

Lobbying Rules for Public Foundations

Federal tax law controls *how much* lobbying 501(c)(3) organizations may engage in. Under the tax code, a 501(c)(3) public charity, including public foundations, may measure its lobbying under one of two methods.

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 a public foundation 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 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, public foundations 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 a public foundation’s lobbying limits under the 501(h) expenditure test, 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 the exempt purpose expenditure amount, apply the following mathematical percentages:

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

There is a \$1 million cap on the overall lobbying limit. There are two types of lobbying, and public foundations may 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. Public foundations may 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 public foundation 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 the 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. Organizations should consult with their attorney to receive guidance on special rules governing their conduct.