

# advocacy resource

## **KEEPING TRACK**

A Guide to Recordkeeping  
for Advocacy Charities

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# ABOUT ALLIANCE FOR JUSTICE

Alliance for Justice is a national association of more than 100 organizations dedicated to advancing justice and democracy. For over 30 years we have been leaders in the fight for a more equitable society on behalf of a broad constituency of environmental, consumer, civil and women's rights, children's, senior citizens' and other groups. Alliance for Justice is premised on the belief that all Americans have the right to secure justice in the courts and to have our voice heard when government makes decisions that affect our lives.

Alliance for Justice is the leading expert on the legal framework for nonprofit advocacy efforts, providing definitive information, resources, and technical assistance that encourages organizations and their funding partners to fully exercise their right to be active participants in the democratic process. AFJ is based in Washington, D.C., with a satellite office in Oakland, California. Additional information can be found at [www.afj.org](http://www.afj.org).

*Keeping Track: A Guide to Recordkeeping for Advocacy Charities*, is designed to provide guidance to 501(c)(3) public charities on how to prepare and maintain lobbying records for the Internal Revenue Service. It does not offer legal advice. Instead, this guide details basic IRS recordkeeping requirements for complying with tax law and offers a variety of systems a public charity may use to comply with these requirements.

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# RECORDKEEPING: THE LEAST APPRECIATED MOST IMPORTANT THING

*“I wanted to make the world a better place, so I really got serious about my organization’s accounting systems.”*

This is probably not something that most people who run nonprofits engaged in lobbying and other public policy work are ever going to say. People who start and run charities are driven to heal the sick, strive against injustice, feed the hungry, educate our children, protect the planet, support great art...not become bookkeepers.

But these nonprofit advocates also don’t want to spend the time and money it takes to fix the problems that bad recordkeeping can cause. They don’t want to take time off from pursuing their mission so they can attempt to recreate three years of missing lobbying records in response to an Internal Revenue Service (IRS) audit. They don’t want to pay thousands of dollars in penalties to the government (and more to the lawyers defending their organizations) because their nonprofits have exceeded their lobbying limits. And they certainly don’t want to see their organizations stripped of their tax-exempt status, forcing the individuals operating the organization to start over from scratch (or just shut everything down entirely) simply because they did not take their recordkeeping seriously.

This guide is designed to help the staff, officers, and board members of 501(c)(3) public charities that engage in lobbying understand how to prepare and maintain the records that are required to comply with federal tax law—the Internal Revenue Code (“the Code”)—by tracking their lobbying activities and reporting those activities to the IRS.<sup>1</sup> This is not a comprehensive guide to the law governing lobbying by charities. (That can be found in Alliance for Justice’s publication *Being a Player – A Guide to the IRS Lobbying Regulations for Advocacy Charities*.) Likewise, this is not a general guide to bookkeeping for nonprofit organizations. (Many such guides exist; check with peer organizations, a reputable accountant, or your state association of nonprofit organizations for suggestions.) Nor, in general, does this publication address recordkeeping for affiliated organizations. (For a detailed guide regarding those groups, please see Alliance for Justice’s *The Connection: Strategies for Creating and Operating 501(c)(3)s, 501(c)(4)s, and Political Organizations*. In addition, one of the sample timesheets offered in the appendices (Appendix C) is designed for a 501(c)(3) with a related 501(c)(4).

There is no perfect recordkeeping system, nor does the Code or IRS mandate a particular system. Different organizations will have different recordkeeping systems based on their size, needs, capabilities, and activities. An organization should design a system that is: flexible enough to satisfy the IRS as well as other federal and state reporting requirements; not overly

## OTHER LOBBYING REPORTING

It is not only federal tax law that requires organizations to report their lobbying. The federal Lobbying Disclosure Act and similar disclosure laws at the state and sometimes even local level require both nonprofit and for-profit lobbyists to register and file regular reports of their lobbying activities. Unlike the Code’s restrictions on 501(c)(3)s, however, none of these other laws restrict the amount of lobbying an organization may do. To complicate matters, each of these laws has different registration and reporting requirements and each uses a slightly different definition of reportable “lobbying.” (For more information about the federal Lobbying Disclosure Act, see the forthcoming Alliance for Justice publication, *The Lobbying Disclosure Act: A Guide for Section 501(c)(3) and 501(c)(4) Organizations*.)

The suggestions and examples found in this publication can be adapted to help your organization collect the information necessary to comply with relevant federal, state, and local lobbying disclosure laws.

<sup>1</sup> This guide is not written for private foundations, which are also organizations that are exempt from federal income tax under section 501(c)(3) of the Code but which (in contrast to 501(c)(3) public charities) may not make any expenditures for lobbying. It is worth noting that private foundations may make grants to charities that lobby and may be involved in the policymaking process in ways that don’t constitute lobbying. For more information about private foundations and advocacy see the Alliance for Justice publication *Investing in Change: A Funder’s Guide to Supporting Advocacy*.

burdensome to administer; and valuable in facilitating programmatic planning. With that in mind, this guide offers suggestions and recommendations for recordkeeping systems by drawing on methods used by Alliance for Justice and other organizations that engage in advocacy.

The examples and suggestions in this guide are predominantly designed for 501(c)(3) public charities that have made the 501(h) election (i.e., charities that have elected to measure their lobbying based on the amount of money they spend for lobbying, an option described in section 501(h) of the Code). For more information on the 501(h) election, see pages 7–8. Charities that have *not* made the 501(h) election and thus measure their lobbying under the “insubstantial part” test will still find this guide useful, and a brief discussion of special recordkeeping issues faced by such charities is found on page 9.

Remember: It is always best to consult with an attorney, accountant, or bookkeeper who is knowledgeable about exempt organization rules when establishing or making changes to any recordkeeping system.

# WHY IS RECORDKEEPING IMPORTANT?

Your decision to read this guide shows that you already understand how important it is to have a good system for keeping records of your charity's lobbying. But you may not be aware of all the ways in which good recordkeeping is helpful—even essential—to your organization.

## 1. CHARITIES MUST REPORT THEIR LOBBYING TO THE IRS EVERY YEAR

Federal tax law requires most charities to file an annual Form 990 or Form 990-EZ with the IRS and report lobbying as part of that return.<sup>2</sup> (Because these organizations are, by definition, generally exempt from federal tax, IRS Forms 990 and 990-EZ are technically referred to as “information returns,” not tax returns.) Both forms request information about the organization, its activities, governance and its finances—information the IRS needs to help ensure the organization is complying with the law. The forms are due the 15th day of the fifth month after the end of the organization's fiscal year (e.g., May 15 for organizations that operate on the calendar year), but the IRS will automatically grant a three-month extension upon request.<sup>3</sup>

Charities that lobby are required to file Schedule C as an attachment to the Form 990 or 990-EZ, and must report their lobbying activities on Part II of that schedule.<sup>4</sup> Charities that measure their lobbying under the 501(h) expenditure test report lobbying on Part II-A. Charities that measure lobbying under the “insubstantial part” test report lobbying on Part II-B.

## 2. EXCEEDING LOBBYING LIMITS LEADS TO FINANCIAL PENALTIES AND JEOPARDIZES THE TAX-EXEMPT STATUS OF CHARITIES

The penalties for a public charity that exceeds its lobbying limits depend on which test the charity has chosen for measuring its lobbying limits (tests that are described in more detail in the next section).

