

501 (h) Rules Explanation from Allen Mattison

On our webinar, I mentioned that section 501(c)(3) public charities have the option of using either of two sets of IRS definitions to measure their lobbying. The two tests are:

1. The 501(h) Expenditure Test; and
2. No Substantial Part Test.

The default is that an organization's lobbying will be measured under the No Substantial Part Test. For a variety of reasons, it would be better for small- to mid-sized organizations to use the 501(h) Expenditure Test. (Churches must use the No Substantial Part Test, but, as I mentioned, it's highly unlikely that a church would do so much lobbying that it would become a substantial part of its activities.)

To elect to use the 501(h) Expenditure Test, file [IRS Form 5768](#) (a very simple, short form). If you file it before the end of your fiscal year, it will be retroactive and will cover all activities for your organization's year. Be sure to tell your accountant, so they can check "yes" for the question on Part IV, line 4, and then fill out Form 990 Schedule C part II-A.

Public health groups on the call would be better off with the 501(h) rules because they provide very clear, specific definitions of lobbying, making it easier for your staff to understand whether a particular activity is lobbying or not. Importantly, these are the same definitions that your foundation funders already use in your grants, meaning your staff already needs to follow those definitions to ensure compliance with grants. So adopting them for your 990 reporting will simplify things.

There are two other significant benefits: The 501(h) rules will allow the organization do to more lobbying, and it will mean that more of your advocacy activities will be treated as non-lobbying activities.

1. More lobbying – The 501(h) rules set specific dollar limits on how much a 501(c)(3) public charity may spend on lobbying. For an organization of your size, these limits are higher under the 501(h) rules than under the rules you currently follow. For example, an organization that spends \$1 million annually on its overall program activities may spend up to \$175,000 per year on lobbying under the 501(h)

rules; under the Insubstantial Part Test, in comparison, it's not clear what the cap is, but the basic rule of thumb would be to spend no more than about 3-5% on lobbying, or no more than \$50,000.

2. More non-lobbying activity – The 501(h) rules allow you to treat lots of public communications about legislation as non-lobbying activity. So you can create reports, videos, op-eds etc. that support legislation and treat those expenditures as non-lobbying activities. But under the Insubstantial Part Test, these would be lobbying expenses.

In combination, these two benefits mean that it's not only simpler for your staff to use the 501(h) definitions, but it means that the organization can engage in far more advocacy (both lobbying and non-lobbying activity) using these definitions.