

**Q: Can Community Action Agencies lobby to influence legislation?**

YES!!! Federal laws permit CAAs to lobby. Since public CAAs are part of local government, however, they should check their local government's rules on lobbying.

**Q: Before you get into specific issues, what's the bottom line on the best way to lobby within the rules?**

CAPLAW recommends that CAAs put aside a small amount of unrestricted funds to pay for legislative lobbying expenses, including an allocation of staff time, travel, and other expenses. These lobbying expenses should be tracked for purposes of establishing that they were paid out of nonfederal funds and for reporting to the IRS.

**Q: What type of lobbying are we talking about here?**

For purposes of this Q & A, we are only talking about **legislative lobbying**, i.e. activities for the purpose of influencing state or federal legislation (but not local legislation), or referenda or ballot initiatives (that are voted on by the general public, rather than the legislature). This *does* include appropriations bills, but *does not* include trying to influence actions of executive branch agencies, for example comments on proposed Head Start regulations or requests to the federal Department of Energy to release LIHEAP fuel assistance funds to the states. However, you should check the Terms and Conditions of your federal grants and other grants derived from federal funds (such as CSBG) to see if there are additional lobbying restrictions.

**Q: So, is every contact with a legislator or his or her staff lobbying?**

No, it's not lobbying unless it's for the purpose of influencing legislation. The key factor usually is whether specific legislation is discussed. Your CAA may participate in numerous types of advocacy or communications involving legislators that do not relate to legislation and therefore would not be considered lobbying.

**Q: Isn't there a limit on how much lobbying CAAs can do?**

If you are a nonprofit 501(c) (3) CAA, the Internal Revenue Code does limit the **legislative** lobbying the organization can do; it cannot be a "substantial part" of the organization's overall functions. The test of whether the lobbying is "substantial" is not a strict percentage of the total budget; the IRS looks at all of the "facts and circumstances," including not only expenditures, but time spent by volunteers. The IRS will also balance the importance of the lobbying activities against the objectives and circumstances of the organization as a whole, rather than just looking at the time or money spent. For most CAAs, however, because the vast majority of their efforts are focused on providing direct services to and administering and coordinating anti-poverty programs for low-income individuals and families, it is unlikely that lobbying activities will exceed the "substantial part" test.

A nonprofit CAA, like most other 501(c) (3)s, may elect to be subject to the "expenditure test" rather than the "substantial part" test described above, for measuring lobbying activity. If it takes this so-called "501(h) election," the CAA is subject to a sliding scale expenditure test made on the basis of a four-year average; it may spend annually up to 20% of the first \$500,000 of its total expenditures for a tax-exempt purpose on legislative lobbying; 10% of the next \$500,000, and 5% of the balance of expenditures, up to a total of \$ 1 million per year. The election may be made by filing IRS Form 5768.

**Q: Do we need to report to the IRS on lobbying??**

Whether or not you take the 501(h) election, a CAA must still answer questions on the Form 990 (the informational return filed annually with the IRS) about legislative lobbying activities. If the 501(h) election is not made (most CAAs have not made this election), you must answer questions about the specific type of activity and provide narrative description and, for some questions, dollar amounts, in connection with the lobbying activity. For IRS purposes, you must report not only on lobbying paid for by the CAA, but also other lobbying, for example by volunteer board members or employees on their own time, if they are doing as a representative of the CAA, rather than as a private citizen. In order to understand the type of information you need to track for the Form 990, we recommend reviewing the 2006 Form 990 and Instructions relating to lobbying, which are attached to the end of this document as Appendix A

**Q: So now I know that 501( c)(3)s in general can do a little lobbying, but I thought that CAAs can't lobby because they receive so much federal funding?**

Even 501( c) (3)s that receive federal funding may conduct lobbying activities, so long as they do not use federal funds to do so. This restriction is based on a combination of annual Appropriations bills that Congress passes every year, regulations issued by the Office of Management and Budget (OMB)(2 CFR 230 App. B, paragraph 25, which recently replaced OMB Circular A-122), and the Anti-Lobbying Act, 18 U.S.C. 1913. This means that CAA resources paid for with federal funds, such as staff time (paid with direct or indirect funds), supplies, equipment, postage, or space, generally may not be used for lobbying activities relating to state or federal legislation (local legislation is ok). Don't forget that program income and federal matching funds are also considered federal funds for purposes of restrictions on their use.

