**Module 11**

**Recordkeeping**

**PowerPoint Script**

Slide 1- Learn Objectives

* Organizations choosing to lobby need to keep accurate records on their lobbying in compliance with IRS regulations or they may find themselves subject to harsh penalties.

Slide 2- Why we record keep

* Charities must report their lobbying to the IRS every year. Charities must file either an annual Form 990 or Form 990-EZ..
* Exceeding lobbying limits leads to financial penalties and jeopardizes the tax-exempt status of charities. If a charity does not comply with lobbying limits they could be subject to a 25% tax on excess lobbying or risk losing their tax exempt status. Recordkeeping helps ensures an organization is complying with its lobbying limits.
* Accurate recordkeeping will keep an organization on track with lobbying limits and would deter the organization from going over those limits. It has been shown that organizations with accurate recording keeping are seen as trustworthy leading to an increase in donations.
* Recordkeeping protects against false accusations. Keeping accurate records will be the necessary proof to show an organization complied with all rules and regulations in regards to lobbying.

Slide 3- Which test

* **501(h) election-** the 501(h) is a section of the Internal Revenue Code outlining an objective expenditure test for measuring an eligible 501(c)(3) organization’s lobbying expenditures in accordance with federal law.
* 501(h) election provides firm numbers leaving no room for ambiguity, but also- no wiggle room.
* **No substantial part test-** “No substantial part of a charity’s activities may be ‘carrying on propaganda, or otherwise attempting to influence legislation.”
* This test creates ambiguity as there is no bright line rule as to the amount of allowable lobbying expenditures.

Slide 4- recordkeeping for 501(h) election

* The recordkeeping requirements are very clear for organizations with a 501(h) election in place.
* An organization must keep records showing expenditures for grassroots and direct lobbying (including expenditures for preparation)
* The expenses that must be tracked include salaries and benefits of staff members, communication costs, a portion of overhead expenses attributed to lobbying; and grants, payments, or reimbursements made to others for lobbying.
* The income tax regulations provides a fairly detailed list of records that must be kept:

[Note to presenter: It is recommended that you just read the following]

**“(a)*Records of lobbying expenditures.*** An electing public charity must keep a record of its lobbying expenditures for the taxable year. Lobbying expenditures of which an organization must keep a record include the following:

**(1)** Expenditures for grass roots lobbying, as described in [paragraph (b)](https://www.law.cornell.edu/cfr/text/26/56.4911-6#b) of this section;

**(2)** Amounts directly paid or incurred for direct lobbying, including payments to another organization earmarked for direct lobbying, fees and expenses paid to individuals or organizations for direct lobbying, and printing, mailing, and other direct costs of reproducing and distributing materials used in direct lobbying;

**(3)** The portion of amounts paid or incurred as current or deferred compensation for an employee's services for direct lobbying;

**(4)** Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and for direct lobbying, whether or not incurred by an employee;

**(5)** The allocable portion of administrative, overhead, and other general expenditures attributable to direct lobbying;

**(6)** Expenditures for publications or for communications with members to the extent the expenditures are treated as expenditures for direct lobbying under [§ 56.4911-5](https://www.law.cornell.edu/cfr/text/26/56.4911-5); and

**(7)** Expenditures for direct lobbying of a controlled organization (within the meaning of [§ 56.4911-10(c)](https://www.law.cornell.edu/cfr/text/26/56.4911-10#c)) to the extent included by a controlling organization (within the meaning of [§ 56.4911-10(c)](https://www.law.cornell.edu/cfr/text/26/56.4911-10#c)) in its lobbying expenditures.

**(b)*Records of grass roots expenditures.*** An electing public charity must keep a record of its grass roots expenditures for the taxable year. Grass roots expenditures of which an organization must keep a record include the following:

**(1)** Amounts directly paid or incurred for grass roots lobbying, including payments to other organizations earmarked for grass roots lobbying, fees and expenses paid to individuals or organizations for grass roots lobbying, and the printing, mailing, and other direct costs of reproducing and distributing materials used in grass roots lobbying;

**(2)** The portion of amounts paid or incurred as current or deferred compensation for an employee's services for grass roots lobbying;

**(3)** Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and for grass roots lobbying, whether or not incurred by an employee;

**(4)** The allocable portion of administrative, overhead and other general expenditures attributable to grass roots lobbying;

**(5)** Expenditures for publication or communications that are treated as expenditures for grass roots lobbying under [§ 56.4911-5](https://www.law.cornell.edu/cfr/text/26/56.4911-5); and

**(6)** Expenditures for grass roots lobbying of a controlled organization (within the meaning of [§ 56.4911-10(c)](https://www.law.cornell.edu/cfr/text/26/56.4911-10#c)) to the extent included by a controlling organization (within the meaning of [§ 56.4911-10(c)](https://www.law.cornell.edu/cfr/text/26/56.4911-10#c)) in its grass roots expenditures.”

Slide 5- recordkeeping for no substantial part test

* There is far less guidance about what records must be recorded under no substantial part test.
* Schedule C of Form 990 requires charities who chose the no substantial part test to report where or not the charity lobbied via volunteers, paid staff, advertisements, mailings, published statements, grants to others for lobbying, direct contact with legislators, public events, or other means.
* Charities must also record “detailed descriptions” of any lobbying activities that fall outside of the above listed categories- the form states “should include all lobbying activities, whether expenses are incurred or not.”
* “During the year, did the filing organization attempt to influence foreign, national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:” volunteers, paid staff, media advertisements, etc.

Slide 6- recordkeeping suggestions

* While an organization must keep records sufficient to comply with Form 990, there is no universal or mandated recording system.
* To have accurate and effective record keeping many organizations have at least one record keeper who is designated as being responsible for tracking the organizations lobbying activities.
* Three main things to track (1) staff time (2) direct costs (3) overhead expenses.
* **Staff time**- time spent lobbying and preparing to lobby. By tracking staff time, you are calculating the percentage of time each employee spends on lobbying and determining the portion of individual staff member’s total salary and benefits that will have to be counted as a lobbying expenditure.
* **Direct costs**- direct costs (other than staff time) that go into lobbying and preparation for lobbying. Direct costs are usually easy to track as they are normally purchases like money spent on copying flyers, travel expenses for lobbying related activities. Receipt tracking is popular among organizations.
* **Overhead expenses**- costs that are not a direct cost or staff time, but are general operating costs that cannot easily be separated into lobbying vs non lobbying expenditures. Examples include- rent, accounting fees, utilities.
* Some organizations require employees to fill out questionnaires every time they partake in lobbying. The designated record keeper then reviews the questionnaires and determines exactly which activities need to be reported.
* Many organizations have organization wide standard reporting forms for lobbing activity.
* Time sheets are the most effective way to track staff time spent on lobbying.
* Estimates are generally NOT RECOMMENDED and should only be used as a last resort.