

Is It Lobbying? Is It Not?

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Topics for today

- 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 issues do you care about?



Avenues for advocacy

- Organize communities
- Educate legislators
- Encourage voting
- Educate the public
- Educational conferences
- Research
- Partisan political
- Lobbying
- Nonpartisan voter education
- Lobbying exceptions
- Skills training
- Change corporate behavior
- Regulatory efforts
- Litigation

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) and 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 more than a small amount of time or money) = direct lobbying

Expressing a view about legislation



Legislation is a bill or resolution introduced in a legislative body or proposed legislation.

- Includes budget appropriations and taxes, and attempts to influence the confirmation of judicial and 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 is direct lobbying, not impermissible electoral activity.
- The voting public is the legislature in a ballot measure (referenda, bond measures, ballot initiatives).

When does it become lobbying?

- Preparation and research time in anticipation of lobbying
- Discussing public issues, formulating and agreeing upon positions, and 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 and facts of each case
- Reimbursements to volunteers for out-of-pocket expenses spent on lobbying counts and must be reported



Insubstantial part

Factors include:

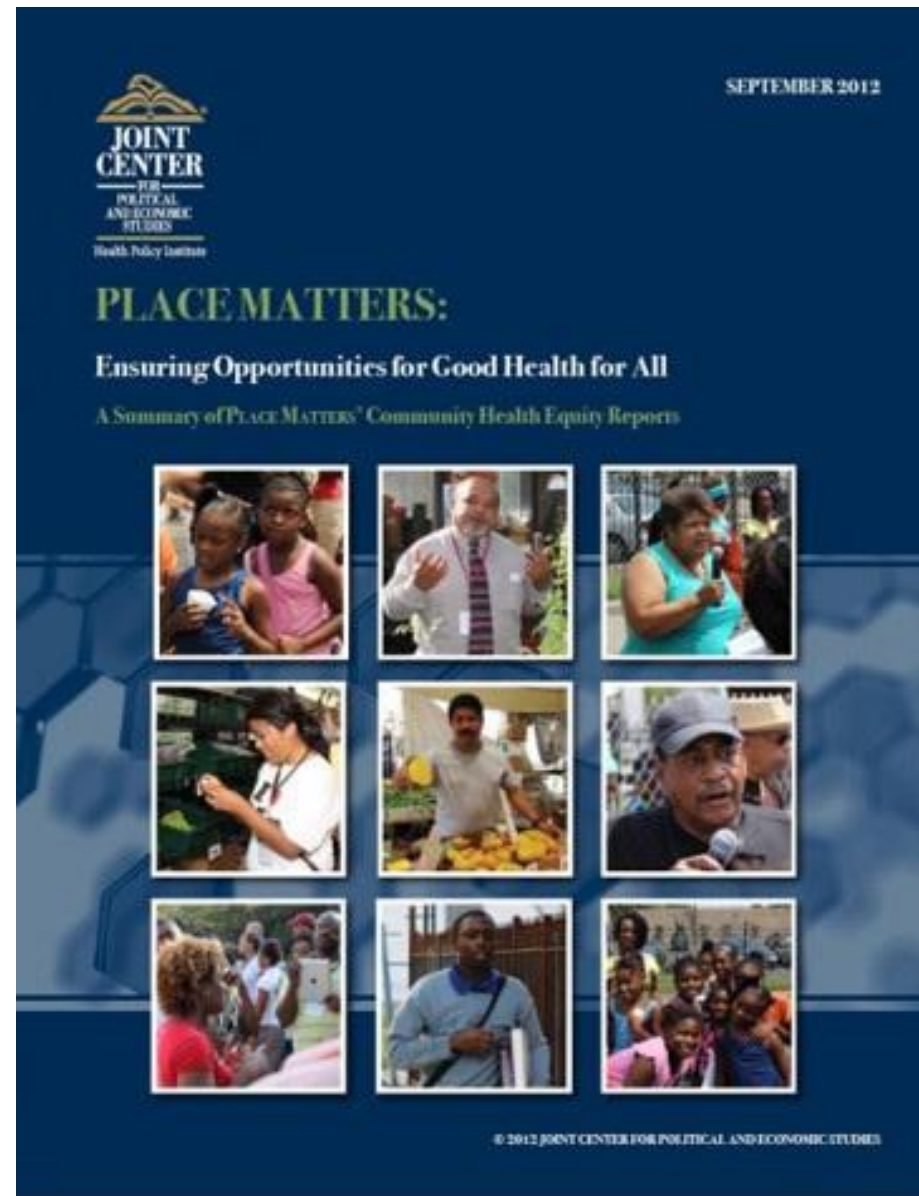
- Absolute amount spent
- Impact
- Public prominence
- Unpaid volunteer work

