

## Make Your Voice Heard: Lobbying and Advocacy

Part One of the CAPLAW webinar series *Changing the Game: How CAAs can engage in politics, advocacy, and lobbying*

April 4th, 2017  
Christopher Logue, Esq.  
Eleanor Evans, Esq.

**CAPLAW**  
Center for Access to Public Legal Resources, Inc.

Link to presentation:  
<http://bit.ly/caplawlobbyingwebinar>

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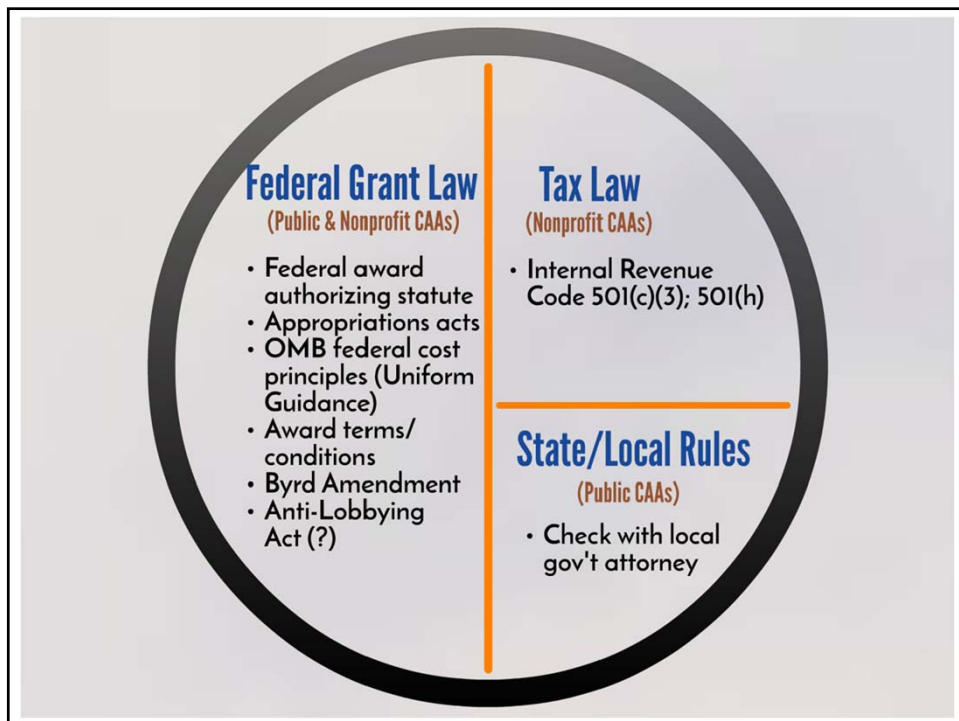
## Webinar Goals

- To discuss and understand **the rules** governing CAA lobbying and advocacy
- To explain how CAAs can **lobby** while staying within the law

## Lobbying vs. Political (Campaign) Activity



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## Federal Grant Law Restrictions on Lobbying

### Uniform Guidance

- Cost must be necessary and reasonable for the performance of the federal award
- For nonprofit CAAs, legislative lobbying costs are generally unallowable (2 C.F.R. § 200.450)

### Federal Appropriations Acts (certain agencies including HHS)

- Cannot use federal funds to lobby on any legislation, appropriations, regulations, administrative action, or Executive Orders, **except** federal regulations and federal administrative actions

## Federal Grant Law Restrictions on Lobbying

(Public & Nonprofit CAAs)

### Byrd Amendment

- Cannot use federal funds to influence federal employees in **making federal awards**

### Anti-Lobbying Act

- Application to grantees is not clear
- Restricts activities not covered by other federal grant laws, including influencing "**policy**," at **any level of government** (federal, state, or local).
- Safest and most flexible approach is to use non-federal unrestricted funds and/or volunteer time to attempt to influence legislation, law, ratification, policy, or appropriation at any level of government.

