

Compact for America Communications Best Practices

In any communication expressing an opinion on legislation to people or entities who are not formally affiliated with either Compact for America Educational Foundation or Compact for America Action, you have two best practices options:

Option 1: If the topic of the communication is related to the Compact for a Balanced Budget:

- Include a statement in your email signature block or elsewhere prominently: “This communication is sent at the specific written request of the Compact for a Balanced Budget Commission, an interstate governmental body representing Alaska, Arizona, Georgia, Mississippi and North Dakota, pursuant to a pro bono technical advisory services contract between the Commission and Compact for America Educational Foundation, Inc. as Compact Administrator”
- Provide educational information from a position of special knowledge or expertise, without propagandizing or making a call to action to support specific legislation;
- Make the communication available to all members of the Compact for a Balanced Budget Commission (mead.treadwell@balancedbudgetcompact.org; paulette.rakestraw@balancedbudgetcompact.org; greg.snowden@balancedbudgetcompact.org) by:
 - giving them advance notice of your intent to engage in such communication and offering to brief them on what you intend to say;
 - cc'ing them on your email; and
 - retaining the email, writing or recording of the communication and notifying them that the email, writing or recording is available to them for their review.
- Retain a record of your attempt to make the communication available to all members of the Commission and transmit that record to the Foundation by cc'ing nick.dranias@compactforamerica.org and/or chip.demoss@compactforamerica.org.

Option 2: If the expenditure of quantifiable Foundation resources is not directly involved, and especially if the topic of the communication is unrelated to the Compact for a Balanced Budget:

- Use your Compact for America Action (joe.blow@compactforamerica-action.org) email address and Action titling (“Volunteer, Advisory Council Member, Board Member, etc.”) in the communication. If you do not have an existing Action email or title, notify Chip DeMoss, CEO of Compact for America, Inc., that you wish to volunteer for Compact for America Action and obtain a Compact for America Action email address and affiliation. **When in doubt, use your Action email and affiliation exclusively.** Unless you are “on the clock” or spending or obligating the expenditure of money originating from the Foundation, it is almost always a safe option to communicate as a volunteer for Compact for America Action.

Compact for America Educational Foundation Lobbying Policy

As a tax-exempt organization under §501(c)(3) of the Internal Revenue Code (IRC), the Compact for America Educational Foundation must comply with the strict limits on lobbying activities as set forth in §4911 of the Code. These limits apply principally to lobbying federal and state legislators with respect to specific legislation and legislative proposals. Failure to comply with

these limits could result in the Foundation incurring tax liability or losing its tax-exempt status. The Foundation must report any amount of money it spends on specified lobbying activities on its annual IRS Form 990.

Separately, the Foundation must comply with the federal Lobbying Disclosure Act (LDA), which requires individuals or organizations to register as lobbyists if they exceed specified thresholds on lobbying Congress or specified high-level Executive Branch officials.

Finally, the Foundation must comply with state law lobbying restrictions, registration requirements, and disclosure requirements with respect to its lobbying in Arizona and other states.

To comply with these various requirements, it is very important that Foundation employees or independent contractors recognize what is lobbying and carefully keep records to document lobbying activity.

Tracking lobbying time and expenses

All Foundation officers, board members, employees, and independent contractors, when utilizing Foundation resources or titles indicating they are acting as an agent of the Foundation, who engage in any activity that is within the definition of lobbying for purposes of the Internal Revenue Code, the Lobbying Disclosure Act (discussed below), or state law must track and properly report their allocable time and expenses so that the Foundation can fulfill its reporting duties to the federal and state governments.

Employees who engage in any lobbying activity (as defined under any of the laws discussed below and regardless of whether registered as a lobbyist) must submit a Lobbying Time and Expense Tracking Sheet to the Director of Administration not later than the 5th business day of the following calendar month. Independent contractors utilizing any title indicating they are acting as an agent of the Foundation shall keep detailed time and expense records itemizing lobbying and non-lobbying time and expense, which shall be submitted together with or detailed upon periodic invoicing for fees and reimbursable expenses.