**Q: How do we lobby, but still ensure that federal funds aren't being used for that purpose?**

There are generally three ways to do that:

1. *Use Unrestricted Funds.* Allocate CAA resources in such a way that any time, supplies, etc. spent on legislative lobbying is tracked and paid for or reimbursed out of nonfederal, unrestricted funds (also check rules and/or grant and contract terms of other funding sources, such as state funds, to determine if lobbying use is allowed). If one staff member is primarily responsible for lobbying, then some or all of that person's compensation would be paid out of nonfederal funds. If staff members, either in addition to or instead of one primary person, spend just a small amount of time engaging in lobbying activities, then based on past history, you could estimate the percentage of time spent on lobbying by each person (as long as lobbying constitutes no more than 25 percent of the employee's total work time) and pay that percentage of compensation from nonfederal funds. See 2 C.F.R. Part 230, App. B, pgh. 25 (c)(4) (identical language as in OMB Circular A-122, Att. B, pgh. 25( c)(4)). Or time spent on lobbying could be paid out of nonfederal funds as needed based on actual reporting. Don't forget, though, that lobbying costs may not be included in the indirect cost pool if your CAA has an indirect cost rate. However, these lobbying costs must be separately identified in the indirect cost rate proposal. So, if an employee who lobbies is charged to indirect costs, a portion of his or compensation must be charged as a direct cost and paid out of nonfederal funds. This lobbying time could be tracked on a time card or other similar report on an ongoing basis, or as an "exception report" when the employee engages in lobbying activities. One state CAA association has suggested that each CAA designate an "advocacy kiosk" paid for entirely out of nonfederal funds (including computer, phone, space, etc.) that can be visited by staff members who engage in advocacy and lobbying activities. Those staff members could either "clock out" during that time or record their time and be paid for it with nonfederal funds.

2. *Lobby on personal time.* Another way to conduct lobbying without using federal funds is for employees to do so on their own time, using non-CAA resources to do. For example, an Executive Director may choose to take an afternoon off to meet with legislators at the state capital to lobby for passage of increased state supplemental Head Start appropriations. In that case, not only the time spent meeting with the legislators, but also preparation time spent either by the Executive Director or his or her staff, must also be either done on personal time or compensated out of nonfederal funds. If this is done during the regular workday and workweek, however, make sure that time cards or other records reflect that this activity is done on personal time. Also, have a written policy indicating your CAA's regular work hours. Even if a CAA expects an Executive Director to be "on duty" 24/7 if a need arises, that doesn't mean that he or she is never on personal time. Also, be careful if non-salaried employees (i.e. those that are NOT exempt from being paid overtime under federal and state wage and hour laws) "volunteer" to lobby on their own time. If those employees are asked or required to lobby, or if the lobbying relates to their paid job, they must be paid to do so; otherwise this may result in a violation of the wage and hour laws.
  
3. *Use board members or other volunteers.* A third way to lobby without using federal funds is to use volunteer board members or other volunteers. Again, as with staff members, make sure that any CAA resources used to prepare for or carry out the lobbying activities (for example, staff time to research and provide talking points, food or space for meetings, phones, paper, etc.) are not paid out of federal funds.

**Q: But we don't lobby legislators, we educate them. That's ok to do with federal funds, isn't it?**

Hate to sound like lawyers, here, but it depends. Just because you call it "educating," doesn't mean it isn't lobbying as well. If the "education" is done for the purpose of trying to get state or federal legislation passed, introduced, modified, defeated, signed, or vetoed, or to influence the outcome of a referendum or ballot initiative, then it's still lobbying and federal funds generally can't be used. Don't forget that legislation also includes appropriations bills. So, for example, if you meet with, call or email your U.S. Representative or a member of his or staff to ask her to increase the Head Start appropriation, that is lobbying. Of course, you can still do it, but not on federally-funded time or using federally-funded resources.

