

Government Affairs and Advocacy

May 2023

Our members often question whether as either an association or as a member of the association are they allowed to advocate. Can NEHA educate policymakers? Can we respond to questions regarding environmental health and the environmental health profession? Can we advocate for the profession?

Can members educate and advocate? Is it a violation of IRS rules for an association or its members to advocate?

The short answer is that it is not only legal but also encouraged. The IRS speaks at length about nonprofit associations, or 501(c)(3), as identified in the IRS code.

Nonprofit associations may educate, advocate, and even lobby federal, state, local, tribal, or territorial policymakers without incurring legal or tax consequences. Education and advocacy are not prohibited and do not need to be reported to the IRS. Lobbying does need to be reported, especially direct lobbying.

Direct lobbying requires a call to action with four conditions met:

1. Communication, with a
2. Government official or employee, that
3. Reflects a point of view or seeks to influence
4. Specific legislation.

For an association, lobbying requires disclosure to the IRS to prove it has used funds from sources without restrictions on lobbying (aka unrestricted funds, not federal grant dollars). It also must show that its lobbying activities are an insubstantial part of activities (less than 5%).

For an individual member, if they are acting on behalf of themselves and not receiving funding to lobby, rather acting as a constituent or citizen, then disclosure is not required. Everyone has a constitutional right to petition their representatives in government.

If the member is acting on behalf of their agency, meaning state or local environmental health agency, then it becomes more complicated. Their agency might require that the member receive permission to use their title or to specify the agency. The state might have requirements about agency (both state or local) personnel regarding lobbying (or advocating) before public officials.

The National Conference of State Legislatures has a [website](#) dedicated to how each state defines lobbying and lobbyists. It is best for members to check on their state rules before lobbying as staff from a state agency.

Our state affiliates have no restrictions on advocacy or lobbying. As nonprofit associations, state affiliates can educate, enlighten, or advocate. Affiliates can lobby if they use unrestricted funds and disclose these activities to the IRS.

Advocacy, Education, and Lobbying

Anyone—including people employed by state, local, tribal, or territorial governments—can advocate on public policy. Advocacy includes such activities as educating the public, providing information and resources to individuals in need of help, going into court, commenting on regulations, and helping individuals get benefits or services to which they are entitled.

Lobbying is just one kind of advocacy. It applies to communication with elected officials that takes a position on a pending piece of legislation and urges action. Public employees are prohibited from engaging in lobbying while at their jobs, using their job title, or using public resources (unless they receive permission from their supervisors). But public employees do not give up their rights as citizens when they take a public job. During their personal time, everyone has the right to express a point of view on proposed laws and budgets and to communicate those views to elected officials.

States generally define lobbying as an attempt to influence government action through either written or oral communication.

At the federal level, members of Congress receive millions of emails and hundreds of thousands of phone calls. Congressional staffers participate in up to 15 Zoom meetings daily to address constituent concerns.

Federal agencies introduce approximately 20,000 government actions, such as notices of proposed rulemakings, notices of final rules, and agency meetings. State legislatures introduce 109,000 bills annually and up to 175,000 for the legislative biennium (i.e., a specified period for 2-years). They need insight on how these actions affect the public and environmental health.

What Is Advocacy?

Advocacy is a key part of any association. According to the IRS, advocacy is the “promotion of an idea that is directed at changing a policy, position, or program at an institution.” Advocacy is a strategy that aims to draw attention to or educate a policymaker on a particular issue. Environmental health advocacy includes educating policymakers and the public about the environmental health profession. Advocacy can be nonpartisan and based in research and analysis.

What Is Education?

Policymakers—the federal, state, and local elected and appointed members who decide on policy, funding, and resources for public health agencies under their jurisdictions—need insight on the needs and issues affecting their state, county, tribe, or city. Policy makers rely on environmental health professionals to provide education and insight into the profession. When an environmental health professional educates an elected official, they are providing information about their community, their agency, their department, or an



environmental health issue. Educating policymakers on public health issues is critical to keep them informed when making decisions that affect the environmental health profession.

What Is Lobbying?