501(h) Expenditure test

- Only counts lobbying activity that costs money
- 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



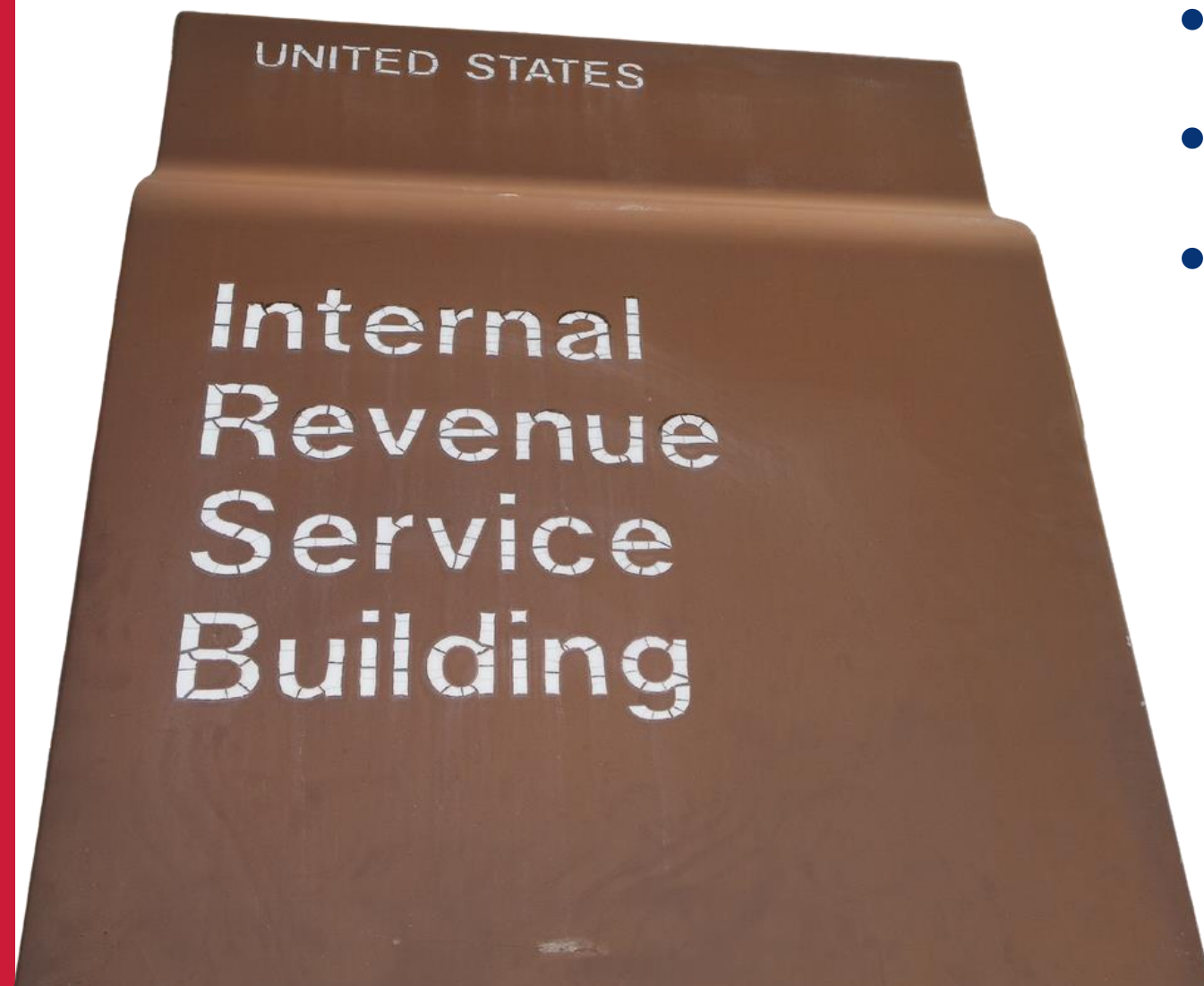
501(h) Expenditure test



May develop and 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

- 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.

