



# PUBLIC STRATEGIES, LLC

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## Lobbying & Not-for-Profit Organizations

### FEDERAL RULES

- Under federal law, a 501(c)(3) organization is allowed to lobby.
- There are two kinds of lobbying recognized by the Internal Revenue Service.
  - "**Direct lobbying**," which involves communications with legislators, staff and other government officials involved in the legislative process that refers to and takes a specific position on specific legislation.
  - "**Grassroots lobbying**," which is a communication with the public that refers to, takes a position on, and includes a "call to action" ("Contact your Assemblymember and urge them to vote against A.1234...") with regard to a specific legislative act.
- Exemptions from lobbying definition:
  - Advocating on a budget cut, which is considered an act of "**self-defense**."
  - Conducting **non-partisan analysis**.
  - Providing **technical assistance**.
  - Discussing **broad social issues** without mentioning legislation.

- IRS Rules for Lobbying Expenditures:

By making an annual "election" under section 501(h) of the Internal Revenue Code (IRS Form 5768, available online at: <http://www.irs.gov/pub/irs-pdf/f5768.pdf>, not-for-profit organizations are allowed to spend funds on **direct lobbying** as follows:

- 20% of the first \$500,000 of their budget (or up to \$100,000);
- 15% of the next \$500,000 (or up to an additional \$75,000);
- 10% of the next \$500,000 (or up to an additional \$50,000); and
- 5% of any remaining funds, up to an annual aggregate limit of \$1 million.

Thus, an agency with a \$1.5 million budget could legally spend up to \$225,000 on direct lobbying without jeopardizing their tax status, with the total rising along with their budget.

- Not-for-profit organization expenditure limits for **grassroots lobbying** are as follows:
  - 5% of the first \$500,000 of their budget (or up to \$25,000);
  - 3.75% of their next \$500,000 (or up to an additional \$18,750);
  - 2.5% of their next \$500,000 (or up to an additional \$12,500); and
  - 1.25% of their remaining budget up to an annual aggregate limit of 250,000.

Thus, an agency with a \$1.5 million budget could legally spend up to \$56,250 on grassroots lobbying without jeopardizing their tax status, with the total rising along with their budget.

The National Council of Nonprofits has a helpful webpage on the 501(h) election: <https://www.councilofnonprofits.org/taking-the-501h-election>

- It is important to note that, while not-for-profit organizations may lobby consistent with the above guidelines, **electoral activities are absolutely prohibited**.

## STATE & LOCAL RULES

- New York State, New York City and other local municipalities have separate rules that lobbyists must follow. These City and State rules in no way prohibit non-profit lobbying; they merely set **reporting guidelines** for non-profits that do so.
- **State requirements:** Any individual, agency or association that expends more than \$5,000 per year on lobbying of local or state officials must file with the New York State **Commission on Ethics and Lobbying in Government** (COELIG). In addition, said entity must file bi-monthly expenditure and expenses statements with COELIG. For details on state lobbying rules and requirements, go to <https://ethics.ny.gov/filing-information-and-requirements>
- **What's Lobbying in New York?** Lobbying in New York is any activity that seeks to support, oppose, change, modify, persuade, prevent, coerce, or delay the:
  - 1) Passage or defeat of legislation;
  - 2) Approval or disapproval of any legislation by the Governor;
  - 3) Adoption or rejection of any rule or regulation having the force and effect of law by a state agency;
  - 4) Outcome of any rate-making proceeding by a state agency;
  - 5) Passage or defeat of any local law, ordinance, or regulation by any municipality or subdivision thereof with a population of 50,000 or more; or
  - 6) Adoption or rejection of any rule or regulation having the force and effect of local law by a municipality or subdivision thereof with a population of 50,000 or more.
- **What State Officials Are Covered by the New York's Lobbying Law?** In addition to the Legislature, the lobby law in New York includes attempts to influence the Governor, Lt. Governor, Comptroller, and Attorney General, as well as state officers and employees including:
  - 1) heads of state departments and their deputies/assistants, except for members of the Board of Regents of the University of the State of New York who are not compensated or are compensated on a per diem basis;
  - 2) officers and employees of statewide elected officials;
  - 3) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies, except for those who are not compensated;
  - 4) members or directors of public authorities, other than multi-state authorities;
  - 5) municipal officers and employees.
- **Are Any Actions Exempt From Lobbying in New York?** Yes; the following activities are NOT considered lobbying in New York:
  - 1) Preparation or submission of a response to a request for information or comments by the legislature, the Governor, a state agency, or municipal, legislative, or executive body;
  - 2) Participation (including all preparation for participation) as a witness, attorney, or other representative at a public rule-making or rate-making proceeding;
  - 3) Attempts to influence a state or municipal agency in an adjudicatory proceeding;
  - 4) Drafting legislation, rules, or regulations, as well as advising clients or rendering opinions on proposed legislation, rules, or regulations, where such professional services are not otherwise connected with actions defined as lobbying;
  - 5) Communications with public officials to obtain factual information, provided that they are not otherwise connected with lobbying activity.
- **Are Any Actions Prohibited Under New York's Lobby Law?** Yes:
  - 1) Gifts to public officials that exceed a "nominal" threshold are prohibited. Awards given to elected officials at lobby days, or complementary food and beverages at a widely-attended reception are considered nominal; buying them dinner is not.
  - 2) "Contingency" retainers, where a lobbyist would be paid a certain amount if some action is achieved, are illegal in New York State.

Violations of the lobbying law, depending on the offense and prior history of infractions, can result in fines, criminal charges, and a prohibition on lobbying in the state.

- **New York City requirements:** New York City lobbying rules largely mirror those of the State. For more information on City lobbying rules and reporting requirements, go to: <https://www.cityclerk.nyc.gov/content/nyc-lobbying-rules>
- **Other Municipalities:** The state lobbying law requires individuals, agencies and associations that lobby municipalities with populations of over 50,000 people to register and report, just as if you were lobbying the state. See: <https://ethics.ny.gov/system/files/documents/2018/01/chapter-3-local-lobbying-overview-and-addendum.pdf>

## **NON-PROFITS AND ADVOCACY**

For more information on non-profit lobbying, see the Council of Nonprofits Everyday Advocacy at: <https://www.councilofnonprofits.org/everyday-advocacy>