## Tax Law Restrictions on Lobbying

(Nonprofit CAAs)

### IRC 501(c)(3)

- Lobbying cannot be a **substantial** part of 501(c)(3) organization's activities
  - Two alternative ways to measure "substantial": "substantial part test" and "expenditure test" (section 501(h) election)
- BOTH tests:
  - Must report on **Form 990**
  - Keep track of **money** spent on lobbying
- **Violation** may result in:
  - Loss of tax exemption
  - Excise tax on organization and its managers

## Tax Law Restrictions on Lobbying

### IRC 501(c)(3)

- **Substantial part test** (default test)
  - Facts and circumstances analysis
  - **Volunteer lobbying** counted (time/expenses)
  - Must provide detailed description of activities on Form 990
- **Expenditure test**
  - Must file 501(h) election with IRS - **Form 5768**
  - Specific definitions of "lobbying" and **dollar limits** (% of organization's total exempt purpose expenditures)
  - No limit on lobbying activities that **do not incur expenses** (e.g., unreimbursed lobbying expenses of volunteers)
  - Must report lobbying expenses on Form 990



## Rules of Thumb

- Do not use federal funds to lobby
- Nonprofit CAAs CAN use unrestricted funds to conduct a limited amount of lobbying
  - Must report to IRS on lobbying activities
  - Can conduct certain types of education and advocacy without reporting to IRS (unlimited)
- Public CAAs should check state and local rules re: lobbying

## Questions

### Question 1

Can Head Start staff members pass our a flier to Head Start parents explaining how proposed federal budget cuts will hurt Head Start families?

### Question 2

A Congressman wants to visit one of our Head Start centers to meet with staff and parents. Is it OK for staff and parents to talk about the impact of Head Start and why they think it's an important program?

### Question 3

Can a Weatherization (WAP) director email our state senator about signing on to a state budget proposal to increase state spending on energy efficiency measures?

### ...More on Q. 3

Is it OK if the WAP director sent that email on her own time and using her personal email, is it OK for her to identify herself as the CAA's state director who works at the CAA?  
 No! Can the WAP director send the e-mail on her own time using her CAA signature block, or using her CAA work e-mail address?  
 No! Can the WAP director ask weatherization clients to call their elected officials in support/opposition to the proposed measure?

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## Question 2

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## Question 3

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## ...More on Q. 3

3a) If the WAP director sent the e-mail on her own time and using her personal email, is it OK for her to identify herself as the CAA's WAP director who works at the CAA?

3b) Can the WAP director send the e-mail (on her own time) using her CAA signature block, or using her CAA work e-mail address?

3c) Can the WAP director ask weatherization clients to call their elected officials in support/opposition to the proposed measures?

## Question 4

We would like to participate in Days on the Hill events that take place at the state house during working hours. Can our Head Start staff members go to a hearing where hundreds of early education staff are advocating for an increase in salaries of childcare workers?

**Uniform Guidance: For Nonprofits, Costs Associated with the Following Lobbying Activities are Unallowable** [2 CFR 200.450(a), (b), and (c)(1)]

- Influencing **introduction** of federal or state legislation
- Influencing **enactment or modification** of federal/state legislation by communicating with **legislator**
- Influencing **enactment or modification** of federal/state legislation by preparing/distributing pamphlets or by **urging public to participate** in lobbying, rallies, fundraising
- Attending/participating in **legislative sessions or committee hearings**, gathering information about legislation, or **analyzing the effect of legislation**, all when done to support or prepare for unallowable lobbying

## ...More on Q. 4

If only a few staff members testify at the hearing (others just show up wearing buttons supporting HS), do we treat the staff members who speak differently from those who just show up?