Under the 501(h) expenditure test, a charity that exceeds either its total or grassroots lobbying limits for that year is required to pay an excise tax, but exceeding lobbying limits does not automatically put the charity's tax-exempt status at risk. The excise tax is equal to one quarter of the amount by which the charity exceeds its grassroots or overall lobbying expenditure limit (or the greater of those if both

### WHO DOES NOT HAVE TO REPORT LOBBYING TO THE IRS?

**Religious Organizations:** Unlike other 501(c)(3) public charities, “churches” (which is how the Code describes all houses of worship) and certain other religious organizations are not required to file an annual information return (i.e., the Form 990 or its analogs). Another special feature of these organizations is that they are not eligible to make the 501(h) election for reporting their lobbying activities. However churches must still make sure that lobbying activities comprise “no substantial part” of their activities and are subject to penalties for violating that requirement.

**Small Charities:** Small charities that normally receive no more than \$50,000 per year are required to file only a short electronic form with the IRS (Form 990-N), confirming the organization's name, address, and other basic information. This “e-postcard” does not require organizations to report their lobbying, but the organizations are still subject to penalties if they exceed permissible lobbying limits.

<sup>2</sup> Some charities qualify to use the simpler Form 990-EZ, instead of the full Form 990. Organizations with gross receipts less than \$200,000 and total assets less than \$500,000 may file a Form 990-EZ. 501(c)(3) private foundations file a different annual return and all 501(c)(3)s reporting unrelated business income file, in addition to their annual returns, a tax return (Form 990-PF and Form 990-T, respectively). Under section 6104 of the Code, charities are also required to make all of these forms available to the public. For more details on Form 990 public disclosure requirements, see Alliance for Justice's guide *Give Me Your 990: Public Disclosure Requirements for Tax-Exempt Organizations*.

<sup>3</sup> An additional three-month extension may be requested, and the IRS will usually grant the request (although it is not required to). Use IRS Form 8868 to request either an automatic or discretionary extension.

<sup>4</sup> Prior to the 2008 revision of the Form 990, charities disclosed their lobbying activities on Schedule A of the form.

limits are exceeded).<sup>5</sup> However, excess lobbying will only result in the loss of the charity's tax-exempt status if the charity has exceeded its lobbying limit by 50% or more over the most recent four years (i.e. if its lobbying was 150% or more of the permitted amount for those four years). So, for example, if a 501(c)(3) operating under the 501(h) expenditure test were to exceed its lobbying limit in 2010, the IRS would look at the organization's lobbying expenditures for 2007, 2008, 2009, and 2010 to see if the organization had made lobbying expenditures of more than 150% of its lobbying limit over those four years. (See the example below.)

**Figure A—Lobbying Expenditures During Four-Year Averaging Period, excerpted from 2010 Form 990 Schedule C Part II-A**

Calendar year (or fiscal year beginning in)	(a) 2007	(b) 2008	(c) 2009	(d) 2010	(e) Total
<b>2a</b> Lobbying nontaxable amount	\$250,000	\$210,000	\$260,000	\$280,000	\$1,000,000
<b>b</b> Lobbying ceiling amount (150% of line 2a, column (e))					\$1,500,000
<b>c</b> Total lobbying expenditures	\$121,000	\$67,500	\$53,400	\$198,000	\$440,000
<b>d</b> Grassroots nontaxable amount	\$62,500	\$52,500	\$65,000	\$70,000	\$250,000
<b>e</b> Grassroots ceiling amount (150% of line 2d, column (e))					\$375,000
<b>f</b> Grassroots lobbying expenditures	\$47,000	\$42,800	\$20,200	\$110,000	\$220,000

Schedule C (Form 990 or 990-EZ) 2010

This charity will owe an excise tax of \$10,000 (25% of the excess grassroots lobbying of \$40,000)...

...but this excess lobbying will not result in the loss of the organization's 501(c)(3) status because total lobbying for the most recent four years does not exceed 150% of the total lobbying limit for those four years (\$220,000 < \$375,000).

In contrast to charities that have made the 501(h) election, a charity that measures its lobbying under the insubstantial part test—sometimes referred to as a “non-electing charity”—that is found to have engaged in “substantial” lobbying in a single year is subject both to an excise tax and, more importantly, possible loss of its tax-exempt status.<sup>6</sup> In practice, however, the IRS rarely revokes the tax exemption of non-electing charities for excess lobbying.

Regardless of whether or not a charity has made the 501(h) election, the IRS may call upon the charity to provide adequate documentation to support the lobbying expenditures reported on its Form 990. If the IRS is not satisfied that the information reported is justified by the organization's recordkeeping system, the IRS can examine the organization's activities and expenditures more closely in order to arrive at a better estimate of lobbying than the reported amount. If that IRS examination were to determine that the charity had exceeded its lobbying limits, the IRS would levy a tax on the organization (or, in limited circumstances, the people managing the organization) and, as discussed above, could strip the organization of its tax-exempt status.

### 3. RECORDKEEPING LETS ELECTING CHARITIES DO MORE LOBBYING WITHOUT FEAR

A charity that has made the 501(h) election and that carefully tracks its lobbying will know just how close it is to its annual lobbying limits. Such a charity that knows it hasn't exceeded

<sup>5</sup> Internal Revenue Code (“IRC”) § 4911(a) and Treasury Regulations (“Reg.”) § 56.4911-1(b). The tax is paid by completing Form 4720 and submitting the form with the payment.

<sup>6</sup> In addition, if the IRS has imposed a tax on a non-electing charity for excess lobbying, the agency may also impose a penalty excise tax on any individual manager of the charity who was “knowing” and “willful” in agreeing to the excess lobbying expenditure that violated the charity's 501(c)(3) status. The amount of the penalty tax on both the organization and management is five percent of the lobbying expenditure. IRC § 4912(b).



its limits may then spend money for lobbying in support of an unexpected legislative opportunity that arises late in the year. Similarly, a charity that is close to the limit would know that it is going to have to pay a penalty if it decides to exceed its limits to work on the issue.

Furthermore, if an electing charity knows it hasn't exceeded its lobbying limits as the end of the year approaches, the charity can make a grant to another organization (perhaps a sister 501(c)(4) organization) to use for lobbying on behalf of the two organizations' commonly held goals. Such a grant would count against the granting charity's lobbying limits, but a grant like this effectively lets charities spend "use it or lose it" lobbying dollars before they "expire."<sup>7</sup>

#### 4. RECORDKEEPING HELPS A CHARITY RAISE FUNDS MORE EFFECTIVELY

Funders, particularly private foundations, are more likely to give support to charities that accurately track lobbying and other activities.

In general, it is beneficial for charities, when approaching potential funders, to be able to develop reliable budgets based on documented past expenses. At the end of a grant, when many foundations expect a report from the grantee about how the funds were used, good recordkeeping can simplify the process of producing that report (and a funder that gets a timely, accurate report is far more likely to be receptive to future grant requests).

