

Lobbying: Individual and 501(c)(3) Organizations

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Lobbying is the most direct form of advocacy. Many people think there is a mystique to lobbying, but it is simply the act of meeting with a government official or their staff to talk about an issue that concerns you and that you would like addressed. The most common type of lobbying is contact with members of Congress or their staff, but housing advocacy should not be limited only to legislators. It is often important to lobby the White House or officials at HUD and other agencies. Lobbying the White House can be especially important leading up to the President's budget proposal each year, setting the tone for budget work to come in the House and Senate.

Whether meeting with members of Congress or officials of the Administration, remember that constituent feedback is a valued and necessary part of the democratic process. You do not have to be an expert on housing policy to lobby. The perspective you can provide on the housing situation in your local area is extremely valuable. Indeed, you are the expert on what is happening in your district or state and you are a resource to officials in DC.

It is helpful to remember that the most effective advocacy requires positive relationships, usually with staff members in congressional and administrative offices. Sometimes officials may seem to be staunch opponents, but simply must be educated on housing issues before they can become allies. It can be a gradual process. Expose officials and their staff to the issues of homelessness and affordable housing by inviting them to your events, or to tour your agency or a housing development. Keep in mind that even those offices who support affordable housing issues and legislation still need to hear from you so that it remains a top priority on their agenda. Legislative allies are more likely to continue their

support when they think it gets noticed, so make sure to offer your thanks and find ways to keep them engaged.

There are several important initial factors to consider when you lobby. Determine the proper target of your advocacy efforts. On federal issues, you will want to decide whether it is best to bring your message to a Member of Congress for legislative action or to Administration officials. Also think about whether you are lobbying on behalf of yourself or on behalf of an organization. This can determine not only the type of message you present, but also whether there is necessary record keeping for your lobbying activity.

EFFECTIVE MEETINGS

If you have never lobbied before, it may help to think of the visit as a twenty-minute conversation in which you will share your insight and positions on affordable housing policy. Consider your meeting an opportunity to build working relationships with decision makers and to educate them on the importance of your local work.

A face-to-face meeting is often the most effective way to get your voice heard. Given the busy schedule of most officials, they may ask you to meet with a staff person who handles housing issues. Very often, staffers can spend more time delving into your concerns than an elected official would be able to devote, so getting to know influential staff people and building relationships with them is crucial.

Scheduling a Meeting

Call the office you hope to meet with to request an appointment well in advance of your visit. Usually you will want to call about four weeks ahead of your intended meeting date. It may take a while for the office to schedule the meeting once you have made the request. In some cases, offices do not like to assign specific staff to meetings more than one week

in advance because they like to remain flexible as committee hearings and floor votes are being scheduled.

If you are setting up a local meeting, locate the contact information for your Member of Congress' district office or for the local field office of the administrative agency. If you are planning to visit Washington, DC, contact the member's Capitol Hill office or the appropriate federal agency (for contact information for key members of Congress and offices of the Administration, see *Congressional Advocacy and Key Housing Committees and Federal Administrative Advocacy* in this *Guide*).

When you call, identify yourself as a constituent to the person who answers the phone. Many offices give priority to arranging meetings for constituents because the time of Members and their staff is limited. Ask first to schedule a meeting with the official. If the scheduler indicates that he or she will not be available, ask to meet with the relevant staff person which will most often be the legislative assistant who covers housing issues.

When scheduling the appointment, be sure to tell the office where you are from in the district or state, the organization you represent, the purpose of the meeting, and the number of people who will be attending the meeting so the staffer can reserve an appropriately sized meeting room.

The scheduler may ask for a list of names of attendees; this is information that can often be sent closer to the date of the meeting. Some offices may ask you to email or fill out a web form to request the meeting rather than give the information over the phone.

Call the office the week prior to the meeting to confirm. If you are meeting with a specific staff person, email them the week prior to confirm the meeting date and time, to reiterate the purpose of the meeting, and to send relevant information for them to review in advance.

Crafting Your Agenda

Developing a well-planned agenda for your meeting will help you maximize your time. Set

an agenda based on how much time you have, usually no more than 20 or 30 minutes. If you will be lobbying in a group, decide who will lead the meeting and what roles everyone will play.

