

Maximizing Your Advocacy

Eight Steps For
Granting Unused
Lobbying Capacity
From a 501(c)(3) to an
Affiliated 501(c)(4)



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Introduction

At Bolder Advocacy, we're always helping nonprofits make smart strategic choices within the law. That's why we're publishing a guide on how a 501(c)(3) and a 501(c)(4) can actually help each other by leveraging each other's limitations.

Federal tax law limits how much lobbying a 501(c)(3) public charity can do. Despite those limits, some of these organizations find themselves at the end the year with unused lobbying capacity (meaning, they have not spent up to their legally allowed cap).

Federal tax law limits 501(c)(4)s in a different way. Unlike 501(c)(3)s, they cannot offer tax-deductibility to their donors. That sometimes makes it harder for 501(c)(4)s to raise money.



This guide helps nonprofit leaders maximize their advocacy by providing step-by-step instructions to grant unused lobbying capacity from a 501(c)(3) to a 501(c)(4).

How To Use This Guide

If you work with or lead a 501(c)(3) that has money in the bank, or if you work with or lead a 501(c)(3)'s affiliated 501(c)(4) that could benefit from additional funds for lobbying work, then this guide is for you. It provides step-by-step instructions, sample agreements, and board resolutions to make this bit of tax law magic a reality.

How Does This Work?

Nonprofit organizations can legally lobby legislators on important matters of public policy but there's a tradeoff between the amount of lobbying allowed and the ability to offer tax-deductibility to donors.

501(c)(3)s get very favorable tax treatment under the law, including the ability to offer tax-deductibility to contributions, but that's balanced out with annual limits on how much lobbying they can do.

501(c)(4)s can engage in unlimited lobbying but donors cannot write off their contributions on their income taxes, which sometimes makes fundraising more challenging.

Despite the lobbying limit, many 501(c)(3)s end their fiscal years with money in the bank and unused lobbying capacity. Meanwhile, 501(c)(4)s often end their years gazing back at missed lobbying opportunities because of their less prolific fundraising.

The 501(c)(3) can help the 501(c)(4) by granting funds that can be spent on lobbying to the 501(c)(4). This allows the (c)(3) to spend its entire lobbying limit, even if the funds are not used until future years.



**Does this sound
like something that
could help your
organization(s) meet
their mission?**

We've outlined
the 8 steps
to make this
work legally.



STEP 1:

Make sure your 501(c)(3) has made the 501(h) election to measure its lobbying limits.

For this to work properly, the 501(c)(3) needs to be measuring its lobbying using the 501(h) rules. In fact, we recommend nearly all public charities choose this method of lobbying measurement — [check out our guide on why and how to make the 501\(h\) election.](#)

If you haven't let the IRS know you're measuring lobbying this way yet, you still have time. Just file Form 5768 before you do any of the next steps. Filing that form is called "making the 501(h) election" and it notifies the IRS that you want to follow the expenditure rules to measure and report lobbying. Best of all, it's retroactive to the beginning of your current tax year, so you can take care of this right now.



Form 5768 (Rev. September 2016) 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) ► Information about Form 5768 and its instructions is at www.irs.gov/form5768 .	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 ending _____ and all subsequent tax years until revoked. (Month, day, and year)</p> <p>Note: This election must be signed and postmarked within the first taxable year to which it applies.</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 _____ and all subsequent tax years (until a new election is made). (Month, day, and year)</p> <p>Note: This revocation must be signed and postmarked before the first day of the tax year to which it applies.</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>		
_____ (Signature of officer or trustee)		_____ (Type or print name and title)
		_____ (Date)

STEP 2:

Check your financials.

Next, you need to nail down your organization's lobbying capacity for the year. Officially, this is called the "lobbying nontaxable amount" or the amount of total lobbying you can do before being taxed by the IRS. For most 501(c)(3) public charities, you determine this by looking up the amount of money the organization spends on its activities on an IRS chart or use our handy lobbying calculator (for further details, see our publication [Being a Player](#)).

Next, look at your records to see how much your organization has spent on direct lobbying and grassroots lobbying (see [Being a Player](#) for definitions). We'll use all three of these numbers in a moment.



