

Who is considered a legislator under federal tax law?

Federal tax law [allows 501\(c\)\(3\) public charities to lobby](#) within specific lobbying limits, and generally includes in the definition of lobbying activities conducted with the goal of influencing specific legislation. It permits organizations to choose to measure their lobbying limits under either the insubstantial part test or the 501(h) expenditure test. While lobbying is not clearly defined under the insubstantial part test, under the 501(h) expenditure test two types of lobbying are described: direct lobbying and grassroots lobbying. Direct lobbying consists of a communication with a legislator that expresses a view about specific legislation. This factsheet will specifically explain who qualifies as a legislator so that organizations can properly track and report their direct lobbying activities.¹

Direct Lobbying

Communication
with a **LEGISLATOR**
that Expresses a View about
Specific Legislation

Who is a legislator?

The federal tax code defines a legislator as any member or employee of a legislative body or any government official or employee who may participate in the formulation of legislation.

Legislators include:

- Members of local, state, federal and international legislative bodies (e.g. City Council members, County Commissioners, members of the state and federal House of Representatives and Senate, members of British Parliament)
- Legislative staffers
- Other government employees (e.g. executive branch or administrative officials or staff) who participate in the formulation of legislation, but only when the principal purpose of your communication with them is to influence legislation
- Members of the general public when voting on a ballot measure (e.g. bond measures, ballot initiatives, referenda, constitutional amendments)

¹ While this factsheet addresses the definition of “legislator” under federal tax law, it does not address the definitions that may apply to state and local municipalities for the purpose of remaining in compliance with state and local lobbyist registration and reporting requirements. For more information about state and local laws, visit our state law resources [here](#).

Examples of communications *with a legislator* that express a view about specific legislation:

Emailing your state Senator to ask her to vote in favor of SB 14, a pending piece of legislation that would create a statewide pre-K program.

Calling the office of your Representative and speaking with his Chief of Staff about specific items you think should be included in the federal budget.

Distributing flyers to the public encouraging them to vote in favor of Proposition 6, a ballot measure that will be voted on in an upcoming election.

Sending a sign-on letter to the President asking him to veto a bill recently passed by Congress.

Urging the head of the Department of Health and Human Services to oppose the state legislature's proposal to reduce the budget for the state Medicaid program by 10%.

Who is not a legislator?

The following are generally not considered legislators; therefore, communications with them will likely not be considered lobbying for a 501(c)(3) public charity:

- Judges
- Executive branch officials (including agency and department officials) unless they participate in the formulation of legislation and your principal purpose in communicating with them is to influence legislation
- School Board Members
- Housing Authority Commissioners
- Zoning Board Members
- Members of other similar local special purpose bodies
- Members of the public, other than when they vote on ballot measures

There are many more "special purpose" bodies whose members will not be considered legislators, but it is often difficult, especially at the local and international level, to determine whether an official is considered a legislator. Although the IRS has not articulated a specific standard, some factors that tend to show an official is not a legislator may include:

- The official is acting pursuant to legislative authority to implement law OR
- The official must act within a specific legal framework approved by a legislative body OR
- The official's board or body adopts rules that do not have broad application and its decisions are limited to a specific jurisdiction, such as a school district

Examples of communications that do not qualify as communications with a legislator:

Communicating with the President and asking him not to sign an executive order that would place travel restrictions on immigrants and refugees.

Asking the Supreme Court to overturn the decision of the Fifth Circuit Court of Appeals, which upheld a law that you believe is unconstitutional.

Communicating with members of your School Board about the implementation of district-wide policies.

Calling a police chief to discuss the enforcement of a new juvenile justice program.

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