

T E N E N B A U M
L A W G R O U P P L L C

wiley

American Society of Association Executives
ASAE Legislative Fly-In

March 23, 2026

Ethics in Advocacy & Lobbying: Best Practices

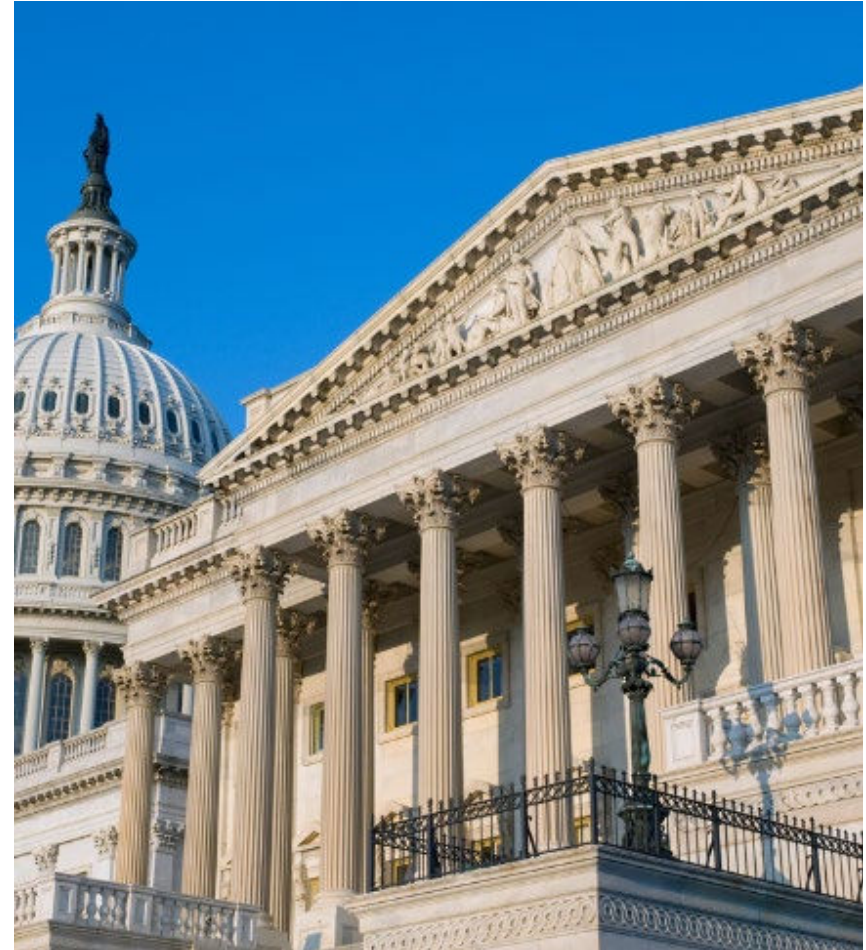
Kevin M. Serafino, Esq., CAE
Associate
Tenenbaum Law Group PLLC

Patrick Wohl, Esq., CAE
Associate, Election Law & Government Ethics
Wiley Rein LLP

Agenda

- Intro to Lobbying Ethics
- Association Lobbying and the Federal Tax Code
- Federal Lobbying Disclosure Act (LDA)
- Federal Gift Rules
- Political Campaign Activity
- Being a Trusted Advocate

Intro to Lobbying Ethics



Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Constitution of the United States
First Amendment**

Ethics:

*A set of moral principles; a theory or system
of moral values*

*The principles of conduct governing
an individual or group*

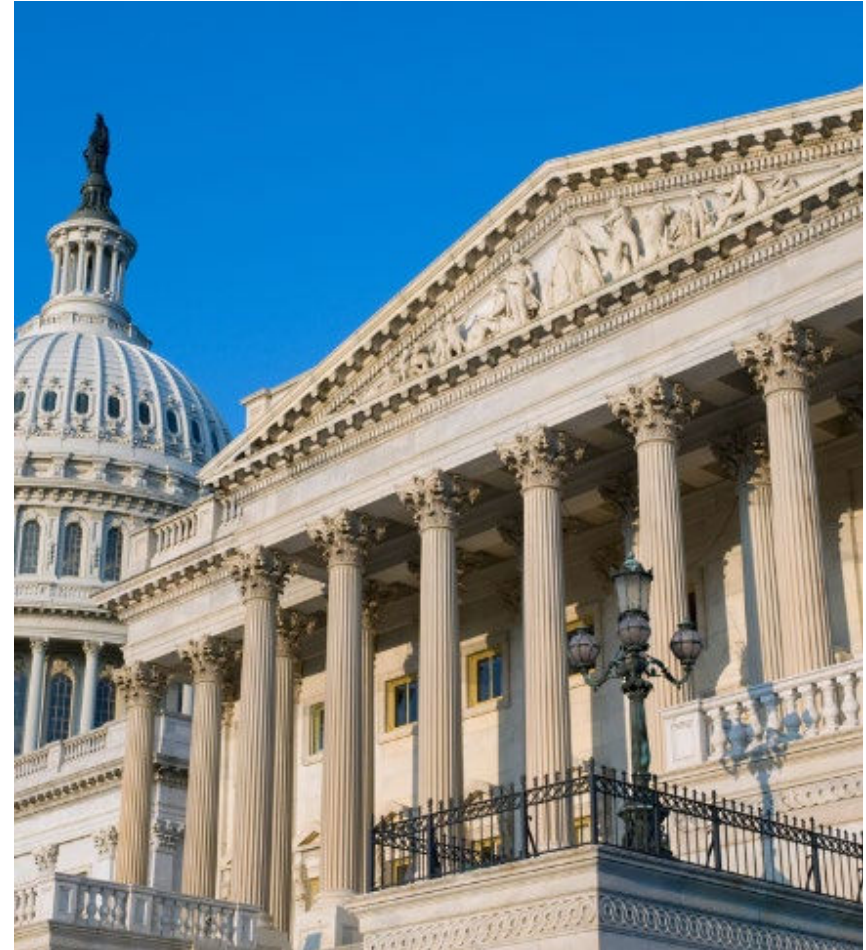
As an ASAE member, one should aspire to:

- *Respect and uphold public laws that govern one's work*
- *Be honest in conducting the member's business*
- *Act fairly*
- *Foster an ethical culture through one's work*
- *Take responsibility for one's conduct*

ASAE Core Ethical Standards
ASAE Standards of Conduct

March is National Ethics Awareness Month

Association Lobbying and the Federal Tax Code



“ . . .organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . ., no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)) . . .”

Internal Revenue Code, Sec. 501(c)(3)

“ Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare . . . ”

Internal Revenue Code, Sec. 501(c)(4)

“ Business leagues, chambers of commerce, real-estate boards, boards of trade ”

Internal Revenue Code, Sec. 501(c)(6)

IRC and Lobbying

- Two separate federal laws requiring disclosure – Internal Revenue Code (IRC) and Lobbying Disclosure Act (LDA)
- (c)(3)s must limit lobbying, while (c)(6)s and (c)(4)s can engage in unlimited lobbying so long as it is mission-related
- Lobbying is defined differently for (c)(3)s, (c)(6)s/(c)(4)s, and under the LDA
- IRC is concerned *primarily* with legislative lobbying
 - LDA covers legislative and regulatory lobbying

SCHEDULE C (Form 990) **Political Campaign and Lobbying Activities** OMB No. 1545-0047

2021
Open to Public Inspection

For Organizations Exempt From Income Tax Under section 501(c) and section 527
 ▶ Complete if the organization is described below. ▶ Attach to Form 990 or Form 990-EZ.
 ▶ Go to www.irs.gov/Form990 for instructions and the latest information.

Department of the Treasury
Internal Revenue Service

If the organization answered "Yes," on Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46 (Political Campaign Activities), then

- Section 501(c)(3) organizations: Complete Parts I-A and B. Do not complete Part I-C.
- Section 501(c) (other than section 501(c)(3)) organizations: Complete Parts I-A and C below. Do not complete Part I-B.
- Section 527 organizations: Complete Part I-A only.

If the organization answered "Yes," on Form 990, Part IV, line 4, or Form 990-EZ, Part V, line 47 (Lobbying Activities), then

- Section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)): Complete Part II-A. Do not complete Part II-B.
- Section 501(c)(3) organizations that have NOT filed Form 5768 (election under section 501(h)): Complete Part II-B. Do not complete Part II-A.

If the organization answered "Yes," on Form 990, Part IV, line 5 (Proxy Tax) (See separate instructions) or Form 990-EZ, Part V, line 35c (Proxy Tax) (See separate instructions), then

- Section 501(c)(4), (5), or (6) organizations: Complete Part III.

