

GRANTEES FAQ

Got Questions? We've Got Answers!
2022 EDITION



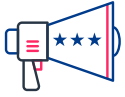
GRANTEES FAQ



Table of Contents:

Frequently Asked Questions

Lobbying	1
Lobbying Activities	2
501(h)-Expenditure Test	3
Funder Rules	4
Discussing Legislation	5
Tracking Communications & Expenditures	6
501(c)(3) and 501(c)(4) Engagement	7
Allocated Budget	8
Need Further Guidance?	9



What types of advocacy activities constitute lobbying and what types aren't considered lobbying?

Advocacy is much broader than lobbying and includes all sorts of work, including for example educating the public and elected officials about your mission, or working with administrative staff on developing rules or regulations to implement existing laws. While public charities can engage in many types of advocacy, and advocacy incorporates a broad range of activities, public charities are also allowed to lobby. How lobbying is defined depends on which of two tests a public charity uses to measure its lobbying limits: the **insubstantial part test** or the **501(h) expenditure test** (see more details in the next question). Under either test, however, the organization must be communicating about legislation in order for the communication to be considered lobbying. "Legislation" includes pending bills, legislative proposals, the budget, judicial nominations that must be confirmed by the Senate, and other actions that need to be voted on by a legislative body.



What is the difference between grassroots lobbying and lobbying?

How lobbying is defined depends on which of two tests a public charity uses to measure its lobbying limits: the **insubstantial part test** or the **501(h) expenditure test**. Under the insubstantial part test, lobbying includes any activities or communications that advocate for the adoption or rejection of legislation, including those geared toward influencing the government's budget process. Under the 501(h) lobbying definitions, lobbying includes both direct and grassroots activities that express a view on specific legislation. Direct lobbying is defined as communication with a legislator (or legislative staff) that expresses a view on specific legislation. Grassroots lobbying, on the other hand, includes communications to the general public that express a view on specific legislation and include one of four types of clearly defined **calls to action**.

The IRS identifies four principal **exceptions** to the 501(h) definitions for direct and grassroots lobbying communications:

- Nonpartisan analysis, study, or research
- Request for technical assistance
- Self-defense
- Examinations and discussions of broad social, economic, and similar problems.

For additional detail on these definitions, check out Bolder Advocacy's factsheets on lobbying under the **insubstantial part** and **501(h) expenditure tests**.

FAQ: Lobbying Activities



We are a 501(c)(3) public charity. Can we lobby?

Yes. Public charities can lobby, and the tax code provides generous limits that define how much lobbying a public charity can do. Your public charity can choose between two ways of measuring its lobbying limits—using either the “insubstantial part” test or the “501(h)-expenditure” test.

The “insubstantial part” test is the default measure for the amount of lobbying activities a public charity can legally engage in according to the IRS. It requires that no substantial part of a charity’s activities may be carrying on propaganda, or otherwise attempting to influence legislation. While the IRS has not provided a reliable measure of what constitutes “substantial” lobbying, it is commonly believed that lobbying that comprises less than 5% of an organization’s overall activities is likely to be deemed “insubstantial.” These activities include actions by volunteers, board members, as well as staff. The insubstantial part test is the only measurement tool available to houses of worship like churches.

On the other hand, the “501(h)-expenditure” test sets a specific monetary limit on the amount public charities may spend to influence legislation. Unlike the “insubstantial part” test, the “expenditure” test does not count lobbying activities that do not require expenditures, such as unreimbursed lobbying activities conducted by volunteers or board members. The overall limit on lobbying is set as a percentage of the organization’s annual exempt purpose expenditures. Under Section 501(h), the overall limit on lobbying starts as high as 20% of those expenditures for small charities and diminishes to a smaller percentage of expenditures for larger organizations, with a maximum cap of \$1,000,000 on an organization’s annual lobbying expenditures. In addition to this overall limit, the “501(h)-expenditure” test imposes a limit on grassroots lobbying, calculated as one-quarter of the overall lobbying limit. For example, a 501(c)(3) that has made the 501(h) election, with an annual budget of \$500,000, would have an overall lobbying limit of \$100,000 and a grassroots lobbying limit of \$25,000.

For a more in-depth comparison of both options, please see Bolder Advocacy’s [guide](#) on how to use the 501(h) election to maximize effectiveness.



Does the state have lobbying reporting rules? What are the differences between state lobbying disclosure laws and the federal tax code lobbying limits?

Yes. Nonprofits engaging in lobbying activities must comply with both Federal tax law and state law. While the Tax Code limits how much lobbying public charities can conduct, state lobbying disclosure rules require lobbyist registration and reporting when certain conditions are met. North Carolina, for example, has its own set of lobbying rules, discussed in more detail in Bolder Advocacy’s [North Carolina Lobbying guide](#).

FAQ: 501(h)-Expenditure Test



What are the advantages and disadvantages of making the “501(h)-expenditure” test election?

