



## **ACCES Policy on Legislative Bill/Regulation Actions**

This document will define the policy when a legislative bill/regulation and/or a request action is brought to the attention of ACCES.

The legislative bill/regulation and/or a requested action shall be reviewed by the ACCES Advocacy Committee to determine if it should be brought to the attention of the ACCES Board at the next Board meeting. The Board will need a majority vote to approve any action for the bill/regulation. An email vote is acceptable if it requires immediate attention and/or the due date of the action takes place before the next Board meeting. The ACCES Board can choose to:

1. Approve an action on behalf of ACCES only.
2. Approve an action on behalf of ACCES and request supporting action from ACCES members (e.g. sign on to a letter, submit a letter of their own, etc.).
  - a. ACCES will notify members of ACCES' action and reasonings for the action.
3. Approve an action on behalf of ACCES and its members.
  - a. This would require a poll to be sent out to ACCES' current members (Executive Director/Program Manager of the agency) and a 100% consensus would be needed. Otherwise, refer to option 2.
4. Take no action and forward the information to the network for their own discretion.

Once the ACCES Board approves an action on a legislative bill/regulation, an informational email will be sent out to the network notifying the network of ACCES' action and reasoning behind the action.

When reviewing and voting on a bill/regulation, the ACCES Advocacy Committee and Board will take into consideration:

### **1. Alignment with Mission and Goals:**

- Bills/Regulations that align with our core mission, values, and objectives.

### **2. Impact on members:**

- Evaluate how a bill will affect our members, their clients, or the population they serve.
  - ACCES will make an effort to reach out to agencies that would be most affected by the bill/regulation to get guidance. In doing so, ACCES will track their response or non-response and the Board will take it into consideration before making a decision.

### **3. Fiscal Implications:**

- The projected fiscal impacts on our organization, our members, and their clients.

#### **4. Stage of the Legislative Process: When our support can be most impactful**

- Timing of the legislative process such as:
  - When a bill is filed or about to be considered.
  - During budget discussions if funding is a concern.
  - When a vote on a critical bill is anticipated to be close.
  - Immediately after a detrimental bill is passed or signed but can still be changed.
  - When the issue is gaining public attention.

#### **5. Advocacy Strategy: What action is asked of us and by whom (e.g. letter, signature, testifying, etc.)**

- The time, effort and cost of the requested action.
- Who is asking for the action and possible motives.
- The people and organizations supporting/not supporting the bill/regulation

#### **6. Ethical and Legal Considerations:**

- Ensure the requested action does not have the potential to be defined as “lobbying” per regulations and is allowable action for a 501(c)(3) tax-exempt nonprofit organization.
  - For more information on regulations on lobbying, please refer to the publication “CAA Leaders’ Legal Guide” by CAPLAW and NCAP.\*

\*Excerpts from *CAA Leaders' Legal Guide* on Lobbying:

Chapter 1: Section F (starting on page 16) and Chapter 4: Section D on Lobbying (starting on Page 105):

### **Can nonprofits lobby?:**

The main takeaway for a nonprofit CAA with respect to lobbying is that, as a 501(c)(3) tax-exempt organization, a nonprofit CAA **may engage in a limited amount of lobbying under IRS rules and when doing so, must use unrestricted (non-federal) funds** unless a specific (narrow) exception exists under the applicable federal grant requirements.

As 501(c)(3) tax-exempt organizations, nonprofit CAAs **may engage in limited lobbying, so long as the lobbying does not constitute a “substantial part” of the organization’s activities**. A nonprofit CAA may choose to comply with this limitation either by applying the “substantial part” test or by making what is known as a “501(h) election.”

#### **Substantial Part Test:**

Under this test, the IRS considers whether, subjectively, lobbying activities constitute a “substantial part” of the organization’s activities. How much time and money constitute a “substantial part,” however, is not well-defined. In assessing whether lobbying constitutes a “substantial part” of the organization’s activities, the IRS balances the significance of the lobbying activities against the objectives and circumstances of the organization as a whole, rather than looking solely at the time or money spent. Under this test, nonprofit CAAs will need to track both time or money spent toward lobbying. CAAs must answer questions on their Forms 990 about the specific types of activity performed, including volunteer time and other unpaid activities, as well as their lobbying expenditures. If the IRS finds that a nonprofit CAA engaged in substantial lobbying in a single year, it can revoke the CAA’s 501(c)(3) status.

