

Lobbying for Community Action Agencies

Executive Overview

1. Nonprofit Community Action Agencies (CAAs) can and should lobby. It's part of your mission!

Work closely with board members, clients and other volunteers. Involving community members in your CAA's lobbying efforts will increase the effectiveness of those efforts. Community members are often the most compelling spokespeople for the issues on which CAAs are lobbying.

Raise, budget, and spend non-federal, unrestricted funds on lobbying activities. Allocate resources so that any agency costs for travel, supplies, etc. devoted to lobbying is tracked and paid for out of non-federal, unrestricted funds. This includes staff time, if applicable.

Lobby on personal time. Everyone and anyone may lobby voluntarily on their own time, without using the CAA's resources.

2. Board and staff members can cultivate key relationships in ways that are not lobbying.

Creating and maintaining a relationship with a member of Congress or a state legislator does not always need to involve lobbying and, it's one of the most important investments you can make.

Keep legislators informed about your CAA's programs and services so that they may refer constituents. For example, if your CAA invites its state senator to tour your federally funded job training program and, during the tour, explains the program, the eligibility requirements for participation and the needs of program participants but does not discuss any pending or proposed legislation, your CAA will not be engaging in legislative lobbying.

Also, activities such as attendance at legislative hearings, gathering information regarding legislation, and analyzing the effect of legislation, when conducted for the purpose of keeping informed about programs and appropriations for budgeting and planning purposes (rather than in support of or in knowing preparation for an effort to influence legislation), are not considered lobbying.

3. How is lobbying defined?

Generally, we are talking lobbying as it relates to *legislation* – that is, activities for the purpose of influencing federal, state or local legislation, or referenda or ballot initiatives (that are voted on by the general public, rather than the legislature). This includes not only legislation on “substantive” issues (for example, Medicaid, immigration, or pay day loans) but also appropriations bills and budget resolutions (for example, appropriations for Community Services Block Grant funding). (However, some federal laws and regulations define lobbying more broadly. Therefore, the safest approach is to treat any activity intended to influence policy-making at the federal, state, or local level as “lobbying” and be paid for using non-federal, unrestricted funds.)

Section One:

Lobbying How-To Guide

CAA staff, board members and volunteers may engage in lobbying activities on behalf of their agency and low-income families. This section discusses the details of how to do that within the rules.

This document, which was prepared by Community Action Program Legal Services, Inc. (CAPLAW), answers the following frequently asked questions (FAQs) about lobbying by CAAs:

1. Can our CAA lobby?
2. How can we lobby within the rules?
3. Can CAA employees and board members lobby as private citizens?
4. How is lobbying defined?
5. What are some examples of legislative lobbying?
6. Can our CAA be in contact with legislators without lobbying?
7. What about lobbying via the internet or social media (e.g., Facebook, Twitter, etc.)?
8. Is there a limit on how much lobbying a CAA can do?
9. Do we need to report our CAA's lobbying activities to the IRS and/or state regulators?

1. Can our CAA lobby?

Nonprofit, 501(c)(3) Community Action Agencies (CAAs) absolutely can lobby. Although the rules governing lobbying by CAAs may seem complex at times, they should not deter your CAA from participating in the policymaking process. Instead of asking "What barriers prevent our CAA from influencing legislation and other public policy?" CAAs should ask "What opportunities do we have to influence legislation and other public policy and how can we do so effectively within the rules that apply to us?"

2. How can we lobby within the rules?

Raise, budget and spend non-federal, unrestricted funds on lobbying activities. Nonprofit, 501(c)(3) CAAs can lobby so long as they pay their lobbying costs with unrestricted, non-federal funds and track their lobbying time, costs and activities for reporting on IRS Form 990. CAAs should allocate resources so that the cost of any staff time, travel, supplies, etc. devoted to lobbying is tracked and paid for out of non-federal, unrestricted funds. If your CAA has a federally negotiated indirect cost rate, keep in mind that lobbying costs must be separately identified in the indirect cost proposal and may not be included in the indirect cost pool.¹

- **Ensure that at least a small percentage of your CAA's chief executive's time is paid out of non-federal, unrestricted funds** so that s/he may lobby on behalf of your CAA, its community and its clients. If other staff members are likely to lobby, estimate the amount of time they will spend

¹ 2 C.F.R. § 200.450(c)(v); 45 C.F.R. § 75.450(c)(v).

lobbying and budget for that percentage of their compensation to be paid out of non-federal, unrestricted funds.

