

Lobbying Definitions

Summary

Lobbying is attempting to influence the legislator on a specific issue or piece of legislation by direct contact, encouraging others to contact the legislator, or advocating for adoption or rejection of a specific piece of legislation.

Lobbying is classified as either Direct or Grassroots.

Direct: Your organization contacting the legislator; Grassroots: Your organization encouraging members of the community to contact the legislator.

Can Charities Lobby?

Yes. With the 1976 Lobby Law and the IRS Regulations set forth in 1990, Congress made it clear that influencing legislation is an appropriate and legitimate activity for charitable organizations. The confusion often results because charitable nonprofits (designated as 501(c)(3) organizations) are prohibited from participating in partisan politics – working for a political party or candidate. However, it is imperative that nonprofits get involved in the political process as it affects government funding for their programs and policies that impact their ability to carry out their charitable missions.

What is Lobbying?

Lobbying is defined by federal tax law as any attempt to influence specific legislation. Lobbying can be done in two ways:

- Contacting or urging the public to contact policy makers for the purpose of proposing, supporting, or opposing legislation, or
- By advocating the adoption or rejection of legislation.

Lobbying =
Soliciting or trying to influence the actions of public officials, especially legislators.

LOBBYING INVOLVES 3 PARTS:

Communication with a policy maker that takes a position on specific, pending legislation.

Policy maker refers to anyone who has direct influence over the outcome of a piece of legislation and could include:

- | | | |
|--|---------------------------------------|------------------------------------|
| <input type="checkbox"/> Legislators | <input type="checkbox"/> Governor | <input type="checkbox"/> President |
| <input type="checkbox"/> Legislative aides | <input type="checkbox"/> Lt. Governor | <input type="checkbox"/> Others |

In the case of a ballot initiative or referendum, voters are considered policy makers, because they decide the outcome of legislation.

A. Direct Lobbying

Direct lobbying is any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official who may participate in the formulation of legislation. A specific activity constitutes direct lobbying if:

- The principal purpose is to influence legislation,
- There is reference to a specific piece of legislation (even if the legislation is not currently under consideration), and
- A point of view is expressed.

Direct lobbying =
You or your members + Elected officials/ staff + Specific legislation

Asking members of your organization to contact legislators is considered direct lobbying since they are part of the organization and presumably working on its behalf.

Examples of Direct Lobbying

- Communicating your organization’s views on a specific legislative proposal to a legislator, a staff member, or any government employee who may help develop legislation
- Asking a legislator or related staff member to take action that would require legislation
- Asking your organization’s members (those who contribute more than a nominal amount of money or time) to lobby for a particular bill
- Attempting to influence the opinion of the general public on referenda or ballot initiatives

B. Grassroots Lobbying

Grassroots lobbying is any attempt to influence legislation by affecting the opinion of the general public. In this case the organization encourages the public to lobby. The organization refers to a specific piece of legislation and provides information to the public on how to contact decision makers. Under certain circumstances mass media ads are an example of grassroots lobbying.

Grassroots lobbying =
General public +
Elected officials/staff +
Specific legislation

Examples of Grassroots Lobbying

- Urging the general public to express a particular view to their legislators about a specific legislative proposal
- Give legislators’ contact information and ways to contact them
- Identifying legislators who are opposed to or undecided on a particular piece of legislation, identifying the audience’s legislators, or naming the members on a committee that will vote on a piece of legislation

What is NOT Lobbying?

The following examples are activities that are NOT considered lobbying by the IRS:

- An effort to influence an administrative agency to change its policies, rules or regulations;
- A general policy position (such as “government has a role in low-income housing”), given that the position does not speak to specific legislation;
- Testimony before a legislative committee when your organization has received a written request from the committee to appear;
- Non-partisan analyses, which need not be neutral or objective, that present facts fully and fairly, are widely available and do not include a call to action (such as, request the reader contact their legislator) Note: If these materials are used later in a lobbying effort, the cost of preparing these materials must be counted as a lobbying expense;
- Responses to written requests for information or technical assistance from legislators;
- Discussion with government officials concerning legislation that directly impacts the organizations (such as its existence, powers, duties, tax-exempt status, or right to receive tax-deductible contributions). However, calling for programs or policies in your organization’s field (such as the environment or healthcare, etc.) is considered lobbying.

Lobbying Standards and Financial Limits

Summary

The law limits the funds that tax-exempt organizations can use for lobbying. There are two sets of rules to consider: Insubstantial Parts Test or 501(h) Status. Insubstantial Parts says that lobbying cannot comprise a substantial part of your organization's work; 501(h) sets specific financial limits. Although reporting your organization's lobbying requires very little paperwork, it is absolutely necessary to keep detailed records of your lobbying activities and funds spent on lobbying.

