



# NOT-FOR-PROFIT NEWS

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## Lobbying Activities: Rules for 501(c)(3) Organizations

By: Sally McColloch, Principal

There is a misperception that lobbying by a 501(c)(3) public charity is discouraged or even disallowed. Contrary to this opinion, federal laws actually encourage both advocacy and lobbying by public charities, within limits. Both Congress and the IRS have indicated that it is proper for a 501(c)(3) to advocate freely, or even lobby, due to their unique position of being on the front-lines of many social and community issues. However, the IRS has stated that lobbying must not constitute a “substantial” part of the organization’s activities. This article is designed to discuss the difference between advocacy and lobbying, the two different types of lobbying and if necessary, how to make the 501(h) lobbying election.

### Advocacy v. Lobbying:

The IRS has defined two types of lobbying; direct and grass-roots lobbying. Direct lobbying occurs when a tax-exempt organization communicates with a legislator in an attempt to influence his or her vote on a specific piece of legislation. Grass-roots lobbying, however, is when the organization raises a “call of action” to the public to contact legislators regarding specific legislation. This “call to action” may involve any of the following:

- Urging the public to contact a legislator
- Providing the contact information for the legislator (e.g. phone number, address)
- Inclusion of material to be used in communicating a position on legislation with a legislator (tear-off post cards, petitions, etc.)
- Specific naming of legislators and their positions on a specific piece of legislation

Advocacy, on the other hand, does not fall under these definitions. Some actions considered advocacy include public education regarding an issue, approaching a governmental agency regarding policy or regulation or publishing research results to the public. These broad policy activities do not count as lobbying and are not limited in any way.



### The 501(h) Election:

So how does an organization determine if their lobbying activities are an insubstantial part of their activities? The IRS only provides vague guidelines for measuring “substantial” lobbying activity. Due to this vagueness it is highly recommended that an organization make a 501(h) election prior to engaging in any type of lobbying activity. A 501(h) election provides a safe harbor level of lobbying spending and guidelines for measurement.

The specified levels of lobbying expenses allowed under the election are as follows:

- 20% of the first \$500,000 in exempt purpose expenditures, plus
- 15% of the next \$500,000, plus
- 10% of the next \$500,000 plus
- 5% of any remaining expenditures

In addition, all grassroots lobbying expenditures are limited to 25% of the total lobbying limit, and there is an overall cap of \$1,000,000 on total lobbying expenditures.

The election is made annually by filing form 5768 with the IRS. It is a simple one page form which may be filed anytime during the tax year.

If you should have any questions regarding lobbying expenses or making the 501(h) election, please contact your RINA representative.



## Nonprofit-owned Buildings: Potential Energy Savings

By: Brad Gai, Stockholder

It has been estimated that electricity represents 55% of the energy used in commercial buildings, with 32% from natural gas. The largest uses of energy are for heating (36%) followed by lighting (21%). This can be a significant portion of a nonprofit's budget. For nonprofits that own their buildings, it is estimated potential savings from cost-effective upgrade projects average 25%. The question becomes how an organization funds these potential upgrades. One of the alternative financing programs available to nonprofit property owners is Property Assessed Clean Energy (PACE) financing.

PACE is a municipal financing program that was originally signed into California law in 2008. Under these programs, the property owner enters into an agreement to increase their property tax assessment to repay the amounts borrowed to finance energy efficiency or distributed renewable energy generation improvements that are permanent improvements to the property.

The application process is no more involved than a bank loan application. The following is a summary of the key features:

- **No money down.** The organization identifies an energy efficient improvement such as; insulation, double pane windows, and high-efficiency HVAC systems, solar (of course) and cool roofs. The project must meet certain energy efficiency requirements.
- **The organization selects a contractor.** The contractor is subject to approval by the lender.
- **Relatively low or no application fee.** The application fee, if any, is rolled into the financing, so there is no money down.
- **Financing of up to 20% of the property value.** The financing agreement to use the property tax assessment to fund repayments gives the PACE financing a priority lien over other financing. This will require cooperation from an existing lender.
- **Up to 20 years to repay the loan.** Shorter loan terms may be selected.
- **The lien stays with the property if the property is sold.** The lien is not required to be paid off due to a change of ownership.

- **Interest rates will vary with the length of the loan.** Interest rates are advertised to be comparable to bank loan rates for similar term loans.
- **There may be a prepayment penalty if the organization wants to pay off the lien.**

Nonprofits that have little liquid cash, an older building and identifiable energy efficiency needs should consider the cash flow impact of using the PACE program. A substantial improvement which lowers annual operating costs could very well produce cash flow to the organization after the debt service.

PACE programs are available state-wide. Each county or city may have a different provider. Private company funding is used to fund the loans despite the government involvement in the debt service process.

Contact your RINA representative if you would like assistance with a cash flow analysis of your energy efficiency project.

## Save the Date

A 2016 Not-for-Profit Roundtable Series Event

### Touching Hearts & Minds: Leveraging Data & Story to Convey Impact

August 2, 2016

11:30 am - 1:30 pm

The City Club San Francisco  
155 Sansome Street, 9th Floor, Library Room

#### Speakers

J. Alexander Sloan

Director of Strategic Partnerships, Tides

Wendy Levy

Executive Director, National Alliance for Media Arts & Culture

RSVP: [www.rina.com/rsvp/Aug-2-16](http://www.rina.com/rsvp/Aug-2-16)



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