## What is Lobbying?

Federal tax law controls *how much* lobbying 501(c)(3) organizations can engage in. Public charities can choose to measure their lobbying under either the **insubstantial part test** or the **501(h) expenditure test**. While lobbying is not defined under the insubstantial part test, this fact sheet provides an overview of how lobbying is defined for organizations that measure their lobbying under the 501(h) expenditure test.

<table>
<thead>
<tr>
<th>Direct Lobbying</th>
<th>Grassroots Lobbying</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Communication</strong> with a <em>Legislator</em> that expresses a <em>View about Specific Legislation</em></td>
<td><strong>Communication</strong> with the <em>Public</em> that expresses a <em>View about Specific Legislation</em> and includes a <em>Call to Action</em></td>
</tr>
</tbody>
</table>

In order for an action to be considered **direct lobbying or grassroots lobbying** it must contain all of the above elements. It is not lobbying if one or more of the required elements is missing.

**Communication**: a conversation (in person or by phone), letter, email, fax, or other creative mechanism to convey a message.

**Legislator**: a member of a legislative body or his/her staff. In addition, executive branch officials who participate in the formulation of legislation are considered legislators (such as the governor or mayor when vetoing or signing a bill). Members of administrative bodies, however, such as school boards, sewer and water districts, housing authorities, zoning boards, and other special purposes bodies, whether elected or appointed, are **not** considered legislators.

**Public**: anyone but a legislator or member of an organization. Communications to an organization’s members are considered direct lobbying. For this purpose, a member is someone who has given more than a small amount of time or money to the organization.

**Expresses a view about specific legislation**: a bill or resolution that has been introduced in a legislative body or proposed legislation such as identifying a problem and presenting a a specific solution to the problem. Specific legislation includes budget appropriations and taxes, and attempts to influence the confirmation of judicial and executive branch nominees. Proposed legislation may qualify as specific legislation even if it has not yet been introduced, been written down, or even fully fleshed out. Specific legislation does not include rulemakings / promulgation of regulations, executive orders, litigation, or attempts to enforce existing laws.

**Call to action**: a specific means of encouraging the communication’s recipient to take lobbying action. A call to action must comprise one of the following actions: 1) tell the
recipient to contact a legislator; 2) provide information on how the recipient can contact his/her legislator, such as providing the phone number or address; 3) provide a mechanism for enabling the recipient to contact his legislator, such as a postcard, petition, or email form; or 4) identify a legislator who will vote on the legislation as being opposed to or undecided about the organization's view on the legislation, a member of a legislative committee who will vote on the legislation, or the recipient's legislator.

**Ballot measure activity** is considered *direct lobbying*. Although ballot measures, such as referenda, bond measures, and ballot initiatives, are determined at the voting booth, efforts for or against them are considered *direct lobbying*, not impermissible electoral activity. Efforts aimed at convincing the public to support or oppose ballot measures are direct lobbying since the voting public serves as the legislature.

February 2007

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. The 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 the Alliance for Justice.
ELECTING THE 501(h) EXPENDITURE TEST

Most 501(c)(3) public charities will benefit from "electing" the 501(h) lobbying expenditure test. The rules that govern lobbying under 501(h) are clearer than those that apply under the "insubstantial" standard.

Step 1 – Complete Form 5768

IRS Form 5768, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation, is the first step in electing to be governed by the 501(h) expenditure test. An organization simply supplies its name, address, and the first tax year to which it wants the election to apply. The form needs to be signed by an authorized officer, usually the president or treasurer. The election applies retroactively to the first day of the fiscal year in which the form is filed and, generally, to all subsequent years. For example, a form filed in December 2006 will bring an organization under section 501(h) from January 1, 2006 forward (assuming the organization operates under the calendar year).

Step 2 – Make a Copy

Make a copy of Form 5768 before mailing it to the IRS because the agency will NOT send a confirmation letter.