- **Create a space within your facility to use for lobbying that is paid for entirely out of non-federal, unrestricted funds**, such as a “lobbying kiosk” that could include a workstation, phone and computer. Staff using the kiosk to lobby should record their time doing so for IRS reporting purposes and to ensure that that time is paid out of non-federal, unrestricted funds.

Work closely with board members, clients and other volunteers. Involving community members in your CAA’s lobbying efforts will increase the effectiveness of those efforts. Community members are often the most compelling spokespeople for the issues on which CAAs are lobbying. You just have to make sure that any agency resources that are used to support their lobbying efforts (e.g., reimbursements for lobbying-related expenses or use of the CAA’s supplies or equipment) are paid for using unrestricted funds. Nonprofit CAAs also need to track volunteer lobbying time and report it on Form 990, unless they have made a 501(h) election with the IRS (see Question 9 below).

Lobby on personal time. CAA employees may lobby on their own time and without using the CAA’s resources to do so. Be sure your CAA has a written policy specifying employees’ regular work hours. Even if an executive director is expected to be “on duty” 24/7, that doesn’t mean that s/he is never on personal time.

Any lobbying done by employees who are not exempt from the federal Fair Labor Standards Act’s minimum wage and overtime provisions should be completely voluntary. Supervisors should not ask or expect non-exempt employees to lobby on their own time; otherwise, the time the CAA will need to pay the non-exempt employees for the time they spend lobbying.

Urge staff, board members, clients and other community supporters to become members of the National Community Action Foundation (NCAF). NCAF (<http://www.ncaf.org/>) works in Washington, D.C. and throughout the U.S. to ensure that the federal government honors its commitment to fighting poverty, especially through the work of Community Action Agencies. NCAF membership is free; members receive important information from NCAF about the status of federal legislation affecting CAAs.

3. Can CAA employees and board members lobby as private individuals?

Yes, in fact they have a constitutional right to do so. CAA employees and board members are lobbying as private individuals if they don’t represent themselves to be acting on behalf of the CAA and don’t use any CAA resources or the CAA name. If they are lobbying as private individuals, the CAA would **not** need to report their activity on its IRS Form 990 or allocate any unrestricted CAA funds to their activity.

For example, if a Head Start teacher who works for a CAA e-mails her elected representatives to urge them to vote on a bill increasing early childhood education funding, states that she is a Head Start teacher, does not represent that she is acting on behalf of the CAA’s Head Start program, composes and sends the e-mail on non-work time, and does not use any CAA resources in doing so, she would be acting entirely as a private citizen and the CAA would not need to pay any costs associated with her lobbying efforts or report them on its Form 990.

4. How is lobbying defined?

Generally, we are talking lobbying as it relates to *legislation* – that is, activities for the purpose of influencing federal, state or local legislation, or referenda or ballot initiatives (that are voted on by the general public, rather than the legislature). This includes not only legislation on “substantive” issues (for example, Medicaid, immigration, or pay day loans) but also appropriations bills and budget resolutions (for example, appropriations for Community Services Block Grant funding).

However, some federal laws and regulations define lobbying more broadly. Therefore, as a general matter, CAPLAW recommends that any activity intended to influence policy-making at federal, state, and local levels be treated as “lobbying” and be paid for using non-federal, unrestricted funds. If your CAA has questions about whether a particular activity is lobbying, contact CAPLAW (Community Action Program Legal Services, Inc.) at caplawinfo@caplaw.org.