The Executive Director will review all Lobbying Time and Expense Tracking Sheets and lobbying time and expense notations on independent contractor invoices for accuracy, completeness, and consistency.

The Chief Executive Officer is responsible for preparing and filing all required registrations and reports under the federal Lobbying Disclosure Act, and any state law requiring the Foundation to register or report regarding its lobbying activities in that state.

What activities clearly do not trigger lobbying reporting?

Most of the activities the Foundation currently engages in are not considered lobbying under federal tax law because, as of January 13, 2015, the Compact for a Balanced Budget Commission, a governmental body, retained and requested the Foundation in writing and by way of a technical services contract to provide technical advice and assistance in (a) formulating and transmitting and assisting the Compact Commission members in formulating and transmitting nonpartisan communications, which offer educational policy analysis, technical advice and expert testimony

concerning the Compact for a Balanced Budget, to Congress, Member States and non-member States; (b) assisting the Compact Commission members in encouraging states to join the Compact for a Balanced Budget and Congress to call the Convention in accordance with this Compact; and (c) assisting the Compact Commission members in cooperating with any entity that shares a common interest with the Compact Commission and engages in policy research, public interest litigation or lobbying in support of the purposes of the Compact.

Such advice and assistance falls within the specific exemption from the definition of lobbying for preparation work and communications stemming from written requests from a governmental body for technical advice and assistance, specifically 26 C.F.R. § 56.4911-2(c)(3) and 53.4945-2(d)(2). **However**, to ensure that a communication or activity qualifies for this exception:

- the subject matter must relate to the Compact Administrator's and Compact Commission's statutory and contractual duties in connection with the Compact for a Balanced Budget;
- subject matter must reflect the Foundation's special knowledge or skill in a relevant area, it cannot be a naked request for sponsorship, a call to action without any analysis or grounding in apparent or actual expertise, or a pure rally of support or opposition without any educational component stemming from the Foundation's expertise; and
- the communication must be retained and made available to all members of the Compact for a Balanced Budget Commission.

Records of all such communications and related expenses should be kept and designated as performed pursuant to the Foundation's technical advisory service contract.

In addition to the performance of services and incurrence of expenses under the Foundation's technical advisory service contract, the following activities are likewise excluded from the definition of federal lobbying:

- Testifying before a legislative committee, at the *written* request of the legislative body through an authorized member (typically the chairperson, but the rules of a committee may allow any committee member to invite testimony on behalf of the committee), and urging a yes or no vote in the course of giving technical advice.
- Writing about specific legislation and ballot measures for regular Foundation publications and the Foundation's website or facebook page, which are designed to be delivered to Foundation membership or a general audience that is not targeted to legislators, provided that no one is urged to oppose or support the legislation or measure, and the materials are not used substantially for lobbying by the Foundation within six months of publication.
- Writing letters to the editor, or other items for a general audience, that explain the pros and cons of legislation or a ballot measure, provided that no one is urged to oppose or support the legislation or measure.

- Nonpartisan analysis, study, or research that is widely distributed beyond a legislative audience, i.e. that has a “substantial non-lobbying distribution,” even if accompanied by a communication that may identify the sponsor(s) of legislation and specific legislators who are opposed to, support, or are undecided with respect to the legislation, provided that it does **not** “directly encourage” the reader to take action with respect to the specific legislation in question; specifically, which means it must **not** include:
 - a statement that the recipient should contact a legislator or other relevant government official;
 - the address, telephone number, web address, or similar information regarding a legislator or legislative body employee; or
 - a petition, post card or similar means for the recipient to contact a legislator or legislative body employee (even if the petition, etc., will be returned to Foundation for delivery to one or more legislators).

What activities clearly must be tracked for the Foundation or must be performed as a volunteer on behalf of Compact for America Action?

