Public Policy Advocacy

- What is lobbying?
  - Grassroots lobbying
  - Direct lobbying
- Can non-profits lobby?
- Should you elect the 501(h) expenditure test?
- How can you influence policy without lobbying?
- What are legislative scorecards?
- How do you get the funds to lobby?
What is lobbying?

• **Direct lobbying** =
  - Communication
  - With a legislator (or your members)
  - Expressing a view about specific legislation (or asking your members to be in touch with legislators)

• **Grassroots lobbying** =
  - Communication
  - With the public
  - Expressing a view about specific legislation
  - Including a call to action
Communication

- A conversation in person or on the phone, letter, email, fax or other creative mechanism to convey a message.
Legislator

- A member of a legislative body (City Council, State Legislature, U.S. Congress) & staff
- Executives when vetoing or signing a bill
- NOT an administrative body (regulations are not legislation!)
The Public

- Communication to the public (anyone who is not a legislator or a member of the organization) = grassroots lobbying
- Communication to members (has given > small amount of time or money) = direct lobbying
Expressing a view about legislation

- Legislation = a bill or resolution introduced in a legislative body or proposed legislation
- Includes budget appropriations & taxes & attempts to influence the confirmation of judicial & executive branch nominees
- Does NOT include regulations, executive orders, litigation, or enforcement of existing legislation
- Does NOT include calls for adequate funding if there is no budget proposal before the legislature
Call to action

- Encouraging the communication’s recipient to take lobbying action
  - Tell to contact legislator
  - Provide info on how to contact legislator
  - Provide way to contact legislator
  - Identify a legislator as being opposed to or undecided about the organization’s view on the legislation, a member of a legislative committee, or recipient’s legislator
Ballot measures

- Ballot measure activity = direct lobbying, not impermissible electoral activity
- The voting public = the legislature in a ballot measure (referenda, bond measures, ballot initiatives)
When does it become lobbying?

- Preparation & research time in anticipation of lobbying
- Discussing public issues, formulating & agreeing upon positions, & studying them in preparation of adopting a position for lobbying
- You begin measuring lobbying activity when the primary purpose of your preparation or research is to engage in lobbying activity
Measuring Lobbying Activities

- The 501(h) expenditure test
  - All costs including photocopying, transportation, staff time, overhead costs aimed at lobbying

- The Insubstantial part test
  - No guidance on how much is “substantial”
“Insubstantial part”

- Can lobby as long as the lobbying activities do not become a “substantial part” of its overall activities
- Subjective test based on circumstances & facts of each case
- Reimbursements to volunteers for out-of-pocket expenses spent on lobbying counts & must be reported
“Insubstantial part”

- Factors include:
  - Absolute amount spent
  - Impact
  - Public prominence
  - Unpaid volunteer work
501(h) Expenditure test

- Only counts lobbying activity that costs $
- Limits vary on size of organization budget
  - $500,000 or less = 20%
  - $500,000-$1 million = $100,000 + 15% of budget over $500,000
  - $1-1.5 million = $175,000 + 10% of budget > $1 million
  - $1.5 million + > = $224,000 + 5% of budget > $1.5 million
  - Maximum $1 million/year
- May spend up to \( \frac{1}{4} \) of overall budget on grassroots lobbying
501(h) Expenditure Test

- May develop & disseminate a “nonpartisan analysis, study or research” or a substantive report that fully discusses the pros and cons of a legislative proposal without it being considered lobbying.
Making the 501(h) Election

- Board votes to elect
- Complete Form 5768
- Make a copy
- Mail to IRS
- Track lobbying expenditures
  - Direct lobbying = 20% of 1st $500,000 + 15% of next $500,000 + 10% of next $500,000 + 5% of remainder
  - < 25% of overall lobbying limit can be spent on grassroots lobbying
Advocacy that is not lobbying

- Nonpartisan analysis or research
- Communication to members on legislation without a call to action
- Attempts to influence regulations, administrative rules, or executive branch actions (including contact with executive branch or legislators)
- Influencing school boards
- Having a newspaper publish an article or ad stating your organization’s view on legislation without a call to action
- Self-defense activity
501(h) Legislative Scorecard

- Inform *members* about how *all relevant* legislators have voted (recorded legislative votes, not campaign positions) & what organization thinks about votes on issues of importance to the group
- Don’t issue just before election; issue at conclusion of legislative cycle
- Can *score* legislators
Lobbying on your own time

- Staff may engage in lobbying on own time AS LONG AS they do not indicate their relationship to your organization and are not directed by the organization to engage in the lobbying.

- EDs may be considered always on duty unless your Board or personnel policies clarify otherwise.
Prohibited Activities

- Intervening in a political campaign of any candidate for public office (but you MAY encourage & register people to vote)
- Engaging in partisan activity of any kind
- Use of government funds to lobby including to lobby for government grants unless Congress expressly authorizes it (i.e., DDCs)
State & federal lobby disclosure laws also require certain organizations & individuals who are paid to lobby or whose lobbying expenses are reimbursed to register & file periodic reports on lobbying activities.
Threshold for Reporting

- There is no minimum threshold for reporting on lobbying activities
- Even though the dollar amount may be small, you should report it
How to report

- IRS accepts any reasonable method for reporting
  - Sampling instead of complete time records to estimate time spent
  - Estimate of overhead costs
  - Actual costs when possible
Registration

• Lobbying Disclosure Act of 1995
  - If you have any employee that spends at least 20% of time on federal lobbying activities & you spend $22,500 or more over 6 months on that lobbying activity, they must register as lobbying & file reports
Sanctions

Non-electing
- 5% excise tax on excessive lobbying spending
- Similar tax on managers who willfully & unreasonably agree to lobbying expenditures

Electing
- 25% excise tax on lobbying spending in excess of ceiling

Death sentence
- Loss of exemption only if spending normally exceeds 150% of either overall or grassroots limit over 4 year period
Funding Lobbying

- May not use *any* government funds to influence legislation
- May not use foundation funds IF grant agreement letter prohibits it
- May use funds generated by fee for service, contributions, membership dues, sale of materials, etc.
Other Options

- Get a legislative body to invite you in writing to express your opinion ("technical advice")
- Set up 501(c) 4
  - No restrictions on the amount of lobbying
  - Gifts to a 501(c) 4 are not tax-deductible
State laws

- Find information about additional limits or reporting requirements from your state association of nonprofit organizations

- www.nonprofits.org
Take Away messages

- You CAN & SHOULD engage in public policy advocacy & lobbying
- For most non-profits, you SHOULD do the 501(h) election
- You MUST report lobbying activities with your tax return regardless of whether you elect & no matter how little you spend on lobbying
Other resources

- Alliance for Justice  
  [www.afj.org](http://www.afj.org)
- NPAction  
  [www.npaction.org](http://www.npaction.org)
- Independent Sector  
  [www.independentsector.org](http://www.independentsector.org)
- Idealist  
  [www.idealist.org](http://www.idealist.org)
- IRS  
Don’t sit on the sidelines, get into the game!

• Empowering family members to participate in advocacy for their children, their community, the larger society, is its own victory, regardless of the specific outcome of any particular effort.

• Democracy is not a spectator sport!