

**Lutheran Services in America
2008 Annual Conference**

**Federal Laws and
Regulations on
Charity Lobbying**



1742 Connecticut Ave., N.W., Washington, D.C. 20009

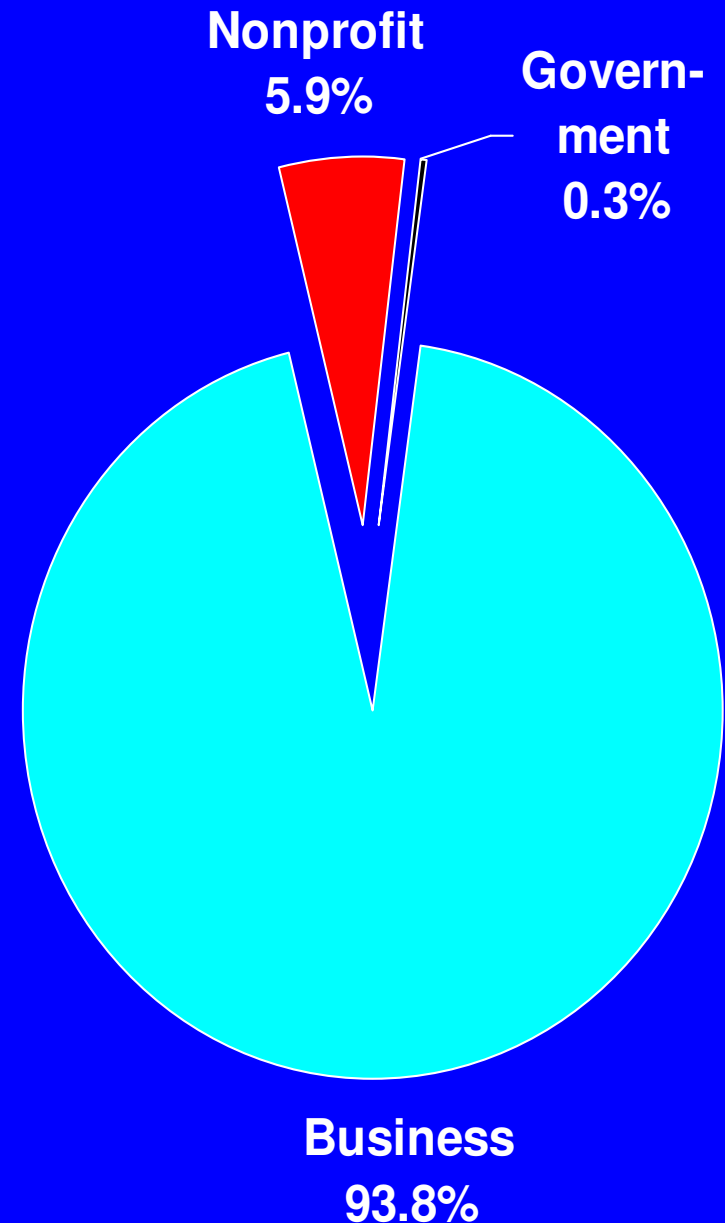
Tel: (202) 234-8494 Fax: (202) 234-8584

Web: www.ombwatch.org

Email: ombwatch@ombwatch.org

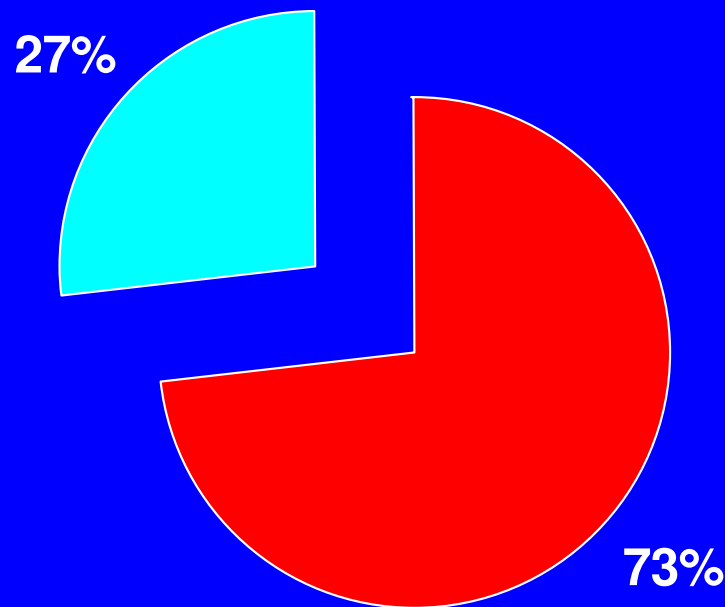
There are many types of nonprofit organizations in the United States

