

October 27, 2015

FAQ's About Nonprofit Organizations and Legislative Lobbying

Nonprofit organizations serving low-income communities in New York are affected by the legislative process in many ways. Their work can be enhanced or complicated by legislation and regulatory action governing their program services or the beneficiaries of those services. Their financial health and even continued existence can depend upon government grants and contracts to provide services.

Nonprofits that lobby in New York must pay attention to federal limits on lobbying activity and to federal, state and local lobbying disclosure requirements. The Internal Revenue Code limits the amount of lobbying a tax exempt organization can undertake consistent with its tax exempt status. Lobbying before Congress may require registration and reporting of that activity. Lobbying before the state legislature or City Council may trigger separate registration and disclosure obligations under the state or city lobbying laws. Lobbying activity may also be regulated by campaign finance laws.

These FAQs provide an introduction to the many ways that legislative advocacy by nonprofit organizations is regulated at the federal, state, and city level. They are intended for use by nonprofit managers and by attorneys who represent them but may not be familiar with this complex area. These FAQs do not attempt to exhaustively cover all of the particulars in this complex and changing area of the law. Lawyers Alliance staff are available to help qualifying nonprofits determine whether they need to register as a lobbyist and how to track and report their lobbying activities and comply with other legal obligations. Please contact Senior Policy Counsel Laura Abel at (212) 219-1800 x283 or visit our website www.lawyersalliance.org for further information.

TABLE OF CONTENTS

Introduction.....	4
1. What is lobbying?	4
2. Can a nonprofit organization lobby?	4
3. Which government bodies regulate lobbying by nonprofits?.....	4
Internal Revenue Code Lobbying Regulation.....	5
4. What is the Internal Revenue Code definition of lobbying?	5
5. What restrictions are placed on 501(c)(3) organizations?	5
6. What happens if a 501(c)(3) organization exceeds the IRS lobbying limit?.....	6
7. Should a 501(c)(3) organization engaged in lobbying always take the 501(h) election?.....	6
8. How are the IRS rules for 501(c)(4) organizations different?.....	7
9. What is the difference between grassroots and direct lobbying, and why does it matter?	7
10. Are there special rules for membership organizations?.....	7
11. Are there exceptions to what must be counted as lobbying activity for IRS purposes?	8
12. How should an organization count an “advocacy day” at City Hall or in Albany?	8
13. How are an organization’s lobbying activities reported to the IRS?.....	9
Federal Lobbying Disclosure Act Regulations.....	9
14. Who must register and report under the Lobbying Disclosure Act?	9
15. What must be reported under the LDA?.....	10
16. What are the primary differences between the IRS and LDA definitions of lobbying?	10
17. What is the registration process for LDA lobbying reports?.....	10
New York State and City Lobbying Regulations.....	11
18. How are City and State lobbying regulations different than IRS regulations on lobbying?	11
19. Does NYC and NYS lobbying activity need to be counted towards an organization’s Internal Revenue Code limit on lobbying?	11
20. What must be reported to NYS?.....	11
21. What must be reported to NYC?	12
22. Do planning and preparation sessions for lobbying need to be reported?.....	13
23. What are the exceptions to the City/State definitions of lobbying?	13
24. What if only part of a meeting or other activity involves lobbying?.....	14
25. Is every interaction with an elected official considered lobbying?	14
26. Does an organization’s lobbying with volunteers need to be reported? What about board members?.....	14
27. Does an appearance at a public hearing count as lobbying?	14
28. How should an organization report an “advocacy day” at City Hall or in Albany?.....	15
29. Does a public rally count as lobbying?.....	15
30. Does seeking member item funding count as lobbying?.....	15

31. Is every attempt to obtain government funding considered lobbying?	15
32. In addition to the obligation to file lobbyist and client reports, what other requirements might apply to a lobbyist who attempts to obtain public funding?.....	16
33. What is the registration and reporting process for NYC and NYS lobbying compliance?	17
34. What personal information must a registered lobbyist disclose?	17
35. Can a registered lobbyist invite a public official to a fundraiser or give other types of gifts?	17
36. Are there special requirements for registered lobbyists who are involved in or contribute to a political campaign?.....	18
37. Must lobbying that a registered lobbyist performs on his or her own time be reported?	18
38. Must lobbying activities of family members living in the same household be reported?	18
39. How should an organization track its lobbying activity?	18
40. What are the penalties for failing to register or file a form, or for doing so late?.....	19
41. What if a lobbying report needs to be changed?	19
42. In addition to periodic lobbying reports, what other forms might a lobbyist or client be required to submit?	19
43. What is the NYS Reportable Business Relationships requirement?	19
44. What is the NYS Source of Funding requirement?	20
Legislative Advocacy Regulated as an Election-Related Communication	20
45. Why do nonpartisan organizations engaged in legislative advocacy need to be aware of independent expenditure disclosure requirements?	20
46. Which legislative advocacy communications must be reported to the Federal Elections Commission?	20
47. Which legislative advocacy communications must be reported to the state Board of Elections?	21
48. Which legislative advocacy communications must be reported to the NYC Campaign Finance Board?.....	22

Introduction

1. What is lobbying?

Lobbying is an attempt to influence legislation or other official government action. Regardless of whether an organization describes its activities as advocacy, community education or legislative policy, if it is trying to influence legislation – meaning supporting or opposing proposed or existing legislation – the organization should familiarize itself with applicable lobbying regulations.

How “legislation” is defined depends on which body of regulations applies. The federal government, New York State and New York City have each enacted statutes and regulations that govern lobbying activity, and what counts as lobbying is different for each regulatory body.

2. Can a nonprofit organization lobby?

Yes! Nonprofit organizations, including nonprofits with 501(c)(3) tax exempt status, may engage in lobbying; the amount of permissible lobbying varies depending on their tax exempt status. Organizations with 501(c)(3) status are subject to the most restrictive regulations on how much lobbying activity they can engage in. Other types of tax exempt organizations can engage in as much lobbying as is necessary or desirable to accomplish their tax exempt purpose. In order to ensure that their advocacy efforts are as effective as possible without jeopardizing their tax exempt status, 501(c)(3) organizations in particular should become familiar with how much lobbying is permissible under Internal Revenue Service (IRS) rules.

3. Which government bodies regulate lobbying by nonprofits?

The IRS limits how much lobbying 501(c)(3) organizations may undertake.

The other applicable regulatory bodies do not limit how much lobbying an organization may engage in but do require that lobbying activity be reported under certain circumstances. The Federal Lobbying Disclosure Act requires disclosure of federal lobbying activity to the Clerk of the House of Representatives and Secretary of the Senate; the NYS Lobbying Act requires disclosure of lobbying activity within New York State (including municipal and county level activity) to the Joint Commission on Public Ethics, and the NYC Lobbying Act requires disclosure of lobbying activity within NYC to the City Clerk’s Lobbying Bureau.

Legislative advocacy may be regulated as an election-related expenditure if it is conducted in the months before an election and if it mentions a public official who is a candidate in that election. The Federal Elections Commission, NYS Board of Elections, and NYC Campaign Finance Board all play a role in regulating such activity.