We do also engage in some activities that are clearly lobbying and that is fine. We just need to track and report our time adequately, or ensure that such activities are performed as a volunteer on behalf of Compact for America Action (utilizing an “action” email address and without any titling indicative of a relationship to the Foundation). Such activities clearly include:

- Sending emails specifically to legislators about a specific bill urging them to vote yes or no, when that communication does not relate to the foregoing technical services contract, or if the communication is a naked call to action without any expert analysis, or if the communication is not made available to all Members of the Compact for a Balanced Budget Commission;
- Testifying before a committee without being requested in writing to support or oppose a bill when that communication does not relate to the foregoing technical services contract, or if the communication is a naked call to action without any expert analysis, or if the communication is not made available to all Members of the Compact for a Balanced Budget Commission;
- Meetings with legislators to ask them to sponsor or support a bill you have drafted when that communication does not relate to the foregoing technical services contract, or if the communication is a naked call to action without any expert analysis, or if the communication is not made available to all Members of the Compact for a Balanced Budget Commission;
- Working with legislative staff to perfect a specific bill when that activity does not relate to the foregoing technical services contract, or if the communication is a naked call to action without any expert analysis, or if the communication is not made available to all Members of the Compact for a Balanced Budget Commission;
- Making web videos that encourage legislators to vote yes or no on a particular bill when that activity does not relate to the foregoing technical services contract, or if the communication

is a naked call to action without any expert analysis, or if the communication is not made available to all Members of the Compact for a Balanced Budget Commission;

- Writing statements for or against ballot measures in the information guide mailed to voters;
- Activating our members to call and write legislators and ask them to vote for or against bills when that activity does not relate to the foregoing technical services contract, or if the communication is a naked call to action without any expert analysis, or if the communication is not made available to all Members of the Compact for a Balanced Budget Commission;
- Paying for radio and TV ads encouraging a yes or no vote on a bill or ballot measure;
- Holding rallies at the Capitol where we provide signs that say vote yes or no on a bill when that activity does not relate to the foregoing technical services contract, or if the communication is a naked call to action without any expert analysis, or if the event is not made available to all Members of the Compact for a Balanced Budget Commission;
- Appearing in radio and TV interviews to support or oppose legislation and ballot measures, including advertisements paid for by campaign committees when that activity does not relate to the foregoing technical services contract, or if the communication is a naked call to action without any expert analysis, or if the communication is not made available to all Members of the Compact for a Balanced Budget Commission; and
- Creating online campaigns using social networking sites to oppose or support legislation or ballot measures when that activity does not relate to the foregoing technical services contract, or if the communication is a naked call to action without any expert analysis, or if the communication is not made available to all Members of the Compact for a Balanced Budget Commission.

Preparation time for any of the above activities is also to be tracked and reported, or shall be considered volunteer work on behalf of Compact for America Action.

Spending limits and gift bans

Many legislatures limit the amount of money a registered lobbyist can spend on legislators and have rules on what kinds of gifts they can and cannot receive. Legislators often cannot be given gifts of entertainment; do not provide free tickets to sporting or cultural events. Do not give gifts valued in excess of \$10 to any legislator in a given year. The cost of food and beverages is excluded from the definition of gift, and can be provided without limitation, but must be tracked and reported. The Foundation has a general policy of not treating legislators or elected officials to meals, unless it is something minor like a cup of coffee.

Lobbying Definitions

The Internal Revenue Code and the LDA each has its own, independent definition of lobbying, and Foundation employees or independent contractors should familiarize themselves with each, so that their time is properly accounted for with respect to each law.



Internal Revenue Code

Section 501(c)(3) of the Internal Revenue Code prohibits the Foundation from engaging in attempts to influence legislation as a “substantial part” of its activities. The Foundation has elected to have the substantiality of its lobbying tested under objective measures established in §4911 of the Code, and the regulations published under §4911.