Step 3 – Track Lobbying Expenditures

Under 501(h), your organization can spend up to 20% of its first $500,000 exempt purpose budget on direct lobbying. Direct lobbying is defined as any communication, with a legislator, expressing a view about specific legislation. Organizations with budget expenditures over $500,000 should apply the following formula:

\[
\text{20\% of the first $500,000} + \text{15\% of the next $500,000} + \text{10\% of the next $500,000} + \text{5\% of the remaining} = \text{the overall lobbying limit}
\]

Grassroots lobbying is defined as any communication with the general public, expressing a view about specific legislation, with a call to action. A call to action refers to four different ways the organization asks the public to respond to its message: (1) asking the public to contact their legislators or staffers; (2) providing the address, phone number, website, or other contact information for the legislators; (3) 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 (4) 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. An organization that has made the 501(h) election can never spend more than 25% of its overall lobbying limit on grassroots lobbying.

Therefore, a 501(c)(3), that has made the 501(h) election, with an annual budget of $500,000, would have an overall lobbying limit of $100,000 and a grassroots lobbying limit of $25,000.

All public charities, including 501(h) electing charities need to keep track of their lobbying expenditures for their 990 Form and in the event of an IRS audit.

Note: To revoke your organization’s 501(h) election, follow steps 1 and 2, filling out the revocation portion of Form 5768 (question 2).

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. The 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 the Alliance for Justice.
**Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation**

(Under Section 501(h) of the Internal Revenue Code)

For IRS Use Only

<table>
<thead>
<tr>
<th>Employer identification number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Room/suite</td>
</tr>
</tbody>
</table>

**General Instructions**

Section references are to the *Internal Revenue Code.*

Section 501(c)(3) states that an organization exempt under that section will lose its tax-exempt status and its qualification to receive deductible charitable contributions if a substantial part of its activities are carried on to influence legislation. Section 501(h), however, permits certain 501(c)(3) organizations to elect to make limited expenditures to influence legislation. An organization making the election will, however, be subject to an excise tax under section 4911 if it spends more than the amounts permitted by that section. Also, the organization may lose its exempt status if its lobbying expenditures exceed the permitted amounts by more than 50% over a 4-year period. For any tax year in which an election under section 501(h) is in effect, an electing organization must report the actual and permitted amounts of its lobbying expenditures and grassroots expenditures (as defined in section 4911(c)) on its annual return required under section 6033. See Schedule A (Form 990 or Form 990-EZ). Each electing member of an affiliated group must report these amounts for both itself and the affiliated group as a whole.

To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in Item 1 or 2, as applicable, and sign and date the form in the spaces provided.

**Eligible Organizations.**—An organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to influence legislation, apply to our tax year ending...and until revoked. (Month, day, and year)

**Revocation—**As an electing organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to influence legislation, apply to our tax year ending...and until revoked. (Month, day, and year)

**Note:** This revocation must be signed and postmarked within the first taxable year to which it applies.

**Under penalties of perjury, I declare that I am authorized to make this election on behalf of the above named organization.**

(Signature of officer or trustee) (Type or print name and title) (Date)

---

### Disqualified Organizations

- The following types of organizations are not permitted to make the election:
  - Section 170(b)(1)(A)(ii) organizations (relating to churches).
  - An integrated auxiliary of a church or of a convention or association of churches, or
  - A member of an affiliated group of organizations if one or more members of such group is described in (a) or (b) of this paragraph.

**Affiliated Organizations.**—Organizations are members of an affiliated group of organizations only if (1) the governing instrument of one such organization requires it to be bound by the decisions of the other organization on legislative issues, or (2) the governing board of one such organization includes persons (i) who are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and (ii) who, by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization. For more details, see section 4911 and section 501(h).

**Where to File.**—Mail Form 5768 to the Internal Revenue Service Center, Ogden, UT 84201-0027.
The question is not

"Should we do advocacy?"

but

"Can we afford not to?"
What is ADVOCACY?
Avenues of Change:
Common Targets

Organizing
Educate
Legislators
Get to Know Legislators
Public Education
Nonpartisan Voter Ed.
PARTISAN POLITICAL
Lobbying Exceptions
Educational Conferences
LOBBYING
Research
Organize a Rally
Regulatory Efforts
Litigation
Training
Avenues for ADVOCACY
NATIONAL PREACH-IN
ON GLOBAL WARMING
FEBRUARY 12-14, 2010
Factors Affecting Success

- Constituent Action
- Allies
- Policymaker Champions
- Credible Research
- Who's In Power
- Economy
- Need For Change
- Public Opinion
- Other

Why **ADVOCACY**?
VICTORY! Lilly Ledbetter Fair Pay Act Passes Senate and House!

