

PRACTICAL GUIDANCE

What Nonprofits Need to Know About Lobbying in

VIRGINIA

Inside This Guide:

This Practical Guidance resource is designed to help your nonprofit organization determine if lobbying rules in Virginia might apply to your state or local 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 Requirements in Virginia?

DIRECT OR GRASSROOTS LOBBYING OF:	CAN THIS TRIGGER?	TRIGGER
State Legislators	Yes	<p>Individual: Being compensated or reimbursed more than \$500 on a prorated basis for time spent actually lobbying legislative officials and their staffs in a calendar year. This calculation does not include lobbying preparation, waiting time, or personal living and travel expenses reimbursed by the employer.</p> <p>Organizations: Organizations generally do not need to register. If, however, your organization pays total prorated staff compensation of more than \$500 for actual lobbying, but the lobbying is spread among multiple staff members who do not themselves trigger individual lobbyist registration, then you may need to file an annual report.</p>
State Executive Branch Officials	Yes	<p>Same as the above trigger for lobbying directed at state-level executive branch officials and their staff regarding legislation, Governor’s executive orders, or procurement decisions (over \$5,000,000 only). The \$500 threshold is cumulative for both legislative and executive branch lobbying.</p> <p>Other executive branch rulemaking lobbying is not regulated.</p>
Local Legislators or Local Executive Branch Officials	Probably not	<p>Virginia state law does not regulate attempts to influence local public officials. We note, however, that there have been recent attempts in Virginia to regulate local lobbying, as well as a general movement among the states to enact more local lobbying ordinances, so you should check with local officials before lobbying at the local level.</p>

KEY LOBBYING TAKEAWAYS FOR NONPROFIT ADVOCACY ORGANIZATIONS IN VIRGINIA:

- There are multiple different measurement periods used for state registration and reporting purposes:** In Virginia, the registration trigger is calculated based on the **calendar** year, but once registered, reporting is based on a **May 1 to April 30** reporting year. If you are also making expenditures on public officials additional and different notification deadlines will occur at the end of the legislative session and at the end of the calendar year. If you need to register, you will need robust tracking systems to make sure you are tracking both staff time and expenses for the right periods, and submitting reports by the right deadline.
- Registration trigger tracking is different than reporting tracking:** Only prorated staff time spent actually communicating with public officials (or the public for grassroots lobbying) counts towards the \$500 registration trigger. However, annual reporting includes prorated staff compensation for preparation time, travel expenses related to lobbying, and organizational expenditures made to facilitate lobbying.

This resource is current as of November 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.org 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 the free Bolder Advocacy Technical Assistance Hotline and the written legal resources available in the Bolder Advocacy resource library at: <https://bolderadvocacy.org/>

Q: What activities count as lobbying?

Virginia law defines “lobbying” as influencing, or attempting to influence, **executive or legislative action** through communication (whether oral or written) with an **executive or legislative official**. Lobbying also includes solicitating others to influence an executive or legislative official (i.e., “grassroots” or “indirect” lobbying).

- **Legislative action** is when:

- Either house of the General Assembly or any **legislative official** prepares, researches, drafts, introduces, considers, modifies, amends, approves, passes, enacts, tables, postpones, defeats, or rejects a bill, resolution, amendment, motion, report, nomination, appointment, or other matter before the General Assembly or such legislative official
- The Governor approves, vetoes, or recommends amendments to a bill passed by the General Assembly
- The General Assembly takes any action to override or sustain a veto by the Governor, consider amendments recommended by the Governor, or considers, confirms, or rejects an appointment of the Governor

- **Legislative official** is:

- A member, member-elect, or employee of the General Assembly
- A member of a committee, subcommittee, commission, or other entity established by, and responsible to, the General Assembly (or to either chamber)

- **Executive action** is when an **executive agency** or **executive official** proposes, drafts, develops, considers, amends, adopts, approves, promulgates, issues, modifies, rejects, or postpones either **legislation** or any executive order issued by the Governor.

