



Lobbying and Advocacy – Q & A

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 antipoverty 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, 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 2009 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 and encouraging others to do so.
 - An individual who becomes a member of the National Community Action Foundation (NCAF) should pay membership dues (\$ 5) out of personal funds.
 - 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.

IRS Form 990 Links:

IRS Form 990:

<http://www.irs.gov/pub/irs-pdf/f990.pdf>

Instructions to IRS Form 990:

<http://www.irs.gov/pub/irs-pdf/i990.pdf>

Schedule C to IRS Form 990:

<http://www.irs.gov/pub/irs-pdf/f990sc.pdf>

Instructions to Schedule C to IRS Form 990:

<http://www.irs.gov/pub/irs-pdf/i990sc.pdf>

APPENDIX A

Part IV Checklist of Required Schedules

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? <i>If "Yes," complete Schedule A</i>	1	
2 Is the organization required to complete Schedule B, Schedule of Contributors?	2	
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? <i>If "Yes," complete Schedule C, Part I</i>	3	
4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities? <i>If "Yes," complete Schedule C, Part II</i>	4	
5 Section 501(c)(4), 501(c)(5), and 501(c)(6) organizations. Is the organization subject to the section 6033(e) notice and reporting requirement and proxy tax? <i>If "Yes," complete Schedule C, Part III</i>	5	

Lobbying

Lobbying activities

See **lobbying activities**.

All activities intended to influence foreign, national, state or local **legislation**. Such activities include direct lobbying (attempting to influence the legislators) and grassroots lobbying (attempting to influence legislation by influencing the general public).

SCHEDULE C
(Form 990 or 990-EZ)

Political Campaign and Lobbying Activities

OMB No. 1545-0047

2010

Open to Public Inspection

For Organizations Exempt From Income Tax Under section 501(c) and section 527

▶ **Complete if the organization is described below.** ▶ **Attach to Form 990 or Form 990-EZ.**
▶ **See separate instructions.**

Department of the Treasury
Internal Revenue Service

If the organization answered "Yes," to Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46 (Political Campaign Activities), then

- Section 501(c)(3) organizations: Complete Parts I-A and B. Do not complete Part I-C.
- Section 501(c) (other than section 501(c)(3)) organizations: Complete Parts I-A and C below. Do not complete Part I-B.
- Section 527 organizations: Complete Part I-A only.

If the organization answered "Yes," to Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47 (Lobbying Activities), then

- Section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)): Complete Part II-A. Do not complete Part II-B.
- Section 501(c)(3) organizations that have NOT filed Form 5768 (election under section 501(h)): Complete Part II-B. Do not complete Part II-A.

If the organization answered "Yes," to Form 990, Part IV, line 5 (Proxy Tax) or Form 990-EZ, Part V, line 35a (Proxy Tax), then

- Section 501(c)(4), (5), or (6) organizations: Complete Part III.

Name of organization	Employer identification number
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Part I-A Complete if the organization is exempt under section 501(c) or is a section 527 organization.

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV.
- 2 Political expenditures ▶ \$
- 3 Volunteer hours ▶

Part I-B Complete if the organization is exempt under section 501(c)(3).

- 1 Enter the amount of any excise tax incurred by the organization under section 4955 ▶ \$
- 2 Enter the amount of any excise tax incurred by organization managers under section 4955 ▶ \$
- 3 If the organization incurred a section 4955 tax, did it file Form 4720 for this year? Yes No
- 4a Was a correction made? Yes No
- b If "Yes," describe in Part IV.

Part I-C Complete if the organization is exempt under section 501(c), except section 501(c)(3).

- 1 Enter the amount directly expended by the filing organization for section 527 exempt function activities ▶ \$
- 2 Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities ▶ \$
- 3 Total exempt function expenditures. Add lines 1 and 2. Enter here and on Form 1120-POL, line 17b ▶ \$
- 4 Did the filing organization file **Form 1120-POL** for this year? Yes No
- 5 Enter the names, addresses and employer identification number (EIN) of all section 527 political organizations to which the filing organization made payments. For each organization listed, enter the amount paid from the filing organization's funds. Also enter the amount of political contributions received that were promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, provide information in Part IV.

(a) Name	(b) Address	(c) EIN	(d) Amount paid from filing organization's funds. If none, enter -0-.	(e) Amount of political contributions received and promptly and directly delivered to a separate political organization. If none, enter -0-.
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				

Part II-A Complete if the organization is exempt under section 501(c)(3) and filed Form 5768 (election under section 501(h)).