Before you set the agenda, it is useful to research the office's past positions and statements on housing issues. You can review roll call votes on key affordable housing bills at <http://thomas.gov> to find out how a Member of Congress has voted on housing legislation. If you need help, don't hesitate to contact the NLIHC Housing Advocacy Organizer for your state, which you can find at <https://nlihc.org/housing-needs-by-state>.

Logistics of the Meeting

Make sure you know the building address and room number where your meeting is being held. Arrive early, as security can be tight at federal offices, especially those on Capitol Hill. If there are congressional hearings at the same time as your meeting, the lines to enter the buildings can be very long and you can end up waiting 15 minutes or more to enter. Do not bring items that may trigger a security concern and delay your entry into a building. The House and Senate office buildings are large and it takes time to navigate to the office where your meeting will be held. Have the name of the person with whom you are meeting readily available.

Conducting Your Meeting

At your meeting, take the time to introduce each attendee and their unique expertise or role in local work. Start the meeting by offering thanks to the official for an action they have taken to support affordable housing, or by highlighting a specific area of interest that you might share. If you are meeting with a regular ally of affordable housing efforts, acknowledge past support at the beginning of the meeting. If meeting with an office that has an unfavorable record on your issues, indicate that you hope to find common ground to work together on issues critical to your local community. Keep in mind that as you educate congressional or administrative offices over time, they may eventually shift their positions favorably.

Next, provide a brief overview of the affordable housing challenges in your community and the

nation. Unless you already have a relationship with the person you are meeting with, do not assume that they have a deep understanding of the problem. Make sure, however, not to spend too much time on these first portions of the meeting so that you have time to substantively discuss your specific issue of concern. Including personal stories and experiences within your message can often get your point across in a more compelling fashion.

Move into the main portion of the meeting by giving a brief description of the top two or three specific housing issues you want to discuss. Try to present the issues positively, as solvable problems. In deciding how to frame your message, research the background of the official you are meeting with to gain insight regarding their professional interests and personal concerns, memberships, affiliations, and congressional committee assignments. These roles and interests are often listed on their website. This information may help you gauge how your concerns fit in with their priorities.

When discussing these issues, do not feel like you must know everything about the topic. If you are asked a question you cannot sufficiently answer, indicate that you will follow up with more information. Offering to provide further detail and answers is an excellent way to continue being in touch with the office after the meeting. If the conversation turns to a topic that is not on your agenda, listen and respond appropriately but steer the meeting back to your agenda since you will have limited time to discuss your main points. Be sure to make the meeting conversational; you want to learn the perspective of the official in addition to making your points.

Have a specific “ask” on the housing issues you raise; for example, suggest that a Member of Congress sponsor, co-sponsor, or oppose a bill. Decide on a concrete action you would like to see taken as a step in resolving the local affordable housing challenges you have presented. Explain how your ask fits within the official’s priorities. The office will agree to this ask, decline, or say they need time to consider. If they decline, ask

how else they might be willing to address the issues you have raised. Suggest ways that you or your organization can be helpful in achieving the end goal of solving the housing challenge.

Before closing the meeting, it is important to try to get an answer on your ask regarding specific legislation or policy changes, even if the answer is “maybe” or “no.” Make a follow-up plan based on this response; you will often want to present further information or recruit additional voices. If at the end of your meeting the official or staff person seems to be leaning against your position, keep the door open for future discussion. Agree to check in with staff after an appropriate amount of time to find out if there is a final decision or to support other next steps. In closing the meeting, be sure to express thanks for their time and interest in the topics they raised.

Leave Behind Written Materials

It is useful to have information to leave with the official or staffer for further review and reference it as needed. To emphasize the extent of the housing crisis in your community, provide information such as: your state’s section of *Out of Reach*, which shows the hourly housing wage in each county; the appropriate NLIHC Congressional District Profile or State Housing Profile that shows rental housing affordability data by congressional district and state; and other NLIHC research reports which can be found at <https://nlihc.org/explore-issues/publications-research/research>. Be sure to bring information on the United for Homes campaign and the national Housing Trust Fund.

