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Good Governance of Nonprofit Organizations

September 29, 2020

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**GOOD GOVERNANCE OF
NONPROFIT
ORGANIZATIONS
DURING THE COVID CRISIS AND
BEYOND**

September 29, 2020

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Agenda

- 8:30 A.M. Webcast Login Open**
- 8:45 A.M. Welcome, Course Objectives, and Introductions
- Philip M. Purcell
- 9:00 A.M. Organization and Current Developments for Nonprofits Under Indiana Law
- Michael N. Red
- 9:45 A.M. Organization and Current Developments for Nonprofits Under Federal Law
- Philip M. Purcell
- 10:15 A.M. Break**
- 10:30 A.M. Impact of CARES Act on Philanthropy; Grants to Assist COVID and Social Relief
- Philip M. Purcell
- 11:00 A.M. Current Developments in the International Activity of Nonprofits
- Lara A. Kalwinski
- 11:45 A.M. Lunch Break**
- 12:30 P.M. Organization and Current Developments of Benefit Corporations Under Indiana Law
- Philip M. Purcell
- 12:45 P.M. Current Developments in Financial Accounting for Nonprofits
- T. Andrew Roberts
- 1:30 P.M. PPP Loan Current Developments
- Ted R. Batson, Jr.
- 2:15 P.M. Break**
- 2:30 P.M. Current Standards for Lobbying and Political Campaign Activity by Nonprofits
- Katherine T. LaBeau
- 3:15 P.M. Current Ethical Best Practices for Nonprofits
- Tamara L. Weaver
- 4:15 P.M. Adjourn**

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Phil Purcell, CFRE, MPA/JD, currently serves as the Director of Planned Giving for the Central Territory of the Salvation Army. In this role, he is the directional leader of 39 planned giving officers in 11 states who close approximately \$70 million in planned gifts each year. Formerly, he served as Senior Counsel for Philanthropy on behalf of the Fellowship of Catholic University Students where he assisted approximately twenty major gift officers engaged in a \$250 million multi-year campaign with a \$100 million goal for planned giving.

Phil has served as Vice-President for Planned Giving and Endowment Stewardship at the Ball State University Foundation where he assisted with the successful completion of a \$200 million campaign, of which \$65 million in planned gifts was raised. He also was director of gift planning for the Central Indiana Community Foundation where he directed the Planned Giving Resource Center. Phil served as director of development and planned gifts for St. Vincent Hospital Foundation and director of planned gifts and development counsel for Rose-Hulman Institute of Technology.

Phil is an attorney and member of the American and Indiana State Bar Associations. He is Senior Consultant and the lead planning attorney for the Heaton Smith Group, a national charitable and estate planning consulting firm. Phil also serves as Editor for *Planned Giving Today*, a monthly national publication. He is lead legal advisor for the national Community Foundation Legal Help Desk. He serves of counsel to the Indianapolis law firm, Fleming Stage. Phil teaches courses on law and philanthropy, nonprofit organization law and planned giving as adjunct faculty for the Indiana University Maurer School of Law (Bloomington, IN) and Indiana University Lilly School of Philanthropy and The Fundraising School (Indianapolis, IN). He also serves on the faculty of the American Institute for Philanthropic Studies (Long Beach State University).

Phil serves as Vice Chair of the Legislation Committee of the American Bar Association's Charitable Giving and Organizations Group and as a member of the Tax-Exempt Organization Advisory Council for the Internal Revenue Service (Great Lakes states). He currently serves on the board of directors of the American Council on Gift Annuities. Phil formerly served on the board of directors for the National Association of Charitable Gift Planners (past

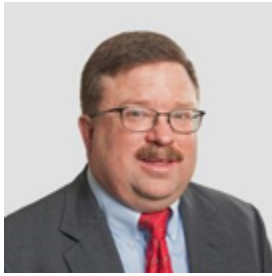
secretary), Charitable Gift Planning Group of Indiana (past president), Association of Fundraising Professionals - Indiana Chapter (past president), Central Indiana Land Trust, and Catch the Stars Foundation. He has written articles on charitable gift and estate planning which have appeared in *Planned Giving Today*, *The Journal of Gift Planning*, *CASE Currents*, *Planned Giving Design Center* and other publications.

Phil has consulted on behalf of over 300 charitable organizations of all types. His consulting focuses on state and federal legal issues (e.g., bylaws, tax exemption applications), philanthropy (e.g., fundraising, gift agreements, policies/procedures, endowments, planned giving) and nonprofit governance (e.g., strategic planning, duties of boards of directors). Phil serves as lead counsel for the national Community Foundation Legal Help Desk, an online subscription service. He has served as an expert witness in court cases and trials on topics related to the law of philanthropy, nonprofit organizations, endowments, scholarships and related issues. He is a Certified Fundraising Executive (CFRE).

He has spoken on topics related to law, nonprofit governance and philanthropy before national, regional and local conferences. His presentations have qualified for continuing education credit for fundraisers, attorneys, accountants, financial planners, trust officers and life insurance professionals throughout the U.S. Phil received his B.A. degree from Wabash College (magna cum laude) and his J.D. and M.P.A. degrees (with honors) from Indiana University. He received a Harry S. Truman scholarship is a member of the academic honorary societies Phi Beta Kappa and Pi Alpha Alpha.

Ted R. Batson, Jr.

CapinCrouse LLP, Indianapolis



Ted Batson, JD, MBA, CPA, CFP, is a certified public accountant and tax attorney. A partner with CapinCrouse LLP, Certified Public Accountants, Ted advises exempt organizations of all sizes on a wide range of issues, including exempt organization taxation and representation before federal and state tax authorities.

Ted is a past presenter at ICLEF conferences and is a frequent speaker the AICPA Advanced Estate Planning Conference and other industry conferences. Ted is a past member of the AICPA Trust, Estate, and Gift Technical Resource Panel.

Ted is a graduate of the Indiana University Robert H. McKinney School of Law (summa cum laude), the Indiana University Kelley School of Business, and Asbury University.

Lara Kalwinski
General Counsel



Lara Kalwinski is General Counsel and Corporate Secretary at Relief International, an international nonprofit organization delivering solutions for people in fragile settings. She navigates nonprofit tax and operational issues including complexities associated with navigating the global transfer of grant funds in destabilized and sanctioned regions. Ms. Kalwinski previously served as Senior Counsel, Policy and Compliance and the Executive Director of National Standards for the Council on Foundations. She led the Council on Foundation's work on behalf of member foundations with Congressional committee staff; state and federal regulators; and peer philanthropic organizations. Her career includes two years in India, conducting research for the Indiana University Center for Constitutional Design in Liberia, and being invited to train foundation staff throughout Japan. Ms. Kalwinski has represented INPOs in The Hague, at the World Bank, and at the UN in Vienna. She is a Lilly Endowment Community Scholar, received the Indiana Governor's Award for Tomorrow's Leaders, and was the 2019 recipient of the Outstanding In-House Counsel Award from the Nonprofit Organizations Committee of the American Bar Association, Business Law Section.

Katherine T. LaBeau

Perkins Coie LLP, Washington, D.C.



Political law attorney *Katherine LaBeau* advises tax-exempt organizations on a spectrum of federal tax, corporate and campaign finance matters. In her practice she represents nonprofit clients, including 501(c)(4) social welfare organizations, 501(c)(3) charitable organizations and 527 political organizations, helping them navigate complex federal tax questions, seek federal tax-exemption and understand the nuances of the Internal Revenue Code and IRS regulations. She also advises nonprofit clients that utilize complex subsidiary structures, helping them achieve their mission while staying legally compliant, particularly with respect to federal tax rules.

As outside general counsel to both new and established nonprofits and political committees, Katherine advises on the organizations' governance, operations and contracts. Both nonprofits and for-profit companies rely on her counsel to maintain compliance with state and local ethics rules and lobbying laws and reporting requirements.

Additionally, Katherine counsels federal and state political committees, including super PACs, 527 organizations and candidate committees, on state and federal campaign finance laws and First Amendment issues.

Committed to pro bono work, Katherine is an advanced volunteer income tax preparer through the IRS Volunteer Income Tax Assistance program and the Washington, D.C. nonprofit, Community Tax Aid.

Katherine is an active member of the American Bar Association Section of Taxation, Exempt Organizations Committee and the D.C. Bar Association Taxation Section.

Michael N. Red

Morse & Bickel, P.C., Indianapolis



Michael Red is a partner with the law firm of Morse & Bickel, P.C., focusing in the practice areas of property tax and real estate related litigation.

Mike represents real estate developers, owners, and managers with respect to property tax assessment and exemption. Working through Indiana's assessment appeals process, Mike has helped taxpayers achieve assessed value reductions in excess of one hundred million dollars, resulting in millions of dollars in tax savings. Similarly, Mike has been at the forefront of charitable purposes litigation in Indiana and has helped a wide variety of charitable organizations establish and maintain exemption for their properties.

Mike regularly represents parties to various types of real estate transactions in dispute resolution and related civil litigation. Mike has successfully represented developers, owners, managers, and other parties in a variety of real estate related disputes ranging from single-issue premises liability cases to multiyear, multi million-dollar financing, construction, management, and investor litigation.

Other areas of practice include federal, state, and local taxation, tax litigation, and tax-exempt and nonprofit organizational structuring and compliance.

T. Andrew Roberts

Estep Burkey Simmons, LLC, Muncie



Andy Roberts is a graduate of Daleville High School. He attended Taylor University and graduated with a B.S. in Accounting and Systems Analysis. After spending over two years with a national accounting firm, he returned to the Muncie area to analyze internal controls and assess risks for a large company in Central Indiana. Andy specializes in community foundation and non-profit auditing and consulting. Andy is currently the Treasurer of the Muncie Children's Museum and his church. He resides in Muncie with his wife and two children.

Tamara L. Weaver

Indiana Attorney General's Office, Indianapolis



Tamara Weaver is a native Hoosier, born and raised in Chesterton, Indiana. She obtained her B.A. in Political Science from Valparaiso University and earned her law degree from the Valparaiso University School of Law. Tamara has been with the Office of the Indiana Attorney General since 2010 in a variety of capacities, including most recently, as a Deputy Attorney General in the Consumer Protection Division. Tamara works on a variety of cases including charitable trusts and institutional funds, nonprofits, educational institutions, and other matters involving enforcement of the State's consumer protection laws.

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Section One

Primer on Indiana Nonprofit Corporations

Michael N. Red

Morse & Bickel, P.C.
Indianapolis, Indiana

Bekah Phillips

Morse & Bickel, P.C.
Indianapolis, Indiana

Section One

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Primer on Indiana Nonprofit Corporations

Michael Red and Bekah Phillips
Morse & Bickel, P.C.
320 N. Meridian St., Ste. 600
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September 29, 2020

Forms of Organization – Unincorporated Association

- Advantages
 - Easy to form
 - Easy to dissolve
 - “Incubator” that may evolve
 - No limits on political campaign contributions
 - Can be tax exempt
- Disadvantages
 - Potential for personal liability
 - Duration uncertain
 - May not hold property

Liability Associated With Unincorporated Associations

- Doing business as a nonprofit corporation (or LLC or Corporation) *generally* protects the principals from personal liability for the debts and liabilities of the entity.
- Aronson v Price, 644 N.E.2d 864 (Ind. 1994). “While an Indiana court will impose personal liability to protect innocent third parties from fraud or injustice, the burden is on the party seeking to pierce the corporate veil to prove that the corporate form was so ignored, controlled or manipulated that it was merely the instrumentality of another and that the misuse of the corporate form would constitute a fraud or promote injustice.”

Liability Associated With Unincorporated Associations

- Aronson v Price (*cont.*). Veil piercing factors:
 - (1) undercapitalization;
 - (2) absence of corporate records;
 - (3) fraudulent representation by corporation shareholders or directors;
 - (4) use of the corporation to promote fraud, injustice or illegal activities;
 - (5) payment by the corporation of individual obligations;
 - (6) commingling of assets and affairs;
 - (7) failure to observe required corporate formalities; or
 - (8) other shareholder acts or conduct ignoring, controlling, or manipulating the corporate form.

Forms of Organization – Limited Liability Company

- Advantages
 - Protection from personal liability
 - Ease of formation
 - Use as a subsidiary for specific programs or assets
 - Can be tax exempt
- Disadvantages
 - Less common and familiar
 - Less potential for broad governance participation

Forms of Organization – Charitable Trust

- Advantages

- High fiduciary standard of care
- Opportunity for close control by trustee/founders
- Ease of formation and operation
- Perpetual duration
- Potential for cy pres application if needed
- Can be tax exempt

- Disadvantages

- Potential for trustee liability – higher standard of care (simple negligence)
- Less opportunity for broad governance participation
- More potential for control by a small number of insiders

Forms of Organization – Nonprofit Corporation

- Advantages

- Most commonly used – familiarity
- Enhanced accountability and organizational integrity and duration
- Potential for governance participation
- Protection from personal liability
- Can be tax exempt

- Disadvantages

- Organizational complexities
- Low standard of care for liability
- Annual reporting requirements
- Less potential for control by founders

Nonprofit vs. Tax-Exempt

- A nonprofit corporation is formed in Indiana by filing Articles of Incorporation with the Indiana Secretary of State. Thus, a nonprofit Corporation is a State entity.
- A nonprofit corporation can become a tax-exempt organization, generally, by filing the appropriate application (Form 1023 or 1024) with the IRS. Thus, describing an organization as “tax-exempt” generally refers to that organization’s federal tax status.

Articles of Incorporation

- Articles of Incorporation can be thought of as the organization's contract with the State (and IRS).
 - Indiana law requires that the following items must be included in a nonprofit corporation's Articles of Incorporation:
 - Name of the corporation: the name must include the word "corporation," "incorporated," "company," "limited," or abbreviations of the foregoing.
 - Statement of Classification (i.e., public benefit corporation, religious corporation, or mutual benefit corporation).
 - The name and street address of the corporation's initial registered agent.
 - Name and address of the incorporator.
- I.C. § 23-17-3-2.

Articles of Incorporation

- Required provisions (*cont.*)
 - Whether the corporation will have members. I.C. § 23-17-3-2(5).

Articles of Incorporation – What is a member and why does it matter?



Articles of Incorporation – What is a member and why does it matter?

- “Member” means a person who, on more than one (1) occasion, has the right to vote for the election of a director under a corporation’s articles of incorporation or bylaws. I.C. § 23-17-2-17(a).
- Members also generally have the right to vote on amendment of the Articles of Incorporation, adoption of a plan of merger, the sale of all or substantially all of the corporation's assets, and the dissolution of the corporation. *E.g.*, I.C. § 23-17-7-4.

Articles of Incorporation – What is a member and why does it matter?

- Nonprofit corporations are not required to have members.
- If they do, the members may be admitted pursuant to any criteria or procedure established in the Articles of Incorporation or Bylaws.
- Consideration is not required for admittance to the corporation as a member unless otherwise provided in the Articles of Incorporation or Bylaws.

E.g., I.C. § 23-17-7.

Articles of Incorporation – What is a member and why does it matter?

(Problematic) Membership provision examples:

- “Each owner of a lot in this neighborhood shall be a member of this Homeowners’ Association.”
- “The membership of this [cemetery association] shall consist solely of lot owners in said cemetery”

Articles of Incorporation – What is a member and why does it matter?

- Classes of members with differing rights concerning voting, dissolution, redemption, and transfer are permitted. I.C. § 23-17-7-4.
- If each of these characters are to be “members,” is it in the best interest of the Corporation for them to have the same rights?



Articles of Incorporation

- Optional provisions
 - The purpose or purposes for which the corporation is organized, which may be either alone or in combination with other purposes.
 - While not required for State purposes, IRC requires purposes applicable to anticipated tax status! E.g., “The Corporation is organized and operated for charitable purposes” *See e.g.*, Code § 501(c)(3) and Treas. Reg. § 1.501(c)(3)-1(d).
 - The names and addresses of the individuals who are to serve as the initial directors.

I.C. § 23-17-3-3.

Articles of Incorporation

- Optional provisions (*cont.*)
 - Provisions not inconsistent with any law regarding the following:
 - Management and regulation of the affairs of the corporation. E.g., “The business and affairs of the Corporation shall be managed by the Board of Directors”
 - Defining, limiting, and regulating the powers of the corporation, the corporation's board of directors, and members (or any class of members).
 - IRC requires dissolution provisions!
 - The characteristics, qualifications, rights, limitations, and obligations attaching to a class of members.
 - Any other provision that is required or allowed to be set forth in the bylaws.
 - Including provisions generally intended to last – like indemnification.

I.C. § 23-17-3-3.

Bylaws

- Bylaws can be thought of as the members' and/or directors' contract with each other.
- Required
 - The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.
 - The bylaws of a corporation may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with any law or the articles of incorporation.
I.C. § 23-17-3-8.

Bylaws

- Member provisions (if members)
- Meetings
 - A corporation with members must hold an annual membership meeting at a time stated in or fixed in accordance with the Bylaws. I.C. § 23-17-10-1(a).
 - The president and treasurer must report on the activities and financial condition of the corporation. I.C. § 23-17-10-1(d)(1).
 - Regular meetings may be held at the times stated or fixed in the Bylaws. I.C. § 23-17-10-1(b).
 - Special meetings may be held on the call of the president, the board of directors, or any other person authorized by the Articles or Bylaws or by the holders of 10% of member votes entitled to be cast at the meeting. I.C. § 23-17-10-2.

Member Meetings During COVID-19

- Remote meetings: If provided in the articles of incorporation or bylaws, members may participate in annual, regular, and special meetings “by and through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting.” I.C. § 23-17-10-1(g); I.C. § 23-17-10-2(f).
 - Conference call
 - Zoom, Microsoft Teams, etc.
- Voting by proxy - I.C. § 23-17-11-6.
 - Unless prohibited by articles of incorporation or bylaws, a member may appoint a proxy to vote by signing an appointment form.
 - The appointment is effective when received by the secretary or other officer or agent authorized to tabulate votes.
 - Appointment is valid for 11 months unless stated differently in the form.

Bylaws

- Member provisions (if members)
- Voting
 - Quorum: 10% of the votes entitled to be cast (represented in person or by proxy), but the Articles of Incorporation or Bylaws can provide for a higher or lower quorum. I.C. § 23-17-11-4(a).
 - One-third mandatory minimum quorum required if the matter to be voted on is not described in the meeting notice. I.C. § 23-17-11-4(d).

Bylaws – So do we want Members, just members, or no members at all?



Bylaws

- Director Provisions

- Number, term and qualification
- Directors may be elected, designated or appointed.
- A board of directors must consist of at least 3 individuals. I.C. § 23-17-12-3.
- The term of each elected director may not exceed 5 years. I.C. § 23-17-12-5(a).
- Directors elected (by members or directors), may be removed (by the members or directors) with or without cause, unless the Articles of Incorporation or Bylaws provide otherwise. I.C. § 23-17-12-8(a); I.C. § 23-17-12-9.

Bylaws

- Director Provisions
- Meetings
 - Notice is not required for regular meetings. I.C. § 23-17-15-3(a).
 - At least 2 days notice of the date, time and place of a special meeting is required. The notice is not required to describe the purpose of the special meeting. I.C. § 23-17-15-3(b).
 - A special meeting may be called by the presiding officer of the board of directors, the president or 20% of the directors then in office, unless the Articles of Incorporation or Bylaws provide otherwise. I.C. § 23-17-15-3(c).
 - Notice can be waived by a written waiver or by attendance. I.C. § 23-17-15-4.

Bylaws

- Director Provisions
- Meetings (*cont.*)
 - Unless provided otherwise in the Articles of Incorporation or Bylaws, a director may participate in a meeting through any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting. I.C. § 23-17-15-1(c).
 - *The foregoing is generally advanced as authority for the proposition that proxy votes by directors are not permissible.*

Bylaws

- Director Provisions
- Voting
 - Except as provided in the Articles of Incorporation or Bylaws, a quorum of the board of directors consists of a majority of the directors in office immediately before a meeting begins. I.C. § 23-17-15-5(a).
 - Articles of Incorporation or Bylaws may not authorize a quorum of fewer than: (a) 1/3 of the number of directors in office; or (b) 2 directors, whichever is greater. I.C. § 23-17-15-5(a).
 - Action may be taken by unanimous written consent. I.C. § 23-17-15-2.

Bylaws

- Director Provisions
- Committees
 - To exercise board powers the committee must:
 - Be created by the board of directors by a majority vote (or the vote otherwise required for board action, if greater);
 - Be composed entirely of directors appointed by the board of directors by a majority vote (or the vote otherwise required for board action, if greater); and
 - Consist of at least 2 directors

Bylaws

- Director Provisions
- Committees (*cont.*)
 - The committee may exercise the authority of the board of directors to the extent specified in the Articles of Incorporation or Bylaws.
 - A committee may not take the following actions:
 - Authorize distributions;
 - Approve or recommend to the members dissolution, merger, or sale, pledge or transfer of all or substantially all of the corporation's assets;
 - Elect, appoint or remove directors or fill vacancies on the board of directors or on a committee; or
 - Adopt, amend or repeal the Articles of Incorporation or Bylaws. I.C. § 23-17-15-6(e).

Bylaws

- Officers
 - Unless otherwise provided in articles of incorporation or bylaws, a corporation must have a president, a secretary, a treasurer, and other officers appointed by the board of directors. I.C. § 23-17-14-1(a).
 - Bylaws or a board of directors must delegate to one (1) of the officers the responsibility for the following:
 - Preparing minutes of the director's and members' meetings.
 - Authenticating records of the corporation. I.C. § 23-17-14-1(b).
 - An individual may simultaneously hold more than one (1) office in a corporation. I.C. § 23-17-14-1(c).

Adoption of Bylaws and Other Corporate Policies and Procedures

- Bylaws and other corporate policies and procedures are generally adopted by resolution of the Board of Directors.
- Other policies typically adopted upon organization for 501(c)(3) organizations include:
 - Conflicts of Interest (*see* Instructions to Form 1023)
 - Also recommended:
 - Excess Benefit Transactions
 - Document Retention and Destruction
 - Gift Acceptance
 - Whistleblower
 - Joint Venture

Stay safe and thank you!

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320 N. Meridian St., Ste. 600
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(317) 686-1540
September 29, 2020

[No Members]

ARTICLES OF INCORPORATION

OF

The undersigned incorporator, desiring to form a corporation (the "Corporation") pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991 [I.C. §§ 23-17 *et seq.*], as amended (the "Act"), executes the following Articles of Incorporation:

ARTICLE I

Name

The name of the Corporation is _____. [I.C. § 23-17-3-2(1)].

ARTICLE II

Classification of Corporation

The Corporation is a [OPTION:] [public benefit corporation [I.C. § 23-17-2-23]] [religious corporation [I.C. § 23-17-2-25]] [mutual benefit corporation [I.C. § 23-17-2-19]]. [I.C. § 23-17-3-2(2)].

ARTICLE III

Purposes and Powers

[Purposes are permitted by I.C. § 23-17-3-3]

Section 3.1. Purposes. The purposes for which the Corporation is formed are:

(a) _____; and

(b) In furtherance of the aforesaid purposes, to transact any and all lawful business for which corporations may be incorporated under the Act, provided such business is not inconsistent with the Corporation being organized and operated exclusively for charitable purposes.

Section 3.2. Nonprofit Purposes.

(a) The Corporation is organized and operated exclusively for charitable purposes and its activities shall be conducted in such a manner that no part of its net earnings shall inure to the benefit of any member, director, officer or other private person, except that the Corporation

shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 3.1.

(b) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office.

(c) Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on:

(i) By a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws, or

(ii) By a corporation, contributions to which are deductible under Section 170(c)(2), Section 2055(a)(2), or Section 2522(a)(2) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws.

Section 3.3. Powers. Subject to any limitation or restriction imposed by the Act, any other law, or any other provisions of these Articles of Incorporation, the Corporation shall have the power:

(a) To do everything necessary, advisable or convenient for the accomplishment of any of the purposes hereinbefore set forth, or which shall at any time appear conducive to or expedient for the protection or benefit of the Corporation, and to do all of the things incidental thereto or connected therewith which are not forbidden by law; and

[OPTION: To be used only if the Corporation is to be part of a group of nonprofit corporations where intercorporate transactions are anticipated and/or the Corporation is to seek status as a Code Section 509(a)(3) supporting organization]

(b) **To engage in transactions, financial or otherwise, with a class of nonprofit corporations exempt from federal taxation pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws. Such transactions shall include, but not be limited to, the transfer of assets, bargain sales, the borrowing or leasing of employees, the sharing of goods or services, the guarantee of the payment of principal, interest or other payment in whatever form on obligations evidenced by any form of indebtedness, and the guarantee of performance of any obligation of any member of said class of nonprofit corporations. Each member of said class shall be affiliated with the Corporation by:**

(i) **supporting the Corporation, being supported by the Corporation, or supporting or being supported by the same corporation or corporations as the**

Corporation pursuant to Section 509(a) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws, or

(ii) being described in Sections 501(c)(2) or 501(c)(25) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws, by paying over its income, less expenses, to the Corporation or to an organization described in Section 3.3(b)(i).

In any event, the foregoing power or powers shall not be exercised or exercisable in a manner inconsistent with the Corporation's status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws; and

(b) To have, exercise and enjoy in furtherance of the purposes hereinbefore set forth all the general rights, privileges and powers granted to corporations by the Act, as now existing or hereafter amended, and by the common law.

Section 3.4. Limitations on Powers. If the Corporation is or becomes a private foundation (as defined in Section 509(a) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws), the Corporation shall be subject to the following requirements:

(a) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the taxes on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws.

(b) The Corporation shall not engage in any act of self-dealing that would subject any person to the taxes imposed on acts of self-dealing by Section 4941 of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws.

(c) The Corporation shall not retain any excess business holdings which would subject it to the taxes on excess business holdings imposed by Section 4943 of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws.

(d) The Corporation shall not make any investments in such a manner as to subject it to the taxes on investments that jeopardize charitable purposes imposed by Section 4944 of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws.

(e) The Corporation shall not make any expenditures which would subject it to the taxes on taxable expenditures imposed by Section 4945 of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws.

ARTICLE IV

Distribution of Assets on Dissolution

In the event of the complete liquidation or dissolution of the Corporation, or the winding up of its affairs, the Board of Directors shall, after paying or making provision for the payment of all the liabilities of the Corporation, distribute all the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws, as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Judge of the Circuit Court of [_____] County, Indiana, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

ARTICLE V

Term of Existence

The Corporation shall have perpetual existence.

ARTICLE VI

Registered Office and Registered Agent

Section 6.1. Registered Office and Registered Agent. The name and street address of the Corporation's registered agent is _____. [I.C. § 23-17-3-2(3)].

Section 6.2. Principal Office. The post office address of the principal office of the Corporation is _____.

ARTICLE VII

No Members

[NOTE: It is now an option for a nonprofit corporation not to have members. Before choosing not to have members, the corporation should determine whether its fundraising activities are regulated by Indiana's charitable gaming law, IC 4-32-1-1 et seq. IC 4-32-9-27 and 4-32-9-28 require that workers and operators at certain fundraising events be members in good standing of the organization. A "member" for purposes of charitable gaming law is defined in 45 IAC 18-1-28.]

The Corporation shall have no members. [I.C. § 23-17-3-2(5); I.C. § 23-17-7-3].

ARTICLE VIII

Board of Directors

Section 8.1. Number and Term of Office. Upon incorporation, the initial Board of Directors shall consist of _____ () directors. Thereafter, the number of directors shall be as specified in or fixed in accordance with the Bylaws of the Corporation; provided, however, that the minimum number of directors shall be three (3). [I.C. § 23-17-12-3]. The term of office of a director shall be as specified in the Bylaws; provided, however, that the term of an elected director shall not exceed five (5) years. [I.C. § 23-17-12-5(a)]. Directors may be elected for successive terms. [I.C. § 23-17-12-5(a)]. Terms of office of directors may be staggered as specified in the Bylaws. [I.C. § 23-17-12-6]. [NOTE: The minimum number of directors and maximum term are statutory. The Articles or Bylaws may provide for designated directors (e.g., ex officio) or appointed directors, as opposed to elected directors. [I.C. § 23-17-12-4(b)]. Directors who are designated or appointed are not subject to the five-year limitation on term.]

Section 8.2. Qualifications. Each director shall have such qualifications as may be specified from time to time in the Bylaws of the Corporation or as required by law. [I.C. § 23-17-12-2].

Section 8.3. Initial Board of Directors. The names and addresses of the initial Board of Directors of the Corporation are:

Names

Addresses

ARTICLE IX

Name and Address of Incorporator

The name and address of the incorporator of the Corporation are: [I.C. § 23-17-3-1]

Name

Address

ARTICLE X

Indemnification [I.C. § 23-17-16-1 through § 23-17-16-15]

Section 10.1. Rights to Indemnification and Advancement of Expenses. The Corporation shall indemnify as a matter of right every person made a party to a proceeding because such person is or was:

- (a) a member of the Board of Directors of the Corporation,
- (b) an officer of the Corporation, or
- (c) while a director or officer of the Corporation, serving at the Corporation's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise, whether for profit or not

(each an "Indemnitee"), against all liability incurred by such person in connection with the proceeding; provided that it is determined in the specific case that indemnification of such person is permissible in the circumstances because such person has met the standard of conduct for indemnification specified in the Act. [I.C. § 23-17-16-8]. The Corporation shall pay for or reimburse the reasonable expenses incurred by an Indemnitee in connection with any such proceeding in advance of final disposition thereof in accordance with the procedures and subject to the conditions specified in the Act. [I.C. § 23-17-16-10]. The Corporation shall indemnify as a matter of right an Indemnitee who is wholly successful, on the merits or otherwise, in the defense of any such proceeding against reasonable expenses incurred by the person in connection with the proceeding without the requirement of a determination as set forth in the first sentence of this paragraph. [I.C. § 23-17-16-9].

