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## THE ASPEN INSTITUTE NONPROFIT SECTOR RESEARCH FUND

The Nonprofit Sector Research Fund awards research grants and convenes leaders to expand knowledge of the nonprofit sector and philanthropy, improve nonprofit practices, and inform public policy related to nonprofits.

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# Snapshots

Research Highlights from the Nonprofit Sector Research Fund

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## Lobbying and Advocacy by Nonprofit Organizations Rethinking the Legal Constraints on Nonprofit Voices

The nonprofit sector has become increasingly important to the government's ability to deliver a whole range of services. Yet federal law keeps nonprofits from having a commensurate say in the development of public policy, argue scholars in recent studies funded in part by the Nonprofit Sector Research Fund. The problem is compounded by nonprofits' lack of understanding about what they are legally able to do, under existing regulations, to influence public policy.

In *A Voice for Nonprofits* (Brookings Institution, 2003), Jeffrey M. Berry (Tufts University) and David F. Arons (Charity Lobbying in the Public Interest) argue for an easing of anti-lobbying restrictions so that nonprofits can better represent those who are traditionally underrepresented. They also argue that nonprofits should make better use of the options they already have to speak for their constituencies in discussions about public policy.

In a related study by Gary Bass (OMB Watch), David F. Arons, Kay Guinane (OMB Watch) and Matt Carter (OMB Watch), the Strengthening Nonprofit Advocacy Project (SNAP) surveyed 1,700 nonprofits to find out how nonprofits participate in policy discussions. The SNAP researchers found that although nonprofit leaders cite the importance of advocacy on policy issues, their lobbying activity is low because of limited resources (including time, staff and volunteer capacity, and money) and the complexity of federal lobbying rules. For more on this study, see the information box on page 2.

*In This Issue:  
How to Strengthen  
Nonprofit Lobbying*

### Constrained Voices in Policy Conversations

Americans support nonprofits enthusiastically. In 1998, 109 million Americans volunteered for nonprofits, giving an average of 3.5 hours a week. And of the \$212 billion given to nonprofits in 2001, 75 percent came from individuals. Nonprofits have grown steadily in our society to meet a consistently growing demand for services; particularly social services. Berry and Arons point out that nonprofits provide the lion's share of the counselors, employment specialists, social workers, and others who deliver social services. "The devolution of social programs, fueled by the movement toward block grants and the political pressure to keep government bureaucracies small, has pulled nonprofits closer into the web of government," the authors say. Local government, in particular, needs nonprofits: they enhance the performance of government and the status of officeholders.

Despite this close connection with government, there is a huge body of regulation governing the ways in which nonprofits can interact with government on behalf of those they represent. The rules

are dense and surprisingly restrictive when compared with the regulations that govern how other interest groups—like unions or corporations—can lobby the government. Berry and Arons argue that it doesn't make sense to silence the voice of nonprofits that speak for those who have difficulty speaking for themselves. "If one did not know better," the authors say, "a review of all the regulations affecting interest-group participation might lead to the conclusion that nonprofits are the lobbying organizations that are most threatening to our form of democracy."

The Tax Reform Act of 1976 (PL 94-455) defines nonprofit lobbying as attempting to affect the opinions of the general public through grassroots lobbying and trying to influence the outcome of a specific piece of legislation by directly lobbying Congress. Section 501(c)3 of the Internal Revenue Code prohibits nonprofits that receive tax-exempt donations from making campaign contributions, mounting grassroots campaigns, and lobbying legislators to any substantial degree. The standard of "substantial" has never been defined, leading nonprofits to err on the side of excessive caution, the authors say. Many nonprofits "are socialized by their understanding of the law into believing that

## How to Strengthen Nonprofit Lobbying

The Strengthening Nonprofit Advocacy Project (SNAP) was launched by OMB Watch, Tufts University, and Charity Lobbying in the Public Interest as the first national research project designed to investigate the public policy role of those nonprofit organizations that are exempt under Section 501(c)3 of the tax code (technically called *charities*). The goals of the project were to determine how involved nonprofits are in public policy issues and to identify factors that motivate and impede them.

According to SNAP Project Director David Arons (Charity Lobbying in the Public Interest), “Although nonprofits are prohibited from using government funds to lobby, and know that, they are afraid they will lose money needed to provide direct services if they speak out on government policy. And, with few exceptions, private foundations are not supplying encouragement or funding to enable nonprofits to be consistently active in the policy arena.” The three-year project drew upon surveys of 1,700 nonprofits, interviews with nonprofit leaders, and analysis of IRS data on nonprofits. The project’s principal findings follow.