Internal Revenue Code Lobbying Regulation

4. What is the Internal Revenue Code definition of lobbying?

The Internal Revenue Code (IRC) defines lobbying as supporting or opposing the passage of “legislation.” Lobbying may be performed by directly contacting legislators (direct lobbying), or by encouraging people outside the organization to contact legislators (grassroots lobbying). For IRC purposes, lobbying includes attempting to influence:

- laws: actions by Congress, state legislative bodies, local legislative authorities, as well as public votes in regard to referenda, ballot initiatives, and constitutional amendments.¹
- judicial nominations: confirmation of a federal judicial nominee by the U.S. Senate, as "resolutions" or "similar items."²
- adoption of international law: proposals for the enactment or amendment of international law.³

The legislation in question must be specific. For example, a policy stance in support of eliminating hunger would not count as lobbying unless the organization is supporting or opposing specific laws that would affect hunger.

For IRS purposes, lobbying does not include an attempt to influence administrative rulemaking or other action, executive action not subject to federal or state legislative approval, and local actions by special bodies such as zoning or school boards. A number of other exceptions to the definition of lobbying are discussed in question 11 below.

5. What restrictions are placed on 501(c)(3) organizations?

Organizations with 501(c)(3) status are prohibited from engaging in lobbying activity that would constitute a “substantial part” of their activities.⁴ If the IRS determines that lobbying constitutes a substantial part of an organization’s activities, the organization may be subject to excise taxes, or it may lose its tax exempt status altogether.

A 501(c)(3) organization has a choice between two alternatives for determining whether it satisfies the “substantial part” test:

- 501(h) election: An organization that elects to use the 501(h) test will have its lobbying activity measured solely on the basis of its lobbying expenditures.⁵ The amount of lobbying that the organization can undertake depends on how much the organization spends on its exempt purposes in a year:

Exempt Purpose Expenditures	Total Lobbying Allowance under 501(h)
up to \$500,000	20% of exempt purpose expenditures (up to \$100,000 max)
\$500,000 - \$1 million	\$100,000 plus 15% of excess over \$500,000
\$1 million - \$1.5 million	\$175,000 plus 10% of excess over \$1 million
\$1.5 million - \$17 million	\$225,000 plus 5% of excess over \$1.5 million
Above \$17 million	\$1,000,000

An organization's total exempt purpose expenditures are all of an organization's expenditures *except* the cost of operating a separate fundraising unit, expenses incurred in operating an unrelated trade or business, or any amounts transferred to affiliate organizations that would cause the organization to remain below the permissible lobbying levels.⁶ Additionally, under the 501(h) election, grassroots lobbying is limited to 25% of the organization's total lobbying allowance.

Any 501(c)(3) organization (other than churches and private foundations) may choose the 501(h) election.

- **Facts and circumstances test:** If an organization does not take the 501(h) election, the organization will be subject to a facts and circumstances test. Under this test, the IRS will look at the overall activities of the organization and may take into account resources other than financial expenditures.⁷ Available guidance is not entirely clear on what factors the IRS will consider, but the IRS has refused to adopt the quantitative approach available to exempt organizations that have made the 501(h) election.

6. What happens if a 501(c)(3) organization exceeds the IRS lobbying limit?

If an organization has not taken the 501(h) election and the IRS determines that lobbying constitutes a "substantial part" of its activities, it will lose its tax exempt status, and may not reapply for tax exempt status as a 501(c)(4) organization.

If an organization has taken the 501(h) election and exceeds its lobbying expenditures allowance, it will owe the IRS excise taxes of 25% of the amount by which it exceeded the allowance.

If the organization exceeds its allowance by an average of 150% over a four-year period, even an electing organization risks revocation of its tax exempt status.

7. Should a 501(c)(3) organization engaged in lobbying always take the 501(h) election?

In most cases, yes. The 501(h) election offers a clear and reliable way to calculate how much an organization can spend on lobbying before its tax exempt status is jeopardized. There is no evidence that taking the election increases the risk of an IRS audit of lobbying activity.

8. How are the IRS rules for 501(c)(4) organizations different?

The IRS does not limit how much lobbying a 501(c)(4) social welfare organization can engage in, so long as the lobbying activity is in furtherance of the 501(c)(4)'s tax exempt purpose. However, keep in mind that a 501(c)(4) organization is not eligible to receive tax deductible donations and cannot engage in partisan political activity as its primary purpose.

9. What is the difference between grassroots and direct lobbying, and why does it matter?

It is important to understand the difference between grassroots and direct lobbying because the IRC limits on grassroots lobbying are lower than the overall lobbying limits, even for organizations that have taken the 501(h) election. Grassroots lobbying is limited to 25% of an organization's total lobbying allowance.

- Direct lobbying occurs when an individual designated and compensated by the organization attempts to influence legislation by communicating with legislative officials. In order for activity to count as direct lobbying, there must be:
 - a) specific legislation (pending or proposed), and
 - b) the organization must take a stand in support of or opposition to that specific legislation.

- Grassroots lobbying occurs when an organization encourages others to influence legislation by urging those outside the organization to engage in lobbying. In order for activity to count as grassroots lobbying, there must be:
 - a) specific legislation (pending or proposed),
 - b) the organization must take a stand in support of or opposition to that specific legislation, and
 - c) the activity must include a "call to action," in which the organization either:
 - i) explicitly asks the public to contact legislators in order to influence the legislation, or
 - ii) implicitly encourages them to do so by providing legislators' names and/or contact information.

All three criteria must be met. For example, simply educating the public on the impact of proposed legislation will not count as grassroots lobbying unless the organization also asks the public to contact their legislators in an attempt to influence the legislation.

10. Are there special rules for membership organizations?

Yes, with respect to the distinction between grassroots and direct lobbying, in particular. Lobbying communications aimed at individuals who are bona fide members of an organization will be counted as direct lobbying expenses rather than grassroots lobbying expenses.⁸ This is especially helpful for organizations that come close to meeting the cap on grassroots lobbying but not their overall lobbying limit. In order for an individual to qualify as a bona fide member of an organization, he or she must pay dues or make a contribution of more than a nominal amount of time or money, or be one of a limited number of honorary members.⁹ An individual

will not be considered to be a member if the individual has simply signed up for the organization's email newsletter.

