

Using the Internet for Lobbying and Other Political Activities¹

Part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations.

Purpose

- To provide a tool for nonprofits to analyze their use of the Internet in regards to advocacy
- To help nonprofit managers, who have elected the "expenditure test" under section 501(h) of the IRS code, determine the difference between Grassroots and Direct Lobbying Expenditures
- To encourage nonprofits to use technology to legally and effectively advocate for their missions

Background

Access to the Internet is expanding, giving voice to many who were previously excluded from the public policy debate either because they lacked the resources to participate or because they were geographically dispersed. Nonprofits are using the Internet's power to enhance their legislative advocacy, ballot measure campaigns, voter education, voter participation, and electoral advocacy, as well as to help build their organizations through membership development and fundraising.

However, neither the Internal Revenue Service (IRS) nor the Federal Election Commission (FEC) has issued much guidance for nonprofits using the Internet for political advocacy. It is strongly recommended that organizations that intend to engage in extensive legislative and/or electoral advocacy on the Internet seek the advice of a lawyer.

Generally, the rules surrounding advocacy and lobbying should be treated no differently when distributed through a web site, listserv, or email than through traditional written forms of lobbying and advocacy. It cannot be stressed enough that your organization should be very familiar with federal and state laws surrounding tax-exempt organizations and lobbying. See the MANP papers entitled "Maine Lobbying Law" and "Federal Lobbying Rules and Regulations" for more information.

E-Mail

Grassroots and Direct Lobbying

Sending allowed electoral communications and legislative advocacy to members via email is considered direct lobbying. However, email messages sent to nonmembers are considered grassroots lobbying.

¹ This guide is intended for 501(c)(3) organizations that elect 501(h) or the expenditure test with the IRS.

Tracking E-mail Activities

It is important to calculate the amount of email use involving lobbying and/or electoral expenditures as a percentage of overall email use.

Listservs

Grassroots and Direct Lobbying

If the list is open to all, your organization must treat legislative advocacy or electoral communication on a listserv as communication to the general public, and therefore count it toward your organization's grassroots lobbying expenditures.

Listservs usually allow subscribers to post their own messages to the list. Your organization will need to consider whether messages posted by others will result in a lobbying expenditure for the organization. Currently, the law is not settled in this area. One way of ensuring an expenditure is not made is to designate a listserv manager who screens messages and does not distribute those that include advocacy. This will make the organization totally aware of any advocacy that appears on the list.

Tracking Listserv Activities

Your organization can track the total number and length of messages posted. Costs can be calculated by allocating the lobbying and electoral messages as a percentage of the listserv's overall traffic. Consider archiving all messages so that your organization is able to document your activities in case an IRS audit takes place.

Websites

Grassroots v. Direct Lobbying

Generally, information posted on your organization's web page should be considered communication with the general public; therefore advocacy content is considered grassroots lobbying.

If this content is housed in a member-only, password-protected area of your site, these communications are considered direct lobbying by the IRS code

Since the Federal Election Commission has determined that there is no way to limit access to an entire website, a member-only section won't necessarily shelter exposure to grassroots lobbying expenditures through references in public areas of a website.

"Call to Action" Link

If your website urges readers to contact their elected officials to influence legislation, or if you provide a web link connecting viewers directly to their legislator's sites or email addresses, your organization should consider the following:

- These links are counted as grassroots lobbying if they are accessible to the general public, and direct lobbying if they are only accessible to your organization's members.
- If your web site contains a navigation bar that allows visitors to jump directly to sections that contain a "call to action" web link, any discussion of legislative issues should be considered grassroots lobbying.

Tracking Web Activities

Due to the fact the content of a website changes frequently, your organization should have some sort of system for recording the contents of the site at any given point in time to provide evidence of your on-line activities.

Your organization should track the number of visitors to the site, as well as gather more detailed information about the various web pages viewed by particular visitors. This information is helpful when determining the expenditures that must be calculated as grassroots and/or direct lobbying. Alternately, your organization may choose to calculate the number or pages that include lobbying or electoral advocacy as a percentage of the total number of pages on your organization's site. If your organization chooses to use a consultant to maintain your website, those fees should count toward your overall lobbying expenditures. If your organization uses a website to lobby, you must report a portion of the cost of creating and operating the site as a lobbying expenditure. Because the IRS has provided no guidelines in this area, a basic rule of thumb is that allocation methods should represent a good-faith attempt to reflect costs, and should be consistently applied. Equipment used in relation to online advocacy should be capitalized and depreciated over time.

Chat areas on your website are subject to the same regulatory guidelines as listservs.

Related Organizations and Their Websites

If related 501(c)(3)s and 501(c)(4)s decide to share a single web site, they should construct it carefully to maximize their lobbying potential. The 501(c)(4) should pay for any lobbying portions of the site. Any material relating to 501(c)(4) political or PAC activity should be clearly separated from the 501(c)(3) portion of the web site. No 501(c)(3) page of the site should contain a direct link to pages containing political communication.