



501(c)(3) ADVOCACY BASICS: Lobbying 101

All 501(c)(3) public charities are legally permitted to lobby, which is a type of advocacy focused on trying to influence specific legislation. Lobbying is perfectly legal. Lobbying is your right and your responsibility. You must be aware, however, of your organization's financial limitations (see Page 2). This document outlines federal requirements. Check with your Secretary of State's office to find out about state requirements related to lobbying.

Learn more about the difference between lobbying and advocacy here: advocacyandcommunication.org/wp-content/uploads/2018/04/ACS_Difference_in_Lobbying_and_Advocacy_2022.pdf

TYPES AND EXAMPLES OF LOBBYING

Direct Lobbying is when an organization attempts to influence specific legislation by stating its position to a *legislator* (or other government employee who participates in the formulation of legislation, such as a cabinet official) through its staff or members. Examples include:

- ▶ Meeting with a state legislator or staffer to ask them to support specific legislative priorities.
- ▶ Working for or against ballot measures, such as referenda, bond measures, and ballot initiatives (because, while voters determine the outcome at the voting booth, the voting public serves as the legislature).

Grassroots Lobbying is communication with the *general public* that expresses a viewpoint about specific legislation and includes a call to action (such as asking people to contact legislators). For an action to be considered grassroots lobbying, it must contain all the above elements (public-facing, specific viewpoint, specific legislation, call-to-action). It is not lobbying if one or more of the required elements is missing. Examples include:

- ▶ Sending an email to your contact lists urging recipients to tell their elected officials to support a specific legislative proposal.
- ▶ The cost of the time to create, organize, and attend a public rally in support of a specific piece of legislation.

501(c)4 Lobbying

Your organization also may have a 501(c)(4) arm. This class of "social welfare organizations" is similar to 501(c)(3)s in that they are also tax exempt, but contributions to 501(c)(4) organizations are not tax deductible. They can engage in unlimited lobbying as well as partisan political activities. For more on starting a 501(c)(4) and related rules, visit www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations

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Some activities may seem like lobbying but are not, including the following:

- ▶ Meeting with a legislator or staffer to introduce yourself and educate the legislator about your community, but *not expressing a view* about any legislation.
- ▶ Educating the public about the consequences of proposed legislation or ballot initiatives by providing research, analysis, and commentary, but *not urging the public to contact* their legislators about it or to vote a particular way.
- ▶ Defending matters affecting your own nonprofit tax status, powers, or lobbying rights.
- ▶ Contacting elected officials or the executive branch about *proposed regulations* (these are a government agency's plans to address a problem or achieve a goal).

SPENDING ON LOBBYING

Federal tax law dictates how much lobbying 501(c)(3) organizations can engage in annually. The federal spending limits apply to both lobbying conducted by in-house staff at an organization, as well as that done by hired consultants or external lobbyists. It is also important to note that the federal limits apply to lobbying at any level—federal, state, and local. Therefore, organizations that lobby at all levels must be strategic in allocating resources, since the time and cost to lobby at the federal level can add up.

501(c)(3) organizations can choose to measure their lobbying under either the **substantial part test** or the **501(h) expenditure test**. The IRS has provided no absolute guidance on how much lobbying is “substantial.” A 1952 federal court decision states that 5% of an organization’s “time and effort” was an insubstantial part of its overall activities. Most tax practitioners generally advise that charities can safely devote 3-5% of their overall activities toward lobbying. If a charitable organization does not specifically choose the 501(h) expenditure test, it is automatically subject to the substantial part test.

The 501(h) form is easy-to-use and one that most charitable organizations should consider filing because it offers a clear guideline that makes it simple to engage in lobbying without breaking the rules. There is no jeopardy to tax-exempt status for a single-year violation with the 501(h) election. The information below provides an overview of how lobbying is defined for organizations that measure their lobbying under the 501(h) expenditure test.

Overall allowable lobbying annual limits are generous under the expenditure test:

- ▶ 20% of the first \$500,000 of annual organizational expenditures may be spent on lobbying.
- ▶ \$100,000 plus 15% of the next \$500,000 of annual organizational expenditures may be spent on lobbying.
- ▶ \$175,000 plus 10% of expenditures between \$1 million and \$1.5 million may be spent on lobbying.
- ▶ \$225,000 plus 5% of expenditures over \$1.5 million may be spent on lobbying.
- ▶ The lobbying limit for nonprofits with more than \$17 million in expenditures is \$1 million.



Under the expenditure test, lobbying is then divided into two parts:

1. Direct lobbying
2. Grassroots lobbying

Charitable nonprofits may spend 25% of their total allowable lobbying expenditures on **grassroots** lobbying. Here is an example:

For ABC nonprofit with expenditures of \$50,000, the overall lobbying limit is \$10,000 (20% of \$50,000, because \$50,000 is less than \$500,000). ABC nonprofit's grassroots lobbying limit is \$2,500 (25% of \$10,000). It can spend all \$10,000 on direct lobbying or spend \$2,500 on grassroots lobbying and \$7,500 on direct lobbying.

For more information about the 501(h) expenditure test and up-to-date limitations, visit irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test.

PAYING FOR LOBBYING

Nonprofits may use “non-earmarked” or general-purpose *private* foundation funds to lobby. Community foundations can earmark grants for lobbying (they are exempt under 501(c)(3) and are not private foundations). Government funds generally cannot be used for lobbying. Individual donors also can support an organization's lobbying efforts.

Sources: Bolder Advocacy, Internal Revenue Service, Center for Lobbying in the Public Interest, Alliance for Justice, Tim Delaney and Lori McClung