11. Are there exceptions to what must be counted as lobbying activity for IRS purposes?

Yes. In many cases, it is helpful to keep in mind the definition of lobbying: for an activity to count as lobbying, specific legislation must be identified, and the organization must take a stand in support of or opposition to that legislation. For grassroots lobbying to occur, there must also be a call to action. If the activity in question does not meet these requirements, it is likely that lobbying has not occurred. Below are examples of activity which are explicitly exempted from the IRS definition of lobbying:

- Nonpartisan analysis, study or research: To fall under this exemption, the analysis must be full and fair and must allow the public to decide whether to support or oppose the legislation. In addition, the analysis must be made available to a cross section of the population (e.g., posted on the web) or to a nonpartisan cross section of the applicable legislative body.¹⁰
- Technical assistance to a governmental body: If a governmental or legislative body asks an organization to testify or provide information on a particular subject, that work will not count as lobbying *so long as* the organization receives a written invitation to provide input. A request from a single legislator will not qualify for this exemption.¹¹
- Self-defense exception: Advocacy regarding legislation that would affect an organization's existence does not count towards its lobbying limits. For example, a charter school could lobby without limitation regarding a bill that would disallow charter schools. Simply lobbying on budgetary issues is unlikely to qualify for this self-defense exception to lobbying, however.¹²

The remaining exemptions set forth by the IRS are helpful as clarifications, but it is also clear that these activities are not lobbying based simply on the IRS' definition of lobbying:

- Non-legislative communications with governmental officials: Many nonprofits do and should interact with government agencies and officials, and those lines of communications should not be stifled. If the topic of the communication is not legislative in nature, or if the organization does not take a position on the legislation, these interactions are not lobbying.¹³
- Communications with members that do not include a call to action: An organization can inform its members about specific or proposed legislation and take a position on that legislation. That activity is not lobbying unless it also includes a call to action.¹⁴
- Communication on issues: Examinations of broad social, economic or similar problems are not lobbying, even if they are directed toward the general public, if there is no call to action.¹⁵

12. How should an organization count an "advocacy day" at City Hall or in Albany?

Because the goal of an "advocacy day" usually includes influencing legislation, any expenses with the event should be counted, including staff time and any expenses such as food and buses for staff and volunteers. Assuming an organization does not compensate volunteers, volunteer time does not need to be reported.

To the extent the advocacy day has other goals, a portion of the expense may be allocated to something other than lobbying. For example, if children are involved, and the trip is also intended to serve an educational purpose (e.g., includes a tour of City Hall and a lecture on how laws are passed), some of the cost of the advocacy day may be allocated to educational activities rather than lobbying if the children are not asked to contact their legislators in order to influence legislation.

If the expense of an advocacy day is problematic because the organization is running up against the IRS limits on how much it may spend on grassroots lobbying, the organization should consider whether participants in the advocacy day are members for IRS purposes, in which case expenses related to those members' activities would be considered direct rather than grassroots expenses.

13. How are an organization's lobbying activities reported to the IRS?

An organization's lobbying activities are reported on Schedule C of the IRS Form 990, which is filed annually by tax exempt organizations with over \$50,000 in revenue. Organizations that have made the 501(h) election are required to report only the monetary value of their activities, while organizations that have not taken the election must provide more information about the activities.¹⁶

Organizations engaged in lobbying should implement consistent and reliable means of collecting information about their lobbying expenses, both in order to comply with the 990 disclosure requirements and to facilitate accurate reporting to the federal, state and city regulatory bodies described below. The organization should maintain employee time records, receipts for expenses, and other documentation that would be helpful in supporting the organization's statements regarding lobbying activity.

Federal Lobbying Disclosure Act Regulations

14. Who must register and report under the Lobbying Disclosure Act?

The Lobbying Disclosure Act ("LDA") covers lobbying at the federal level only; state and city level lobbying are not reported under the LDA. Only organizations that meet the following thresholds are required to register and report their lobbying activity under the LDA:

- the organization's lobbyist has made at least two lobbying contacts and has spent at least 20% of his or her time on lobbying activity in a quarterly period; *and*
- the organization employing the lobbyist spent at least \$12,500 on lobbying during that quarterly period.

If one or both of these criteria are not met, the organization does not need to register and report under the LDA, even if it engages in lobbying at the federal level.

15. What must be reported under the LDA?

Assuming the thresholds above are met, attempting to influence federal legislation, regulations, agency action (including procurements), or Senate confirmations (and nominations for such confirmations) must be reported if lobbying is directed at any of the following:

Executive Branch

- President
- Vice President
- Officers and employees of the Executive Office
- Any official serving in an Executive Level I through V position: These are Cabinet members and certain other senior level officials¹⁷
- Any member of the uniformed services serving at grade O-7 or above
- Schedule C Employees: These tend to be people whose job involves making or approving substantive policy recommendations and their aides¹⁸

Legislative Branch

- A member of Congress
- An elected officer of either the House or the Senate (such as the Clerk or chaplain)
- An employee who works for a legislator, committee, or working group or caucus of the legislature

Lobbying includes contacting these individuals in order to influence legislation, and “any efforts in support of such contacts, including preparation or planning activities, research and other background work that is intended, at the time of its preparation, for use in contacts and coordination with the lobbying activities of others.”¹⁹

16. What are the primary differences between the IRS and LDA definitions of lobbying?

The LDA counts influencing regulations as lobbying, while the IRS counts influencing legislation, confirmation of judicial nominees, and international law. The LDA counts activity targeted at federal legislators and certain federal officials, while the IRS counts activity targeted at legislators at any level of government.

However, a 501(c)(3) organization has the option of using the IRS’ definition of lobbying when it fills out its LDA reports.²⁰ This would simplify the organization’s record keeping, but it may result in the organization reporting more activity than it must under the LDA.

17. What is the registration process for LDA lobbying reports?

Registration is required within 45 days of meeting the LDA registration thresholds and must be performed electronically using prescribed software.²¹ Quarterly reports describing the organization’s lobbying activity are due within 20 days after the end of each quarter beginning in January, April, July and October. Reports must be filed with the Clerk of the House of Representatives and Secretary of the Senate.

New York State and City Lobbying Regulations

18. How are City and State lobbying regulations different than IRS regulations on lobbying?

Two main differences stand out. First, neither NYC nor NYS lobbying regulations limit how much lobbying an organization (or any other person or entity) may engage in. Instead, each requires *disclosure* of lobbying activity, if a \$5,000 expenditure threshold has been met.

Second, under both NYC and NYS laws, the definition of lobbying is broader. In addition to attempting to influence legislation, the NYC and NYS definitions include attempting to influence administrative rules “having the force and effect of law,” as well as procurements and certain other actions by government agencies, boards and commissions. The result is that much more of an organization’s advocacy work may be reportable to NYC and NYS, even though that activity will not count towards the organization’s IRS lobbying limits.

19. Does NYC and NYS lobbying activity need to be counted towards an organization’s Internal Revenue Code limit on lobbying?

Not necessarily. Because the NYS and NYC lobbying include many activities that the IRS does not count as lobbying, some of the lobbying activity that must be reported to NYS and NYC will not count towards the IRC limits on lobbying.

20. What must be reported to NYS?

An organization must report all attempts to influence certain types of activities by state, county and municipal legislators and agency officials in New York State. Federal level lobbying activity is not included and does not count towards the \$5,000 threshold.