5. What are some examples of legislative lobbying?

If your CAA engages in any activity for the purpose of passing, defeating, or introducing federal, state, or local legislation or a referendum or ballot initiative, the activity will generally be considered legislative lobbying, regardless of whether you call it “educating” or “advocating.” Following are some examples of legislative lobbying:

- Asking members of your CAA’s congressional delegation to support continued CSBG appropriations and CSBG reauthorization.
- Preparing talking points for staff and board members who will be meeting with members of Congress to ask for their support of continued CSBG appropriations and CSBG reauthorization.
- Asking your U.S. representative or senator to sign on to a “Dear Colleague” letter requesting support for Weatherization (WAP) reauthorization or for continued WAP appropriations.
- Writing a letter to the editor, an op-ed piece or a blog post in favor of a statewide ballot question to expand Medicaid.
- Publicizing your letter, op-ed or blog post via your CAA’s social media accounts.
- Asking staff, clients or sub-contractors to contact their members of Congress in favor of continued funding for the federal Low Income Home Energy Assistance Program (LIHEAP).
- Emailing state legislators in support of legislation that will increase rental housing for low-income families.
- Legislative liaison activities, such as attendance at legislative hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support or in knowing preparation for an effort to influence legislation.

But remember: Just because these activities are considered lobbying doesn’t mean your CAA can’t engage in them. It just can’t pay for the costs of the activities using federal funds. Setting aside some non-federal, unrestricted funds to engage in these activities enables your CAA to participate meaningfully in policy and legislative initiatives affecting your clients and community.

6. Can our CAA be in contact with legislators without lobbying?

Yes! Creating and maintaining a relationship with a member of Congress or a state legislator, does not need to involve lobbying.

In addition to working on legislation, a key component of what legislators do is providing services to constituents. Keeping legislators informed about your CAA's programs and services so that they may refer constituents to your CAA for assistance is a form of program outreach and is critical information for legislators and their constituent services staff. For example, if your CAA invites its state senator to tour its federally funded job training program and, during the tour, explains the program, the eligibility requirements for participation and the needs of program participants but does not discuss any pending or proposed legislation, your CAA will not be engaging in legislative lobbying. Costs associated with the tour will likely be considered outreach for the job training program and as long as they are otherwise allowable (i.e. documented, reasonable, allocable, etc.) under the OMB Uniform Guidance,² they may be charged to your CAA's federal job training funds.

Also, when conducted for the purpose of keeping informed about programs and appropriations for budgeting and planning purposes (rather than in support of or in knowing preparation for an effort to influence legislation), activities such as attendance at legislative hearings, gathering information regarding legislation, and analyzing the effect of legislation are not considered lobbying.

7. What about lobbying on via the internet or social media (e.g., Facebook, Twitter, etc.)?

The same rules described above apply to lobbying via the internet and social media. Be careful about including links to websites or pages that are lobbying; it can be done but will count as lobbying. If employees are lobbying on their personal Facebook pages or Twitter accounts, they should do so on their own time, using their own phones and computers and without reference to their CAA, otherwise their lobbying may be attributed to your CAA.

8. Is there a limit on how much lobbying a nonprofit CAA can do?

Yes. 501(c)(3) tax-exempt organizations are subject to IRS rules prohibiting the organization from having lobbying activities be a "substantial part" of the organization's overall activities. The organization can choose to be subject to a facts-and-circumstances "substantial part" test, or a bright-line "expenditure test" to demonstrate that its legislative lobbying activities are insubstantial. These tests are described in Section Two, "What are the Rules that Apply to CAA Lobbying Activities?" under *Federal Tax Laws*.

9. Do we need to report our CAA's lobbying activities to the IRS?

Yes. All 501(c)(3) tax-exempt CAAs must answer questions about its legislative lobbying activities on its Form 990 filed annually with the IRS. The scope of information reported to the IRS will depend on whether the CAA made a 501(h) election. See Section Two, "What are the Rules that Apply to CAA Lobbying Activities?" under *Federal Tax Laws* for additional information about a CAA's reporting obligations.

² 2 C.F.R. Part 200, Subpart E, or for HHS programs, 45 C.F.R. Part 75, Subpart E.

Section Two:

What Rules Apply to CAA Lobbying Activities?

CAAs are subject to an array of laws, regulations and contractual provisions that interact to create the lobbying arena in which they operate. *Section One: Lobbying How-To Guide* addresses what you can do and how you can do it. This section provides greater detail on the main federal statutes that govern a CAA's lobbying activities.