Name of organization _____ Employer identification number _____

Part I-A Complete if the organization is exempt under section 501(c) or is a section 527 organization.

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV. See instructions for definition of "political campaign activities."
- 2 Political campaign activity expenditures. See instructions ▶ \$ _____
- 3 Volunteer hours for political campaign activities. See instructions

Part I-B Complete if the organization is exempt under section 501(c)(3).

- 1 Enter the amount of any excise tax incurred by the organization under section 4955 ▶ \$ _____
- 2 Enter the amount of any excise tax incurred by organization managers under section 4955 ▶ \$ _____
- 3 If the organization incurred a section 4955 tax, did it file Form 4720 for this year? Yes No
- 4a Was a correction made? Yes No
- b If "Yes," describe in Part IV.

Part I-C Complete if the organization is exempt under section 501(c), except section 501(c)(3).

- 1 Enter the amount directly expended by the filing organization for section 527 exempt function activities ▶ \$ _____
- 2 Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities ▶ \$ _____
- 3 Total exempt function expenditures. Add lines 1 and 2. Enter here and on Form 1120-POL, line 17b ▶ \$ _____
- 4 Did the filing organization file Form 1120-POL for this year? Yes No
- 5 Enter the names, addresses and employer identification number (EIN) of all section 527 political organizations to which the filing organization made payments. For each organization listed, enter the amount paid from the filing organization's funds. Also enter the amount of political contributions received that were promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, provide information in Part IV.

	(a) Name	(b) Address	(c) EIN	(d) Amount paid from filing organization's funds. If none, enter -0-	(e) Amount of political contributions received and promptly and directly delivered to a separate political organization. If none, enter -0-
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					

For Paperwork Reduction Act Notice, see the Instructions for Form 990 or 990-EZ. Cat. No. 50084S Schedule C (Form 990) 2021

Lobbying by 501(c)(6) and (c)(4) Orgs

- Expenses reported on IRS Form 990
- Lobbying expenses not tax deductible by association members as business expenses:
 - Most Associations report to members the non-deductible portion of their membership dues – members pay the cost through lower business tax deductions for membership dues
 - Option: Association pays a 21% “proxy tax” on lobbying expenses, rather than passing through to members

(c)(6)/(c)(4) Lobbying Expenses

- IRC Sec. 162(e) – no business tax deduction allowed for expenditures incurred in connection with:
 - Influencing legislation
 - Any political campaign activity
 - Any attempt to influence the general public with respect to elections and legislative matters (grassroots); and
 - Any direct communication with covered Executive branch officials (different from (c)(3) rules)

Lobbying Tax Requirements for (c)(6)s/(c)(4)s

- Determine expenditures and overhead
 - Treasury regulations provide cost allocation methods
 - *De minimis* rules for staff time and “in-house lobbying”
- Determine total annual membership dues
 - Include “similar amounts” – voluntary payments and special assessments
- Reporting to IRS - total membership dues and lobbying expenditures
- Notice to Members - state portion of membership dues that the association estimates will be nondeductible due to lobbying
- Adjustments – pay tax on excess or carry forward to future years

501(c)(3) Lobbying Limits

Two Alternative Tests

1. “No Substantial Part” Test:
 - No substantial part of an organization’s activities may be lobbying
 - This is the default test
 - Unclear limits, definition, and the penalty for exceeding the limit is the revocation of federal tax exemption
2. 501(h) Expenditure Test:
 - Clear dollar-based limits
 - Clear definitions of lobbying
 - Direct + Grassroots lobbying
 - Penalty is a tax on the excess lobbying expenditures
 - Requires one-time election using IRS Form 5768



501(h) Legislative Lobbying Limits

- Calculate the organization's total exempt-purposes expenditures (how much the organization spends during the tax year, subject to some adjustments)
- Overall lobbying limit is:
 - 20% of first \$500,000
 - 15% of next \$500,000
 - 10% of next \$500,000
 - 5% of remainder
- Grassroots lobbying limit is 25% of overall lobbying limit



What Is Legislative Lobbying?

