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# Administrative Advocacy

FACTSHEET | December 17, 2020

TOPICS

[Administrative Agencies](#), [Public Charity Advocacy](#)

Nonprofits have a wide variety of advocacy tools at their disposal to create change in their communities, including both administrative advocacy and lobbying. Administrative advocacy involves influencing the rules that government agencies use to implement laws. This can be a creative way for nonprofits to achieve their missions. Nonprofits have successfully persuaded U.S. presidents and governors to make or rescind executive orders and have convinced agencies at all levels of government to improve their regulations and policies.

These are some examples of administrative advocacy:

- Asking the President to rejoin the Paris climate accord.
- Urging the Pentagon to implement regulations allowing transgender people to serve in the military.
- Demanding that the local board of elections provide sample ballots in specific languages spoken in your community, as required by federal law.
- Calling on the local school board to end its contract with the police department to provide school resource officers.

When nonprofits influence how existing laws are implemented, they are engaging in advocacy, but not lobbying. Generally speaking, under federal tax law, lobbying is narrowly defined as attempting to influence legislation. 501(c)(3) public charities<sup>1</sup> can lobby within generous lobbying limits. Because administrative advocacy does not count as lobbying, 501(c)(3) organizations can

engage in significant administrative advocacy without exceeding their annual lobbying limits.

The definition of lobbying depends on which test a 501(c)(3) uses to measure and report their lobbying. 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. Similarly, grassroots lobbying requires urging the public to contact legislators to express a view about specific legislation<sup>2</sup>. To meet the definition of lobbying under 501(h), 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 of administrative and “special-purpose” bodies that do not meet the definition of lobbying and will not count against the organization’s lobbying limit.

These decisions include administrative rules, regulations, agency policies, and executive orders.

## 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). “Legislator” also includes the general public when they are voting on [ballot measures](#). Most other government officials are not considered legislators, so communications with them will likely not be considered lobbying for a 501(c)(3) organization. Non-legislative government officials who are administrative officials include:

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

## Influencing Administrative Rules, Regulations, Policies, and Executive Orders Is Not Lobbying

Whether you use the 501(h) expenditure test or the insubstantial part test, the core definition of lobbying is that the communication expresses a view about legislation. The rules and regulations administrative and special-purpose bodies adopt are not specific legislation, because an administrative body is simply interpreting and applying a law that the legislature already passed. So under federal tax law, 501(c)(3) organizations can do as much advocacy on administrative rules, regulations, and other administrative actions as needed. 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. In contrast, efforts to weigh in on a tougher Congressional Clean Air Act would count as lobbying.

Executive orders are also not specific legislation, because they are within the sole discretion of the executive branch. For example, an immigrant rights organization could write to President-elect Biden, encouraging him to reverse President Trump's Muslim ban. That communication would count as administrative advocacy rather than lobbying under IRS rules. Attempting to influence a governor's executive orders and executive actions would also not count as lobbying for the same reason.

It is important to note the definition of lobbying under state and local lobbying disclosure laws 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. If your organization does significant lobbying at the federal level, your organization may need to disclose or report those activities under the federal [Lobbying Disclosure Act](#).

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

Administrative and executive branch officials are not typically considered legislators. However, sometimes these officials participate in the "formulation of legislation." Formulation of legislation means signing bills into law or vetoing a bill. It also includes influencing the content of legislation, and can include drafting bills and giving input into a legislative budget. As a result, communicating with an administrative or executive branch official is considered lobbying if the principal purpose of the communication is to influence legislation. For example, it would be considered direct lobbying if an organization urged the head of a state's department of health and human

services to prevent the state legislature's proposed cuts to health funding in the budget.

Whether an administrative official would be considered a legislator will largely depend upon the facts<sup>3</sup>. For example:

- It is not lobbying for a nonprofit to ask the police chief to place a moratorium on using Tasers.
- On the other hand, it would be lobbying if the nonprofit asks the police chief to remove the proposed Taser purchase from her budget request to the city council<sup>4</sup>.

Organizations need to report lobbying on IRS Form 990, Schedule C. Because administrative advocacy does not meet the IRS definition of lobbying, public charities do not need to report their expenses for administrative advocacy.

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## **Using Private Foundation Funds for Administrative Advocacy**

Private foundations cannot make grants earmarked for lobbying, and they are not allowed to lobby themselves. Since administrative advocacy does not constitute lobbying, private foundations can engage in and earmark funds for administrative advocacy. For example, a private foundation can make a grant to an organization for the purpose of asking the Department of Agriculture to change the dietary requirements for school lunches. Also, the grantee could use those private foundation funds to sign on to a letter to the Department of Agriculture, encouraging federally funded school lunch programs to provide more salads and fruit. In fact, private foundations could send their own public comments to the Department. In fact, private foundations could send their own public comments to the Department of Commerce seeking healthier lunch choices or testify at agency meetings to share their concerns.

Administrative advocacy can be an incredibly powerful, but often overlooked, tool in the advocacy toolbox. Although 501(c)(3) public charities can and should

lobby, doing so is not always the best strategy. Working directly with government agencies may actually be the most effective way to improve public policy.

1 Private foundations, which are also 501(c)(3)s, have many of the same advocacy rights as public charities. Even though private foundations may not lobby (influence legislation), they may engage in administrative advocacy.

2 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 public charities that have chosen to use 501(h) to define, track, and report their lobbying. For more information on making the 501(h) election see the AFJ factsheet, "Maximize Your Lobbying Limit."

3 26 CFR 56.4911-2(d)(4)

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



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