IRS – Lobbying Expenditures Method

Schedule C (Form 990 or 990-E) 2014
 Page 2

Part 8-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 1a, 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 1a.</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 10% 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 1a, column (a) or (b) is:	The lobbying nontaxable amount is:	Not over \$500,000	20% of the amount on line 1a.	Over \$500,000 but not over \$1,000,000	\$100,000 plus 10% 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 1a, column (a) or (b) is:	The lobbying nontaxable amount is:													
Not over \$500,000	20% of the amount on line 1a.													
Over \$500,000 but not over \$1,000,000	\$100,000 plus 10% 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.)

11

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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/forms5768.

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 _____ (Month, day, and year) and all subsequent tax years until revoked.

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 _____ (Month, day, and year) and all subsequent tax years (until a new election is made).

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) _____

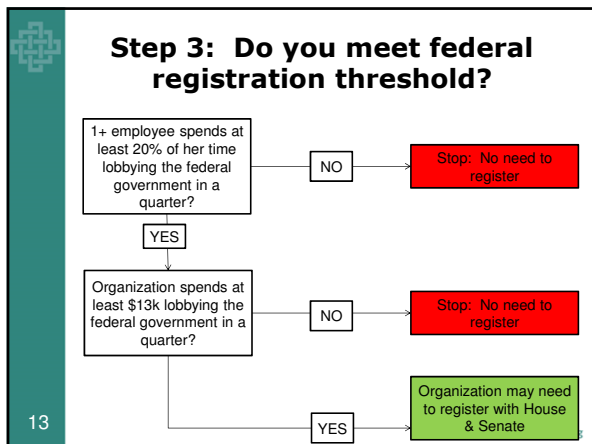
General Instructions

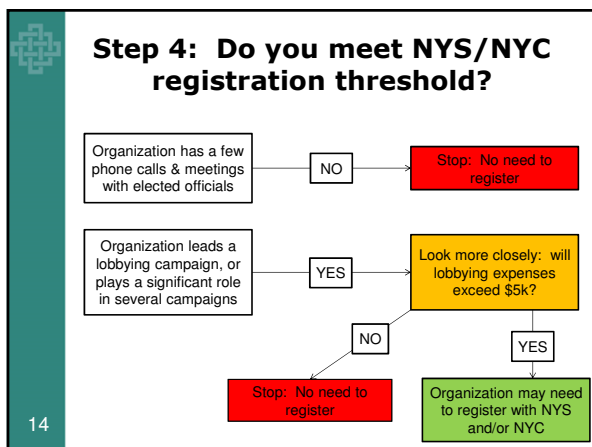
To make or revoke the election, enter the ending date of the tax year to which _____

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

12

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NYS/ NYC: Closer look

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


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

55 hours * \$19.23/hour	\$1,057 staff time
12% overhead	\$ 127
printing & mailing postcards	<u>\$ 500</u>
total lobbying expenditures	\$1,684

Result: lobbying expenditures will be under \$5,000
No need to register with NY State or NY City

15

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NYS/NYC: Closer look

Organizer: \$40k/year ÷ 2,080 hours/year = \$19.23/hour


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

55 hours * \$19.23/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

16

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

- Lawyers Alliance: FAQ's on Nonprofits and Lobbying, <http://www.lawyersalliance.org/advocacy.php>
- 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

17

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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****

18

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NYS – Reporting Lobbying Expenditures (cont’d)

Lobbyists

- Register every 2 years:
 - List organization as “lobbyist” & employees as “individual lobbyists.”
 - \$200 fee
 - 2019-2020 registration was due 1/1/19, or within 15 days of when lobbying starts
- Report: Lobbyist Bi-Monthly report is due every 2 months.
 - next report due 5/15/19

19

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NYS – Reporting Lobbying Expenditures (cont’d)

Clients of Outside Lobbyists

- Set up User profile in JCOPE’s online Lobbying Application
- File Client Semi-Annual Report January 15 and July 15

20

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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/lobbyist/>
*Register with & report to
 NYC Clerk Lobbying Bureau*

21

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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


22
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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

23
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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

24
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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

25

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Reportable Business Relationship Questionnaire

Name	
Title	
Address of Primary Work Location(s)	

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: ☐

26

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Disbursement of Public Monies Report

A registered lobbyist must file this report if:

- (1) the lobbyist anticipates spending over \$5k
- (2) to influence the allocation of over \$15k
- (3) that the state legislature has included in the state budget, and designated for programs, grants or discretionary funds, without allocating it to a particular recipient ("lump sum appropriation")

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

27

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28

SUMMARY OF DPM COMPENSATION AND REIMBURSED EXPENSES FOR THIS PERIOD

Compensation

(Current period only)

\$

Reimbursed Expenses

(Current period only)

\$

OTHER DPM LOBBYING EXPENSES (CURRENT PERIOD ONLY)

☐ I have no DPM expenses to report for this period (skip to section 19)

A. DPM EXPENSE

Paid to

Expense amount

\$

Expense reimbursed by the Client

☐ Yes ☐ No

Expense purpose (check one only)

☐ Advertising - Billboards
☐ Advertising - Flyers
☐ Advertising - Print Media
☐ Advertising - Television/Radio
☐ Buses for lobby event

☐ Consulting
☐ E-advocacy
☐ Legislative Bill Tracking
☐ Legislative Research
☐ Lodging

☐ Rallies
☐ Rent
☐ Social Event/Reception/Banquet
☐ Social Media - Websites
☐ Travel Reimbursement - Train, Airfare, Car, Hotel

29

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

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

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30


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

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10



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*

31

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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

32

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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

33

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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

34
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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

35
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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**

36
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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*

37

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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 http://www.jcope.ny.gov/training/training_lobbyists.html

38

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39

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