- There are more than 1.6 million nonprofits (roughly 6% of all organizations in the US)
- Most of these – roughly 1.1 million – are “charities” under 501(c)(3) of the tax code (this includes religious congregations)
- Other nonprofits include trade associations, unions, social welfare groups



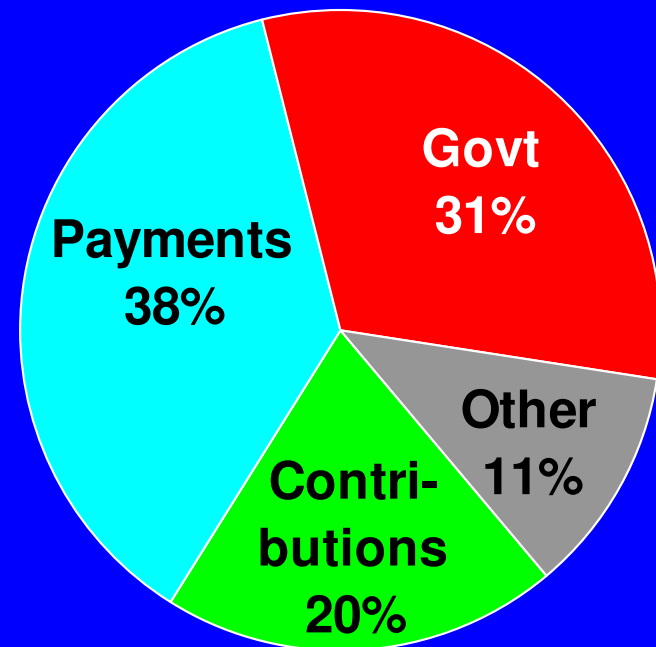
Three-fourths of charities have expenses below \$500,000; roughly one-third of revenue comes from government

Expenses Below \$500,000



■ < \$500K ■ \$500K or more

Revenue by Source



Advocacy Restrictions: Two Mechanisms

Tax Code

- Provides limits on the amount of lobbying
- Noncompliance can be loss of tax exemption or fines

Federal Grant Rules

- Cannot use federal funds to lobby
- Fines and possible loss of grants
- No implication for tax status

TAX CODE

Only 501(c)(3) organizations (also called “charities”) that are not congregations have limits on amount of lobbying

- Social welfare groups, trade associations, unions, and religious congregations have no limits on lobbying.
- Limits on charity related to tax deductibility of contributions. Example: if you give OMB Watch a contribution, you may take an itemized tax deduction.
- Charities may not engage in electioneering – that is, opposing or supporting a candidate for elected office.

What do I need to know to follow the IRS rules for lobbying by 501(c)(3)s?

- Choice between two sets of rules to follow...
 - the *substantial part test* or
 - the *expenditure test*, also known as the *501(h) election*
- One set of rules is generally preferable for most charities – the expenditure test.
- If a charity does not elect the expenditure test, it is subject to the substantial part test.

What Is the “Substantial Part” Test?

- Lobbying cannot be a substantial part of a charity’s activities.
- If it is, the charity is subject to losing its tax exemption and with it the right to receive tax deductible contributions.

What Is the Expenditure Test?

- The expenditure test rules provide clear and liberal ceilings for lobbying **expenditures** and clear **definitions** of what is and is not lobbying.
- Frequently known as the 501(h) or “H” election, the expenditure test did not replace the older substantial part test but is an alternative to it.

The Choice: Substantial Part vs. Expenditure Test

Substantial Part Test

- **No certain and definitely allowable amounts of lobbying expenditures**
- **One year violation may result in the loss of tax-exempt status**
- **Additional reporting burden on tax form 990**

Expenditure Test

- **Clear lobbying definitions**
- **Definitely allowable amount of lobbying expenditures**
- **Exceptions to what activities constitute lobbying**
- **No jeopardy to tax-exempt status for one year violation**
- **Less reporting burden than substantial part test**

How does one elect to be covered by the expenditure test?

