

WORK-PLACE RULES AND GUIDELINES FOR PUBLIC HEALTH ADVOCATES

Democracy is not a spectator sport. Public health professionals can play a significant role in decision-making processes and policy formation. **Anyone, when representing himself or herself, can advocate an issue or idea to legislators or their staff and urge them to take certain action.**

Increasingly, members of Congress look to the opinions and expertise of their constituents and not solely the paid professional lobbyists hired to promote the interests of a particular organization or group. This makes it all the more important that public health professionals feel comfortable sharing their knowledge and hands-on experiences with their policy-makers.

Knowing this, it is important to answer some of the key questions about the permissibility of certain activities individual advocates may undertake. **Keep in mind that the rules governing an individual's advocacy efforts can be different from the rules governing organizational advocacy and lobbying activities.** This section offers advocacy guidelines for:

1. your individual activity as a public health professional; and
2. your activity on behalf of, or as a part of, an organization such as your state public health Affiliate.

GUIDELINES FOR INDIVIDUALS

Individual Advocacy Activities

(particularly state and federal employees)

“What can I do if I am a state or federal employee?”

This question comes up often. If you are a state or federal employee, do not automatically assume that you

cannot take part in advocacy activities. As a federal or a state employee, you are subject to regulations concerning communication with state and federal legislators, and this should be taken seriously. Be sure to investigate your agency or organization's policies and follow the rules as expressed by your state's ethics office.

The bottom line is that it is important for *all employees*, regardless of who your employer is, to **fully investigate and become thoroughly familiar with workplace rules and guidelines so that you can successfully fulfill your role as an advocate.** You can influence your legislators and be an effective advocate for public health by following certain guidelines.

- **The First Amendment protects your right to be an advocate.** If you adhere to the regulations regarding advocacy, you *can* participate in the policy-making process and advocate public health with your legislators and their staff.
- **Be sure to identify yourself primarily as a concerned citizen (or parent) presenting your personal views.** You may identify your official state or federal capacity, or other employment position, as long as you make it clear that you are speaking on behalf of *yourself* as a constituent, or for example, the local public health association or child advocacy organization of which you are a member. If you are writing to express your personal views, clarify that you are in no way representing your agency or organization for whom you work or any of your workplace colleagues.
- **State or federal funds cannot be used directly or indirectly to pay for any of your advocacy activities.** This includes salary, staff, or office equipment or supplies (e.g. copier, postage, telephone, computer, fax, etc.)—even after working hours.

Personal funds may be used. Be sure to use your agency or organization's letterhead only if it is appropriate or approved.

- **Advocacy activities must be conducted during personal time.** You should take annual or personal leave to cover any time spent on advocacy activities conducted during regular working hours. You can participate in advocacy activities after hours and on weekends without taking annual leave.
- **MOST IMPORTANTLY, check your agency or organization's policies** to learn more about employee rules and guidelines for advocacy.

GUIDELINES FOR ORGANIZATIONS & ASSOCIATIONS

When you are participating in advocacy activities **as a member or leader of your state public health association or any another advocacy or professional organization**, it is critical to understand the following tax and lobbying guidelines.

LOBBYING RULES FOR ORGANIZATIONAL ACTIVITIES

APHA and the majority of the state affiliated public health associations, as well as many of our partners in public health, have been granted 501(c)(3) tax-exempt status by the Internal Revenue Service. The lobbying rules that govern 501(c)(3) organizations in respect to lobbying are found in two Sections—4911 and 4912—of the Internal Revenue Code. Organizations with 501(c)(3) tax exempt status face certain legal limitations on the types of political and lobbying activities in which they can engage.

For example, 501(c)(3) organizations are *not* allowed to be involved or intervene in a political campaign—either on behalf of or in opposition to a particular candidate or policy-maker. Yet, these organizations *can* engage in lobbying activities regarding issues, legislation, and regulation subject to certain limitations.