On the other hand, if you invite your state senator to visit and tour your job training program and explain the program and needs of your clients, and perhaps even ask the legislator to hold a hearing on the job training needs of your community, but do not discuss any pending or proposed legislation, then that is education, or advocacy, but not lobbying. If costs associated with that meeting fall within one of your grants, and are otherwise allowable under 2 CFR Part 230 (OMB A-122) (i.e. documented, reasonable, allocable, etc.), then they could be charged to federal funds.

**Q: Can you give us some other examples of legislative lobbying activities?**

Sure, here are some more:

- Signing on to a letter to state or federal legislators about pending or proposed legislation or appropriations.
- Paying dues to an organization primarily engaged in lobbying
  - If the CAA pays dues to an organization that does some lobbying, but that is not its primary activity, such as a state 501(c)(3)CAA association, for example, and if the association uses dues to pay lobbying expenses, then that portion of dues used for lobbying expenses should be paid out of nonfederal funds.

- Asking your U.S. Representative or Senator to sign on to a “Dear Colleague” letter requesting support for a piece of legislation or increase a legislative appropriation.
- Legislative liaison activities, such as attendance at legislative hearings, gathering information regarding legislation, and analyzing the effect of legislation, **when such activities are carried on in support or in knowing preparation for an effort to influence legislation. But, if such activities are not carried out for that purpose, but rather to keep informed about programs and appropriations for purposes of budgeting and planning, that it is not considered lobbying.**
- Asking the Governor to sign legislation.
- Asking clients or staff to engage in the activities described above.

**Q: Can CAA employees or board members lobby as private citizens?**

Yes, they can. If they don’t represent themselves to be acting on behalf of the CAA, and don’t use any CAA resources or the CAA name, then they would be lobbying as private citizens (or perhaps on behalf of another organization). That’s fine and the CAA would not in that case need to report that activity to the IRS on the Form 990 or allocate any unrestricted CAA funds to the activity.

**Q: Aren’t there some exceptions in 2 C.F.R. Part 230 (OMB A-122) to the general rule that federal funds can’t be used for lobbying:**

Yes, there are:

- Lobbying in connection with local legislation
- Lobbying to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the organization’s authority to perform the grant, contract, or other agreement.
  - For example, lobbying for legislation to lower unemployment insurance premiums
- Providing a technical and factual presentation of information on a topic directly related to the performance of a grant or contract
  - through hearing testimony, statements or letters
  - to the Congress or a state legislature, or subdivision, member , or cognizant staff member of such body member,
  - in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing),
  - provided such information is readily obtainable and can be readily put in deliverable form, and
  - provided costs for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.
- Any activity specifically authorized by statute to be undertaken with grant funds

**Q: Can you boil down the implications of those exceptions to the OMB A-122 lobbying restrictions?**

The only exception that a CAA is likely to be able to make much use of is the third -- the technical and factual presentation. But read the numerous requirements carefully. It does not cover phone calls or meetings; only written or oral testimony or letters in response to a documented request and it generally doesn't cover travel and hotel costs in connection with the presentation. The clearest activity to come within this exception is personally testifying at and/or submitting a written statement to a public hearing held by a legislature or legislative committee (although, again, travel costs are not generally allowable). Due to the fact that annual federal appropriations bills language prohibiting use of appropriated federal funds for lobbying to influence federal, and sometimes state, legislation, does not explicitly include these exceptions, if your CAA is receiving federal funds indirectly, such as through the state, it is important to confirm that OMB A-122 ( or 2 C.F.R. Part 230) applies to your subgrant or state contract. You can check this in the Grant Terms and Conditions or State contract provisions.

