

PRACTICAL GUIDANCE

What Nonprofits Need to Know About Lobbying in

OHIO

New in This Update:

This Practical Guidance resource updates the 12.13.21 version. Updates include:

- A new FAQ describing how to use this resource
- A new FAQ comparing federal and state lobbying rules

Inside This Guide:

This Practical Guidance resource is designed to help your nonprofit organization determine if lobbying rules in Ohio might apply to your work. It includes:

- Summary of registration and reporting triggers
- Key takeaways for nonprofit organizations
- FAQs
- Case study for a hypothetical small student voting rights organization
- List of helpful additional resources

What Lobbying Activities Trigger Registration in Ohio?

DIRECT LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	Direct communication with a state legislator, or certain high-level state officials involved in legislation, by a person paid to actively advocate for or against legislative decisions at least 5% of their time in any four-month reporting period.
State Executive Branch Officials	Yes	Direct communication with certain elected executive officials by a person paid to actively advocate for or against executive branch decisions at least 25% of their time in any four-month reporting period.
Local Legislators or Local Executive Branch Officials	Maybe	The Ohio state lobbying statute does not regulate lobbying at the local level, but some municipalities and counties (including Columbus, Cincinnati, and Cuyahoga County) have their own lobbying statutes that may require registration.

Grassroots lobbying: Ohio does not regulate grassroots lobbying at the state level. Nonprofit organizations that do only grassroots lobbying (communications designed to get the public to communicate with public officials) are not required to register and report such activities.

Retirement system lobbying: Ohio also regulates the lobbying of public officials in the state retirement system. Retirement system lobbying is not covered in this guide.

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ADVOCACY ORGANIZATIONS IN OHIO:

- **Registration thresholds are relatively high:** Your nonprofit organization is unlikely to trigger Ohio's state lobbyist registration and reporting requirements unless your organization employs staff or has paid consultants that spend significant time directly communicating with state level officials involved in making legislative or executive branch decisions. Paid staff time counted towards the lobbying thresholds does not include time spent preparing for the lobbying activities, only the time spent directly communicating with the public officials. Five percent (5%) of a full-time staff person's time in a four-month period translates into approximately 32 hours of direct communication.
- **The state has helpful resources online and technical assistance available:** If you do need to register and report your lobbying activities, the Joint Legislative Ethics Committee (JLEC) of the Ohio Office of the Legislative Inspector General (OLIG) puts out a detailed Ohio Lobbying Handbook (as of the date of this resource the most current version is the 2014 Handbook) and encourages organizations contemplating lobbying activities to call their office in advance for a free consultation. The Ohio Lobbying Handbook can be found at <http://www.jlec-olig.state.oh.us/PDFs/Lobbying/Ohio%20Lobbying%20Handbook.pdf>

This resource is current as of May 2022. We do our best to periodically update our resources and welcome any comments or questions regarding new developments in the law. Please e-mail us at advocacy@afj.com or at info@democracycapacity.org with any comments.

This resource is meant to convey the basic principles of sections of state law that are most relevant for nonprofit advocacy and does not cover all aspects or all details of the state statutes. Please refer to the full text of the law for more details. This resource also does not cover details of federal lobbying disclosure law, IRS regulations related to lobbying, or any separate county or municipal regulations that may apply to lobbying-related activities. In some states there is an ongoing movement towards the enactment of additional local county and municipal level lobbying regulations, and organizations are urged to check with the appropriate local jurisdiction before undertaking local lobbying activity.

Q: How should we think about using this Practical Guidance resource?

This Practical Guidance – What Nonprofits Need to Know About Lobbying resource is designed to help your nonprofit organization determine if state or local regulations might apply to your existing or proposed advocacy work. The answer is surprisingly often – **YES!** – but there are also often many advocacy activities that do not require state lobbyist registration or reporting.

This Guide will help you identify which of your state or local activities might trigger registration and reporting, and also give you potential alternative program design ideas that would allow your program to be in compliance with the regulations but not require registration and reporting.