“What is considered lobbying?” To be considered lobbying, a communication **must refer to and express a view** on a specific legislative proposal that has been introduced before a legislative body (federal, state, or local). This means working to influence the outcome of specific legislation—trying to get a bill passed or defeated—by communicating your organization's views or position to those who participate in the formulation of

the specific legislation—your Members of Congress, your state legislators, your local elected officials, or the staff of policy-makers. Recent interpretation and clarification of these laws by Congress means that these lobbying rules also apply to lobbying appointed officers of a regulatory agency.

“How is lobbying different from advocacy?” Advocacy is participating in the democratic process by taking action in support of a particular issue or cause. Advocacy activities like participating in a town meeting or demonstration, conducting a public forum or press activity, or developing an issue brief for your local policy-makers on a particular public health issue do not constitute lobbying as long as you are not urging a policy-maker to take a position or action on specific legislation.

APHA employs staff in its Government Relations & Affiliate Affairs (GRAA) department as lobbyists. APHA lobbying staff are registered with the Senate and the House and APHA reports the amount of funds expended on the organization's lobbying activities.

“Is it or isn't it lobbying?” The following are some examples of action to help you better understand what is and what isn't lobbying.

- The Pennsylvania Public Health Association prepares an issue brief on the Superfund program. As long as this issue brief presents a balanced discussion of all sides of the debate, this does **not constitute lobbying**—non-partisan research and analysis is not counted as lobbying. This issue brief can even be reprinted in the PPHA newsletter and it is **not lobbying**.
- The leadership of the Nevada Public Health Association goes to the state capitol to discuss public health funding issues and to provide a general overview of public health infrastructure across the state. These NPHA leaders continue to develop strong working relationships with their state policy-makers. As long as these NPHA members do not urge state legislators to vote a certain way on a particular piece of legislation, this visit is **not considered lobbying**. In contrast, if these NPHA leaders, on behalf of NPHA, communicate with state legislators to support, oppose, or modify a bill pending in the state legislature, this **does constitute lobbying**.
- APHA is asked to present testimony or respond to an inquiry by the House Commerce Committee, or

the Maine Public Health Association is asked to present testimony before the state legislature. In both cases, **this does not constitute lobbying** because the organization was asked to testify. If APHA or MPHA requests to testify, then **this does constitute reportable lobbying**.

“How much lobbying is our state public health association allowed to do?” When your organization or association expends resources—staff and funding—on lobbying activity, you must track these expenditures for the organization’s tax records and for filing your 990 form with the Internal Revenue Service. Organizations may choose to comply with one of two different standards for determining the extent of the organization’s legal lobbying limits, a “no substantial part” measure or a formula measure known as a 501(h) election.

APHA, some state public health associations and other non-profits have chosen to come under the second of these two standards called Section 501(h). Previously there had been a vague test regarding the definition and limits of lobbying for non-profit organizations instructing that “no substantial part” of an organization’s overall activities could be lobbying efforts to influence legislation. In an attempt to help organizations better clarify the limits on lobbying activity with more than the vaguely defined “no substantial part,” the 501 (h) election was instituted to provide clearer guidelines for organizations by using a measurable formula.

The 501 (h) election or “expenditure test” formula is based on an organization’s budget, and therefore is easier to determine than the “no substantial part” rule which is harder to define or measure. In addition, the 501 (h) election rules are concerned with the *type* of lobbying an organization is undertaking.

Organizations are responsible for determining to which standard they wish to be subject. An organization wishing to fall under the “expenditure test” is responsible for filing an election with the IRS (using IRS form 5768). Any organization not filing an election is automatically subject to the “no substantial part” standard. Issues to consider in making a determination include ability to strategically plan the extent and type of lobbying activity the organization will undertake and record-keeping obligations. Most importantly, each organization’s leaders should convene board members, staff, and the organization’s financial advisor or lawyer in determining the best standard with which to comply.

Before examining the formula for lobbying expenditure limits, a key in understanding how much lobbying your association or organization can participate in is knowing that lobbying activities fall into two categories—**direct** and **grassroots** lobbying.