Direct Lobbying Definition:

A **Communication** +

That **Expresses a View** +

On **Specific Legislation** +

To a **Legislator** =

Direct Lobbying

Grassroots Lobbying Definition:

A **Communication** +

That **Expresses a View** +

On **Specific Legislation** +

To the **General Public** +

With a **Call to Action** =

Grassroots Lobbying

Specific Legislation

Specific Legislation:

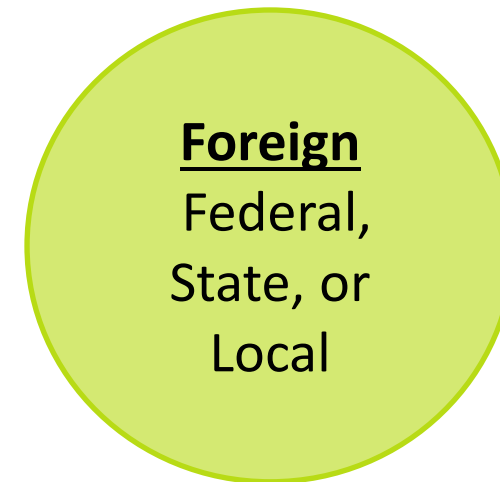
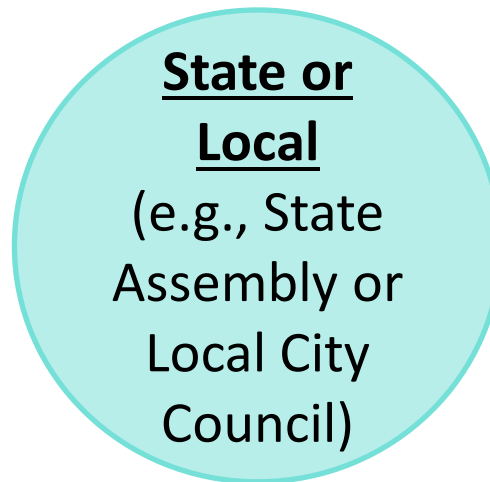
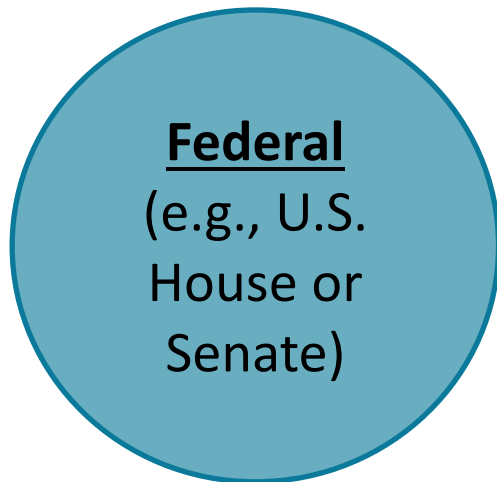
- A bill (e.g., H.R. 7, S. 42)
- Proposed legislation (e.g., model bills)
- Draft amendments
- Specific legislative policy proposals
- Congressional resolutions
- Treaties requiring Senate ratification
- Judicial and executive nominees

NOT Specific Legislation:

- Administrative rules
- Court opinions
- Agency decisions
- Executive orders
- Private (non-government) actions

Who Is a Legislator?

- A member of a legislative body or their staff:

