

## **Administrative Advocacy**

### **Influencing Rules, Regulations, and Executive Orders**

Not all efforts to influence public policy meet the definition of lobbying, so 501(c)(3) organizations can play a significant advocacy role while still staying within their annual lobbying limits. For organizations that measure their lobbying using the [501\(h\) expenditure test](#), direct lobbying requires communicating with a legislator to express a view about specific legislation and grassroots lobbying requires urging the public to contact legislators to express a view about specific legislation.<sup>1</sup> In order to meet the definition of lobbying, an activity must contain all parts of the definition. Under this narrow definition of lobbying, 501(c)(3) public charities can engage in a number of advocacy activities to influence decisions--including rules, regulations, and executive orders--of administrative and “special purpose” bodies that do not meet the definition of lobbying and therefore will not count against the organization’s lobbying limit.

### **Direct Lobbying Requires Communicating with a Legislator**

The term “legislator” includes members of Congress, state legislators, county supervisors and commissioners, city council members, and [international bodies](#) that have legislative power (e.g., Parliament), and the general public when voting on [ballot measures](#). Except as noted below, the following are generally not considered legislators and therefore communications with them will likely not be considered lobbying for a 501(c)(3) organization:

- Judges
- Officials serving in the executive branch of government, including agencies and departments
- School board members
- Housing authority commissioners
- Zoning board members
- Members of other similar local special purpose bodies

There are many more “special purpose” bodies whose members will not be considered legislators, but it is often difficult, especially at the local and international level, to determine whether an official is considered a legislator. Although the IRS has not articulated a specific standard, some factors that tend to show an official is **not** a legislator may include:

- The official is acting pursuant to legislative authority to implement law OR
- The official must act within a specific legal framework approved by a legislative body OR
- The official’s board or body adopts rules that do not have broad application and its decisions are limited to a specific jurisdiction, such as a school district

---

<sup>1</sup> Organizations that have not made the 501(h) election are subject to the “insubstantial part” test. While insubstantial part test filers are allowed to lobby, the rules discussed in this fact sheet apply only to electing public charities. For more information on making the 501(h) election see the AFJ factsheet, [“Maximize Your Lobbying Limit”](#).

## **Influencing Administrative Regulations and Executive Orders Is Not Lobbying**

Under federal tax law, rules and regulations adopted by administrative and special purpose bodies are not specific legislation because an administrative body is interpreting and applying law already passed by the legislature. Therefore, 501(c)(3) organizations can do as much advocacy on administrative rules, regulations and other administrative actions as needed because these policies are not specific legislation. For example, an environmental organization could devote an unlimited amount of resources to influence the Environmental Protection Agency to set regulations limiting coal burning power plants.

Executive orders, which are within the sole discretion of the executive branch, are also not specific legislation. If, for example, an LGBT rights organization wrote to President Obama encouraging him to issue an order extending benefits to same-sex partners of federal employees, the communication would not count as lobbying.

It is important to note the definition of lobbying at the state and local level may vary. Administrative and executive branch lobbying may be reportable under lobbying disclosure rules at the state or local level. Check AFJ's [state law resources](#) for more information about the lobbying disclosure rules in your state. The federal Lobbying Disclosure Act may also impose certain disclosure and reporting obligations on your organization.

## **Administrative Officials May Be Considered Legislators in Limited Circumstances**

While administrative and executive branch officials are not typically considered legislators, at times these officials participate in the formulation of legislation, and communications with them may count as lobbying. An organization engages in direct lobbying when it communicates with any government official or employee who may participate in the formulation of legislation, if the principal purpose of the communication is to influence legislation. For example, it would be considered lobbying if an organization urged the head of a state's department of health and human services to influence the state legislature's proposed cutting of health service funding in the budget.

Whether an administrative official would be considered a legislator will largely depend upon the facts. To illustrate:<sup>2</sup>

- It is not lobbying for a nonprofit to propose to a Park Authority that it purchase a particular tract of land for a new park, even though such an attempt would necessarily require the Park Authority eventually to seek appropriations to support a new park.
- On the other hand, it would be lobbying if the nonprofit provided the Park Authority with a proposed budget to be submitted to a legislative body.<sup>3</sup>

---

<sup>2</sup> 26 CFR 56.4911-2(d)(4)

<sup>3</sup> Unless one of the four lobbying exceptions applies – See the AFJ factsheet, [What is Lobbying?](#), for more information on the four lobbying exceptions.



In the first example, advocating for a specific tract of land for the park is not lobbying because the decision is entirely within the purview of the Park Authority, which is not a legislative body. The second example is lobbying because the organization is involved in formulating legislation by proposing an appropriation of funding that must be approved by a legislative body.

---

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)