

Federal Lobbying Rules for Public Charities

Quick facts on 501 (c)(3) Organizations

Examples	<ul style="list-style-type: none">• Alliance for Justice• Kentucky Child Now• All churches (but can't elect 501(h) and other special rules apply)
Tax Treatment	<ul style="list-style-type: none">• Exempt from most federal taxes• Contributions ARE generally tax-deductible• Contributions are NOT subject to federal gift tax
Lobbying Activities	<ul style="list-style-type: none">• Limited expenditures to influence legislation, ballot measures, and judicial nominations, among others (insubstantial part test or 501(h) expenditure test)
Political Activities	<ul style="list-style-type: none">• Prohibited from engaging in any partisan political activities; may conduct nonpartisan voter engagement activities• May not establish a Political Organization for political activities• Penalties: Revocation of tax-exempt status and excise taxes on both the organization and its members

501(c)(3) public charities have limits on how much lobbying they can engage in and may choose to measure their lobbying limits in one of two ways: *the insubstantial part test and the 501(h) expenditure test*.

Direct Lobbying is defined as any communication, with a legislator, that expresses a view about specific legislation.

Grassroots Lobbying is defined as any communication with the general public, which expresses a view about specific legislation, and includes a call to action.

A Call to Action refers to four different ways the organization can ask the public to respond to its message:

1. asking the public to contact their legislators or their staff
 2. providing the address, phone number, website, or other contact information for the legislators
 3. providing a mechanism to contact legislators, such as a tear-off postcard, petition, letter or email link to send a message directly to the legislators or
 4. listing the recipient's legislator, the names of legislators voting on a bill, or those undecided or opposed to an organization's view on the legislation.
- The last type of call to action is an indirect call to action.

Communication

A communication is anything used to convey a message, including letters, e-mails, phone calls, meetings, and faxes.

Legislator

Legislator, for purposes of direct lobbying communications, includes members of a legislative body and his or her staff as well as any government employee who may participate in the formulation of legislation. Members of administrative bodies such as school boards or housing commissions are NOT considered legislative bodies.

General Public

The general public for purposes of grassroots lobbying communications includes anyone who is not a legislator and anyone who is not a member of the public charity (see below for membership rule).

Specific Legislation

Specific legislation included legislation introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes. Specific legislation includes anything with a bill number including budget appropriations, taxes, and influencing the confirmation of judicial and executive branch nominees. Specific legislation also included proposed legislation such as something that is not yet introduced, not yet written out, or not yet fully fleshed out. Regulations, enforcement of laws, executive orders and litigation are NOT considered specific legislation. Thus, work on these items is NOT considered lobbying.

Membership Rule

When an organization communicates with its MEMBERS, expresses a view about specific legislation, and tells its members to contact their legislator(s) about the legislation, that communication is considered direct lobbying. Members are defined as those who contribute more than a nominal amount of time or money to an organization. A nominal amount of money is any amount of money contributed to the organization. A nominal amount of time means that a person regularly participates in an organization's activities.

Ballot Measures

When a communication, supports or opposes a referendum, bond measure, ballot initiative, or constitutional amendments, these communications are considered direct lobbying because members of the public act as legislators when voting on such measures.

Lobbying Exceptions

There are four exceptions to the definition of lobbying. These are activities that all 501(c)(3) public charities may engage in without limit because they are NOT considered lobbying.

- 1. Nonpartisan analysis, study, or research:** This is a substantive report that has a "full and fair" discussion of the issues, meaning both sides of the issue are discussed. It must be widely distributed. The report may express a view and the report may include an indirect call to action.
- 2. Requests for technical advice or assistance:** This is a response to a written request for information from the head of a governmental body, committee, or subcommittee.
- 3. Self-Defense:** These are communications with legislators or a legislative body regarding issues affecting an organization's existence, powers, tax-exempt status or the deductibility of contributions to a public charity. This exception is

very narrow and rare. It is best to consult counsel to see whether your fact situation fits with in this exception.

- 4. Examinations of broad social, economic, and similar problems:** These examinations are already excluded from the definitions of lobbying under the 501(h) expenditure test. These examinations are NOT considered direct lobbying because they do not express a view about specific legislation. They are not considered grassroots lobbying because they either do not express a view about specific legislation or they do not include a call to action and thus do not have all the elements required for a grassroots lobbying communication.

Insubstantial Part Test – this is the default test under which 501(c)(3) public charities measure their lobbying. Using the insubstantial part test, lobbying must be an insubstantial part of an organization’s overall activity. Unfortunately, insubstantial part is not defined by the IRS. Most believe that if a public charity’s lobbying activity is less than 5% of its overall activity it would be an insubstantial amount of lobbying. The insubstantial part test is an activities base test and means that public charities must attribute a value to volunteer time and in-kind contributions used for lobbying when measuring their lobbying activities.

501(h) Expenditure Test – this is done by filing IRS form 5768. Under this test there are clear dollar based limits on how much a public charity can spend on lobbying as well as clear definitions as to what constitutes lobbying. A public charity does NOT count cost-free activities such as volunteer time or in-kind contributions used for lobbying against its lobbying limits. Some organizations cannot make the 501(h) election. Churches, for example, cannot make the election and must measure their lobbying under insubstantial part test. Some organizations with very large budgets might not want to make the 501(h) election because of the \$1 million lobbying cap.

Lobbying Limits Under 501(h)

To determine a public charity’s lobbying limit, charities must identify their exempt purpose expenditures and then use the following chart to determine its overall lobbying limit:

Annual Expenditures	Overall Lobbying Limit
\$500,000 or less	20% of exempt purpose expenditures
\$500,000 to \$1 million	\$100,000 plus 15% of excess over \$500,000
\$1 million to \$1.5 million	\$175,000 plus 10% of excess over \$1 million
\$1.5 million to \$17 million	\$225,000 plus 5% of excess over \$1.5 million
Over \$17 million	\$1,000,000

There are two types of lobbying activities for public charities that measure their lobbying activity under the 501(h) expenditure test: direct and grassroots lobbying. A public charity’s **grassroots lobbying limit is ¼ of its overall lobbying limit** (as determined by the chart above). An organization that has made the 501(h) election can never spend more than ¼ of its overall lobbying limit of grassroots lobbying.