### Barriers to Nonprofit Policy Participation

- Nonprofits list three key barriers to policy participation: limited financial resources, tax law or IRS regulations, and limited staff or volunteer skills.
- The more funding an organization gets from the government, the less likely it will be to participate in public policy. Many nonprofits that receive government money are afraid that they will suffer retribution if they engage in public policy matters.
- Nonprofits feel that foundations do not support lobbying undertaken by nonprofits, and that they unnecessarily place restrictions on using grant funds for lobbying purposes.
- Most nonprofits know that they cannot use federal funds to lobby, and most know that they can talk to elected officials about public policy matters. But even among groups that claim to know the rules, most do not know the basic limits on lobbying, the definition of what constitutes lobbying under IRS rules, and federal grant rules governing lobbying and voter education activities (including candidate forums or debates). Most are unaware of the legal opportunity to lobby with private funds.

### Strategies to Increase Nonprofit Policy Participation

- The rules regarding lobbying, advocacy, and voter education need to be simplified in order to encourage greater understanding and participation.
- Nonprofits, board members, foundations, and government need to better understand that public policy participation is as important for nonprofits as other day-to-day program, management, and governance activities. All these stakeholders need to know the existing legal opportunities for funding lobbying.
- Nonprofits need capacity-building activities, including training on lobbying restrictions under government grant rules, on lobbying and advocacy restrictions under tax rules, on being an effective advocate, and on building internal lobbying capacity. Since not all nonprofits have the same needs with regard to strengthening public policy participation, training and technical assistance should be differentiated for the audience.

For more information about the SNAP study, visit the OMB Watch website:  
<http://www.ombwatch.org/article/articleview/769/1/101/>

they shouldn't be politically active," Berry and Arons argue.

Several types of activity are excluded from the definition of lobbying, including the publication of nonpartisan studies, the provision of technical assistance, most communication with an organization's members and administrative officials, and "self-defense" lobbying. 501(c)3 nonprofit organizations can engage in as much of these non-lobbying activities as they want.

While lack of resources or even a distaste for government may contribute to a nonprofit's lack of involvement in lobbying, Berry and Arons see section 501(c)3 as a key factor. "Since it threatens nonprofits that violate the limitation with financial annihilation, leaders want to make sure that any contact they have with government cannot be construed as lobbying," they say. "The safest path is to be uninvolved. When that isn't possible, the next safest alternative is to minimize anything that could be interpreted as lobbying." Some nonprofit leaders refuse to even use the word, though they clearly engage in some forms of lobbying.

## Lobbying Possibilities for Nonprofits under Current Regulations

Clarification and change in regulations governing nonprofit lobbying is needed, the authors say, but neither the executive branch nor legislative branch is likely to initiate reform. Change has to come from the sector itself. Berry and Arons explore the ways in which nonprofits can engage in lobbying for their constituencies even under existing regulations.

**501(c)3s: More Room for Lobbying Than Many Think.** "When executives make a guess as to how much they can lobby, they usually guess on the low side," the authors say. If nonprofits correctly understand the law, they can engage in significant lobbying, though they need to keep careful records and avoid provoking adversaries who might try to initiate an IRS investigation.

**The 501 (h) Election: A Largely Unused Option for Lobbying.** The government has created two separate policies to govern lobbying by nonprofits. One is the conventional 501(c)3 policy, which has the ambiguous "substantial" criterion built into it. The other is the optional 501 (h) election, which allows nonprofits to ignore the "substantial" limitations on lobbying. The 501 (h) election is very specific about the amount of lobbying that is permissible.

It defines two sliding scales: one for direct lobbying of legislators and one for grassroots activities. According to Berry and Arons, "At the low end, nonprofits with budgets of up to \$500,000 can spend 20 percent of all their expenditures on direct lobbying. An organization with a budget between \$1.5 million and \$17 million can spend \$225,000 plus 5 percent of the budget over \$1.5 million. The formulas for grassroots lobbying allow for one-quarter of the spending on direct lobbying."

The regulations for the H election also define permissible lobbying activities. For example, a nonprofit can give "technical assistance" to legislators as long as they are asked. So "a nonprofit could help draft a statute and not have that count as lobbying," say Berry and Arons. If a 501(c)3 wants to take the H election, it has to file only the very simple IRS form 5768; however, only about 2.5 percent of all 501(c)3s filing a tax return choose this election. Most nonprofits don't even know the option exists.

**501(c)4s: A Branch That Can Lobby.** Some nonprofits choose to have two related organizations: a 501(c)3 and a 501(c)4. Contributions to a 501(c)4 are not tax deductible, and the nonprofit must keep separate financial records and boards for the two organizations, but the 501(c)4 has much more freedom to lobby. The combination 501(c)3/501(c)4 is a legal arrangement according to the Supreme Court, but many nonprofits don't have constituencies that can make the individual donations that must support a 501(c)4. There has been very little growth in the number of 501(c)4s for this reason.

## Getting Nonprofits' Voices into Policy Discussions

Lobbying should be part of the mission of a nonprofit, Berry and Arons argue. Nonprofits may be the only way some constituencies get represented in policy conversations, and organizations should learn more about how they may legally carry out lobbying activities. Nonprofits also need to make themselves attractive to government as potential partners in policy-making, say the authors: someone in the nonprofit must be in charge of government relations and the nonprofit must develop its research or information capacity so that it can provide useful information to policymakers.

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