Upon demand by a person for indemnification or advancement of expenses, as the case may be, the Corporation shall expeditiously determine whether the person is entitled thereto in accordance with this Article and the procedures specified in the Act. [I.C. § 23-17-16-12].

The indemnification provided under this Article shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Article.

Section 10.2. Other Rights Not Affected. It is the intent of this Article to provide indemnification to directors and officers to the fullest extent now or hereafter permitted by law consistent with the terms and conditions of this Article. Nothing contained in this Article shall limit or preclude the exercise of, or be deemed exclusive of, any right under the law, by contract or otherwise, relating to indemnification of or advancement of expenses to any person who is or was a director, officer, employee or agent of the Corporation, or the ability of the Corporation to otherwise indemnify or advance expenses to any such individual.

Notwithstanding any other provision of this Article, there shall be no indemnification with respect to matters as to which indemnification would result in inurement of net earnings of the Corporation "to the benefit of any private shareholder or individual," **[if the organization is a public charity insert this phrase:]** [or an "excess benefit transaction"] within the meaning of Section[s] 501(c)(3) **[if the organization is a public charity insert this phrase:]** [or 4958] of the Internal Revenue Code of 1986, as amended, or similar provisions of any subsequent Federal tax laws.

Section 10.3. Definitions. For purposes of this Article:

(a) A person is considered to be serving an employee benefit plan at the Corporation's request if the person's duties to the Corporation also impose duties on, or otherwise involve services by, the person to the plan or to participants in or beneficiaries of the plan.

(b) The estate or personal representative of a person entitled to indemnification or advancement of expenses shall be entitled hereunder to indemnification and advancement of expenses to the same extent as the person.

(c) The term "expenses" includes all direct and indirect costs (including, without limitation, counsel fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement or appeal of a proceeding or establishing or enforcing a right to indemnification under this Article, applicable law or otherwise.

(d) The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan) or reasonable expenses incurred with respect to a proceeding. **[I.C. § 23-17-16-4].**

(e) The term "party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding. **[I.C. § 23-17-16-6].**

(f) The term "proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal. **[I.C. § 23-17-16-7].**

IN WITNESS WHEREOF, the undersigned incorporator executes these Articles of Incorporation and verifies subject to penalties of perjury that the facts contained herein are true.

Dated this _____ day of _____, _____.

(Written Signature)

(Printed Signature)

[FORM: Members]

BYLAWS

OF

ARTICLE I

Membership

Section 1.1. Members. As provided in the Articles of Incorporation, members of _____ (the "Corporation") shall be _____.

Section 1.2. Membership Certificates. The Corporation will not have membership certificates unless otherwise authorized by the Board of Directors. The form of any such certificate, if authorized, shall be prescribed by the Board of Directors.

Section 1.3. Duration of Membership; Resignation. Membership in the Corporation may terminate by voluntary resignation as herein provided, or as otherwise provided in these Bylaws or by law. All rights and privileges of a member in the Corporation shall cease on the termination of membership. Any member may voluntarily resign at any time upon fair and reasonable notice to the Corporation. Any such notice shall be presented to the Board of Directors at the next succeeding meeting of the Board of Directors. Resignation of a member shall be effective when notice is so given, unless the notice is in writing and provides for a later effective date. The resignation of a member does not relieve the member from any obligations the member may have to the Corporation as a result of obligations incurred or commitments made before such resignation, including any unpaid dues, fees or assessments. **[I.C. § 23-17-8-1].**

Section 1.4. Expulsion, Suspension, and Termination. A member may be expelled or suspended and a membership may be terminated or suspended only under a procedure that is fair and reasonable and carried out in good faith, as provided by law. **[I.C. § 23-17-8-2(a)].** Sufficient cause for suspension or termination of voting membership shall include, but not be limited to, violation of these Bylaws, nonpayment of dues, fees or assessments, if any, violation of any lawful rule or practice duly adopted by the Corporation, or any other conduct prejudicial to the interests of the Corporation. **[if applicable:** Notwithstanding the foregoing, if the membership of the Corporation is coextensive with the Board of Directors, a person automatically ceases to be a member of the Corporation when the person ceases to be a director.]

Section 1.5. Dues, Fees, and Assessments. Subject to the Articles of Incorporation, the amount of any membership fees, dues and assessments applicable to membership in the Corporation or to any class of such membership and the time and manner of payment thereof shall be determined by the Board of Directors.

ARTICLE II

Meetings of Members

Section 2.1. Annual Meeting. The annual meeting of the members of the Corporation shall be held at ____: ____ .m. on the _____ in _____ of each year, or at such other time as may be designated by the Board of Directors. **[I.C. § 23-17-10-1(a)].** Annual meetings of the members should be held within the earlier of six (6) months after the close of the fiscal year or fifteen (15) months after the Corporation's last annual meeting. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with these Bylaws does not affect the validity of any corporate action or work any forfeiture or dissolution of the Corporation. **[I.C. § 23-17-10-1(f)].** Annual membership meetings shall be held at the place specified in the notice of the meeting; otherwise, such meeting shall be held at the Corporation's principal office. **[I.C. § 23-17-10-1(c)].** At the annual meeting of members, the President and the Treasurer, or their designees, shall report on the activities and financial condition, respectively, of the Corporation. **[NOTE: The preceding sentence recites a statutory requirement. IC 23-17-10-1(d)(1).]**

Section 2.2. Regular Meetings. The Corporation may hold regular membership meetings at times stated in or fixed by a resolution of the Board of Directors. Regular membership meetings shall be held at the place specified in the notice of the meeting; otherwise, such meeting shall be held at the Corporation's principal office.

Section 2.3. Special Meetings. Special meetings of the members may be called by the President, by the Board of Directors, or by one or more petitions in writing signed, dated and delivered by at least one-tenth (1/10th) of the votes entitled to be cast at the proposed special meeting. Such petition or petitions must demand a special meeting and describe the purpose for which the meeting is to be held. **[I.C. § 23-17-10-2(a)].** Special membership meetings shall be held at the place specified in the notice of meeting; otherwise, such meetings shall be held at the Corporation's principal office. **[I.C. § 23-17-10-2(d)].**

Section 2.4. Participation. A member may participate in an annual, a regular or a special meeting of the members by or through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating by this means is considered to be present in person at the meeting. **[I.C. § 23-17-10-1(g)].**

Section 2.5. Notice of Meetings. Written notice stating the place, date and time of any meeting of the members and, if the quorum of members for the meeting is less than one-third (1/3) or in the case of special meetings, or when otherwise required by law, a description of the purpose or purposes for which such meeting is called, shall be delivered or mailed (first class or registered) by the Corporation to each member of record entitled to vote at such meeting, at such address as appears on the records of the Corporation, at least ten (10) but not more than sixty (60) days before the date of such meeting, on being notified of the place, date and time thereof by the officers or

persons calling the meeting. Notwithstanding the foregoing, action taken by the members shall not be invalidated, and notice shall not be considered improper, if notice [**OPTION:** ,including oral notice,] is given in a fair and reasonable manner. [I.C. § 23-17-10-5].

Section 2.6. Waiver of Notice. Notice of any meeting may be waived in writing by any member before or after the date and time of the meeting, if the waiver is signed by the member and delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. [I.C. § 23-17-10-6(a)]. A member's attendance at a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives any valid objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the member objects to considering the matter when the matter is presented. [I.C. § 23-17-10-6(b)].

Section 2.7. Voting Rights. Except as may otherwise be provided in the Articles of Incorporation, each member of record of the Corporation shall be entitled to vote on each matter voted on by the members. [I.C. § 23-17-11-3].

Section 2.8. Date of Determination of Voting Rights. The Board of Directors may fix a record date to determine the members entitled to notice of a members' meeting, to demand a special meeting, to vote or to take any other action; provided, however, that the record date may not exceed seventy (70) days prior to the meeting or action requiring a determination of members. In the absence of action by the Board of Directors to fix a record date as herein provided, the record date shall be [**OPTION:** the date of the meeting or action requiring a determination of members **OR** the [fourteenth (14th)] day prior to the meeting or action requiring a determination of members]. [**NOTE: The first option should be considered if the members and the directors are the same or if there is a desire for immediate turnover in membership, with the new members being able to take action without delay.**] [I.C. § 23-17-10-7].

Section 2.9. Voting by Proxy. A member entitled to vote at any meeting of members may vote either in person or by proxy. [I.C. § 23-17-11-6(a)]. A member may appoint a proxy to vote or otherwise act for the member by signing an appointment form personally or by a duly authorized attorney-in-fact of such member. [I.C. § 23-17-11-6(b)]. (For purposes of this section, a copy of a signed proxy that has been telecopied shall be deemed "signed" by the member.) An appointment of a proxy is valid for eleven (11) months, unless a longer or shorter period is specified in the appointment form. No proxy shall vote at any meeting of members unless the appointment form designating such proxy shall have been filed with the Secretary or other officer or agent authorized to tabulate votes. [I.C. § 23-17-11-6(c)].

Section 2.10. Quorum; Voting. At any meeting of members, ten percent (10%) of the votes entitled to be cast on a matter, represented in person or by proxy, shall constitute a quorum for action on the matter, unless a higher quorum shall be required by law, the Articles of Incorporation or these Bylaws. [I.C. § 23-17-11-4(a)]. [**NOTE: Quorum may be any number or percentage.**] Notwithstanding the foregoing, unless at least one-third (1/3) of the voting power

is present in person or by proxy, the only matters that may be voted on at a meeting of the members are those matters that are described in the meeting notice. **[NOTE: The preceding sentence recites the statutory rule; it should not be deleted. I.C. § 23-17-11-4(d).]** After a vote is represented for any purpose at a meeting, the vote is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or must be set for that adjourned meeting. **[I.C. § 23-17-11-4(d)].** If a quorum exists, action on a matter other than the election of directors is approved if the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number is required by law, the Articles of Incorporation or these Bylaws. **[I.C. § 23-17-11-5(a)].** Directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present. **[I.C. § 23-17-11-7(a)].**

Section 2.11. Voting List. The Corporation shall keep at all times, at the Corporation's principal office, a complete and accurate list of all members entitled to vote by the Articles of Incorporation of the Corporation. After fixing a record date for notice of a meeting, the Corporation shall prepare a list of the names of the Corporation's members who are entitled to notice of the members' meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. **[I.C. § 23-17-11-1(a)].** Subject to the limitations described below, the list of members must be available for inspection by a member for the purpose of communication with other members concerning the meeting, beginning five (5) business days before the date of the meeting for which the list was prepared and continuing through the meeting, at the Corporation's principal office or at the place identified in the meeting notice where the meeting will be held, and the list must be available for inspection at any time during the meeting or any adjournment thereof. Subject to the limitations described below, a member may also inspect and copy, at any reasonable time and reasonable location specified by the Corporation, the Corporation's membership list if the member gives the Corporation written notice at least five (5) days before the member desires to inspect and copy the same; **[I.C. § 23-17-11-1(b)]** provided, however, the following conditions must exist:

- (a) the member's demand must be in good faith and for a proper purpose,
- (b) the member must describe with reasonable particularity the purpose of the inspection, and
- (c) the membership list must be directly connected with the purpose. **[I.C. § 23-17-27-2(c)].**

Notwithstanding the foregoing, the Corporation in any event may refuse to provide names or identifying information relating to contributors.

Section 2.12. Conduct of Meetings. Meetings of members, including the order of business, shall be conducted in accordance with such rules as the Board of Directors may adopt.

Section 2.13. Action by Written Ballot. Any action that may be taken at an annual, a regular or a special meeting of members may be taken without a meeting if the Corporation delivers a written ballot to every member entitled to vote on the matter. The ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting. A solicitation for votes by written ballot must indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than the election of directors, and specify the time by which a ballot must be received by the Corporation to be counted. A written ballot may not be revoked once received by the Corporation. **[I.C. § 23-17-10-8].**

Section 2.14. Action by Consent. Any action required or permitted to be taken at a meeting of the members may be taken without a meeting if the action is approved by members holding at least eighty percent (80%) of the votes entitled to be cast on the action. The action must be evidenced by at least one (1) written consent which describes the action taken, is signed by the members representing at least eighty percent (80%) of the votes entitled to be cast on the action, and is delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. Requests for written consents must be delivered to all members entitled to vote. Action taken by written consent is effective when the last member necessary to meet the eighty percent (80%) requirement signs the consent, unless a prior or subsequent effective date is specified in the consent. **[I.C. § 23-17-10-4].**

ARTICLE III

Board of Directors

Section 3.1. Duties and Qualifications. The business and affairs of the Corporation shall be managed by the Board of Directors.

Section 3.2. Number, Term, and [Election] [Designation] [Appointment]. **[Note: Directors may be elected by the members or they may be designated or appointed. See IC 23-17-12-4. The following provision is for the standard election of the directors by the members. If the Board of Directors is to consist in whole or in part of designated or appointed directors, tailored drafting is required.]** The Board of Directors shall consist of a minimum of three (3) directors and a maximum of _____ (____) directors, with the exact number of directors specified from time to time by resolution of the Board of Directors. Each director shall serve for a term of _____ (____) years **[cannot exceed 5 years, unless director is designated or appointed].** **[NOTE: Terms of office of directors may be staggered by dividing the directors into groups. The following language may be used: The term of office of directors shall be staggered by dividing the total number of directors into (____) groups. The groups shall be as near equal in size as possible. One group of directors shall be elected at each annual meeting of members.]**

The term of office of the first group of directors shall expire at the first annual meeting of the members, and the term of office of the [other or second] group of directors shall expire at the second annual meeting of the members. [The term of office of the [third] [fourth] [etc.] group of directors shall expire at the [third] [fourth] [etc.] annual meeting of the members. Thereafter, the term of office of each director shall be _____ (_____) years.]

Other than the initial directors, the directors shall be elected at the annual meeting of the members by a plurality of the votes cast by the members. Despite the expiration of a director's term, the director continues to serve until a successor is elected **[designated or appointed]** and qualifies, or until there is a decrease in the number of directors.

Section 3.3. Vacancies. Any vacancy among the directors caused by death, resignation, removal, increase in the number of directors or otherwise may be filled by a majority vote of the remaining members of the Board of Directors. The term of office of a director chosen to fill a vacancy shall expire at the later of the next annual meeting of the members, or at such time as a successor shall be duly elected and qualified.

Section 3.4. Removal. Any director may be removed, with or without cause, by the members whenever the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors. **[NOTE: If directors are designated or appointed, the foregoing provision should be eliminated or limited to elected directors. Appointed directors would be subject to removal by the person or persons appointing the director. See IC 23-17-12-12. Consideration should be given to the issues relating to removal of designated directors. Designated directors would be automatically removed when the basis for the director's designation ceases, e.g., a person who is designated as a director because the bylaws provide that the President shall be a director and that person occupies the office of President. If the person is removed as the President, the person would cease to be a director. Designated directors could also be removed by amendment of the provision of the articles or bylaws providing the designation. See IC 23-17-12-12.]**

Section 3.5. Annual Meetings. Unless the Board of Directors determines otherwise, the Board of Directors shall meet on the _____ day of _____ each year, at _____, for the purpose of election of officers of the Corporation and consideration of any other business which may be brought before the meeting. No notice shall be necessary for the holding of an annual meeting.

Section 3.6. Other Meetings. Regular meetings of the Board of Directors may be held pursuant to a resolution of the Board to such effect, and shall be held whenever convenient for the Board of Directors. Unless otherwise provided by the Board of Directors, regular meetings shall be held at the Corporation's principal office. No notice shall be necessary for any regular meeting. Special meetings of the Board of Directors may be held upon the call of **[Option:** the presiding officer of the Board of Directors, the President, or twenty percent (20%) of the directors then in office] and upon at least forty-eight (48) hours' notice specifying the date, time, place and purpose

or purposes of the meeting, given to each director either personally or by regular mail, electronic mail, facsimile transmission or telephone. **[The persons authorized to call a special meeting, the time of notice, content of notice and delivery of notice may be changed; the preceding recites the statutory requirements in the absence of a provision for call and notice of meeting.] [Option: Oral notice is authorized.]** A director may waive any required notice of an annual, regular or special meeting. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or Corporate records. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not vote for or assent to action taken at the meeting.

Section 3.7. Participation. A director may participate in an annual, a regular or a special meeting of the Board of Directors by or through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating by this means is considered to be present in person at the meeting.

Section 3.8. Quorum; Voting. One-third (1/3) of the directors in office when action is taken, but in no event fewer than two (2) directors, shall be necessary to constitute a quorum for the transaction of any business at a meeting of the Board of Directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present when the act is taken shall be the act of the Board of Directors, unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws.

Section 3.9. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if the action is taken by all directors. The action must be evidenced by at least one (1) written consent describing the action to be taken, signed by each director and included in the minutes or filed with the corporate records reflecting the action taken. Action taken under this Section is effective when the last director signs the consent, unless the consent specifies a prior or subsequent effective date.

Section 3.10. Executive Committee. There shall be, and by the adoption of these Bylaws the Board of Directors hereby creates, an Executive Committee of the Corporation, which shall consist of _____ (_____) directors, appointed by a majority of all the directors in office when the action is taken. During intervals between meetings of the Board of Directors, the Executive Committee shall have and exercise all of the authority of the Board of Directors in the management of the Corporation, except where prohibited by law. In addition, the Executive Committee, to the extent specified by the Board of Directors, may exercise the authority of the Board of Directors, except where prohibited by law. The Executive Committee shall cause minutes of its proceedings to be kept and filed with the minutes of the proceedings of the Board of Directors. **[NOTE: For a committee (even an Executive Committee) to exercise board powers, the committee must be created by the Board of Directors and must be composed entirely of directors appointed by the Board of Directors (a committee is composed of at least two (2) directors). IC 23-17-15-6. If there is a desire for person(s) other than directors or a**

committee of directors to exercise board powers, consider a provision delegating power to non-directors in the articles of incorporation pursuant to IC 23-17-12-1.]

Section 3.11. Other Committees. The Board of Directors may from time to time create and appoint standing, special or other committees to undertake studies, make recommendations and carry on functions for the purpose of efficiently accomplishing the purposes of the Corporation. Committees, to the extent specified by the Board of Directors, may exercise the powers, functions or authority of the Board of Directors, except where prohibited by law; provided, however, that if a committee is to exercise board powers, functions, or authority, (a) all the persons serving on the committee must be directors, (b) there must be at least two (2) persons on the committee, and (c) the creation of the committee and the appointment of its members shall be by a majority of all directors in office when the action is taken.

ARTICLE IV

Officers

Section 4.1. Officers and Qualifications Therefor. The officers of the Corporation shall consist of a President, a Vice President, a Secretary and a Treasurer. The officers shall be chosen by the Board of Directors. Any two (2) or more offices may be held by the same person.

Section 4.2. Terms of Office. Each officer of the Corporation shall be elected by the Board of Directors at its annual meeting and shall hold office for a term of one (1) year and until a successor shall be duly elected and qualified, or until resignation, removal or death.

Section 4.3. Vacancies. Whenever any vacancies shall occur in any of the offices of the Corporation for any reason, the same may be filled by the Board of Directors, and any officer so elected shall hold office until the expiration of the term of the officer causing the vacancy and until the officer's successor shall be duly elected and qualified.

Section 4.4. Removal. Any officer of the Corporation may be removed, with or without cause, at any time by the Board of Directors.

Section 4.5. Compensation. The officers of the Corporation shall receive no compensation for their services in such offices.

ARTICLE V

Powers and Duties of Officers

Section 5.1. President. The President, if present, shall preside at all meetings of the members and the Board of Directors. At each annual meeting of the members, the President or the President's designee shall report on the activities of the Corporation. **[NOTE: The preceding sentence recites a statutory requirement. IC 23-17-10-1.]** Subject to the general control of the

Board of Directors, the President shall manage and supervise all of the affairs of the Corporation and shall perform all of the usual duties of the chief executive officer of a corporation.

Section 5.2. Vice President. Subject to the general control of the Board of Directors, if the President is not present, the Vice President shall discharge all the usual functions of the President and shall have such other powers and duties as these Bylaws, the Board of Directors or an officer authorized by the Board may prescribe.

Section 5.3. Secretary. The Secretary shall attend all meetings of the members and of the Board of Directors, and prepare, keep, or cause to be kept, a true and complete record and minutes of the proceedings of such meetings, and shall perform a like duty, when required, for all committees appointed by the Board of Directors. If required, the Secretary shall attest the execution by the Corporation of deeds, leases, agreements and other official documents. The Secretary shall attend to the giving and serving of all notices of the Corporation required by these Bylaws, shall have custody of the books (except books of account) and records of the Corporation, shall be responsible for authenticating records of the Corporation, and in general shall perform all duties pertaining to the office of Secretary and such other duties as these Bylaws, the Board of Directors, or an officer authorized by the Board may prescribe. **[NOTE: There is a statutory requirement that bylaws or the board delegate to one officer the responsibility of preparing minutes of directors' and members' meetings and authenticating the corporation's records. IC 23-17-14-1.]**

Section 5.4. Treasurer. The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Corporation. The Treasurer shall have charge and custody of, and be responsible for, all funds, notes, securities and other valuables which may from time to time come into the possession of the Corporation and shall deposit, or cause to be deposited, all funds of the Corporation with such depositories as the Board of Directors shall designate. At each annual meeting of the members, the Treasurer, or the Treasurer's designee, shall report on the financial condition of the Corporation. **[NOTE: The preceding sentence recites a statutory requirement. IC 23-17-10-1.]** The Treasurer, or the Treasurer's designee, shall furnish, at meetings of the Board of Directors or whenever requested, a statement of the financial condition of the Corporation, and in general shall perform all duties pertaining to the office of Treasurer.

Section 5.5. Assistant Officers. The Board of Directors may from time to time designate and elect assistant officers who shall have such powers and duties as the officers whom they are elected to assist shall specify and delegate to them, and such other powers and duties as these Bylaws or the Board of Directors may prescribe. An Assistant Secretary may, in the absence or disability of the Secretary, attest the execution of all documents by the Corporation.

ARTICLE VI

Miscellaneous

Section 6.1. Corporate Seal. The Corporation may, but need not, have a corporate seal. The form of any such corporate seal may be specified in a resolution of the Board of Directors. A corporate seal, however, shall not be required for any purpose, and its absence shall not invalidate any document or action.

Section 6.2. Execution of Contracts and Other Documents. Unless otherwise ordered by the Board of Directors, all written contracts and other documents entered into by the Corporation shall be executed on behalf of the Corporation by the President or Vice President and, if required, attested by the Secretary or an assistant secretary.

Section 6.3. Fiscal Year. The fiscal year of the Corporation shall begin on **[January 1]** of each year and end on the immediately following **[December 31]**.

ARTICLE VII

Amendments

Subject to law and the Articles of Incorporation, the power to make, alter, amend or repeal all or any part of these Bylaws is vested in the Board of Directors, except where such changes would terminate or alter the membership rights of members. In that case, the members shall have the power to vote upon such changes, as provided in the Act. **[See IC 23-17-18-2 and 23-17-17-29, with respect to deletion of a membership class, change in voting rights of members, etc.]**. The Corporation must provide notice to the directors and, when applicable, the members, of any meeting at which an amendment to the Bylaws is to be considered and voted upon.

Secretary's Initials

Date: _____

**BYLAWS
OF**

[I.C. § 23-17-3-8]

ARTICLE I

Board of Directors

Section 1.1. Duties and Qualifications. The business and affairs of the Corporation shall be managed by the Board of Directors.

Section 1.2. Number, Term, and Election. The Board of Directors shall consist of a minimum of _____ (___) directors and a maximum of _____ (___) directors, with the exact number of directors specified from time to time by resolution of the Board of Directors. **[There must be a minimum of at least 3 directors. I.C. § 23-17-12-3]**

The term of office of directors shall be staggered by dividing the total number of directors into three (3) groups. **[Allowed by I.C. § 23-17-12-6].** The groups shall be as near equal in size as possible. The term of office of the first group of directors shall expire at the first annual meeting of the directors and the term of office of the second group of directors shall expire at the second annual meeting of the directors. The term of office of the third group of directors shall expire at the third annual meeting of the directors. Thereafter, the term of office of each director shall be three (3) years. **[Term of a director may not exceed 5 years. I.C. § 23-17-12-5(a).]**

Other than the initial directors, the directors shall be elected at each annual meeting of Board of Directors. Despite the expiration of a director's term, the director continues to serve until a successor is elected and qualifies, or until there is a decrease in the number of directors. **[I.C. § 23-17-12-5(d)].**

Section 1.3. Vacancies. Any vacancy among the directors caused by death, resignation, removal, increase in the number of directors or otherwise may be filled by the majority vote of the remaining directors. The term of office of a director chosen to fill a vacancy shall expire at the later of the expiration of the unexpired term which the director was chosen to fill, or at such time as a successor shall be duly appointed and qualified. **[I.C. § 23-17-12-14].**

Section 1.4. Removal. Any director may be removed, with or without cause, by the affirmative vote of a majority of the remaining directors. **[I.C. § 23-17-12-9, -10].**

Section 1.5. Annual Meetings. Unless the Board of Directors determines otherwise, the Board of Directors shall meet on _____, **[I.C. § 23-17-10-1]** for the purpose of appointment of directors and election of officers of the Corporation and consideration of any other business which may be brought before the meeting. No notice shall be necessary for the holding of an annual meeting. **[I.C. § 23-17-15-3].**

Section 1.6. Other Meetings. Regular meetings of the Board of Directors may be held pursuant to a resolution of the Board to such effect, and shall be held whenever convenient for the Board of Directors. Unless otherwise provided by the Board of Directors, regular meetings shall

be held at the Corporation's principal office. No notice shall be necessary for any regular meeting. **[I.C. § 23-17-15-3(a)]**. Special meetings of the Board of Directors may be held upon the call of the presiding officer of the Board of Directors, the Chairperson, or twenty percent (20%) of the directors then in office and upon at least forty-eight (48) hours' notice specifying the date, time, place and purpose or purposes of the meeting, given to each director either personally or by regular mail, electronic mail, facsimile transmission or telephone. **[I.C. § 23-17-15-3(b)]**. Oral notice is authorized. A director may waive any required notice of an annual, regular or special meeting. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or Corporate records. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not vote for or assent to action taken at the meeting. **[I.C. § 23-17-15-4]**.

Section 1.7. Participation. A director may participate in an annual, a regular or a special meeting of the Board of Directors by or through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating by this means is considered to be present in person at the meeting. **[I.C. § 23-17-15-1(c)]**.

Section 1.8. Quorum; Voting. One-third (1/3) of the directors in office when action is taken, but in no event fewer than two (2) directors, shall be necessary to constitute a quorum for the transaction of any business at a meeting of the Board of Directors. **[This is the lowest amount allowed by I.C. § 23-17-15-5(a)]**. If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present when the act is taken shall be the act of the Board of Directors, unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws. **[I.C. § 23-17-15-5(b)]**.

Section 1.9. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if the action is taken by all directors. The action must be evidenced by at least one (1) written consent describing the action to be taken, signed by each director and included in the minutes or filed with the corporate records reflecting the action taken. **[I.C. § 23-17-15-2(a)]**. Action taken under this Section is effective when the last director signs the consent, unless the consent specifies a prior or subsequent effective date. **[I.C. § 23-17-15-2(b)]**.

Section 1.10. Executive Committee. There shall be, and by the adoption of these Bylaws the Board of Directors hereby creates, an Executive Committee of the Corporation, which shall consist of the officers of the Corporation. During intervals between meetings of the Board of Directors, the Executive Committee shall have and exercise all of the authority of the Board of Directors in the management of the Corporation, except where prohibited by law. In addition, the Executive Committee, to the extent specified by the Board of Directors, may exercise the authority of the Board of Directors, except where prohibited by law. The Executive Committee shall cause minutes of its proceedings to be kept and filed with the minutes of the proceedings of the Board of Directors. **[I.C. § 23-17-15-6]**.

Section 1.11. Other Committees. The Board of Directors may from time to time create and appoint standing, special or other committees to undertake studies, make recommendations and carry on functions for the purpose of efficiently accomplishing the purposes of the Corporation. Committees, to the extent specified by the Board of Directors, may exercise the

powers, functions or authority of the Board of Directors, except where prohibited by law; provided, however, that if a committee is to exercise board powers, functions, or authority, (a) all the persons serving on the committee must be directors, (b) there must be at least two (2) persons on the committee, and (c) the creation of the committee and the appointment of its members shall be by a majority of all directors in office when the action is taken. [I.C. § 23-17-15-6].

ARTICLE II

Officers

Section 2.1. Officers and Qualifications Therefor. The officers of the Corporation shall consist of a President, a Vice-President, a Secretary and a Treasurer. [I.C. § 23-17-14-1(a)]. The officers shall be chosen by the Board of Directors. The offices of President and Treasurer may not be held by the same person. Otherwise, any two (2) or more offices may be held by the same person. [I.C. § 23-17-14-1(c)].

Section 2.2. Terms of Office. Each officer of the Corporation shall be elected by the Board of Directors at its annual meeting and shall hold office for a term of one (1) year and until a successor shall be duly elected and qualified, or until resignation, removal or death.

Section 2.3. Vacancies. Whenever any vacancies shall occur in any of the offices of the Corporation for any reason, the same may be filled by the Board of Directors, and any officer so elected shall hold office until the expiration of the term of the officer causing the vacancy and until the officer's successor shall be duly elected and qualified.

Section 2.4. Removal. Any officer of the Corporation may be removed, with or without cause, at any time by the Board of Directors. [I.C. § 23-17-14-3(c)].

Section 2.5. Compensation. The officers of the Corporation shall receive no compensation for their services in such offices.

ARTICLE III

Powers and Duties of Officers

[“An officer shall perform the duties set forth in bylaws....” I.C. § 23-17-14-2].