Under the NYS Lobbying Act, lobbying is defined as attempting to influence:²²

State actions

- (i) **law:** the passage or defeat of any legislation or resolution by either house of the state legislature including but not limited to the introduction or intended introduction of such legislation or resolution or approval or disapproval of any legislation by the governor;
- (ii) **executive order:** the adoption, issuance, rescission, modification or terms of a gubernatorial executive order;
- (iii) **agency rules & regulations:** the adoption or rejection of any rule or regulation having the force and effect of law by a state agency;
- (iv) **ratemaking:** the outcome of any rate making proceeding by a state agency;

State or local actions

- (v) **procurement:** any determination: (A) by a public official, or by a person or entity working in cooperation with a public official related to a governmental procurement, or (B) by an officer or employee of the unified court system, or by a person or entity

working in cooperation with an officer or employee of the unified court system related to a governmental procurement;

(vi) **tribal-state agreements & gaming:** the approval, disapproval, implementation or administration of tribal-state compacts, memoranda of understanding, or any other tribal-state agreements and any other state actions related to Class III gaming as provided in 25 U.S.C. § 2701, except to the extent designation of such activities as "lobbying" is barred by the federal Indian Gaming Regulatory Act, by a public official or by a person or entity working in cooperation with a public official in relation to such approval, disapproval, implementation or administration;

Local actions

(vii) **law or regulation:** the passage or defeat of any local law, ordinance, resolution, or regulation by any municipality or subdivision thereof;

(viii) **executive order:** the adoption, issuance, rescission, modification or terms of an executive order issued by the chief executive officer of a municipality;

(ix) **agency rule or regulation:** the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law, ordinance, resolution, or regulation;
or

(x) **ratemaking:** the outcome of any rate making proceeding by any municipality or subdivision thereof.

21. What must be reported to NYC?

Only work aimed at the NYC government must be reported to NYC. State and federal level lobbying activity should not be included and do not count towards the \$5,000 threshold.

Under the NYC Lobbying Act, lobbying is defined as attempting to influence:²³

(i) City Council:

- the introduction, passage, defeat or substance of any local law or resolution by the City Council, or
- any determination regarding the calendaring or scope of any City Council oversight hearing;

(ii) Mayor:

- the support, opposition, approval or disapproval of any local law or resolution by the Mayor, even if the law or resolution has not yet been introduced,
- the issuance, repeal, modification or substance of a mayoral executive order;

(iii) **Procurement:** any determination made by an elected city official or an officer or employee of the city with respect to the procurement of goods, services or construction, including the preparation of contract specifications, or the solicitation, award or administration of a contract, or with respect the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies;

(iv) **Zoning or land use:** any determination made by the Mayor, City Council, City Planning Commission, a borough president, a borough board or a community board with respect to zoning or the use, development or improvement of real property subject to city regulation;

(v) **City's real property:** any determination made by an elected city official or an officer

or employee of the city with respect to the terms of the acquisition or disposition by the city of any interest in real property, with respect to a license or permit for the use of real property of or by the city, or with respect to a franchise, concession or revocable consent;

(vi) **Agency:** the proposal, adoption, amendment or rejection by an agency of any rule having the force and effect of law;

(vii) **Ratemaking:** the decision to hold, timing or outcome of any ratemaking proceeding before an agency;

(viii) **Board or Commission:** the agenda or any determination of a board or commission; or

(ix) **State or federal legislation:** any determination made by an elected city official or an officer or employee of the city to support or oppose any state or federal legislation, rule or regulation whether or not it has been formally introduced or proposed.

22. Do planning and preparation sessions for lobbying need to be reported?

In general, any work the organization does to prepare for public lobbying communications should be reported. This includes planning and strategy sessions and coordination meetings. It also includes work drafting legislation that does not yet exist, if the organization then pushes for the law to be enacted.

However, advocacy planning that does not involve specific or proposed legislation is not lobbying. For example, a meeting of coalition members to decide which policies to focus on for the year would not be lobbying until those policies are identified and the decision is made that the policy changes require legislative solutions.

23. What are the exceptions to the City/State definitions of lobbying?

There are numerous specific exceptions, which include:²⁴

- Drafting & opinions: Drafting or offering an opinion on legislation is not lobbying so long as the person does not conduct other lobbying activity with respect to the legislation.
- Agency proceedings: Participation in the public proceedings of a government agency is not lobbying, with respect to participation that is part of the public record and preparation for such participation.
- Adjudication: Participation in an adjudicatory proceeding is not lobbying.
- Responding to a request for information: Responding to a request for information from a government official or government body is not lobbying. However, the activity will be considered lobbying if the informant:
 - a) volunteered more information than was sought in the request;
 - b) provided requested information in a manner that clearly attempted to influence the passage or defeat of legislation, rules, or regulations;
 - c) instigated the request from the government official; *or*
 - d) “otherwise engaged in lobbying” on the subject matter in question.²⁵
- Procurement: NYS and NYC each have specific rules about when contacts with legislators and agency officials must be reported as lobbying, which are discussed in greater detail below. In general, it is not lobbying to respond to an RFP or to participate

in an officially sanctioned means of communication such as bidders conferences or questions submitted to a designated forum.

Keep in mind that in order for an activity to be defined as lobbying, it must refer to, and take a stand in opposition to or support of, specific legislation, rules or other desired action. NYS treats an appeal to the public as indirect (grassroots) lobbying only if it also includes a call to action: a request that the audience contact the relevant legislators or officials to support or oppose the legislation.²⁶ It is likely that NYC adheres to this approach as well.²⁷

24. What if only part of a meeting or other activity involves lobbying?

Only that portion of a meeting or activity that is aimed at influencing government action needs to be reported. However, differentiating between the different portions of a particular meeting will require careful record keeping, as the organization should be able to justify the split between lobbying and non-lobbying activities by referring to its records.

25. Is every interaction with an elected official considered lobbying?

No. In order for an activity to count as lobbying, it must involve an attempt to influence legislation, agency rules, or one of the other specific items discussed in response to questions 20 and 21 above. For this reason, educating government officials or discussing logistics of government-funded programs without an accompanying “ask” generally does not count as reportable lobbying.

26. Does an organization’s lobbying with volunteers need to be reported? What about board members?

In general, time spent by uncompensated volunteers does not need to be reported. All of the regulatory bodies monitor the expenditures related to lobbying, and because volunteers are uncompensated, in most cases the organization will incur no reportable expenses.

However, there is an exception for board members of the organization that lobby at the city level, even if those activities are uncompensated. Because the City Clerk views board members as being designated as lobbyists by the organization by virtue of their official role, board members’ activities must be reported if the organization is already registered. If the organization is not registered as a lobbyist, board member activities need not be reported.²⁸

In addition, lobbying by a volunteer must be reported to NYS if the volunteer is listed as an “additional lobbyist” on a lobbying report filed by another organization.²⁹

27. Does an appearance at a public hearing count as lobbying?

Testimony before the *City Council or State legislature* (and the preparation time for that testimony) is not considered lobbying if comes in response to a written invitation from the legislative body itself.³⁰ For NYC reporting purposes, the invitation can be made generally to members of the public; it is unclear whether this is true for state reporting.³¹ If the person is

testifying before a legislative committee, the invitation can come from that committee but not from an individual legislator.

In most cases, testimony before a *public agency* (and the preparation time for that testimony) would not be reported as lobbying activity, even without an invitation to testify.³²

28. How should an organization report an “advocacy day” at City Hall or in Albany?

Because the goal of an “advocacy day” usually includes influencing legislation, staff time should be reported to NYS and NYC as lobbying. However, assuming an organization does not compensate volunteers, most volunteer time does not need to be reported (with the exceptions discussed in the answer to question 26 above).³³ Expenses for food, lodging and transportation (such as buses) for volunteers, and for staff who are not registered lobbyists, must also be reported. Unlike with the IRS lobbying limits, however, it is not necessary to report to either NYS or NYC regarding expenses for food, lodging and transportation for staff who are registered lobbyists.³⁴

29. Does a public rally count as lobbying?

Public rallies may count as lobbying activity if an organization uses the rally to conduct grassroots lobbying (i.e., encouraging the public to take action in support of or opposition to a piece of legislation). If those criteria are not met, and there is no direct contact with legislators at the rally, the rally will not count as lobbying.