This Section does not address the state laws that may also apply to a CAA's lobbying activities, as those laws vary significantly by state. State laws typically establish when an individual or organization must register as lobbyist. A CAA should work with an attorney licensed in its state to ensure compliance with its state laws. Often, the association for nonprofit organizations within a state serves as a helpful resource with respect to the lobbying laws that apply within that state.

Federal Grant Laws

Appropriations Riders. Congress has, for many years, included riders in annual federal appropriations statutes that restrict a CAA's ability to use federal funds to influence administrative action, appropriations bills, or local legislation. The Consolidated and Appropriations Act, 2022, P.L. 117-103, for example, prohibits the use of HHS grant funds to:

pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.³

Similar restrictions appear in the language of appropriations riders for other federal executive agencies. As a result, CAAs generally cannot use federal funds to pay any expenses of lobbying activities.

Byrd Amendment. While both nonprofit and public CAAs may, under certain circumstances, use federal funds to prepare and submit grant applications as well as to engage in technical discussions about the proposals prior to their official submission, the Byrd Amendment, 31 U.S.C. § 1352, prohibits using federal funds to attempt to influence federal employees in connection with the awarding of federal grants. CAAs must submit a certification form when applying for federal grants certifying their compliance with the Byrd Amendment.⁴

Anti-Lobbying Act. The Anti-Lobbying Act, 18 U.S.C. § 1913, restricts federal government personnel from lobbying Congress. Specifically, the Anti-Lobbying Act prohibits funds appropriated by "any enactment of Congress" from being used "directly or indirectly" to pay for any of various forms of communication:

³ 2 C.F.R. § 200.450.

⁴ See, e.g., 45 C.F.R. § 93.110 for the regulations applicable to HHS grants.

intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy or appropriation....

While the Anti-Lobbying Act was originally enacted as a criminal statute, 2002 amendments to the law removed the criminal penalties and now provide for fines that range from \$10,000 to \$100,000 dollars for each individual violation of the law.

Note that the Anti-Lobbying Act defines prohibited lobbying activities broadly – covering not just activities to influence legislation but also policy matters. Further, it has not always been clear whether the Anti-Lobbying Act applies to CAAs as federal grantees. Because of the significant penalties imposed by the law and the lack of definitive guidance around how this law applies to CAAs, as a general matter, CAPLAW recommends using non-federal, unrestricted funds to engage in any activities intended to influence policy-making at the federal, state, and local levels.

Uniform Guidance. Under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), 2 C.F.R. Part 200 (45 C.F.R. Part 75 for funds from the U.S. Department of Health and Human Services), lobbying costs are generally unallowable.⁵ These include executive lobbying costs, which are costs incurred in attempting to improperly influence an employee or officer of the executive branch of the federal government to consider or act on a federal award or regulatory matter, as well as legislative lobbying costs, which are costs incurred in attempting to influence the introduction, enactment, or modification of any federal or state legislation.⁶ The ban on using federal funds to engage in legislative lobbying also includes paying for staff salaries or expenses in connection with legislative liaison activities, including attending legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when the CAA conducts these activities in support of or in knowing preparation for efforts to engage in lobbying.⁷

The Uniform Guidance does contain narrow exceptions for certain activities related to influencing legislation, as discussed below. ***Note, however that other lobbying restrictions, including those in federal appropriations acts and the Anti-Lobbying Act, may still apply and ultimately restrict or prohibit the use of federal funds to cover the costs of these activities.*** Because the federal appropriations acts do not incorporate the Uniform Guidance exemptions, we recommend that CAAs seeking to rely on one of the exemptions below consult with CAPLAW or another attorney familiar with the federal grant rules on lobbying before doing so. The Uniform Guidance exceptions are as follows:

- Lobbying activities related only to local legislation, rather than state or federal legislation.
- Lobbying to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.
- Providing a technical and factual presentation of information on a topic directly related to the performance of a grant or contract (1) through hearing testimony, statements or letters; (2) to Congress or a state legislature, or subdivision, member, or cognizant staff member of such body;

⁵ 2 C.F.R. § 200.450.

⁶ 2 C.F.R. §§ 200.450(b); (c).

