

## 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. 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 your organization can engage in depends on the test it uses to calculate its limit - the optional [“501\(h\) expenditure” test](#) or the default [“insubstantial part” test](#).

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

Most organizations will be able to engage in more lobbying by electing to measure their lobbying under Section 501(h) of the Internal Revenue Code.

- The 501(h) expenditure test provides more generous lobbying limits than the insubstantial part test. It defines a clear dollar amount that the electing public charity may spend on lobbying, and lobbying limits vary depending on the size of the organization’s annual expenditures. Organizations with overall expenditures of \$500,000 or less per year, for example, can spend as much as 20% of their budget on lobbying. You can use the chart below or our [online calculator](#) to determine your organization’s lobbying limit.

Organization’s Annual Expenditures	Overall Lobbying Limit
\$500,000 or less	20%
\$500,000 to \$1 million	\$100,000 + 15% of excess over \$500,000
\$1 million to \$1.5 million	\$175,000 + 10% of excess over \$1 million
\$1.5 million to \$17 million	\$225,000 + 5% of excess over \$1.5 million
Over \$17 million	\$1,000,000

- An electing public charity 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). For example, if your organization’s overall lobbying limit is \$100,000, you could spend up to \$25,000 on grassroots lobbying and then \$75,000 on direct lobbying or alternatively spend the full \$100,000 on direct lobbying.

<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](#).

- 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 only considers expenditures. 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.
- Under the 501(h) expenditure test, you may allocate the costs of certain activities that have both lobbying and non-lobbying purposes. For example, if an executive director flies to Washington, DC, for a four-day trip, of which three days will be spent at an educational conference while the fourth day is spent lobbying, it is usually appropriate to count 25 percent of the costs the organization paid for travel expenses as lobbying costs.

Churches and other houses of worship cannot take advantage of the 501(h) expenditure test.

## **Complete Form 5768 to Make the 501(h) Election**

A 501(c)(3) public charity may use the 501(h) expenditure test (commonly referred to as “making the 501(h) election”) by [filing the simple Form 5768](#) with the IRS.

- It’s easy! All you need is your organization’s basic information, such as address and employer identification number.
- You only have to file once. Complete the form and the election applies retroactively to the first day of the tax year in which the form is filed. It also applies to all subsequent years. Don’t worry - if you ever want to go back to the insubstantial part test, all you have to do is send in Form 5768 again to revoke the 501(h) election for the next tax year.
- Keep a copy for your records. It’s good practice to keep a copy of the completed Form 5768 for your records so that 5, 10, or 20 years from now, it’ll be easy to confirm the lobbying test under which your organization is operating.

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

The insubstantial part test is the default test that applies if your organization does not make the 501(h) election. While the 501(h) election provides a clearer standard for measuring lobbying, if your organization operates under the insubstantial part test you should not be deterred from lobbying.

The insubstantial part test requires that “no substantial part of a charity’s activities...be carrying on propaganda or otherwise attempting to influence legislation.”<sup>3</sup> This means lobbying must be an “insubstantial” part of your organization’s 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 an organization can safely devote 3-5% of their overall activities to 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,

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<sup>3</sup> 26 U.S. Code § 501(c)(3) (2005)



members of a legislative body for the purpose of proposing, supporting, or opposing legislation or advocates for the adoption or rejection of legislation.”<sup>4</sup>

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.

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<sup>4</sup> *Id.*