If you do need to register and report with the state, this Guide will also give you practical tips about what information needs to be included in your reports, and how to try to minimize your operational burden while remaining in compliance with the rules.

While this Guide does provide some information about the federal IRS rules that apply to nonprofit lobbying, it is designed to cover state and local regulations. Links to resources containing more information about federal IRS rules can be found in the federal lobbying FAQ below and on the Additional Resources page of this Guide.

We also hope that this Guide will prove useful to legal counsel and other advocacy advisors who are working to assist nonprofit advocacy organizations, as well as the funders who generously support this work. Advisors and funders are invited to use our free Bolder Advocacy Technical Assistance Hotline and the written legal resources available in our resource library at <https://bolderadvocacy.org/>

Q: What activities count as lobbying?

Ohio has similar but different rules relating to **legislative lobbying** and **executive agency lobbying**. In general, Ohio defines lobbying as **active advocacy** for or against **legislation** or an **executive agency decision** through **direct communications** with certain high-level elected and appointed state legislative or executive branch officials.

Legislative lobbying: In the context of legislative lobbying:

- **“actively advocating”** means using direct communication to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of any legislation.
- **“legislation”** means any bills, resolutions, amendments, nominations, and any other matter pending before the General Assembly (state House of Representatives or Senate), any matter pending before the Controlling Board (which handles adjustments to the state budget), or the executive approval or veto of any bill acted upon by the General Assembly.
- **“direct communication”** about the legislation is lobbying if it is with:
 - Any member of the General Assembly
 - Any member of the Controlling Board
 - The Governor
 - The head of any of the state executive branch departments listed in Appendix C of the Ohio Lobbying Handbook
 - Any of the high-level legislative staff that are required to file financial disclosure statements with the state. The current list of such officials can be found at: http://www.jlec-olig.state.oh.us/?page_id=924

Note that **legislative** lobbying can occur when directly communicating with **executive** branch officials who have a role in legislative decision making (for example, the Governor) and in such cases the trigger rules for legislative lobbying apply.

Executive agency lobbying: In the context of executive agency lobbying:

- **“actively advocating”** means advocacy using direct communication to promote, oppose, or otherwise influence the outcome of an executive agency decision.
- **“executive agency decision”** means a decision of an executive agency regarding the expenditure of state funds or award of any financial arrangement where state funds are to be allocated or distributed, or a regulatory decision of an executive agency, or any board or commission of the state, where administrative rules, bulletins, directives, and policy statements are all regulatory decisions.
- **“direct communication”** about the executive agency decision is lobbying if it is with:
 - Any of the six elected executive branch officials (Governor, Lieutenant Governor, Attorney General, Secretary of State, Auditor of State, Treasurer of State)
 - The head of any state executive branch department or agency listed in Appendix B or Appendix C of the Ohio Lobbying Handbook
 - Certain other executive agency officials that are required to file financial disclosure statements with the state. State lobbying compliance officials advise that if an organization is pursuing executive branch lobbying that it should check with the ethics office of each agency that it intends to lobby to determine which staff members are subject to such requirement

Q: What triggers lobbyist registration and reporting with the state?

The requirement to register as a lobbyist with the state is triggered by the amount of paid time an advocate spends during any four-month reporting period doing direct communication lobbying activities. Registration and reporting are only required if an employee or paid consultant of your organization is spending more than 5% of their paid time doing legislative lobbying, or 25% of such time doing executive agency lobbying during a reporting period.

The only time that counts against this threshold is time spent directly communicating with a public official, so unless your organization is doing significant amounts of lobbying work, you will likely not need to register or report your lobbying activities to the state. Nonprofits working close to a threshold should carefully track their paid staff’s direct communication lobbying time and might consider using multiple staff members to lobby to keep direct communication levels below the thresholds for each individual staff member.

Q: Are there exceptions to what counts as lobbying?

Yes. Ohio does not consider the following activities to be lobbying, and these activities do not count towards the 5% or 25% thresholds: grassroots efforts; contacts made for the sole purpose of gathering information in a public record; and appearances before public hearings of the General Assembly, the Controlling Board, or an executive agency.