In the context of lobbying with funds from private foundations, recordkeeping is particularly important. IRS regulations state that private foundations may not earmark funds for lobbying, but a private foundation may make a grant to a 501(c)(3) public charity that the charity is permitted to spend on lobbying (assuming the foundation does not otherwise forbid such use). One way to do this is for a private foundation to make a grant providing "general support" that the 501(c)(3) public charity grantee may use for any purpose, including lobbying.<sup>8</sup> Alternatively, a charity may lobby with dollars from foundation grants that are earmarked for a specific project. Here good recordkeeping is essential (pre- and post-grant) as regulations permit a private foundation to make a grant to a specific project of a public charity that includes some lobbying activity, provided the amount of the grant is no more than the total non-lobbying portion of the budget for the entire project<sup>9</sup>. For example, if a 501(c)(3) grantee had a specific project budget of \$100,000, with \$40,000 of that budget allocated to non-lobbying advocacy and \$60,000 allocated to lobbying, the private foundation could make a specific project grant to the 501(c)(3) grantee for up to \$40,000. In order to protect itself under this rule, the foundation must receive a credible budget from the grantee that shows the portion of the project budget that the 501(c)(3) grantee expects to spend for lobbying. A reliable system for tracking lobbying both helps the charity prepare that budget and helps give the foundation confidence that it can rely on that budget document.

**IRS regulations state that private foundations may not earmark funds for lobbying, but a private foundation may make a grant to a 501(c)(3) public charity that the charity is permitted to spend on lobbying.**

<sup>7</sup> A public charity may make a grant to a non-charity that lobbies. Because the granting charity needs to be sure that it does not exceed its limit on grassroots lobbying, it will need to specify what portion of the grant (if any) it will permit the grantee to spend on grassroots lobbying. To the degree the grant agreement earmarks the grant for grassroots or direct lobbying, the charity making the grant will treat the grant as grassroots or direct lobbying expenditures (Reg. § 56.4911-3(c)(1) and (2)). A 501(c)(3) may also make a "controlled grant" that allows a non-501(c)(3) grantee to spend the funds for a non-lobbying, 501(c)(3)-permissible purpose (Reg. § 56.4911-4(f)(3)), and the 501(c)(3) won't have to treat such a grant as a lobbying expenditure (Reg. § 56.4911-3(c)(i)(B)). The grant agreement should include other appropriate restrictions as well, especially a ban on the use of the funds for intervening in any political campaign for public office.

<sup>8</sup> Reg. § 53.4945-2(a)(6)(i). For more information on how foundations can support charities that lobby, see the Alliance for Justice guide, *Investing in Change: A Funder's Guide to Supporting Advocacy*.

<sup>9</sup> Reg. § 53.4945-2(a)(6)(ii).

Whether or not a 501(c)(3) applicant is seeking a grant under the project grant rule, private foundation funders are increasingly looking at a grantee's Form 990 or 990-EZ for evidence that the organization understands and is complying with its legal responsibilities regarding lobbying. Recent Form 990 or 990-EZ returns for most organizations can be found on Guidestar.org and other websites that make this information from the IRS available.<sup>10</sup> Organizations seeking private foundation grants should be aware that funders may be reviewing these filings even if they do not ask for them as part of the application package.

## **5. GOOD RECORDKEEPING IS PROTECTION AGAINST FALSE ACCUSATIONS**

Foundations aren't the only ones scrutinizing your organization. Many advocacy organizations face opposition from people and groups with contrary interests. Unfortunately, some of these opposition groups try to distract advocates with charges of improper conduct by filing complaints with the IRS alleging underreported lobbying activity or illegal candidate campaign intervention.<sup>11</sup> Maintaining proper records demonstrating no inappropriate use of 501(c)(3) funds makes it easier for a charity to respond to frivolous attacks and allows for a quick response with minimal distraction to overall advocacy work.

## **6. RECORDKEEPING IS A GOOD MANAGEMENT TOOL**

Without proper records, people who manage 501(c)(3) public charities (or any other organizations, for that matter) will find it difficult to track the time or resources spent on their organizations' activities. Often, this results in an ineffective use of the public charity's funds as well as missed program opportunities. In contrast, good recordkeeping can aid both the organization's board of directors in strategic planning and the organization's officers in day-to-day management of staff efforts and projects.

Spending a reasonable amount of time each day, week, or month to track staff time and other expenditures in pursuit of a charity's mission pays off in the long run, particularly for smaller charities that engage in advocacy and operate on limited budgets.

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<sup>10</sup> In general, up to three prior years' filing of Forms 990 and 990-EZ are visible to the public on [www.guidestar.org](http://www.guidestar.org) website.

<sup>11</sup> 501(c)(3) organizations are prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. This includes making contributions to political campaign funds or making public statements of position on behalf of the organization in favor of or in opposition to any candidate for public office. For more information on permissible and prohibited 501(c)(3) election-related activities, see the Alliance for Justice guide, *The Rules of the Game*.

# WHAT LOBBYING RECORDS ARE REQUIRED?

Lobbying is an essential tool for many 501(c)(3) public charities. The information (and supporting documentation) an organization keeps to track and report its lobbying depends on which of the tests the organization has chosen to measure its lobbying activities—the 501(h) expenditure test or the “insubstantial part” test.

## TWO TESTS FOR LOBBYING

Alliance for Justice’s guide *Being a Player - A Guide to the IRS Lobbying Regulations for Advocacy Charities* explains the choice between the two tests for lobbying and provides details about the limits and definitions of lobbying under the 501(h) test. All 501(c)(3) organizations engaged in legislative advocacy are encouraged to become thoroughly familiar with the rules explained in that guide before designing a recordkeeping system to track their lobbying activities. Nonetheless, a brief summary of the basic rules will help provide a framework for the recordkeeping discussion that follows.

### The Insubstantial Part Test

The insubstantial part test is the lobbying limit test that applies to 501(c)(3) public charities by default, and the name of the test gives the rule: No substantial part of a charity’s activities may be “carrying on propaganda, or otherwise attempting to influence legislation.”<sup>12</sup>

The lobbying limit imposed by this test is based on activities, not expenditures. Even unpaid lobbying activities, such as lobbying by volunteers, count against the limits.<sup>13</sup> The IRS has provided no reliable guidance about how much lobbying is “substantial,” although it is commonly believed that lobbying that comprises less than 5% of an organization’s overall activities is likely to be deemed “insubstantial.”<sup>14</sup> Furthermore, the guidance as to what constitutes lobbying under the insubstantial part test is vague. For example, the instructions to Schedule C, Part II-B explain that an organization will be regarded as engaging in lobbying if it either “contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation or . . . advocates for the adoption or rejection of legislation.”

### The 501(h) Expenditure Test

For those charities that are eligible and elect to use it, the 501(h) expenditure test offers far more clarity than the insubstantial part test. Under this test, lobbying is measured solely based on the expenditures the charity makes for lobbying activities. The overall limit on lobbying is set as a percentage of the organization’s

**The 501(h) expenditure test offers far more clarity than the insubstantial part test.**

<sup>12</sup> IRC 501(c)(3).

<sup>13</sup> See INSTRUCTIONS FOR SCHEDULE C (FORM 990 OR 990-EZ), the instructions for the IRS form on which charities annually report their lobbying activities. The instructions for Part II-B (the section for non-electing charities to report their lobbying) require that charities completing Line 1i report “all lobbying activities, whether expenses are incurred or not (for example, even lobbying activities carried out by unreimbursed volunteers).” See also *League of Women Voters v. U.S.*, 180 F. Supp. 379 (Ct. Cl. 1960) (holding that legislative decision-making done by unpaid members of the organization is lobbying for the purposes of determining the substantiality of an organization’s lobbying).

