

## Transition Team Advocacy

Advocates have an important role to play when a new administration—either a new president or governor— is coming into power. Advocates will find that some of the activities discussed below will also be appropriate actions to take with newly elected legislators as well. The transition period (the time between election and inauguration days) is an important window of time when organizations, including 501(c)(3) charities, can build relationships and work to have their concerns made a priority of the new administration. There are many activities, including ones that do not constitute lobbying, that organizations can engage in to influence the policies and direction of a new administration.

When planning their activities, organizations, particularly 501(c)(3)s, need to determine whether their activities constitute lobbying under the IRS rules as well as [federal](#) or [state lobbying](#) disclosure laws. In general, direct lobbying is defined as a communication with a legislator that expresses a view about specific legislation (including the nomination of people to positions that must be confirmed by a legislative body). It may also include communication with certain executive branch officials, such as urging a governor to veto a bill or asking the Secretary of Education to ask Congress for an increased line item for a particular program. Grassroots lobbying is a communication with the general public that reflects a view on a specific piece of legislation (including a vote to confirm a nominee) and includes a call to action that encourages people to contact a legislative representative.

Public charities with lobbying-restricted funds will find there are many activities they can engage in that do not need to be counted as lobbying expenditures. Examples of *activities that usually do not count as lobbying* under the IRS rules include the following:

- **Recommend transition team members.** An effective way to have your policy positions prioritized is to have a member of the transition team who already supports your policy agenda appointed to the team. Recommending people to serve on the transition team is not considered lobbying because the positions are appointed.
- **Offer a list of potential candidates or suggest qualifications for key positions.** New administrations have many jobs to fill and having people who support your organization's goals will help move your policy priorities. In the context of nominations, it would be direct lobbying to share with an executive branch official the name of one potential candidate or encourage the legislature to confirm or reject a nominee. However, merely providing members of the transition team or members of the new administration with a long list of potential nominees for cabinet-level positions or judicial appointments, or suggesting qualifications or traits hoped for in nominees, would not rise to the level of direct lobbying.
- **Offer your analysis of an issue to educate the transition team and new administration.** The transition period is an ideal time to educate the transition team and new administration about your organization's issues. A public charity can shape its transition-related advocacy to fit into the nonpartisan analysis, study, or research exception to lobbying. This exception offers an opportunity to disseminate truly educational materials which reflect a view on an issue, but it must be done carefully.

In order to qualify for this exception, a publication must pass two tests: the content test and the distribution test. To pass the content test, the communication must provide a sufficiently full and balanced discussion of the underlying facts to enable a member of the general public to form an independent opinion. Under the distribution test, the communication must be made available to the general public, a segment of the public or government bodies or employees, and even legislative bodies – provided it is widely disseminated. A communication cannot qualify for this exception if it refers to specific legislation and includes a grassroots call to action.

For example, a gun safety group could urge support for universal background checks in a publication that explores the experiences of states with such laws to the experiences of states without extensive background check laws. Similarly, a health care access group could encourage expansion of Medicaid in its state in an analysis that compared the health outcomes of low-income residents in their state with those of low-income residents in states that had expanded Medicaid coverage. For more information, see Bolder Advocacy’s publication, [\*Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities.\*](#)

- **Consider visibility events for key transition events.** A public demonstration or a visibility event is another way to publicize and promote your issue. As long as you do not include a call to action, a visibility event is not lobbying. For example, an environmental organization could hold a visibility event where supporters hold signs that say: “Fracking causes earthquakes” or “Fracking pollutes” without incurring lobbying expenses. Similarly, a reproductive rights group could have supporters attend a rally, using signs that say: “Support Women’s Health.”
- **Invite the incoming official or surrogates to your events or to visit your program.** Having an incoming official attend an event or visit your program can be a particularly effective way for service providers to build relationships with new officials, educate them on their programs and the services provided, and highlight the important work the program accomplishes. Inviting new officials to an event is a way to show the strength of your support and to introduce the new official to constituents who support your cause.
- **Learn as much as you can about the incoming official.** The transition period is an ideal time to learn more about incoming officials who can have an impact on your agenda. Organizations should learn which issues motivate or concern the official as well as those areas where they are not in agreement. Knowing about an official’s existing viewpoints will make your advocacy stronger as you will know where to target efforts.

Many other transition-related activities will likely constitute lobbying. *Lobbying activities during the transition period* could include the following:

- **Create a Blueprint of your policy priorities.** A Blueprint is an opportunity to educate the new administration about your budget and policy priorities and urge it to adopt your goals as administration priorities. A Blueprint should usually be considered a lobbying communication because it is typically shared with elected officials and calls for adoption of a legislative position. An organization could also create a Blueprint that meets the definition of the nonpartisan analysis exception to lobbying as discussed above. A Blueprint could also focus

on executive orders and other administrative issues, such as the repeal or adoption of regulations, and not be counted as a lobbying communication.

- **Promote your Blueprint with the Transition Team.** Don't stop at sending in your Blueprint—offer to meet with transition team members to discuss it. If the team holds public meetings, attend. If there are opportunities to testify, sign up and offer testimony urging adoption of your Blueprint recommendations.
- **Publicize your Blueprint.** Send a press release when you send your Blueprint to the transition team, tweet about it and post information on your website. Organizations may also want to inform their supporters about their transition advocacy and encourage them to take action. Any actions that ask members of the public to contact a legislator or executive level official to support or oppose specific legislation would be considered grassroots lobbying.
- **Recommend and support people for nomination to key positions in the administration and for judicial vacancies.** In the context of nominations, it is direct lobbying to share with an executive branch official the name of a candidate you support for nomination to a key position, including a candidate for nomination to a federal court. If you encourage members of the legislature to confirm a nominee, that activity is direct lobbying as confirmation involves a vote of a legislative body. Encouraging members of the general public to contact their legislators to vote for or against confirmation of a nominee would be considered grassroots lobbying.

---

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.