

THE 501(h) EXPENDITURE TEST

LOBBYING in general consists of communications intended to influence specific legislation.

Legislation is action by a legislative body, whether federal, state, or local. Action by judicial, executive and administrative bodies (including special purpose bodies like school and zoning boards) is not legislation, since these are not legislative bodies.

Specific legislation includes both legislation that has been introduced in a legislative body and a *specific legislative proposal* the organization supports or opposes. A treaty is specific legislation from the time the President's representative begins to negotiate it; an initiative is specific legislation when petitions are first circulated to place the question on the ballot.

DIRECT LOBBYING is a communication made to a legislator; employee of a legislative body; or any other government employee who may participate in the formulation of legislation (but only if the principal purpose of the communication is to influence legislation); and which:

- refers to specific legislation; and
- expresses a view on that legislation.

It is also direct lobbying when an organization asks its members to contact legislators in support of or in opposition to legislation. For this purpose, members are those individuals who contribute more than a nominal amount of time or money to the organization.

GRASS ROOTS LOBBYING encourages the public to contact legislators about legislation. A grass roots lobbying communication:

- refers to a specific piece of legislation;
- reflects a view on that specific legislation; and
- encourages the recipient of the communication to take lobbying action with respect to the specific legislation.

This last requirement, the "grass roots lobbying call to action," can take one of four forms:

- state that the recipient should contact a legislator or other relevant government employee for purposes of influencing the legislation;
- state the address, phone number, or similar information of a legislator or legislative body employee (note that a communication that provides contact information for the president or governor is not grassroots lobbying even though the communication may seek signing or vetoing legislation);
- provide a petition, post card, or similar means for the recipient to contact a legislator, legislative body employee, or other relevant government employee; or
- specifically identify a legislator(s) who will vote on the legislation as being: opposed to or undecided about the organization's view on the legislation; the recipient's legislator(s); or a member of a legislative (sub)committee which will vote on the legislation.

Identifying the sponsor(s) of a piece of legislation does not constitute a grass roots lobbying call to action.

WHAT IS NOT LOBBYING

Communications that do not contain all the required elements are not lobbying. For instance:

No specific legislation. A communication that refers only to broad policy objectives probably does not refer to specific legislation and thus contains no lobbying content. Similarly, general legislative proposals (such as "We must enact comprehensive campaign finance reform," or "It's time to get really tough on crime") that do not outline any specific elements do not meet this test.

Executive, not legislative action. The chief executive may occasionally act in a legislative capacity, as when s/he signs or vetoes a bill. However, action by the executive branch is ordinarily not within the definition of legislation and therefore attempts to influence executive orders, administrative agency action, and the like are not treated as lobbying activities.

Specific exceptions. A communication may contain all the elements of direct or grass roots lobbying and yet be exempted from the definition of lobbying because it is covered by one of four basic exceptions:

- Nonpartisan study, analysis and research. A communication that takes a view on specific legislation and advocates for that view point may qualify for this exception if it provides a sufficiently full and fair exposition of the underlying facts to enable a member of the general public to form an independent opinion or conclusion about the subject. The communication must be made available to the general public, a segment of the general public, or to governmental bodies or employees. It may not contain one of the first three types of grass roots calls to action.
- Examinations and discussions of broad social, economic and similar problems. These are communications that address the public, members of legislative bodies, or governmental employees on general topics which are also the subject of specific legislation. To be excluded from the definition of lobbying, they must not refer to specific legislation or *directly* encourage the recipients to take action.
- Requests for technical advice. A response to a *written* request from a legislative body or a legislative committee or subcommittee (*i.e.*, testifying in a committee hearing at the committee's request) is not considered lobbying. The testimony must be made available to all members of the requesting body.
- Self-defense. Communications that would otherwise be treated as direct lobbying fall into this exception if they relate to possible legislative actions which could affect the organization's existence, powers, duties, tax-exempt status, or the deductibility of contributions to the organization.