



NAHMA Grassroots Advocacy: AHMA 501(c)3 Organizations And Their Role in Advocacy

*Presented by ASCENT Management, LLC
May 1, 2013*

Both NAHMA and AHMA members play important and critically needed roles in helping to define and change the federal political landscape for the affordable housing industry. Because AHMAs were formed as charitable 501(c)3 organizations, some have expressed concern about the extent they can be involved in educating, advocating, and lobbying on behalf of a regulatory and legislative agenda while also following IRS regulations. The good news is that AHMAs have many varied roles to play to advance advocacy efforts on behalf of their members. They can look to NAHMA for its governmental relations expertise and use that information to focus their advocacy efforts without fear of jeopardizing their 501(c)3 status. Once more, their local and regional perspective is valued and can add an important voice for advancing the affordable housing industry's political agenda for the betterment of the communities they serve.

"The fact is that nonprofits may legally lobby. Getting involved in the legislative process and having a say in policy discussion is not just an appropriate role for nonprofits; it is vital," says Nayantara Mehta, counsel for Alliance for Justice in Oakland, CA. "Working toward structural policy changes is more likely to reduce, or at least prevent from worsening, the need for the very services that many dedicated nonprofits provide. Most nonprofits exist to make the world better and fairer, for a particular constituency group or community, or for the planet as a whole. If nonprofits really want to achieve their goals—a cleaner environment, more affordable housing, health care for everyone, equal pay for equal work—then lobbying is an indispensable tool."

For a 501c3 organization to be involved in direct lobbying, the organization must determine how it will measure its lobbying limits. There are two choices:

- 1) **The insubstantial part test**, where lobbying may not be a substantial part of an organization's overall activity. Unfortunately, the IRS has not provided guidance on what is an appropriate "insubstantial" amount of lobbying, and has not defined what exactly it considers to be lobbying under this test. Most tax practitioners believe that if a nonprofit's lobbying activity is less than 5 percent of its overall activities, it would be an insubstantial amount of lobbying, and

therefore acceptable. A 501(c)3 choosing this direction would have to report its lobbying activities on its annual IRS Form 990, which requires it to provide a detailed written description of the lobbying activities it has engaged in that tax year.

- 2) **The 501(h) expenditure test.** This is often seen as the easier and preferable choice. In response to the vagueness of the insubstantial part test, Congress introduced the 501(h) expenditure test in 1976 to provide nonprofits with guidance on how much lobbying they can conduct. In this case, the 501(c)3 only has to report its expenditure on lobbying activities on the IRS Form 990. Depending on the amount of an organization's exempt purpose expenditures, it can generally spend up to 20 percent of its annual expenditures on lobbying. A nonprofit must affirmatively elect to have its lobbying measured via the 501(h) election, by completing the short IRS Form 5768.

The total lobbying expenditures limits under the 501(h) test are:

- 20% of the first \$500,000 of exempt purpose expenditures, plus
- 15% of the next \$500,000 of exempt purpose expenditures, plus
- 10% of the next \$500,000 of exempt purpose expenditures, plus
- 5% of the remaining exempt purpose expenditures up to a total cap of \$1 million.

The 501(h) expenditure test is clear and easy to calculate; it also provides other significant benefits over the “insubstantial part test:”

- No limit on lobbying activities that do not require expenditures, such as unreimbursed activities conducted by bona fide volunteers (not true for non-electing nonprofits)
- Clear definitions of various kinds of lobbying communications, enabling electing charities to control whether they are lobbying or not (no authoritative guidance has been issued by the IRS on these definitions for non-electing nonprofits)
- Higher lobbying dollar limits and fewer items that count toward the exhaustion of those limits (unlike the miniscule and artificial restrictions adopted by some non-electing nonprofits)
- Less likely to lose exemption because the IRS may only revoke exempt status from electing organizations that exceed their lobbying limits by at least 50% averaged over a four-year period (a non-electing group could lose its exemption for a single year’s excessive lobbying)
- No personal penalty for individual managers of an electing nonprofit that exceeds its lobbying expenditures limits (not so for those in non-electing nonprofits).