Q: How does this work together with federal IRS lobbying regulations?

All tax-exempt organizations must follow both federal tax law (regulated by the IRS) **and** any state and local lobbying laws that apply to their work.

The IRS rules regulate how much lobbying a nonprofit organization can do, while state and local regulations are transparency rules designed to help the public understand what funds are being spent to influence decision making and by whom. As a result, federal tax law rules related to lobbying and state lobbying regulations are quite different, and state lobbying regulations also vary greatly state to state.

In general, the IRS requires 501(c)(3) organizations to report on their annual Form 990 legislative lobbying at the federal, state, and local levels, but does not count as lobbying advocacy activities relating to executive branch or administrative officials at any level.

There is no additional requirement for organizations or individuals to “register” with the IRS to report lobbying activities.

Nonprofits that are public charities under IRS exemption 501(c)(3), including grantmaking public charities like community foundations, can lobby within the generous limits allowed by federal tax law. The amount of lobbying is determined by either using the insubstantial part test or the 501(h) expenditure test. See our resource <https://bolderadvocacy.org/resource/public-charities-can-lobby-guidelines-for-501c3-public-charities-2/>

Organizations that are tax-exempt under 501(c)(4) (social welfare organizations), 501(c)(5) (labor organizations), and 501(c)(6) (trade associations) can do unlimited lobbying. See our <https://bolderadvocacy.org/resource/being-a-player-a-guide-to-the-irs-lobbying-regulations-for-advocacy-charities/>

Your organization will need to ensure that you are keeping track of your lobbying staff time and your expenses in a way that works for both your IRS reporting, and for any required state or local reporting, since the information required in each regime will be different.

Note that there is also a federal law called the Lobbying Disclosure Act that requires some organizations to register and report their federal level lobbying activities. Organizations that have only occasional contacts at the federal level (having occasional meetings with members or staff or sending occasional letters to Congress) will not need to register under the LDA. The thresholds are designed to require only those organizations with sustained lobbying activities and expenses to file. For more information see: https://bolderadvocacy.org/wp-content/uploads/2018/06/Understanding_the_Lobbying_Disclosure_Act.pdf

Q: Does supporting or opposing a ballot measure count as lobbying?

Supporting or opposing an Ohio ballot measure is not regulated as a lobbying activity under Ohio law (even though the IRS does count it as a lobbying activity). Instead, Ohio regulates activity to support or oppose a ballot measure under the state’s campaign finance laws. Nonprofit organizations considering working on ballot measures in Ohio (either working to get a measure on the ballot or supporting or opposing an existing measure) should seek advice on how to comply with any applicable state or local campaign finance reporting requirements.

Q: If we are required to register, how does the process work?

Both your organization and your individual lobbyist must register within 10 days of having an employee or paid consultant that crosses the registration threshold and pay a \$25 registration fee. Registration is submitted online at the Ohio Lobbying Activity Center (OLAC) at <http://www2.jlec-olig.state.oh.us/olac/>

Registration needs to be renewed either every year (for Executive Agency Lobbying) or every other year (for Legislative Lobbying).

Q: When are periodic lobbying reports due?

Once registered, both your organization and your individual lobbyists need to file reports online with the OLAC system three times a year.

- Reporting for January through April: Due no later than last day of May
- Reporting for May through August: Due no later than last day of September
- Reporting for September through December: Due no later than last day of January

Q: What information do the periodic lobbying reports include?

Generally, the state wants to know what kind of lobbying is being conducted (Legislative Lobbying or Executive Agency Lobbying), what specific legislation or executive agency

FAQS

decisions the lobbying relates to, and the details of any expenditures your organization or the lobbyist made when directly communicating with the public officials lobbied. There are detailed instructions about how to file the reports in the Ohio Lobbying Handbook.

Q: What is considered a reportable “expenditure”?