**APPENDIX A**

**Excerpts re: Lobbying from 2006 Form 990 Schedule A and Schedule A Instructions**

**Part III** Statements About Activities (See page 2 of the instructions.)

Yes No

**1** During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities ► \$ \_\_\_\_\_ (Must equal amounts on line 38, Part VI-A, or line i of Part VI-B.) . . . . .

	Yes	No
<b>1</b>		

Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes" must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.

## Part III. Statements About Activities

**Line 1.** If the organization answered "Yes" on this line, it must complete Part VI-A or VI-B and include the additional information discussed under those Parts; otherwise, the return may be considered incomplete.

Enter the total expenses paid or incurred in connection with the lobbying activities described on line 1. The amount of expenses the organization enters must equal the amounts on line 38, Part VI-A, or line i, Part VI-B.

**Substantial part test.** In general, a section 501(c)(3) organization may not devote a substantial part of its activities to attempts to influence legislation. Under the *substantial part test*, if such an organization engages in substantial lobbying activities, the organization will lose both its tax-exempt status and its ability to receive tax-deductible charitable contributions. Except for churches, certain church affiliated organizations, and private foundations, an organization that loses its section 501(c)(3) status because it did not meet the substantial part test will owe an excise tax under section 4912 on all of its lobbying expenditures. Managers of the organization may also be jointly and severally liable for this tax.

**Expenditure test.** As an alternative to the substantial part test, eligible public

charities may elect the expenditure test of section 501(h). The *expenditure test* generally permits higher limits for lobbying expenditures than allowed under the substantial part test. Electing public charities are subject to the lobbying expenditure definitions of section 4911, which are generally more liberal than the definitions under the substantial part test. Section 4911 applies only to public charities that made a valid section 501(h) election by filing Form 5768, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation.

**Electing public charities.** If the organization is an electing public charity, it must complete Part VI-A of this form.

**Nonelecting public charities.** If the organization checked "Yes" but is not an electing public charity, it must complete Part VI-B and attach a statement giving a detailed description of the organization's lobbying activities.



*All charities, both electing and nonelecting, are absolutely prohibited from intervening in a political campaign for or against any candidate for an elective public office. If a charity does intervene in a political campaign, it will lose both its tax-exempt status and its eligibility to receive tax-deductible charitable contributions. Both the organization and its managers are subject to the tax on political expenditures under section 4955.*

**Part VI-A Lobbying Expenditures by Electing Public Charities** (See page 10 of the instructions.)  
(To be completed **ONLY** by an eligible organization that filed Form 5768)

Check **a**  if the organization belongs to an affiliated group. Check **b**  if you checked "a" and "limited control" provisions apply.

<b>Limits on Lobbying Expenditures</b>		(a) Affiliated group totals	(b) To be completed for all electing organizations
(The term "expenditures" means amounts paid or incurred.)			
36	Total lobbying expenditures to influence public opinion (grassroots lobbying) . . . . .	36	
37	Total lobbying expenditures to influence a legislative body (direct lobbying) . . . . .	37	
38	Total lobbying expenditures (add lines 36 and 37) . . . . .	38	
39	Other exempt purpose expenditures . . . . .	39	
40	Total exempt purpose expenditures (add lines 38 and 39) . . . . .	40	
41	Lobbying nontaxable amount. Enter the amount from the following table—		
	<b>If the amount on line 40 is—</b> <b>The lobbying nontaxable amount is—</b>		
	Not over \$500,000 . . . . . 20% of the amount on line 40 . . . . .	} 41	
	Over \$500,000 but not over \$1,000,000 . . . . . \$100,000 plus 15% 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 . . . . .		
42	Grassroots nontaxable amount (enter 25% of line 41). . . . .	42	
43	Subtract line 42 from line 36. Enter -0- if line 42 is more than line 36. . . . .	43	
44	Subtract line 41 from line 38. Enter -0- if line 41 is more than line 38. . . . .	44	

**Caution:** If there is an amount on either line 43 or line 44, you must file Form 4720.

**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 instructions for lines 45 through 50 on page 13 of the instructions.)