Under the 501(h) expenditure test, there are two different types of lobbying:

- a. **Direct lobbying.** Direct lobbying is defined as any communication, with a legislator, that expresses a view about specific legislative proposal or legislation that has been introduced before a legislative body. Actions by executive, judicial or administrative bodies are excluded from the definition of lobbying. A 501(c)3 organization can meet with or communicate via email, phone or mail with a member of Congress if there is no discussion of specific legislation and the individual does not propose any legislation to address the issue that is discussed.
- b. **Grassroots lobbying.** An organization that has made the 501(h) election may not spend more than one-quarter of its overall lobbying limit on grassroots lobbying. Grassroots lobbying is defined as any communication, with the general public, that expresses a view about specific legislation, and includes a call to action. A call to action refers to four very specific ways the organization can ask the public to respond to its message. Those calls to action must be either:
 - i. Asking the public to contact their legislators or their staff;
 - ii. Providing the address, phone number, website, or other contact information for the legislators;
 - iii. Providing a mechanism to contact legislators such as a tear-off postcard, petition, letter, or e-mail link to send a message directly to the legislators; or
 - iv. Listing the recipient's legislator, the names of legislators voting on a bill, or those undecided or opposed to an organization's view on the legislation.

Do AHMAs Have to Choose? Be an Educator, a Resource

The 501(c)3 AHMAs also have another option, if they don't want to track their lobbying activities or lobbying expenditures. Lobbying is just one form of advocacy. AHMAs can contribute to affecting/changing the political landscape by:

- Educating members of Congress and the public about broad public housing issues.
- Encouraging people working and living in affordable housing to register to vote, and educating them on housing issues can affect their lives.
- Educating voters about candidate positions (but not directly supporting a candidate, nor advocating against a candidate).
- Encouraging AHMA members to contact their members of Congress with respect to pending legislation – educate AHMA members to use their voice to help make their communities better; AHMAs can mobilize members to support or oppose legislation that could affect them.
- Providing AHMA members with voting records of members of Congress on key affordable housing issues throughout the year; it's unacceptable to publish this information only once a campaign is underway.

- Being an expert -- Be sure your members of Congress know that you are happy to be a resource for them.

AHMAs Have Options

All politics is local! It is important for AHMAs to strengthen the voice of the affordable housing industry, by getting involved at some level. The more Congress is educated by its constituents – meaning AHMA executives and property managers – the more likely they will pass legislation that helps, and defeat legislation that hurts, the AHMA management level and also the affordable housing residents and communities they serve.

AHMAs, their members and residents are the face of the affordable housing industry. NAHMA and AHMAs voice will have more impact and weight when everyone stands as a united front, putting a face on the issue (e.g. how bedbugs are affecting residents), and sharing the impact that legislation and regulatory initiatives will positively or negatively affect residents and their communities. The more education that is available for Capitol Hill, the fewer myths will exist about the importance and effectiveness of affordable housing as an industry whose mission it is to provide compassionate housing and the opportunity to lift families from low-income levels.

Note to NAHMA staff: ASCENT Management recommends securing a speaker from one of the organizations listed in the sources below for the Legislative or Regulatory meetings to present the value and rules of advocacy/lobbying to all members, both NAHMA and AHMA members – if this has not been done in the past. It would also be advantageous to videotape it (with speaker’s permission) for a training tool for AHMAs going forward; it could be presented at the local AHMA meetings.

Sources:

Nonprofits and Lobbying: Yes, They Can! By Nayantara Mehta, Alliance for Justice, published in ABA Business Law Today, Vol.18, No. 4, March-April 2009 issue (<http://apps.americanbar.org/buslaw/blt/2009-03-04/mehta.shtml>)

Top Ten Myths about 501(c)(3) Lobbying and Political Activity, by Jeffrey S. Tenenbaum Esq., Venable LLP, May 2002 (<http://www.asaecenter.org/Resources/whitepaperdetail.cfm?ItemNumber=12202>)

Limitations on Lobbying Activities: Guidelines for 501(c)3 Organizations, by Jeffrey S. Tenenbaum Esq. Venable LLP, May 2002 (<http://www.asaecenter.org/Resources/whitepaperdetail.cfm?ItemNumber=12212>)



League of Women Voters website (<http://www.lwv.org/content/defining-advocacy-vs-lobbying>)

FAQ: Lobbying and Advocacy, By Center for Nonprofit Management
(<http://www.cnmsocal.org/resources/articles/faq-lobbying-and-advocacy.html>)