<sup>14</sup> See *Seasongood v. Commissioner*, 227 F.2d 907 (6th Cir. 1955) (finding that 5% of an organization’s “time and effort” was insubstantial). See also IRS CPE Text, Lobbying Issues (1997) at 280 (“while neither the Service nor the courts have adopted a percentage test for determining whether a substantial part of an organization’s activities consist of lobbying, some guidance can be derived from *Seasongood* [under which] a five percent safe harbor has been frequently applied as a general rule of thumb regarding what is substantial”).

annual expenditures.<sup>15</sup> The overall limit on lobbying starts as high as 20% of those expenditures for small charities and diminishes to a smaller percentage of the expenditures for larger organizations, with a maximum cap of \$1,000,000 on an organization's annual lobbying expenditures. In addition to this overall limit, the 501(h) test imposes a limit on grassroots lobbying, calculated as one-quarter of the overall lobbying limit.<sup>16</sup>

## TOP FIVE LOBBYING TIPS

Alliance for Justice asked several national experts for a list of the most common tips for measuring lobbying under the 501(h) test. Here are their top five:

- 1. Preparation time.** Under both the 501(h) expenditure test and the insubstantial part test, preparation to lobby (planning, research, strategy meetings, etc.) counts towards a charity's lobbying limits.
- 2. Overhead expenses.** Remember that a portion of your rent, the salary for your support staff that serve the entire organization, your insurance premiums, etc. need to be treated as lobbying expenditures in proportion to the amount of lobbying that the public charity conducts.
- 3. Specific legislation.** Even though a policy proposal has not yet been introduced as a bill in the legislature, urging a legislator to support a specific proposal is in almost all instances lobbying.
- 4. Grassroots lobbying.** Charities sometimes add a "petition to Congress" in fundraising mailings or list contact information for the state legislature in monthly newsletters. Such "calls to action" could be considered grassroots lobbying communications.
- 5. Requests from individual legislators.** It's great when a legislator calls asking for help. But remember, you don't get to claim the "request for technical assistance" exception if the request comes from an individual—the request must come from an individual who is extending an invitation in writing in his or her capacity as head of an official body.

In addition to these clearly defined expenditure limits, the definition of lobbying is likewise clearer under the 501(h) test. Generally, direct lobbying is defined as the organization's communications with legislators in support of or in opposition to a specific legislative proposal. Expressing a view on a legislative proposal to the general public will count as grassroots lobbying if the communication includes a "call to action" that explicitly (or, in some cases, implicitly) urges the listener to contact a legislator. The 501(h) test includes special rules for an organization's communications to its members and provides several important exceptions to the definition of lobbying, such as an exception for "nonpartisan analyses" of legislative proposals and for activities undertaken at the written request of a government body.<sup>17</sup>

Under the 501(h) test, charities may allocate certain expenditures that have both lobbying and non-lobbying purposes and for those that represent a mix of direct and grassroots lobbying. For example, if an executive director flies to Washington, D.C. for a four day trip, three days of which will be spent at an educational conference and the fourth day spent lobbying, it is usually appropriate to count 25 percent of the costs the 501(c)(3) paid for travel expenses as lobbying costs. The 501(h) regulations have special rules for allocating the costs of communications that contain both lobbying and non-lobbying messages that depend on whether (and the degree to which) the audience for the communication is comprised of legislators, the organization's members, and the general public.

## Which Test is the Best for Your Organization?

Most 501(c)(3) organizations that are eligible to do so will benefit from electing to measure their lobbying limits under the 501(h) expenditure test. Except for very large organizations that hit the \$1 million cap on lobbying under the 501(h) test and a few other special cases, the 501(h) expenditure test provides more generous lobbying limits than the insubstantial part test and allows 501(c)(3)s to benefit from the clearer lobbying limits and definitions available to 501(h)-electing 501(c)(3)s.

Choosing the 501(h) expenditure test is as simple as filing a one page form—IRS Form 5768. Once the form has been submitted to the IRS, your organization can begin measuring its lobbying limits based on its lobbying expenditures and using the more clear definitions of what constitutes lobbying activity. Regardless of when in the year the organization first files Form 5768, the 501(c)(3) may apply the 501(h) test retroactively to the beginning of the organization's tax year.

<sup>15</sup> IRC § 4911(c)(2). An organization's lobbying limits are calculated based on its "exempt purpose expenditures," which excludes certain expenditures for fundraising, capital expenses, unrelated business activities, and other purposes not connected to carrying out the organization's charitable purposes. Treas. Reg. § 56.4911-4. For many organizations, all of the organization's expenditures qualify as exempt purpose expenditures.

<sup>16</sup> IRC § 4911(c)(4).

<sup>17</sup> IRC § 4911(d)(2).

## RECORDKEEPING REQUIREMENTS FOR CHARITIES THAT HAVE MADE THE 501(h) ELECTION

For charities that have made the 501(h) election, the law requires the charity to maintain records showing expenditures for grassroots and direct lobbying (including expenditures for preparation for such lobbying). The expenses that must be tracked include staff salaries and benefits; costs of communications (e.g. printing and postage); a portion of overhead expenses attributable to lobbying; and grants, payments, or reimbursements made to others for lobbying.<sup>18</sup>

## RECORDKEEPING REQUIREMENTS FOR NON-ELECTING CHARITIES

There is far less guidance about what records must be kept by public charities measuring their lobbying limits under the insubstantial part test. However, Schedule C of the Form 990 requires these charities to report whether or not the charity lobbied via volunteers, paid staff, advertisements, mailings (to members, legislators, or the public), published statements, grants to others for lobbying, direct contact with legislators, public events, or other means and to report any expenditures for each such activity.<sup>19</sup> Non-electing charities must also provide a “detailed description” of any lobbying activities that fall outside of those categories, which the form’s instructions clearly state “should include all lobbying activities, whether expenses are incurred or not.”<sup>20</sup>

### HOW TO TRACK VOLUNTEER LOBBYING

The IRS has suggested that volunteer activities should be considered in quantifying lobbying activities under the insubstantial part test (and asks filers to indicate on Schedule C to the Form 990 whether they have used volunteers to carry out lobbying activities). However, the IRS provides no guidance on how to measure such activities. Here, we suggest a reasonable procedure to document how substantial lobbying is in comparison to other volunteer activities.

The organization should make a reasonable estimate of the total number of hours that volunteers devote to the organization and then allocate such time between legislative and non-legislative activities to determine the percentage of overall volunteer activities devoted to lobbying. Some activities may include a mix of lobbying and non-lobbying. For example, generally time volunteer board members spend attending board and committee meetings would be treated as non-lobbying, except to the extent that those meetings involved discussion of legislative strategy and decision-making, which would be considered lobbying.

We suggest that organizations only track efforts by those who volunteer for the charity in some type of organized capacity, and not attempt to track less structured efforts (such as those who respond to information in your newsletter by calling their Senator without any additional prompting by the organization). Thus, the organization would track the efforts of individuals who volunteer for particular events, such as fundraisers or lobby days, as well as the time volunteered by volunteer board members and members of volunteer committees.

Note that measuring volunteers’ hours can have additional benefits. Organizations can use the information in annual reports and fundraising proposals to demonstrate how the organization leverages its limited resources, or to honor volunteers who contribute the greatest number of hours, encouraging further volunteer efforts.

<sup>18</sup> Reg. § 56.4911-6, Reg. § 56.4911-3(a)(1).