Follow up After Your Meeting

Following your visit, send a letter or email thanking the official or staff member for their time, reaffirming your views, and referencing any agreements made during the meeting. Include any information that you agreed to provide. Monitor action on your issues and asks over the coming months and contact the official or staff member to encourage them to act during key moments, or to thank them for taking action. If the issue that you lobbied on is being tracked by your statewide affordable housing coalition

or NLIHC, it is helpful to report the results of the meeting. If aware of your meeting, statewide coalitions and NLIHC can build on your lobbying efforts and keep you informed as issues move forward.

CONGRESSIONAL RECESS

Throughout the year, Congress goes on recess, and Senators and Representatives leave Washington for their home districts. Members spend this time meeting with constituents and conducting other in-district work. Recess provides advocates with a great opportunity to interact with members of Congress face-to-face, without having to travel to Washington, DC. Take advantage of recesses by scheduling meetings with your Senators and Representative.

Many members of Congress also hold town hall meetings during recesses; these events provide the opportunity to come together as a community to express concerns and ask questions about an official's positions on important policy issues. If your members of Congress are not planning to convene any town hall meetings during a recess, you may be able to work with others in the district to organize one and invite your Members to participate.

It is important to note that members of Congress cannot officially introduce or co-sponsor legislation during recess, and because Congress is not in session, there are no votes on legislation during this time. It is therefore especially important to follow up on any meetings held during recess once Congress resumes session, especially if commitments were made regarding legislation.

To find out when the House is scheduled to go on recess, visit <http://house.gov/legislative>. To find out when the Senate is scheduled to go on recess, visit <http://bit.ly/2lwx2rC>

SENDING EMAILS

Email is now the most common way to communicate with members of Congress and their staff. Many congressional staff people prefer emails because they can be easily labeled,

archived, and tallied. Make sure to present your affordable housing concern concisely and specifically and to reference specific bills when possible. In general, it is best to reach out to a specific staff person in a congressional office, because emails to a general inbox may not be correctly forwarded according to your issue area. Remember, congressional offices can receive upwards of 50,000 emails each month, so it is key to make contact with a specific housing staffer. If you do not know how to find the email address of the best person for a particular office, contact NLIHC's Field Team at outreach@nlihc.org and they will provide that information.

MAKING PHONE CALLS

Calls can be especially effective if a staff person receives several calls on the same topic within a few days of each other, so you may want to encourage others in your district or state to call at the same time you do. When you call, ask to speak to the staff person who deals with housing issues. If calling a member of Congress, be sure to identify yourself as a constituent, say where you are from, and if applicable, have the names and numbers of relevant bills. The days before a key vote or hearing are an especially effective time to call.

WRITING LETTERS

Because of extensive security screening that delays delivery, letters are a decreasingly effective tool for letting members of Congress and other decision makers know how you feel about issues. For members of Congress, address the letter to the housing staffer to ensure it ends up in the right hands. Use the following standard address blocks when sending letters to Congress:

Senate

The Honorable [full name]
ATTN: Housing Staffer
United State Senate
Washington, DC 20510

House of Representatives

The Honorable [full name]
ATTN: Housing Staffer

United State House of Representatives
Washington, DC 20515

To find out the phone number for your Member of Congress, visit NLIHC's congressional directory at <http://cqrcengage.com/nlihc/lookup>, or call the U.S. Capitol Switchboard at 202-224-3121.

ADDITIONAL WAYS TO ENGAGE ELECTED OFFICIALS

Visits, letters, and calls are not the only effective ways to communicate your priorities to officials. Other ways to engage them include:

- Inviting an official to speak at your annual meeting or conference.
- Tweeting at them or commenting on their Facebook posts can be effective because many legislators are increasingly focused on cultivating an active presence on social media.
- Organizing a tour of agencies or housing developments and featuring real people telling their success stories.
- Holding a public event and inviting an official to speak.
- Getting media coverage on your issues. Organize a tour for a local reporter or set up a press conference on your issue. Call in to radio talk shows or write letters to the editor of your local paper. Call your newspaper's editorial page editor and set up a meeting to discuss the possibility of the paper's support for your issue. If you succeed in generating press, be sure to forward the coverage to housing staffers for your members of Congress.
- Eliciting the support of potential allies who are influential with officials, like your city council, mayor, local businesses, unions, or religious leaders.