30. Does seeking member item funding count as lobbying?

Because member items are designated in City and State budget legislation, contacting a legislator or government employee to influence the disbursement or award of member item money should be reported as lobbying. Likewise, it is reportable lobbying to attempt to persuade the legislature to include in the budget either funding for a particular type of program, or a particular level of funding.

31. Is every attempt to obtain government funding considered lobbying?

No. As a rule, responding to an RFP or participating in a formal process to apply for a grant or other type of funding is not considered lobbying.³⁵

However NYS and NYC each have extremely specific rules about when contacts with elected officials or agency staff outside of a formal application process constitute lobbying.³⁶ An organization that clearly exceeds the state and city expenditure thresholds may want to report all such contacts as lobbying. For an organization that is unsure about whether it meets an expenditure threshold, it may be worth parsing these rules:

- An attempt to influence a contract between a nonprofit organization and a state agency generally is not considered lobbying for NYS purposes if the funding stream is not open to for-profit entities. However, if the contract is a procurement contract, open to for-profit entities, then an attempt to influence it is considered lobbying for NYS purposes.³⁷

A procurement contract includes a contract or agreement in excess of \$15,000 regarding “a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a governmental procurement.”³⁸

- An attempt to obtain a county or local procurement contract is reportable lobbying for NYS purposes.³⁹
- An attempt to obtain a NYC procurement contract is also reportable lobbying for NYC purposes.⁴⁰
- An attempt by a nonprofit to obtain a grant is not reportable lobbying for NYS purposes.⁴¹ However, an attempt to obtain a grant from a NYC agency may be reportable lobbying for NYC purposes.⁴²

Note that a registered lobbyist, but not a client, must file a separate, additional report if it anticipates spending \$5,000/year or more to influence the disbursement of certain state funds. This requirement is discussed more fully below.

32. In addition to the obligation to file lobbyist and client reports, what other requirements might apply to a lobbyist who attempts to obtain public funding?

- Disbursement of Public Monies Reports: A registered lobbyist that anticipates expending in excess of \$5,000 to influence the disbursement of certain state funds must file a NYS Lobbyist Disbursement of Public Monies Report. This report must be filed if the lobbyist attempts to influence the allocation of funding in excess of \$15,000, where the state legislature has included that funding in the state budget without allocating it to a particular recipient.⁴³ This report does *not* need to be filed if the attempt involves either a member item that the budget directs to a particular organization or a procurement contract. Because NYS does not consider attempts to obtain certain types of government funding to be lobbying (as discussed above), some activity may need to be included on the Disbursement of Public Monies report even though it is not considered lobbying.
- Restricted Period: NYS imposes special restrictions on lobbying regarding NYS procurements. Most contracts between state agencies and nonprofit organizations *are excluded* from these requirements, as are grants.⁴⁴ For covered procurements, once an agency issues a request for proposals or other announcement inviting applications for funding, until the contract is awarded, registered lobbyists are restricted in whom they may contact to influence that funding. However, they *are allowed to*:
 - lobby the agency’s designated contact;
 - respond to an RFP; or
 - participate in officially sanctioned means of communications such as bidders’ conferences or questions submitted to a designated forum.

Failure to comply with the restricted period can result in penalties up to \$50,000 and a ban on lobbying activity in NYS. The restricted period applies only to attempts to obtain NYS funding; it does not apply to attempts to obtain county or municipal funding.

33. What is the registration and reporting process for NYC and NYS lobbying compliance?

If an organization anticipates that it will meet or exceed the \$5,000 threshold for registration at the State and/or City levels, it should register and report its lobbying activity:

- **NYS:** Register and report online to the New York Joint Commission on Public Ethics (<http://www.jcope.ny.gov>).

An organization that employs the lobbyists itself must register with JCOPE as a client (requiring two semi-annual reports) and as a lobbyist (requiring bi-monthly reports). If the organization employs an outside lobbyist, it must register and report as a client.

- **NYC:** Register and report online to the City Clerk (http://www.cityclerk.nyc.gov/html/lobbying/lobbying_bureau.shtml)

An organization that employs the lobbyists itself must register with the City Clerk as a lobbyist/client (requiring bi-monthly lobbyist reports but no client reports).⁴⁵ At some point before December 17, 2015, NYC will permit organizations that spend between \$5,000 and \$10,000 on their own lobbying to file just two semi-annual lobbyist reports, but that that provision is not yet in effect. An organization that employs an outside lobbyist must enroll as a client with the City Clerk (requiring an annual report).

Please note: there is no minimum threshold for filing a lobbyist bi-monthly report under the NYS and NYC lobbying laws once an organization is registered. Even if no lobbying has occurred during a reporting period, a report MUST be filed.

34. What personal information must a registered lobbyist disclose?

Both NYS and NYC make lobbying reports available online, so anyone registered as a lobbyist under either system will be publicly identified as such. The person's lobbying expenditures and lobbying activities will be made public as well. In addition, home address and spouse or domestic partner must be reported to JCOPE and the City Clerk, although this information is not public. Unemancipated children must also be listed on the NYC registration forms if those children are making campaign contributions.

35. Can a registered lobbyist invite a public official to a fundraiser or give other types of gifts?

The general rule is that lobbyists may not give anything of more than nominal value to public officials.⁴⁶ It is sometimes impermissible to give gifts to public officials' relatives, or for a lobbyists' relatives to give gifts to public officials.⁴⁷ However, both NYS and NYC do permit certain types of gifts, including:

- complimentary tickets to an organization's charitable events;⁴⁸
- complimentary attendance at a conference widely attended by people other than public officials, so long as the event is related to the official's job;⁴⁹
- awards, plaques and other ceremonial items that are publicly presented;⁵⁰ and
- pens, t-shirts and the like that promote the organization and have little resale value.⁵¹

36. Are there special requirements for registered lobbyists who are involved in or contribute to a political campaign?

Contributions by NYC-registered lobbyists to NYC political campaigns are not matched by the NYC Campaign Finance Board and are subject to lower contribution limits than other individuals. If the lobbyist is an organization, this includes contributions by the CEO, CFO and/or COO, and any person employed in a senior managerial capacity.⁵²

In addition, political fundraising and paid political consulting must be reported for all individuals who are registered as lobbyists with NYC, as well as for their unemancipated children and spouse or domestic partner. Political fundraising is defined as “solicitation or collection of contributions of a candidate” for NYC office, and would include house parties and sending emails to encourage others to donate to a candidate, even when that activity is voluntary and uncompensated.⁵³ Political consulting is only reportable if the individual receives compensation for the consulting. Registered lobbyists must report even those political fundraising and paid political consulting activities that they conduct in their private lives during off-work hours.