IRS Definition: The IRS regulations under IRC 4911 define “lobbying” by reference to “direct lobbying communications” and “grassroots lobbying communications.” A “direct lobbying communication” is a communication that does *all* of the following:

- (a) refers to specific legislation or a specific legislative proposal,
- (b) reflects a view on that legislation or proposal, *and*
- (c) is directed at someone who may participate in the formulation of legislation. In general, this includes:
 - Members of Congress and their staffs;
 - Congressional committee, subcommittee, and joint committee staffs;
 - federal, state, or local executive branch officials or employees or independent contractors (if the “principal purpose” of the communication is to influence legislation); and
 - any official and staff of state and local legislative bodies and committees. For this purpose, administrative bodies, such as school boards, zoning boards, and other similar special purpose bodies are not considered to be legislative bodies.

In the case of a ballot measure, the voters are the legislators, and communications with the public (the voters) about the ballot measure and that reflect a view on the ballot measure are treated as direct lobbying communications.

Certain exceptions apply to this definition of direct lobbying communications, including:

- (a) communication of nonpartisan analysis, study or research;
- (b) discussions of broad social, economic, and similar general policy issues; and
- (c) amounts paid or incurred in connection with providing technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either of the foregoing, in response to a written request by such body, committee, or subdivision (not from an individual official or employee, but on behalf of the entity itself).

Nonpartisan analysis, study, or research is defined as an independent and objective exposition of a particular subject matter. It may advocate a particular position or viewpoint on specific legislation, but it must contain a sufficiently full and fair exposition of the pertinent facts (in contrast to unsupported opinion) to enable the audience to form an independent opinion or conclusion.

The Foundation may choose any suitable means to make such nonpartisan analysis, study, or research available to the public (including to government bodies, officials and employees or independent contractors), including distribution of reprints of speeches, published or draft articles

and reports; presentation of information through conferences, meetings and discussions; comments and suggestions on proposed legislation to more perfectly implement nonpartisan research, policy ideas and suggestions based on or derived from our body of research even if it's not been published, and dissemination to the news media and other public forums. However, such communication cannot be directed towards persons who are interested solely in one side of a particular issue.

Nonpartisan analysis, study, or research may not “**directly** encourage” the reader to take action with respect to the specific legislation in question. Thus, to qualify for the exception, it may **not** include any of the following:

- (a) a statement that the recipient should contact a legislator or other relevant government official;
- (b) the address, telephone number, web address, or similar information regarding a legislator or legislative body employee; or
- (c) a petition, post card or similar means for the recipient to contact a legislator or legislative body employee (even if the petition, etc., will be returned to Foundation for delivery to one or more legislators).

However, nonpartisan analysis, study, or research may identify the sponsor(s) of legislation, and may identify specific legislators who are opposed to, support, or are undecided with respect to the legislation as long as none of the direct encouragements listed above are included in the presentation. However, a comprehensive listing should not be published.

An example:

Not Permitted: Vote for/against H.R. 99, or Foundation supports/opposes H.R. 99, or similar. Vote to repeal the statute. Introduce/sponsor this bill. See list below of representatives opposed to H.R. 99.

Permitted: Passage of H.R. 99, sponsored by Rep. Smith, would harm/improve the economy/national security, etc. Changing the bill as follows would more fully implement the policy solutions recommended by our nonpartisan research [reference specific paper, if published]. The statute should be repealed. Therefore, the President should veto/sign H.R. 99.

Thus under the IRS definition, if a written or verbal communication is entirely nonpartisan analysis, study, or research, it is not a “direct lobbying communication” nor is it a “grassroots lobbying communication” (defined below).