Executive action includes procurement transactions over \$5,000,000. Executive action in the context of the Virginia lobbying laws **does not** include executive agency rulemaking.

- **Executive official** is:

- The Governor, the Lieutenant Governor, the Attorney General, and any of their staff (other than a “clerical or secretarial” employee)
- The Governor’s cabinet secretaries and their deputies
- The chief executive officer of each **executive agency**
- Any member of state-level supervisory and policy boards, commissions, and councils

- **Executive agency** is an agency, board, commission, or other body in the executive branch of the state government including the State Corporation Commission, the Workers’ Compensation Commission, the Virginia Lottery, and institutes of higher education.

Note that this broad definition of lobbying is narrowed by several explicit exceptions, which are discussed in the “Are there exceptions to what counts as lobbying?” FAQ below.

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

In Virginia, lobbyist registration is triggered when an individual receives more than \$500 in prorated compensation and reimbursements (excluding reimbursements for personal living and travel arrangements related to the lobbying work paid for by the lobbyist’s employer) in a **calendar** year for their lobbying activities.

The state has not given formal guidance on how groups should calculate their staffs’ prorated lobbying time. Looking to the plain language of the statute, however, the only time you would count towards the prorated \$500 registration trigger threshold is the time your staff person is actually communicating with public officials, or actually engaging in grassroots communications (as opposed to preparing to do so). For example, time spent traveling to and from a meeting and waiting outside the office of a public official would not count, but the time inside the office speaking with the official would.

In addition, any time spent on activities that are statutory exceptions to the registration requirements would also not count towards the registration threshold calculation (see next FAQ below).

Note that organizations themselves are not required to register with the State, but in the specific circumstance where your organization has more than \$500 in prorated lobbying staff compensation in a calendar year, but it is spread out among staff members such that no individual staff member goes over the \$500 registration threshold, your organization may still be required to file an annual report. If this situation applies to your organization, you should contact the Virginia Conflict of Interest and Ethics Advisory Council (the “Ethics Council”), which regulates lobbying in Virginia, for advice at 804-698-1810 or by e-mail to ethics@dls.virginia.gov.

Q: How does the trigger threshold work if we are a fiscally sponsored project?

You will need to be sure you are communicating transparently and in a timely fashion with your fiscal sponsor if you plan to undertake activities that might potentially count as lobbying activities!

Each fiscal sponsor will have its own ways of working with projects who wish to take on lobbying activities.

In general, for fiscally sponsored projects that do not have their own legal entity and the fiscal sponsor engages all of the project’s independent contractors or employees, the lobbyist registration trigger must be divided between all of the projects housed at the fiscal sponsor who are doing lobbying activities in the state.

Your account manager at your fiscal sponsor will be able to help you understand how to track your portion of the available threshold.

IMPORTANT NOTE: In states where registration is required very shortly after the registration threshold is reached, or periodic lobbyist disclosure is due shortly after the end of a reporting period, special procedures may need to be worked out in order to process the registration or reporting on time. You should connect with your account manager as soon as you begin planning any potential lobbying strategy!

Q: Are there exceptions to what counts as lobbying?

Yes! In Virginia, certain types of lobbying-related activities do not require state-level lobbyist registration or reporting. The exceptions most relevant to nonprofit organizations are:

- Ministerial contacts, such as arranging meetings or requesting information relating to the status of legislative or executive action, but only so long as the communication makes no attempt to influence the action
- Responses to published notices soliciting comment
- Giving testimony to a legislative or executive body if it is formal testimony before a public meeting of the body where the appearance is registered in the records, or where the testimony is compelled by the body
- Communication between an association and its members
- An employee of a business, other entity, or local government whose job duties do not regularly include lobbying. Informal guidance from the staff of the Ethics Council suggests that this exception is quite narrow, and you should not assume that staff who have other job duties besides lobbying are broadly exempt from registration under this exception.
- Volunteers who do not get paid to lobby, are not given anything of value to lobby, and do not expend more than \$500 of their own money (other than on travel and personal living expenses) to lobby.

