Lobbying and ALA: Fact Sheet

The American Library Association is a nonprofit association exempt from federal income tax under section 501(c)(3) of the U.S. Internal Revenue Code – the section of the IRS Code, which applies to scientific or educational associations or foundations, as well as charitable and religious organizations. The following rules apply specifically to 501(c)(3) organizations.

No “substantial” percentage of activities of a 501(c)(3) organization may be focused on “propaganda, or otherwise attempting to influence legislation…” – in other words, on lobbying. Further, 501(c)(3) organizations are completely prohibited from engaging, directly or indirectly, in any political campaign for or against a candidate for local, state or federal office. (See Election Year Rules)

What Is Lobbying?

It is important for both ALA leaders and staff to be clear about what constitutes lobbying.

- Direct lobbying includes oral or written communication with members of a legislature, their staff, political appointees, senior executive office personnel for the purpose of influencing legislation or regulation. Preparation for lobbying is included in the definition of lobbying.

- “Lobbying contacts” may be made regarding legislation (its formulation, modification or adoption), executive branch policies (rules, regulations, executive orders), administration or execution of a federal program or policy, or nomination or confirmation of any person requiring a Senate confirmation.

- If an association urges its members to contact legislators regarding pending legislation, this is considered direct lobbying.
  
  - Any communication which urges ALA members – explicitly or implicitly – to contact legislators regarding a specific piece of legislation must be considered lobbying.
  
  - If an association communicates with members regarding a piece of legislation on which the association has not taken a position, it will not necessarily be considered lobbying.

- Grassroots lobbying is an attempt to influence legislation through a communication with the general public – including reference to specific legislation, an expression of the association’s views on that legislation, and a call for action. Note that while associations often use the term “grass roots” to refer to their own members, to the IRS it means the broader public outside the association membership.
- If an association conducts or commissions a research study for use in lobbying, the study itself must be considered lobbying. If the study is intended primarily for non-lobbying purposes but is later used in lobbying, it would not generally be considered lobbying.

- Meetings may constitute a “lobbying communication” if the meeting is used to urge members to act for/against specific legislation.

- “Lobbying activity” includes certain activities undertaken in preparation for lobbying – e.g. planning and preparation, coordination with other lobbyists.
  - Staff travel time may be considered a lobbying activity for purposes of tracking lobbying expenditures.

What Kinds of Public Policy Communications Would Not Be Considered Lobbying?

It is equally important for ALA leaders and staff to understand what does not constitute lobbying.

- If an association responds to a request from an administrative agency for information, that does not constitute lobbying.

- Participation on a federal advisory committee does not constitute lobbying.

- Providing comments in response to a proposed rulemaking is not lobbying.

- Testimony before a Congressional committee or subcommittee, at the request of that committee or subcommittee, is not lobbying.
  - If ALA requests an opportunity to provide testimony, that may be considered lobbying.

- An amicus curiae brief filed in the course of a judicial proceeding is not lobbying.

- A statement filed during an administrative adjudication is not lobbying.

How Much Can ALA Spend on Lobbying?

The IRS initially provided only the vague standard of “no substantial lobbying….” One federal court case (Seasongood v. Commissioner) determined that spending up to 5% of the budget for lobbying might be within the “insubstantial” range.

In 1976, an elective alternative provision [501(h)] was added to the law to permit 501(c)(3) organizations to be guided by an absolute numerical percentage test – rather than the vague “insubstantial.” Final IRS regulations implementing the 501(h) election
were issued in 1990. Section 501(h) gives exempt organizations the option of complying with specific monetary limits. The 501(h) election does not increase the amount of lobbying that a 501(c)(3) organization of ALA’s size can do – but does provide an alternative guide to the vague “substantiality” test for those organizations that opt to utilize it.

ALA has opted for the 501(h) election. The 501(h) election provides a mathematical formula – a sliding scale – for determining permissible lobbying expenditures as compared to (most) other association expenditures (fund-raising expenses are excluded).

- Less than 20% of the first $500,000 of the association budget, 15% of the 2nd $500,000, 10% of the 3rd $500,000, and 5% of each subsequent $500,000.

- There is an absolute limit – regardless of the size of the budget – of $1,000,000/year on lobbying expenditures. ALA is operating well below that cap.

- An exempt organization is responsible for maintaining careful records of resources used for lobbying and must identify both direct and grassroots lobbying on its IRS information forms.

- Grassroots lobbying may not constitute more than 25% of what is spent on direct lobbying.

- A 25% excise tax is imposed on excess lobbying expenditures.

- If lobbying expenditures average more than 150% of the permissible limit over 4 years, the 501(c)(3) tax exemption may be lost.

Separate from – and in addition to – the IRS regulations, which limit expenditures for lobbying by 501(c)(3) organizations, ALA, like other associations, must comply with the provisions of the Lobbying Disclosure Act of 1995.

- The Lobbying Disclosure Act of 1995 requires registration by every lobbyist. A lobbyist is an individual “employed or retained by a client for financial or other compensation” to make one or more “lobbying contact.” An association staff member meets that definition if he/she spends more than 20% of his/her time on lobbying activities.

- In addition to name, business address and similar information, each lobbying registration includes a statement outlining the general issue areas about which the registrant expects to lobby, as well as any specific issues the registrant has already addressed or is likely to address.
Five staff members in the ALA Washington Office lobbied in one or more of the following areas during the past six months: budget/appropriations, copyright, education, government issues, civil rights/liberties, and telecommunications.

Quarterly, an association employing lobbyists files a report with the Secretary of the Senate and Clerk of the House of Representatives including, among other information, a list of specific issues on which the registered organization engaged in lobbying activities and which Houses of Congress and/or executive agencies were contacted.

The quarterly report must also include a “good faith” estimate of the registered association’s total lobbying expenses during the covered period.

Are All Associations Subject to the Same Rules?

No. Associations which are tax-exempt under section 501(c)(6) of the U.S. Internal Revenue Code – most trade and professional associations -- are subject to different limitations, as are those exempt under other 501(c) sections.

- “Lobbying” is defined differently for 501(c)(6) organizations.
- There are no quantitative limits on lobbying expenditures by 501(c)(6) organizations.
- The Omnibus Budget Reconciliation Act of 1993 eliminated the deductibility, for federal income tax purposes, of lobbying expenses.
  - Federal income tax deductibility is disallowed for a portion of dues paid to an association engaging in more than minimal amounts of lobbying. The percentage of the members’ dues that is nondeductible is based on the relationship between total dues/related income and the association’s total lobbying expenditures.
  - At the time dues are billed or assessed, the association must advise members of the percentage of the dues that must be considered nondeductible.
  - As an alternative to this notification, an association may opt to pay a flat 35% proxy tax on the year’s lobbying expenditures.
- IRS regulations include detailed guidelines on how an association’s costs should be allocated to lobbying and which kinds of lobbying are nondeductible at any level of expenditure (e.g. grassroots lobbying, foreign lobbying).
- A 501(c)(6) association may engage in political advocacy and may organize a political action committee (PAC) – both subject to stringent regulation.