

Lobbying Rules for Community Foundations: An Overview

While a community foundation may lobby on legislative measures as one way to reach its goals, many activities that a community foundation may undertake as part of a media advocacy campaign are not classified as “lobbying”—as defined by the Internal Revenue Service (IRS). Thus, understanding the IRS definition of lobbying can help a community foundation achieve greatest flexibility when planning a media advocacy campaign.

What are the Limits on Lobbying Activity? Community foundations (like all public charities) may lobby as long as such activity is not a substantial part of the foundation’s work. Lobbying includes activities directly carried out by the foundation as well as grants the foundation makes that are designated for lobbying purposes.

The IRS has established two different tests that can be used to determine whether lobbying is insubstantial. A community foundation may choose which test governs its activities:

- **Insubstantial Part Test:** While “insubstantial” has never been clearly defined by the IRS, most practitioners agree that approximately 5 percent of the organization’s overall activities is a safe level of lobbying. Volunteer activities, money spent on lobbying, and the amount of emphasis the foundation places on its lobbying activity are some factors in looking at the permissible amount of lobbying. The insubstantial part test is the default test that the IRS applies when looking at the organization’s lobbying activities.
- **Section 501(h) Expenditure Test:** Under this test, the amount the community foundation may spend on lobbying is determined on a sliding scale with an annual \$1 million absolute cap on lobbying. Depending on the foundation’s budget, lobbying could permissibly constitute as much as 20 percent of the foundation’s total expenditures in a tax year. There are many advantages to electing this test. These advantages include that the test offers a clear definition of lobbying and that the test is based only on money spent by the foundation on lobbying activities. To elect the expenditure test, the foundation files the simple, half-page Form 5768 (<http://www.irs.gov/pub/irs-pdf/f5768.pdf>) with the IRS.

What is Lobbying? Under the Section 501(h) expenditure test, lobbying is classified as either direct or grassroots. Direct lobbying is defined as a communication with a legislator (or legislative staff) expressing a view about specific legislation (including legislative proposals). Grassroots lobbying is defined as a communication with the *general public* expressing a view about specific legislation that includes a call to action. The call to action requirement means that the communication would not be lobbying unless it encouraged recipients of the communication to contact legislators or provided recipients with information (e.g., legislators’ names or contact information) or a mechanism to facilitate such contact.

What is Not Lobbying? Advocacy activity that does not meet the definition briefly outlined above is generally not lobbying for those organizations that elect the 501(h) expenditure test. Further, the IRS has defined certain actions that are exceptions to the general definitions above. The list on the reverse of this page highlights some of the many ways that a community foundation may become involved in advocacy activity without even crossing the line into lobbying activity.

Sample Ways Community Foundations May Engage in Advocacy

This list highlights some of the ways community foundations may engage in public policy without lobbying.¹

1. Direct communications with legislators or their staff about a general issue of concern. To use this lobbying exception, your direct communications may not refer to either specific legislation or a legislative proposal. If a specific legislation or proposal is referenced, no view may be expressed on such legislation.
2. Direct communications with legislators or their staff is also permitted on matters that might affect the foundation's existence, powers, duties, or tax-exempt status. This is often referred to as self-defense lobbying. This exception does not extend to communications with the general public.
3. Grassroots communications to the public about a policy issue if the communication:
 - does not contain any reference to specific legislation or legislative proposal;
 - references specific legislation or legislative proposal but does not express a view on the legislation or proposal; or
 - references specific legislation or legislative proposal and indicates a position on the issue but does not encourage the recipients of the communications to contact legislators or provide information (e.g., legislators' names or contact information) or a mechanism to facilitate such contact.
4. Communications with executive officials (i.e., the President, governors, mayors) or their staff about a policy issue where the official or staff member will not participate in the formulation of legislation discussed. If the official or staff member participates in formulating the legislation, the communication should not include a reference to specific legislation or legislative proposal or should not express a view on the legislation or proposal.
5. Communications with administrative bodies to influence regulations or the enforcement of existing laws.
6. Participating in class action lawsuits or similar public interest litigation in an attempt to influence judicial bodies.
7. Responding to written requests from a legislative body (not a single legislator) for technical assistance on pending legislation.
8. Sharing the results of nonpartisan analysis, study, or research on a legislative issue.
9. Discussing issues of broad social, economic and similar problems that require a legislative solution as long as the discussion does not address the merits of specific legislation.

While this list serves as a good starting point to understand permissible advocacy activities, the assistance of experienced legal counsel should always be considered when navigating through the rules for engaging in advocacy activity. For more information about the tests that govern lobbying activity by public charities, visit the Council's resources on the legal aspects of advocacy activity at <http://www.cof.org/index.cfm?containerid=248>.

¹ Not all of these exceptions may apply to public charities that do not elect to use the 501(h) expenditure test.