Lobbying is the attempt to influence a legislative body through communication with a member or employee of the legislative body or with a government official who participates in constructing legislation. Lobbying can include written or oral communication for or against specific legislation.

The IRS lists examples of lobbying, including:

- **Direct Lobbying:** Any attempt to influence legislation through communication with:
 - (i) Any member or employee of a legislative body or
 - (ii) Any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation.

A communication with a legislator or government official will be treated as a direct lobbying communication, if, but only if, the communication:

- (i) Refers to specific legislation and
- (ii) Reflects a view on such legislation.

- **Grassroots Lobbying:** An effort to influence legislation through an attempt to affect the opinions of the general public or any segment of the public. A communication with the general public will be treated as a grassroots lobbying communication if, but only if, the communication:

- (i) Refers to and reflects a view of specific legislation and
- (ii) Encourages the recipient of the communication to take action with respect to such legislation by one of the following means:
 - Stating that the recipient should contact legislators or other government employees who may participate in the formulation of legislation for the purpose of influencing legislation.
 - Stating a legislator's address, phone number, or similar information.
 - Providing a petition, tear-off postcard, or similar material for the recipient to send to a legislator.
 - Specifically identifying one or more legislators who will vote on legislation as opposing view on the legislation, being undecided about the legislation, being the recipient's representative in the legislature, or being a member of the legislative committee that will consider the legislation.

IRS provides examples of what is not lobbying, but rather is education or advocacy:



- Providing technical advice to a governmental body in response to a written communication.
- Performing nonpartisan analysis or research that is an independent and objective exposition of a particular subject matter, even though it may advocate a particular position.
- Communicating with governmental officials on nonlegislative matters, such as regulatory rulemaking.
- A group conducts a research project that collects information on the dangers of the use of pesticides. They produce and publish a report that presents the advantages, disadvantages, and economic costs of current patterns of pesticide use and significantly reduced levels of pesticides. The report concludes that the costs outweigh the benefits and recommends that legislation should be adopted to control the use of pesticides. This example does not constitute lobbying because it presents information on both sides of the issue and presents a full and fair exposition of the facts that can enable the reader to form an independent judgment.
- An environmental health professional contacts a member of Congress requesting that they write to an Executive Branch agency concerning proposed regulations issued by that agency. This communication does not constitute lobbying because it does not reflect a view on specific legislation.

These rules underscore the fact that there have been and will continue to be multiple opportunities for organizations and their members to engage in public policy debates, as well as shape legislative and regulatory developments in ways that support their missions without running afoul of the tax code.

Don't be afraid to lobby on issues of importance to your organization. Just be vigilant about potential lobbying and gift and ethics laws, and seek guidance when you are unsure if a law might apply to you or your organization.



Examples of Education, Advocacy, and Lobbying Activities

Education and Advocacy	Lobbying
Explaining workforce challenges your health department is facing and discussing how higher salaries, loan repayment, or additional funding could help.	Asking a member of Congress or their staff to cosponsor legislation that would create new funding for the public health workforce.
Describing to a member of Congress how local health departments administer flu vaccinations and why vaccinations are important for preventing the spread of flu.	Urging a member of Congress to vote for legislation that expands insurance coverage of flu vaccines.
Providing legislators educational materials that emphasize success stories from your local health department programs. The materials include information about what federal funding supports programs at your health department and examples of what you could do with more funding.	Providing legislators materials that ask them to support a specific amount of funding for specific programs in the upcoming annual appropriations bill.
Tweeting statistics about your diabetes programs, how local health departments are helping reduce diabetes rates, and how additional resources can assist your local health department to reduce diabetes rates.	Tweeting a message urging Congress to vote for or against legislation for diabetes prevention programs in local health departments.
Sending a weekly e-newsletter discussing factual information on opioid abuse in your community and outlining programmatic efforts that are proven to reduce this public health issue.	E-mailing a “call to action” to members of your organization to encourage them to contact their legislator in favor of opioid prevention legislation.

Source: The NACCHO Advocacy Toolkit, National Association of County and City Health Officials, 2023 (<https://www.naccho.org/uploads/downloadable-resources/Advocacy-Toolkit-February-2023.pdf>).