Technical Advice or Assistance. Under this exception, the request for assistance or advice to which the Foundation is responding must be made *in writing* and in the name of the requesting governmental body, committee or subdivision rather than by or on behalf of an individual member. Similarly, the response to such request must be available to every member of the requesting body, committee or subdivision. A governmental body or committee may include a legislative committee or subcommittee (including a joint committee), or an executive branch commission or other entity that may be considering recommending legislation. Because technical assistance or advice may be given only at the express written request of a governmental body, committee or subdivision, the oral or written presentation of such assistance or advice need not qualify as nonpartisan analysis, study,

or research; and the technical advice or assistance may include opinions or recommendations regarding directly related legislation.



Lobbying Disclosure Act

Under the LDA, the term “lobbying contact” means “any oral or written communication” (including an electronic communication) to a “covered person” regarding any of the following:

- (a) formulating, amending, or adopting federal legislation;
- (b) formulating, amending, or adopting a federal regulation or any other program, policy, or position of the United States Government;
- (c) establishing, changing, or preventing changes in the administration or execution of a federal program or policy; or
- (d) the nomination or confirmation of an appointment requiring Senate confirmation.

Covered persons: Members of Congress and their staff, committee and subcommittee staff, staff of the Joint Economic Committee, Joint Committee on Taxation, and similar committees, certain federal Executive Branch officials and employees or independent contractors including President, Vice President, any officer or employee of the Executive Office of the President, Executive Schedule I to V; uniformed service grades O-7 and above; and any officer or employee in a policy making position including Schedule C political appointees. Generally, this excludes civil servants GS-15 or below unless they are a political appointee.

Communications with state and local officials are not “lobbying contacts” covered by the LDA.

The definition of “lobbying contact” excludes the following:

- (a) speeches and publications broadcast to the public through mass communication,
- (b) monitoring general legislative developments and scheduling non-lobbying meetings,
- (c) testimony before Congress,
- (d) written responses to a request from a member of Congress or a member’s staff, or committee, subcommittee, or joint committee staff (always reference the request with your response) and
- (e) written comments filed as part of a public proceeding.

Consideration should be given to the intended use and application of any research or communication at the time the activities were conducted.

Supporting Activities

Under both the IRS and the LDA definitions, lobbying communications and lobbying contacts include efforts in support of such communications and contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in lobbying communications and/or contacts, as well as any coordination with the lobbying activities of others.

Compact Administrator Exemption

It is the sense of the Compact Commission of the Compact for a Balanced Budget that the federal Lobbying Disclosure Act does not apply to the Compact Commission or the Compact Commissioners, nor to the Foundation or any individual or entity acting on behalf of the Foundation at the direction of the Compact Commission in its capacity as Compact Administrator. This is because there is a specific exemption from the definition of “lobbying contacts” under the Act for communications made by a “public official” acting in his or her “official capacity” under 26 U.S.C. § 1602(8)(B)(i). On January 13, 2015, pursuant to its express statutory and contractual authority under Article IV, section 1(a), of the Compact for a Balanced Budget, the Compact Commission appointed, retained and requested the Foundation, including all individuals and entities formally associated with the Foundation, in writing and by way of a technical services contract to serve as Compact Administrator. In such capacity, the Foundation was directed by the Compact Commission to fulfill its responsibilities as Compact Administrator under Article IV, section 6, of the Compact for a Balanced Budget by communicating on behalf of the Compact Commission in regard to its authority under Article IV, section 1, subsection (b), to encourage States to join the Compact and Congress to call the Convention in accordance with the Balanced Budget Compact. In fact, at the Compact Commission’s request, the Foundation agreed to assist the Commission in such capacity by providing technical advice and assistance in (a) formulating and transmitting and assisting the Compact Commission members in formulating and transmitting nonpartisan communications, which offer educational policy analysis, technical advice and expert testimony concerning the Compact for a Balanced Budget, to Congress, Member States and non-member States; (b) assisting the Compact Commission members in encouraging states to join the Compact for a Balanced Budget and Congress to call the Convention in accordance with the Compact; and (c) assisting the Compact Commission members in cooperating with any entity that shares a common interest with the Compact Commission and engages in policy research, public interest litigation or lobbying in support of the purposes of the Compact.