“What’s the difference between direct and grassroots lobbying?” Direct lobbying happens when an organization—like APHA—attempts to influence federal, state or local legislation by directly contacting (such as calling, writing, or visiting) any member of a legislature, legislative staff, or government official participating in the development and progress of legislation. Direct lobbying is also APHA calling on the organization’s membership—in this case, APHA members and Affiliates—to persuade policy-makers to propose, support, oppose, change or otherwise influence legislation.

The call to action by APHA to members and Affiliates **constitutes direct lobbying for the Association**. The subsequent action taken by APHA individual members and Affiliate members (such as writing, calling, or visiting) **is advocacy and not considered lobbying because they are acting on their own behalf as public health professionals and constituents, and are not representing APHA or their Affiliate**. If a letter is written to a Member of Congress by an Affiliate, asking him or her to support a particular bill, **this letter constitutes direct lobbying for the Affiliate**.

Grassroots lobbying happens when an organization—again, using APHA as an example—attempts to influence federal, state or local legislation by trying to influence public opinion and get the general public to act. This can be confusing, as “grassroots” is generally used to connote the local membership of an organization; however, for IRS determination, grassroots is defined as reaching the broader public (such as an ad in the newspaper). Thus, a call to action by APHA to the broader public **constitutes grassroots lobbying for the Association**. The subsequent action taken by individual members of the public on their own behalf (such as writing, calling, or visiting) **is advocacy and is not considered lobbying**.

The following specific examples illustrate the differences between direct and grassroots lobbying.

- APHA drafts a letter advocating support of ISTEAA reauthorization legislation pending in Congress. The Intermodal Surface Transportation Efficiency

Act (ISTEA) has provisions that expand bike trails, running/walking paths, and public transportation, each of which encourages a healthier and more active public. The letter is sent to the Chair of the Transportation and Infrastructure Committee. **The letter constitutes direct lobbying by APHA** because it refers to and reflects a particular organizational view on specific legislation. In addition, the letter is a form of communication with a Member of Congress or staff in which the goal of the communication is to get the Member to support a particular position or piece of legislation.

- An APHA Board Member, Executive Director, and staff go to a meeting with a U.S. Senator to discuss APHA’s position on the international health implications of specific tobacco legislation pending in Congress. **This visit constitutes direct lobbying by APHA.** The costs that APHA incurs must be counted as direct lobbying, (e.g. salaries/benefits of APHA staff, travel expenses, and materials preparation). Remember, Board Members serve in a volunteer capacity and therefore only their travel expenses need be counted as lobbying.
- APHA sends an issue brief to its members detailing how a pending regulatory reform bill would affect public health, presenting both sides of the argument. **This issue brief does not constitute lobbying by APHA** because there is **no “call to action”**—the issue brief does not *directly* encourage its members to call or write particular policy-makers to urge them to act in a particular manner on a specific bill; nor are addresses, phone numbers, or e-mail addresses of policy-makers provided to members.
- APHA sends an Action Alert to its members detailing how a pending regulatory reform bill would affect public health and urges APHA members to contact their policy-makers and voice their opposition to the bill. **This Action Alert constitutes direct lobbying by APHA** because there is a “call to action”—members were provided with specific encouragement to call, write, fax, e-mail, or visit their policy-makers on the pending regulatory reform legislation to urge specific action.
- APHA places an ad in the *Washington Post* newspaper detailing how a pending regulatory reform bill would affect public health, urging that the public oppose the bill, and identifies how Members of

Congress are planning to vote on this issue. **This ad constitutes grassroots lobbying by APHA**—the public was provided with specific encouragement to contact their policy-makers and urge them to oppose pending regulatory reform legislation.

- APHA pays for a billboard ad calling on the public to support the public health provisions of pending tobacco legislation and encourage the public to write and call Members of Congress. **This ad constitutes grassroots lobbying by APHA**—the public was provided with specific encouragement and contact information to communicate with their policy-makers and urge them to support legislation.

There is a limit to how much lobbying is permitted by a 501(c)(3) organization. The following formula indicates the amount an organization can expend on combined (direct and grassroots) lobbying activities in comparison to the organization’s overall budget. This ceiling, or maximum allowable annual lobbying scale, is:

- 20 percent of the first \$500,000 of an organization’s exempt purpose expenditures, plus
- 15 percent of the second \$500,000 of such expenditures, plus
- 10 percent of the third \$500,000 of such expenditures, plus
- 5 percent of the remainder of such expenditures, with a cap of \$1 million in annual lobbying expenses.