<sup>19</sup> Form 990, Schedule C, Part II-B. No report of expenditures is required for volunteer lobbying (because volunteers are unpaid). Amounts paid or incurred for staff time spent on lobbying are not reported in total but rather broken out as part of the lobbying expenditures reported by “type” on lines lc-li (staff compensation is reported elsewhere on the Form 990, and non-electing charities are not required to break out staff compensation for lobbying).

<sup>20</sup> Instructions for Schedule C, Part II-B.

# SUGGESTED METHODS FOR RECORDKEEPING

Although the law requires that each organization maintain records that are sufficient to support the information reported on the organization's Form 990, the law does not mandate any particular recordkeeping system.<sup>21</sup> Organizations should select a reasonable system that suits their resources and abilities. A reasonable method of recordkeeping should be one that is not too burdensome, fulfills the organization's legal requirements (including federal, state, and local lobbying disclosure requirements—see sidebar, page 1), meets the organization's administrative needs, and accommodates the organization's other reporting requirements (such as those tied to foundation grants or government contracts).

Every organization should have at least one **recordkeeper**—a designated person who is responsible for tracking and maintaining the organization's lobbying information.

All the methods described in this publication track three basic types of expenditures:

- *staff time* (time spent lobbying and preparing for lobbying);
- *direct costs* (other than staff time) (for example, a receipt for train fare to the state capital or a bill for printing a grassroots lobbying advertisement in the newspaper); and
- *overhead expenses* (office rent, utilities, professional fees for accounting services—any cost that is not a “direct cost” or “staff time”).

In each of the systems presented below, both staff time and other direct costs are designated as lobbying (whether direct or grassroots) or non-lobbying, and overhead costs are apportioned based on the percentage of time the staff, as a whole, spends engaged in lobbying. What distinguishes these methods is the way in which that staff lobbying activity is tracked and reported: a timesheet-based system; an “incident report” system; and a questionnaire-based system.

Other recordkeeping alternatives may exist that are better suited to an organization's needs and resources. The important thing to keep in mind is that a workable recordkeeping system is a fundamental necessity for every organization. The methods set forth in this publication should serve as a starting point, offering examples of practical systems used by other organizations, to get you thinking about what the best system is for *your* organization.

## ACTIVITY KEYS

Even with good training, staff will likely find that some activities are difficult to categorize as lobbying or non-lobbying. In those confusing instances an “activity key”—a “cheat sheet” that summarizes the classification of the most common tasks conducted by that organization—is often helpful. For example, an activity key might show as grassroots lobbying “meetings to organize activists to contact legislators in favor of increased funding for agency.” The activity key can be edited or expanded as new questions arise and are resolved.

## 1. STAFF TIME

As indicated above, the centerpiece of any recordkeeping system for lobbying is the system for tracking staff time spent on lobbying. The goal in tracking staff time is to calculate the percentage of time each employee spends lobbying. Knowing how much time each member of the organization's staff spends engaged in direct and grassroots lobbying, the recordkeeper can determine the portion of that staff member's *total salary and benefits* the organization will have to treat as lobbying expenditures.

<sup>21</sup> Reg. § 20.6001-1(c).

Assume, for example, that an employee works 40 hours in a given week and spends 8 hours during that particular week (20% of the employee’s time) engaged in grassroots lobbying. Therefore, the organization will treat 20% of the money it spends for that employee’s salary, benefits, and other payroll-related expenses for the week as grassroots lobbying expenditures. (See sidebar, page 15, regarding non-salary costs of employees.)

Furthermore, the aggregate information collected about the percentage of staff time spent on lobbying is also our suggested way of allocating overhead expenses. (See discussion below.)

The accuracy of this recordkeeping system relies on timely and accurate collecting of data that details the amount of time employees spend lobbying. All employees must understand the recordkeeping system (including an adequate understanding of what activities constitute lobbying) and must realize the importance of their recordkeeping obligations. It is a good idea for the organization to provide periodic staff training on the recordkeeping system, including which activities should be counted as lobbying.

**Three Options for Tracking Staff Time**

**Option 1—Timesheets**

A system of staff timesheets is the best, most complete, way for most organizations to track staff time spent on lobbying. This is the method we use at Alliance for Justice, and we think it provides the most detailed and contemporaneous picture of our lobbying and other programmatic activities. Timesheets require individual employees to keep written records of how much time they spend on particular projects. For IRS purposes, all that matters is the total amount of time an employee spent on direct and grassroots lobbying (or, for charities that have not made the 501(h) election, just lobbying):

**Figure B—Simple Timesheet**

NAME	EMPLOYEE TIME SHEET															
MONTH: JANUARY																
DAY OF MONTH	MON	TUE	WED	THU	FRI	SAT	SUN	MON	TUE	WED	THU	FRI	SAT	SUN	MON	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	TOTAL
Regular Hours																
Lobbying Direct																
Lobbying Grassroots																

See Appendix A for several examples of timesheets.

More sophisticated timesheets add additional entries to meet funders’ requirements or to keep track of expenditures among multiple programs. Many timesheets break down work into project categories, requiring additional categorization of the day’s activities. While this takes more time and effort, it also transforms the timesheet into a better management tool, tracking individual project expenses against organizational resources:

Figure C—Sophisticated Timesheet

NAME: Jane Doe	EMPLOYEE TIME SHEET															
MONTH: JANUARY																
DAY OF MONTH	MON	TUE	WED	THU	FRI	SAT	SUN	MON	TUE	WED	THU	FRI	SAT	SUN	MON	TOTAL
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
<b>Access to Justice</b>																0
Lobbying: Direct																0
Lobbying: Grassroots																0
<b>Nonprofit Advocacy</b>																0
Lobbying: Direct																0
Lobbying: Grassroots																0
<b>Operations</b>																
Administration																0
Development																0

Among other advantages, more detailed timesheets may:

- provide useful management information to the organization;
- be required to comply with recordkeeping requirements imposed on recipients of government funds or certain foundation grants; and
- be required to comply with state or local laws, such as a state lobbying disclosure law with a definition of lobbying that differs from the federal tax law definition. (See sidebar, page 1, regarding other reporting requirements.)

### TIMESHEETS AND OVERTIME

Some organizations worry that a system of timesheets will trigger overtime reporting obligations under the federal Fair Labor Standards Act (FLSA) or similar state or local wage and hour laws. Keeping timesheets does not affect whether an organization is subject to these laws, but keeping timesheets will help ensure that the organization is able to comply with the law.

A full discussion of the FLSA (much less the state and local laws) is beyond the scope of this guide, but, in general, the FLSA requires that covered employees (“non-exempt employees”) be paid at least the federal minimum wage and that they be paid overtime wages of at least one-and-a-half of their hourly wage for working more than 40 hours in a week. Some salaried employees, notably certain senior executives and professional employees, are exempt from the provisions of FLSA.

It is true that many committed people who work for nonprofits work more than 40 hours per week. The FLSA requires that any such people who are non-exempt employees be paid overtime, whether or not they are required to complete timesheets. Therefore, not only does a well-designed timesheet simplify lobbying tracking, but it also helps an organization comply with labor law requirements by documenting the amount of overtime that should be paid.

Some organizations will be reluctant to implement a timesheet system, fearful of the burden both on the staff members and on those charged with overseeing the system. There are, however, ways to minimize the burden of timesheet systems. For example, time could be rounded up to the hour rather than measuring time in half-hour, quarter-hour, or even tenth-of-an-hour increments as some organizations do. There is no rule regarding how closely time must be tracked. In addition, electronic spreadsheets and other computer-aided timesheets systems (including some free- and share-ware systems) have simplified both the reporting and analysis of staff time.