VICTORY! It's been a long road to pass the Lilly Ledbetter Fair Pay Act, and now we're nearly there! On January 22, 2009, the US Senate passed the Lilly Ledbetter Fair Pay Act, joining the House of Representatives. President Obama has spoken out in support of the Ledbetter Fair Pay Act and is expected to sign the Act into law very soon.

The Voices of Moms Helped Reach This Important Victory: MomsRising responded immediately when the Court made its harmful decision in the Ledbetter v. Goodyear Tire case in May of 2007 stating that pay discrimination claims must be made within 180 days after the pay is initially set (which effectively gutted the ability to hold employers accountable when they pay women less than men—even if the discrimination continues for years). Since then, MomsRising members have been deeply and consistently active in the fight to restore and improve pay equity laws.

Your persistence paid off. By the numbers, here is what you accomplished:

Letters to Legislators: A whopping 84,557 Letters to the U.S. Senate and House in favor of this legislation.

Resumes: MomsRising members sent in and delivered nearly 9,000 resumes to Senator John McCain's office after he refused to support this legislation, saying that women don't need fair pay, they need "more education and training."

Systemic CHANGE

Thank you for passing SCHIP and standing up for America's values

PROTECT funding
Foster DISCUSSION

EMPOWER Constituents
Foster DISCUSSION

EMPOWER Constituents
How much **LOBBYING?**

**INSUBSTANTIAL PART TEST**

1. What is “insubstantial”?
2. Default test
3. Activities-based
4. Lobbying not defined
5. Penalty

or

**501(H) EXPENDITURE TEST**

1. Dollar-based limits
2. One-time election – IRS Form 5768
3. Expenditures only
4. Definition of lobbying
5. Penalty less severe
Direct
- Communication
- With a legislator
- Expressing a view about specific legislation

Grassroots
- Communication
- With the general public
- Expressing a view about specific legislation
- Includes a “call to action”

What is LOBBYING?

Specific Legislation

30/60 Day Notice
HB 2484

Talking Points
We've developed a set of key messages that you can incorporate into your letters. One tip is to keep your letter short, concise and make it personal by giving an example of how the shortage of affordable housing has impacted you, your community or someone you know.

- Everyone needs housing—a roof over their head.
- Affordable housing is good for the economy—it helps people get jobs and keep them.
- Your grandparents and other seniors shouldn't have to worry about having a place to live.
- Without enough affordable housing, the whole community suffers.
- Businesses can't find enough employees who can afford to live near their workplace. It's difficult to retain and retain employees when there is a shortage of affordable housing.
- Homelessness forces children into unstable and uncertain lives. With a stable home, a child is able to focus on learning without worrying about moving during the school year.
- Seniors and persons with special needs on fixed incomes may have to sacrifice their basic needs in order to afford rent. Imagine choosing between food and a roof over your head.
- Investing dollars and other resources in nonprofits is an investment in stable neighborhoods, which helps promote self-sufficiency. The payoff is more productive people who are less dependent upon remedial and government assistance.

Protect current state funding for key programs, such as:

- The Emergency Food Assistance Program (EFAP)
- $193,000 to support the General Administration Food Programs that leverage millions in federal funding, food, and operational support
- State contributions to WIC and for the WIC Farmers Market Nutrition Program
- Washington Grown Fruits and Veggies Grant initiated by Local Farms Health Kids
- State funding that insures access to school, summer, and child care meals
- Leaving off a call to action
- Commenting on rules and regulations
- Litigation
- Asking for an Executive Order
- Asking for enforcement of existing laws

Not **LOBBYING**

- Nonpartisan analysis, study, or research
- Technical advice or assistance
- Self defense
- Examinations and discussions of broad social, economic, or similar problems

**Lobbying EXCEPTIONS**