Lawyers Alliance FOR NEW YORK

Connecting Lawyers, Nonprofits, and Communities

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Designing a Lobbying Compliance System for a New York Nonprofit

Nonprofits that are recognized as public charities by the Internal Revenue Service (IRS) can influence legislation, within limits.[1] These organizations are required to report their lobbying activities on IRS Form 990 and should ensure that they have internal systems in place to record these activities. At the state and local level, nonprofits that spend $5,000 or more to lobby in New York must register as a lobbyist with State and City regulators. Depending on whether the organization lobbies, it may also have an obligation to register with and report to other lobbying regulators. A nonprofit interested in engaging in lobbying should decide on its goals around lobbying activities and create an internal lobbying compliance system to manage reporting requirements and avoid liability.

Designing a lobbying compliance system can appear daunting because regulators at the federal, state, and local levels each have their own definition of lobbying and require different reports. It is important for nonprofits to designate appropriate personnel to keep track of lobbying expenditures, generate required reports, and ensure the organization does not exceed their lobbying allowance. A nonprofit can take four steps to build a lobbying compliance system:

1. Identify a lobbying compliance staff member.
2. Create and share an internal lobbying tracker tool.
3. Complete required reporting and registration on time.
4. Stay in compliance.

See below for a detailed discussion of each step.

Step 1: Identify a lobbying compliance staff member.

At least one person at your nonprofit should understand which regulators the organization needs to be compliant with and report to. This person might be your policy director or manager, or other staff who is familiar with or has capacity to learn the rules around lobbying at the federal, state, and local levels. Your organization should ensure that this person knows where to turn for all of the relevant definitions of lobbying and is aware of the information that must be tracked for each regulator.

Here are some resources they can turn to for help:

- The New York State Commission on Ethics and Lobbying in Government (COELIG) website: https://ethics.ny.gov/
- The Lobbying Bureau of the New York City Clerk website: https://www.cityclerk.nyc.gov/content/lobbying-bureau

[1] 26 U.S. Code Section 501(c)(3). Organizations deemed private foundations may not engage in any lobbying. *Id* Section 4945.

- Lawyers Alliance's FAQs on Lobbying for NY Nonprofits: https://lawyersalliance.org/userFiles/uploads/legal_alerts/Nonprofits_and_Lobbying_FAQ.pdf
- Lawyers Alliance also offers two on-demand webinars titled "Am I Lobbying?" and "Careful Lobbying Compliance" available for a small fee: https://lawyersalliance.org/recorded-webinars
- Bolder Advocacy, "What Nonprofits Need to Know About Lobbying in New York:" https://afj.org/resource/practical-guidance-what-nonprofits-need-to-know-about-lobbying-in-new-york/
- Bolder Advocacy's Nonprofit Advocacy Self-Assessment: https://afj.org/wp-content/uploads/2024/12/Advocacy-Check-Up-Nonprofit-Self-Assessment.pdf

Step 2: Create and share an internal lobbying tracker tool.

A nonprofit should require that each employee that engages in lobbying activities track their time spent lobbying and all lobbying-related expenditures. For example, the nonprofit can distribute a lobbying tracker tool like the one Lawyers Alliance has created, attached as an addendum.[2] The organization should tailor the tracker to its needs by identifying the activities it actually engages in and taking into account the definitions of lobbying used by the relevant regulators. For example, your organization might participate in an annual advocacy day or might appeal directly to a City Councilmember on a periodic basis.

There are many other ways to do this, and each organization should pick a method that works best given its other recordkeeping systems and its own culture. For instance, some organizations have each staff person simply email the necessary information to the lobbying compliance staffer every week. Others use a spreadsheet or time-tracking software.