### Option 2—Lobbying Reporting Form or “Incident Report”

Instead of reporting all their time using timesheets, some organizations require staff to complete a lobbying reporting form, sometimes referred to as an “incident report”—a form that staff members must fill out every time they lobby (or have performed an activity that they believe might count as lobbying but are unsure). At a minimum, there should be a place to enter the amount of time the staff person spent on lobbying. Depending on the preferences and needs of the organization, an incident report can be designed to provide either simple or detailed information about the contacts or the nature of the activity.



An incident report system may be the best choice for organizations that engage in only occasional lobbying and who have no other need to track staff time more thoroughly (such as grant requirements or management needs). For these organizations, the small, but daily, task of filling in a timesheet may not be necessary, and an incident report system may suffice. The lobbying reporting form allows such organizations to keep accurate lobbying records without the daily maintenance required by timesheets.

Note that for charities operating under the insubstantial part test (which requires a narrative report of some types of lobbying activities on the Form 990 or Form 990-EZ via Schedule C, Part II-B, Line 1i) or under state or federal lobbying disclosure laws (which often require reporting on the nature of the lobbying), a lobbying reporting form may be useful because it tracks the additional information an organization needs to comply with the law. Even organizations that use a timesheet system such as those described above will sometimes supplement that information with a system of lobbying incident reports.

**Figure D–Lobbying Reporting Form/Incident Report**

<b>LOBBYING REPORTING FORM</b>	
<b>Employee Name:</b>	<u>Jane R. Doe</u>
<b>Date:</b>	<u>02/01/2011</u>
<b>Description of Activity:</b>	<u>Researched information on work/study programs for letter to Senator Jones on S.B. 1642(The Higher Education Authorization Act of 2011)</u>
<b>Time (round up to the ½ hour):</b>	
<b>Direct Lobbying:</b>	<u>1.5</u>
<b>Grassroots Lobbying:</b>	<u>0</u>

**Figure E–Lobbying Reporting Form/Incident Report (Spreadsheet Format)**

Employee Name	Date	Time (rounded up to the ½ hour)		Notes
		Direct Lobbying	Grassroots Lobbying	
Jane R. Doe	2/01/2011	1.5	0	Strategy meeting

Because lobbying reporting forms do not collect the total time worked (including non-lobbying hours), the recordkeeper must estimate a base number of hours per week in order to calculate the portion of the staff person’s salary and benefits to be treated as lobbying. For full-time staff, the recordkeeper should usually use the organization’s full-time workweek (e.g., 40 hours per week) as the standard, but that may vary by organization or position. (See, also, the sidebar on wage and hour laws, page 12.)

Note that this system of estimating the total number of hours worked by employees could result in the organization reporting more lobbying than if employees had tracked all their time. For example, if an employee spends six hours in a given week lobbying, the expenditure represented by that lobbying is less if the employee worked 60 hours that week (10% of salary and benefits) than if that employee worked only 40 hours (15% of salary and benefits). Because the organization cannot document the long hours worked that week, it may over-report the percentage of time spent lobbying.

### Option 3—Questionnaire

Another option for tracking staff time spent on lobbying activities on a case-by-case basis is by means of a questionnaire that employees complete every time they engage in an activity that constitutes (or may constitute) lobbying and that the recordkeeper can use to determine whether to report the activity as lobbying. A questionnaire requires far more in-depth information than the simple lobbying incident report described above, and may request that staff provide information such as:

#### OVERREPORTING VS. UNDERREPORTING

If an organization is unsure if an activity counts as lobbying, it usually is safer to treat the activity as lobbying for IRS purposes, provided the organization does not risk exceeding its lobbying limits in doing so. Note, however, that there are significant restrictions imposed on lobbyists and the organizations that employ them under the federal Lobbying Disclosure Act, so organizations should consider whether overreporting lobbying for tax purposes might have adverse consequences under the LDA. (Also organizations should check relevant state lobbying laws to determine if overestimating lobbying expenditures or activities is problematic.)

- Describe the activity, including individuals contacted, work product produced, and subject matter of work.
- Describe any and all expenditures associated with the aforementioned activity including travel expenses, printing costs, staff time, etc.
- What type of decision is the activity attempting to influence?
- What level of government is the activity attempting to impact?

A sample questionnaire is attached as Appendix B.

The key advantage of a questionnaire-based system is that it does not require the staff to understand the definitions of lobbying. Instead, the questionnaire collects enough information about each potential lobbying activity to allow the organization's recordkeeper to make a determination about which activities constitute direct and grassroots lobbying, including information that will allow the recordkeeper to determine whether any exceptions to the lobbying definitions apply.

Although avoiding much of the need to train staff on the lobbying rules can be appealing, particularly for organizations with high staff turnover, this method comes with a price: staff will have the burden of providing extensive information on every activity that may, conceivably, constitute lobbying.

As with the incident reports described above, an organization using a questionnaire-based system for tracking staff time foregoes the benefits of tracking all staff time in favor of reducing staff recordkeeping on a daily basis. As a result, the organization's recordkeeper will again have to estimate the total number of hours each employee works to determine the percentage of salary and benefits attributable to lobbying. Also, a questionnaire, like the incident reports, can collect more detailed information about lobbying activities, making compliance with other reporting obligations easier.

#### Special Problems in Tracking Lobbying by Certain Staff

Some staff roles do not lend themselves to using any of these suggested techniques for tracking lobbying time. In such cases, it may make sense to treat these employees differently from other staff in tracking lobbying activities:

**Support Employees:** Not all employees necessarily need to—or can—report their lobbying activities. If your organization is lucky enough to have administrative support staff, such as a receptionist, administrative assistant, filing assistant, or others who work for the entire organization, it may be difficult for these colleagues to determine what part of their work is in support of the organization's lobbying efforts, and thus counts towards the organization's overall lobbying limits. Rather than asking these colleagues to track their lobbying and non-lobbying time, we recommend that your organization treat the salary and benefits of these employees as an “overhead expense” and allocate these costs as discussed below.

**Some staff roles do not lend themselves to using any of these suggested techniques for tracking lobbying time. In such cases, it may make sense to treat these employees differently from other staff in tracking lobbying activities.**

**Full-Time Lobbyists:** When an individual spends virtually all of his or her time engaged in lobbying activities, it may be simplest to count that person's entire compensation as lobbying, regardless of actual lobbying work done by the staff person. For IRS purposes, there is no harm in this efficient method of recordkeeping, provided the organization is not so close to its lobbying limits that overreporting of lobbying expenditures associated with the full-time lobbyist's activities would lead the organization to exceed its lobbying limits. (Note that if the person engages in a mix of direct and grassroots lobbying, then an organization that has made the 501(h) election may choose to have such an employee track his or her lobbying to permit the organization to allocate the cost between the two types of lobbying.)

#### HOW MUCH DOES AN EMPLOYEE COST?

Remember that employees usually cost organizations more than just the expense of salaries. Most organizations are required to pay Social Security and other payroll taxes on top of the employees' gross wages, as well as employee-related expenses including the cost of benefits packages such as health insurance, employer contributions to retirement funds, and other fringe benefits. Since all of these payments are expenditures related to the staff member's employment, they must be included in calculating the organization's lobbying expenditures when these employees lobby on behalf of the organization.

