

What is Lobbying Under the 501(h) Election?

*Federal tax law controls how much lobbying 501(c)(3) organizations can engage in. Public charities can choose to measure their lobbying under either the insubstantial part test or the 501(h) expenditure test. While lobbying is not clearly defined under the **insubstantial part test**, this fact sheet provides an overview of how lobbying is defined for organizations that measure their lobbying under the 501(h) expenditure test.*

Lobbying

DIRECT LOBBYING	GRASSROOTS LOBBYING
Communication with a legislator that expresses a view about specific legislation	Communication with the public that expresses a view about specific legislation and includes a call to action

In order for an action to be considered direct lobbying or grassroots lobbying it must contain all of the above elements. It is not lobbying if one or more of the required elements is missing. Understanding the meaning of each element is key.

COMMUNICATION

A conversation (in person or by phone), letter, email, fax, or other creative mechanism to convey a message.

LEGISLATOR

A member of a legislative body or their staff. In addition, executive branch officials who participate in the formulation of legislation are considered legislators (such as the governor or mayor when vetoing a bill or an agency secretary when helping the legislature write a bill). Members of administrative bodies, however, such as school boards, sewer and water districts, housing authorities, zoning boards, and other special purposes bodies, whether elected or appointed, are not considered legislators.

PUBLIC

Anyone but a legislator or **member** of an organization. Communications to an organization's members are treated more favorably, so a communication to an organization's members that urges them to contact legislators to express a view about specific legislation is considered to be direct lobbying. For this purpose, a member is someone who has given more than a small amount of time or money to the organization.

EXPRESSES A VIEW ABOUT SPECIFIC LEGISLATION

A bill or resolution that has been introduced in a legislative body or a specific proposal to solve a problem. Specific legislation includes budget appropriations and taxes, and attempts to influence the confirmation of judicial and executive branch nominees. A proposal may qualify as specific legislation even if it has not yet been introduced, been written down, or even fully fleshed out. Specific legislation does not include rulemakings/promulgation of regulations, executive orders, litigation, or attempts to enforce existing laws.

CALL TO ACTION

A specific means of encouraging the communication's recipient to take lobbying action. A call to action must comprise one of the following actions:

1. Tell the recipient to contact a legislator;
2. Provide information on how the recipient can contact their legislator, such as providing the phone number or address;
3. Provide a mechanism for enabling the recipient to contact their legislator, such as a postcard, petition, or email form; or
4. Identify a legislator who will vote on the legislation as being opposed to or undecided about the organization's view on the legislation, a member of a legislative committee who will vote on the legislation, or the recipient's legislator.

BALLOT MEASURE ACTIVITY IS CONSIDERED

DIRECT LOBBYING

Although ballot measures, such as referenda, bond measures, and ballot initiatives, are determined at the voting booth, advocating for or against them is considered direct lobbying, not impermissible electoral activity. Efforts aimed at convincing the public to support or oppose ballot measures are direct lobbying since the voting public serves as the legislature.

Not Lobbying

There are four principal exceptions to these definitions. Any communication that meets one of these exceptions does not count as lobbying:

NONPARTISAN ANALYSIS, STUDY OR RESEARCH THAT PRESENTS ALL SIDES OF AN ISSUE

The communication must provide a full and fair exposition of the underlying facts and it must be made available to the general public, a segment of the general public, or to governmental bodies or employees. The document should provide enough information to allow readers to draw their own conclusions about the issue, even if the report itself contains a specific conclusion. For example, an organization might write a paper discussing the need for access to healthcare by low-income children, which might conclude with a recommendation for increased funding for state child health insurance.

RESPONSES TO WRITTEN REQUESTS FOR ASSISTANCE FROM COMMITTEES OR OTHER LEGISLATIVE BODIES

The communication must be in response to a written request by a legislative body, committee, or subcommittee (not an individual legislator), and it must be made available to all members of the requesting body. As an example, the executive director of a public charity, in response to a written request from the chair of a legislative committee, could testify in support of a clean indoor air bill, without counting the expenses toward the organization's lobbying limits.

CHALLENGES TO OR SUPPORT FOR LEGISLATIVE

PROPOSALS THAT WOULD CHANGE THE ORGANIZATION'S

RIGHTS OR ITS RIGHT TO EXIST

The communication must be with a legislative body regarding possible actions of that body which could affect the organization's existence, powers, duties, tax-exempt status, or the deductibility of contributions to the organization. For instance, proposed legislation to eliminate the tax-deductibility of contributions to 501(c)(3) organizations would fall within the so-called "self-defense" exception.

EXAMINATIONS AND DISCUSSIONS OF BROAD SOCIAL,

ECONOMIC, AND SIMILAR PROBLEMS

Communications on general topics which are also the subject of specific legislation must not refer to specific legislation or directly encourage the recipients to take action.



This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code. Alliance for Justice publishes plain-language guides on nonprofit advocacy topics, offers educational workshops on the laws governing the advocacy of nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, please feel free to contact Alliance for Justice.