Whichever method you use, the nonprofit should provide instructions on tracking activities that may be considered lobbying. To accomplish this, the nonprofit could provide a training that covers how the relevant regulators define lobbying and highlights particular activities that the lobbying compliance staff member has determined must be reported.[3]

The tracker should allow each staff member to track activities by date, time spent, and any other costs associated with the activity (e.g., transportation, printing, hiring consultants, etc.). Depending on which regulators you have to report to, the tracker may also have to include other information, such as a description of the subject of the lobbying (such as a bill number) and which government officials were contacted. The lobbying compliance staff member should review each staff member's tracking tool and determine which activities need to be reported to each regulator. The individual staff members do not need to know which activities must be reported to which regulator; the lobbying compliance staff member should understand the different definitions among the regulators and determine when the nonprofit has met the threshold that triggers registration requirements.

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[2] Lawyers Alliance's tracker tools are meant for use by employees to track their time, but a lobbying compliance staff member should oversee all entries.

[3] For organizations that lobby solely in New York and at the federal level, Lawyers Alliance's on-demand "Am I Lobbying" webinar can help educate staff.

<u>Step 3: Complete required reporting and registration on time.</u>

Reporting to the New York State (NYS) and New York City (NYC) Lobbying Regulators:
With input and guidance from the lobbying compliance staff member, an administrative assistant or organizer may input the lobbying information from all staff into the lobbying regulators' online lobbying reporting systems. Alternatively, the lobbying compliance staff member can manage the entire reporting process. NYS and NYC require registered lobbyists to file reports every two months. There are also special reports that must be filed if a lobbyist engages in particular activities, such as raising funds for a NYC candidate or making a payment to a state employee. You can find more information on the websites of COELIG, the NYC Clerk's Lobbying Bureau, and in Lawyers Alliance's FAQs on Nonprofits and Lobbying and "Careful Lobbying Compliance" webinar listed above.

Reporting to the IRS (for 501(c)(3) Public Charities):
A tax preparer or other person filing the organization's annual IRS Form 990 or 990-EZ should report lobbying expenditures on Schedule C.[4] If the organization has filed IRS Form 5768, allowing it to use the expenditures-only test (also known as the 501(h) election), all they will have to report is how much the organization spent on direct lobbying and how much it spent on grassroots lobbying. If the organization has not filed Form 5768, it will also have to indicate the types of advocacy activities it has conducted, such as rallies and mailings to legislators. Smaller organizations that file the 990-N do not report lobbying expenses to the IRS but should still keep records in case they are audited. See also Bolder Advocacy's publication "Keeping Track," which goes into incredible detail about tracking lobbying to report it on the 990 Schedule C.[5]

Finally, the lobbying compliance staff member should ensure that the organization is meeting deadlines for reporting and registering. The lobbying compliance staff member should create their own tool for tracking deadlines. There can be significant penalties for failing to report on time.

<u>Step 4: Stay in compliance.</u>

In case the nonprofit experiences personnel changes, it should maintain internal guidance for the designated lobbying compliance staff member and make sure they know how to update the relevant information in the online portals for COELIG and the NYC Clerk Lobbying Bureau. The nonprofit should also consider holding annual trainings around lobbying for all staff, especially if the organization decides to increase or change its lobbying activities.[6]

This alert is meant to provide general information only, not legal advice. Please visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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[4] Schedule C and instructions available here: https://www.irs.gov/charities-non-profits/required-filing-form-990-series.
[5] See https://afj.org/resource/keeping-track-a-guide-to-recordkeeping-for-advocacy-charities/.
[6] Note that NYS and YC each have their own required trainings for registered lobbyists.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations and social enterprises that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, Lawyers Alliance for New York helps nonprofits to provide housing, stimulate economic opportunity, improve urban health and education, promote community arts, and operate and advocate for vital programs that benefit low-income New Yorkers of all ages.

Date	Employee Name	Subject (include bill or regulation number if applicable)	Description of Activities	Government Entity	Government Official's Name and Title	Form of Communication	Direct or Grassroots Lobbying?	Time Spent (Hours)	Additional Expenses
				E.g., State Legislature		E.g., Meeting	IRS definitions: https://www.irs.gov/charities-non-profits/direct-and-grass-roots-lobbying		

A full, annotated version of this tracker is available upon request. Email info@lawyersalliance.org.