www.irs.gov/pub/irs-pdf/f5768.pdf

Form 5768 (Rev. December 2004) Department of the Treasury Internal Revenue Service	Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation (Under Section 501(h) of the Internal Revenue Code)	For IRS Use Only ▶
Name of organization	Employer identification number	
Number and street (or P.O. box no., if mail is not delivered to street address)	Room/suite	
City, town or post office, and state	ZIP + 4	
<p>1 Election—As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year endingand all subsequent tax years until revoked. (Month, day, and year)</p> <p>Note: <i>This election must be signed and postmarked within the first taxable year to which it applies.</i></p> <p>2 Revocation—As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending (Month, day, and year)</p> <p>Note: <i>This revocation must be signed and postmarked before the first day of the tax year to which it applies.</i></p> <p>Under penalties of perjury, I declare that I am authorized to make this (check applicable box) ▶ <input type="checkbox"/> election <input type="checkbox"/> revocation on behalf of the above named organization.</p> <p>..... (Signature of officer or trustee) (Type or print name and title) (Date)</p>		

General Instructions

Section references are to the Internal Revenue Code.

Section 501(c)(3) states that an organization exempt under that section will lose its tax-exempt status and its qualification to receive deductible charitable contributions if a substantial part of its activities are carried on to influence legislation. Section 501(h), however, permits certain eligible 501(c)(3) organizations to elect to make limited expenditures to influence legislation. An organization making the election will, however, be subject to an excise tax under section 4911 if it spends more than the amounts permitted by that section. Also, the organization may lose its exempt status if its lobbying expenditures exceed the permitted amounts by more than 50% over a 4-year period. For any tax year in which an election under section 501(h) is in effect, an electing organization must report the actual and permitted amounts of its lobbying expenditures and grass roots expenditures (as defined in section 4911(c)) on its annual return required under section 6033. See Schedule A (Form 990 or Form 990-EZ). Each electing member of an affiliated group must report these amounts for both itself and the affiliated group as a whole.

To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in item **1** or **2**, as applicable, and sign and date the form in the spaces provided.

Eligible Organizations.—A section 501(c)(3) organization is permitted to make the election if it is not a disqualified organization (see below) and is described in:

1. Section 170(b)(1)(A)(ii) (relating to educational institutions),
2. Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),
3. Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),
4. Section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),
5. Section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or
6. Section 509(a)(3) (relating to organizations supporting certain types of public charities other than those section 509(a)(3) organizations that support section 501(c)(4), (5), or (6) organizations).

Disqualified Organizations.—The following types of organizations are not permitted to make the election:

- a. Section 170(b)(1)(A)(i) organizations (relating to churches),

- b. An integrated auxiliary of a church or of a convention or association of churches, or

- c. A member of an affiliated group of organizations if one or more members of such group is described in **a** or **b** of this paragraph.

Affiliated Organizations.—Organizations are members of an affiliated group of organizations only if **(1)** the governing instrument of one such organization requires it to be bound by the decisions of the other organization on legislative issues, or **(2)** the governing board of one such organization includes persons (i) who are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and (ii) who, by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

For more details, see section 4911 and section 501(h).

Note: *A private foundation (including a private operating foundation) is not an eligible organization.*

Where To File.—Mail Form 5768 to the Internal Revenue Service Center, Ogden, UT 84201-0027.

What is Direct Lobbying?

When an organization attempts to influence specific legislation by stating a position to a legislator or other government employee who participates in the formulation of legislation

What is Grassroots Lobbying?

When an organization urges the public to take action on specific legislation.

To be grassroots lobbying, the communication must:

- Refer to specific legislation;**
- Reflect a point of view; and**
- Carry a call to action which provides information about contacting legislators**

Lobbying Exemptions

- **Nonpartisan analysis, study or research**
- **Providing technical assistance, such as testimony, in response to a written request**
- **Self-defense lobbying**
- **Influencing executive branch actions**
- **Discussion of broad social, economic and similar policy issues**

Lobby Ceilings Under 1976 Lobby Law

Exempt Purpose Expenditures	Allowable Lobbying Expenditures	Allowable Grassroots Lobbying
Up to \$500,000	20%	25% of Direct
\$500,000 - \$1 million	\$100,000 + 15% of excess over \$500,000	\$25,000 + 3.75% of excess over \$500,000
\$1 mil - \$1.5 mil	\$175,000 + 10% of excess over \$1 million	\$43,750 + 2.5% of excess over \$1 million
\$1.5 mill - \$17 mil	\$225,000 + 5% of excess over \$1.5 mil	\$56,250 + 1.25% of excess over \$1.5 mil
Over \$17 mil	\$1 million	\$250,000

Calculating Permissible Lobbying Expenditures: An Example

Exempt Purpose Expenditures	Permissible Lobbying Amount	Grassroots Lobbying Amount
\$1.2 million	\$195,000	\$48,750 (25% of overall lobbying)

The Calculation

For \$1 million in exempt purpose expenditures, the maximum lobbying amount is \$175,000.