37. Must lobbying that a registered lobbyist performs on his or her own time be reported?

NYS may require a person listed as an additional lobbyist on one organization’s registration to register and report regarding any lobbying he does on a volunteer basis for any other organization, even though an organization’s uncompensated volunteers usually are not required to register as a lobbyist.⁵⁴

NYC does not require individuals employed by a registered lobbyist to report lobbying that they do on their own time, unless the individual spends or receives at least \$5,000 in reportable compensation and expenses for the purpose of lobbying.⁵⁵

38. Must lobbying activities of family members living in the same household be reported?

Although the spouse or domestic partner of a registered lobbyist is listed for purposes of registration, that individual’s lobbying activity (if any) does not need to be reported. However, if the spouse, domestic partner or unemancipated children engage in political fundraising or in paid political consulting, that activity must be reported.

39. How should an organization track its lobbying activity?

In order to file timely reports, an organization should put in place a system that captures the lobbying activity of all employees. These records must be turned in to the person who will be filing the reports with enough lead time before the deadline for that person to process and input the necessary information.

While the records of the organization need not be detailed time sheets, the records should be an accurate reflection of the organization’s activities, and should include the following:

- subject, including bill number if applicable;
- target, including specific individuals (e.g., City Council members) if applicable;

- time spent;
- additional expenses (e.g., printing costs);
- level of legislation (i.e., federal, state or local); and
- grassroots or direct lobbying

For organizations reporting under multiple systems (IRS, Federal Lobbying Disclosure Act, NYS and/or NYC), records should also reflect whether the activity is lobbying for IRS purposes (e.g., an attempt to influence administrative rulemaking that is NOT considered lobbying for IRS purposes but must be reported for NYS and NYC purposes).

40. What are the penalties for failing to register or file a form, or for doing so late?

When an organization fails to register as a lobbyist in a timely fashion, or to file a report as a lobbyist or client, the City Clerk and JCOPE are authorized to charge first time filers up to \$10/day, and to charge everyone else up to \$25/day. However, JCOPE has adopted a late fee schedule that sets flat rates at a substantially lower level and has discretion to reduce or waive late fees in appropriate circumstances.⁵⁶ The City Clerk has similar discretion to reduce or waive fees.⁵⁷ Leniency is most likely to be exercised for newly registered organizations, organizations that lobby solely on their own behalf, and those with reasonable explanations for the late filings.

In most cases, the single most important factor for avoiding penalties is the timely filing of reports. However, NYC can impose penalties of up to \$30,000 and NYS can impose penalties of up to \$50,000 for knowing and willful violations of the applicable lobbying statute.

41. What if a lobbying report needs to be changed?

In general, there is no penalty for amending a lobbying report if an organization realizes that changes need to be made. However, it is possible that penalties could be assessed when a willful violation of the lobbying laws has occurred.

42. In addition to periodic lobbying reports, what other forms might a lobbyist or client be required to submit?

NYC-registered lobbyists may have to file a Fundraising/Political Consulting Report. NYS-registered lobbyists may have to file a Disbursement of Public Monies Report and/or a Reportable Business Relationship Form. Clients of NYS-registered lobbyists may also have to file a Reportable Business Relationship Form.

43. What is the NYS Reportable Business Relationships requirement?

A NYS-registered lobbyist or client is required disclose information about certain types of business transactions with state elected officials and state employees. A transaction is covered if the lobbyist or client (or one of the client's directors or executive managers) pays the state official or employee \$1,000 or more in a single twelve-month period for goods, services or anything of value. The transaction is also covered if the compensation is provided to an entity in which the state official or employee has a significant interest, or if it is provided to a third party

at the direction of either the state official or employee or an entity in which the state official or employee has a significant interest.⁵⁸

Lobbyists must disclose reportable business relationships at the time of their biennial registrations; clients must do so at the time of their semi-annual reports. Both lobbyists and clients must update that information whenever they enter into or learn of a new reportable business relationship. JCOPE's website provides a questionnaire that nonprofits can use to determine whether their directors or executive managers are engaged in any transactions that must be reported.⁵⁹

44. What is the NYS Source of Funding requirement?

If a NYS-registered lobbyist whose lobbying activity is performed on its own behalf, or a client of a registered lobbyist, engages in a substantial amount of lobbying in New York State, it must disclose each source of funding over \$5,000 used for such lobbying.⁶⁰ An organization is covered if it has spent at least \$50,000 and 3% of its total expenditures in the last year on lobbying in New York. Organizations with 501(c)(3) status that are registered with the Attorney General's Charities Bureau under article 7-A of the Executive Law are exempt. In addition, disclosure is not required if JCOPE determines that reporting may harm the person or organization that provided the funding. Source of funding information is reported on the client Semi-Annual Report.

Legislative Advocacy Regulated as an Election-Related Communication

45. Why do nonpartisan organizations engaged in legislative advocacy need to be aware of independent expenditure disclosure requirements?

Legislative advocacy may be regulated as an election-related expenditure if it is conducted in the months before an election and if it mentions a public official who is a candidate in that election. Such communications are sometimes called "independent expenditures" and sometimes called "electioneering." Nonpartisan nonprofits need to be aware of these regulations, because some of the regulations extend to communications that do not support or oppose the candidate, and that refer to the individual in a capacity other than as a candidate.

In addition to legislative advocacy, many of the independent expenditure regulations discussed in this section cover advocacy that explicitly supports or opposes a candidate or ballot proposal. Those requirements are beyond the scope of this document and are not discussed here.

46. Which legislative advocacy communications must be reported to the Federal Elections Commission?

The Federal Elections Commission Act defines "electioneering" as a communication issued in the month or two prior to a federal election, in a broadcast, cable or satellite communication, which includes the name of a clearly identified candidate for a federal election and is targeted to the relevant electorate.⁶¹ A communication is covered even if it does not support or oppose the candidate, and even if it refers to the individual in a capacity other than as a candidate. An entity

that issues “electioneering” communications that in the aggregate cost more than \$10,000 must report to the Federal Elections Commission within 24 hours of when the communication is made.⁶² This requirement applies to 501(c)(3) organizations, as well as to all other types of organizations.

47. Which legislative advocacy communications must be reported to the state Board of Elections?

In some circumstances, a legislative advocacy communication may be deemed an “independent expenditure” that must be reported to the Board of Elections.⁶³ A communication will be deemed to be an independent expenditure if it mentions someone who is running for state or local office, is distributed to 500 or more members of the general public, and:

a) at any time the communication contains words such as “vote” “oppose,” “support,” “elect,” “defeat,” or “reject,” which call for the election or defeat of the candidate.

This provision applies to 501(c)(3) organizations and all other types of entities.

However, it is unlikely that a 501(c)(3) nonprofit will issue this type of communication, because they are prohibited from doing so by the Internal Revenue Code.

b) during the calendar year in which an election will be held the communication advocates for or against the candidate. To determine whether a communication falls into this category the Board of Elections will examine the following factors:

- Whether the communication identifies a particular candidate by name or other means such as party affiliation or distinctive features of a candidate’s platform or biography;
- Whether it expresses approval or disapproval for said candidate’s positions or actions;
- Whether it is part of an ongoing series by the group on the same issue and the series is not timed to an election;
- Has the issue raised in the communication been raised as a distinguishing characteristic amongst the candidates; and
- Whether its timing and the identification of the candidate are related to a non-electoral event (e.g. a vote on legislation or a position on legislation by an officeholder who is also a candidate).⁶⁴

This provision applies to 501(c)(3) organizations and all other types of entities.

c) a month or two prior to an election the communication references the candidate, even if the communication is completely unrelated to the election.