advocacy resource

BEING A PLAYER

A Guide to the IRS Lobbying Regulations
for Advocacy Charities

Gail M. Harmon
Jessica A. Ladd
Eleanor A. Evans

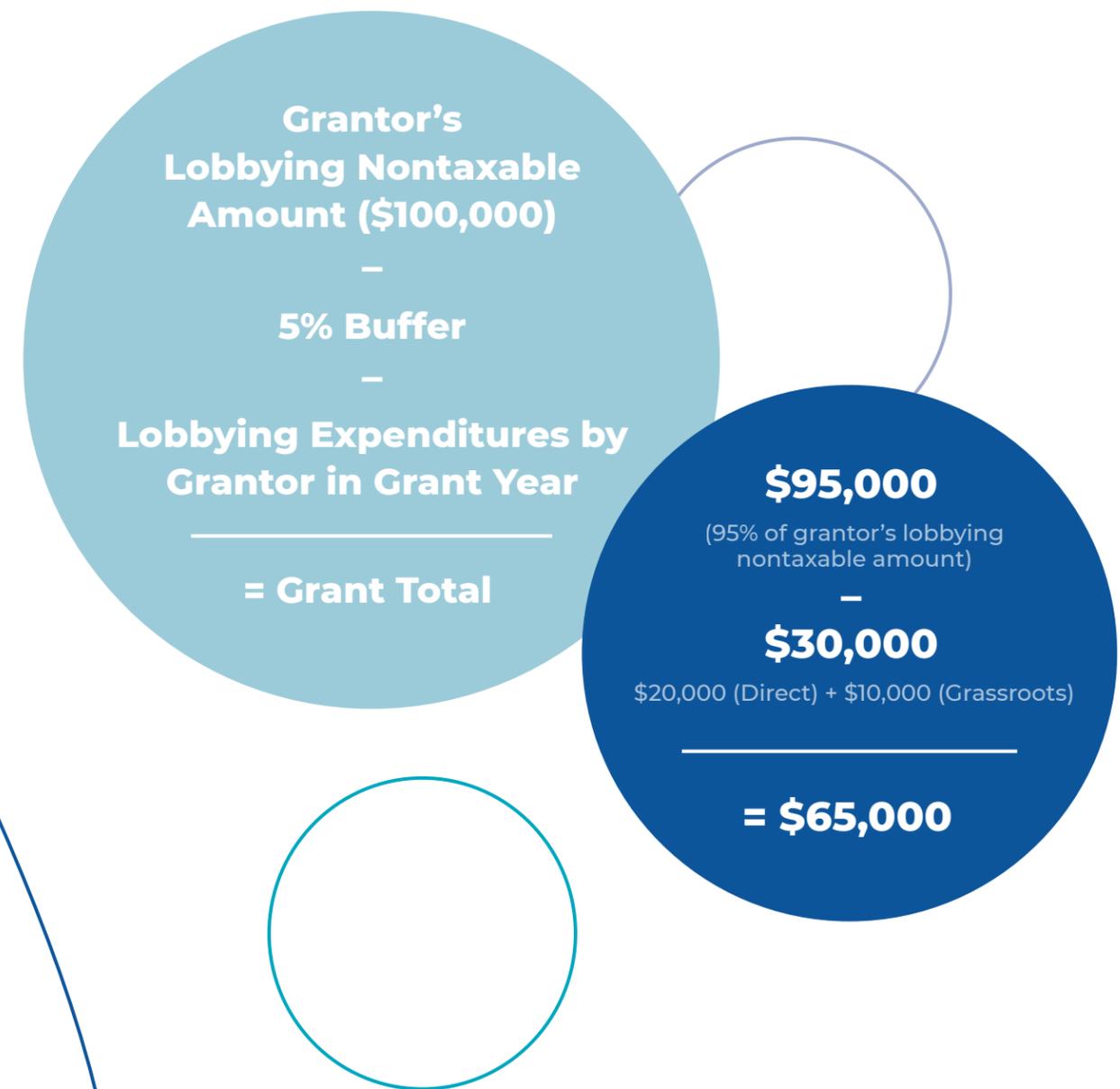
Harmon, Curran,
Spielberg & Eisenberg, LLP

STEP 3:

Calculate a safe amount to grant using the accompanying worksheet.

We recommend leaving at least a 5% buffer in the grant for total lobbying amount and grassroots lobbying limits within the grant, just in case the IRS later reclassifies non-lobbying activities as lobbying if you're audited down the line.

You will also need to deduct the amount of lobbying your 501(c)(3) organization has done that year in order to arrive at the grant amount. For example, assume in 2021 that the 501(c)(3)'s lobbying nontaxable amount is \$100,000 and it engaged in \$20,000 of direct lobbying and \$10,000 of grassroots lobbying. Therefore, it has \$70,000 left of lobbying capacity.



STEP 4:

Calculate a grassroots lobbying limit.

When making a grant to the (c)(4), the (c)(3) must pay attention to not only its overall lobbying limit, but also its grassroots lobbying limit.

In our example, the (c)(3)'s "grassroots nontaxable amount" is 1/4 of its total lobbying cap, or \$25,000. For purposes of the grant, we want to create that 5% buffer and account for the grassroots lobbying the (c)(3) engaged in that year so it can explicitly limit how much of the grant can be used for grassroots lobbying.



**Grantor's Lobbying
Nontaxable Amount
(\$25,000)**

—

5% Buffer

—

**Lobbying Expenditures by
Grantor in Grant Year**

= Grant Total

\$23,750

(95% of grantor's grassroots
lobbying nontaxable amount)

—

\$10,000

= \$13,750

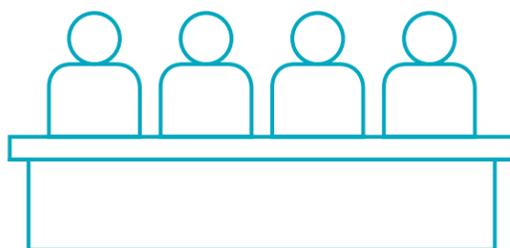
STEP 5:

Get approval from your 501(c)(3)'s board.