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: <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: <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 a Virginia ballot measure is not regulated as a lobbying activity under Virginia law (even though the IRS does count it as a lobbying activity). Instead, Virginia regulates activity to support or oppose a ballot measure that is already on the ballot under the state’s campaign finance laws.

One potential exception is activity relating to a proposed constitutional amendment. The General Assembly can, upon a majority vote in both houses, refer proposed state constitutional amendments to voters for ratification. Any attempt to influence an official in connection with a vote on a referral of a proposed amendment would need to be assessed under the lobbying rules.

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

Once any individual staff person reaches (or it becomes clear they will reach) the registration trigger threshold, then that individual is required to register with the Ethics Council prior to engaging in any additional lobbying work. Due to a quirk in the law, if all lobbying activity takes place entirely outside of the capital city of Richmond, then the lobbyist need only register within fifteen days of first engaging in lobbying that goes over the threshold.

All registrations must be made on the Ethics Council’s online Lobbyist Registration and Disclosure Portal, accessible here: <https://lobbying.dls.virginia.gov/frmLogin.aspx>

Lobbyist registrations must be made annually, and all registrations expire each May 1. There is a \$100 fee.

The Ethics Council’s User Guide for Lobbyist Registrations and Disclosures provides helpful step-by-step instructions, including screenshots, for navigating this process. It is available at: <http://ethics.dls.virginia.gov/lobbyists.asp#register>

A few practical tips to consider when registering your lobbyists:

- Registration information is made public. Have your staff use their business contact information and not their personal contact information when registering.
- Your organization is called the “Principal” in the registration and reporting filings.
- Virginia does not require much detail about the nature of your organization, or the type of lobbying you will be doing. You can feel free to give only a general description.
- You will need to give the name and contact information for an “Authorizing Officer” of your organization. This person cannot be the same person as the lobbyist, but also does not have to be any particular officer. If your Executive Director is the person registering as a lobbyist, you could perhaps have one of the members of your Board act as the Authorizing Officer.
- There is an option for your Authorizing Officer to waive the requirement to sign off on the annual report of the lobbyist. We suggest that you do not use this option, since it is better to have at least two sets of eyes on your annual lobbyist disclosure reports before final submission.

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- You will also need to give the name and contact information for the individual(s) who will retain your organization's lobbying records, if it is not the Authorizing Officer, and the lobbyist's records, if it is not the lobbyist. All records need to be kept for at least two years. It's probably best to name a single person to be responsible for all of the records in case of staff transition.

Q: When are periodic lobbying reports due?

Virginia requires only an annual disclosure of lobbying activity and expenditures from each registered lobbyist. The disclosure is due each year on July 1 and covers activity from May 1 of the previous year through April 30. Failure to meet the deadline will result in a civil penalty of \$50 to both your individual lobbyist and your organization. If the lobbyist still hasn't filed by the 11th day after the deadline, an additional civil penalty of \$50 **per day** will be imposed on both your lobbyist and your organization until the statement is filed.

The infrequent reporting requirement eases the operational burden of reporting, but you will still need good systems to ensure timely tracking of lobbying activity and expenditures throughout the entire year so that the information is available at the end of the reporting cycle.

Q: What information do the periodic lobbying reports include?

The annual lobbyist reports require disclosure of a number of details. They require a summary of the general nature of the lobbying activity your organization did during the reporting period. They require disclosure of the prorated compensation of each of your lobbyists for time spent actually lobbying and preparing to lobby. The reports also seek information about any other internal expenses your organization made that are directly related to your lobbying work, including your lobbyists' personal living and travel expenses related to their lobbying work. Finally, you must also report expenses made on public officials.

Q: What is considered a reportable "expenditure"?

The lobbying disclosure form requires you to report expenditures in the below seven categories:

- Entertainment, meals, and travel (for public officials or their family)
- Gifts (for public officials or their family)
- Honoraria (made to public officials)
- Communications related to lobbying
- Personal living and travel reimbursed expenses (of the lobbyist)
- Prorated compensation of lobbyists for their lobbying work (for reporting purposes, including preparation time)
- Other (expenses directly related to lobbying not in any of the above categories)

Reporting of expenditures and gifts made on public officials:

For categories of expenses made on public officials, there are some complicated rules about how such expenses and gifts must be itemized and reported.