⁷ 2 C.F.R. § 200.450(c)(iv).

or (3) in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing):

- Such information must be readily obtainable and can be readily put in deliverable form; and
- Costs for travel, lodging or meals are **not** allowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for the presentation made by the chairman or ranking minority member of the committee or subcommittee conducting the hearing.
- Any activity specifically authorized by statute to be undertaken with grant funds.
- Any activity that the Internal Revenue Code specifically exempts from the definition of “lobbying” or “influencing legislation” (see I.R.C. §§ 501(c)(3), 501(h), 4911(a)), including:
 - Nonpartisan analysis, study, or research reports;
 - Examinations and discussions of broad social, economic, and similar problems;
 - Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 C.F.R. §§ 56.4911-2(c)(1)-(c)(3); and
 - Self-defense communications
 - Example: Lobbying around a proposal that could result in a 501(c)(3) organization’s loss of tax exemption or ability to receive tax deductible contributions.
 - Note, however, that this exception does not apply when a CAA is lobbying to preserve its funding in a budget. The IRS has made clear that advocacy around legislative proposals to eliminate or change funding for social service programs or other state grants are explicitly excluded from the exemption in the examples.⁸

Federal Tax Rules

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. There are two ways for a CAA to demonstrate that its lobbying activities are insubstantial; it can either: (1) apply the “substantial part” test, where the IRS looks at all of the facts and circumstances of the CAA’s lobbying activities (including lobbying expenses and lobbying time spent by volunteers); or (2) make what is known as a “501(h) election,” which is a bright-line test with clear limits on the amount of lobbying expenditures a CAA can make.

Under the “substantial part” test, the IRS will balance the significance of the lobbying activities against the objectives and circumstances of the organization as a whole, rather than just looking at the amount of time or money spent on lobbying. Because the vast majority of a CAA’s activities and efforts are likely focused on running, administering, and coordinating antipoverty programs for low-income individuals and families, generally speaking, it is unlikely that lobbying activities will exceed the “substantial part” test.

CAAs concerned about the amount of time or expenses spent on lobbying, or simply preferring to be held to a bright-line test, can choose to make a 501(h) election with the IRS instead. Also known as the

⁸ See 26 CFR 56.4911-2(c)(1)-(4).

“expenditure test,” making this election allows the CAA to be held to clear dollar limits on the organization’s lobbying expenditures, and these limits are based on a sliding scale and measured on the basis of a four-year average. Generally speaking, each year, the organization may spend up to 20% of the first \$500,000 of its total exempt purposes expenditures on legislative lobbying; 10% of the next \$500,000, and 5% of the balance of expenditures, up to a total of \$ 1 million per year. Unlike with the “substantial part” test, under the “expenditure test,” a CAA only needs to track its lobbying expenses. This means that there are no limits on a CAA’s lobbying activities that do not incur expenses (e.g., the CAA does not have to report or track the time or expenses its volunteers spend on lobbying so long as the CAA doesn’t reimburse its volunteers for those expenses).

In order to be subject to the bright-line “expenditure test,” a 501(c)(3) nonprofit CAA or CAA association must make an election under Internal Revenue Code section 501(h) and file IRS Form 5768. A nonprofit CAA that does not make a 501(h) election will, by default, be subject to the “substantial part” test. Once a CAA makes a 501(h) election, it is valid for the current and subsequent tax years until the CAA revokes it by filing another Form 5768.

A 501(c)(3) nonprofit CAA must also must answer questions on its Form 990 about legislative lobbying activities. If a CAA has not made the 501(h) election, it must answer questions about the specific type of activity (including volunteer time and other unpaid activities) and, for some questions, lobbying expenditures. We recommend reviewing the Form 990 and instructions relating to lobbying to better understand information that must be collected. A CAA should have its employees (and volunteers, if the CAA doesn’t file a 501(h) election) carefully track their time, expenses, and lobbying activities in order to be able to report on them on Form 990.

Contracts with Funding Sources

Funding source rules and/or grant and contract terms may also include restrictions on lobbying. It is important to check the terms and conditions of each grant or contract, including for state and foundations grants, to determine if lobbying use related to grant purposes is allowed.