### The Last Resort: Estimates

Estimating staff time for lobbying is very imprecise and not recommended, but if an organization has not been able to implement any of the options described above then an estimate of staff time spent lobbying is better than nothing. For example, imagine a charity that has come to realize the importance of tracking staff lobbying activities and that is implementing one of the systems described above. As the deadline for the Form 990 approaches, this charity will still be faced with the problem of how to report the lobbying activities that took place in the year *before* the new system was implemented.

A few tips for organizations that must estimate the amount of staff time spent lobbying for want of a better system:

- **Let those with the best knowledge make the estimate.** The IRS will give greater credence to estimates by people who have some basis for making an accurate estimate. Ideally, each staff person who engaged in lobbying over the period in question should provide the estimate for how much time he or she spent lobbying. If these employees lack a sufficient understanding of what is and isn't lobbying in order to make an accurate estimate, then the direct supervisors for those employees (the people who managed the lobbying these employees did) should make the estimate. Don't expect the executive director of a large organization to be able to estimate all the lobbying done by a large staff scattered across the country.
- **Make the estimate as close in time to the lobbying as possible.** Try not to wait until the accountants arrive (or internal preparers begin) to prepare the organization's Form 990 to come up with a lobbying estimate. The less time that has passed between the lobbying activity and the estimate, the better the organization will be able to defend the validity of the estimate.
- **Put the estimate in writing.** Require each employee (or supervisor) making an estimate of lobbying time to submit a written estimate. Not only are written documents better evidence should there ever be a question about the organization's lobbying, but requiring employees to put their estimates in writing may encourage them to take the task of making the estimate more seriously.
- **Be cautious.** The common tendency in making estimates is to underreport lobbying. To counteract this, encourage those making estimates to treat as lobbying any activities that come close to the line, and document that instruction. An organization that can show the IRS it has been cautious in estimating lobbying may find it easier to defend those estimates later.

## Calculating Staff Time Lobbying Costs

No matter which option a charity selects to track staff hours spent on lobbying activities, the organization's recordkeeper will have to use that information to determine the portion of salary and benefits attributable to each staff member that must be treated as lobbying expenditures.

The way a 501(c)(3) public charity that has made the 501(h) election allocates its lobbying costs for staff time is by measuring a staff member's direct lobbying hours and grassroots lobbying hours for a given period. Each figure is then used to measure the direct lobbying percentage and grassroots lobbying percentage via the formulas below:

$$\frac{\text{direct lobbying hours}}{\text{total hours worked}} = \text{direct lobbying percentage}$$

$$\frac{\text{grassroots lobbying hours}}{\text{total hours worked}} = \text{grassroots lobbying percentage}$$

The recordkeeper then multiplies the percentages derived above by the staff member's total compensation (including salary, payroll taxes, and the cost of benefits such as paid health insurance or organization contributions to a retirement plan). The result of this calculation is the portion of these employee-related expenditures that the organization will

### EXAMPLE: CALCULATING THE COSTS OF THE EXECUTIVE DIRECTOR'S LOBBYING ACTIVITIES

Assume that a 501(c)(3) public charity that has made the 501(h) election and that the total costs to the organization for the executive director's salary, payroll taxes, health insurance, and pension contribution are \$5,000 per month.

The organization requires its staff to submit timesheets. The executive director submits timesheets showing that in February she worked a total of 250 hours. Of that time, the executive director reports 50 hours of direct lobbying and 10 hours of grassroots lobbying. The percentage of the executive director's time spent engaged in direct lobbying is calculated as follows:

$$\frac{50 \text{ hours direct lobbying}}{250 \text{ total hours worked}} = 20\% \text{ direct lobbying}$$

Similarly, the percentage of the executive director's time spent engaged in grassroots lobbying is calculated as follows:

$$\frac{10 \text{ hours grassroots lobbying}}{250 \text{ total hours worked}} = 4\% \text{ grassroots lobbying}$$

The organization's recordkeeper may then calculate the lobbying expenditures attributable to the executive director's work for the month based on these percentages:

$$20\% \text{ direct lobbying} \times \$5,000 \text{ monthly expense} = \$1,000 \text{ direct lobbying expenditure}$$

$$4\% \text{ grassroots lobbying} \times \$5,000 \text{ monthly expense} = \$200 \text{ grassroots lobbying expenditure}$$

These expenditures for direct and grassroots lobbying will be added to the organization's other lobbying expenditures (work by other staff, direct costs, and a portion of overhead expenses) to determine the organization's overall lobbying.

treat and direct and grassroots lobbying, to be combined with other lobbying expenditures in determining whether the organization has stayed within its lobbying limits.

## 2. OVERHEAD

Overhead costs are general operating expenses that cannot easily be separated into lobbying and non-lobbying portions. These include rent, utilities, and anything else that is an expenditure by the organization that is not captured elsewhere as lobbying.

One straightforward method of measuring overhead costs is to apply the percentage of the organization's aggregate staff time spent on lobbying activity against the overhead cost calculations. One simple way to do this is to add the lobbying activity from all staff timesheets and calculate office-wide percentages of direct and grassroots lobbying and then apply those percentages to overhead costs.

## 3. DIRECT COSTS

Compared to staff compensation and staff-related overhead expenditures, tracking other costs for lobbying is easy.

Direct costs are goods or services purchased by an organization for lobbying. They can vary widely in character and price but usually have a receipt or invoice associated with them. Examples of direct costs include:

- money spent copying direct lobbying flyers that support an upcoming ballot measure
- money spent on a taxi ride to a legislator's office for a lobbying meeting
- money spent on consultant fees to create a grassroots lobbying broadcast advertisement encouraging the general public to contact their legislators about a pending piece of legislation

Since direct costs are usually single purchases, keeping track of them is relatively simple. Some organizations may find it useful to enter the information for each direct cost into a computer database, tracking specifics about each item along with a tag designating each as grassroots or direct lobbying. Spreadsheet programs can be used to automatically catalog and organize the costs by category. The advantage of a precise system is that it allows for useful information such as weekly or monthly reports that help an organization keep track of where it is in relation to its lobbying limits. This type of recordkeeping system is critical for organizations that are trying to maximize their lobbying potential.

Other organizations may prefer a simpler option. For these groups, receipt tracking may be a better fit. In this system, the organization's recordkeeper simply writes "direct" or "grassroots" on the receipt for the lobbying expenditure and places it in a file containing the lobbying receipts for the year. When it is time to prepare the organization's Form 990, the information is all in one place, making it easy to calculate direct costs. Due to the difficulty in monitoring the organization's lobbying spending on an ongoing basis under this method, this system is best for organizations that are certain they will not exceed their annual lobbying limits and that do not expect to engage in enough lobbying to trigger federal, state or local lobbying disclosure.