Section 3.1. President. The President shall preside at all meetings of the Board of Directors. Subject to the general control of the Board of Directors, the President shall manage and supervise all of the affairs of the Corporation and shall perform all of the usual duties of the chief executive officer of a corporation. At each annual meeting of directors, the President or the President's designee shall report on the activities of the Corporation.

Section 3.2. Vice-President. In the absence of the President, the Vice-President shall discharge all of the usual duties of the President.

Section 3.3. Secretary. The Secretary shall attend all meetings of the Board of Directors, and prepare, keep, or cause to be kept, a true and complete record and minutes of the proceedings

of such meetings, and shall perform a like duty, when required, for all committees appointed by the Board of Directors. If required, the Secretary shall attest the execution by the Corporation of deeds, leases, agreements and other official documents. The Secretary shall attend to the giving and serving of all notices of the Corporation required by these Bylaws, shall have custody of the books (except books of account) and records of the Corporation, shall be responsible for authenticating records of the Corporation, and in general shall perform all duties pertaining to the office of Secretary and such other duties as these Bylaws, the Board of Directors, or an officer authorized by the Board may prescribe. [I.C. § 23-17-2-26; § 23-17-14-1(b)].

Section 3.4. Treasurer. The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Corporation. The Treasurer shall have charge and custody of, and be responsible for, all funds, notes, securities and other valuables which may from time to time come into the possession of the Corporation and shall deposit, or cause to be deposited, all funds of the Corporation with such depositories as the Board of Directors shall designate. At each annual meeting of the directors, the Treasurer, or the Treasurer's designee, shall report on the financial condition of the Corporation. The Treasurer, or the Treasurer's designee, shall furnish, at meetings of the Board of Directors or whenever requested, a statement of the financial condition of the Corporation, and in general shall perform all duties pertaining to the office of Treasurer.

Section 3.5. Assistant Officers. The Board of Directors may from time to time designate and elect assistant officers who shall have such powers and duties as the officers whom they are elected to assist shall specify and delegate to them, and such other powers and duties as these Bylaws or the Board of Directors may prescribe. An Assistant Secretary may, in the absence or disability of the Secretary, attest the execution of all documents by the Corporation.

ARTICLE IV

Miscellaneous

Section 4.1. Corporate Seal. The Corporation may, but need not, have a corporate seal. The form of any such corporate seal may be specified in a resolution of the Board of Directors. A corporate seal, however, shall not be required for any purpose, and its absence shall not invalidate any document or action. [I.C. § 23-17-4-2(2)].

Section 4.2. Execution of Contracts and Other Documents. Unless otherwise ordered by the Board of Directors, all written contracts and other documents entered into by the Corporation shall be executed on behalf of the Corporation by the President and, if required, attested by the Secretary or an assistant secretary.

Section 4.3. Fiscal Year. The fiscal year of the Corporation shall begin on January 1 of each year and end on the immediately following December 31.

ARTICLE V

Amendments

The power to make, alter, amend or repeal all or any part of these Bylaws is vested in the Board of Directors. The Corporation must provide notice to the directors of any meeting at which an amendment to the Bylaws is to be considered and voted upon. **[I.C. § 23-17-18-1]**.

Secretary's Initials

Date: _____

Section Two

Organization and Current Developments for Nonprofits Under Federal Law

Philip M. Purcell, CFRE, MPA/JD
Consultant for Philanthropy, LLC
Adjunct Faculty, Indiana University Maurer School of Law and
Lilly School of Philanthropy
Noblesville, Indiana

Section Two

Organization and Current Developments for Nonprofits Under Federal Law..... Philip M. Purcell, CFRE, MPA/JD

PowerPoint Presentation

1023 Form

1023EZ Form

Organization and Current Developments for Nonprofits Under Federal Law

Philip M. Purcell, JD

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FEDERAL EXEMPTION

Section 501(c) – Tax Exempt Organizations

Mutual Benefit Orgs

- 501(c)(4)-Civic leagues
- 501(c)(6)-Business leagues, chambers of commerce, real estate boards
- 501(c)(7)-Social & recreational clubs
- 501(c)(8)-Fraternal benefit societies, associations.
- 501(c)(13)-Credit unions
- 501(c)(19)-Veterans organizations

Public Charities 501(c)(3)

Traditional Charities 509(a)(1)

- No Public Support Test:
- Hospitals
 - Schools
 - Churches
 - Government
- Public Support Test Required:
- Community Foundations and Other Publicly Supported Charities

Other Publicly Supported Charities 509(a)(2)

Public Support Test required

Private Foundations 501(c)(3)

Supporting Organizations 509(a)(3)

Public Safety Organizations 509(a)(4)

Type 1

Type 2

Type 3

Functionally Integrated

Non-functionally Integrated

Types of Applications

- **FORM 1023: Application for Recognition of Exemption Under Section 501(c)(3)**
- **FORM 1023-EZ: Small organizations may file Form 1023-EZ, Streamlined Application for Recognition of Exemption. 1023-EZ must be filed electronically.**
- **FORM 1024: Application for Recognition of Exemption Under 501(a) – Other than 501(c)(3)**

Types of Applications

- **FORM SS-4: EIN Application**
- **FORM 2848: Power of Attorney and Declaration of Representative, if someone other than the principal officer or director will represent the organization on matters about the application.**
- **FORM 8821: Tax Information Authorization, allows IRS to provide information about an application to someone other than a principal officer or director.**

Three Requirements

1. Organized
2. Operated
3. Purpose

Section 501(c)(3)

(3) Corporations . . . organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (b)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Organized

Organized: Appropriate Legal Form?

The organization must be organized as a:

- 1. Trust,**
- 2. Corporation,**
- 3. Limited Liability Corporation, or**
- 4. Unincorporated Association.**

Organized

- **An organization's organizing documents (articles of incorporation, trust documents, articles of association) must:**
 - 1. limit its purposes to those described in section 501(c)(3) of the IRC;**
 - 2. not expressly permit activities that do not further its exempt purpose(s), and,**
 - 3. permanently dedicate its assets to exempt purposes.**

Operated

Operated

A substantial (“primary”) portion of an organization’s activities must further its exempt purpose(s). Other activities are prohibited or restricted including, but not limited to, the following activities:

- must absolutely refrain from participating in the political campaigns of candidates for local, state, or federal office;**
- must restrict its lobbying activities to an insubstantial part of its total activities;**
- must ensure that its earnings do not inure to the benefit of any private shareholder or individual;**

Operated

- **must not operate for the benefit of private interests such as those of its founder, the founder's family, its shareholders or persons controlled by such interests;**
- **must not operate for the primary purpose of conducting a trade or business that is not related to its exempt purpose, such as a school's operation of a factory; and,**
- **must not have purposes or activities that are illegal or violate fundamental public policy.**

Purpose

Operated: Does the Organization have an Exempt Purpose?

- **Purpose statement is very important!**
- **Must be stated in organizing documents such as the articles.**
- **The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.**

Section 501(c)(3)

(3) Corporations . . . organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (b)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Purpose

- **The term “charitable” is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.**

**Review of Form 1023:
Application for
Recognition of
Exemption Under
Section 501(c)(3)**

New Online Form

- **Beginning January 31, 2020, applications for recognition of exemption on Form 1023 must be submitted electronically online at Pay.gov.**
- **The IRS provided a 90-day grace period during which it accepted paper versions of Form 1023 (Rev. 12-2017).**

New Online Form

- **The required user fee for Form 1023 remains \$600 for 2020. Applicants must pay the fee through Pay.gov when submitting the form. Payment can be made directly from a bank account or by credit or debit card.**
- **Updates about Form 1023 can be obtained by subscribing to Exempt Organizations Update, a free e-Newsletter from the IRS Exempt Organizations' office.**

Review of Form

- **Part I: Identification of Applicant**
- **Part II: Organizational Structure**
- **Part III: Required Provisions in Your Organizing Document**
- **Part IV: (Narrative Description of) Your Activities**
- **Part V: Compensation and Other Financial Arrangements (With Your Officers, Directors, Trustees, Employees, and Independent Contractors)**

Review of Form

- **Part VI: Financial Data**
- **Part VII: Foundation Classification (Private Foundation or Public Charity)**
- **Part VIII: Effective Date**
- **Part IX: Annual Filing Requirements**
- **Part X: Signature**

Review of Form: Upload Checklist

- **Organizing Document (and any amendments)**
- **Bylaws, if adopted**
- **Form 2848, Power of Attorney**
- **Form 8821, Tax Information Authorization**
- **Supplemental Responses (if applicable)**
- **Expedited Handling Request (if applicable)**

Schedules

- **A - Churches**
- **B – Schools, Colleges, Universities**
- **C – Hospitals and Medical Research Organizations**
- **D – Section 509(a)(3) Supporting Organizations**
- **E – Effective Date**
- **F – Low Income Housing**
- **G – Successors to Other Organizations**
- **H – Organizations Providing Scholarships or Other Grants to Individuals and Private Foundations Requesting Advance Approval of Individual Grant Procedures**

Instructions, Appendix A: Sample Conflict of Interest Policy

Appendix A, Sample Conflict of Interest Policy, is only intended to provide an example of a conflict of interest policy for organizations.

The sample conflict of interest policy does not prescribe any specific requirements. Therefore, organizations should use a conflict of interest policy that best suits their organization.

Changes to 1023 Form for 2020

- **Now filed online.**
- **Some changes simply rearrange questions to optimize its format for electronic filing.**
- **Question of the applicant's NTEE Code**

NTEE Activity Code

I. Arts, Culture, and Humanities - A

II. Education - B

III. Environment and Animals - C, D

IV. Health - E, F, G, H

V. Human Services - I, J, K, L, M, N, O, P

VI. International, Foreign Affairs - Q

VII. Public, Societal Benefit - R, S, T, U, V, W

VIII. Religion Related - X

IX. Mutual/Membership Benefit - Y

X. Unknown, Unclassified – Z

See: <https://nccs.urban.org/project/national-taxonomy-exempt-entities-ntee-codes>

Changes to 1023 Form

- **New representations regarding the applicant's OFAC (Office of Foreign Assets Control) compliance.**
- **Describe practice to ensure that foreign expenditures or grants are not diverted to support terrorism or other non-charitable activities.**
- **Consider corresponding changes to Bylaws or other written operating manual to ensure that the compliance procedures represented to the IRS are memorialized in the organization's records.**

Changes to 1023 Form

- **Certain responses to Form 1023 trigger automatic follow-up questions.**
- **Example: If the applicant reports a response to a question regarding the applicant's financials that would require an itemized explanation, a follow-up question is automatically generated to require a response from the applicant before the applicant can continue to the next question.**
- **Impossible for an applicant to overlook the need to itemize where required.**

Changes to 1023 Form

- **The electronic Form 1023 also prevents an applicant from skipping a page until all responses on that page are completed. In order to help ensure that all responses are appropriately completed, it is recommended that a sample application is completed first.**

Form 1023-EZ

- **Streamlined form only filed electronically.**
- **Generally for organizations with gross receipts less than \$50,000 for the next three years.**

Changes to 1023EZ for 2020

- **Questions about annual gross receipts, total assets and public charity classification were added directly to the Form 1023-EZ from the eligibility worksheet.**
- **A new text box was also added for applicants to provide a brief description of their mission or most significant activities.**

IRS Review and Determination Letter

- **The IRS tax specialist reviewing an application may request additional information in writing or in a conference call.**
- **If all information received establishes that an organization meets the requirements for exemption, the IRS will issue a “determination letter” recognizing the organization’s exempt status and providing its public charity classification.**
- **This is an important document that should be kept in the organization’s permanent records.**

Resources: Publications

- **Pub 15, Circular E, Employer's Tax Guide,**
- **Pub 15-A, Employer's Supplemental Tax Guide,**
- **Pub 463, Travel, Entertainment, Gift, and Car Expenses,**
- **Pub 517, Social Security and Other Information for Members of the Clergy and Religious Workers,**
- **Pub 526, Charitable Contributions,**
- **Pub 538, Accounting Periods and Methods,**
- **Pub 557, Tax-Exempt Status for Your Organization,**
- **Pub 561, Determining the Value of Donated Property**
- **Pub 583, Starting a Business and Keeping Records,**
- **Pub 598, Tax on Unrelated Business Income of Exempt Organizations,**
- **Pub 1771, Charitable Contributions—Substantiation and Disclosure Requirements,**

Resources: Publications

- **Pub 1828, Tax Guide for Churches and Religious Organizations,**
- **Pub 3079, Tax-Exempt Organizations and Gaming,**
- **Pub 3833, Disaster Relief, Providing Assistance Through Charitable Organizations,**
- **Pub 4302, A Charity's Guide to Vehicle Donations,**
- **Pub 4303, A Donor's Guide to Vehicle Donations,**
- **Pub 4221-NC, Compliance Guide for Tax-Exempt Organizations (other than 501(c)(3) Public Charities and Private Foundations),**
- **Pub 4221-PC, Compliance Guide for 501(c)(3) Public Charities,**
- **Pub 4221-PF, Compliance Guide for 501(c)(3) Private Foundations,**

Resources: Forms

- **Form SS-4, Application for Employer Identification Number,**
- **Form 941, Employer's Quarterly Federal Tax Return,**
- **Form 990, Return of Organization Exempt From Income Tax,**
- **Form 990-EZ, Short Form Return of Organization Exempt From Income Tax,**
- **Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation,**
- **Form 990-N, Electronic Notice (e-Postcard) For Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ (available electronically only),**
- **Form 990-T, Exempt Organization Business Income Tax Return,**
- **Form 990-W, Estimated Tax on Unrelated Business Taxable Income for Exempt Organizations,**

Resources: Forms

- **Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code,**
- **Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code,**
- **Form 1041, U.S. Income Tax Return for Estates and Trusts,**
- **Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,**
- **Form 5578, Annual Certification of Racial Non-Discrimination for a Private School Exempt from Federal Income Tax,**
- **Form 5768, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation,**

Resources: Forms

- **Form 8282, Donee Information Return,**
- **Form 8283, Noncash Charitable Contributions,**
- **Form 8868, Extension of Time To File an Exempt Organization Return,**
- **FinCEN Form 114, Report of Foreign Bank and Financial Accounts (filed with Treasury Department).**

**Application for Recognition of Exemption
Under Section 501(c)(3) of the Internal Revenue Code**

Do not enter social security numbers on this form as it may be made public.
Go to www.irs.gov/Form1023 for instructions and the latest information.

Note: *If exempt status is approved, this application will be open for public inspection.*

Use the "?" buttons throughout this form for help in completing this application. For additional help, call IRS Exempt Organizations Customer Account Services toll-free at 1-877-829-5500.

If you cannot complete required responses within the textbox limits throughout this form, upload your additional narratives with the other required documents.

Part I Identification of Applicant

1a Full Name of Organization (exactly as it appears in your organizing document)				b Care of Name (if applicable)	
c Mailing Address (Number, street and room/suite)		d City		e Country UNITED STATES	
f State		g Zip Code + 4	h Foreign Province (or State)		i Foreign Postal Code
2 Employer Identification Number		3 Month Tax Year Ends		4 Person to Contact if More Information is Needed (officer, director, trustee, or authorized representative)	
5 Contact Telephone Number			6 Fax Number (optional)		7 User Fee Submitted \$600.00

8 Organization's Website (if available):

9 List the names, titles, and mailing addresses of your officers, directors, and/or trustees.

First Name:		Last Name:		Title:	
Mailing Address:			City:		
State (or Province):			Zip Code (or Foreign Postal Code):		
First Name:		Last Name:		Title:	
Mailing Address:			City:		
State (or Province):			Zip Code (or Foreign Postal Code):		
First Name:		Last Name:		Title:	
Mailing Address:			City:		
State (or Province):			Zip Code (or Foreign Postal Code):		
First Name:		Last Name:		Title:	
Mailing Address:			City:		
State (or Province):			Zip Code (or Foreign Postal Code):		
First Name:		Last Name:		Title:	
Mailing Address:			City:		
State (or Province):			Zip Code (or Foreign Postal Code):		

Check here to add more officers, directors, and/or trustees.

Part II Organizational Structure

- 1** You must be a corporation, limited liability company (LLC), unincorporated association, or trust to be tax exempt.

Select your type of organization.

Corporation

At the end of this form, you must upload a copy of your articles of incorporation (and any amendments) that shows proof of filing with the appropriate state agency.

Limited Liability Company (LLC)

At the end of this form, you must upload a copy of your articles of organization (and any amendments) that shows proof of filing with the appropriate state agency. Also, if you adopted an operating agreement, upload a copy, along with any amendments.

Unincorporated Association

At the end of this form, you must upload a copy of your articles of association, constitution, or other similar organizing document that is dated and includes at least two signatures. Include signed and dated copies of any amendments.

Trust

At the end of this form, you must upload a signed and dated copy of your trust agreement. Include signed and dated copies of any amendments.

- 2** Enter the date you formed. (MM/DD/YYYY)

- 3** Select your state (or U.S. territory) of incorporation or other formation. If you were formed under the laws of a foreign country, select Foreign Country.

- 4** Have you adopted bylaws? If "Yes," at the end of this form, upload a current copy showing the date of adoption. If "No," explain how you select your officers, directors, or trustees.

Yes No

- 5** Are you a successor to another organization?

Yes No

Answer "Yes" if you have taken or will take over the activities of another organization, you took over 25% or more of the fair market value of the net assets of another organization, or you were established upon the conversion of an organization from for-profit to nonprofit status. If "Yes," complete Schedule G.

Part III Required Provisions in Your Organizing Document

Part III helps ensure that, when you submit this application, your organizing document contains the required provisions to meet the organizational test under section 501(c)(3).

If you cannot check "Yes" in both Lines 1 and 2, your organizing document does not meet the organizational test. DO NOT file this application until you have amended your organizing document. Remember to upload your original and amended organizing documents at the end of this form.

- 1** Section 501(c)(3) requires that your organizing document limit your purposes to one or more exempt purposes within section 501(c)(3), such as charitable, religious, educational, and/or scientific purposes.

The following is an example of an acceptable purpose clause: The organization is organized exclusively for charitable, religious, educational, and scientific purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

Does your organizing document meet this requirement?

Yes No

- 1a** State specifically where your organizing document meets this requirement, such as a reference to a particular article or section in your organizing document (Page/Article/Paragraph):

- 2** Section 501(c)(3) requires that your organizing document provide that upon dissolution, your remaining assets be used exclusively for section 501(c)(3) exempt purposes, such as charitable, religious, educational, and/or scientific purposes. Depending on your entity type and the state in which you are formed, this requirement may be satisfied by operation of state law.

The following is an example of an acceptable dissolution clause: Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

Does your organizing document meet this requirement?

Yes No

- 2a** State specifically where your organizing document meets this requirement, such as a reference to a particular article or section in your organizing document (Page/Article/Paragraph) or indicate that you rely on state law.

Part IV Your Activities

1 Describe completely and in detail your past, present, and planned activities. Do not refer to or repeat the purposes in your organizing document. For each past, present, or planned activity, include information that answers the following questions:

- a. What is the activity?
- b. Who conducts the activity?
- c. Where is the activity conducted?
- d. What percentage of your total time is allocated to the activity?
- e. How is the activity funded (for example, donations, fees, etc.) and what percentage of your overall expenses is allocated to this activity?
- f. How does the activity further your exempt purposes?

Part IV Your Activities (continued)

2 Enter the 3-character NTEE Code that best describes your activities.

Or check here if you want the IRS to select the NTEE Code that best describes your activities.

3 Do any of your programs limit the provision of goods, services, or funds to a specific individual or group of specific individuals? For example, answer "Yes" if goods, services, or funds are provided only for a particular individual, your members, individuals who work for a particular employer, or graduates of a particular school. If "Yes," explain the limitation and how recipients are selected for each program.

 Yes No

4 Do any individuals who receive goods, services, or funds through your programs have a family or business relationship with any officer, director, trustee, or with any of your highest compensated employees or highest compensated independent contractors? If "Yes," explain how these related individuals are eligible for goods, services, or funds.

 Yes No

5 Do you or will you support or oppose candidates in political campaigns in any way? If "Yes," explain.

 Yes No

6 Do you or will you attempt to influence legislation? If "Yes," explain how you attempt to influence legislation.

 Yes No

Part IV Your Activities (continued)

- 6a** Did you or will you make an election to have your legislative activities measured by expenditures by filing Form 5768? If "No," describe whether your attempts to influence legislation are a substantial part of your activities. Include the time and money spent on your attempts to influence legislation as compared to your total activities. Yes No

- 7** Do you or will you publish, own, or have rights in music, literature, tapes, artworks, choreography, scientific discoveries, or other intellectual property? If "Yes," describe who owns or will own any copyrights, patents, or trademarks, whether fees are or will be charged, how the fees are determined, and how any items are or will be produced, distributed, and marketed. Yes No

- 8** Do you or will you provide educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, the sound use of consumer credit, and/or assist individuals and families with financial problems such as credit card debt and foreclosure by providing them with counseling? If "Yes," explain. Yes No

- 9** Do you or will you make grants, loans, or other distributions to organizations? If "Yes," describe the type and purpose of the grants, loans, or distributions, how you select your recipients including submission requirements (such as grant proposals or application forms), and the criteria you use or will use to select recipients. Also describe how you ensure the grants, loans, and other distributions are or will be used for their intended purposes (including whether you require periodic or final reports on the use of funds and any procedures you have if you identify that funds are not being used for their intended purposes). Finally, describe the records you keep with respect to grants, loans, or other distributions you make and identify any recipient organizations and any relationships between you and the recipients. If "No," continue to Line 10. Yes No

Part IV Your Activities (continued)

- 9a** Do you or will you make grants, loans, or other distributions to organizations that are not recognized by the IRS as tax exempt under section 501(c)(3)? If "Yes," name and/or describe the non-section 501(c)(3) organizations to whom you do or will make distributions and explain how these distributions further your exempt purposes. Yes No

- 9b** Do you or will you make grants, loans, or other distributions to foreign organizations? If "Yes," name each foreign organization (if not already provided), the country and region within each country in which each foreign organization operates, any relationship you have with each foreign organization, and whether the foreign organization accepts contributions earmarked for a specific country or organization (if so, specify which countries or organizations). If "No," continue to Line 10. Yes No

- 9c** Do your contributors know that you have ultimate authority to use contributions made to you at your discretion for purposes consistent with your exempt purposes? If "Yes," describe how you relay this information to contributors. Yes No

- 9d** Do you or will you make pre-grant inquiries about the recipient organization? If "Yes," describe these inquiries, including whether you inquire about the recipient's financial status, its tax-exempt status under the Internal Revenue Code, its ability to accomplish the purpose for which the resources are provided, and other relevant information. Yes No

- 9e** Do you or will you use any additional procedures to ensure that your distributions to foreign organizations are used in furtherance of your exempt purposes? If "Yes," describe these procedures, including periodic reporting requirements, auditing grantees, site visits by your employees or compliance checks by impartial experts, etc., to verify that grant funds are being used appropriately. Yes No

Part IV Your Activities (continued)

9f Do you share board members or other key personnel with the recipient organization(s)? If "Yes," identify the relationships. Yes No

9g When you make grants, loans, or other distributions to foreign organizations, will you check the OFAC List of Specially Designated Nationals and Blocked Persons for names of individuals and entities with whom you are dealing to determine if they are included on the list? Describe any other practices you will engage in to ensure that foreign expenditures or grants are not diverted to support terrorism or other non-charitable activities. Yes No

9h Will you comply with all United States statutes, executive orders, and regulations that restrict or prohibit U.S. persons from engaging in transactions and dealings with designated countries, entities, or individuals, or otherwise engaging in activities in violation of economic sanctions administered by OFAC? Yes No

9i Will you acquire from OFAC the appropriate license and registration where necessary? Yes No

10 Do you or will you operate in a foreign country or countries? If "Yes," name each foreign country and region within each country in which you do or will operate and describe your operations in each one. If "No," continue to Line 11. Yes No

10a When you conduct activities in foreign countries, will you check the OFAC List of Specially Designated Nationals and Blocked Persons for names of individuals and entities with whom you are dealing to determine if they are included on the list? Describe any other practices you will engage in to ensure that foreign expenditures or grants are not diverted to support terrorism or other non-charitable activities. Yes No

10b Will you comply with all United States statutes, executive orders, and regulations that restrict or prohibit U.S. persons from engaging in transactions and dealings with designated countries, entities, or individuals, or otherwise engaging in activities in violation of economic sanctions administered by OFAC? Yes No

10c Will you acquire from OFAC the appropriate license and registration where necessary? Yes No

Part IV Your Activities (continued)

- 11** Are you a sponsoring organization that maintains one or more donor advised funds? If yes, please provide a complete description of your program, including the specific advice that such donors may provide. Describe in detail the control you maintain (or will maintain) over the use of the funds. Yes No

- 12** Do you or will you operate a school? Yes No
If "Yes," complete Schedule B.

- 13** Is your principal purpose or function to provide hospital or medical care? Yes No
If "Yes," complete Schedule C.

- 14** Do you or will you provide low-income housing? Yes No
If "Yes," complete Schedule F.

- 15** Do you or will you provide scholarships, fellowships, educational loans, or other educational grants to individuals, including grants for travel, study, or other similar purposes? Yes No
If "Yes," complete Schedule H - Section I.

- 16** Check any of the following fundraising activities that you will undertake (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Website, mail, email, personal, and/or phone solicitations | <input type="checkbox"/> Foundation grant solicitations |
| <input type="checkbox"/> Receive donations from another organization's website | <input type="checkbox"/> Government grant solicitations |
| <input type="checkbox"/> Bingo | <input type="checkbox"/> Other (non-bingo) gaming activities |
| <input type="checkbox"/> Other (describe) | |

- We will not engage in fundraising activities.

- 17** Do you or will you engage in fundraising activities for other organizations? If "Yes," describe these arrangements, including the names or descriptions of the organizations for which you raise funds. Yes No

Part V Compensation and Other Financial Arrangements

- 1** Do you or will you compensate officers, directors, or trustees, or do or will you have highest compensated employees, or highest compensated independent contractors? If "No," continue to Line 2. Yes No

In establishing compensation for your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors:

- 1a** Do or will the individuals that approve compensation arrangements follow a conflict of interest policy? Yes No

- 1b** Do or will you approve compensation arrangements in advance of paying compensation? Yes No

- 1c** Do or will you document in writing the date and terms of approved compensation arrangements? Yes No

- 1d** Do or will you record in writing the decision made by each individual who decided or voted on compensation arrangements? Yes No

- 1e** Do or will you approve compensation arrangements based on information about compensation paid by similarly situated taxable or tax-exempt organizations for similar services, current compensation surveys compiled by independent firms, or actual written offers from similarly situated organizations? Yes No

- 1f** Do or will you record in writing both the information on which you relied to base your decision and its source? Yes No

- 1g** Do or will you have any other practices you use to set reasonable compensation? If "Yes," describe these practices. Yes No

- 2** Have you adopted a conflict of interest policy consistent with the sample conflict of interest policy in Appendix A to the instructions? If you are a hospital, answer "Yes" if your conflict of interest policy includes provisions consistent with the additional healthcare related provisions in the sample document. If "No," describe the procedures you will follow to ensure that persons who have a conflict of interest will not have influence over setting their own compensation or regarding business deals with themselves. Yes No

- 3** Do you or will you compensate any of your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors through non-fixed payments, such as discretionary bonuses or revenue-based payments? If "Yes," describe all non-fixed compensation arrangements, including how the amounts are determined, who is eligible for such arrangements, whether you place a limitation on total compensation, and how you determine or will determine that you pay no more than reasonable compensation for services. Yes No

Part V Compensation and Other Financial Arrangements *(continued)*

- 4 Do you or will you purchase or sell any goods, services, or assets from or to: (i) any of your officers, directors, or trustees; (ii) any family of any of your officers, directors, or trustees; (iii) any organizations in which any of your officers, directors, or trustees are also officers, directors, or trustees, or in which any individual officer, director, or trustee owns more than a 35% interest; (iv) your highest compensated employees; or (v) your highest compensated independent contractors? If "Yes," describe any such transactions that you made or intend to make, with whom you make or will make such transactions, how the terms are or will be negotiated at arm's length, and how you determine you pay no more than fair market value or you are paid at least fair market value. Yes No

- 5 Do you or will you have any leases, contracts, loans, or other agreements with: (i) your officers, directors, or trustees; (ii) any family of any of your officers, directors, or trustees; (iii) any organizations in which any of your officers, directors, or trustees are also officers, directors, or trustees, or in which any individual officer, director, or trustee owns more than a 35% interest; (iv) your highest compensated employees; or (v) your highest compensated independent contractors? If "Yes," describe any written or oral arrangements that you made or intend to make, with whom you have or will have such arrangements, how the terms are or will be negotiated at arm's length, and how you determine you pay no more than fair market value or you are paid at least fair market value. Yes No

- 6 Do you or will you contract with another organization to develop, build, market, or finance your facilities? Yes No
If "Yes," describe each facility, the role of the other organization, and any business or family relationship between the organization and your officers, directors, or trustees. Explain how that entity is selected, how the terms of any contract(s) are negotiated at arm's length, and how you determine you will pay no more than fair market value for services.

Part V Compensation and Other Financial Arrangements *(continued)*

- 7 Does or will someone other than your own employees or volunteers manage your activities or facilities? Yes No
- If "Yes," describe the activities or facilities that will be managed by others, the names of the persons or organizations that manage or will manage your activities or facilities, and any business or family relationship between the organization and your officers, directors, or trustees. Explain how these managers were or will be selected, how the terms of any contracts or other agreements were or will be negotiated, and how you determine you will pay no more than fair market value for services.