Calendar year (or fiscal year beginning in) ►	Lobbying Expenditures During 4-Year Averaging Period				
	(a) 2006	(b) 2005	(c) 2004	(d) 2003	(e) Total
45	Lobbying nontaxable amount . . . . .				
46	Lobbying ceiling amount (150% of line 45(e))				
47	Total lobbying expenditures . . . . .				
48	Grassroots nontaxable amount . . . . .				
49	Grassroots ceiling amount (150% of line 48(e))				
50	Grassroots lobbying expenditures . . . . .				

**Part VI-B Lobbying Activity by Nonelecting Public Charities**

(For reporting only by organizations that did not complete Part VI-A) (See page 13 of the instructions.)

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:

- a Volunteers . . . . .
- b Paid staff or management (Include compensation in expenses reported on lines c through h.) . . . . .
- c Media advertisements . . . . .
- d Mailings to members, legislators, or the public . . . . .
- e Publications, or published or broadcast statements . . . . .
- f Grants to other organizations for lobbying purposes . . . . .
- g Direct contact with legislators, their staffs, government officials, or a legislative body. . . . .
- h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means . . . . .
- i Total lobbying expenditures (Add lines c through h.) . . . . .

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities.

Yes	No	Amount

## Part VI-A. Lobbying Expenditures by Electing Public Charities

Complete Part VI-A only for an eligible organization that elected to be subject to the lobbying expenditure limitations of section 501(h) by filing Form 5768 and for which the election was valid and in effect for its tax year beginning in the year 2006. A public charity that makes a valid section 501(h) election may spend up to a certain percentage of its exempt purpose expenditures to influence legislation without incurring tax or losing its tax-exempt status.

**Expenditure test.** Under the expenditure test, there are limits both upon the amount of the organization's grassroots lobbying expenditures and upon the total amount of its direct lobbying and grassroots lobbying expenditures. If the electing public charity does not meet this expenditure test, it will owe a section 4911 excise tax on its excess lobbying expenditures. Moreover, if over a 4-year averaging period the organization's average annual total lobbying or grassroots lobbying expenditures are more than 150% of its dollar limits, the organization will lose its exempt status.

The following terms are used in Part VI-A. See Regulations section 56.4911 for details.

**Exempt purpose expenditures.** The amount an electing public charity may spend on lobbying (without incurring tax) is a scaled percentage of the organization's exempt purpose expenditures. In general, an expenditure is an exempt purpose expenditure if it is paid or incurred by an electing public charity to accomplish the organization's exempt purpose.

In general, exempt purpose expenditures are:

1. The total amount paid or incurred for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition (not including providing athletic facilities or equipment, other than by qualified amateur sports organizations described in section 501(j)(2)),
2. The allocable portion of administrative expenses paid or incurred for the above purposes,
3. Amounts paid or incurred to try to influence legislation, whether or not for the purposes described in 1 above,
4. Allowance for depreciation or amortization, and
5. Fundraising expenditures, except that exempt purpose expenditures do not include amounts paid to or incurred for either the organization's separate fundraising unit or other organizations, if the amounts are primarily for fundraising.

See also Regulations section 56.4911-4(c) for a discussion of excluded expenditures.

**Lobbying expenditures.** The term *lobbying expenditures* is expenditures paid or incurred for the purpose of attempting to influence legislation:

- Through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation, and
- By attempting to affect the opinions of the general public.

To determine if an organization has spent excessive amounts on lobbying, the organization must know which expenditures are lobbying expenditures and which are not lobbying expenditures. An electing public charity's lobbying expenditures for a year are the sum of its expenditures during that year for (1) direct lobbying communications (direct lobbying expenditures) plus (2) grassroots lobbying communications (grassroots expenditures).

**Direct lobbying communications (direct lobbying expenditures).** A direct lobbying communication is any attempt to influence any legislation through communication with any:

- Member or employee of a legislative body, or
- Government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation.