Reportable expenditures include: gifts over \$25 given to the individual being lobbied (or their family members); meals or beverages purchased for the individual being lobbied; the meal, beverage, or entertainment portion of the costs of hosting an event where all legislators or agency staff are invited (called an “all-invited” event); and expenditures related to speaking events or national conferences where legislative or executive agency officials are attending. Your employee or consultant compensation and the expenses of preparing to lobby are not reportable. Campaign contributions that are otherwise reportable under Ohio’s campaign finance laws (and allowed under your IRS tax-exemption status) are also not lobbying expenditures.

Reports must still be filed even if no expenditures were made during the reporting period. More details about these reporting requirements can be found in the Ohio Lobbying Handbook.

Gift ban: It is important to note that regulations relating to lobbying expenditures almost always intersect in complicated ways with state and local ethics and “gift ban” laws, and such rules often apply even if your nonprofit has not reached the threshold required for lobbyist registration. You should be certain that you understand the intricacies of both sets of rules before giving any gifts to, or paying expenses for, any public officials.

Advance notice to persons lobbied: We also note that because of ethics laws sensitivities, Ohio has a procedure called the Non-Dispute Notice, whereby an individual being lobbied must be given at least ten days advance notice to review and potentially correct (or reimburse) the expense listed on any lobbying report in which he or she is named. The procedure must be done before the report is filed, and the reporting deadline is tight, so you might consider avoiding making any expenditures that would require a Non-Dispute Notice procedure.

Q: Do our organization’s donors need to be disclosed on any lobbying reports?

No.

Q: How are our lobbyists required to identify themselves while lobbying?

OLIG issues one lobbying identification card for each type of lobbying being done (Legislative or Executive Agency) upon a lobbyist’s registration. The best practice in Ohio is to wear these ID cards for identification purposes while lobbying legislators or executive branch staff. It is also possible to request an Ohio Statehouse ID that allows registered lobbyists with a need to access the Statehouse on a regular basis to enter without passing through security screenings at a public entrance. For more information see: <http://www.ohiostatehouse.org/services/id-access>

Q: Are there any other restrictions on lobbyists that we should be aware of?

Yes. Persons who have pleaded guilty to, or have been convicted of, certain types of offenses may not serve as lobbyists (see the “Individuals Guilty of Certain Offenses Prohibited from Registering” section of the Ohio Lobbying Handbook).





Lobbyist compensation may not be contingent upon the outcome of the legislation or executive agency decision they are advocating for or against.

Case Study STUDENTS VOTE NOW

Students Vote Now is a hypothetical small 501(c)(3) advocacy organization considering being vocal about House Bill 101 pending in the Ohio House of Representatives

STUDENTS VOTE NOW IS CONSIDERING:

- Reaching out to its student constituents via direct physical mailings, e-mails, and volunteer phone banking, in order to get the students to call their Ohio House representative about the bill.
- Doing an in-person Lobby Day at the Statehouse about House Bill 101 to visit legislators' offices, or alternatively arranging a virtual Zoom lobby event. The Lobby Day activity might potentially include renting a bus, buying T-shirts for the volunteer participants, and handing out some small swag items from the organization to the legislators, or if done by Zoom, the purchase of an upgraded Zoom account.
- Testifying before a committee of the Ohio House of Representatives regarding the student perspective on House Bill 101.
- Having an employee engage with the Mayor of Columbus about a similar, but separate, local ordinance being considered there.