- 8 Do you participate in any joint ventures, including partnerships or limited liability companies treated as partnerships, in which you share profits and losses with partners? If "Yes," state your ownership percentage in each joint venture, list your investment in each joint venture, describe the tax status of other participants in each joint venture (including whether they are section 501(c)(3) organizations), describe the activities of each joint venture, describe how you exercise control over the activities of each joint venture, and describe how each joint venture furthers your exempt purposes. Yes No

Part VI Financial Data

- 1 Select the option that best describes you to determine the years of revenues and expenses you need to provide.
- You completed less than one tax year.
Provide a total of three years of financial information (including the current year and two future years of reasonable and good faith projections of your future finances) in the following Statement of Revenues and Expenses.
- You completed at least one tax year but fewer than five.
Provide a total of four years financial information (including the current year and three years of actual financial information or reasonable and good faith projections of your future finances) in the following Statement of Revenues and Expenses.
- You completed five or more tax years.
Provide financial information for your five most recent tax years (including the current year) in the following Statement of Revenues and Expenses.

Part VI Financial Data (continued)**A. Statement of Revenues and Expenses**

Type of revenue	Current tax year	4 prior tax years or 2 succeeding tax years			
	From: _____ To: _____	From: _____ To: _____	From: _____ To: _____	From: _____ To: _____	From: _____ To: _____
1 Gifts, grants, and contributions received (do not include unusual grants)					
2 Membership fees received					
3 Gross investment income					
4 Net unrelated business income					
5 Taxes levied for your benefit					
6 Value of services or facilities furnished by a governmental unit without charge (not including the value of services generally furnished to the public without charge)					
7 Any revenue not otherwise listed above or in lines 9 - 12 below (provide an itemized list below)					
8 Total of lines 1 through 7					
9 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to your exempt purposes (provide an itemized list below)					
10 Total of lines 8 and 9					
11 Net gain or loss on sale of capital assets (provide an itemized list below)					
12 Unusual grants (provide an itemized list below)					
13 Total Revenue (add lines 10 through 12)					
Type of expense	Current tax year	4 prior tax years or 2 succeeding tax years			
14 Fundraising expenses					
15 Contributions, gifts, grants, and similar amounts paid out (provide an itemized list below)					
16 Disbursements to or for the benefit of members (provide an itemized list below)					
17 Compensation of officers, directors, and trustees					
18 Other salaries and wages					
19 Interest expense					
20 Occupancy (rent, utilities, etc.)					
21 Depreciation and depletion					
22 Professional fees					
23 Any expense not otherwise classified, such as program services (provide an itemized list below)					
24 Total Expenses (add lines 14 through 23)					

25 Itemized financial data

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Part VI **Financial Data** *(continued)*

B. Balance Sheet (for your most recently completed tax year)		Year End:
Assets		
1	Cash	
2	Accounts receivable, net	
3	Inventories	
4	Bonds and notes receivable (provide an itemized list below)	
5	Corporate stocks (provide an itemized list below)	
6	Loans receivable (provide an itemized list below)	
7	Other investments (provide an itemized list below)	
8	Depreciable assets (provide an itemized list below)	
9	Land	
10	Other assets (provide an itemized list below)	
11	Total Assets (add lines 1 through 10)	
Liabilities		
12	Accounts payable	
13	Contributions, gifts, grants, etc. payable	
14	Mortgages and notes payable (provide an itemized list below)	
15	Other liabilities (provide an itemized list below)	
16	Total Liabilities (add lines 12 through 15)	
Fund Balances or Net Assets		
17	Total fund balances or net assets	
18	Total Liabilities and Fund Balances or Net Assets (add lines 16 and 17)	

19 Itemized financial data

Part VII Foundation Classification

Part VII is designed to classify you as an organization that is either a private foundation or a public charity. Public charity classification is a more favorable tax status than private foundation classification. If you are a private foundation, this part will further determine whether you are a private operating foundation.

1 Select the foundation classification you are requesting from the list below.

- You are described in 509(a)(1) and 170(b)(1)(A)(vi) as an organization that receives a substantial part of its financial support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public.
- You are described in 509(a)(2) as an organization that normally receives not more than one-third of its financial support from gross investment income and receives more than one-third of its financial support from contributions, membership fees, and gross receipts from activities related to its exempt functions (subject to certain exceptions).
- You are described in 509(a)(1) and 170(b)(1)(A)(i) as a church or a convention or association of churches. Complete Schedule A.
- You are described in 509(a)(1) and 170(b)(1)(A)(ii) as a school. Complete Schedule B.
- You are described in 509(a)(1) and 170(b)(1)(A)(iii) as a hospital, a cooperative hospital service organization, or a medical research organization operated in conjunction with a hospital. Complete Schedule C.
- You are described in 509(a)(1) and 170(b)(1)(A)(iv) as an organization operated for the benefit of a college or university that is owned or operated by a governmental unit.
- You are described in 509(a)(1) and 170(b)(1)(A)(ix) as an agricultural research organization directly engaged in the continuous active conduct of agricultural research in conjunction with a college or university.
- You are described in 509(a)(3) as an organization supporting either one or more organizations described in 509(a)(1) or 509(a)(2) or a publicly supported section 501(c)(4), (5), or (6) organization. Complete Schedule D.
- You are described in 509(a)(4) as an organization organized and operated exclusively for testing for public safety.
- You are a publicly supported organization and would like the IRS to decide your correct classification.
- You are a private foundation.

1a As a private foundation, section 508(e) requires special provisions in your organizing document in addition to those that apply to all organizations described in section 501(c)(3). Check this box to confirm that your organizing document includes these provisions or you rely on state law.

State specifically where your organizing document meets this requirement, such as a reference to a particular article or section in your organizing document (Page/Article/Paragraph) or state that you rely on state law.

1b Do you or will you provide scholarships, fellowships, educational loans, or other educational grants to individuals, including grants for travel, study, or other similar purposes? Yes No
If "Yes," complete Schedule H - Section II.

1c Are you a private operating foundation? Yes No

To be a private operating foundation you must engage directly in the active conduct of charitable, religious, educational, and similar activities, as opposed to indirectly carrying out these activities by providing grants to individuals or other organizations.

Part VII Foundation Classification (continued)

- 1d** Describe how you meet the requirements for private operating foundation status, including how you meet the income test and either the assets test, the endowment test, or the support test. If you've been in existence for less than one year, describe how you are likely to satisfy the requirements for private operating foundation status.

- 2** If you have been in existence more than 5 years, you must confirm your public support status. To confirm your qualification as a public charity described in 509(a)(1) and 170(b)(1)(A)(vi) in existence for five or more tax years, you must have received one-third or more of your total support from governmental agencies, contributions from the general public, and contributions or grants from other public charities; or 10% or more of your total support from governmental agencies, contributions from the general public, and contributions or grants from other public charities and the facts and circumstances indicate you are a publicly supported organization. Calculate whether you meet this support test for your most recent five-year period.

- i.** Did you receive contributions from any person, company, or organization whose gifts totaled more than the 2% amount of line 8 in Part VI-A? Yes No

If "Yes," identify each person, company, or organization by letter (A, B, C, etc.) and indicate the amount contributed by each. Keep a list showing the name of and amount contributed by each of these donors for your records.

- ii.** Based on your calculations, did you receive at least one-third of your support from public sources or did you normally receive at least 10 percent of your support from public sources and you have other characteristics of a publicly supported organization? Yes No

- 2a** If you have been in existence more than 5 years, you must confirm your public support status. To confirm your qualification as a public charity described in 509(a)(2) in existence for five or more tax years, you must have normally received more than one-third of your support from contributions, membership fees, and gross receipts from activities related to your exempt functions, or a combination of these sources, and not more than one-third of your support from gross investment income and net unrelated business income. Calculate whether you meet this support test for your most recent five-year period.

- i.** Did you receive amounts from any disqualified persons? Yes No

If "Yes," identify each disqualified person by letter (A, B, C, etc.) and indicate the amount contributed by each. Keep a list showing the name of and amount contributed by each of these donors for your records.

- ii.** Did you receive amounts from individuals or organizations other than disqualified persons that exceeded the greater of \$5,000 or 1% of the amount on line 10 of Part VI-A Statement of Revenues and Expenses? Yes No

If "Yes," identify each individual or organization by letter (A, B, C, etc.) and indicate the amount contributed by each. Keep a list showing the name of and amount contributed by each of these donors for your records.

- iii.** Based on your calculations, did you normally receive more than one-third of your support from a combination of gifts, grants, contributions, membership fees, and gross receipts (from permitted sources) from activities related to your exempt functions and normally receive not more than one-third of your support from investment income and unrelated business taxable income? Yes No

Part VIII Effective Date

In general, a determination letter recognizing exemption of an organization described in section 501(c)(3) is effective as of the date of formation of an organization if: (1) its purposes and activities prior to the date of the determination letter have been consistent with the requirements for exemption; and (2) it has filed an application for recognition of exemption within 27 months from the end of the month in which it was organized.

- 1 Are you submitting this application within 27 months of the end of the month in which you were legally formed? Yes No

If "No," complete Schedule E.

Part IX Annual Filing Requirements

If you fail to file a required information return or notice for three consecutive years, your exempt status will be automatically revoked.

- 1 Certain organizations are not required to file annual information returns or notices (Form 990, Form 990-EZ, or Form 990-N, e-Postcard). If you are granted tax-exemption, are you claiming to be excused from filing Form 990, Form 990-EZ, or Form 990-N? Yes No

If "Yes," are you claiming you are excused from filing because you are:

- A church or association of churches
- An integrated auxiliary (such as a men's or women's organization, religious school, mission society, or religious group)
- A church-affiliated organization (other than a section 509(a)(3) organization) that is exclusively engaged in managing funds or maintaining retirement programs and is described in Revenue Procedure 96-10, 1996-1 C.B. 577
- A school below college level affiliated with a church or operated by a religious order
- A mission society (other than a section 509(a)(3) supporting organization) sponsored by, or affiliated with, one or more churches or church denominations, if more than half of the society's activities are conducted in, or directed at, persons in foreign countries
- An affiliate of a governmental unit that meets the requirements of Revenue Procedure 95-48, 1995-2 C.B. 418 (other than a section 509(a)(3) supporting organization)
- Other (describe)

Part X Signature

- I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, and to the best of my knowledge it is true, correct, and complete.

(Type name of signer)

(Type title or authority of signer)

05/13/2020

(Date)

Upload checklist:

- Organizing document (and any amendments)
- Bylaws, if adopted
- Form 2848, Power of Attorney and Declaration of Representative (if applicable)
- Form 8821, Tax Information Authorization (if applicable)
- Supplemental responses (if applicable)
- Expedited handling request (if applicable)

Schedule A. Churches

- 1 Do you have a written creed, statement of faith, or summary of beliefs? If "Yes," describe your written creed, statement of faith, or summary of beliefs. Yes No

- 2 Do you have a literature of your own? If "Yes," describe your literature. Yes No

- 3 Do you have a formal code of doctrine and discipline? If "Yes," describe your code of doctrine and discipline. Yes No

- 4 Describe your religious hierarchy or ecclesiastical government.

- 5 Are you part of a group of churches with similar beliefs and structures? If "Yes," explain. Yes No

- 6 Do you have a form of worship? If "Yes," describe your form of worship. Yes No

- 7 Do you have regularly scheduled religious services? If "Yes," describe the nature of the services. Yes No

- 7a What is the average attendance at your regularly scheduled religious services?

- 8 Do you have an established place of worship? If "Yes," describe your established place of worship or where you meet to hold regularly scheduled religious services. Yes No

Schedule A. Churches (continued)

9 Do you have an established congregation or other regular membership group? If "No," continue to Line 10. Yes No

9a How many members do you have?

9b Do you have a process by which an individual becomes a member? If "Yes," describe the process. Yes No

9c Do your members have voting rights, rights to participate in religious functions, or other rights? If "Yes," describe the rights your members have. Yes No

9d May your members be associated with another denomination or church? Yes No

9e Are all of your members part of the same family? Yes No

10 Do you conduct baptisms, weddings, funerals, or other religious rites? Yes No

11 Do you have a school for the religious instruction of the young? Yes No

12 Do you have ministers or religious leaders? If "Yes," describe these roles and explain whether the ministers or religious leaders are ordained, commissioned, or licensed after a prescribed course of study. Yes No

13 Do you have schools for the preparation of your ordained ministers or religious leaders? Yes No

14 Do you ordain, commission, or license ministers or religious leaders? If "Yes," describe the requirements for ordination, commission, or licensure. Yes No

15 Do you have other information you believe should be considered regarding your status as a church? If "Yes," explain. Yes No

Schedule B. Schools, Colleges, and Universities

- 1** Do you normally have a regularly scheduled curriculum, a regular faculty of qualified teachers, a regularly enrolled student body, and facilities where your educational activities are regularly carried on? Yes No
- 2** Is the primary function of your school the presentation of formal instruction? If "No," continue to Line 3. Yes No

2a Select the best description(s) of your school:

- Elementary school
- Secondary school
- Charter school
- College or university
- Technical school
- Other school (describe)

- 3** Are you a public school because you are operated by a state or subdivision of a state or operated wholly or predominantly from government funds or property? If "Yes," explain how you are operated by a state or subdivision of a state. Do not complete the remainder of Schedule B. Yes No

- 4** Were you formed or substantially expanded at the time of public school desegregation in the school district or county in which you are located? Yes No

- 5** Has a state or federal administrative agency or judicial body ever determined that you are racially discriminatory? If "Yes," explain. Yes No

- 6** Has your right to receive financial aid or assistance from a governmental agency ever been revoked or suspended? If "Yes," explain. Yes No

Information Required by Revenue Procedure 75-50 as Modified by Revenue Procedure 2019-22

- 7** Have you adopted a racially nondiscriminatory policy as to students in your organizing document, bylaws, or by resolution of your governing body? Yes No

State where the policy is located or if adopted by resolution of your governing body.

- 8** Do your brochures, application forms, advertisements, and catalogues dealing with student admissions, programs, and scholarships contain a statement of your racially nondiscriminatory policy? If "Yes," continue to Line 9. Yes No

- 8a** By checking this box, you agree that all future printed materials, including website content, will contain the required nondiscriminatory policy statement.

Schedule B. Schools, Colleges, and Universities *(continued)*

9 Have you made your racially nondiscriminatory policy known to all segments of the general community you serve by: a) publishing a notice of your policy in a newspaper of general circulation that serves all racial segments of the community; b) publicizing your policy over broadcast media in a way that is reasonably expected to be effective; or c) displaying a notice of your policy at all times on your primary, publicly accessible internet home page in a manner reasonably expected to be noticed by visitors to the homepage? If "Yes," continue to Line 10. Yes No

9a By checking this box, you agree that you will publicize your nondiscriminatory policy in a way that meets the requirements of Revenue Procedure 75-50, 1975-2 C.B. 587, as modified by Revenue Procedure 2019-22, I.R.B. 1260.

10 Do or will you (or any department or division of your organization) discriminate in any way on the basis of race with respect to admissions, use of facilities or exercise of student privileges, faculty or administrative staff, or scholarship or loan programs? If "Yes," for any of the above, explain fully. Yes No

11 Complete the table below to show the racial composition for the current academic year and projected for the next academic year. If you are not operational, submit an estimate based on the best information available (such as the racial composition of the community you serve).

For each racial category, enter the number of (a) students, (b) faculty, and (c) administrative staff. Provide actual numbers rather than percentages for each racial category.

Racial Category	(a) Student Body		(b) Faculty		(c) Administrative Staff	
	Current Year	Next Year	Current Year	Next Year	Current Year	Next Year
Total						

12 In the table below, enter the number and amount of loans and scholarships awarded to enrolled students by racial categories. Provide actual numbers rather than percentages for each racial category.

Check here if you will not provide any loans or scholarships to students.

Racial Category	Number of Loans		Amount of Loans		Number of Scholarships		Amount of Scholarships	
	Current Year	Next Year	Current Year	Next Year	Current Year	Next Year	Current Year	Next Year
Total								

Schedule B. Schools, Colleges, and Universities *(continued)*

13 List your incorporators, founders, board members, and donors of land or buildings, whether individuals or organizations.

--

14 Do any of your incorporators, founders, board members, and donors of land or buildings, whether individuals or organizations, have an objective to maintain segregated public or private school education? If "Yes," explain.

Yes No

--

15 Will you maintain records according to the nondiscrimination provisions contained in Revenue Procedure 75-50? If "No," explain.

Yes No

--

Schedule C. Hospitals and Medical Research Organizations

- 1** Are you a medical research organization (an organization whose principal purpose or function is medical research and which is directly engaged in the continuous active conduct of medical research) operated in conjunction with a hospital? If "No," continue to Line 2. Yes No

- 1a** Name the hospitals with which you have a relationship and describe the relationship.

- 1b** List your assets showing their fair market value and the portion of your assets directly devoted to medical research.

Do not complete the remainder of Schedule C.

- 2** Are you applying for exemption as a cooperative hospital service organization described in section 501(e)? If "Yes," explain. Yes No

Do not complete the remainder of Schedule C.

- 3** Are all the doctors in the community eligible for staff privileges? If "No," give the reasons why and explain how the medical staff is selected. Yes No

Schedule C. Hospitals and Medical Research Organizations *(continued)*

- 4** Do or will you provide medical services to all individuals in your community who can pay for themselves or are able to pay through some form of insurance? If "No," explain. Yes No

- 5** Do you or will you maintain a full-time emergency room? If "Yes," continue to Line 6. Yes No

- 5a** Are you a specialty hospital or would emergency services be duplicative based on your region or locality? Yes No

- 6** Do you provide free or below cost services? If "Yes," describe your policy for determining when and to whom you provide these services and how these services promote the organization's benefit to the community. Yes No

- 7** Do you or will you carry on a formal program of medical training or medical research? If "Yes," describe such programs, including the type of programs offered, the scope of such programs, and affiliations with other hospitals or medical care providers with which you carry on the medical training or research programs. Yes No

- 8** Do you or will you carry on a formal program of community education? If "Yes," describe such programs, including the type of programs offered, the scope of such programs, and affiliation with other hospitals or medical care providers with which you offer community education programs. Yes No

Schedule C. Hospitals and Medical Research Organizations *(continued)*

- 9** Is your board of directors composed of a majority of individuals who are representative of the community you serve, or do you operate under a parent organization whose board of directors is composed of a majority of individuals who are representative of the community you serve? If "Yes," continue to Line 10. Yes No

- 9a** List each board member's name and business, financial, or professional relationship with the hospital. Also, identify each board member who is representative of the community and describe how that individual is a community representative. If you operate under a parent organization whose board of directors is not composed of a majority of individuals who are representative of the community you serve, provide the requested information for your parent's board of directors as well.

--

- 10** Do you operate a facility which is required by a state to be licensed, registered, or similarly recognized as a hospital? If "No," do not complete the rest of Schedule C. Yes No

- 10a** Do you conduct a community health needs assessment (CHNA) at least once every three years and adopt an implementation strategy to meet the community health needs identified in the assessment as required by section 501(r)(3)? If "No," explain. Yes No

--

- 10b** Do you have a written financial assistance policy (FAP) and a written policy relating to emergency medical care as required by section 501(r)(4)? If "No," explain. Yes No

--

Schedule C. Hospitals and Medical Research Organizations *(continued)*

- 10c** Do you both (1) limit amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under your FAP to not more than amounts generally billed to individuals who have insurance covering such care, and (2) prohibit use of gross charges as required by section 501(r)(5)? If "No," explain. Yes No

- 10d** Do you make reasonable efforts to determine whether an individual is FAP-eligible before engaging in extraordinary collection actions as required by section 501(r)(6)? If "No," explain. Yes No

Schedule D. Section 509(a)(3) Supporting Organizations

1 List the names, addresses, and EINs of the organizations you support.

--

2 Are all your supported organizations public charities under section 509(a)(1) or (2)? If "Yes," continue to Line 3. Yes No

2a Are your supported organizations tax exempt under section 501(c)(4), 501(c)(5), or 501(c)(6) and do your supported organizations meet the public support test under section 509(a)(2)? If "No," explain how each organization you support is a public charity under section 509(a)(1) or 509(a)(2). Yes No

--

3 Which of the following describes your relationship with your supported organization(s)?

- A majority of your governing board or officers are elected or appointed by your supported organization(s). (Type I supporting organization)
- Your control or management is vested in the same persons who control or manage your supported organization(s). (Type II supporting organization)
- One or more of your officers, directors, or trustees are elected or appointed by the officers, directors, trustees, or membership of your supported organization(s), or one or more of your officers, directors, trustees, or other important office holders, are also members of the governing body of your supported organization(s), or your officers, directors, or trustees maintain a close and continuous working relationship with the officers, directors, or trustees of your supported organization(s). (Type III supporting organization)

4 Describe how your governing board and officers are selected. If you are a Type III organization, also describe how your officers, directors, or trustees maintain a close and continuous working relationship with the officers, directors, or trustees of your supported organization(s).

--

Schedule D. Section 509(a)(3) Supporting Organizations *(continued)*

- 5** Do any persons who are disqualified persons (except individuals who are disqualified persons only because they are foundation managers) with respect to you or persons who have a family or business relationship with any disqualified persons appoint any of your foundation managers? If "Yes," (1) describe the process by which disqualified persons appoint any of your foundation managers, (2) provide the names of these disqualified persons and the foundation managers they appoint, and (3) explain how control is vested over your operations (including assets and activities) by persons other than disqualified persons. Yes No

- 6** Do any persons who are disqualified persons (except individuals who are disqualified persons only because they are foundation managers) have any influence regarding your operations, including your assets or activities? If "Yes," (1) provide the names of these disqualified persons, (2) explain how influence is exerted over your operations (including assets and activities), and (3) explain how control is vested over your operations (including assets and activities) by individuals other than disqualified persons. Yes No

- 7** Does your organizing document specify your supported organization(s) by name? Yes No
 If "Yes" and you selected Type I above, continue to Line 8.
 If "Yes," and you selected Type II, do not complete the rest of Schedule D.
 If "No" and you selected Type III above, amend your organizing document to specify your supported organization(s) by name or you will not meet the organizational test and need to reconsider your requested public charity classification; then continue to Line 8.

- 7a** Does your organizing document name a similar purpose or charitable class of beneficiaries as to your supported organization(s)? If "No," amend your organizing document to specify your supported organization(s) by name, purpose, or class or you will not meet the organizational test and need to reconsider your requested public charity classification. Yes No

If you selected Type II above, do not complete the rest of Schedule D.

- 8** Do you or will you receive contributions from any person who alone, or combined with family members or an entity at least 35% controlled by that person, controls any of your supported organizations, or will you receive contributions from any family member of, or an entity at least 35% controlled by, any person who controls any of your supported organizations? If "Yes," explain. Yes No

If you selected Type I above, do not complete the rest of Schedule D.

Schedule D. Section 509(a)(3) Supporting Organizations (continued)

- 9 Do the officers, directors, or trustees of your supported organization have a significant voice in your investment policies, the timing and making of grants, the selection of grant recipients, and in otherwise directing the use of your income or assets? If "Yes," explain. Yes No

- 10 In each taxable year, do you or will you provide each of your supported organizations with (a) a written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support you provided to the supported organization during the immediately preceding taxable year, (b) a copy of your most recently filed Form 990-series return or notice, and (c) a copy of your governing documents? If 'No,' explain. Yes No

- 11 Do you exercise a substantial degree of direction over the policies, programs, and activities of your supported organization(s) and appoint or elect (directly or indirectly) a majority of the officers, directors, or trustees of your supported organization(s)? If "Yes," explain. Yes No

- 12 Do substantially all of your activities directly further the exempt purposes of one or more supported organizations to which you are responsive by performing the functions of, or carrying out the purposes of, such supported organization(s) and but for your involvement would normally be engaged in by such supported organization(s). If "Yes," explain and do not complete the rest of Schedule D. Yes No

Schedule D. Section 509(a)(3) Supporting Organizations *(continued)*

13 Do you distribute at least 85% of your annual net income or 3.5% of the aggregate fair market value of all of your non-exempt-use assets (whichever is greater) to your supported organization(s)? If "No," explain.

Yes No

13a How much do you contribute annually to each supported organization?

13b What is the total annual revenue of each supported organization?

13c Do you or the supported organization(s) earmark your funds for support of a particular program or activity? If "Yes," explain.

Yes No

Schedule E. Effective Date

- 1** Are you applying for reinstatement of exemption after being automatically revoked for failure to file required returns or notices for three consecutive years? If "No," continue to Line 2. Yes No

- 1a** Revenue Procedure 2014-11, 2014-1 C.B. 411, provides procedures for reinstating your tax-exempt status. Select the section of Revenue Procedure 2014-11 under which you want us to consider your reinstatement request.

- Section 4. You are seeking retroactive reinstatement under section 4 of Revenue Procedure 2014-11. By selecting this line, you attest that you meet the specified requirements of section 4, that your failure to file was not intentional, and that you have put in place procedures to file required returns or notices in the future. Do not complete the rest of Schedule E.

- Section 5. You are seeking retroactive reinstatement under section 5 of Revenue Procedure 2014-11. By selecting this line, you attest that you meet the specified requirements of section 5, that you have filed required annual returns, that your failure to file was not intentional, and that you have put in place procedures to file required returns or notices in the future.

Describe how you exercised ordinary business care and prudence in determining and attempting to comply with your filing requirements in at least one of the three years of revocation and the steps you have taken or will take to avoid or mitigate future failures to file timely returns or notices. Do not complete the rest of Schedule E.

- Section 6. You are seeking retroactive reinstatement under section 6 of Revenue Procedure 2014-11. By selecting this line, you attest that you meet the specified requirements of section 6, that you have filed required annual returns, that your failure to file was not intentional, and that you have put in place procedures to file required returns or notices in the future.

Describe how you exercised ordinary business care and prudence in determining and attempting to comply with your filing requirements in each of the three years of revocation and the steps you have taken or will take to avoid or mitigate future failures to file timely returns or notices. Do not complete the rest of Schedule E.

- Section 7. You are seeking reinstatement under section 7 of Revenue Procedure 2014-11, effective the date you are filling this application. Do not complete the rest of Schedule E.

- 2** Generally, if you did not file Form 1023 within 27 months of formation, the effective date of your exempt status will be the date you filed Form 1023 (submission date). Requests for an earlier effective date may be granted when there is evidence to establish you acted reasonably and in good faith and the grant of relief will not prejudice the interests of the government.

- Check this box if you accept the submission date as the effective date of your exempt status. Do not complete the rest of Schedule E.

- Check this box if you are requesting an earlier effective date than the submission date.

- 2a** Explain why you did not file Form 1023 within 27 months of formation, how you acted reasonably and in good faith, and how granting an earlier effective date will not prejudice the interests of the Government.

You may want to include the events that led to the failure to timely file Form 1023 and to the discovery of the failure, any reliance on the advice of a qualified tax professional and a description of the engagement and responsibilities of the professional as well as the extent to which you relied on the professional, a comparison of (1) what your aggregate tax liability would be if you had filed this application within the 27-month period with (2) what your aggregate liability would be if you were exempt as of your formation date, or any other information you believe will support your request for relief.

Schedule F. Low-Income Housing

- 1** Describe each facility including the type of facility, whether you own or lease the facility, how many residents it can accommodate, the current number of residents, and whether the residents purchase or rent housing from you.

- 2** Describe who qualifies for your housing in terms of income levels or other criteria and explain how you select residents.

- 3** Do you meet the safe harbor requirements outlined in Revenue Procedure 96-32, 1996-1 C.B. 717, which provides guidelines for providing low-income housing that will be treated as charitable, including for each project that (a) at least 75 percent of the units are occupied by residents that qualify as low-income and (b) either at least 20 percent of the units are occupied by residents that also meet the very low-income limit for the area or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit, and less than 25 percent of the units are provided at market rates to persons who have incomes in excess of the low-income limit? Yes No

- 4** Is your housing affordable to low-income residents? If "Yes," describe how your housing is made affordable to low-income residents. Yes No

- 5** Do you impose any restrictions to make sure that your housing remains affordable to low-income residents? If "Yes," describe these restrictions. Yes No

Schedule F. Low-Income Housing *(continued)*

- 6** In addition to rent or mortgage payments, do residents pay periodic fees or maintenance charges? If "Yes," describe what these charges cover and how they are determined. Yes No

- 7** Do you provide social services to residents? If "Yes," describe these services. Yes No

- 8** Do you participate in any government housing programs? If "Yes," describe these programs. Yes No

Schedule G. Successors to Other Organizations

- 1** List the name, last address, and EIN of your predecessor organization and describe its activities.

--

- 2** List the owners, partners, principal stockholders, officers, and governing board members of your predecessor organization. Include their names, addresses, and share/interest in the predecessor organization (if for-profit).

--

- 3** Are you a successor to a for-profit organization? If "Yes," explain your relationship with the predecessor organization that resulted in your creation and explain why you took over the activities or assets of a for-profit organization or converted from for-profit to nonprofit status; continue to Line 4. Yes No

--

- 3a** Explain your relationship with the other organization that resulted in your creation and why you took over the activities or assets of another organization.

--

Schedule G. Successors to Other Organizations (continued)

- 4 Do or will you maintain a working relationship with any of the persons listed in question 2 or with any for-profit organization in which these persons own more than a 35% interest? If "Yes," describe the relationship. Yes No

- 5 Were any assets transferred, whether by gift or sale, from the predecessor organization to you? If "Yes," provide a list of assets, indicate the value of each asset, explain how the value was determined, and attach an appraisal, if available. For each asset listed, also explain if the transfer was by gift, sale, or combination thereof and describe any restrictions that were placed on the use or sale of the assets. Yes No

- 6 Were any debts or liabilities transferred from the predecessor for-profit organization to you? If "Yes," provide a list of the debts or liabilities that were transferred to you, indicating the amount of each, how the amount was determined, and the name of the person to whom the debt or liability is owed. Yes No

- 7 Will you lease or rent any property or equipment to or from the predecessor organization or any persons listed in Line 2 or a for-profit organization in which these persons own more than a 35% interest? If "Yes," describe the arrangement(s) including how the lease or rental value was determined. Yes No

Schedule H. Organizations Providing Scholarships, Fellowships, Educational Loans, or Other Educational Grants to Individuals and Private Foundations Requesting Advance Approval of Individual Grant Procedures**Section I** Public charities and private foundations complete lines 1 through 8 of this section.