FOR MORE INFORMATION

- National Low Income Housing Coalition, 202-662-1530, <https://nlihc.org>.

- Contact NLIHC's Field Team by contacting outreach@nlihc.org and finding the Housing Advocacy Organizer for your state.

For contact information for key members of Congress and offices of the Administration, see the *Congressional Advocacy and Key Housing Committees* and *Federal Administrative Advocacy* article in this *Guide*.

LOBBYING AS AN INDIVIDUAL

The undeniable benefit of lobbying in an official capacity on behalf of an organization or coalition is that the broad reach of the group's membership, clients, and staff deepens the impact of your message. By contrast, a benefit of lobbying as an individual is that it can free you to discuss issues you care about in a more personal manner without concern for any potential limitations placed by a board of directors or organizational policy. Remember that even when you do not speak on behalf of your organization or employer, it is always appropriate to mention what affiliations or work have informed your perspective.

Much like organizational lobbying, the key to lobbying as an individual is to ensure that your voice is heard and that congressional and Administration officials are responding to your particular concerns. This is most effectively achieved by doing in-person meetings, but phone calls and emails can be influential as well.

LOBBYING AS A 501(C)(3) ORGANIZATION

Contrary to what many nonprofits believe, 501(c)(3) organizations are legally allowed to lobby in support of their organization's charitable mission. The Internal Revenue Service (IRS) defines lobbying as activities to influence legislation. Electoral activities that support specific candidates or political parties are forbidden, and nonprofits can never endorse or assist any candidate for public office. The amount of lobbying an organization can do depends on how the organization chooses to measure its lobbying activity. There are two options to determine lobbying limits for 501(c)

(3) groups—the insubstantial part test and the 501(h) expenditure test.

Insubstantial Part Test

The insubstantial part test automatically applies unless the organization elects to come under the 501(h) expenditure test. The default insubstantial part test requires that a 501(c)(3)'s lobbying activity be an “insubstantial” part of its overall activities. Unfortunately, the IRS and courts have been reluctant to define the line that divides substantial from insubstantial. Most lawyers agree that if up to 5% of an organization's total activities are lobbying, then the organization is generally safe. The insubstantial part test is an activity-based test that tracks both activity that the organization spends money on, as well as activity that does not cost the organization anything. For example, when unpaid volunteers lobby on behalf of the organization, these activities would be counted under the insubstantial part test. There are no clear definitions of lobbying under the insubstantial part test.

501(h) Expenditure Test

Fortunately, there is an alternative test that provides much clearer guidance on how much lobbying a 501(c)(3) can do and what activities constitute lobbying. The 501(h) expenditure test was enacted in 1976 and implementing regulations were adopted in 1990. This choice offers a more precise way to measure an organization's lobbying limit because measurements are based on the organization's annual expenditures. The organization is only required to count lobbying activity that actually costs the organization money (i.e., expenditures); therefore, activities that do not incur an expense do not count as lobbying. A 501(c)(3) can elect to use these clearer rules by filing a simple, one-time form – IRS Form 5768 (available at: www.irs.gov). To determine its lobbying limit under the 501(h) expenditure test, an organization must first calculate its overall lobbying limit. This figure is based on an organization's “exempt purpose expenditures;” generally this is the amount of money an organization spends per year. Once an

organization has determined its exempt purpose expenditures, the following formula is applied to determine the organization's overall lobbying limit: 20% of the first \$5,000,000 + 15% of the next \$500,000 + 5% of the remaining.

There is a \$1 million yearly cap on an organization's overall lobbying limit. This means that if an organization chooses to measure its lobbying under the 501(h) expenditure test, it also agrees not to spend more than \$1 million on lobbying activity each year.

There are two types of lobbying under the 501(h) expenditure test: direct lobbying and grassroots lobbying. An organization can use its entire lobbying limit on direct lobbying, but it can only use one-fourth of the overall limit to engage in grassroots lobbying.