#### **What is defined as lobbying:**

A nonprofit CAA engages in **lobbying** if it attempts to influence the introduction, enactment, or modification of legislation, referenda, or other ballot initiatives. In some cases, the term “lobbying” may also be more broadly defined to include, for example, actions taken to support or defeat any proposed or pending regulation, administrative agency actions, or Executive Orders.

#### **What Doesn’t Count as Lobbying: Four Exceptions Under IRS Rules”**

The IRS regulations define four basic exceptions to the definition of lobbying communications.<sup>31</sup> This means that a tax-exempt organization does not need to count time and expenditures spent on the following types of activities towards its lobbying expenditure limits.

- **Nonpartisan Analysis, Study, or Research.** This exception allows a tax-exempt organization to publish educational materials that both refer to and reflect a view on specific legislation, so long as the materials provide a full and fair presentation of the underlying facts such that the audience can form an independent opinion or conclusion about the subject. The materials cannot directly encourage the reader to take lobbying action with respect to the specific legislation, and the educational materials must be widely disseminated and made available to the general public. Generally-speaking, qualifying materials will be contained in speeches, legislative testimony, reports, and

booklets; advertisements and “fact sheets,” on the other hand, will probably not be sufficiently detailed to qualify for this exception.

- **Examinations and Discussions of Broad Social, Economic, and Similar Problems.** This exception allows a tax-exempt organization to engage in discussions with members of legislative bodies or governmental employees about general topics that are also the subject of specific legislation, so long as the organization does not refer to the specific legislation or directly encourage the listener to take legislative action. For example, participating in community meetings with state legislators to discuss general issues of affordable housing would probably qualify for this exception.
- **Requests for Technical Advice.** Under this exception, a tax-exempt organization can respond to a written request by a legislative body, committee, or subcommittee, so long as the response is provided to all members of the body making the request. Thus, for example, providing technical advice to an individual legislator would not qualify for the exception, while testifying before a full legislative subcommittee would.
- **Self-Defense Communications.** This exception allows a tax-exempt organization to communicate with a legislative body regarding possible actions that could affect the organization’s existence, powers, duties, tax-exempt status, or the deductibility of contributions to the organization. For example, lobbying the legislature to vote against a bill that would jeopardize the organization’s tax-exempt status qualifies under the “self-defense” communication exception. IRS regulations, however, have clarified that attempts to persuade a legislative body to continue funding a program through the annual appropriations bill does not constitute self-defense and thus, such communications would count towards the organization’s lobbying expenditure limits.

#### **Practice Tips When Conducting Lobbying Activities:**

- **Use non-federal, unrestricted funds to lobby.** CAAs should only use non-federal, unrestricted funds for any expenditures made in relation to lobbying activities. Any staff member who is primarily responsible for lobbying should be paid, in part or in whole, out of the CAA’s non-federal, unrestricted funds. If a staff member only spends a limited amount of time at work engaged in lobbying, the CAA should pay that portion of the staff member’s salary using non-federal, unrestricted funds.
- **Track time spent by employees lobbying.** CAAs should track employee lobbying time on a timecard on an ongoing basis or as an “exception report” when the employee engages in lobbying activities. The CAA must report this time on its Form 990.
- **Do not include lobbying costs as part of the indirect cost pool.** If a CAA has a federally negotiated indirect cost rate, the CAA must separately identify lobbying costs as direct costs in the CAA’s indirect cost rate proposal.
- **Lobby on personal time, without using CAA resources.** Employees are free to lobby on their personal time without using any CAA resources.
- **Be careful when asking non-exempt employees to volunteer to lobby.** CAAs should be aware that they must pay employees who are not exempt from overtime pay under the federal Fair Labor Standards Act (FLSA) for their volunteer lobbying efforts if (i) they are asked or required to lobby or (ii) if the lobbying relates to their paid job. Failure to do so may result in wage and hour law violations.
- **Lobby using board members or other volunteers.** CAAs may use board members or other volunteers to lobby. However, as discussed above, volunteer time is a factor used to determine if a 501(c)(3) tax-exempt organization has engaged in a substantial amount of lobbying if the CAA has not opted out of the default, “substantial part” test. Therefore, the time spent must be tracked and reported on the CAA’s Form 990.