- 1** Describe the types of educational grants you provide to individuals, such as scholarships, fellowships, loans, etc., including the purpose, number and amount(s) of grants, how the program is publicized, and if you award educational loans, the terms of the loans.

- 2** Do you maintain case histories showing recipients of your scholarships, fellowships, educational loans, or other educational grants, including names, addresses, purposes of awards, amount of each grant, manner of selection, and relationship (if any) to officers, trustees, or donors of funds to you? If "No," explain. Yes No

- 3** Describe the specific criteria you use to determine who is eligible for your program (for example, eligibility selection criteria could consist of graduating high school students from a particular high school who will attend college, writers of scholarly works about American history, etc.).

- 4** Describe the specific criteria you use to select recipients (for example, specific selection criteria could consist of prior academic performance, financial need, etc.).

Schedule H. Organizations Providing Scholarships, Fellowships, Educational Loans, or Other Educational Grants to Individuals and Private Foundations Requesting Advance Approval of Individual Grant Procedures *(continued)*

- 5** Describe any requirement or condition you impose on recipients to obtain, maintain, or qualify for renewal of a grant (for example, specific requirements or conditions could consist of attendance at a four-year college, maintaining a certain grade point average, teaching in public school after graduation from college, etc.).

- 6** Describe your procedures for supervising the scholarships, fellowships, educational loans, or other educational grants. Explain whether you obtain reports and grade transcripts from recipients, or you pay grants directly to a school under an arrangement whereby the school will apply the grant funds only for enrolled students who are in good standing. Also, describe your procedures for taking action if the terms of the award are violated.

- 7** How do you determine who is on the selection committee for the awards made under your program?

- 8** Are relatives of members of the selection committee, or of your officers, directors, or substantial contributors eligible for awards made under your program? If "Yes," what measures do you take to ensure unbiased selections?

Yes No

Do not complete the rest of Schedule H. If you are a private foundation, you will be directed to complete Section II of Schedule H later in the application.

Schedule H. Organizations Providing Scholarships, Fellowships, Educational Loans, or Other Educational Grants to Individuals and Private Foundations Requesting Advance Approval of Individual Grant Procedures *(continued)*

Section II

Private foundations complete lines 1 through 7 of this section. Public charities do not complete this section.

- 1** As a private foundation, do you want this application to be considered as a request for advance approval of grant making procedures? Yes No

If "No," do not complete the rest of Schedule H.

- 1a** Check the box(es) indicating under which section(s) you want your grant making procedures to be considered.

- 4945(g)(1) - Scholarship or fellowship grant to an individual for study at an educational institution
- 4945(g)(3) - Other grants, including loans, to an individual for travel, study, or other similar purposes, to enhance a particular skill of the grantee or to produce a specific product

- 2** Do you represent that you will (1) arrange to receive and review grantee reports annually and upon completion of the purpose for which the grant was awarded, (2) investigate diversions of funds from their intended purposes, and (3) take all reasonable and appropriate steps to recover diverted funds, ensure other grant funds held by a grantee are used for their intended purposes, and withhold further payments to grantees until you obtain grantees' assurances that future diversions will not occur and that grantees will take extraordinary precautions to prevent future diversions from occurring? Yes No

- 3** Do you represent that you will maintain all records relating to individual grants, including information obtained to evaluate grantees, identify whether a grantee is a disqualified person, establish the amount and purpose of each grant, and establish that you undertook the supervision and investigation of grants described in Line 2? Yes No

- 4** Do you or will you award scholarships, fellowships, and educational loans to attend an educational institution based on the status of an individual being an employee of a particular employer? Yes No

If "No," do not complete the rest of Schedule H.

- 5** Will you comply with the seven conditions and either the percentage tests or facts and circumstances test for scholarships, fellowships, and educational loans to attend an educational institution as set forth in Revenue Procedures 76-47, 1976-2 C.B. 670, and 80-39, 1980-2 C.B. 772, which apply to inducement, selection committee, eligibility requirements, objective basis of selection, employment, course of study, and other objectives? Yes No

- 6** Do you or will you provide scholarships, fellowships, or educational loans to attend an educational institution to employees of a particular employer? If "No," continue to Line 7. Yes No

- 6a** Will you award grants to 10% or fewer of the eligible applicants who were actually considered by the selection committee in selecting recipients of grants in that year as provided by Revenue Procedures 76-47 and 80-39? Yes No

- 7** Do you provide scholarships, fellowships, or educational loans to attend an educational institution to children of employees of a particular employer? Yes No

If "No," do not complete the rest of Schedule H.

- 7a** Will you award grants to 25% or fewer of the eligible applicants who were actually considered by the selection committee in selecting recipients of grants in that year as provided by Revenue Procedures 76-47 and 80-39? Yes No

If "Yes," do not complete the rest of Schedule H.

Schedule H. Organizations Providing Scholarships, Fellowships, Educational Loans, or Other Educational Grants to Individuals and Private Foundations Requesting Advance Approval of Individual Grant Procedures *(continued)*

- 7b** Will you award grants to 10% or fewer of the number of employees' children who can be shown to be eligible for grants (whether or not they submitted an application) in that year, as provided by Revenue Procedures 76-47 and 80-39? If "Yes," describe how you will determine who can be shown to be eligible for grants without submitting an application, such as by obtaining written statements or other information about the expectations of employees' children to attend an educational institution; do not complete the rest of Schedule H. Yes No

- 7c** Will you award grants based on facts and circumstances that demonstrate that the grants will not be considered compensation for past, present, or future services or otherwise provide a significant benefit to the particular employer? If "Yes," describe the facts and circumstances you believe will demonstrate that the grants are neither compensatory nor a significant benefit to the particular employer. In your explanation, describe why you cannot satisfy either the 25% test or the 10% test in questions 7a and 7b. Yes No

Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

▶ Do not enter social security numbers on this form as it may be made public.
▶ Information about Form 1023-EZ and its separate instructions is at www.irs.gov/form1023.

Note: If exempt status is approved, this application will be open for public inspection.

Check this box to attest that you have completed the Form 1023-EZ Eligibility Worksheet in the current instructions, are eligible to apply for exemption using Form 1023-EZ, and have read and understand the requirements to be exempt under section 501(c)(3).

Part I Identification of Applicant

1a Full Name of Organization

b Address (number, street, and room/suite). If a P.O. box, see instructions. **c** City **d** State **e** Zip Code + 4

2 Employer Identification Number **3** Month Tax Year Ends (MM) **4** Person to Contact if More Information is Needed

5 Contact Telephone Number **6** Fax Number (optional) **7** User Fee Submitted

8 List the names, titles, and mailing addresses of your officers, directors, and/or trustees. (If you have more than five, see instructions.)

First Name:	Last Name:	Title:	
Street Address:	City:	State:	Zip Code + 4:
First Name:	Last Name:	Title:	
Street Address:	City:	State:	Zip Code + 4:
First Name:	Last Name:	Title:	
Street Address:	City:	State:	Zip Code + 4:
First Name:	Last Name:	Title:	
Street Address:	City:	State:	Zip Code + 4:
First Name:	Last Name:	Title:	
Street Address:	City:	State:	Zip Code + 4:

9 a Organization's Website (if available):
b Organization's Email (optional):

Part II Organizational Structure

1 To file this form, you must be a corporation, an unincorporated association, or a trust. **Check the box** for the type of organization.
 Corporation Unincorporated association Trust

2 **Check this box** to attest that you have the organizing document necessary for the organizational structure indicated above.
(See the instructions for an explanation of **necessary organizing documents**.)

3 Date incorporated if a corporation, or formed if other than a corporation (MMDDYYYY): _____

4 State of incorporation or other formation: _____

5 Section 501(c)(3) requires that your organizing document must limit your purposes to one or more exempt purposes within section 501(c)(3).
 Check this box to attest that your organizing document contains this limitation.

6 Section 501(c)(3) requires that your organizing document must not expressly empower you to engage, otherwise than as an insubstantial part of your activities, in activities that in themselves are not in furtherance of one or more exempt purposes.
 Check this box to attest that your organizing document does not expressly empower you to engage, otherwise than as an insubstantial part of your activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

7 Section 501(c)(3) requires that your organizing document must provide that upon dissolution, your remaining assets be used exclusively for section 501(c)(3) exempt purposes. Depending on your entity type and the state in which you are formed, this requirement may be satisfied by operation of state law.
 Check this box to attest that your organizing document contains the dissolution provision required under section 501(c)(3) or that you do not need an express dissolution provision in your organizing document because you rely on the operation of state law in the state in which you are formed for your dissolution provision.

Part III Your Specific Activities

- 1 Enter the appropriate 3-character NTEE Code that best describes your activities (See the instructions): _____
- 2 To qualify for exemption as a section 501(c)(3) organization, you must be organized and operated exclusively to further one or more of the following purposes. By checking the box or boxes below, you attest that you are organized and operated exclusively to further the purposes indicated. **Check all that apply.**

<input type="checkbox"/> Charitable	<input type="checkbox"/> Religious	<input type="checkbox"/> Educational
<input type="checkbox"/> Scientific	<input type="checkbox"/> Literary	<input type="checkbox"/> Testing for public safety
<input type="checkbox"/> To foster national or international amateur sports competition		<input type="checkbox"/> Prevention of cruelty to children or animals
- 3 To qualify for exemption as a section 501(c)(3) organization, you must:
 - Refrain from supporting or opposing candidates in political campaigns in any way.
 - Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals (that is, board members, officers, key management employees, or other insiders).
 - Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially.
 - Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s).
 - Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in section 501(h).
 - Not provide commercial-type insurance as a substantial part of your activities. **Check this box** to attest that you have not conducted and will not conduct activities that violate these prohibitions and restrictions.
- 4 Do you or will you attempt to influence legislation? **Yes** **No**
(If yes, consider filing Form 5768. See the instructions for more details.)
- 5 Do you or will you pay compensation to any of your officers, directors, or trustees? **Yes** **No**
(Refer to the instructions for a definition of **compensation**.)
- 6 Do you or will you donate funds to or pay expenses for individual(s)? **Yes** **No**
- 7 Do you or will you conduct activities or provide grants or other assistance to individual(s) or organization(s) outside the United States? **Yes** **No**
- 8 Do you or will you engage in financial transactions (for example, loans, payments, rents, etc.) with any of your officers, directors, or trustees, or any entities they own or control? **Yes** **No**
- 9 Do you or will you have unrelated business gross income of \$1,000 or more during a tax year? **Yes** **No**
- 10 Do you or will you operate bingo or other gaming activities? **Yes** **No**
- 11 Do you or will you provide disaster relief? **Yes** **No**

Part IV Foundation Classification

Part IV is designed to classify you as an organization that is either a private foundation or a public charity. Public charity status is a more favorable tax status than private foundation status.

- 1 If you qualify for public charity status, check the appropriate box (**1a – 1c** below) and skip to **Part V** below.
 - a **Check this box** to attest that you normally receive at least one-third of your support from public sources or you normally receive at least 10 percent of your support from public sources and you have other characteristics of a publicly supported organization. **Sections 509(a)(1) and 170(b)(1)(A)(vi).**
 - b **Check this box** to attest that you normally receive more than one-third of your support from a combination of gifts, grants, contributions, membership fees, and gross receipts from permitted sources) from activities related to your exempt functions and normally receive not more than one-third of your support from investment income and unrelated business taxable income. **Section 509(a)(2).**
 - c **Check this box** to attest that you are operated for the benefit of a college or university that is owned or operated by a governmental unit. **Sections 509(a)(1) and 170(b)(1)(A)(iv).**
- 2 If you are not described in items **1a – 1c** above, you are a private foundation. As a private foundation, you are required by section 508(e) to have specific provisions in your organizing document, unless you rely on the operation of state law in the state in which you were formed to meet these requirements. These specific provisions require that you operate to avoid liability for private foundation excise taxes under sections 4941-4945.
 - Check this box** to attest that your organizing document contains the provisions required by section 508(e) or that your organizing document does not need to include the provisions required by section 508(e) because you rely on the operation of state law in your particular state to meet the requirements of section 508(e). (See the instructions for explanation of the section 508(e) requirements.)

Form 1023-EZ is filed electronically only on Pay.gov.

Part V Reinstatement After Automatic Revocation

Complete this section only if you are applying for reinstatement of exemption after being automatically revoked for failure to file required annual returns or notices for three consecutive years, and you are applying for reinstatement under section 4 or 7 of Revenue Procedure 2014-11. (Check only one box.)

- 1 **Check this box** if you are seeking retroactive reinstatement under section 4 of Revenue Procedure 2014-11. By checking this box you attest that you meet the specified requirements of section 4, that your failure to file was not intentional, and that you have put in place procedures to file required returns or notices in the future. (See the instructions for requirements.)
- 2 **Check this box** if you are seeking reinstatement under section 7 of Revenue Procedure 2014-11, effective the date you are filing this application.

Part VI Signature

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, and to the best of my knowledge it is true, correct and complete.

(Type name of signer)

(Type title or authority of signer)

**PLEASE
SIGN
HERE** ▶

(Signature of Officer, Director, Trustee, or other authorized official)

(Date)

Form **1023-EZ** (6-2014)

Form 1023-EZ is filed electronically only on Pay.gov.

Section Three

Disaster Relief and Philanthropy

Philip M. Purcell, CFRE, MPA/JD
Consultant for Philanthropy, LLC
Adjunct Faculty, Indiana University Maurer School of Law and
Lilly School of Philanthropy
Noblesville, Indiana

Section Three

Disaster Relief and Philanthropy..... Philip M. Purcell, CFRE, MPA/JD

PowerPoint Presentation

Impact of CARES Act on Giving

Tax Cuts and Jobs Act of 2017: Implications for Nonprofit Organizations

Impact of SECURE Act on Giving

IRS Publication 3833

DISASTER RELIEF AND PHILANTHROPY

PHILIP M. PURCELL, MPA/JD

PMPURCELL@OUTLOOK.COM

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OVERVIEW

- Disaster Research
- Federal and State Law: Aid to Individuals and Businesses
- Charitable Classes
- Assessing Need
- Documentation
- Qualified Disaster Payments
- Employer-Sponsored Assistance
- Tax Rules for Recipients
- Charitable Giving
- Resources

DISASTER RESEARCH



RESEARCH: INDIANA UNIVERSITY LILLY SCHOOL OF PHILANTHROPY

- The school has collected and tracked extensive data on disaster philanthropy from U.S. individuals, corporations, foundations, and nonprofit organizations to major domestic and overseas disasters since 2001.
- All publicly reported gifts of \$1 million or more for disaster relief are also recorded in the school's Million Dollar List.

RESEARCH RESULTS ON GIVING RATES

- Giving does go up during crisis years, often at a faster rate than in the prior year. However, giving in years of crisis is not statistically significant relative to overall giving except in a few instances.
- In every type of crisis analyzed, giving was strongly associated with economic factors. In only a few instances was giving associated with crisis events. See <https://scholarworks.iupui.edu/handle/1805/6350>

RESEARCH: THE CENTER FOR DISASTER PHILANTHROPY

Partners with Foundation Center to annually conduct the *Measuring the State of Disaster Philanthropy: Data to Drive Decisions* report, a comprehensive data collection and analysis effort on disaster-focused charitable giving.

See <https://disasterphilanthropy.org/>

FEDERAL AND STATE LAW: AID TO INDIVIDUALS AND BUSINESSES



FEDERAL TAX LAW

- Under federal law, an existing qualified charity generally must be given full control and authority over the use of donated funds.
- Contributors may not earmark funds for the benefit of a particular individual or family.
- Contributions to qualified charities may be earmarked for flood relief, hurricane relief or other disaster relief.

STATE FUNDRAISING LAW

- Some state authorities that regulate charitable solicitation rules have imposed regulations that provide that, if a charity represents that funds will be used for the relief of the victims of a particular disaster, the funds may not be used for other programs of the organization.
- Charitable organizations and contributors should be aware of the solicitation rules that may apply in their particular jurisdiction. See www.nasconet.org

AID TO INDIVIDUALS

Organizations may provide assistance in the form of funds, services, or goods to ensure that victims have the basic necessities, such as:

- temporarily in need of food or shelter when stranded, injured, or lost because of a disaster;
- temporarily unable to be self-sufficient as a result of a sudden and severe personal or family crisis, such as victims of violent crimes or physical abuse;
- long-term assistance with housing, childcare, educational expenses because of disaster; and,
- in need of counseling because of trauma experienced as a result of a disaster or a violent crime.

AID TO BUSINESSES

An exempt charity can accomplish a charitable purpose by providing disaster assistance to a business if:

- the assistance is a reasonable means of accomplishing a charitable purpose, and,
- any benefit to a private interest is incidental to the accomplishment of a charitable purpose.

RATIONALE FOR AID TO BUSINESS

Disaster assistance may also be provided to businesses to achieve the following charitable purposes:

- to aid individual business owners who are financially needy or otherwise distressed,
- to combat community deterioration, and,
- to lessen the burdens of government.

PROTOCOL FOR AID TO BUSINESS

- Once a damaged business has been restored to viability or a newly attracted business is self-supporting, further assistance from a charity is no longer appropriate.
- Charities that aid businesses should have criteria and procedures in place to determine when aid should be offered and discontinued.

CHARITABLE CLASS



CHARITABLE CLASS

- The group of individuals that may receive assistance from a tax-exempt charitable organization is called a “charitable class.”
- A charitable class must be large enough or sufficiently indefinite that the community as a whole, rather than a pre-selected group of people, benefits when a charity provides assistance.
- See <https://www.irs.gov/charities-non-profits/charitable-organizations/disaster-relief-meaning-of-charitable-class>

LARGE CLASS

- A charitable class could consist of all the individuals in a city, county or state.
- This charitable class is large enough that the potential beneficiaries cannot be individually identified and providing benefits to this group would benefit the entire community.

INDEFINITE CLASS

- If beneficiaries are limited to a small group (employees of a particular employer), the group of persons eligible must be indefinite.
- To be indefinite, the relief must include employees affected by the current disaster and those who may be affected by any future disaster.
- If the facts and circumstances indicate a program is intended to benefit only victims of a current disaster and not future disasters, the organization would not be considered to be benefiting a charitable class.

PROHIBITION ON EARMARKING

- Because of the requirement that exempt organizations must serve a charitable class, a tax exempt disaster relief or emergency hardship organization cannot earmark and limit its assistance to specific individuals, such as a few persons injured in a particular fire.
- Similarly, donors cannot earmark contributions to a charitable organization for a particular individual or family.

ASSESSING NEED



NEEDY OR DISTRESSED TEST

- Gifts cannot be distributed to individuals merely because they are victims of a disaster.
- A disaster relief/emergency hardship organization must make a specific assessment that a recipient of aid is financially or otherwise in need.

ASSESSMENT OF NEED

- Individuals do not have to be totally destitute to be financially needy - may merely lack the resources to obtain basic necessities.
- Must be based on an objective evaluation of the victims' needs at the time the grant is made.
- The scope of the assessment required to support the need for assistance may vary depending upon the circumstances.

CONDUCTING NEEDS ASSESSMENTS

- As victims are able to call upon personal resources, it may become appropriate for charities to conduct individual financial needs assessments.
- For example, if a charity provides 3-6 months of financial assistance for basic housing because of a disaster or emergency hardship, it would be required to make an assessment of financial need before disbursing aid past this time.
- Those who do not need assistance should not use charitable resources.

NO AUTOMATIC RIGHT TO CHARITY AID

- An individual who is eligible for assistance because the individual is a victim of a disaster or emergency hardship has no automatic right to a charity's funds.
- A charitable organization that provides disaster or emergency hardship relief does not have to make an individual whole.
- A charitable organization is responsible for taking into account the charitable purposes for which it was formed, the public benefit of its activities, and the specific needs and resources of each victim when using its discretion to distribute its funds.

DOCUMENTATION



DOCUMENTATION

- Adequate records to show that the organization's payments further the organization's charitable purposes and that the victims served are needy or distressed.
- Appropriate records to show that they have made distributions to individuals after making appropriate needs assessments based on the recipients' financial resources and their physical, mental, and/or emotional well-being.

SAMPLE DOCUMENTATION FOR LONG-TERM AID

- Complete description of the assistance provided,
- Costs associated with providing the assistance,
- The purpose for which the aid was given,
- The charity's objective criteria for disbursing assistance under each program,
- How the recipients were selected,
- The name, address, and amount distributed to each recipient,
- Any relationship between a recipient and officers, directors, or key employees of, or substantial contributors to, the charitable organization, and,
- The composition of the selection committee approving the assistance.

DOCUMENTATION FOR SHORT-TERM ASSISTANCE

Short-term emergency assistance would only be expected to maintain records showing:

- the type of assistance provided,
- criteria for disbursing assistance,
- date, place, estimated number of victims assisted (names and addresses are not required),
- charitable purpose intended to be accomplished, and
- the cost of the aid.

Examples: distribution of blankets, hot meals, electric fans, or coats, hats and gloves

REPORTING TO IRS

Public charity. If disaster relief activities is one of its three largest programs:

- Describe the services provided in the Statement of Program Service Accomplishments on Form 990 or Form 990-EZ.
- Schedule F if it carries out foreign operations
- Schedule I for grants or other assistance to individuals.

Private foundation. If it carries on disaster relief activities as one of its four largest programs:

- Describe the services provided in its summary of direct charitable activities on Form 990-PF.

QUALIFIED DISASTER PAYMENTS



QUALIFIED DISASTER

Defined in IRC section 139 as a disaster that:

- results from terrorist or military actions,
- results from an accident involving a common carrier,
- is a Presidentially declared disaster, or
- is an event that the Secretary of the Treasury determines is catastrophic.
- See: www.fema.gov/disasters/year/2018?field_dv2_declaration_type_value=DR

COVID-19 IS QUALIFIED DISASTER

- **Disaster Declarations at FEMA site. See:**
<https://www.fema.gov/disasters>
- **Tax Relief in Disaster Situations. See:**
<https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>

QUALIFIED DISASTER RELIEF PAYMENTS

“Qualified disaster relief payments” include payments (regardless of the source) for:

- reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,
- reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence due to a qualified disaster (rented or owned residence),
- reasonable and necessary expenses incurred for the repair or replacement of the contents of a personal residence due to a qualified declared disaster, and
- payments by a federal, state, or local government, or their agencies or instrumentalities, to persons affected by a qualified disaster

NOT QUALIFIED AS DISASTER RELIEF PAYMENTS

Qualified disaster relief payments do not include:

- payments for expenses otherwise paid for by insurance or other reimbursements, or,
- income replacement payments, such as payments of lost wages, lost business income, or unemployment compensation

INCOME TAX: QUALIFIED DISASTER RELIEF PAYMENTS

- “Qualified disaster relief payments” from any source, including employers, reimbursing or paying individuals’ specified expenses in connection with qualified disasters are not taxable as income and are not subject to employment taxes or withholding.
- Internal Revenue Code section 139

EMPLOYER - SPONSORED ASSISTANCE PROGRAMS



EMPLOYER SPONSORED PUBLIC CHARITY

- An employer can establish a public charity to provide assistance programs to respond to any type of disaster or employee emergency hardship situations, as long as the related employer does not exercise excessive control over the organization.
- Generally, employees contribute to the public charity and rank and file employees constitute a significant portion of the board of directors.

REQUIREMENTS

To ensure the program is not impermissibly serving the related employer:

1. the class of beneficiaries must be large or indefinite (a “charitable class”),
2. the recipients must be selected based on an objective determination of need, and
3. the recipients must be selected by an independent selection committee or adequate substitute procedures must be in place to ensure that any benefit to the employer is incidental and tenuous. The charity’s selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer.

BENEFITS

If these requirements are met, the public charity's payments to the employer-sponsor's employees and their family members in response to a disaster or emergency hardship are presumed:

- (1) to be made for charitable purposes, and
- (2) not to result in taxable compensation to the employees.

EMPLOYER SPONSORED DONOR ADVISED FUND

A donor advised fund or account can make grants to employees and their family members in the following circumstances:

- the fund serves the single identified purpose of providing relief from one or more “qualified disasters”,
- the fund serves a charitable class,
- recipients of grants are selected based upon an objective determination of need,

EMPLOYER SPONSORED DONOR ADVISED FUND

- the selection of recipients is made using either an independent selection committee or substitute procedures to ensure that any benefit to the employer is incidental and tenuous (the committee is considered independent if a majority of its members consists of persons who are not in a position to exercise substantial influence over the employer's affairs),
- no payment is made or for the benefit of any director, officer, or trustee of the sponsoring community foundation or public charity, or members of the selection committee, and,
- the fund maintains adequate records to demonstrate the recipients' need for the disaster assistance provided.

EMPLOYER SPONSORED PRIVATE FOUNDATIONS

- Can only make payments to employees or their family members affected by qualified disasters, not in non-qualified disasters or in emergency hardship situations.
- Does not apply to payments made to or for the benefit of individuals who are directors, officers, or trustees of the private foundation or members of the selection committee, i.e. acts of self-dealing.


EMPLOYER SPONSORED PRIVATE FOUNDATIONS

Payments in response to a qualified disaster to employees (or family of employees) of an employer that is a disqualified person (a substantial contributor) are charitable if:

- the class of beneficiaries is large or indefinite (a “charitable class”),
- the recipients are selected based on an objective determination of need or, and,
- selection is made using an independent selection committee to ensure that any benefit to the employer is incidental and tenuous. The foundation’s selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer.

EMPLOYER SPONSORED PRIVATE FOUNDATIONS

If the requirements are met, the foundation's payments in response to a qualified disaster are treated as made for charitable purposes:

- do not result in prohibited self-dealing merely because the recipient is an employee (or family member of an employee) of the employer-sponsor; and
 - do not result in taxable compensation to the employees.
- 

TAX RULES FOR RECIPIENTS OF DISASTER GRANTS



INCOME TAX: QUALIFIED DISASTER RELIEF PAYMENTS

- “Qualified disaster relief payments” from any source, including employers, reimbursing or paying individuals’ specified expenses in connection with qualified disasters are not taxable as income and are not subject to employment taxes or withholding.
- Internal Revenue Code section 139

DIRECT ASSISTANCE FROM EMPLOYERS

- A corporation or other non-exempt entity may provide direct assistance to disaster victims rather than funneling its assistance through a charity or governmental entity.
- Sometimes an employer may assist through a non-exempt fund to receive contributions from the employer as well as employees.
- Qualified disaster relief payments are not taxable regardless of source to the extent that any expenses are not otherwise compensated by insurance or other reimbursements.
- Qualifying payments are not subject to income tax, self-employment tax, or employment taxes even if the payments are made directly from an employer.

INCOME TAX: PAYMENTS OTHER THAN QUALIFIED DISASTERS

- Payments under a charitable organization's program as a result of a disaster or emergency hardship are considered to be gifts and excluded from gross income of recipients. See IRC Sec. 102.
- Payments from an employer-sponsored public charity or private foundation are also exempt from gross income as gifts so long as the requirements described earlier are followed.

ADDITIONAL INCOME TAX CONSIDERATIONS

- Payments that individual disaster victims receive from governmental units under social programs for the promotion of the general welfare (i.e. based on need) are not included in the gross income of the recipients of the payments.
- If any payment was made out of a moral or legal obligation, an anticipated economic benefit or in return for services, the payment will not be excluded from income as a gift.

CONSIDERATIONS FOR CHARITABLE GIVING



DUE DILIGENCE

Resources to confirm that an organization is charitable:

- EO Select Check on the Charities and Nonprofits home page on the IRS website, www.irs.gov
- Call IRS Exempt Organizations Customer Service at (877) 829-5500.
- Charity watchdogs: GuideStar, Charity Navigator, Better Business Bureau's Wise Giving Alliance

FOREIGN CONTRIBUTIONS

- Contributions to qualified domestic charitable organizations that provide assistance to individuals in foreign countries qualify as tax-deductible contributions provided the U.S. organization has full control and discretion over the uses of such funds.
- Contributions directly to foreign organizations are generally not tax-deductible, unless permitted by a tax treaty. The U.S. currently has tax treaties with Canada, Mexico, and Israel

PERSONAL GIFTS

- A direct gift to a person does not qualify as a tax-deductible contribution.
- However, individual recipients of gifts are generally not subject to federal income tax on the value of the gift.
- No federal gift tax unless the total gifts made in a year exceed the annual exclusion amount.
- Unlimited gift tax exclusion for payment of medical expenses on behalf of a person. See <https://www.law.cornell.edu/cfr/text/26/25.2503-6>

RESOURCES



IRS PUBLICATIONS

- Publication 526, Charitable Contributions
- Publication 547, Casualties, Disasters, and Thefts
- Publication 557, Tax-Exempt Status for Your Organization
- Publication 559, Survivors, Executors, and Administrators
- Publication 561, Determining the Value of Donated Property
- Publication 584, Casualty, Disaster, and Theft Loss Workbook (Personal-Use Property)
- Publication 584-B, Business Casualty, Disaster, and Theft Loss Workbook
- Publication 1771, Charitable Contributions—Substantiation and Disclosure Requirements
- Publication 2194, Disaster Resource Guide for Individuals and Businesses
- Publication 3067, Disaster Assistance (Income tax deduction)
- Publication 3833, Disaster Relief

IRS WEBSITE

Disaster Assistance and Emergency Relief for Individuals and Businesses at <https://www.irs.gov/businesses/small-businesses-self-employed/disaster-assistance-and-emergency-relief-for-individuals-and-businesses>

This website provides links to status on current disasters, federal disaster relief agencies, planning information (for individuals, business, charities, advisors), video training, IRS forms and publications.

Impact of CARES Act on Giving

Philip M. Purcell, JD
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The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Act) was passed on March 27, 2020 to help taxpayers, businesses and nonprofits in the wake of the coronavirus pandemic and economic downturn. Gift planners should be aware of this Act's impact on philanthropy.