### TYPICAL OVERHEAD EXPENSES

Every organization will have a different list of overhead expenses that should be allocated between lobbying and non-lobbying. Some of the most typical overhead expenses include:

- |   |                                 |
|---|---------------------------------|
| ■ Rent  | ■ Subscriptions                 |
| ■ Support staff salaries and benefits (see p. 15) | ■ Postage and delivery expenses |
| ■ Office equipment rental and maintenance         | ■ Photocopying                  |
| ■ Depreciation of capital purchases               | ■ Storage                       |
| ■ Telephone and internet service                  | ■ Insurance                     |
| ■ Office supplies                                 | ■ Legal and accounting fees     |
|   | ■ Local taxes                   |
|   | ■ Website                       |

### EXAMPLE: CALCULATING THE PORTION OF OVERHEAD ATTRIBUTABLE TO LOBBYING

To determine the portion of overhead costs that it must treat as direct and grassroots lobbying, a 501(c)(3) public charity that has made the 501(h) election can create a spreadsheet that combines the information from the timesheets of each of its staff members. Note that the charity does not include timesheet information for the organization’s receptionist or the organization’s administrative assistant, the two people who provide support for all of the organization’s operations:

Figure F—Sample Staff Time Summary

Staff Member	Total Hours	Direct Lobbying	% of hours for Direct	Grassroots Lobbying	% of hours for GR
Executive Director	250	50	20%	5	2%
Deputy Director	200	25	12.5%	24	12%
Research Director	175	0	0%	0	0%
Research Assistant	175	0	0%	0	20%
Access to Justice Project Director	200	25	12.5%	21	10%
<b>Total</b>	1000	100		50	
Percentage of Total Hours			<b>10%</b>		<b>5%</b>

As shown in Figure F above, the staff as a whole spent 10% of its time for the period engaged in direct lobbying and 5% of its time engaged in grassroots lobbying.

The next step is to calculate the organization’s total overhead expenses for the period:

Expense Description	Amount of Expense
Rent	\$11,000
Receptionist	\$2,000
Administrative Assistant	\$2,400
Liability Insurance	\$2,000
Telephone & Internet	\$2,300
Postage	\$3,500
Office Supplies	\$400
Professional Fees	\$1,400
<b>Total</b>	<b>\$25,000</b>

Note that the salary, payroll taxes, and benefits for the support staff (the receptionist and the administrative assistant) are included in overhead. The line for postage does include the postage for mailing an annual report the organization sent out during the period, but it does not include the postage for a special grassroots lobbying alert the organization mailed to its members. (The costs of that mailing would be tracked separately as a direct cost of grassroots lobbying.)

The 501(c)(3) can then apply the staff lobbying percentages to the total overhead expenses for the period:

- 10% direct lobbying X \$25,000 overhead expense = \$2,500 direct lobbying expenditure
- 5% grassroots lobbying X \$25,000 overhead expense = \$1,220 grassroots lobbying expenditure

These expenditures for direct and grassroots lobbying will be added to the organization’s other lobbying expenditures (staff time and direct costs) to determine the organization’s overall lobbying for the period.

# CONCLUSION

Recordkeeping is important, and it is not as difficult as you may think.

The law mandates a minimum level of sophistication in recordkeeping systems, but many public charities find that going beyond the law helps them improve their resource and personnel management, making them more efficient and better able to pursue their mission-related goals. Ultimately, the best recordkeeping system is the one that satisfies all of your legal obligations and maximizes your organization's lobbying potential.

This guide has offered several suggestions for setting up recordkeeping systems that will allow your organization to effectively and accurately report its lobbying activities. We hope you find it a useful tool when thinking about what will be the best recordkeeping system for your organization. Each organization will differ in its methods, depending on size, resources, staff, and amount of lobbying activity. The most important thing to remember is to develop a reliable yet realistic and workable system that captures all of the necessary information.

For more information on recordkeeping, including sample timesheets and other forms see the Appendices.

# APPENDIX A:

## Simple Timesheets

### Weekly Timesheet

Name: \_\_\_\_\_

Week of \_\_\_\_\_

	<b>Total Hrs</b>	<b>General</b>	<b>Direct lobbying</b>	<b>GR lobbying</b>	<b>VACATION</b>	<b>SICK</b>
Monday	0					
Tuesday	0					
Wednesday	0					
Thursday	0					
Friday	0					
Saturday	0					
Sunday	0					
Total:	0	0	0	0	0	0



# APPENDIX A:

## Simple Project Timesheet

Name:

Month:

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Project A																	
Project B																	
Project C																	
Project D																	
Project E																	
Project F																	
Direct Lobbying																	
GR Lobbying																	
Vacation																	
Sick																	

Total 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0

# APPENDIX B:

## Lobbying Questionnaire

### Lobbying (and Possible Lobbying) Reporting Form

*Please complete this form if you engage in or provide support for an activity that you believe might constitute lobbying. If you are not certain whether or not the activity is lobbying and the activity involves expressing a view on a matter of public policy, complete this form. If you have questions about how to complete this form, contact [NAME].*

Your Name: \_\_\_\_\_

Date of Activity: \_\_\_\_\_ Time Spent (nearest half hour): \_\_\_\_\_

For (Check one):  [NAME OF 501(c)(3)] (501(c)(3))  [NAME OF 501(c)(4)] (501(c)(4))

**Briefly describe the activity (including subject matter, bill number (if applicable), actions taken, individuals contacted, workproduct produced (attach copy if applicable)):**

**Briefly describe any reimbursable expenditures or payments to outside vendors associated with this work (e.g. travel expenses, printing costs, etc.):**

**Circle the appropriate answer(s) for the questions below and provide additional information as requested:**

**1. What type of decision is this work an attempt to influence?**

- a. Something voted on by a legislative body
- b. Something decided by an administrative agency or the executive branch, without legislative involvement
- c. An issue to be put before the voters (a ballot measure, such an initiative or referendum)
- d. Something else/mixed purposes/not sure (explain on attached sheet)

**2. What level of government is this work an attempt to impact the policy of (circle all that apply)?**

- a. Federal
- b. State (which state or states?) \_\_\_\_\_
- c. Local (which locality or localities?) \_\_\_\_\_
- d. Other (explain on attached sheet)

**3. What was the ultimate audience for this work (circle all that apply)?**

- a. Legislators, legislative staff, or other public officials
- b. The public, the media, or others who are not public officials (answer next question)
- c. Organization staff (describe what they expect to do with the work on attached sheet)
- d. Mixed/not sure (explain on attached sheet)

**4. If you circled 3.b above, does the workproduct include (circle all that apply)?**

- a. Language urging recipients to contact a public official
- b. Contact information (phone, address, email, etc.) for a public official
- c. A way to send a message to a public official (a web-based form, a fill-in postcard, a petition, etc.)
- d. Indication that a public official is opposed to, undecided on, or in a position to vote on the policy issue discussed
- e. A paid ad that ran or will run in the mass media (TV, radio, newspaper, magazine, or billboard)

**5. Circle any of the following that apply:**

- a. The work will result in a workproduct that presents a complete and fair discussion or analysis of the subject (attach or describe)
- b. The work was done at the request of a public official (state the substance of the request, provide the name and title of the official, and describe the form in which the request arrived (written, oral, etc.))
- c. The work involves a policy that will directly affect our organization's existence, powers, duties, tax-exempt status, or the deductibility of contributions made to our organization (not simply an issue we care about)

# APPENDIX C:

## Simple 501(c)(3)-501(c)(4) Timesheet

Name: \_\_\_\_\_

Week of \_\_\_\_\_ to \_\_\_\_\_

	Total Hours	501(c)(3)			501(c)(4)		VACATION	SICK
		General	Direct lobbying	GR lobbying	General	Electioneering		
Monday	0							
Tuesday	0							
Wednesday	0							
Thursday	0							
Friday	0							
Saturday	0							
Sunday	0							
<b>Total:</b>	0	0	0	0	0	0	0	0



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