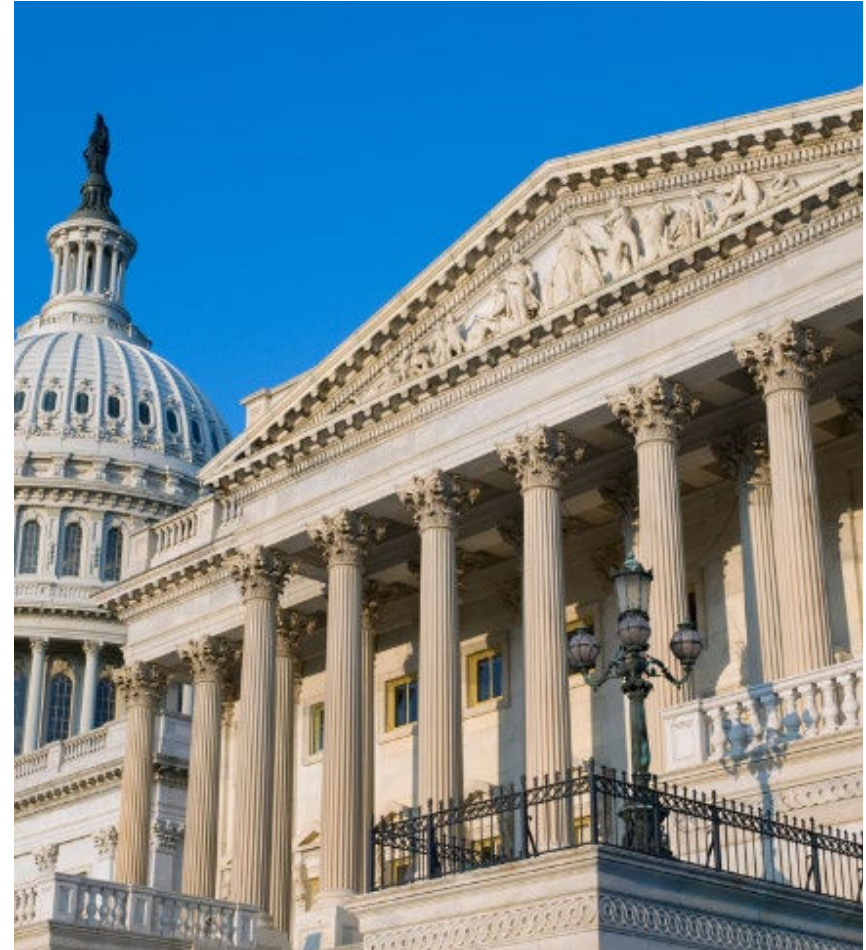


- Executive Branch employee only if:
 - Person is in a position to influence the formulation of legislation and
 - Primary purpose of the communication is to influence legislation

Lobbying by 501(c)(3) Organizations

- Special rules for calls to action, paid mass media advertising, subsequent use of materials/reports
- Narrow exceptions exist for nonpartisan analysis, requests for technical assistance, self-defense
- Expenses and recordkeeping – staff costs, overhead, travel
- 25 percent tax on excess lobbying expenditures

Lobbying Registration, Reporting, and Disclosure



Lobbying Registration and Disclosure

- Federal – Lobbying Disclosure Act (LDA)
 - Requires registration and reporting of lobbyists and lobbying entities
 - Covers direct lobbying of Congress and Executive branch, but not grassroots
 - “Lobbying” defined differently than IRS, and expenses can be calculated differently
- States have their own requirements, and they are all different
 - Careful planning required before state advocacy – advance registration may be required

LDA – When to Register

An organization must file a Form LD-1 registration within 45 days of when it (a) spends more than \$14,000 on employee pro-rata lobbying time in a three-month period; and (b) one employee meets the definition of “lobbyist” by:

Making more than one “lobbying contact” for the organization (at any time)

AND

Spending 20 percent or more of his/her time on “lobbying activity” for the organization in same 3-month period as the \$14,000 expenditure.

LDA – What Is Lobbying Activity?

A “lobbying contact” is:

Any oral or written communication with a “covered official” regarding federal legislation, regulation, Executive Order, rule, Senate nomination or confirmation, contract, grant, program, or policy of the federal government.

Reportable “lobbying activity” also includes:

Prep work or research conducted with the intent for use in one’s own, or another’s, lobbying contacts.

Many communications are exempt, such as:

Written responses to covered officials’ specific questions; congressional or agency testimony; notice and comment rulemaking submissions, speeches, articles, or mass media, or administrative requests that involve no attempt to influence.

Not Lobbying: Social interactions, goodwill, public communications

Who Are LDA “Covered Officials?”

Legislative Branch

- Members, employees, and officers of Congress, including congressional agencies such as the Library of Congress

Executive Branch

- The President, Vice President, and all Executive Office of the President staff, including EOP agencies such as USTR, OMB, and CEQ
- Schedule C or Executive Schedule Level I - V political appointees in the administration, but not SES employees

LD-2 Quarterly Report Content

- Lobbyist, their contacts, and issues; prior covered positions, JACK Act disclosure
- Expenses – pick one of three calculation methods:
 - Method A: LDA definitions only – any organization
 - Method B: I.R.C. Sec. 6033(b)(3) – (c)(3) taking 501(h) election
 - Method C: I.R.C. Sec. 162(e) – (c)(4) and (c)(6) orgs
- **Each calculation method covers a different set of activities**

Calculating Expenses

Default: Add outside lobbying fees, portion of membership dues attributed to lobbying, pro-rata employee time, then round to *nearest* \$10,000 increment if >\$5,000

Gross-up: Adjusting pro-rata salary to include non-salary compensation and overhead (75% recommended, used by IRS)

