

## **Public Charities Can Lobby**

### Guidelines for 501(c)(3) Public Charities

Much advocacy work, including efforts to influence executive branch actions, does not constitute lobbying. Yet, contrary to popular misconception, 501(c)(3) public charities—including houses of worship and public foundations—*can* lobby under federal law. In fact, the Internal Revenue Service has stated that public charities “may lobby freely” so long as lobbying is within generous specified limits.<sup>1</sup>

Under federal tax law, lobbying generally consists of communications that are intended to influence specific legislation.<sup>2</sup> How much lobbying the organization can do depends upon which of two tests the organization uses to measure its lobbying: the optional “501(h) expenditure” test or the default [“insubstantial part” test](#).

### **Making the 501(h) Election Can Maximize an Organization’s Lobbying Limit**

Most organizations will be able to engage in more lobbying by electing to measure its lobbying under Section 501(h) of the tax code, because:

- The 501(h) expenditure test provides more generous lobbying limits than the insubstantial part test. It defines a clear dollar amount an electing public charity may spend on lobbying, and limits vary depending on the size of the organization’s budget. Organizations that spend \$500,000 or less overall per year, for example, can spend as much as 20% of their budget on lobbying. You can use our [online calculator](#) to determine your organization’s lobbying limit.
- Organizations using the 501(h) expenditure test can take advantage of clearer definitions of lobbying, including [specific exceptions](#) to what counts as lobbying.
- The organization considers only expenditures lobbying. Cost-free activities, such as volunteer time, do not count against the organization’s lobbying limits because the organization does not pay for these activities.
- An electing 501(c)(3) may spend up to a quarter of its overall lobbying limit on [grassroots lobbying](#) (such as urging the general public to communicate the organization’s position on legislation to legislators) or up to the entire amount on [direct lobbying](#) (such as telling legislators or their staff to support or oppose legislation, or urging the organization’s members to do so.)
- Under the 501(h) expenditure test, charities may allocate certain expenditures that have both lobbying and non-lobbying purposes. For example, if an executive director flies to Washington, DC, for a four-day trip, three days of which will be spent at an educational conference and the fourth day spent lobbying, it is usually appropriate to count 25 percent of the costs the 501(c)(3) paid for travel expenses as lobbying costs.

---

<sup>1</sup> Lobbying by Public Charities; Lobbying by Private Foundations, 55 Fed. Reg. 35,579, 35,584 (Aug. 31, 1990). [Private foundations](#) are subject to a prohibitive tax on any lobbying expenditures they make.

<sup>2</sup> For more information on lobbying, please see [Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities](#).

A 501(c)(3) public charity may make the 501(h) by [filing the simple Form 5768](#) once with the IRS. Churches and other houses of worship cannot take advantage of the 501(h) expenditure test.

## **Insubstantial Part Test Filers Can Still Lobby**

The insubstantial part test is the default test that applies if the public charity does not make the 501(h) election. While the 501(h) election provides a clearer standard for measuring lobbying, public charities that have not taken the 501(h) election should not be deterred from lobbying activities.

The insubstantial part test requires that “no substantial part of a charity’s activities...be carrying on propaganda or otherwise attempting to influence legislation.” Therefore, a charity’s lobbying must be an “insubstantial” part of its overall activities (such as volunteer activity and social media posts), not just its expenditures. The IRS has provided no absolute guidance on how much lobbying is “substantial,” but most tax practitioners generally advise that charities can safely devote 3-5% of their overall activities toward lobbying. In addition, guidance as to what constitutes lobbying under the insubstantial part test is vague. The insubstantial part test defines lobbying as “carrying on propaganda, or otherwise attempting to influence legislation” and includes any communication that “contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation or advocates for the adoption or rejection of legislation.”

If a 501(c)(3) wishes to engage in more lobbying than is permitted under either the 501(h) expenditure test or the insubstantial part test, the organization may consider creating an [affiliated 501\(c\)\(4\)](#) organization, which can engage in an unlimited amount of lobbying.

---

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 866-NPLOBBY.

[www.bolderadvocacy.org](http://www.bolderadvocacy.org) | [www.allianceforjustice.org](http://www.allianceforjustice.org)