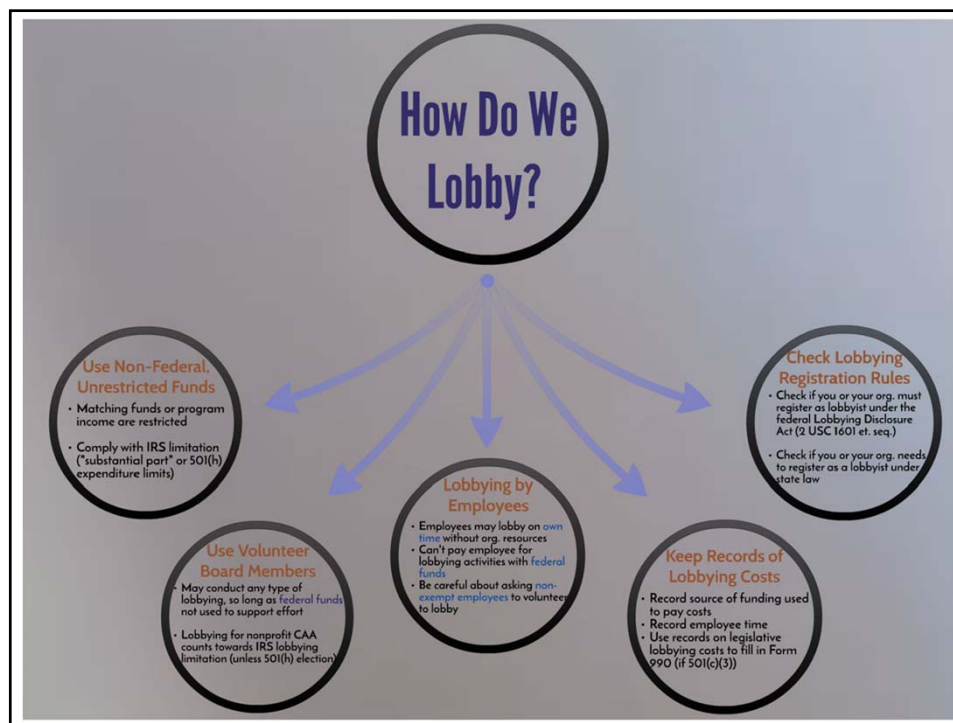
## Question 5

What if staff members accompany parents to a Day on the Hill event, and the parents testify at the hearing but the staff member is there just for moral support?

## Question 6

Our state senator is working on the upcoming budget, and has invited our organization to provide her with draft budget numbers. She hasn't promised that she'll use our numbers, but we think this will be a good way of educating the senator on the importance of the work our CAA does. Can we do this?

# Lobbying Attempting to influence the introduction, enactment, or modification of **legislation (including appropriations), referenda, ballot initiatives [and regulations, administrative actions, or executive orders]\*** *\*Note: Included in the definition of lobbying pursuant to certain federal appropriations acts*



## Use Non-Federal, Unrestricted Funds

- Matching funds or program income are restricted
- Comply with IRS limitation ("substantial part" or 501(h) expenditure limits)

## Use Volunteer Board Members

- May conduct any type of lobbying, so long as federal funds not used to support effort
- Lobbying for nonprofit CAA counts towards IRS lobbying limitation (unless 501(h) election)

## Lobbying by Employees

- Employees may lobby on **own time** without org. resources
- Can't pay employee for lobbying activities with **federal funds**
- Be careful about asking **non-exempt employees** to volunteer to lobby

## Keep Records of Lobbying Costs

- Record source of funding used to pay costs
- Record employee time
- Use records on legislative lobbying costs to fill in Form 990 (if 501(c)(3))

## Check Lobbying Registration Rules

- Check if you or your org. must register as lobbyist under the federal Lobbying Disclosure Act (2 USC 1601 et. seq.)
- Check if you or your org. needs to register as a lobbyist under state law

## Additional Resources

- Alliance for Justice Tools for Effective Advocacy  
<http://bolderadvocacy.org/tools-for-effective-advocacy>
  - Blog: <http://www.bolderadvocacy.org/blog>
  - "Administrative Advocacy: Influencing Rules, Regulations, and Executive Orders"
- IRS lobbying information  
<http://www.irs.gov/Charities-&-Non-Profits/Lobbying>

This training is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement - Grant Award Number 90ET0441-03. Any opinion, findings, and conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families



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The crystal ball contains a diagram illustrating the lobbying process. At the center is a circle labeled 'Lobbying and Political Activity' with a colorful, abstract image. Surrounding this central circle are four smaller circles, each labeled 'Questions' and containing a list of questions. Arrows point from the central circle to each of the four surrounding circles, indicating a flow of information or a cycle of inquiry.