Standard One: Insubstantial Part Test

Organizations that choose not to file Section 501 (h) of the IRS Code are still subject to the IRS guidelines set forth in 1934. Known as the "insubstantial part test," these guidelines require that "no substantial part of a charity's activities consist of carrying on propaganda or otherwise attempting to influence legislation." "Substantial" has never been fully defined. However, the courts have made clear that the definition of lobbying under the "insubstantial part test" is not only related to an expenditure of money. For example, activities conducted by volunteers to influence legislation must be considered lobbying.

What is substantial? It is not well defined and therefore open to interpretation.

Standard Two: 501(h) Expenditure Test

Those charitable organizations that choose the Section 501(h) election must apply the "expenditure test." Under this standard, lobbying only occurs when there is an expenditure of money. It sets forth specific dollar limits, calculated as a percentage of a charity's total exempt purpose expenditures.

These limits are:

- 20% of the first \$500,000 of exempt purpose expenditures, plus
- 15% of the next \$500,000 of exempt purpose expenditures, plus
- 10% of the next \$500,000 of exempt purpose expenditures, plus
- 5% of the remaining exempt purposes expenditures, up to a total cap of \$1 million.

The organization's grassroots lobbying efforts (described in greater detail below) are limited to 25% of the organization's total lobbying activities as calculated using the formula above. Even if the organization chooses to spend very little on direct lobbying efforts, it may still spend up to 25% of the total limit under the law on grassroots lobbying.

It should be noted that churches and their affiliates are not allowed to elect 501(h) status, although they may lobby under the "insubstantial part test".

Making the 501(h) Status Election

To elect 501(h) status, your organization will need to file a single page form: IRS Form 5768

EXAMPLE

A nonprofit with a \$100,000 budget, that has chosen the 501(h) election, may spend up to \$20,000 on direct and grassroots lobbying combined. Of this \$20,000, no more than \$5,000 can be spent on grassroots lobbying. This includes all expenses: salaries, copying, etc.

“Election/Revocation of Election by an Eligible 501(c)(3) Organization to Make Expenditures to Influence Legislation.” It requires only the organization’s name, address, and the first tax year to which the election will apply. This form can be found online at <http://www.irs.gov/pub/irs-pdf/f5768.pdf>.

Why choose the 501(h) Election?

The 501(h) expenditure election provides significant benefits over the “insubstantial part test,” including:

- No limit on lobbying activities that do not require expenditures
- Clear definitions of various kinds of lobbying communications, which allows your organization to more easily determine whether or not it is engaging in lobbying activities
- Higher lobbying limits and fewer items that count toward the exhaustion of those limits
- Your organization is less likely to lose its exemption status, since the IRS may only revoke exempt status from electing organizations that exceed their lobbying limits by at least 50% averaged over a 4-year period (a non-electing organization may lose its status for a single year’s excessive lobbying activities)
- No personal penalties assessed for individual organization managers whose organization exceeds its lobbying expenditures limits

Sanctions for Violation of 501(h) Standards

Under the 1976 Lobby Law, an organization that either exceeds their overall expenditure limit OR the 25% grassroots-lobbying limit in any year will be assessed a 25% excise tax on its excess lobbying expenses. You do not lose your 501(c)(3) status. The IRS uses a four year averaging period, and only if you exceed the limits by more than 50% over the entire period are you in danger of losing your exemption.

Record Keeping

Many organizations are understandably concerned that the rules are complicated and require substantial record keeping. It is essential to keep track of your lobbying, whether you elect 501(h) status or not, in order to calculate your total exempt purpose expenditures. However, reporting your organization’s lobbying expenditures actually requires very little extra paperwork. The amount of money your organization spends on lobbying each year only needs to be reported in one section of your IRS form 990.

TIPS FOR TRACKING MONEY
See the [AFP.org website](http://AFP.org) for a complete set of tracking tools. *afp.org*

Careful bookkeeping will help you keep track of your lobbying. Your bookkeeping system should include line items for total lobbying expenses as well as grassroots expenses. Since a large portion of your lobbying efforts will be staff oriented, your timesheets should have a method of tracking both direct and grassroots lobbying efforts. It is highly recommended that one employee be designated as the authority on the organization’s lobbying efforts. A bookkeeping method is necessary to track all postage, copying, faxing and printed materials used in association with any lobbying efforts. This system need not be complicated, but it should be detailed and easy to maintain.