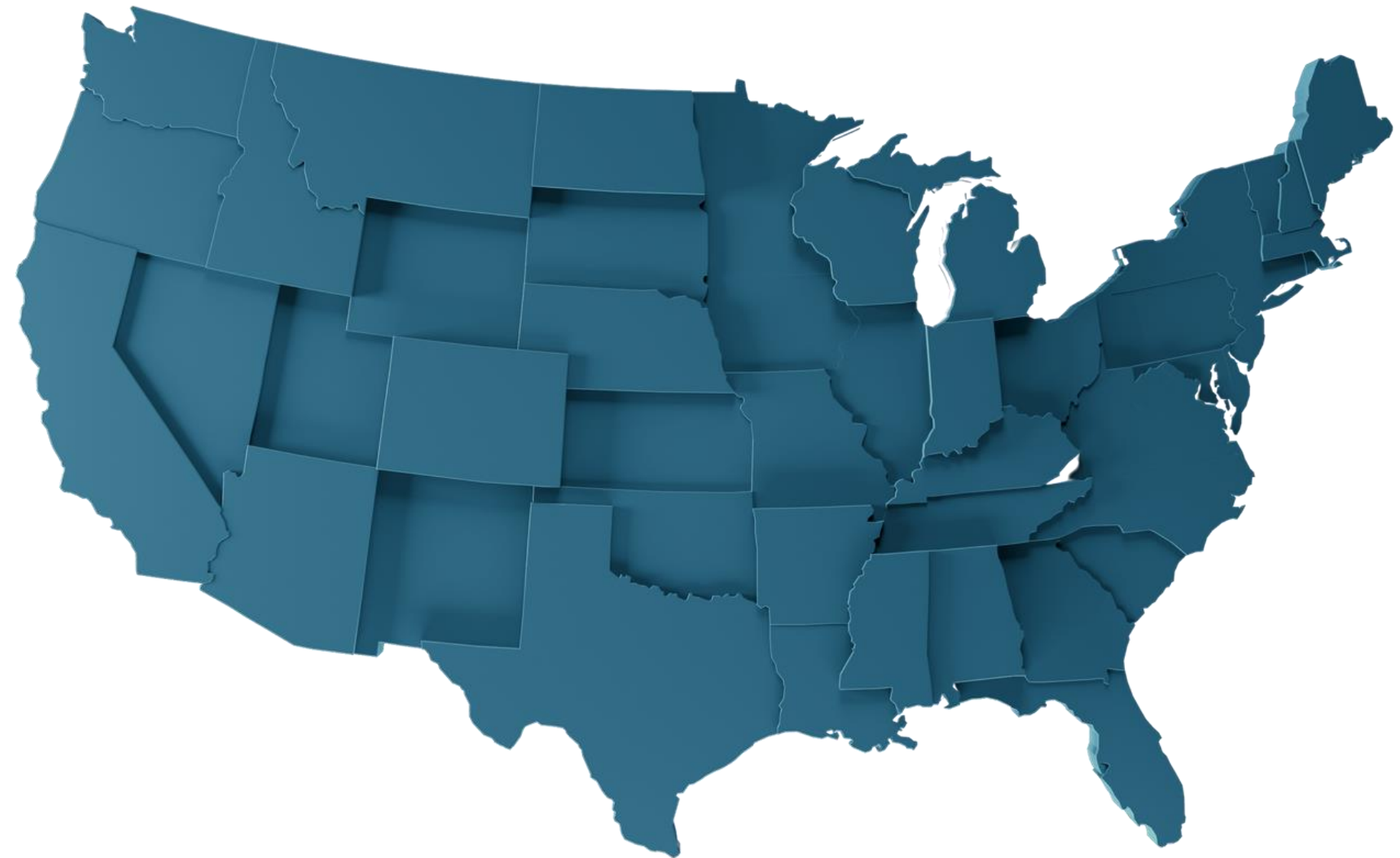


Prohibited Activities

- Intervening in a political campaign of any candidate for public office (but you MAY encourage and 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)

Registration & Reporting

State and federal lobby disclosure laws also require certain organizations and individuals who are paid to lobby or whose lobbying expenses are reimbursed to register and 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 in your 990 Form.

How to Report

The 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 and you spend \$22,500 or more over 6 months on that lobbying activity, they must register as lobbyists and file reports.



Sanctions

Non-electing

- 5% excise tax on excessive lobbying spending
- Similar tax on managers who willfully and 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 a 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.
- Find out more at www.bolderadvocacy.org.

Takeaway Messages



- You **can and should** engage in public policy advocacy and 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 and no matter how little you spend on lobbying.

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!**

Tools



- At the Table: Lobbying and Political Activity Policy
- At the Table: Lobbying Report Template
- General Lobbying Rules for Non Profits
- When Does Your Activity Become Lobbying?

Other Resources

Alliance for Justice

www.afj.org

Independent Sector

www.independentsector.org

IRS

www.irs.gov/charities

Questions and Discussion