New universal charitable deduction for 2020. A reduction in taxable income is available in 2020 for donors who do not itemize their deductions, i.e., an "above-the-line" adjustment to income that will reduce a donor's Adjusted Gross Income (AGI) and consequently taxable income. The adjustment is available for cash gifts up to \$300 per taxpayer unit (husband and wife jointly). The deduction is not available for gifts to private foundations, donor advised funds (DAFs), supporting organizations (SOs) or for cash deductions carried forward from prior years. And this deduction is not available for noncash gifts such as appreciated stock. This new universal deduction will encourage the great majority of taxpayers who do not itemize to make more cash gifts in 2020.

New 100 percent AGI limit for 2020. A 100 percent AGI limit is available only in 2020 for cash gifts to public charities by those who itemize. This limit does not apply to carry-over deductions from years prior to 2020. Gifts to DAFs, SOs and private foundations are not eligible for this special election. The 100 percent limit is reduced dollar-for-dollar by other itemized charitable deductions. This means that in 2020, a donor who deducts 30 percent of AGI for gifts of long-term appreciated property and elects the 100 percent of AGI limit for qualified cash contributions will be able to also deduct up to 70 percent of her AGI for qualified cash gifts, a total deduction of up to 100 percent of AGI. A donor who makes the 100 percent of AGI election can carry over unused deductions up to five additional years. The carry-over deduction will be subject to the regular 60 percent of AGI limit.

Because federal income tax rates are progressive, it may not always be to a donor's advantage to make the 100 percent of AGI election. Donors in the highest federal tax brackets, could generate better overall tax savings by using the 60 percent AGI limit and carrying over the excess deduction to the next year. Donors should consult their tax advisers to determine whether the 100percent election is best.

Suspension of RMD. The new law suspends required minimum distributions (RMD) for 2020 from IRAs, 401(k)s, 403(b)s and most other defined contribution plans maintained by an employer for individuals. Minimum distributions that have already started are still required from defined benefit pension plans and some 457 plans. However, required minimum distributions that would have had to start in 2020 do not have to start until 2021, including distributions from defined benefit pension plans and 457 plans.

This change will decrease the tax incentive for a donor to make a qualified charitable distribution (QCD) – an IRA charitable rollover - from an IRA in 2020. However, the change will help retirees who would have had to withdraw a greater percentage of their retirement accounts than expected or face a penalty, given that their RMD calculation for 2020 is based on the retirement account balance as of Dec. 31, 2019 and account values decline with the market.

Limit on cash contributions from corporations increased from 10 percent to 25 percent of taxable income in 2020 for cash gifts to public charities but not to private foundations, DAFs and SOs. The usual 10 percent limit still applies to other charitable contributions by corporations, and those contributions reduce the 25 percent limit dollar-for-dollar. Qualified cash contributions more than the 25 percent limit can be carried over for up to five years.

Limit on contributions of food inventory increased from 15 percent to 25 percent in 2020.

Loans of up to \$10 million are available for eligible nonprofits with 500 or fewer employees. Nonprofits are also eligible for expedited loans of up to \$1 million. The money must be used for salaries and other associated expenses such as health care premiums. Nonprofits that keep their employees on the payroll through June 30 are eligible to have their loans forgiven, essentially turning the loan into a grant.

Whether the provisions of the CARES Act that are destined to sunset at the end of 2020 will be extended into 2021 and beyond remain to be seen. In the meantime, this Act should help nonprofits and gift planning.

**Tax Cuts and Jobs Act of 2017:
Implications for Nonprofit Organizations
Philip M. Purcell, MPA/JD**

On December 20, 2017, Congress enacted sweeping tax reform legislation referred to as the Tax Cuts and Jobs Act (the “Act”) which brought significant changes impacting nonprofits and donors. In addition, there were a few proposed changes that ultimately were not included in the Act but may suggest future legislation.

Revised Income Tax Brackets and Rates. Most individual income taxes are reduced until December 31, 2025. The number of income tax brackets remain at seven, but the income ranges in several brackets have been changed and each new bracket has lower rates. A different inflation measure (Chained CPI or C-CPI) will be applied to the brackets instead of the Consumer Price Index (CPI), so the brackets increase more slowly. This is effectively a tax increase over time, as people move more quickly into higher brackets as their income rises. This inflation adjustment element is permanent

<u>Tax Rate</u>	<u>Income Range Individuals</u>	<u>Income for Married Joint Filers</u>
10%	\$0 - \$9,525	\$0 - \$19,050
12%	\$9,526 - \$38,700	\$19,051 - \$77,400
22%	\$38,701 - \$82,500	\$77,401 - \$165,000
24%	\$82,501 - \$157,500	\$165,001 - \$315,000
32%	\$157,501 - \$200,000	\$315,001 - \$400,000
35%	\$200,001 - \$500,000	\$400,001 - \$600,000
37%	\$500,001 and Up	\$600,001 and Up

Revised Long Term Capital Gains Tax Brackets. Short-term capital gains are taxed at the taxpayer’s ordinary income tax rate. The long-term capital gains (LTCG) tax rates of 0%, 15%, and 20% apply. Under the Tax Cuts and Jobs Act, the three capital gains income thresholds do not match up perfectly with the tax brackets. Instead, they are applied to maximum taxable income levels, as follows:

<u>LTCG Rate</u>	<u>Single Filers</u>	<u>Married File Jointly</u>	<u>Head of House</u>	<u>Married File Separately</u>
0%	Up to \$38,600	Up to \$77,200	Up to \$51,700	Up to \$38,600
15%	\$38,600-\$425,800	\$77,200-\$479,000	\$51,700-\$452,400	\$38,600-\$239,500
20%	Over \$425,800	Over \$479,000	Over \$452,400	Over \$239,500

The 3.8% net investment income tax that applies to certain high earners will stay in place, with the exact same income thresholds.

Increased Standard Deduction. The Act nearly doubles the standard deduction for individual taxpayers. raising the standard deduction to \$24,000 (from \$12,700) for married couples,

\$12,000 (from \$6,350) for unmarried individuals, and \$18,000 (from \$9,350) for head of household. The outcome for persons who do not pay mortgage interest or property tax is that in future years they will not get any tax savings from the first \$24,000/\$12,000 donated to charities each year. And there will be no tax savings from charitable gifts if less is donated. Taxpayers will instead take the \$24,000/\$12,000 standard deduction.

According to the Joint Committee on Taxation, the number of taxpayers who will itemize their deductions in 2018 and following years will fall from 40 million under former law to just 9 million under the new legislation. The Indiana University Lilly School of Philanthropy estimates that this reduced number of itemizers plus cutting the top marginal tax rate may decrease charitable giving by approximately \$21 billion.

Increased AGI Limit for Cash Gifts. Before the Act, the deduction limit for cash gifts to publicly supported charities and operating private foundations was 50% of Adjusted Gross Income (AGI). Excess deduction may be claimed for up to five additional years, claiming as much deduction each year subject to the limit. The Act increases the limitation for cash contributions from 50% to 60% of AGI. However, due to an apparent drafting error in the Act, the 60% limit only applies if all gifts in a given year by a donor are cash. If one dollar of appreciated stock or other non-cash asset such as stock is donated, then the deduction limit remains at 50% of AGI for the donor. Congress may consider a technical correction to repair this limitation so that 60% applies for cash gifts even if non-cash gifts are donated in the same year. Overall, this increase in the AGI limitation may normally incentivize cash contributions, but due to the standard deduction increase, the impact on giving is less helpful.

AGI limitations on non-cash charitable contributions are not affected by the Act. For example, contributions of long-term capital gain property, such as stock or real estate, continue to be subject to a deduction limit of 30% of AGI. “Long-term” means that the donor owned the capital asset for more than a year. This property is the best asset to donate to a charity since there are two advantages. First, one can claim a charitable tax deduction for the full value of the property. Second, there is no capital gains tax owed by the donor or charity. If the donor sold the asset instead, he or she would owe long-term capital gains tax.

Repeal of Pease Limitation. Under prior law, most itemized deductions such as for charitable gifts, mortgage interest and state/local income taxes, were reduced by the “Pease Limitation” to 3 percent of the amount that a taxpayer’s AGI exceeded an annually inflation-adjusted AGI threshold. However, the reduction could not reduce total deductions by more than 80 percent overall. The thresholds for 2017 were \$261,500 (single filers) and \$313,800 (joint filers) of AGI. Elimination of the Pease Limitation should make the charitable deduction more useful for high income donors for whom the increased standard deduction has less impact.

Repeal of the 80/20 Rule. Under prior law, donors who made gifts that qualified for preferential rights to purchase athletic tickets to sporting events of colleges and universities could deduct 80% of the value of the donation. 20% of the donation was considered a non-deductible quid pro quo return financial benefit for the right to purchase ticket(s) for the athletic

event. Under the new law, none of the gift is considered a tax-deductible contribution if the gift conveys the right for an improved opportunity to purchase seating at a college or university athletic event. The actual cost of the ticket has never been considered tax deductible.

Charitable Giving Strategies Resulting from Act. In anticipation of the Act, many persons who planned to itemize deductions for 2017, but not itemize in 2018 due to the higher standard deduction, accelerated their charitable gifts before December 31, 2017. For example, donors with multi-year pledges, pre-paid amounts scheduled for future years. Other donors maximized charitable deductions in 2017 by increased giving to a donor advised fund that will provide money for grants in future years.

On the other hand, some high-income persons who were subject to the Pease Limitation in 2017 chose to delay gifts to 2018 when the limitation expires. The increased standard deduction may not appeal to these high-income taxpayers who will take advantage of a charitable deduction that is no longer reduced by the Pease Limitation in 2018 and beyond.

One future charitable giving strategy that the Act may incentivize is the “bunching” of gifts. Donors may give every other year (or less frequent) to have a higher amount contributed in one year to get them over the standard deduction threshold. This will create the opportunity for claiming an income tax charitable deduction.

IRA Charitable Rollover. The IRA Charitable Rollover (“rollover”) was made permanent as of December 18, 2015. However, many donors may inquire if this was changed by the Act given the unique history of the rollover as a temporary law from 2006 to 2015. The good news is that the Act did not change the charitable rollover which applies to persons age 70.5 years and older. The annual limit of \$100,000 for rollovers per donor still applies. In fact, the rollover may be more attractive since it does not qualify for a charitable deduction and is not impacted by the standard deduction increase. Rather, the rollover escapes income tax liability on the withdrawal. And the rollover still cannot be made for a gift annuity or to a charitable remainder trust, private foundation or donor advised fund.

Revised Estate Tax Exemption, Rate and Expiration. The threshold to qualify for the estate tax is now (2018) \$11,180,000 for individuals and \$22,360,00 for couples, which were set at \$5.49 million for individuals, and \$10.98 million for married couples in 2017. The exemption amounts are adjusted for inflation. Absent further congressional action, the exemptions will revert to their 2017 levels (adjusted for inflation) beginning January 1, 2026. The marginal tax rate for gift, estate and generation-skipping taxes remains at 40%.

Increased Estate Tax Threshold May Reduce Bequests. Even at today's levels, only 0.2% of all estates are subject to the estate tax. The unlimited (100%) charitable deduction for the estate tax remains an incentive for philanthropy from large taxable estates. However, since fewer estates will be subject to estate taxation, one potential result is a decline in the number of bequests to charitable organizations.

Elimination of Alternative Gift Substantiation. The Act eliminates alternative gift substantiation for charities. A donor who gives \$250 or more to a charitable organization is required to obtain a contemporaneous written acknowledgement of the gift to substantiate the donation for tax purposes. Before the Act, the Internal Revenue Code permitted a charitable organization to file a document with the IRS containing detailed information about the donor and his or her gift. This change should have limited practical effect as most charities send acknowledgement letters or receipts thanking all donors for their contributions.

Changes to Unrelated Business Income Tax Rules. The Act changes the method by which charities must calculate income from their unrelated trade or business activities. Rather than having the flexibility to aggregate all sources of unrelated business income (“UBI”), a charity must calculate the amount of UBI it generates separately for each line of business. This new calculation eliminates charities’ ability to offset gains in one line of business with losses in another, potentially increasing the total amount of UBI on which charities are taxed. However, due to the Act’s reduction in the corporate tax rate, charities will now pay tax on UBI at a rate of 21 percent—down from the 35 percent rate previously imposed on net UBI.

New Excise Taxes for Highly Compensated Nonprofit Employees. The Act imposes a new 21 percent excise tax on compensation more than \$1 million paid by tax-exempt organizations to their covered employees. An individual is a “covered employee” if he or she is one of the five most highly compensated employees of the tax-exempt organization for the tax year in question or was one of the five most highly compensated employees during any preceding tax year, beginning with 2017. The excise tax must be paid by the tax-exempt organization, not by the covered employee. This provision applies not only to charities but also private foundations and other organizations that are tax-exempt but not charitable.

New Excise Taxes for Large University Endowments. Private nonprofit colleges and universities that have at least 500 full-time or full-time equivalent (FTE) students and endowment assets exceeding \$500,000 per student are now subject to a new 1.4 percent excise tax on the net investment income. For a university with 50,000 full-time or FTE students, the tax would be applied if the university’s endowment exceeds \$25 billion.

Proposals Omitted from the Final Act. The Act omits many proposals considered by Congress that represented potentially negative implications for nonprofits. For example, the Act did not include more burdensome procedures to establish the rebuttable presumption of reasonableness used to determine whether intermediate sanctions apply. In addition, a proposal to eliminate private activity bonds was omitted from the Act. And while President Trump threatened repeal of the Johnson Amendment that prohibits political campaign activity by tax exempt organizations, this Amendment was not repealed by the Act. Finally, while Congress considered imposing a payout requirement on donor advised funds, no such rate or requirement was included in the Act.

The Tax Cuts and Jobs Act included some good – as well as some potentially bad or ugly – for nonprofits. Time will tell how the Act’s provisions will impact fundraising and other important aspects of nonprofit operations on behalf of important charitable missions.

Impact of SECURE Act on Giving
Philip M. Purcell, JD
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The Setting Every Community Up for Retirement Enhancement (SECURE) Act was enacted January 1, 2020. This legislation marks the most significant changes to retirement security since the Pension Protection Act of 2006.

WHAT CHANGED

1. You can contribute to your IRA longer. You can now contribute to your IRA past the age of 70½, allowing you more time to save.
2. The required minimum distribution (RMD) age changed. The SECURE Act changed the age at which one must start taking RMDs from a retirement account from 70½ to 72. Donors who turned 70½ in 2019 or earlier will have to continue to take required minimum distributions.
3. IRA rules changed for most non-spousal beneficiaries. If one names someone other than a spouse as the beneficiary of an IRA, they now have to withdraw the entire amount within 10 years. Previously, they could stretch this over their lifetimes. The law takes effect for deaths of IRA owners after Dec. 31, 2019, so IRAs inherited before then still benefit from prior law.

WHAT STAYED THE SAME

1. One can still withdraw funds starting at age 59½ with no penalty. One can still access retirement savings prior to 59½, but there is a 10% early penalty withdrawal. The new law allows for an aggregate amount of \$5,000 to be distributed from a retirement plan without a 10% penalty in the event of a qualified birth or adoption.
2. Spouses can still take distributions throughout their lifetimes. When one names a spouse as the beneficiary of your IRA, they can continue to take distributions from the account throughout their lifetime.
3. IRA owners age 70½ and older can still make qualified charitable distributions (QCDs) to qualified charities.

WHAT IT MEANS FOR CHARITABLE GIVING

1. More interest in testamentary life income gifts. Donors may not want their non-spousal beneficiaries to receive their IRA proceeds within 10 years. A testamentary charitable gift annuity (CGA) or a testamentary charitable remainder trust (CRT) may be a solution. An individual can name a CGA or a CRT as a beneficiary. The IRA proceeds will then be used to fund a testamentary CGA or CRT.

With a CRT, for example, not only is this a great tax strategy, but the non-charitable beneficiaries would receive payments from the CRT over one or more lives or a term of up to 20 years from the trust. At the end of the term, the remainder will go to one or more charitable organizations or to a donor advised fund.

2. A need for reminders for donors between ages 70½ and 72. Donors don't have to wait to make their QCDs until age 72. By starting at 70½, they can make a difference today, while receiving benefits in return.

3. Larger retirement plan account balances. Donors can now save and contribute to their retirement accounts for a longer period of time. These accounts may grow in size during this time, leaving nonprofits who have been named as a percentage beneficiary a larger portion of the account.



Tax Exempt and Government Entities

EXEMPT ORGANIZATIONS

DISASTER *Relief*

PROVIDING
ASSISTANCE
THROUGH
CHARITABLE
ORGANIZATIONS

TABLE *of*

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Relief

PROVIDING ASSISTANCE

THROUGH CHARITABLE ORGANIZATIONS

This publication is for people interested in assisting victims of disasters or those in emergency hardship situations through tax-exempt charities. Charitable organizations have traditionally been involved in assisting victims of disasters such as floods, fires, riots, storms or similar large-scale events. Charities also play an important role in helping those in need because of a sudden illness, death, accident, violent crime or other emergency hardship. This publication includes:

- advice about helping to provide relief through an existing charitable organization,
- information about establishing a new charitable organization,
- guidance about how charitable organizations can help victims,
- documentation and reporting requirements,
- guidance about employer-sponsored assistance programs,
- information about tax treatment of disaster relief payments,
- information about gifts and charitable contribution rules, and
- reference materials and taxpayer assistance resources.

By using this publication as you begin to plan your relief efforts, you will be able to ensure that your program will assist victims in ways that are consistent with the federal tax rules that apply to charities.

Providing aid to relieve human suffering caused by a natural or civil disaster or an emergency hardship is charity in its most basic form. Charitable organizations, including churches, are frequently able to administer relief programs more efficiently than individuals acting on their own. Charitable organizations can continue to offer assistance over long periods. Even if the charity later dissolves, its remaining assets are permanently dedicated to accomplishing charitable purposes and cannot be divided among the organization's members, directors or employees.

Of course, there are tax advantages when a tax-exempt charitable organization provides relief. If an organization is exempt from federal income tax, it can use more of its resources to further its mission. Contributors to qualified charitable organizations may be eligible to claim tax deductions for their donations, and the value of these contributions is not subject to gift tax, regardless of the amount. Also, individuals receiving assistance are not generally subject to federal tax on the value of assistance they receive from a charity to meet their personal needs.

HELPING THROUGH AN EXISTING CHARITABLE ORGANIZATION

When a tragic event occurs there is often an overwhelming desire on the part of the community to come to the aid of the victims. In the immediate aftermath of a disaster or emergency, those who wish to provide help may overlook existing charities and spend precious time and resources establishing a new charitable organization and applying for tax-exempt status.

As an alternative, it may be more practical to combine resources with an existing charity to provide immediate relief, or see whether an existing charity operating in a related area may be interested in establishing a special program to address a particular disaster or emergency hardship situation. For instance, a community fund like the United Way, a religious organization like the Salvation Army, or a relief organization like the Red Cross are all existing organizations which have provided targeted disaster relief and emergency hardship assistance in response to natural and civil disasters and other unforeseen emergencies. Community-based organizations and charities with a local presence often know best what assistance is needed and understand the social and cultural context of a disaster. Working with and supporting these existing organizations may prove to be a more efficient use of disaster relief resources.

Furthermore, even if a charity was not specifically organized to provide disaster relief and such activities were not specified in its application for exemption, an existing recognized charity may engage in disaster relief activities without obtaining prior permission from the IRS. However, it must report this new activity on its annual return and may wish to report a change in its activities to the IRS Exempt Organizations Determinations Office.

FEDERAL TAX LAW

Under federal law, an existing qualified charity generally must be given full control and authority over the use of donated funds, and contributors may not earmark funds for the benefit of a particular individual or family. Contributions to qualified charities may, however, be earmarked for flood relief, hurricane relief or other disaster relief.

STATE LAW CONSIDERATIONS

Some contributors are reluctant to contribute to an existing umbrella organization with many programs. They are concerned that their donations will not be spent directly to serve the victims of the particular emergency they wish to help, and instead, will be applied to other organizational expenses.

To address these concerns, many state and local authorities that regulate charitable solicitation rules have imposed regulations that provide that, if a charity represents that funds will be used for the relief of the victims of a particular disaster, the funds may not be used for other programs of the organization. Charitable organizations and contributors should be aware of the solicitation rules that may apply in their particular jurisdiction.

ESTABLISHING A NEW CHARITABLE ORGANIZATION

When no existing charity appears to have the capability to carry out an effective disaster relief or emergency hardship program, or when the potential organizers of the charity have long-term goals extending beyond the immediate crisis, it may be appropriate to consider establishing a new charitable organization. An organization qualifies as an exempt charitable organization if it is organized and operated exclusively for charitable purposes, serves public rather than private interests, and refrains from participating or intervening in any political campaign or engaging in substantial amounts of lobbying activity.

APPLYING FOR TAX-EXEMPT STATUS

Generally, a new charitable organization with actual or anticipated annual gross receipts in excess of \$5,000 must submit an application for exemption and be recognized as tax exempt by the IRS. There are exceptions to this general rule. Churches, synagogues, temples, and mosques may, but are not required to, apply for tax-exempt status from the IRS.

You may wish to consult the IRS website at www.irs.gov and review the following IRS resources when establishing a charitable organization:

Life Cycle of a Public Charity/Private Foundation

These life cycles, which can be accessed at www.irs.gov/charities, contain links to helpful information about points of intersection between disaster relief organizations and the IRS, including access to explanatory information and forms that organizations may need to file with the IRS.

Publication 4220, Applying for 501(c)(3) Tax-Exempt Status

This publication provides information about eligibility for section 501(c)(3) status, how to apply for tax-exempt status, and the responsibilities of section 501(c)(3) organizations.

Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

Applicants for tax-exempt status under section 501(c)(3) generally must file Form 1023.

Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

Organizations with annual revenues of \$50,000 or less and assets of \$200,000 or less may file the interactive Form 1023-EZ. It's three pages and must be filed online. An organization not eligible to file Form 1023-EZ must use Form 1023.

Publication 557, Tax-Exempt Status for Your Organization

This publication describes basic requirements to qualify as a tax-exempt charitable organization and the application process.

EMPLOYEE IDENTIFICATION NUMBER (EIN)

An organization must obtain an employer identification number before it applies for tax-exempt status. An EIN is an organization's account number with the IRS. It should be used on all correspondence with the IRS and must be entered on application forms as well as annual information and tax returns.

You can apply for an EIN:

- Online by clicking on the *Employer ID Numbers* link at *Tax Information For Businesses*. The EIN is issued immediately once the application information is validated. (Certain organizations, including those with a foreign address and certain limited liability companies may not file online.) This is the preferred application method.
- By telephone at (800) 829-4933. International applicants must call (267) 941-1099. An assistant will provide the number to an authorized party by phone.
- By faxing or mailing a completed *Form SS-4, Application for Employer Identification Number*, to the fax numbers or address specified in the form instructions. The form and instructions are available on www.irs.gov or by calling (800) 829-3676.

If you have already applied for an EIN and have not yet received it, or you are not sure whether you have an EIN, call our toll-free customer account services number, (877) 829-5500, for assistance.

EXPEDITED PROCESSING OF APPLICATIONS FOR EXEMPTION

Normally, a Form 1023 is processed in order based upon the date it is received; however, a new disaster relief or emergency hardship organization may request expedited handling of its application. An organization should only request expedited handling of its application if there is a compelling reason for the IRS to approve such a request. An application will not be expedited simply because the organization may serve disaster victims. The organization must demonstrate that it is meeting an immediate need of disaster relief or emergency hardship victims and that its ability to provide immediate assistance to such victims will be adversely impacted in a material way if the application is not reviewed expeditiously. Requests for expedited handling are infrequently approved, and even if consideration of the application is expedited, there is no guarantee that tax-exempt status will be granted.

The request for expedited processing should accompany the application and user fee, and should include:

- a compelling reason to process the application ahead of others,
- a brief description of the disaster and details of how the organization will provide relief,
- an explanation of the immediate need for the specific disaster relief services the organization provides,

- a description of any pending grants, including information about the grantor and the amount or property to be received,
- an explanation of how the loss of the grant(s) might impact the organization's ability to operate and provide relief,
- a description of any significant business emergency (such as an impending deadline imposed by a court or government agency) demonstrating that the business emergency will significantly impact the applicant's ability to operate and explaining how expediting the application will enable the applicant to avoid the emergency,
- a statement explaining any other anticipated consequences should the expedited processing be denied, and
- the date an exemption letter is required, if applicable.

The following examples demonstrate the types of situations in which a request for the expeditious handling of an application for exemption would be appropriate or inappropriate.

EXAMPLE

An organization has a matching grant pending that would double the funds it has available to provide immediate counseling for children directly affected by an earthquake. The organization can only receive the funds if it can prove that it is exempt under section 501(c)(3). Expediting the processing of the application under these circumstances is appropriate because the organization would otherwise lose this significant grant money that is to be used to provide counseling to children at a time when they most need it.

EXAMPLE

An organization plans to raise funds to be used to erect a monument to victims of a plane crash. Certain businesses and members of the general public have expressed interest in contributing to the project; however, there are no firm commitments for funding. While the organization intends to honor disaster victims, it is not providing disaster relief. Furthermore, there is no evidence that there are any significant grants pending or any other business reason to expedite consideration of the application. Expedited treatment of the application would not be appropriate.

PUBLIC CHARITY VS. PRIVATE FOUNDATION

Every exempt charitable organization is classified as either a public charity or a private foundation. Generally, organizations that are classified as public charities are those that:

- are churches, hospitals, schools, and qualified medical research organizations affiliated with hospitals, schools, colleges and universities;
- have an active fundraising program and normally receive a substantial part of their support in the form of contributions from publicly supported organizations, governmental units, and/or from the general public;
- normally receive not more than one-third of their support from the sum of gross investment income and the excess (if any) of unrelated business taxable income over the tax imposed on that income; and normally receive more than one-third of their support from contributions, membership fees, and gross receipts from activities related to their exempt functions; and
- support other public charities.

Because public charities typically solicit funds from the general public and are generally subject to more public scrutiny and oversight in their daily operations, they are less restricted in the type of disaster assistance and emergency hardship relief they may provide than private foundations. See *Employer-Sponsored Assistance Programs, page 15*.

Private foundations, in contrast, typically have a single major source of funding (usually gifts from one family or corporation), rather than funding from many sources. Many have as their primary activity the making of grants to other charitable organizations and individuals, rather than the direct operation of a charitable program.

Classification as a public charity or private foundation is important because different tax rules apply to the operations of each. Deductibility of contributions to a private foundation is more limited than deductibility of contributions to a public charity. In addition, private foundations are subject to excise taxes, including taxes on acts of self-dealing. For example, it is self-dealing if the income or assets of a private foundation are used by or for the benefit of a substantial contributor to the foundation or a person in control of the foundation, and the benefit is not incidental or tenuous.

Publication 557, Tax-Exempt Status for Your Organization, explains some of the distinctions between public charities and private foundations. See also the *Life Cycle of a Public Charity* and the *Life Cycle of a Private Foundation* at www.irs.gov/charities.

HOW CHARITABLE ORGANIZATIONS HELP VICTIMS

Charitable organizations can serve disaster victims and those facing emergency hardship situations in a variety of ways.

AID TO INDIVIDUALS

Organizations may provide assistance in the form of funds, services, or goods to ensure that victims have the basic necessities, such as food, clothing, housing (including repairs), transportation, and medical assistance (including psychological counseling). The type of aid that is appropriate depends on the individual's needs and resources. Disaster relief organizations are generally in the best position to determine the type of assistance that is appropriate.

For example, immediately following a devastating flood, a family may be in need of food, clothing, and shelter, regardless of their financial resources. However, they may not require long-term assistance if they have adequate financial resources. Individuals who are financially needy or otherwise distressed are appropriate recipients of charity. Financial need and/or distress may arise through a variety of circumstances. Examples include individuals who are:

- temporarily in need of food or shelter when stranded, injured, or lost because of a disaster;
- temporarily unable to be self-sufficient as a result of a sudden and severe personal or family crisis, such as victims of violent crimes or physical abuse;
- in need of long-term assistance with housing, childcare, or educational expenses because of a disaster; and
- in need of counseling because of trauma experienced as a result of a disaster or a violent crime.

AID TO BUSINESSES

Disaster assistance may also be provided to businesses to achieve the following charitable purposes:

- to aid individual business owners who are financially needy or otherwise distressed,
- to combat community deterioration, and
- to lessen the burdens of government.

An exempt charity can accomplish a charitable purpose by providing disaster assistance to a business if:

- the assistance is a reasonable means of accomplishing a charitable purpose, and
- any benefit to a private interest is incidental to the accomplishment of a charitable purpose.

Once a damaged business has been restored to viability or a newly attracted business is self-supporting, further assistance from a charity is no longer appropriate. Charities that aid businesses should have criteria and procedures in place to determine when aid should be offered and discontinued.

EXAMPLE

As a result of a tornado, the central business district of a community is severely damaged. Because of the devastation, the area has become blighted. No single business wants to begin restoration efforts until it can be assured that the whole business district will be restored. A charity may provide funds to begin rebuilding the infrastructure of the district, such as roads, sidewalks, parks, sewers and power lines. This type of assistance would accomplish a charitable purpose by combating community deterioration. Any benefit to the business is incidental to the public purpose accomplished by the charity's program of assistance to the community.

CHARITABLE CLASS

The group of individuals that may properly receive assistance from a tax-exempt charitable organization is called a "charitable class."

A charitable class must be large enough or sufficiently indefinite that the community as a whole, rather than a pre-selected group of people, benefits when a charity provides assistance. For example, a charitable class could consist of all the individuals in a city, county or state. This charitable class is large enough that the potential beneficiaries cannot be individually identified and providing benefits to this group would benefit the entire community.