As discussed above, the “insubstantial part” test is the default test set by the IRS for nonprofit organizations to measure their lobbying limit. However, the IRS allows 501(c)(3) public charities to elect to utilize the “501(h)-expenditure” test instead. While the “insubstantial part” test sets vague standards regarding lobbying limits and broad lobbying definitions, public charities that make the 501(h) election can easily calculate their lobbying limits down to a specific dollar amount. They can also take advantage of narrow definitions for direct and grassroots lobbying. Unlike the “insubstantial part” test, the “501(h)-expenditure” test imposes no limit on lobbying activities that do not require expenditures, such as unreimbursed lobbying activities conducted by bona fide volunteers. In addition, electing organizations may have a lower chance of losing their tax exempt status if they exceed their lobbying limits, because the IRS considers the electing organization’s direct lobbying and grassroots expenditures as a moving average over a four-year period and can revoke the organization’s exempt status only if it exceeds either limit by 50 percent. In contrast, non-electing organizations could lose their tax exemption on the basis of substantial lobbying within a single tax year.



If we make the “501(h)-expenditure” test election, will our funders be less likely to fund us?

No! A public charity that elects the “501(h)-expenditure” test must keep good records regarding their lobbying expenditures. And funders are more likely to give support to charities that accurately track lobbying and other advocacy activities. Private foundations and others often expect public charities to know when and how to lobby, so making the 501(h) election often provides assurance of good record-keeping to those seeking to provide financial support for your work.



Do all funders have to follow the same rules about lobbying?

No. There are two types of foundations —public and private. Just as most types of advocacy are fully legal for you to engage in as a grantee, most advocacy is also fully legal for foundations to support. But there are some key differences between public and private foundations when it comes to funding and engaging in lobbying.

Public foundations (publicly supported grant-makers such as community foundations and women’s funds) face the fewest restrictions when it comes to funding advocacy and lobbying, and can even lobby themselves. Often these foundations are community-based and make grants to support charitable activities in their local areas. Public foundations are permitted to fund all types of 501(c)(3)-permissible advocacy, including lobbying.

Private foundations are supported by one or a few individuals or sources. These entities can have vast resources and may present excellent fundraising opportunities for your organization. At the same time, they must follow stricter rules when funding certain types of advocacy work. Private foundations are not allowed to earmark grants for lobbying, which means they can’t provide money to you with the understanding that it will be dedicated to lobbying work. However, this does NOT mean that private foundations can’t give money to organizations that lobby. In fact, the law outlines [**specific ways in which private foundations may fund organizations that lobby**](#). In addition, private foundations are subject to additional rules when funding voter registration drives.

FAQ: Discussing Legislation



Can we talk about legislation in proposals/reports to the foundation?

Yes. Grantees can generally engage in advocacy activities and freely report their activities—even lobbying or nonpartisan voter activity—without negative consequences for the foundation. Funders understand this as part of your larger organizational or project-based work and appreciate the opportunity to understand this as part of the bigger picture—however no portion of grants from private foundations can be earmarked to support lobbying.



Is it OK if we tweet about bills, we're following?

Yes, **but remember**, the rules differentiating public education from lobbying matter in this context. If an organization is simply tweeting about bills that are filed, or upcoming, or that they support with no [call to action](#), then under the “501(h)-expenditure” test, those tweets would not constitute lobbying. If the tweet has a call to action, or if the public charity is reporting lobbying under the “insubstantial part” test, then the tweet is likely lobbying and needs to be counted against the organization’s lobbying limit. For more on how these rules apply to nonprofits’ online advocacy, please visit Bolder Advocacy’s guide to [“Public Policy in the Digital Age.”](#)

Using social media to engage in lobbying activity will count against a charity’s lobbying limits. However, due to the low cost of social media tools, a public charity may engage in lobbying efforts through social media and find that it is an effective use of its advocacy. For more information on how to properly use social media without exceeding the limits set by the IRS, please review the following guide [Legal Tips on Using Social Media for Advocacy.](#)

FAQ: Tracking Communications & Expenditures



Do we count every meeting with a legislator as lobbying?

No—it depends on the purpose of the meeting. Sometimes, a public charity is meeting with a legislator simply to introduce their organization or program or to inform him or her of the problems in a community and possible solutions. Those types of meetings are likely not lobbying. Meetings where the public charity expresses support or opposition to legislation likely will be considered lobbying, unless an exception applies. For more information on activities that are not considered lobbying, please review [Bolder Advocacy's Lobbying guide](#).

It's important for the public charity to be clear with staff, volunteers, and board members that communicating with legislators, or their staff, is an important part of any advocacy campaign but that sometimes these communications will be considered lobbying and should be recorded as such. Similarly, if a public charity is working with other elected officials to promote or oppose legislation (like for example, asking a Governor to veto a bill), those types of communications may be considered lobbying as well. Because it is important to understand the difference between lobbying activities and non-lobbying advocacy, we've provided several resources below to help inform you.



How do we track our lobbying?

A 501(c)(3) public charity must maintain sufficient records in order to track lobbying efforts and expenditures. Federal tax law requires most charities to file an annual Form 990 or Form 990-EZ with the IRS and report lobbying as part of that return. Public charities that have made the 501(h) election are required to maintain records showing expenditures for grassroots and direct lobbying. Non-electing charities must also provide a detailed description of lobbying activities. Therefore, maintaining proper records and monitoring your organization's expenditures adequately is highly recommended.