In addition, **no organization may spend more than 25 percent of its permitted lobbying total on grassroots lobbying.**

Remember, states can have specific state laws that govern lobbying local and state policy-makers. Should you have any questions or would like additional information about your rights and the legality or compliance of your individual or organizational lobbying activities, please contact your local ethics official or an attorney for more details.

Keep in mind that this is just an overview of advocacy and lobbying guidelines. For more detailed analysis of the rules governing lobbying and the tax codes, please see the following additional resources:

- “Lobbying, Advocacy and Nonprofit Boards,” a publication written by John D. Sparks for the National Center for Nonprofit Boards;



Charity Lobbying in the Public Interest (CLPI) is an organization that encourages charity groups to lobby their causes and educates them on their lobbying rights and responsibilities. CLPI offers training workshops, advocacy materials, and “How to” tutorials to prepare charities for their potential role in the legislative process. For information, contact:

**Charity Lobbying in the Public Interest
2040 S St., NW, Washington, DC 20009
(202) 387-5048 phone • (202) 387-5149 fax
charity.lobbying@indepsec.org e-mail
www.indepsec.org/clpi.**

- “Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities,” written by Gail M. Harmon et al. as a report by the Advocacy Forum created as a project of the Alliance for Justice.

LESSONS LEARNED

As APHA Executive Director Dr. Georges Benjamin, MD, FACP, noted in his introduction to this handbook, it takes public health professionals working together to “sustain a vocal and noticeable presence at all levels of policy-making to ensure that public health is protected and that public health programs are supported—fiscally and politically.”

Use the information and build on the action strategies highlighted throughout the pages of the APHA Advocates’ Handbook when embarking on a new public health advocacy endeavor. Please use these tools, tailoring them to meet your needs as you advocate public health in your community, in your state, and at the federal level. Please know you can always call on APHA to be a resource in your advocacy efforts.

We wish you many successes in your future advocacy. Keep the following overarching “Lessons Learned” in mind.

TOP 10 LESSONS TO TAKE AWAY

1. **We cannot do it without each other.** Your public health expertise is needed. As a public health advocate, you are filling a big gap. There are not a lot of people out there advocating public health.
2. **The Winning Equation: Education + Action = Advocacy.** The number-one job of an advocate is to educate policy-makers and the public.
3. **Go together like peanut butter and jelly.** Remember, advocacy is about building long-term relationships. Success is not just about being victorious on a particular issue, but about raising public health issues with policy-makers. Relationships with policy-makers and staff help to gain you access to the policy process.
4. **Proof is in the pudding.** The public health advocacy success stories are out there—you as a public health advocate can make a difference. Use data and the public health human interest stories that you encounter in your workplace to further your advocacy efforts.
5. **Many roads, one goal.** There are many different avenues for effective advocacy; write, call, or visit your policy-maker, testify, speak at a town meeting, use the media—all of these methods provide important links in protecting and enhancing public health.
6. **“Public Health is Watching You.”** Remember to thank policy-makers for the great work they did in taking a particular action or voting a certain way. Be sure to follow up and let policy-makers know that you are watching how they protect public health and what they say and **do** on important public health matters.
7. **Friends, gotta have ‘em.** It takes partnerships at the community, state, and federal level in the fight to protect, promote, and advance the nation’s health. Remember to always be on the look-out for new partners—all members of the community are stakeholders in public health.
8. **Public health advocacy is not only rewarding, it is fun.** While public health is serious work, spreading the word about the difference public health makes, around the corner and around the globe, is a very rewarding experience.
9. **Timing is everything.** Remember, The earlier in the process you involve yourself, the better chance you have of influencing the outcome of legislation or a policy proposal.
10. **Put the Public in public health.** Be sure to remember for whom and for what we are advocating—the public. Include the public in your public health advocacy efforts.