

## Communicating With Your Members

### Tracking and Treating Grassroots Communications with Members

Federal tax law allows certain lobbying communications with a 501(c)(3) public charity's members to be treated more favorably than communications with the general public. This fact sheet provides information on how to identify such communications and explains how to track and treat them. It is important to understand the [basic lobbying rules](#) and the [differences between direct and grassroots](#) lobbying before delving into the member communication rules discussed in this fact sheet.

### Organizational Benefits

Generally speaking, there are two primary benefits a public charity gains by taking advantage of the member communications rules discussed in this fact sheet. The first benefit is that a communication encouraging members to engage in lobbying through a [call to action](#) counts as direct lobbying (against the [larger direct lobbying limit](#)), instead of grassroots lobbying<sup>1</sup>. The second benefit is that when a public charity is distributing a multi-purpose communication to members (e.g., a newsletter or an educational piece that also has a [call to action](#)), only the lobbying portion of the publication is treated as direct lobbying, even if there are other sections of the publication on the same general subject.

While there are benefits to using the member communications rules, these tools are most helpful for a charity that wishes to reduce its grassroots lobbying expense totals--for example when it expects to exceed either its overall and/or grassroots lobbying limits. If the organization is not likely to exceed its overall or grassroots lobbying limits, it may be easier to avoid the initial time-consuming review and analysis of these member communication rules. That said, once the practice is institutionalized as a best practice, the analysis should become less onerous.

### Who is a Member?

The federal tax code provides special benefits to [501\(h\) electing](#) public charities for communications (e.g., newsletters, email blasts) with "members." The rules in this fact sheet are not available to organizations using the [insubstantial part test](#). The IRS defines a member as anyone who donates more than a nominal amount of time or money to the organization. The organization can apply this definition of member when taking advantage of these membership communication rules, even if it is not a membership organization or if the organization's bylaws use a different definition of member.

### Evaluating Your Distribution and Membership Lists

If the organization wants to take advantage of the member communication rules, it should develop a system to segregate or flag members and non-members in discrete distribution lists. Additionally, the organization should review its membership list as a whole on a regular basis to determine whether the members continue to fall within the definition of member.

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<sup>1</sup> However, if the communication to members encourages them to ask their friends and family to contact legislators about the bill, the communication will be considered as grassroots lobbying.

## What Type of “Communication” Is It?

As you’ll see below, how you track member communications depends upon whether: (1) your distribution list is entirely members (or at least 85% of the recipients are members); (2) more than half of the recipients are members; or (3) less than half of recipients are members. Examples follow:

- A communication is a **Member Communication** if at least 85% of recipients are members. If at least 85% of recipients are members, you can count ALL recipients as members.
- If more than 50% of the recipients are members, then you allocate the communication as member and non-member communication based on the percent of the list that is actually members (a **Primarily Member Communication**).
- If 50% or less of the recipients are members, then you do not count any of the recipients as members (a **Non-Member Communication**).

## Allocating Costs between Lobbying and Non-Lobbying Content

Often an organization sends out a newsletter or other communication that contains both lobbying and non-lobbying content. The benefit of sending a **Member Communication** or a **Primarily Member Communication** is that only the lobbying portion of the communication counts against the organization’s lobbying limit. In a **Non-Member Communication**, the lobbying content and all communication on the **same general subject** as the lobbying counts against the sending organization’s lobbying limit. The “**same general subject**” is defined as activities or issues that would be directly affected by the specific legislation referenced in the lobbying communication.

### Example:

A 501(c)(3) public charity is sending out a four-page newsletter. The first page contains an informative article about an endangered mountain bird; the second page discusses the harm that offshore oil drilling does to the coastline; the third page is dedicated to general fundraising; and the fourth page is an action alert, urging members to contact their legislators in support of a bill prohibiting offshore oil drilling. The total cost of the newsletter (including staff time, printing, and mailing costs) is \$1,000.