Direct lobbying is communicating with a legislator or legislative staff member (federal, state, or local) about a position on specific legislation. Remember that legislators also include the President or governor when you are asking them to sign a bill into law or veto a bill, as well as Administration officials who have the ability to influence legislation.

Grassroots lobbying is communicating with the general public in a way that refers to specific legislation and that takes a position on the legislation and calls for action. A call to action contains one to four different ways the organization asks the public to respond to its message: (1) asking the public to contact their legislators; (2) providing the contact information, for example the phone number, for a legislator; (3) providing a mechanism for contacting legislators such as a tear-off postcard or an email link that can be used to send a message directly to legislators; or (4) listing those voting undecided or opposed to specific legislation. Identifying legislators as sponsors of legislation is not considered a call to action.

The regulations clarify how the following communications should be classified:

- Ballot Measures: communications with the general public that refer to and state a position on ballot measures (for example,

referenda, ballot initiatives, bond measures, and constitutional amendments), count as direct lobbying, not grassroots lobbying, because the public are presumed to be acting as legislators when voting on ballot measures.

- Organizational Members: the 501(c)(3)'s members are treated as a part of the organization, so urging them to contact public officials about legislation is considered direct, not grassroots, lobbying.
- Mass Media: any print, radio, or television ad about legislation widely known to the public must be counted as grassroots lobbying if the communication is paid for by the nonprofit and meets other, rather nuanced provisions: refers to and includes the organization's position on the legislation; asks the public to contact legislators about the legislation; and appears on the media source within two weeks of a vote by either legislative chamber, not including subcommittee votes.

Lobbying Exceptions

There are some specific exceptions for activities that otherwise might appear to be lobbying under the 501(h) expenditure test. It is not lobbying to:

- Prepare and distribute a substantive report that fully discusses the positives and negatives of a legislative proposal, even if the analysis comes to a conclusion about the merits of that proposal. The report cannot ask readers to contact their legislators or provide a mechanism to do so, and it must be widely distributed to those who would both agree and disagree with the position. This non-partisan distribution can be achieved through an organization's website and to all members of the legislative body considering the proposal.
- Respond to a written request for testimony or assistance at the request of the head of a government body such as a legislative committee chair.
- Support or oppose legislation if that

legislation impacts its tax-exempt status or existence. This lobbying exception is narrow and should be used with caution after consultation with an attorney.

- Examine and discuss broad social, economic, and similar problems. For example, materials and statements that do not refer to specific legislation are not lobbying even if they are used to communicate with a legislator. Additionally, materials and statements communicating with the general public and expressing a view on specific legislation but that do not have a call to action are also not considered lobbying.
- Litigate and attempt to influence administrative (regulatory) decisions or the enforcement of existing laws and executive orders.

Record Keeping

A 501(c)(3) organization, when it is measuring its lobbying under the insubstantial part test or the 501(h) expenditure test, is required to reasonably track its lobbying in a way sufficient to show that it has not exceeded its lobbying limits. There are three costs that 501(h)-electing organizations must count toward their lobbying limits:

- Staff Time: for example, paid staff time spent meeting legislators, preparing testimony, or encouraging others to testify.
- Direct Costs: for example, printing, copying, or mailing expenses to get the organization's message to legislators.
- Overhead: for example, the pro-rated share of rented space used in support of lobbying (a good way to handle this is to pro-rate the cost based on the percentage of staff time spent lobbying).

Although the 501(h) election is less ambiguous than the insubstantial part test, it is important to carefully consider which option is best for your organization.

FOR MORE INFORMATION

Alliance for Justice (AFJ): AFJ publishes a detailed, plain-language book on the 501(c)(3) lobbying rules called *Being a Player: A Guide to*

the IRS Lobbying Regulations for Advocacy Charities. Another AFJ publication, *The Rules of The Game: A Guide to Election-Related Activities for 501(c)(3) Organizations (Second Edition)*, reviews federal tax and election laws which govern nonprofit organizations with regard to election work and explains the right and wrong ways to organize specific voter education activities. AFJ also publishes guides on related topics, such as influencing public policy through social media, and offers workshops and technical assistance for nonprofit organizations.

Alliance for Justice, 202-822-6070, www.afj.org.