A communication with a legislator or government official will be treated as a direct lobbying communication, if, but only if, the communication:

- Refers to specific legislation, and
- Reflects a view on such legislation.

**Grassroots lobbying communications (grassroots expenditures).** A grassroots lobbying communication is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any part of the general public.

A communication is generally not a grassroots lobbying communication unless (in addition to referring to specific legislation and reflecting a view on that legislation) it encourages recipients to take action about the specific legislation.

A communication encourages a recipient to take action when it:

1. States that the recipient should contact legislators;
2. States a legislator's address, phone number, etc.;
3. Provides a petition, tear-off postcard, or similar material for the recipient to send to a legislator; or
4. Specifically identifies one or more legislators who:
  - a. Will vote on legislation;
  - b. Opposes the communication's view on the legislation;
  - c. Is undecided about the legislation;
  - d. Is the recipient's representative in the legislature; or
  - e. Is a member of the legislative committee that will consider the legislation.

A communication described in (4) above generally is grassroots lobbying only if, in addition to referring to and reflecting a view on specific legislation, it is a communication that cannot meet the full and fair exposition test as nonpartisan analysis, study, or research.

**Communication with members.** For purposes of section 4911, expenditures for certain communications between an organization and its members are treated more leniently than are communications to nonmembers. Expenditures for a communication that refers to, and reflects a view on, specific legislation are not lobbying expenditures if the communication satisfies the following requirements:

1. The communication is directed only to members of the organization,
2. The specific legislation the communication refers to, and reflects a view on, is of direct interest to the organization and its members,
3. The communication does not directly encourage the member to engage in direct lobbying (whether individually or through the organization), and
4. The communication does not directly encourage the member to engage in grassroots lobbying (whether individually or through the organization).

Expenditures for a communication directed only to members that refers to, and reflects a view on, specific legislation and that satisfies the requirements of paragraphs 1, 2, and 4, but does not satisfy the requirements of paragraph 3, are treated as expenditures for direct lobbying.

Expenditures for a communication directed only to members that refers to, and reflects a view on, specific legislation and satisfies the requirements of paragraphs 1 and 2, but does not satisfy the requirements of paragraph 4, are treated as grassroots expenditures, whether or not the communication satisfies the requirements of paragraph 3.

See Regulations section 56.4911-5 for details.

There are special rules regarding certain paid mass media advertisements about highly publicized legislation; allocation of mixed purpose expenditures; certain transfers treated as lobbying expenditures and special rules regarding lobbying on referenda, ballot initiatives, and similar procedures (see Regulations sections 56.4911-2 and -3).

**Legislation.** In general, the term *legislation* includes Acts, bills, resolutions, or similar items. *Specific legislation* includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes.

**Exceptions to the definitions of direct lobbying communication and/or grassroots lobbying communication.** In general, engaging in nonpartisan analysis, study, or research and making its results available to the general public or segment or members thereof, or to governmental bodies, officials, or employees is not considered either a direct lobbying communication or a grassroots lobbying communication. Nonpartisan analysis, study, or research may advocate a particular position or viewpoint as long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. A communication that responds to a governmental body's or committee's written request for technical advice is not a direct lobbying communication. A communication is not a direct lobbying communication if the communication is an appearance before, or communication with, any legislative body whose action might affect the organization's existence, its powers and duties, its tax-exempt status, or the deductibility of contributions to the organization, as opposed to affecting merely the scope of the organization's future activities.

**Affiliated groups.** Treat members of an affiliated group as a single organization to measure lobbying expenditures and permitted lobbying expenditures. Two organizations are affiliated if one is bound by the other organization's decisions on legislative issues (control) or if enough representatives of one belong to the other organization's governing board to cause or prevent action on legislative issues (interlocking directorate). If the organization is not sure whether its group is affiliated, it may ask the IRS for a ruling letter. There is a fee for this ruling. For Information on requesting rulings, see Rev. Proc. 2007-4, 2007-1 I.R.B. 118.