- A** Check if the filing organization belongs to an affiliated group.
B Check if the filing organization checked box A and "limited control" provisions apply.

Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred.)		(a) Filing organization's totals	(b) Affiliated group totals												
1a	Total lobbying expenditures to influence public opinion (grass roots lobbying)														
b	Total lobbying expenditures to influence a legislative body (direct lobbying)														
c	Total lobbying expenditures (add lines 1a and 1b)														
d	Other exempt purpose expenditures														
e	Total exempt purpose expenditures (add lines 1c and 1d)														
f	Lobbying nontaxable amount. Enter the amount from the following table in both columns.														
<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">If the amount on line 1e, column (a) or (b) is:</th> <th style="text-align: left;">The lobbying nontaxable amount is:</th> </tr> </thead> <tbody> <tr> <td>Not over \$500,000</td> <td>20% of the amount on line 1e.</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 15% of the excess over \$500,000.</td> </tr> <tr> <td>Over \$1,000,000 but not over \$1,500,000</td> <td>\$175,000 plus 10% of the excess over \$1,000,000.</td> </tr> <tr> <td>Over \$1,500,000 but not over \$17,000,000</td> <td>\$225,000 plus 5% of the excess over \$1,500,000.</td> </tr> <tr> <td>Over \$17,000,000</td> <td>\$1,000,000.</td> </tr> </tbody> </table>		If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:	Not over \$500,000	20% of the amount on line 1e.	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.		
If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:														
Not over \$500,000	20% of the amount on line 1e.														
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.														
g	Grassroots nontaxable amount (enter 25% of line 1f)														
h	Subtract line 1g from line 1a. If zero or less, enter -0-														
i	Subtract line 1f from line 1c. If zero or less, enter -0-														
j	If there is an amount other than zero on either line 1h or line 1i, did the organization file Form 4720 reporting section 4911 tax for this year?		<input type="checkbox"/> Yes <input type="checkbox"/> No												

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 2a through 2f on page 4.)

Lobbying Expenditures During 4-Year Averaging Period					
Calendar year (or fiscal year beginning in)	(a) 2007	(b) 2008	(c) 2009	(d) 2010	(e) Total
2a	Lobbying nontaxable amount				
b	Lobbying ceiling amount (150% of line 2a, column (e))				
c	Total lobbying expenditures				
d	Grassroots nontaxable amount				
e	Grassroots ceiling amount (150% of line 2d, column (e))				
f	Grassroots lobbying expenditures				

Part II-B Complete if the organization is exempt under section 501(c)(3) and has NOT filed Form 5768 (election under section 501(h)).

	(a)		(b)
	Yes	No	Amount
1 During the year, did the filing organization attempt to influence foreign, 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 1c through 1i)?			
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 similar means?			
i Other activities? If "Yes," describe in Part IV			
j Total. Add lines 1c through 1i			
2a Did the activities in line 1 cause the organization to be not described in section 501(c)(3)?			
b If "Yes," enter the amount of any tax incurred under section 4912			
c If "Yes," enter the amount of any tax incurred by organization managers under section 4912			
d If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year?			

Part III-A Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6).

	Yes	No
1 Were substantially all (90% or more) dues received nondeductible by members?	1	
2 Did the organization make only in-house lobbying expenditures of \$2,000 or less?	2	
3 Did the organization agree to carryover lobbying and political expenditures from the prior year?	3	

Part III-B Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6) if BOTH Part III-A, lines 1 and 2 are answered "No" OR if Part III-A, line 3 is answered "Yes."

1 Dues, assessments and similar amounts from members	1	
2 Section 162(e) nondeductible lobbying and political expenditures (do not include amounts of political expenses for which the section 527(f) tax was paid).		
a Current year	2a	
b Carryover from last year	2b	
c Total	2c	
3 Aggregate amount reported in section 6033(e)(1)(A) notices of nondeductible section 162(e) dues	3	
4 If notices were sent and the amount on line 2c exceeds the amount on line 3, what portion of the excess does the organization agree to carryover to the reasonable estimate of nondeductible lobbying and political expenditure next year?	4	
5 Taxable amount of lobbying and political expenditures (see instructions)	5	

Part IV Supplemental Information

Complete this part to provide the descriptions required for Part I-A, line 1; Part I-B, line 4; Part I-C, line 5; and Part II-B, line 1i. Also, complete this part for any additional information.