If the group of eligible beneficiaries is limited to a smaller group, such as the employees of a particular employer, the group of persons eligible for assistance must be indefinite. To be considered to benefit an indefinite class, the proposed relief program must be open-ended and include employees affected by the current disaster and those who may be affected by a future disaster. Accordingly, if a charity follows a policy of assisting employees who are victims of all disasters, present or future, it would be providing assistance to an indefinite charitable class. If the facts and circumstances indicate that a newly established disaster relief program is intended to benefit only victims of a current disaster without any intention to provide for victims of future disasters, the organization would not be considered to be benefiting a charitable class.

Because of the requirement that exempt organizations must serve a charitable class, a tax-exempt disaster relief or emergency hardship organization cannot target and limit its assistance to specific individuals, such as a few persons injured in a particular fire. Similarly, donors cannot earmark contributions to a charitable organization for a particular individual or family.

EXAMPLE

Linda's baby, Todd, suffers severe burns in a fire requiring costly treatment that Linda cannot afford. Linda's friends and co-workers form the Todd Foundation to raise funds from fellow workers, family members, and the general public to meet Todd's expenses. Because the organization is formed to assist a particular individual, it would not qualify as a charitable organization.

Consider this alternative case: Linda's friends and co-workers form an organization to raise funds to meet the expenses of an open-ended group consisting of all children in the community injured by disasters where financial help is needed. Neither Linda nor members of Linda's family control the charitable organization. The organization controls the selection of aid recipients and determines whether any assistance should be provided to Todd. Potential donors are advised that, while funds may be used to assist Todd, their contributions might well be used for other children who have similar needs. The organization does not accept contributions specifically earmarked for Todd or any other individual. The organization, formed and operated to assist an indefinite number of current and future disaster victims, qualifies as a charitable organization.

See the example in the section on *Gifts and Charitable Contribution Rules*, page 24, for a situation where providing disaster assistance apart from a qualified charity is desirable.

EXAMPLE

A hurricane causes widespread damage to property and loss of life in several counties of a coastal state. Over 100,000 homes are damaged or destroyed by high winds and flooding. The group of people affected by the disaster is large enough that providing aid to this group benefits the public as a whole. Therefore, a charitable organization can be formed to assist persons in this group since the eligible recipients comprise a charitable class.

EXAMPLE

A hurricane causes widespread damage to property and loss of life in several counties of a coastal state. In one of the affected counties, an existing charitable organization has an ongoing program that provides emergency assistance to residents of the county. A small number of residents of this county suffered significant injury or property damage as a result of the storm. The organization provided assistance to some of these individuals. The organization's assistance was provided to a charitable class because the group of potential recipients is indefinite in that it is open-ended to include other victims of future disasters in the county.

NEEDY OR DISTRESSED TEST

Generally, a disaster relief or emergency hardship organization must make a specific assessment that a recipient of aid is financially or otherwise in need. Individuals do not have to be totally destitute to be financially needy; they may merely lack the resources to obtain basic necessities. Under established rules, charitable funds cannot be distributed to individuals merely because they are victims of a disaster. Therefore, an organization's decision about how its funds will be distributed must be based on an objective evaluation of the victims' needs at the time the grant is made. The scope of the assessment required to support the need for assistance may vary depending upon the circumstances.

A charity may provide crisis counseling, rescue services, or emergency aid such as blankets or hot meals in the immediate aftermath of a disaster without a showing of financial need. Providing such services to the distressed in the immediate aftermath of a disaster serves a charitable purpose regardless of the financial condition of the recipients. However, as time goes on and people are able to call upon their individual resources, it may become increasingly appropriate for charities to conduct individual financial needs assessments. For example, if a charity intends to provide three to six months of financial assistance to families to pay for basic housing because of a disaster or emergency hardship, it would be required to make an assessment of financial need before disbursing aid. While those who may not have the resources to meet basic living needs may be entitled to such assistance, those who do not need continued assistance should not use charitable resources.

NO AUTOMATIC RIGHT TO CHARITY AID

An individual who is eligible for assistance because the individual is a victim of a disaster or emergency hardship has no automatic right to a charity's funds. For example, a charitable

organization that provides disaster or emergency hardship relief does not have to make an individual whole, such as by rebuilding the individual's uninsured home destroyed by a flood, or replacing an individual's income after the person becomes unemployed as the result of a civil disturbance. This issue is especially relevant when the volume of contributions received in response to appeals exceeds the immediate needs. A charitable organization is responsible for taking into account the charitable purposes for which it was formed, the public benefit of its activities, and the specific needs and resources of each victim when using its discretion to distribute its funds.

SHORT-TERM AND LONG-TERM ASSISTANCE

Often charitable organizations (or programs of existing charities) are established as a result of a particular disaster where both short-term and long-term assistance might be required. The following types of assistance, if based on individual need, would be consistent with charitable purposes:

- assistance to allow a surviving spouse with young children to remain at home with the children to maintain the psychological well-being of the family,
- assistance with elementary and secondary school tuition and higher education costs to permit a child to attend school,
- assistance with rent, mortgage payments or car loans to prevent loss of a primary home or transportation that would cause additional trauma to families already suffering, and
- travel costs for family members to attend funerals and to provide comfort to survivors.

EXAMPLE

A group of individuals is killed in a fire in a large office complex. A charitable organization was previously formed to assist needy individuals in the surrounding region. The charity determines that some victims' spouses and dependents lack adequate resources to meet immediate basic needs; others have resources to meet these needs, but will likely have a continuing need for counseling, medical, housing, childcare and education expenses. In this circumstance, the organization can grant funds to assist in meeting current and continuing needs. The organization can also set aside funds for possible future needs. However, when payments are made out of the set-aside funds, they must be based on needs of victims' families that exist at the time the payments are made.

DOCUMENTATION

An organization must maintain adequate records to show that the organization's payments further the organization's charitable purposes and that the victims served are needy or distressed. Charities must also maintain appropriate records to show that they have made distributions to individuals after making appropriate needs assessments based on the recipients' financial resources and their physical, mental, and emotional well-being.

Generally, documentation should include:

- a complete description of the assistance provided,
- costs associated with providing the assistance,
- the purpose for which the aid was given,
- the charity's objective criteria for disbursing assistance under each program,
- how the recipients were selected,
- the name, address, and amount distributed to each recipient,
- any relationship between a recipient and officers, directors, or key employees of, or substantial contributors to, the charitable organization, and
- the composition of the selection committee approving the assistance.

DOCUMENTATION OF SHORT-TERM EMERGENCY AID

A charitable organization that is distributing short-term emergency assistance would only be expected to maintain records showing the type of assistance provided, criteria for disbursing assistance, date, place, estimated number of victims assisted (individual names and addresses are not required), charitable purpose intended to be accomplished, and the cost of the aid. Examples of such short-term emergency aid would include the distribution of blankets, hot meals, electric fans, or coats, hats and gloves. An organization that is distributing longer-term aid should keep the more-detailed type of records described above.

REPORTING

Most public charities and all private foundations are required to file an annual return. Public charities file *Form 990, Return of Organization Exempt from Income Tax*; *Form 990-EZ, Short Form Return of Organization Exempt from Income Tax*; or *Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or 990-PF*. Private foundations file *Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation*.

If a public charity carries on disaster relief activities as one of its three largest programs, it must describe the services provided in the *Statement of Program Service Accomplishments* on Form 990 or Form 990-EZ. See the form instructions for additional information about reporting obligations of public charities with respect to grants or other types of disbursements to individuals in connection with disaster relief programs. A public charity also may be required to complete *Schedule F* if it carries out foreign operations, or *Schedule I* for grants or other assistance to individuals.

Similarly, if a private foundation carries on disaster relief activities as one of its four largest programs, it must describe the services provided in its summary of direct charitable activities on Form 990-PF. See the Form 990-PF instructions for further information about reporting disaster relief activities of private foundations such as grants or other types of disbursements to individuals.

For additional information about the reporting requirements of public charities and private foundations, see the *Life Cycle of a Public Charity* and the *Life Cycle of a Private Foundation* at www.irs.gov/charities, as well as *Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities*, and *Publication 4221-PF, Compliance Guide for 501(c)(3) Private Foundations*.

INCOME TAX TREATMENT OF QUALIFIED DISASTER PAYMENTS

Internal Revenue Code section 139 provides that **qualified disaster relief payments** from any source, including employers, reimbursing or paying individuals' specified expenses in connection with **qualified disasters** are not taxable as income and are not subject to employment taxes or withholding.

A qualified disaster is defined in section 139 as a disaster that:

- results from terrorist or military actions,
- results from an accident involving a common carrier,
- is a Presidentially declared disaster, or
- is an event that the Secretary of the Treasury determines is catastrophic.

Qualified disaster relief payments within the meaning of section 139 include payments received (regardless of the source) for the following expenses:

- reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,
- reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence due to a qualified disaster (a personal residence can be a rented residence or one you own), and
- reasonable and necessary expenses incurred for the repair or replacement of the contents of a personal residence due to a qualified declared disaster.

Payments by a federal, state, or local government, or their agencies or instrumentalities, to persons affected by a qualified disaster in order to promote general welfare are also considered to be qualified disaster relief payments. For purposes of such payments by federal, state, or local governments, a qualified disaster includes the events listed above, as well as a disaster determined by a federal, state or local authority to warrant governmental assistance.

Qualified disaster relief payments do not include:

- payments for expenses otherwise paid for by insurance or other reimbursements, or
- income replacement payments, such as payments of lost wages, lost business income, or unemployment compensation

EMPLOYER - SPONSORED ASSISTANCE PROGRAMS

Frequently, employers fund relief programs through charitable organizations aimed at helping their employees cope with the consequences of a disaster or personal hardship. As noted above, all charitable organizations, including those that provide disaster relief, must demonstrate that they serve a public rather than a private interest and serve a charitable class. In the past, employer-sponsored organizations were considered to enhance employee recruitment and retention, resulting in private benefit to sponsoring employers. In addition, there were concerns that

employers could exercise undue influence over the selection of recipients. For these reasons, special rules apply to employer-sponsored charities.

Employer-sponsored charities sometimes establish emergency hardship funds to help employees who have been the victims of crime or a personal loss such as a fire or a sudden death in the family.

Not all employer-sponsored charitable organizations are permitted to provide assistance to employees and their families in any type of emergency hardship situations. The types of benefits a charitable organization can provide through an employer-sponsored assistance program depend on whether the employer-sponsored organization is a public charity, a donor advised fund or a private foundation. When an employer-sponsored organization provides assistance to employees, certain limitations apply that help to ensure that such aid does not result in impermissible private benefit to the employer.

EMPLOYER-SPONSORED PUBLIC CHARITIES

Because public charities typically receive broad financial support from the general public, their operations are generally more transparent and are subject to greater public scrutiny. Accordingly, public charities may provide a broader range of assistance to employees than can be provided by donor advised funds or private foundations. An employer can establish an employer-sponsored public charity to provide assistance programs to respond to any type of disaster or employee emergency hardship situations, as long as the related employer does not exercise excessive control over the organization. Generally, employees contribute to the public charity and rank and file employees constitute a significant portion of the board of directors.

To ensure the program is not impermissibly serving the related employer, the following requirements must be met:

- the class of beneficiaries must be large or indefinite (a “charitable class”),
- the recipients must be selected based on an objective determination of need, and
- the recipients must be selected by an independent selection committee or adequate substitute procedures must be in place to ensure that any benefit to the employer is incidental and tenuous. The charity’s selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer.

If these requirements are met, the public charity’s payments to the employer-sponsor’s employees and their family members in response to a disaster or emergency hardship are presumed: (1) to be made for charitable purposes, and (2) not to result in taxable compensation to the employees.

EMPLOYER-SPONSORED DONOR ADVISED FUNDS

Certain community foundations and other public charities maintain separate funds or accounts to receive contributions from individual donors. These individual donors then receive advisory privileges over investment or distribution of the donated funds.

In general, these organizations, known as donor advised funds, can make grants to 501(c)(3) public charities and, under certain conditions, to other organizations for charitable purposes, but cannot make grants to individual persons. However, there is an exception for certain employer-related funds or accounts established to benefit employees and their family members who are victims of a qualified disaster.

A donor advised fund or account can make grants to employees and their family members in the following circumstances:

- the fund serves the single identified purpose of providing relief from one or more qualified disasters as *defined on page 14* in the discussion of section 139 of the Internal Revenue Code,
- the fund serves a charitable class,
- recipients of grants are selected based upon an objective determination of need,
- the selection of recipients of grants is made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous (the selection committee is considered independent if a majority of its members consists of persons who are not in a position to exercise substantial influence over the employer's affairs),
- no payment is made from the fund to or for the benefit of any director, officer, or trustee of the sponsoring community foundation or public charity, or members of the fund's selection committee, and
- the fund maintains adequate records to demonstrate the recipients' need for the disaster assistance provided.

For a description of the types of records a fund must retain, see the previous section, *Documentation*, on *page 13*.

EMPLOYER-SPONSORED PRIVATE FOUNDATIONS

Like public charities, private foundations can make need-based distributions to victims of disasters or to the poor or distressed. However, several issues arise when an employer-sponsored private foundation provides aid that favors the employees of the sponsoring employer. The IRS has previously ruled that, because the availability of the disaster relief programs aided employers in recruiting and retaining a stable workforce, such programs conferred a significant private benefit on the sponsoring companies. However, after the September 11 attacks, Congress took the position that employer-sponsored private foundations should be able to provide assistance to employees in certain situations.

Accordingly, employer-sponsored private foundations may provide assistance to employees or family members affected by a qualified disaster, as defined in section 139 of the Code, as long as certain safeguards are in place to ensure that such assistance is serving charitable purposes, rather than the business purposes of the employer. Employer-sponsored private foundations can only make payments to employees or their family members affected by qualified disasters, not in non-qualified disasters or in emergency hardship situations.

The IRS will presume that payments in response to a qualified disaster, as defined above, made by a private foundation to employees (or family members of employees) of an employer that is a disqualified person (such as a company that is a substantial contributor) are consistent with the foundation's charitable purposes if:

- the class of beneficiaries is large or indefinite (a "charitable class"),
- the recipients are selected based on an objective determination of need or, and
- the selection is made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous. The foundation's selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer.

If the requirements of this presumption are met, the private foundation's payments in response to a qualified disaster are treated as made for charitable purposes; do not result in prohibited self-dealing merely because the recipient is an employee (or family member of an employee) of the employer-sponsor; and do not result in taxable compensation to the employees.

The presumption described above does not apply to payments that would otherwise constitute self-dealing and subject the organization to excise taxes. For example, the presumption does not apply to payments made to (or for the benefit of) individuals who are directors, officers, or trustees of the private foundation or members of the private foundation's selection committee.

While a private foundation may fail to meet all of the requirements of the presumption, other procedures and standards may be considered to constitute adequate substitutes to ensure that any benefit to the employer is incidental and tenuous, when all the facts and circumstances are taken into account. Conversely, even though a private foundation meets the presumption, the IRS may still review the facts and circumstances to ensure that any benefit to the employer is tenuous and incidental. For example, a program may not be used to induce employees to follow a course of action sought by the employer or designed to relieve the employer of a legal obligation for employee benefits.

EXAMPLE

A for-profit company is located in an area of the country designated a Presidentially-declared disaster because of hurricane devastation. A private foundation funded by the company establishes a new program to provide assistance to the company's employees and their immediate family members who are victims of the current disaster and any future qualified disasters. The private foundation's committee that selects recipients for assistance consists of a majority of members who are not in a position to exercise substantial influence over the affairs of the company. The foundation provides assistance to the employees and their families based on an objective determination of need.

The foundation's program does not relieve the company of any legal obligation, such as an obligation under a collective bargaining agreement or written plan that provides insurance benefits. The company does not use the program to recruit employees to continue their employment, or to otherwise follow a course of action sought by the company.

Because the foundation serves a charitable class, provides assistance based on an objective determination of need, and has an independent selection committee, the IRS will presume that it is carrying out a charitable program. Distributions are neither self-dealing transactions between the foundation and the employer nor taxable compensation to its employees under the program.

See the *Life Cycle of a Private Foundation* at www.irs.gov/charities for information about foundation excise taxes, self-dealing, and disqualified persons.

For a description of the types of records a private foundation must retain, see the previous section, *Documentation*, on [page 13](#).

SPECIAL TAX RULES FOR RECIPIENTS OF DISASTER RELIEF ASSISTANCE

This part of the publication discusses special tax rules that apply to individuals who receive assistance from public charities, private foundations, employer-related charitable organizations, government entities and other sources in disaster situations.

Gross income, for federal income tax purposes, generally includes all income from whatever source derived, unless a specific exception applies. Whether a payment to a disaster victim constitutes gross income for income tax purposes or compensation subject to employment tax depends, in part, on the source of the payment.

CHARITABLE ORGANIZATIONS

Payments that individuals receive under a charitable organization's program as a result of a disaster or emergency hardship are considered to be gifts and are excluded from gross income of recipients under section 102 of the Code. Payments from an employer-sponsored public charity or private foundation are also exempt from gross income as gifts so long as the requirements described in *Employer-Sponsored Assistance Programs*, [page 15](#), are met.

An examination of the facts and circumstances surrounding a charity's payment to a for-profit business will govern whether the business can exclude the amount paid from gross income as a gift under section 102 of the Code. The IRS will evaluate whether the charity intended the payment to be a gift, and was motivated by charitable impulses. If the payment was made out of a moral or legal obligation, an anticipated economic benefit or in return for services, the payment will not be excluded from income as a gift.

FEDERAL AND STATE GOVERNMENT

Generally, payments that individual disaster victims receive from governmental units under social programs for the promotion of the general welfare (i.e. based on need) are not included in the gross income of the recipients of the payments. In addition, certain payments that individuals receive from a state, federal or local government (or agency thereof), in connection with a qualified disaster, as described on [page 14](#), are excluded from the gross income of the recipient under section 139 of the Code. See *Direct Assistance from Employers and Other Sources*, [page 21](#), for additional information about the types of payments excluded from income and employment taxes under section 139.

EXAMPLE

An area within a state was affected by a hurricane that was a Presidentially-declared disaster. The state enacted emergency legislation to provide grants to pay or reimburse medical, temporary housing, and transportation expenses incurred by individuals as a result of the flood that are not compensated by insurance or otherwise. Payments received under the state's grant program are excluded from income under the general welfare exclusion as well as under section 139 of the Code.

DIRECT ASSISTANCE FROM EMPLOYERS AND OTHER SOURCES

In some instances a corporation or other non-exempt entity may choose to provide direct assistance to disaster victims rather than funneling its assistance through a charity or governmental entity. In addition, sometimes an employer may provide assistance through a non-exempt fund established to receive contributions from the employer as well as employees. In certain circumstances, payments from such sources may receive favorable tax treatment as well. As noted on [page 14](#), section 139 of the Code provides for special tax treatment of qualified disaster relief payments made to victims of a qualified disaster, regardless of the source. Qualified disaster relief payments are not included in the income of recipients to the extent that any expenses covered by these payments are not otherwise compensated by insurance or other reimbursements. Qualifying payments are not subject to income tax, self-employment tax, or employment taxes (Social Security, Medicare, and federal unemployment taxes) even if the payments are made directly from an employer.

EXAMPLE

A for-profit corporation makes grants to its employees who are affected by a flood that was a Presidentially-declared qualified disaster. The grants will pay or reimburse employees for medical, temporary housing, and transportation expenses they incur as a result of the flood that are not compensated by insurance or otherwise. The corporation will not require individuals to provide proof of actual expenses to receive a grant payment. The corporation's program, however, contains requirements (which are described in the program documents) to ensure that the grant amounts are reasonably expected to be commensurate with the amount of unreimbursed reasonable and necessary medical,

temporary housing, and transportation expenses the corporation's employees incur as a result of the flood. The grants are not intended to indemnify all flood-related losses or to reimburse the cost of non-essential, luxury, or decorative items and services. The grants are available to all employees regardless of length or type of service with the corporation.

The grants made by the employer are qualified disaster relief payments expected to be commensurate with the unreimbursed reasonable and necessary personal, living or family expenses of the employees not compensated by insurance or otherwise. The grants are excluded from the employees' gross income under section 139.

GIFTS AND CHARITABLE CONTRIBUTION RULES

This part of the publication discusses the tax rules that apply to individuals who want to claim a tax deduction for their contributions to a qualified charitable organization. It also discusses the potential liability of donors for gift tax.

CHARITABLE CONTRIBUTIONS

Contributors to qualified domestic charitable organizations may be eligible to claim federal income tax deductions for their contributions if they file itemized tax returns. Qualified organizations include charitable organizations that the IRS has determined are exempt from federal income tax. Churches, synagogues, temples and mosques are also qualified charitable organizations.

Domestic charitable organizations are those created under the laws of the United States or its possessions. For charitable contribution purposes, United States possessions include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of Northern Mariana Islands.

See [Publication 526, Charitable Contributions](#), for a complete description of qualified organizations.

Before making a contribution to an organization for disaster relief, a contributor may want to verify whether the contribution would be tax-deductible. A contributor may use the following resources to determine if the organization is qualified to accept tax-deductible contributions:

- Go to *EO Select Check* on the *Charities and Nonprofits home page* on the IRS website, www.irs.gov, to access an online database of qualified charitable organizations, or
- Call IRS Exempt Organizations Customer Service at (877) 829-5500.

Potential contributors, like other interested members of the public, may obtain a copy of an organization's exemption application or its recent annual information returns (Form 990, 990-EZ, 990-PF or 990-N).

Contributors can contact the organization directly or submit *Form 4506-A, Request for Public Inspection or Copy of Exempt Organization IRS Form*, to the IRS to receive copies of the completed forms. Some organizations also post the forms on their website. An organization's Form 990-N may be accessed on the IRS website using *EO Select Check*.

A contributor cannot claim a tax deduction for any cash, check, or other monetary contribution to a qualified charitable organization made on or after January 1, 2007, unless the donor maintains a record of the contribution in the form of either a bank record (such as a canceled check) or a written communication from the charity (such as a receipt or a letter) showing the name of the charity, the date of the contribution, and the amount of the contribution. For more information about contributions, see *Publication 526, Charitable Contributions*.

In addition, a donor cannot claim a tax deduction for any single contribution of \$250 or more unless the donor obtains a contemporaneous acknowledgment of the contribution from the recipient organization. For detailed information on what a charity is required to include in written acknowledgment statements given to donors, see *Publication 1771, Charitable Contributions—Substantiation and Disclosure Requirements*.

FOREIGN CONTRIBUTIONS

Contributions to qualified domestic charitable organizations that provide assistance to individuals in foreign countries qualify as tax-deductible contributions for federal income tax purposes, provided the U.S. organization has full control and discretion over the uses of such funds.

If the contributor is a corporation, its contributions for use in a foreign country are not deductible unless the domestic charity is itself organized as a corporation for federal tax purposes.

Contributions to foreign organizations are generally not tax-deductible, unless permitted by a tax treaty. The United States currently has tax treaties with Canada, Mexico, and Israel. See *Publication 526, Charitable Contributions*, for limitations that apply pursuant to these treaties.

GIFTS

Individuals can also help victims of disaster or hardship by making gifts directly to victims. This type of assistance does not qualify as a tax-deductible contribution since a qualified charitable organization is not the recipient. However, individual recipients of gifts are generally not subject to federal income tax on the value of the gift. If you make a gift directly to an individual, you are not subject to federal gift tax unless the total gifts made in a year exceed the annual exclusion amount.

Sometimes providing financial assistance apart from a qualified charity is desirable.

EXAMPLE

Jim, a college student and a counselor at a summer camp, accidentally rolls his old truck into a lake. The other counselors collect several hundred dollars and give the monies directly to Jim to help with the down payment for another truck. Since the counselors are making gifts to a particular individual, the use of a qualified charitable organization would not be appropriate. The counselors cannot claim tax deductions for their gifts to Jim. However, Jim is not subject to federal income tax on the gift amount. The other counselors would not be subject to federal gift tax if the total gifts made by each counselor to Jim during the year did not exceed the annual exclusion amount.

For more information about the taxability of gifts, see *Publication 559, Survivors, Executors, and Administrators*.

ADDITIONAL HELP ON DISASTER-RELATED TOPICS

The IRS has a number of forms and publications on disaster relief and tax exemption that may be helpful to your organization.

FORMS AND PUBLICATIONS

To order free IRS publications and forms, call the IRS at (800) 829-3676.

Download IRS publications and forms at www.irs.gov.

Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code

Form 1023-EZ, Streamlined Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code

Publication 526, Charitable Contributions

Publication 547, Casualties, Disasters, and Thefts

Publication 557, Tax-Exempt Status for Your Organization

Publication 559, Survivors, Executors, and Administrators

Publication 561, Determining the Value of Donated Property

Publication 584, Casualty, Disaster, and Theft Loss Workbook (Personal-Use Property)

Publication 584-B, Business Casualty, Disaster, and Theft Loss Workbook

Publication 1771, Charitable Contributions—Substantiation and Disclosure Requirements

Publication 2194, Disaster Resource Guide for Individuals and Businesses

TELEPHONE ASSISTANCE

The following telephone numbers will connect you to IRS customer service.

(877) 829-5500 **IRS Exempt Organizations Customer Account Services**
for tax information specific to exempt organizations

(215) 516-2000 **IRS International Customer Service**
for tax information specific to foreign tax issues

(800) 829-1040 **IRS Customer Service**
for general tax information

Section Four

Current Developments in the International Activity of Nonprofits

Lara A. Kalwinski

General Counsel and Corporate Secretary at Relief International

Section Four

Current Developments in the International Activity of Nonprofits..... Lara A. Kalwinski

PowerPoint Presentation

26 CFR 601. 105: Examination of returns and claims for refund, credit, or abatement;
determination of correct tax liability

Current Developments
in the

INTERNATIONAL ACTIVITY OF NONPROFITS

*Content by:
Lara A. Kalwinski*



RELIEF INTERNATIONAL

has the experience and agility to meet the ever-changing needs of populations in vulnerable situations.

We specialize in fragile settings.

- Today, we will work to deliver life-saving aid to millions of people living on the edge of survival.
- Tomorrow, when the crisis subsides, we will work alongside community members to restore opportunities, infrastructure, and education.
- And the day after that we will be ready for the next chapter.





INTRODUCTION

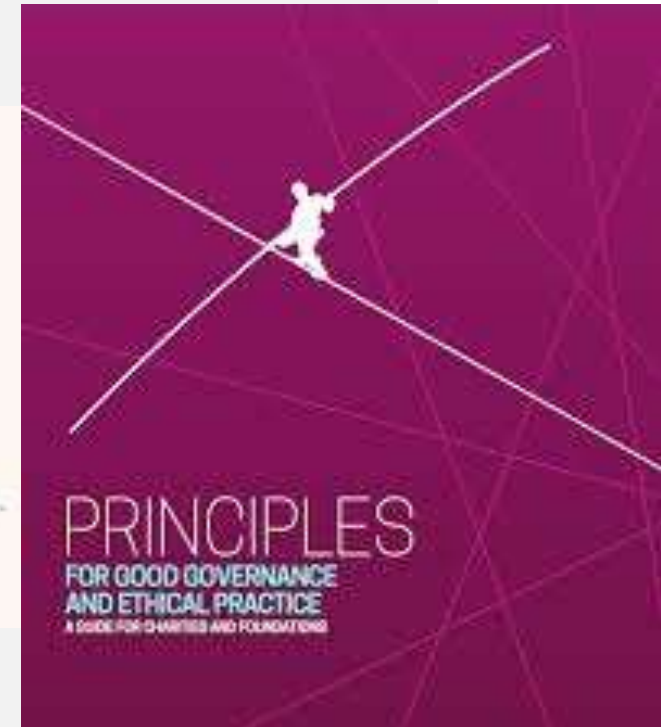
Centering the conversation

ALIGNMENT WITH INDUSTRY GOOD GOVERNANCE



LAWS AND REGULATIONS

A charitable organization must comply with all applicable federal laws and regulations, as well as applicable laws and regulations of the states and the local jurisdictions in which it is based or operates. If the organization conducts programs outside the United States, it must also abide by applicable international laws, regulations, and conventions that are legally binding on the United States.

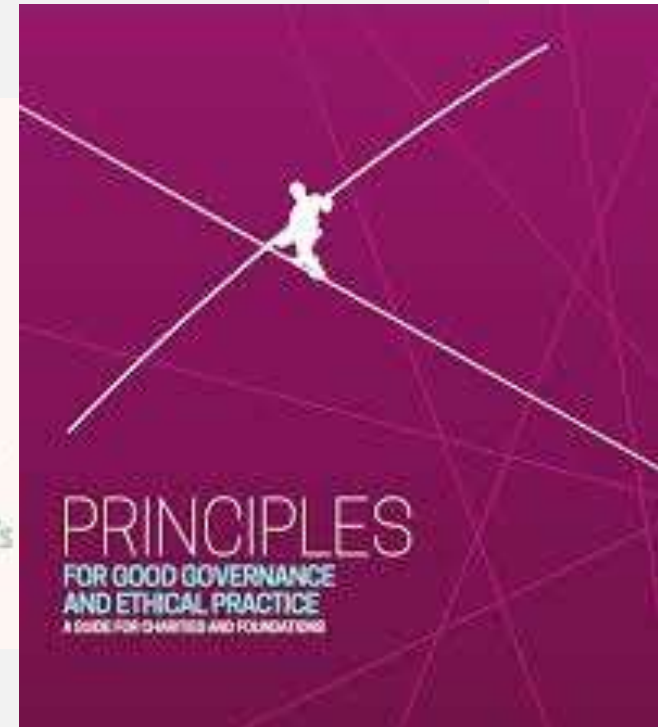


ALIGNMENT WITH INDUSTRY GOOD GOVERNANCE

PRINCIPLE 6

PROTECTION OF ASSETS

A charitable organization's board should ensure that the organization has adequate plans to protect its assets—its property, financial and human resources, programmatic content and material, and its integrity and reputation—against damage or loss. The board should review regularly the organization's need for general liability and directors' and officers' liability insurance, as well as take other actions necessary to mitigate risks.