This provision does not apply to 501(c)(3) organizations but does apply to other types of nonprofits.

An organization that makes an independent expenditure must first register as a “political committee” with the Board of Elections and then comply with the Board’s requirements regarding reporting, attribution and contributions.⁶⁵

48. Which legislative advocacy communications must be reported to the NYC Campaign Finance Board?

The NYC Campaign Finance Board definition of “electioneering” includes a communication that refers to one or more clearly identified candidates in a NYC election within 30 days before a primary or special election or 60 days before a general election, and that is communicated via paid or unpaid radio, television, cable or satellite broadcast, mailing 500 copies, or any form of paid advertisement. A communication is covered even if it does not support or oppose the candidate, and even if it refers to the individual in a capacity other than as a candidate. However, 501(c)(3) organizations are exempt from the reporting requirement.

If an organization spends \$1,000 or more on electioneering communications, that organization must comply with the Campaign Finance Board’s rules regarding reporting and attribution.⁶⁶

Lobbying Reporting Schedule

IRS

Form 990: Lobbying activity must be reported annually on Schedule C

Federal Lobbying Disclosure Act

Registration: Within 45 days of when thresholds are met

Quarterly Activity: April 20
July 20
October 20
January 20

Contribution Reports: July 30
January 30

NYS Lobbying Act

Registration: January 1, or when lobbying expenditures are anticipated to reach \$5,000 for the calendar year

Client Report: July 15
January 15

Lobbyist Report: March 15
May 15
July 15
September 15
November 15
January 15

Disbursement of Public Monies Reports: Only in periods where procurement lobbying has occurred -
March 15
May 15
July 15
September 15
November 15
January 15

NYC Lobbying Act

Registration: January 15, or when lobbying expenditures are anticipated to reach \$5,000 for the calendar year

Client Report: January 15

Lobbyist Report: March 15
May 15
July 15
September 15
November 15
January 15

Political Fundraising and Consulting Report: Only in periods when registered lobbyists have engaged in political fundraising or paid political consulting:
March 15
May 15
July 15
September 15
November 15
January 15

Helpful websites:

IRS, Lobbying Issues for Tax Exempt Organizations

<http://www.irs.gov/pub/irs-tege/eotopic97.pdf>

Federal Lobbying Disclosure Act Guidance

http://lobbyingdisclosure.house.gov/amended_lda_guide.html

JCOPE, Instructions for Lobbyists Filing Online

http://www.jcope.ny.gov/forms/lob/lob_online.html

NYS Office of General Services, Procurement Lobbying Law FAQs

<https://online.ogs.ny.gov/legal/lobbyinglawfaq/>

NYC Clerk, Law Governing Lobbying

<http://www.cityclerk.nyc.gov/html/lobbying/law.shtml>

NYC.gov, e-Lobbyist User Guide

http://www.nyc.gov/html/misc/pdf/elobbyist_user_guide.pdf

Alliance for Justice – General and State by State Lobbying Information

<http://bolderadvocacy.org/navigate-the-rules>

¹ IRC §4911(e)(2); Treas. Reg. §53.4945-2(d)(2)(iii)(defining the term for purposes of the "expenditure" test); Treas. reg. §1.501(c)(3) - 1(c)(3)(ii) (defining the term for purposes of the "substantial part" test).

² IRC §4911(e)(2); Treas. Reg. §56.4911-2(b)(4)(ii)(B).

³ See Rev. Rul. 73-440, 1973-2 C.B. 177.

⁴ In considering amendments adding the expenditure test, one Congressional Committee reported, "Many believe that the standards as to the permissible level of activities under present law are too vague and thereby tend to encourage subjective and selective enforcement." S. Rep. No. 94-938 (Part 2), 94th Cong., 2d Sess. (1976), at 80.

⁵ IRC §501(h).

⁶ IRC §4911 (e)(1)(C); Treas. Reg. §56.4911-4(c).

⁷ *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849, 855 (10th Cir. 1972), cert. denied 414 U.S. 864 (1973); but see *Seasongood v. Commissioner*, 227 F.2d 907, 912 (6th Cir. 1955) (five per cent of an organization's "time and effort" devoted to lobbying did not constitute a substantial part of its activities).

⁸ IRC §4911(d)(3).

⁹ IRS, Lobbying Issues, EO Topic 97, p. 314, <http://www.irs.gov/pub/irs-tege/eotopic97.pdf>.

¹⁰ IRC §4911(d)(2)(A); Treas. Reg. §56.4911-2(c)(1). However, the expense of preparing materials subsequently used in lobbying activities will not be counted if the primary purpose of the materials was not for lobbying or the expenditures were paid more than six months before the subsequent use. In those instances where the subsequent lobbying use is by an independent organization, there must also be "clear and convincing evidence" of collusion between the two groups to prepare and disseminate the materials for lobbying purposes or the expenditures incurred in preparation will not be counted as lobbying expenditures. Treas. Reg. §56.4911-2(b)(2)(v).

¹¹ IRC §4911(d)(2)(B); Treas. Reg. §56.4911-2(c)(3).

¹² IRC §4911(d)(2)(C); Treas. Reg. §56.4911-2(c)(4).

¹³ IRC §4911(d)(2)(E).

¹⁴ IRC §4911(d)(2)(D). The communication would be considered direct lobbying or grass roots lobbying depending upon which of the latter two requirements were not satisfied. Treas. Reg. §56.4911(c) and (d).

Generally, an individual is considered to be a bona fide member if he or she contributes more than a nominal amount of time or money to the organization, and communications "primarily" to those members would include communications of which at least 50% are directed to members. *See* Treas. Reg. §56.4911-5(f)(1)-(4).

¹⁵ Treas. Reg. §56.4911-2(c)(2).

¹⁶ Schedule C to the IRS Form 990 or 990-EZ, <http://www.irs.gov/pub/irs-pdf/f990sc.pdf>.

¹⁷ The specific positions are listed in 5 U.S.C. §§ 5311 to 5316.

¹⁸ The specific positions are listed in Appendix No. 3 to Committee on Oversight and Government Reform of the House of Representatives, Policy & Supporting Positions (2012), <http://www.gpo.gov/fdsys/pkg/GPO-PLUMBOOK-2012/pdf/GPO-PLUMBOOK-2012.pdf>.

¹⁹ Clerk of the House of Representatives, Lobbying Disclosure Act Guidance § 3 (rev. 2013), http://lobbyingdisclosure.house.gov/amended_lda_guide.html.

²⁰ Lobbying Disclosure Act § 15.

²¹ <http://lobbyingdisclosure.house.gov/software.asp>

²² N.Y. Leg. Law § 1-c(c) ("NYS Lobbying Act").

²³ NYC Admin. Code §3-211 *et seq.*

²⁴ NY Lobbying Act § 1-c(A)-(Q); NYC Admin. Code § 3-211(c)(2), (3).

²⁵ NY Lobbying Act § 1-c(E); NY State Temporary Commission on Lobbying, Op. 41 (99-1).

