

Lobbying Rules for Nonprofits

Federal tax law controls *how much* lobbying 501(c)(3) organizations can engage in (the Internal Revenue Service (IRS) is the agency that enforces this law.) Under the tax code, a 501(c)(3) public charity can choose one of two methods to measure its lobbying.

The “Insubstantial Part” Test

The first—and default—method is the rather vague insubstantial part test. This test requires that lobbying be limited to an insubstantial part of an organization’s overall activity. Under this test, there are no clear definitions regarding what constitutes lobbying, what an “insubstantial part” is, or how to measure activities. If an organization measures its lobbying limit by the insubstantial part test, it should work with an attorney and accountant to create parameters and definitions for the organization. An organization is subject to this test unless and until it elects otherwise.

The “501(h) Expenditure” Test

The second method to measure lobbying activity is the 501(h) expenditure test. While the name reflects a section of the tax code, organizations do not change their 501(c)(3) status by choosing this method to measure their lobbying. This test provides clearer guidance, as it defines lobbying, provides an exact dollar-based lobbying limit, and measures lobbying based upon an organization’s expenditures. Therefore, if an activity creates no cost for the organization then it does not count against its lobbying limit. An organization must affirmatively elect—through a one-time filing of Form 5768—to be covered by this test.

Since no guidance is provided under the insubstantial part test, the following rules apply to the 501(h) expenditure test only.

Overall lobbying limit

To determine an organization’s lobbying limits under the 501(h) expenditure test, you must first calculate its overall lobbying limit. It is based on the organization’s “exempt purpose expenditures,” which, for most organizations, is the amount of money they will spend in the current fiscal year. Once you have determined this number, you apply the following mathematical percentages:

$$\begin{aligned}
 &20\% \text{ of the first } \$500,000 \\
 &+ 15\% \text{ of the next } \$500,000 \\
 &+ 10\% \text{ of the next } \$500,000 \\
 &+ 5\% \text{ of the remaining} \\
 &= \text{the overall lobbying limit}
 \end{aligned}$$

There is a \$1 million cap on the overall lobbying limit. There are two types of lobbying, and you can use the entire lobbying limit on *direct lobbying*, but can only use ¼ of it on *grassroots lobbying*.

Direct Lobbying

Direct lobbying is a communication with a legislator (federal, state, local) or legislative staff member that both:

- Refers to specific legislation, and
- Takes a position on that legislation

Special Rule for Ballot Measures (referenda, ballot initiatives, bond measures, constitutional amendments):

Communications with the general public that refer to and state a position on ballot measures count as direct lobbying. 501(c)(3)s can fund ballot measure drives and tell voters whether to support or oppose ballot measures because the activity is considered direct lobbying.

Grassroots Lobbying

Grassroots lobbying is a communication with the public that:

- Refers to specific legislation,
- Reflects a view of the legislation, and
- Contains a call to action

A call to action refers to four different ways the organization asks the public to respond to its message:

- Asking the public to contact their legislators or staffers;
 - Providing the address, phone number, website, or other contact information for the legislators;
 - 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
 - Listing the recipient’s legislator, the names of legislators voting on a bill, or those undecided or opposed to organization’s view on the legislation.
- * Identifying legislators as sponsors of the legislation is *not* a call to action.

Note: This handout provides general guidelines only, and should not be relied upon as legal advice. Organizations should consult with their attorneys to receive guidance on how the law applies to their specific activities.