While the IRS does not mandate a particular book-keeping method, public charities should carefully track these three basic types of expenditures: staff time (time spent lobbying and preparing for lobbying); direct costs (other than staff time); and overhead expenses (office rent, utilities, professional fees for accounting services—any cost that is not a “direct cost” or “staff time”). For more information on how to keep track of lobbying efforts, see Bolder Advocacy's guide titled [Keeping Track: A Guide to Recordkeeping for Advocacy Charities](#). The IRS does not mandate how a public charity must keep track of this work, but it does state that whatever recording option for lobbying is selected, the public charity should ensure it is reasonable and consistent across the organization.



Can we attend meetings hosted by 501(c)(4) organizations?

Yes. A 501(c)(3) public charity is not prevented from attending meetings hosted by 501(c)(4) organizations. There are multiple kinds of advocacy activities that 501(c)(3) public charities and 501(c)(4) social welfare organizations are permitted to do together under federal tax law. To see several examples of how these two organization types can work together, please see Bolder Advocacy’s [Comparison of 501\(c\)\(3\) and 501\(c\)\(4\) Permissible Activities](#).

Public charities are prohibited from supporting or opposing candidates for public office, something that 501(c)(4) social welfare organizations are permitted to do in limited amounts. It is important for the public charity to know and be clear that if a meeting hosted by a 501(c)(4) organization starts to discuss candidate work or other partisan political work such as “flipping a district” or block-walking by precinct, that the public charity should leave the room. A public charity cannot engage in this type of partisan political activity around candidates. A public charity should always stay mindful that working with elected officials on legislation and policy work is different than supporting candidates.

FAQ: Allocated Budget



A funder has asked us for an “allocated budget” that details our lobbying and non-lobbying costs. What does that mean?

An allocated budget is one that clearly delineates between an organization’s non-lobbying and lobbying expenses. Before a public charity can complete this type of budget, it needs to understand what counts as lobbying—and what does not. While the categorization will depend on the exact nature of each of the organization’s activities, in general, a public charity must understand the difference between its general advocacy activities and those that qualify as either direct or grassroots lobbying.

Public charities should engage in good record-keeping in order to facilitate being able to budget for each program or project. This includes developing reliable budgets that reflect the lobbying and non-lobbying costs to the program. See Bolder Advocacy’s guide [**Grants & Lobbying—What Funders Need Grantees to Know**](#).

Another good tip is for the public charity to understand the restrictions faced by private foundations—they cannot earmark grants for lobbying. For example, if a 501(c)(3) public charity wants to raise money specifically for a lobby day or another activity that is clearly lobbying, it should seek funding from a public foundation, not a private foundation. A private foundation should never make an earmarked lobbying grant, but it can make general support grants to grantees that engage in lobbying or fund the non-lobbying portion of a proposed specific project grant budget.

FAQ: Need Further Guidance?



We've read these FAQs, but still have questions about some specific activities. What should we do?

Bolder Advocacy provides several resources to nonprofits engaging in lobbying and advocacy in its Resources library. Some resources corresponding to this FAQ include:

- **Public Charities Can Lobby: Guidelines for 501(c)(3) Public Charities**
- **Lobbying Flowchart**
- **Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities**
- **Election Checklist for 501(c)(3)s**
- **The Rules of the Game: A Guide to Election-Related Activities for 501(c)(3) Organizations**
- **Legal Tips on Using Social Media for Advocacy**

Please feel free to contact the Bolder Advocacy technical assistance hotline if you have any questions about the information shared in this FAQ or about your nonprofit advocacy rights in general – our attorney-trainers are available every weekday to offer free technical assistance: advocacy@afj.org or 866-NP-LOBBY (866-675-6229) or a sara@afj.org or 415-528-3540 para comunicarse en español.

Bolder Advocacy also provides trainings and public webinars to nonprofits. If interested in learning more about the services offered, please visit [here](#). If you think that your organization would benefit from a webinar or workshop tailored to your staff and/or volunteers, please complete this [workshop request form](#).

Keep up to date with the latest in nonprofit and foundation news, interviews with funders, announcements about new resources, upcoming events, and policy updates affecting tax-exempt organizations by signing up for Bolder Advocacy's newsletter [here](#).

Bolder Advocacy has also created a podcast titled **Rules of the Game**. Each episode, Bolder Advocacy's attorneys **demystify the rules nonprofits must follow when they are advocating on the issues they care about**. You can find the Rules of the Game podcast on your favorite [podcasting platforms](#) or on Bolder Advocacy's [website](#).



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 at 1-866-NPLOBBY

Need More Guidance?

Bolder Advocacy is here to help! Just call our Technical Assistance hotline at 1-866-NP-LOBBY or complete [this form](#), email us at advocacy@afj.org, or visit our website at bolderadvocacy.org. Please share this with your funders, and encourage them to reach out to us with their questions.



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.