²⁶ NY Temp. State Commiss. on Lobbying, Op. 49 (02-4), <http://jcope.ny.gov/advice/lob/opinio49.htm>.

²⁷ NYC Clerk Advisory Op. 1990-1 ("The publication of a newsletter directed to a specific segment of the public which seeks to create and stimulate a letter-writing campaign or telephone call campaign on the part of that readership directed toward their legislators in response to specific legislation targeted by the newsletter constitutes lobbying."), <http://cityclerk.nyc.gov/html/lobbying/1990-1.shtml>.

²⁸ NYC Clerk Advisory Op. 2012-1, <http://www.cityclerk.nyc.gov/html/lobbying/2012-1.shtml>.

²⁹ NY Temp. State Commiss. on Lobbying, Op. No. 47 (02-2), <http://www.jcope.ny.gov/advice/lob/opinio47.htm>.

³⁰ NYS Lobbying Act § 1-c(E); NYC Admin. Code § 3-211(c)(3)(v).

³¹ NYC Clerk, Advisory Op. 2014-1 (2014), <http://www.cityclerk.nyc.gov/html/lobbying/2014-1.shtml>.

³² NYS Lobbying Act § 1-c(C); NYC Admin. Code § 3-211(c)(3)(iii).

³³ NY Temp. State Commiss. on Lobbying, Op. No. 10 (78-10),

<http://www.jcope.ny.gov/advice/lob/opinio10.htm>.

³⁴ NYS Lobbying Act § 1-h(b)(5)(iii)(A) ("expenses shall not include: ... personal sustenance, lodging and travel disbursements of such lobbyist"); NYC Admin. Code § 3-216(b)(5)(iii) (same). *See also* NYS Temp. State Commiss. on Lobbying, Op. No. 43 (00-02), <http://jcope.ny.gov/advice/lob/opinio43.htm> (organization must report all expenses, including lodging and travel, of employees who are not listed on the organization's lobbyist registration form).

³⁵ NYS Lobbying Act § 1-c(K); NYC Clerk Advisory Op. 2013-1.

³⁶ *See* NYS Office of General Services, Procurement Lobbying Law FAQs,

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/Faq.htm>.

³⁷ NYS Lobbying Act §§ 1-c(c) (defining lobbying as including an attempt to influence a determination by a public official related to a governmental procurement), 1-c(r) (excluding Article XI-B contracts from the definition of procurement contracts); NYS Finance Law Article § 179-q (defining "contract" for purposes of Article XI-B as "an enforceable agreement entered into by a not-for-profit organization and a state agency or any agent acting for such state agency in the procurement process"). *See also* NYS Office of General Services, Procurement Law FAQs 4.18 (2010), <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/Faq.htm#toc127322418>.

³⁸ NYS Lobbying Act § 1-c(o).

³⁹ NYS Lobbying Act § 1-c(c).

⁴⁰ NYC Admin. Code § 3-211(c)(1)(iii).

⁴¹ NYS Lobbying Act § 1-c(r). A transaction is deemed a grant if the issuing agency calls it a grant. NYS Office of General Services, Procurement Law FAQs 4.18 (2010),

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/Faq.htm#toc127322418>.

⁴² NYC Admin. Code § 3-211(c)(1)(iii).

⁴³ NYS Lobbying Act § 1-1; NYS Lobbyist Disbursement of Public Monies Report, available at

<http://www.jcope.ny.gov/forms/lob/pdf/PublicMoniesREVISED.pdf>; JCOPE, Guidelines to the NYS Lobbying Act, pp. 47-48.

⁴⁴ NYS Office of General Services, Procurement Law FAQs 4.18 (2010),

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/Faq.htm#toc127322418>.

⁴⁵ NYC Clerk, Lobbying Bureau, Frequently Asked Questions (26. My business/organization is a lobbyist/client filer. Are we required to file a client annual report? a. If your business/organization does not retain an outside lobbyist, it is not required to file a client annual report... If your business/organization retains an outside lobbyist, a client annual report is required if the \$5,000 threshold is exceeded for such lobbying activity.”).

⁴⁶ NYS Lobbying Act § 1-m; 19 NYCRR 934.3; Rules of the NYC Conflicts of Interest Board § 1-16 et seq.

⁴⁷ 19 NYCRR 934.3(b), (c).

⁴⁸ NYS Lobbying Act § 1-c(j)(i); 19 NYCRR 934.4(a)(3); NYC Conflict of Interest Board, Advisory Op. 2007-3, p. 7.

⁴⁹ NYS Lobbying Act § 1-c(j)(ii); 19 NYCRR 934.4(a)(4); NYC Conflict of Interest Board Rules § 1-16(c)(6), (8), (9).

⁵⁰ NYS Lobbying Act § 1-c(j)(iii); 19 NYCRR 934.4(a)(5); NYC Conflict of Interest Board Rules § 1-16(c)(3).

⁵¹ NYS Lobbying Act § 1-c(j)(v); 19 NYCRR 934.4(a)(7); NYC Conflict of Interest Board Rules § 1-16(c)(1).

⁵² NYC Campaign Finance Law §§ 3-702(3), 3-703(1-a), available at <http://www.nycclerk.info/law/act>.

⁵³ NYC Lobbying Law § 3-216.1.

⁵⁴ NY Temp. State Commiss. on Lobbying, Op. No. 10 (78-10),

<http://www.jcope.ny.gov/advice/lob/opinio10.htm>; NY Temp. State Commiss. on Lobbying, Op. No. 47 (02-2), <http://www.jcope.ny.gov/advice/lob/opinio47.htm>.

⁵⁵ NYC Clerk, Lobbying Bureau, Advisory Op. 2008-1, <http://cityclerk.nyc.gov/html/lobbying/2008-1.shtml>.

⁵⁶ JCOPE, Guidelines to the New York State Lobbying Act, pp. 30-31,

http://jcope.ny.gov/about/lob/Lobbying%20Guidelines%209_11_12.pdf; NYC Admin. Code § 3-223(c)(2) (changes effective May 2014).

⁵⁷ NYC Local Law 129 of 2013, Intro. 1172-a.

⁵⁸ In particular, the transaction is covered if it involves “a non-governmental entity for which the [client or lobbyist] knows or has reason to know that a State Person is a proprietor, partner, director, officer or manager, or owns or controls ten percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange).” JCOPE, Reportable Business Relationships Guidelines, <http://jcope.ny.gov/about/lob/Reportable%20Business%20Relationships%20Guidelines.pdf>.

⁵⁹ The questionnaire is available here: <http://www.jcope.ny.gov/rbr/2013-05-20%20RBR%20Questionnaire%20FINAL.pdf>.

⁶⁰ NYS Lobbying Act, §§ 1-h(c)(4), 1-j(c)(4); 19 NYCRR Part 938.

⁶¹ 11 C.F.R. § 100.29.

⁶² 11 C.F.R. § 104.20(b).

⁶³ N.Y. Elec. Law § 14-107(a).

⁶⁴ 9 NYCRR § 6200.10(b)(1).

⁶⁵ N.Y. Elec. Law § 14-116.

⁶⁶ NYC Campaign Finance Board, About Independent Expenditures, <http://www.nycclerk.info/independent-expenditures/about-ies>.