Timesheets: Very effective for tracking time; can be tracked by project

% Estimate (if not using timesheets): At the end of the quarter, estimate the portion of total worktime spent on lobbying, apply to salary, then gross up

LD-203 Semiannual Contribution Reports

- Online reporting by organization and each of its lobbyist employees
 - Lobbyists must file reports through termination from the organization's registration, may transfer employers
- Disclose any PAC or other political committee controlled or established by the filer
- Disclose the filer and committee's "political contributions"
 - Not just campaign contributions – includes honorary expenses, contributions to orgs established, financed, maintained, or controlled by covered official
- Certify compliance with House/Senate gift rules under penalty of perjury

State & Local Lobbying Considerations

- Whenever you interact with state or local officials, you may be engaged in lobbying.
- **Before** interacting with state or local officials, seek guidance to determine whether you will trigger lobbyist registration and reporting requirements.
 - Zero-threshold states (e.g., CO, FL, and IL)
- States (and many localities) define lobbying differently and impose their own disclosure and other obligations on organizations and individuals who engage in lobbying.
- Having a registered lobbyist accompany you to a meeting does not usually shield you from the lobbying laws.
- Don't forget about grassroots lobbying, goodwill lobbying, and procurement

Federal Gift Rules



Gift Rules

- Different rules for federal, state, local, and different rules for legislative and executive branches
- Premise: Controlling improper influence and self-dealing
- Covered: Money, goods, entertainment, travel, and services provided below market value (or free) to government officials and family
- Additional Restrictions: Lobbyists, vendors, regulated entities
- Common Exemptions: Family, personal friends, large meetings, receptions, contributions, travel for official purpose

Common Exceptions

- Receptions
 - Nominal F&B, no meals (“toothpick rule” or “coffee and donuts”)
- Widely Attended Events
 - 25+ persons other than official invitees
- Events with Constituent Organizations (House Only)
- Commemorative Items
 - Plaques/trophies, with inscription, presented in person
- Facility Tours / Site Visits (House Only)

Event Planning and Gift Compliance

- With enough notice, high-impact events can be planned and executed successfully within applicable rules
- Plan early – pre-approval by House/Senate or Executive agency may be needed
- Exceptions are your friends

State & Local Gift Rules

- 50 states with 50+ rules
 - Some have explicit dollar limits while others apply an appearance of impropriety rule, examining the facts and circumstances
 - Others distinguish between lobbyists and non-lobbyists (*e.g.*, California's \$10 per month lobbyist rule vs. \$630 per year rule for others)
- State, county, municipal, and even entity-based rules may apply
- Common exceptions for food, travel, *de minimis gifts*, widely attended events etc.
- Remember reporting requirements and PR considerations
- Certain jurisdictions require gift notices (*e.g.*, Virginia, Ohio)

Political Campaign Activity



Political Campaign Activity

- NOT the same thing as lobbying
- 501(c)(3) orgs are prohibited from making political contributions and campaign intervention (i.e., advocating for or against candidates or political parties)
 - Certain non-partisan election-related activities are permitted, such as non-partisan candidate forums and non-partisan get-out-the-vote drives
 - Fact-specific determinations
- 501(c)(6) trade associations and other nonprofits subject to other rules

Common Activities that Carry Risk

- Certain issue advocacy if the issues are the same or similar to those being debated by the candidates
- Voter registration and “get-out-the-vote” activities
- Candidate outreach and education
- Hosting candidates at events
- Hosting a public-facing event involving candidates such as a debate or candidate forum

Making Political Contributions

- Federal law prohibits corporations from making campaign contributions, although 29 states permit corporate contributions to state candidates
- Many 501(c)(6) associations create separate segregated funds (also known as “political action committees” (PACs)) to make candidate contributions
- Limited, transparent, and highly regulated
- Association may cover administrative and fundraising expenses of a “connected” PAC using non-PAC dollars