Some expenses and gifts also trigger a separate requirement to notify the public official that appears in your report so that they may have the information for their own ethics filings. **These notification reports are not made on the same cycle as your annual lobbyist disclosure reports!** Lobbyist disclosure reports are due in July, for the period between May 1 and the end of April. Notification reports about expenses made on public officials are due at the end of each legislative session, and by January 10 each year.

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It is often operationally easier, from a compliance standpoint, for smaller nonprofit organizations to avoid making any expenditures on public officials, and instead give to public officials information about your organization.

If you do wish to make expenditures on public officials, or give them gifts, you should carefully review the regulations available here:

<https://law.lis.virginia.gov/vacodefull/title2.2/chapter4/article3/> and the examples in the Ethics Council's Informal Guide to Completing the Lobbyist's Disclosure Statement, available at: <http://ethics.dls.virginia.gov/LDS%20Guide.pdf>

Reporting of your organization's internal lobbying expenses:

- **Communications:** Expenditures made on communications for lobbying must be reported on your annual report, but do not get counted towards the trigger threshold for registering as a lobbyist. Examples of expenses that would count in this category are:
 - Expenses of grassroots mailings, but only if they include a specific call to action relating to your attempt to influence state legislative or executive action
 - Cost of digital ads, if they have a call to action for the public to influence state legislative or executive action
 - Cost of text messaging communications, if they have a call to action for your constituents to try to influence a specific state legislative or executive action
- **Personal living and travel reimbursed expenses (of the lobbyist):** The practical tip to note here is that these lobbying-related expenses do not count towards the registration trigger itself (if they are reimbursed by the employer). They only need to get reported once a lobbyist is already registered.
- **Prorated compensation of lobbyists for their work lobbying and preparing to lobby:** Note that while for the purposes of calculating the registration trigger only time spent in actual communication is prorated, for reporting purposes the definition of reportable expenditures **does** include compensation "in connection with" direct and grassroots lobbying communications (i.e., preparation time).
- **Other (expenses directly related to lobbying not in any of the above categories):** This category includes expenses that would not have been incurred but for the lobbying work. Examples include purchase of Virginia's "Lobbying in a Box" subscription bill tracking service, a bus rented to take volunteers to the capital for a Lobby Day, and the costs of meals for the volunteers while on the Lobby Day trip. Again, it's important to note that these expenses do not get calculated in the registration trigger, but once any of your staff is registered as a lobbyist then they do get counted as a reportable expenditure. Expenses designated as "Other" must be itemized in detail on Schedule C of the disclosure form, regardless of their value.

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?

Lobbyists are not required to wear badges for identification in Virginia, but it is a best practice to identify oneself as a lobbyist before engaging in lobbying.

A lobbyist security badge to access the General Assembly Building can be obtained at the Clerk's Office of the Senate or House of Delegates. The lobbyist should bring a copy of the lobbyist registration form to obtain the access badge.

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





Virginia law prohibits "contingent compensation" for lobbyists – in other words, compensation that is dependent on the outcome of any legislative or executive action.

Case Study STUDENTS VOTE NOW

Students Vote Now is a hypothetical small 501(c)(3) advocacy organization considering being vocal about House Bill 101 currently pending in the Virginia General Assembly

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 state house representative about the bill.
- Doing an in-person Lobby Day at the state capital about Bill 101 to meet with legislators, 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 type 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 House of Delegates regarding the student perspective on Bill 101.
- Having an employee engage with the Mayor of Richmond about a similar, but separate, local ordinance being considered.