Accordingly, the Compact Commission, the Compact Commissioners, as well as the Foundation and any individual or entity acting on behalf of the Foundation in its capacity as Compact Administrator all appear to meet the definition of public official under 26 U.S.C. § 1602(15) (A) (an appointed official of a state) or (C) (an appointed official of an organization of State appointed officials). All of the foregoing contemplated communications of Compact Commission, the Compact Commissioners, as well as the Foundation and any individual or entity acting on behalf of the Foundation in its capacity as Compact Administrator are specifically authorized as part of their official duties by the Compact for a Balanced Budget. Moreover, by coordinating with the Compact Commission to host an official public meeting within the halls of Congress on May 25, 2016 without questioning the Commission’s status, during which testimony was elicited from the Foundation in its capacity as Compact Administrator, the Leadership of the House of Representatives appears to have recognized the public official status of the Compact Commission, the Compact Commissioners, as well as the Foundation and any individual or entity acting on behalf of the Foundation in its capacity as Compact Administrator.

“Grassroots Lobbying” Definition

Under §4911 of the Internal Revenue Code, a “grassroots lobbying communication” is an attempt to influence specific legislation by encouraging the public (or a segment of the public) to contact legislators about that legislation. In order to constitute grassroots lobbying, a communication must do all of the following:

- (a) refer to specific legislation;
- (b) express or reflect a view on that specific legislation; *and*
- (c) encourage the recipient of the communication to take lobbying action (i.e. a “call to action”) with respect to the specific legislation

Call to Action Definition: A “call to action” includes any of the following:

- (a) a statement that the recipient should contact a legislator or other relevant government official;
- (b) the address, telephone number, web address, or similar information regarding a legislator or legislative body employee;
- (c) a petition, post card or similar means for the recipient to contact a legislator or legislative body employee (even if the petition, etc., will be returned to Foundation for delivery to one or more legislators); *or*
- (d) identification of specific legislators who are opposed to or undecided about the organization’s view on the legislation. (Exception: if the communication meets the definition of nonpartisan analysis, study, or research it is not a grassroots lobbying communication even if it identifies some legislators who are opposed or undecided. However, a comprehensive listing should not be published.)

Simply identifying the sponsors of a piece of legislation does not constitute a grassroots lobbying “call to action.”

A communication has a “call to action” if any one of the four items listed above is present.

An example:

Not Permitted: Contact your Representative/Senator about H.R. 99, or Foundation supports/opposes H.R. 99, or similar. Urge your Representative/Senator to repeal the statute. Click here to see a list of Representatives/Senators who oppose H.R. 99.

Permitted: Passage of H.R. 99, sponsored by Rep. Smith, would harm/improve the economy/national security, etc. The statute should be repealed. Therefore, the President should veto/sign H.R. 99. In response to a question from the public, I believe Rep. Jones is undecided/supporting/opposing H.R. 99.

Use of nonpartisan analysis, study, and research in grassroots lobbying. Even though the costs of developing and distributing nonpartisan analysis, study, and research is not treated as direct lobbying expenses, if the nonpartisan analysis, study, or research is used by the Foundation with a grassroots lobbying communication within 6 months after the expenses were incurred **and** before there has been any substantial non-lobbying distribution of the report, the costs of developing the NASR must be accounted for a grassroots lobbying expenses. Substantial non-lobbying distribution may include distribution of the NASR to legislators, their staff, and the Foundation’s donors and other constituents, and posting it on the Foundation’s website.

Special rules for communications with Compact for America Educational Foundation constituents. Communications whose distribution is limited to donors who have given to the Compact for America Educational Foundation within the past 12 months, and that would otherwise be grassroots lobbying communications, are treated as direct lobbying communications. Such communications are treated as grassroots lobbying communications only if they encourage the reader to encourage others to contact their legislators.