ACTIVITY	OHIO LOBBYIST REGISTRATION/REPORTING REQUIREMENTS
 Student Engagement	The proposed student engagement activities are all grassroots lobbying activities that are not regulated by Ohio at the state level.
 Lobby Day	This activity contemplates direct communication with legislators advocating for or against legislation, but unless Students Vote Now is doing other significant lobbying activities using the same staff, this activity is not likely to reach the 5% threshold for requiring lobbyist registration (for a four-month period of full-time work, approximately 32 hours of direct communications with legislators). Preparation, travel and wait time between meetings does not get counted in this calculation. Gift ban rules should be checked before giving out any swag to legislators. Giving informational literature about your organization instead is usually simpler.
 Committee Testimony	Testifying before public hearings of the General Assembly does not count as lobbying.
 Mayor	The Mayor of Columbus is not a covered state official, so this activity would not be considered lobbying under Ohio state law. Columbus has its own local lobbying statute triggered by 5% paid compensation during a four-month reporting period. ¹ As described, the direct communication time with the Mayor seems unlikely to trigger a requirement to register with the city of Columbus. Cuyahoga County ² and the City of Cincinnati ³ also have lobbyist registration requirements that should be explored if there is any intention to lobby any other local officials, and organizations are urged to check with the appropriate local jurisdiction before undertaking local lobbying activity.
Bottom Line	The proposed Students Vote Now activities should not trigger lobbyist registration and reporting obligations so long as the Lobby Day event and the work with the Mayor in Columbus do not involve long periods of direct communication activity. Students Vote Now should either refrain from giving any swag to the legislators or the Mayor or investigate more carefully exactly how any such proposed gifts might be regulated under the state and local ethics and gift ban rules or give informational literature instead.

¹ <https://www.columbus.gov/council/how-do-i/legislative-agent-information/>

² <https://inspectorgeneral.cuyahogacounty.us/en-US/Lobbyist-Registration.aspx>

³ <https://www.cincinnati-oh.gov/council/lobbyist-information/>

ADDITIONAL RESOURCES

BOLDER ADVOCACY'S TECHNICAL HOTLINE:

Bolder Advocacy's free Technical Hotline team is always happy to help nonprofits and advocacy attorneys with more specific questions. You can contact our team of experts by emailing us at advocacy@afj.org or calling us during standard business hours at 866-NP-LOBBY (866-675-6229).

BOLDER ADVOCACY'S MORE DETAILED STATE LAW RESOURCES:

- See our Ohio Lobbying Disclosure Guide for more details on the actual text of the Ohio lobbying statute, and any related advisory opinions. <https://bolderadvocacy.org/resource/ohio-lobbying-disclosure/>
- Our *Lobbying or Not?* One pager gives some additional examples on what is and is not considered lobbying activity in Ohio. <https://bolderadvocacy.org/resource/ohio-lobbying-or-not/>
- Also see our *Ohio Campaign Finance and Ballot Measure Guide* for rules related to state ballot measure advocacy, which Ohio regulates as a campaign finance activity, unlike the IRS which regulates such activities as direct legislative lobbying. <https://bolderadvocacy.org/resource/ohio-campaign-finance-and-ballot-measure-guide/>

OHIO STATE RESOURCES:

- **Office of the Legislative Inspector General**
The agency responsible for administering the lobbyist registration and reporting system in Ohio is the Office of the Legislative Inspector General (OLIG): http://www.jlec-olig.state.oh.us/?page_id=4
- **Full Text of Ohio Lobbying Statutes**
The full text of the Ohio state lobbying statute can be found as links at: http://www.jlec-olig.state.oh.us/?page_id=2062
- **Ohio Lobbying Handbook**
OLIG puts out the Ohio Lobbying Handbook to help lobbyists comply with the registration and reporting requirements of the law (as of the date of this Practical Guidance publication, the most recent version of the Handbook is the 2014 version): <http://www.jlec-olig.state.oh.us/PDFs/Lobbying/Ohio%20Lobbying%20Handbook.pdf>
- **Additional Questions**
Technical questions about lobbyist registration and reporting can be directed to a representative at the Lobbying Division of OLIG at: 614-728-5105

BOLDER ADVOCACY'S FEDERAL LAW RESOURCES:

While state and local laws regulate which lobbying activities require registration and reporting, the IRS also regulates how much lobbying a 501(c)(3) tax-exempt organization is allowed to do, including at the state and local levels. The way the IRS counts lobbying will almost always be different than how state and local laws count it, and organizations are urged to review our federal law resources to ensure all IRS compliance obligations are being met. See our *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities*. <https://bolderadvocacy.org/resource/being-a-player-a-guide-to-the-irs-lobbying-regulations-for-advocacy-charities/>



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