Members of an affiliated group measure both lobbying expenditures and permitted lobbying expenditures on the basis of the affiliated group's tax year. If all members of the affiliated group have the same tax year, that year is the tax year of the affiliated group. However, if the affiliated group's members have different tax years, the tax year of the affiliated group is the calendar year, unless all the members of the group elect otherwise. See Regulations section 56.4911-7(e)(3).

If the electing organization belongs to an affiliated group, complete in Part VI-A, lines 36 through 44:

- Column (a) for the affiliated group as a whole, and
- Column (b) for the electing member of the group.

If there are no excess lobbying expenditures on either line 43 or 44 of column (a), treat each electing member as having no excess lobbying expenditures. However, if there are excess lobbying expenditures on either line 43 or 44 of column (a), treat each electing member as having excess lobbying expenditures. In such case, each electing member must file Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code , and must pay the tax on its proportionate share of the affiliated group's excess lobbying expenditures. To find a member's proportionate share, see Regulations section 56.4911-8(d). Enter the proportionate share in column (b) on line 43 or line 44, or on both lines.

**Attached schedule.** Attach a schedule showing each affiliated group member's name, address, EIN, and expenses. Use the format of Part VI-A for this schedule. Show which members elected and which did not. Include each electing member's share of the excess lobbying expenditures on the attached schedule. Nonelecting members do not owe tax, but remain subject to the general rule, which provides that no substantial part of their activities may consist of carrying on propaganda or otherwise trying to influence legislation.

**Limited control.** If two organizations are affiliated because their governing instruments provide that the decisions of one will control the other only on national legislation, apply expenditures as follows:

- Charge the controlling organization with its own lobbying expenditures and the national legislation expenditures of the affiliated organizations.
- Do not charge the controlling organization with other lobbying expenditures (or other exempt-purpose expenditures) of the affiliated organizations, and
- Treat each local organization as though it were not a member of an affiliated group; for example, the local organization should account for its own expenditures only and not any of the national legislation expenditures deemed as incurred by the controlling organization.

When this type of limited control is present, each member of the affiliated group should complete column (b) only.

**Group returns.** Although membership in a group affiliated for lobbying does not establish eligibility to file a group return, a group return can sometimes meet the filing requirements of more than one member of an affiliated group. (*General Instruction R* of the Instructions for Form 990 and Form 990-EZ explains who may file a group return.) If a central or parent organization files a group return on behalf of two or more members of the group, complete column (a), Part VI-A, for the affiliated group as a whole. Include the central, electing, and nonelecting members. In column (b), except on lines 43 and 44, include the amounts that apply to all electing members of the group if they are included in the group return. Attach the schedule described above under *Affiliated groups*. Show what amounts apply to each group member. If the group return includes organizations that belong to more than one affiliated group, show in column (a) the totals for all such groups. On the attached schedule, show the amounts that apply to each affiliated group and to each group member. If the parent organization has made the lobbying expenditure election, its separate return must also show in column (a) the amounts that apply to the affiliated group as a whole and, in column (b), the amounts that apply to the parent organization only. A subordinate organization not included in the group return would also complete column (a) for the affiliated group as a whole and column (b) for itself only. However, if limited control (defined above) exists, complete only column (b) in Part VI-A of the group return for the electing members in the group. Attach a schedule to show the amounts that apply to each electing member. In the separate returns filed by the parent and by any subordinate organizations not included in the group return, complete only column (b).

**Lines 36 through 44.** Complete column (b) for any organization using Part VI-A but complete column (a) only for affiliated groups. Use lines 36 through 44 to determine whether any of the

organization's current year lobbying expenditures are subject to tax. File Form 4720 if the organization needs to report and pay the excise tax.

**Lines 45 through 50.** Lines 45 through 50 are used to determine if the organization exceeded lobbying expenditure limits during the 4-year averaging period. Any organization for which a lobbying expenditure election under section 501(h) was in effect for its tax year beginning in 2006 must complete columns (a) through (e) of lines 45 through 50 except in the following situations.