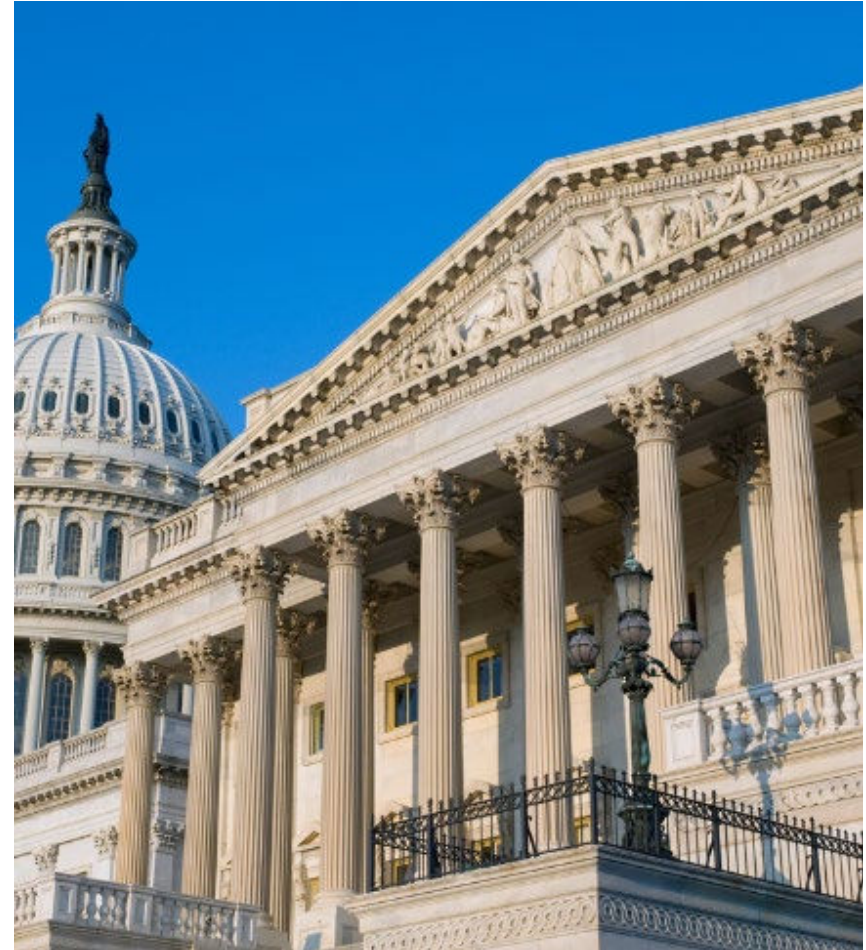
Association PACs – Federal

- Required to register with Federal Election Commission (FEC) and regularly report receipts and disbursements
- Only individuals may contribute, up to \$5,000/year
- Solicitation limited to association’s “restricted class”:
 - Association’s executive and administrative personnel
 - Individual members
 - Executive and administrative personnel of corporate members, with prior written approval (prior approval can only be given to *one* connected PAC per year)

State & Local Campaign Finance

- Corporate contributions permitted in 29 states
- Permitted for ballot initiatives (*Belotti*)
- Federal or out-of-state PAC may be permitted to contribute – but be aware of registration/reporting obligations
- Legislative blackout periods
- Potential donor disclosure issues (e.g., MN, NY, WA)
- Grassroots lobbying communications may be regulated under campaign finance law

Being a Trusted Advocate



Being a Trusted Advocate

- Your influence is tied to your reputation
- Your actions will shape your reputation, and that of your employer, associations, and industry
- You do not have to become an expert on lobbying laws
- Trust your instincts

Being a Trusted Advocate

Honesty

Candor

Integrity

Accuracy

Compliance

Reputation

Professionalism

Diligence

Yea or Nay?

Yea:

- Identify yourself and your interests
- Provide complete and accurate information
- Supplement with high-quality materials
- Correct mistakes
- Seek compliance advice
- Separate policy and politics

Nay:

- Lie
- Withhold or obfuscate
- Cite questionable sources
- Claim authority/expertise you don't have
- Tie political support to official action
- Threaten
- Ignore compliance obligations

Remember Why We Advocate

ASAE's advocacy and communications efforts enhance recognition for the profession and result in a positive legislative and regulatory climate for the association community.

Questions?



Kevin M. Serafino, Esq., CAE
Associate

Tenenbaum Law Group PLLC
601 13th Street NW, 12th Floor
Washington, DC 20005
771-240-2831

kserafino@TenenbaumLegal.com
www.TenenbaumLegal.com

T E N E N B A U M
L A W G R O U P P L L C



Patrick Wohl, Esq., CAE
Associate

Wiley Rein LLP
2050 M Street NW
Washington, DC 20036
847-894-3268

pwohl@wiley.law
www.Wiley.law

wiley

T E N E N B A U M
L A W G R O U P P L L C

wiley.law