### Analysis:

If the newsletter is a **Member Communication** or a **Primarily Member Communication**, only the portion of the newsletter that is lobbying (page four) will count as lobbying. Under this scenario, your organization would calculate the total cost of the newsletter, and 25% of it (one page out of four), or \$250, would be a lobbying expenditure. If it is a **Member Communication**, the \$250 would normally be a grassroots lobbying expenditure (because it includes a call to action), but because it is being sent to members it is instead tracked as direct lobbying. If it is a **Primarily Member Communication**, then the \$250 would be allocated between direct and grassroots lobbying based upon the percentage of recipients that are members (as discussed in more detail below).

If the newsletter is a **Non-Member Communication**, the portion of the newsletter that is lobbying, plus all parts of the newsletter on the same general subject as the lobbying portion, will be considered lobbying. Using the same scenario, the second page (the article on the harm of offshore drilling) is on the same general subject as the lobbying communication on page four. This means that half the newsletter is lobbying and half is not (two pages out of four). In this example, your organization would calculate the total cost of the newsletter, and 50% of it, or \$500, will be grassroots lobbying.

## Allocating Costs Between Direct and Grassroots Lobbying

If a communication includes some direct and grassroots lobbying, the federal tax code also includes a formula for deciding how to allocate the costs between direct and grassroots lobbying. If the organization has sufficient room in its lobbying budget to simply count the entire communication cost as grassroots lobbying, it may be easier to do so. If, however, the organization would like to avoid counting the entire communication as a grassroots lobbying communication, it can follow this allocation method:

Non-Member	Primarily Member	Member
Generally, all lobbying is grassroots.	Apportion costs for a communication that encourages direct lobbying based on the percentage of members and nonmembers receiving the communication.	Generally, all lobbying is direct. If the communication asks members to urge non-members to act, then treat the communication as a grassroots lobbying expense.

### Example:

An organization sends out a multi-page newsletter that includes some direct lobbying (e.g., an invitation to participate in a lobby day) and some grassroots lobbying (a communication with a call to action). The total cost of the communication is \$1,000. How does it allocate the costs of the communication if:

- Page one includes an invitation to participate in the organization’s strategy session to prepare for a group lobbying day on Capitol Hill (direct lobbying),
- Page two is the same article on offshore drilling mentioned above,
- Page three is general fundraising (not lobbying), and
- Page four is the offshore drilling action alert (grassroots lobbying)?

### Analysis:

A. Page one will always be direct lobbying, no matter who receives the newsletter.

B. **Member Communications** that would normally count as grassroots lobbying can be treated as direct lobbying instead. If the newsletter is a Member Communication, the action alert encouraging members to contact their legislators can be counted as direct lobbying. Therefore, page one (\$250) and page four (\$250) are direct lobbying expenditures.

C. If this is a **Primarily Member Communication** (e.g., 70% member and 30% non-member), page one is still a \$250 direct lobbying expenditure, but the \$250 action alert is apportioned 70% direct (\$175) and 30% grassroots (\$75).

D. If the organization’s newsletter is a **Non-Member Communication**, the entire \$250 action alert will be grassroots lobbying because asking the general public (non-members) to communicate with their legislator is always grassroots lobbying. Remember, the article on the same general subject (page two) will

also be included because this is a Non-Member Communication. Page one is still a direct lobbying expenditure, making the total expenditure: \$250 direct (page one); \$500 grassroots (pages two and four).

Again, if the organization is not running up against its lobbying limits, it may prefer to disregard these allocations for practical reasons and simply treat the entire communication as a grassroots lobbying expense.

## **Special Rules for Ballot Measures**

Because the general public is considered the “legislature” when voting on ballot measures, this may provide special opportunities to 501(c)(3) organizations sending communications to their members regarding ballot measures. Some tax and election attorneys advise their clients that member communications which refers to, and reflects a view on, a ballot measure and is of direct interest to the organization and its members will not be lobbying at all even if it asks members to, for example, sign or circulate petitions to place a measure on the ballot or to vote for or against a measure. However, if the communication also asks members to urge nonmembers to vote a certain way, this communication will count as direct lobbying.

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