1. An organization first treated as a section 501(c)(3) organization in its tax year beginning in 2006 does not have to complete any part of lines 45 through 50.
2. An organization does not have to complete lines 45 through 50 for any period before it is first treated as a section 501(c)(3) organization.
3. If 2006 is the first year for which an organization's first section 501(h) election is effective, that organization must complete line 45, columns (a) and (e).

The organization must then complete all of column (e) to determine whether the amount on line 47, column (e), is equal to or less than the lobbying ceiling amount calculated on line 46 and whether the amount on line 50 is equal to or less than the grassroots ceiling amount calculated on line 49.

The organization does not satisfy both tests if either its total lobbying expenditures or grassroots lobbying expenditures exceed the applicable ceiling amounts. When this occurs, all five columns must be completed and a recomputation made unless exception 1 or 2 above applies.

4. If 2006 is the second or third tax year for which the organization's first section 501(h) election is in effect, that organization is required to complete only the columns for the years in which the election has been in effect, entering the totals for those years in column (e).

The organization must determine, for those 2 or 3 years, whether the amount entered in column (e), line 47, is equal to or less than the lobbying ceiling amount reported on line 46, and whether the amount entered in column (e), line 50, is equal to or less than the grassroots ceiling amount calculated on line 49.

The organization does not satisfy both tests if either its total lobbying expenditures or grassroots lobbying expenditures exceed applicable ceiling amounts. When that occurs, all five columns must be completed and a recomputation made, unless exception 1 or 2 above applies.

If the organization is not required to complete all five columns, attach a statement explaining why. In the statement, show the ending date of the tax year in which the organization made its first section 501(h) election and state whether or not that first election was revoked before the start of the organization's tax year that began in 2006.

**Note.** If the organization belongs to an affiliated group, enter the appropriate affiliated group totals from column (a), lines 36 through 44, when completing lines 45, 47, 48, and 50.

**Line 45. Lobbying nontaxable amount.** For 2003 through 2006, enter the amount from line 41 of the Schedule A (Form 990 or 990-EZ) filed for each year.

**Line 47. Total lobbying expenditures.** For 2003 through 2006, enter the amount from line 38 of the Schedule A (Form 990 or 990-EZ) filed for each year.

**Line 48. Grassroots nontaxable amount.** For 2003 through 2006, enter the amount from line 42 of the Schedule A (Form 990 or 990-EZ) filed for each year.

**Line 50. Grassroots lobbying expenditures.** For 2003 through 2006, enter the amount from line 36 of the Schedule A (Form 990 or 990-EZ) filed for each year.

## **Part VI-B. Lobbying Activity by Nonelecting Public Charities**

The Part VI-A instructions defining direct and grassroots lobbying activities by organizations that made the section 501(h) election do not apply to nonelecting organizations that complete Part VI-B.

Part VI-B provides a reporting format for any organization that engaged in lobbying activities in its 2006 tax year but did not make a section 501(h) lobbying expenditure election for that year by filing Form 5768.

A nonelecting public charity will generally be regarded as lobbying if the organization either: (1) contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation or the government's budget process; or (2) advocates the adoption or rejection of legislation.

Nonelecting organizations must complete Part VI-B to show lobbying expenditures paid or incurred.



In item g, direct contact is a personal telephone call or visit with legislators, their staffs, or government officials.

These nonelecting organizations must also attach a statement giving a detailed description of their lobbying activities. The detailed description of lobbying activities should include all lobbying activities, whether expenses are incurred or not (for example, even lobbying activities carried out by unreimbursed volunteers).

For example, the activities should be included in the attached statement if an organization (either through its employees or volunteers) attempts to influence legislation in any of the following ways:

- Sending letters or publications to government officials or legislators,
- Meeting with or calling government officials or legislators,
- Sending or distributing letters or publications (including newsletters, brochures, etc.) to members or to the general public, or
- Using direct mail, placing advertisements, issuing press releases, holding news conferences, or holding rallies or demonstrations.