Some organizations' bylaws may require a resolution by the board of directors for a grant of this type — check your bylaws and with board members themselves as appropriate.

A resolution for a grant like this can be approved by the 501(c)(3)'s board of directors any time during the year, with the calculation of the amount and payment to the 501(c)(4) happening before the close of year. The 501(c)(4) board does not need to approve receiving this grant.

BOARD OF DIRECTORS



RESOLUTION

Of the Board of Directors of Nonprofit Advocacy Education Fund
December 19, 2019

The Board of Directors of the [501(c)(3)] Nonprofit Advocacy Education Fund hereby authorizes a distribution of funds ("Grant"), subject to the limitations below, to the [501(c)(4)] Nonprofit Advocacy Action Campaign.

Amount of Grant

The amount to be distributed to Nonprofit Advocacy Action Campaign shall be equal to 95% of Nonprofit Advocacy Education Fund's lobbying nontaxable amount for 2019, as defined by 26 USC 4911(c)(2), minus the amount of lobbying expenditures, as defined by 26 USC 4911(c)(1), made by Nonprofit Advocacy Education Fund in 2019.

Restrictions on Use of Funds

Nonprofit Advocacy Action Campaign shall be prohibited from using the Grant for the purpose of electioneering for or against any candidate for public office.

The use of the Grant for grassroots lobbying shall be restricted as necessary to ensure that 2019 expenditures by Nonprofit Advocacy Education Fund for grassroots lobbying, as defined by 26 CFR 56.4911-2(b)(2), do not exceed 95% of the grassroots lobbying nontaxable amount, as defined by 26 CFR 56.4911-1(c)(2).

Payment of Grant

This grant shall be considered an obligation of Nonprofit Advocacy Education Fund in the 2019 tax year and shall be made as promptly as possible, and no later than December 31, 2019.

STEP 6:

Write the grant agreement.

Any grant from a 501(c)(3) to a 501(c)(4) needs to carefully control the activity of the grantee to ensure the funds are spent only on things the 501(c)(3) can do. The grant needs to prohibit use of the grant funds for partisan electioneering and ensure the lobbying use stays below the lobbying nontaxable amounts for total and grassroots lobbying.

The (c)(4) grantee must also agree to report how it used the money to the (c)(3) on a regular basis until the funds are totally spent.



Sample Grant Agreement For Lobbying from 501(c)(3) to 501(c)(4)

The grant to [name of 501(c)(4) ("Grantee")] from [name of 501(c)(3)] ("Grantor") is for the explicit purposes described in Grantee's proposal and subject to Grantee's acceptance of the terms of this Agreement.

WHEREAS, Grantor is a nonprofit corporation organized and operated for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1964, as amended ("Code") and desires to provide a grant to Grantee to conduct lobbying activity within its legal limits set forth in Code Section 4911(c)(2); and

WHEREAS, the parties herto agree that every effort shall be made to safeguard the integrity of Grantor's tax-exempt status;

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the parties agree as follows:

STEP 7:

Sign the grant agreement and cut the check.

The 501(c)(3) makes its final lobbying expenditure of the tax year at this point. Essentially, it is paying the (c)(4) to conduct future lobbying work with the last of its lobbying cap (minus that 5% safety buffer). The (c)(3) then reports the grant plus its earlier lobbying to the IRS on the year's Form 990.

Note, that the representative for the 501(c)(3) and 501(c)(4) may be the same person (i.e. your executive director serves that role for both organizations). Since they serve the two organizations separately, it is appropriate for them to sign the agreement on behalf of both organizations.



Please sign and return the original of this agreement acknowledging that Grantee accepts the terms and conditions of this Agreement.

For Grantee:

For Grantor:

(Signature of Authorized Representative)

(Signature of Authorized Representative)

(Name & Title)

(Name & Title)

(Date)

(Date)

STEP 8:

The 501(c)(4) spends the money following the grant rules.

The 501(c)(4) is under no deadline to spend the lobbying grant funds before the end of the year. It only needs to follow the grant agreement rules and report back to the (c)(3) as it spends the grant down.

It must comply with grant agreement limits completely, including limits on grassroots lobbying and no support or opposition of candidates using grant funds. However, it can do additional grassroots lobbying or partisan electioneering with other unrestricted funds.



Conclusion

By working together, affiliated 501(c)(3)s and 501(c)(4)s can leverage each other's strengths and accomplish their policy goals. This guide shows just one of the ways they can do it. For more information on how affiliated groups can work together, read Bolder Advocacy's [The Connection](#).

If you have questions, [contact us at Bolder Advocacy](#).

Need More Guidance?

Bolder Advocacy is here to help!
Just call our Technical Assistance hotline at
1-866-NP-LOBBY, email us at **advocacy@afj.org**,
or visit our website at **bolderadvocacy.org**.
Please share this with your funders, and
encourage them to call us with questions.

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