ACTIVITY	LOBBYIST REGISTRATION/REPORTING REQUIREMENTS
 <p>Student Engagement</p>	<p>Grassroots lobbying is regulated in Virginia, but since the trigger calculation is made on prorated staff time spent actually doing the grassroots communication, under the specific facts of the Students Vote Now programming the only time that would count significantly towards the trigger for the student engagement efforts would be time where any staff person was paid to phone bank. Students Votes Now can have staff plan and supervise the phone bank but not spend their paid time doing the actual calls if they want to minimize work that counts towards the threshold.</p>
 <p>Lobby Day</p>	<p>For Lobby Day, the costs of preparation time, travel time, and time waiting for the meetings do not count towards the registration threshold. Time spent by paid staff in the meetings will count.</p> <p>Time spent inside the meetings by volunteers will not count towards the trigger.</p> <p>Giving public officials swag is often more complicated than it is worth. Students Vote Now should give the officials information about the organization instead.</p>
 <p>Committee Testimony</p>	<p>As long as the committee testimony is formal public testimony and the Students Vote Now appearance is registered in the committee's records, this activity does not count towards the registration trigger.</p>
 <p>Mayor</p>	<p>Virginia's state lobbying laws do not apply to communications with local officials, including the Mayor of Richmond, and Richmond does not have its own local lobbyist registration ordinance.</p> <p>That said, the Virginia state legislature has recently been contemplating regulating local lobbying, and there is also a movement in many states towards implementing local lobbyists registration ordinances. Students Vote Now should check in with public officials in Richmond before beginning their lobbying efforts there.</p>
<p>Bottom Line</p>	<p>Depending on how much time Students Vote Now's paid staff spend in actual lobbying conversations with public officials on Lobby Day (or on the phone bank if they chose to do those communications) staff may be able to keep their lobbying time below the trigger threshold. Remember that there is a reporting requirement on the organization if total prorated staff time goes over \$500 even if no individual is required to register.</p> <p>If individuals do need to register, the reporting burden is relatively light, especially if Students Vote Now refrains from making any expenditures on public officials.</p>

ADDITIONAL RESOURCES

BOLDER ADVOCACY'S TECHNICAL ASSISTANCE HOTLINE:

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

BOLDER ADVOCACY'S MORE DETAILED STATE LAW RESOURCES:

- Bolder Advocacy's Virginia Lobbying Disclosure Guide:
<https://bolderadvocacy.org/resource/virginia-lobbying-disclosure/>
- Also see Bolder Advocacy's Virginia Campaign Finance and Ballot Measure Guide for rules related to state ballot measure advocacy, which Virginia regulates as a campaign finance activity, unlike the IRS which regulates such activities as direct legislative lobbying.
<https://bolderadvocacy.org/resource/virginia-campaign-finance-and-ballot-measure-guide/>

VIRGINIA STATE RESOURCES:

- **Virginia Conflict of Interest and Ethics Advisory Council (the "Ethics Council"):**
Virginia's lobbying laws, as well as conflict of interest (gift) rules, are enforced by the Ethics Council. Their website can be access here: <http://ethics.dls.virginia.gov/lobbyists.asp>
- **Full Text of Virginia Lobbying Statute:**
The full text of the Virginia state lobbying statute can be found at:
<https://law.lis.virginia.gov/vacodefull/title2.2/chapter4/article3/>
- **Guide to Completing the Lobbyist Disclosure Statement:**
A helpful PDF guide to Virginia's disclosure requirements, including the reporting of lobbying expenditures, is available here: <http://ethics.dls.virginia.gov/LDS%20Guide.pdf>
- **System User Guide for the Lobbyist Registration and Disclosure Portal:**
A helpful slideshow user guide to Virginia's online registration and disclosure portal is available here:
<http://ethics.dls.virginia.gov/pdf/2017%20Lobbyist%20Registrations%20and%20Disclosures.pdf>
- **Additional Questions**
Any questions about lobbyist registration and reporting can also be directed to the Ethics Council staff at 804-698-1810 or by e-mail to ethics@dls.virginia.gov

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:

<https://bolderadvocacy.org/resource/being-a-player-a-guide-to-the-irs-lobbying-regulations-for-advocacy-charities/>



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