Now take 10 percent of the amount above \$1 million – in this case, \$200,000 – which is \$20,000.

Add \$20,000 to the \$175,000 for a total lobbying ceiling of \$195,000.

One-quarter of this amount – \$48,750 – can be spent on grassroots lobbying.

GRANT RULES

Federal Grantees Cannot Use Federal Funds Either Directly or Indirectly to Lobby or Electioneer

Key Policies

- Anti-Lobbying Act (18 USC § 1913)
- Appropriations Riders
- OMB Circular A-122, Cost Principles for Non-Profit Organizations

Cost Principles

Nonprofits	Circular A-122
Higher Education	Circular A-21
Hospitals	45 CFR 74

Audits Ensure Nonprofits Comply with Cost Principles

SEE

Circular A-133, Audits of States, Local
Governments, and Non-Profit
Organizations

Federal Grant Rules that Nonprofits Need to Follow

(for nonprofits receiving federal grants)

Type of recipient	Name of Document	Title and Federal Register Citations
Cost Principles		
Nonprofit orgs (except those listed below)	OMB Circular A-122 (Attachment C excludes some organizations)	Cost Principles for Nonprofit Organizations http://www.whitehouse.gov/omb/circulars/a122/a122_2004.html
Institutions of higher education	OMB Circular A-21	Cost Principles for Educational Institutions http://www.whitehouse.gov/omb/circulars/a021/a021.html
Hospitals & health institutions	45 CFR 74	Principles for Determining Costs Applicable to R&D under Grants and Contracts with Hospitals http://rates.psc.gov/fms/dca/cfr45pt74.html
State, local, & Indian tribal governments	OMB Circular A-87	Cost Principles for State, Local, and Indian Tribal Governments http://www.whitehouse.gov/omb/circulars/a087/toc.html
General Requirements		
State, local, & Indian tribal governments, nonprofit orgs	Each agency regulations	Grants Management Common Rule http://www.whitehouse.gov/omb/grants/chart.html
Higher educ. institutions, hospitals, other nonprofit organizations	OMB Circular A-110 (being replaced by agency rules)	Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations http://www.whitehouse.gov/omb/circulars/a110/a110.html
State, local, & Indian tribal governments	OMB Circular A-102 (being replaced by agency rules)	Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments. http://www.whitehouse.gov/omb/circulars/a102/a102.html
Audit		
State, local, & Indian tribal governments, nonprofit organizations	OMB Circular A-133	Audits of States, Local Governments, and Non-Profit Organizations. http://www.whitehouse.gov/omb/circulars/a133/a133.html A-133 Compliance Supplement (annual) http://www.whitehouse.gov/omb/circulars/a133_compliance/07/07to_c.html (March 2007)

A-122 Lobby Restrictions

Can't Use Federal Funds to:

- Influence federal, state, or local elections, referendum, or initiatives.
- Assist a political party, campaign, PAC, or other entity that is established to influence election outcomes.
- Attempt to influence federal or state legislation either directly or indirectly.
- Engage in “legislative liaison” activities (e.g., attend legislative hearings) when in support of lobbying activities.

Exceptions to A-122 Lobby Restrictions:

- Documented requests from a legislative body on topics related to the performance of the grant so long as the information is readily obtainable and deliverable.
- Direct lobbying at the state level to reduce the cost of the grant or to avoid material impairment to perform the grant.
- Any activity specifically authorized by statute to be undertaken with the grant.

A Bit of History: Attacks on Nonprofit Advocacy

- 1983: Modification of OMB Circular A-122 based on Heritage Foundation's "defund the left" agenda to limit use of private funds of federal grantees
- 1995: Reps. Istook, McIntosh & Ehrlich appropriations riders to restrict use of private funds of federal grantees.
- Ongoing: Riders applying to specific programs (e.g., Legal Services Corporation, Affordable Housing Fund).

Helpful Resources

- Center for Lobbying in the Public Interest

<http://www.clpi.org>

- Alliance for Justice

<http://www.afj.org/nonprofit/>

- OMB Watch

<http://www.ombwatch.org>

<http://www.npaction.org>