WHILE TALKING TO THE DONOR, THINK ABOUT

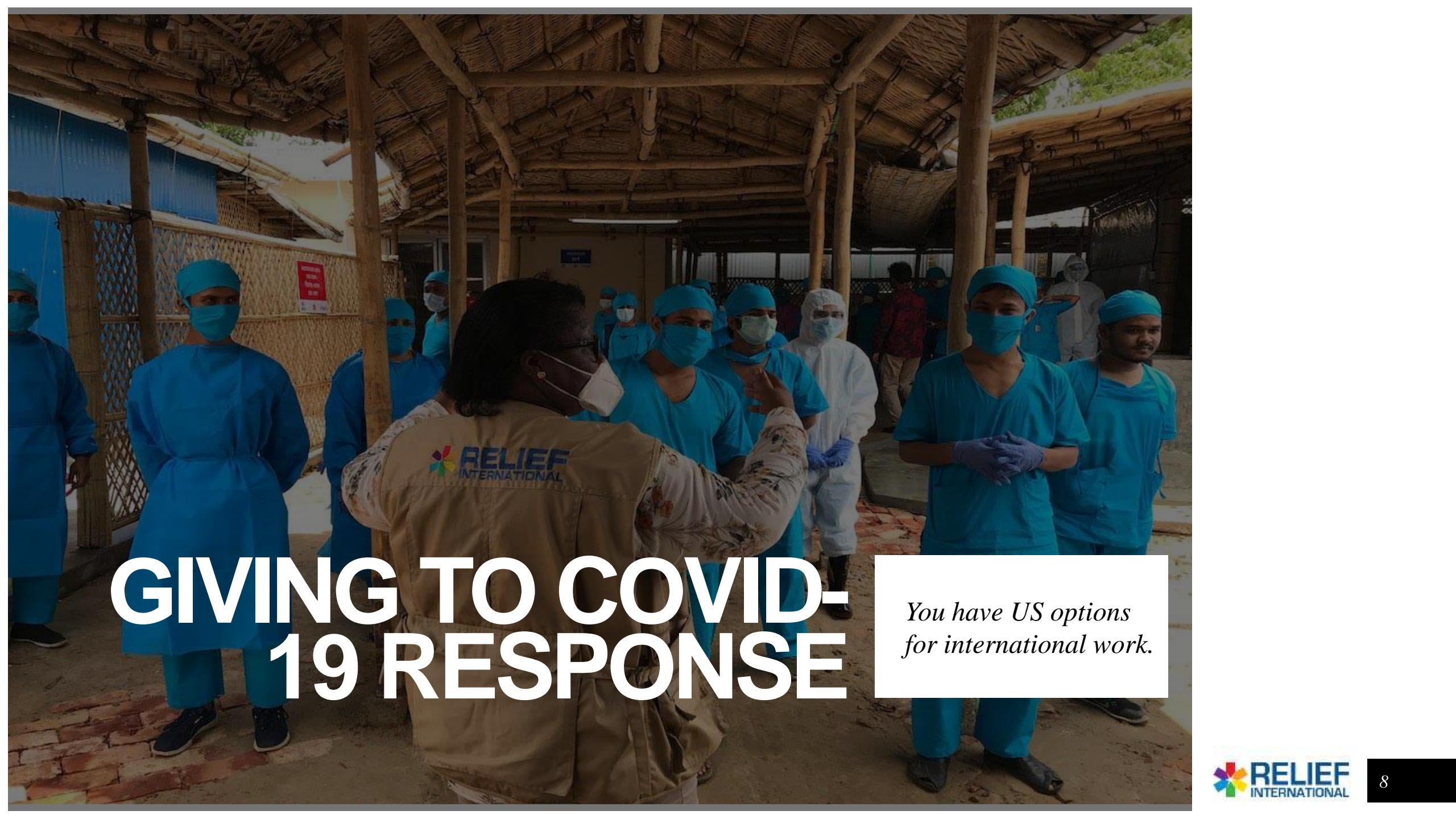
- *What do you want the funds to be used for?*
- *What is the charitable status of the potential entity?*
- *Will there be sub-grantees?*
- *Will there be grants to individuals?*



ALSO, CONSIDER THE ENTITY & CURRENT CRISIS

- *What does the donor expect from the entity?*
- *Can the funds be flexible for greatest needs?*
- *What is realistic reporting to the donor during a pandemic? Customized v. Standardized*
- *What are the entity's risk mitigation and reporting in place you can ask for? Government funding?*
- *Do the donor's expectations pile on to legal requirements?*
 - Fraud, waste, and abuse
 - Contracts, commandeering, sanctions, supply chain
 - Safeguarding staff, contractors, volunteers from trafficking and sexual exploitation and abuse





GIVING TO COVID-19 RESPONSE

You have US options for international work.

HOW TO GIVE TO INTERNATIONAL WORK

Option 1: Find a US 501(c)(3) **doing work internationally**

Option 2: Find a US 501(c)(3) **giving to work abroad**

Option 3: Find an international organization **documenting**

- 501(c)(3) charitable purpose, or
- 501(c)(3) charitable organization equivalent,
- *Screen for no funds supporting terrorism.*



*Why choose a
501(c)(3)*



REMINDER: SPOT A US 501(C)(3)

By Definition:

- Organized exclusively for educational, religious, charitable, scientific testing for public safety, literary purposes, and certain sports, that are non-profit, and
- Does not play a partisan political role (e.g., by supporting candidates for election or attempting to influence legislation).



REMINDER: BENEFITS OF CHOOSING A 501(C)(3)

Understand 501(c)(3) tax benefits

- Applied for and received exemption from federal income taxation on all income related to these purposes.
- Sought exemption from state taxes generally by filing applications for exemptions with the state tax authorities.
- Contributions to these organizations may be tax deductible for the donor.
- **For additional information, refer to, IRS Publication 526.** *NOTE: Publication 526 has changes you'll want to review due to the Taxpayer Certainty and Disaster Tax Relief Act of 2019.* <https://www.irs.gov/forms-pubs/about-publication-526>



MATCHING YOUR DONOR WITH A US ENTITY

Find & Verify U.S. 501(c)(3) status

- Find (examples)
 - News
 - Donor Recommendation
 - Grant Applicant
 - GuideStar
 - ProPublica
- Verify (examples)
 - Organization provides determination letter
 - Copy of most recently filed Form 990
 - IRS Exempt Organization Search



OPTIONS 1&2
International Work
via a US 501(c)(3)



LEARN HOW THE CHARITY “DOES” INT’L WORK

After You’ve Found a 501(c)(3)

- Determine if the charity will run the program you want to fund, or
- If they will find an independent entity to run the program.

This determination may assist with the donor or grant agreement language used.



DISTINGUISHING BETWEEN OPTION 1 & OPTION 2

Option 1: Find a US 501(c)(3) **doing work internationally**

Option 2: Find a US 501(c)(3) **giving to work abroad**

ASK YOURSELF: Is the 501(c)(3)

1. Operational
2. An intermediary, or
3. Both



OPTION 1: FIND A US 501(C)(3) WORKING ABROAD

Operational Characteristics

- Has international offices and staff implementing programs
- Does internal due diligence
- May have institutional grants from US, UN, EU, UK or others demonstrating existing due diligence and reporting requirements
- Varied policies and capacity to provide customized funding reports, often requires a substantial donation
- Examples: [Relief International](#) (Delaware), Poor Handmaids of Jesus Christ (Indiana)



OPTION 2: FIND A US 501(C)(3) INTERMEDIARY

Characteristics of an Intermediary

- Find an international entity is a 501(c)(3) organization that accepts donations and grants for international work.
- Rather than doing the operational work, the 501(c)(3) does legally required due diligence and shares information with you.
- Organizations may share customized or general grantee reports depending on capacity, urgency of response, and size of grant.
- Examples: UNRWA USA, CAF America, Give2Asia, Silicon Valley Community Foundation
- **Two common types of intermediaries are often referred to as**
 - “friends of” organizations or
 - donor advised funds at sponsoring organizations



OPTION 2: FIND A US 501(C)(3) INTERMEDIARY

Intermediary Language

- “Friends of” language can look like this:

[501(c)(3) friends of name] informs the American public about [international NGO name’s] work and generates support for its programs. [International NGO name] is separate from the [501(c)(3) friends of name]. The 501(c)(3) has its own governing body and has discretion over its distribution of funds.

- **Donor Advised Funds** specializing in international due diligence language can look like this:

American donors cannot give directly to foreign charitable organizations and obtain a tax deduction. As a US public charity, [501(c)(3) intermediary name] is able to accept funds from American donors who can then recommend that [501(c)(3) intermediary name] use those funds to support foreign charitable organizations.

Language above edited from examples on UNRWA USA and CAF America websites as of August 30, 2020



OPTION 2: FIND A US 501(C)(3) INTERMEDIARY

Intermediary PRO TIPS

- Though many people talk about “donor advised funds” as a way to work with an intermediary, the legal entity is a 501(c)(3) nonprofit called a sponsoring organization.
- The sponsoring organization then highlights its expertise in international due diligence and giving you a funding mechanism.
- The funding mechanism becomes opening a donor advised fund at the sponsoring organization.
- To make a grant:
 - The sponsoring organization may have organization they already have due diligence on for the issue or geographic area you want to support. OR
 - The sponsoring organization may invite recommendations from the donor and do due diligence on new entities.



OPTION 2: FIND A US 501(C)(3) INTERMEDIARY

Intermediary PRO TIPS

- **The sponsoring organization may say they will not take a donor advisor's recommendation.**
- You don't often hear the term sponsoring organization, more commonly you will hear:
 - Community Foundation, such as Silicon Valley Community Foundation
 - National Donor Advised Fund, such as Fidelity Charitable



OPTION 2: FIND A US 501(C)(3) INTERMEDIARY

Is the 501(c)(3) operational or an intermediary or both?

- Both
 - Sometimes the organization implements the programs.
 - Other times, they sub-grant or re-grant funds to vetted partners.
 - Example: Zakat Foundation of America



WHAT IF: THE ENTITY DOES NOT HAVE IRS STATUS

Before assuming it is an international entity . . .

1. Is the donor talking about a project with a 501(c)(3) fiscal sponsor?
2. Is a for-profit entity engaging in a charitable project?
3. Is a business league or 501(c)(4),(5),(6) doing a project with a charitable purpose?

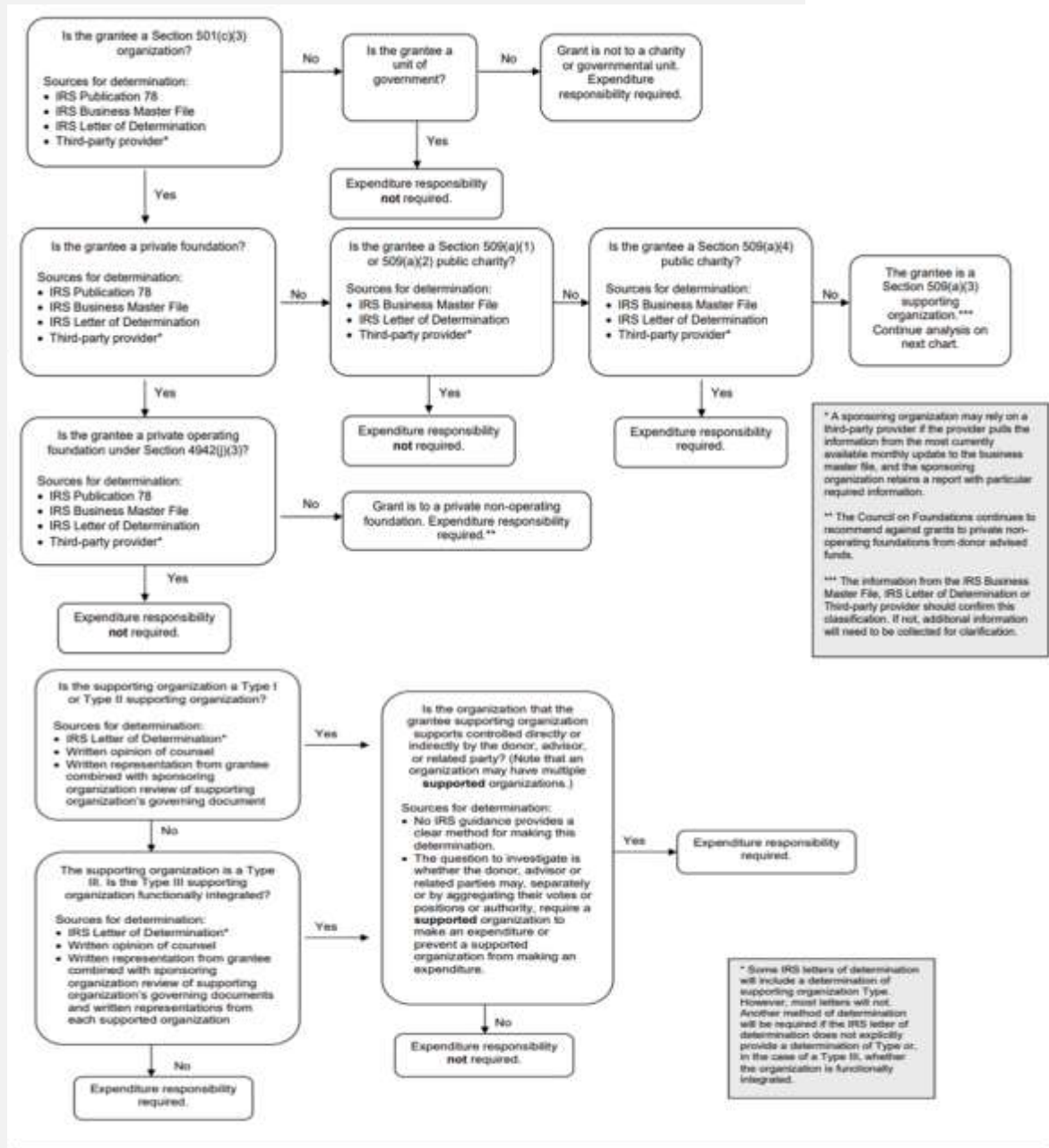
If you have one of these, you may want to use the expenditure responsibility chart and see expenditure responsibility analysis in the next section.



WHEN IN DOUBT, CHECK THE COUNCIL ON FOUNDATIONS' CHART

WHEN IS MORE DUE DILIGENCE REQUIRED?

THIS MANDATED DUE DILIGENCE IS CALLED EXPENDITURE RESPONSIBILITY



The information provided here is based on our continuing analysis of the Pension Protection Act. Every effort has been made to ensure accuracy of these documents. Please understand, however, that due to the complexity of the law and the fact that many of these provisions introduce issues that are new to the Internal Revenue Code, this information is subject to change. The information is not a substitute for expert legal, tax or other professional advice and we strongly encourage grantmakers and donors to work with their counsel to determine the impact of this legislation on their particular situations. This information may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code.



DUE DILIGENCE FOR INT'L ENTITY

*Documenting
Charitable Purpose or
501(c)(3) Equivalent*

OPTION 3: FUND AN INTERNATIONAL ENTITY

- There are two legally permitted methods when donating or granting to groups doing charitable projects or charitable organizations outside of the United States.
- *See* § § 4942(g), 4945(d)(4), 53.4942(a)-3(a)(6), 53.4945-5(a)(5), and 53.4945-6(c)(2)(ii) of the Internal Revenue Code and Corresponding Revenue Procedure 94-92, 2017-53 provide requirements.
- These methods were created by US Treasury regulators and are called
 - **equivalency determination,**
 - **and expenditure responsibility.**



OPTION 3A: USE EQUIVALENCY DETERMINATION

Equivalency Determination Defined

- A good faith determination that a non-US organization is the equivalent of a US public charity. ED examines whether an organization's organizational documents, operations, and funding structure meet the requirements of a public charity.
- Expenditure Responsibility is also called Foreign Public Charity Equivalent (FPCE)



OPTION 3A: USE EQUIVALENCY DETERMINATION

Choosing a Determination Method

- An evaluator must collect a set of detailed information about the grantee's operations and finances and make a reasonable determination of its equivalency.
- In Rev. Proc. 92-94, the IRS requires determinations in one of two ways:
<https://www.federalregister.gov/documents/2012/09/24/2012-23553/reliance-standards-for-making-good-faith-determinations>
 - Use a qualified tax practitioner — an attorney, CPA, or enrolled agent
 - Make the determination in-house based on donee/grantee affidavits,



OPTION 3A: USE EQUIVALENCY DETERMINATION

Updating Rev. Proc. 92-94 w/ Rev. Proc 2017-53 – Private Fdn Required, DAF Best Practice

- Must be in English
- Written advice attaches the donee/grantee's organizing documents and corresponding foreign laws relied on (translated to English)
- Written advice should verify the grantee has not been designated a terrorist organization by the US government. Many often check names of key individuals against OFAC Consolidated Terrorist List search tool
- International hospitals need not comply with Section 501(r)
- International schools cannot discriminate on basis of race, color, or national or ethnic origin. *See Rev. Proc. 75-50*
- Additional information on meeting the public support test



OPTION 3A: USE EQUIVALENCY DETERMINATION

Mandatory characteristics to be a 501(c)(3) equivalent:

- Be organized and operated exclusively for charitable purposes.
- Have a dissolution clause that requires remaining assets be turned over to a similar charitable purpose
- Not conduct any political activity and only insubstantial lobbying
- Not have any shareholders or members that are entitled to assets or income of the entity
- Meet the public support test, or be a hospital, school, or church



OPTION 3A: USE EQUIVALENCY DETERMINATION

Work without Guarantee

An entity must be willing to provide significant up-front information before receiving funding, including detailed financial records and English language versions of governing documents.



OPTION 3A: USE EQUIVALENCY DETERMINATION

Equivalency Determination Expires

See [Rev. Proc. 2017-53](#) & <https://www.ngosource.org/blog/equivalency-determination-validity-period-timing-your-ed-request>

- “written advice will be considered current if, as of the date of distribution, the **relevant law on which the advice is based has not changed** since the date of the written advice and the factual information on which the advice is based is from the donee's current or prior taxable year (or annual accounting period if the donee does not have a taxable year for United States federal tax purposes).” —Treas. Reg. § 53.4942(a)-3.
- “[w]ritten advice that a grantee met the public support test ... for a test period of five years will be treated as current for purposes of grant payments to the grantee during the **two taxable years** (or, as applicable, annual accounting periods) of the grantee immediately following the end of the five-year test period.” *Id.*



OPTION 3A: USE EQUIVALENCY DETERMINATION

External Resources Available

Because the Equivalency Determinations process can seem invasive and be rigorous, entities like [Tech Soup Global's NGOSource](#) offer assistance with equivalency determinations as a service.



OPTION 3B: USE EXPENDITURE RESPONSIBILITY

Expenditure Responsibility defined

- A set of federally-mandated oversight and monitoring procedures, designed to ensure that grant funds are used for charitable purposes for which they were awarded.
- These procedures and requirements enable U.S. donors or grantmakers to make donations or grants to foreign organizations that are neither recognized as 501(c)(3) public charities by the IRS nor tested to be an equivalent of a U.S. public charity.



OPTION 3B: USE EXPENDITURE RESPONSIBILITY

Expenditure Responsibility Requires

<https://www.irs.gov/charities-non-profits/irc-section-4945h-expenditure-responsibility>

- **Pre-grant inquiry:** Prior to making the donation/grant, conduct an inquiry that is complete enough to give a reasonable person assurance that the funds will be used for charitable purposes.
- **Written Agreement:** The agreement must state the purposes of the grant and mandated reporting.
- **Separate Account:** The agreement should require funds be held in a separate account or have separate accounting, have a reporting requirement for misuse of funds, and call for the grantee to return funds not used for the grant.
- **Report(s) from Grantee:** Describe the use of funds and progress toward achieving the objectives of the donation/grant. The final report submitted should identify all expenditures of donated/granted funds.
- **Report to IRS:** Check for Form 990 requirement to report ER grants
- **Recordkeeping:** The donor/grantmaker must maintain records about the grant and, including possible Form 990 reporting requirements.
- **Investigation of Diversions:** Take corrective steps if it discovers the grantee has diverted the funds, including possible Form 990 reporting.



OPTION 3B: USE EXPENDITURE RESPONSIBILITY

Expenditure Responsibility in Practice

- Name of the proposed donee/grantee:
- When was the organization founded:
- Essential institutional character and function or purpose, pick one or more: Educational Institution or Program; Disaster Relief; Medical Services; Humanitarian Aid; Other (explain)
- Name and titles of chief personnel, including a brief statement of how their background and experience contribute to the funding's purpose
- Summary of funding awarded to the charitable project by others
- Documentation on scope of your inquiry into the activities and practices of the proposed donor/grantee.
- Brief statement of basis for conclusion that the proposed donor/grantee will use the grant for the proper purposes.



OPTION 3B: USE EXPENDITURE RESPONSIBILITY

Expenditure Responsibility Prohibits

- Funds cannot be used for lobbying or propaganda
- Funds cannot be used to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive
- Funds cannot be re-granted to an organization unless the grantee also exercises expenditure responsibility
- Funds cannot be used for grants to individuals for travel, study, or other similar purposes unless complying with IRS requirements for such grants

PRO TIP: Capital expenditures are not prohibited but these grants require the capital be used for exclusively charitable purposes and likely requires extensive reporting, possibly for years.



OPTION 3B: USE EXPENDITURE RESPONSIBILITY

Recognize “High Risk” Activities

If the project includes one or more of the following, you may need additional advice from a subject matter expert in law, banking, or sanctions.

- Cash distribution via money, gift cards, or vouchers to individuals or families?
- Funds used for an organization that is not registered with their country’s government?
- Funds for programs or services in sanctioned countries, territories, or regions
<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>
- Funds for activities seen as illegal or raising scrutiny by the country/territory/governing body.



SEE FORM 990, SCHEDULE F TO GET A SENSE OF RISKS

Part IV Foreign Forms

- 1 Was the organization a U.S. transferor of property to a foreign corporation during the tax year? *If "Yes," the organization may be required to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation (see Instructions for Form 926).* Yes No

- 2 Did the organization have an interest in a foreign trust during the tax year? *If "Yes," the organization may be required to separately file Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and/or Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner (see Instructions for Forms 3520 and 3520-A; don't file with Form 990).* Yes No

- 3 Did the organization have an ownership interest in a foreign corporation during the tax year? *If "Yes," the organization may be required to file Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations (see Instructions for Form 5471).* Yes No

- 4 Was the organization a direct or indirect shareholder of a passive foreign investment company or a qualified electing fund during the tax year? *If "Yes," the organization may be required to file Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund (see Instructions for Form 8621).* Yes No

- 5 Did the organization have an ownership interest in a foreign partnership during the tax year? *If "Yes," the organization may be required to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships (see Instructions for Form 8865).* Yes No

- 6 Did the organization have any operations in or related to any boycotting countries during the tax year? *If "Yes," the organization may be required to separately file Form 5713, International Boycott Report (see Instructions for Form 5713; don't file with Form 990).* Yes No

OPTION 3B: USE EXPENDITURE RESPONSIBILITY

Resources

- Council on Foundations' Expenditure Responsibility Step by Step, <https://www.cof.org/content/expenditure-responsibility-step-step>
- Learn Foundation Law for Private Foundations: <https://learnfoundationlaw.org/wp-content/uploads/2014/12/Expenditure-Responsibility-Quick-Reference-Guide.pdf>, <https://learnfoundationlaw.org/expenditure-responsibility-rules-for-private-foundations/>





DON'T FORGET THESE FACTORS

US & International Issues to Remember

US ISSUES FOR INTERNATIONAL WORK

- U.S. OFAC Economic Sanctions
- US State Dept Foreign Terrorist Organizations
- Foreign Corrupt Practices Act
- Foreign Agents Registration Act
- Foreign Government Laws and Policy Priorities
- Preventing Sexual Exploitation and Abuse



THANK YOU

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BONUS MATERIALS

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CHECKING 501(C)(3) STATUS

*Bonus Materials:
Practice of Law*

Tax Exempt Organization Search (formerly Select Check)

Individuals

Businesses and Self-Employed

Charities and Nonprofits

Exempt Organization Types

Lifecycle of an Exempt Organization

Annual Filing and Forms

Charitable Contributions

Search for Charities

Education Sessions

Free e-Newsletter

International Taxpayers

Government Entities

Data Updates Delayed

We're delayed in posting certain content to the Tax Exempt Organization Search tool:

- IRS determination letters issued March 2020 and later
- Paper-filed 990-series returns received April 2020 and later

Quick Links

- [A-Z Index](#)
- [Educational Resources and Guidance](#)
- [Publications](#)
- [Audit Process](#)
- [Contact Us](#)
- [About Us](#)

Tax Exempt Organization Search helps users find information about a tax-exempt organization's federal tax status and filings. You can find:

- **Organizations eligible to receive tax-deductible charitable contributions (Pub 78 data).**
 - Users may rely on this list in determining deductibility of their contributions. (Users may also download a complete [list](#).) Data posting date: 00-11-2020
 - Be aware of the following when searching for organizations that can receive tax-deductible contributions:
 1. Certain eligible donees (i.e., churches, group ruling subordinates, and governmental units) may not be listed. See [Other Eligible Donees](#) for more information.
 2. "Doing business as" (also known as DBA) names of organizations are not listed. See [Search Tips](#) for additional guidance.
- **Automatically revoked organizations**
 - By law, tax-exempt status is revoked when an organization does not file required Form 990-series returns or notices annually for three consecutive years. The automatic revocation date listed for each organization is historical; it reflects an organization's effective date of automatic revocation, but not necessarily its current tax-exempt status. The organization may have applied to the IRS for reinstatement of exemption and been recognized by the IRS as tax-exempt after its effective date of automatic revocation. (Users may also download a complete [list](#).) Data posting date: 00-11-2020
- **IRS determination letters dated on or after January 1, 2014**
 - IRS issues a determination letter recognizing an organization as tax-exempt under the sub-section for which it applied. An organization must apply and pay a user fee to receive a determination letter. Data posting date: 00-12-2020
- **Form 990-series returns**
 - Forms 990, 990-EZ, 990-PF and 990-T (990-T returns for 501(c)(3) organizations only). (Users may also download a complete [list](#).) Data posting date: 07-13-2020
- **Organizations that have filed a Form 990-N (e-Postcard)**
 - Form 990-N (e-Postcard) is an annual electronic notice most small tax-exempt organizations (annual gross receipts normally \$50,000 or less) are eligible to file instead of Form 990 or Form 990-EZ. (Users may also download a complete [list](#).) Data posting date: 06-17-2020

[Tax Exempt Organization Search](#)

[Search Tips](#) for Tax Exempt Organization Search

JAWS Users should visit [Tax Exempt Organization Search: Frequently Asked Questions](#) for information on how to use the search tool.

Additional information

- [Frequently asked questions](#) - Tax Exempt Organization Search Tool
- [Revocations of 501\(c\)\(3\) Determinations](#)
- [Suspensions Pursuant to Code Section 501\(r\)](#)
- [Exempt Organizations Business Master File Extract \(EO BMF\)](#): a list of organizations recognized as exempt by the IRS
- [www.StayExempt.irs.gov - Interactive Training for Charities](#)

Click Here

Great Resources

Check on Federal Tax Exempt Status

Great Resource



IRS

Help | News | Language ▾ | Charities & Nonprofits | Tax Pros

File | Pay | Refunds | Credits & Deductions | Forms & Instructions

[Home](#) > [Charities and Non-Profits](#) > [Search for Charities](#) > Tax Exempt Organization Search

Tax Exempt Organization Search

Select Database ⓘ Search By ⓘ Search Term ⓘ

Search All ▾ Employer Identification Number ▾ Enter EIN Number

City State Country

Enter City All States ▾ United States ▾

Search Reset [Search Tips](#)

Be Careful How You Search, This is NOT like Googling

apps.irs.gov/app/eos/

IRS

Help | News | Language ▾ | Charities & Nonprofits | Tax Pros

File | Pay | Refunds | Credits & Deductions | Forms & Instructions

Home > Charities and Non-Profits > Search for Charities > Tax Exempt Organization Search

Tax Exempt Organization Search

Select Database ⓘ Search By ⓘ Search Term ⓘ

Search All ▾ Employer Identification Number ▾ Enter EIN Number

City State Country

Enter City All States ▾ United States ▾

Search Reset Search Tips

Great Resource

EIN or Name Options: EIN gives best results, "The" and "generic" names can change results

Seems straightforward but incorporation state verses doing business state can lead to zero results, EIN helps

IRS

Search

Help | News | Language | Charities & Nonprofits | Tax Pros

File | Pay | Refunds | Credits & Deductions | Forms & Instructions

Home > Charities and Non-Profits > Search for Charities > Tax Exempt Organization Search

Results for Tax Exempt Organization Search

Select Database ⁱ Search By ⁱ Search Term ⁱ

Search All Organization Name Relief International

City State Country

Enter City All States United States

Search Reset Search Tips

Would adding a city or state help? Unlikely

Where is Relief International . . . #25

Showing 1-25 results of 48 Sort by: Name Z-A

Additional information

- [Frequently asked questions - Exempt Organizations Select Check](#)
- [Revocations of 501\(c\)\(3\) Determinations](#)
- [Suspensions Pursuant to Code Section 501\(p\)](#)
- [Exempt Organizations Business Master File Extract \(EO BMF\): a list of organizations recognized as exempt by the IRS](#)
- [Tax Exempt Organization Search: Bulk Data Downloads](#)

<p>Veterinary Relief International Inc EIN: 13-4191193 Orient, NY, United States Auto-Revocation List Form 990-N</p>
<p>Rohini Relief International EIN: 20-0892406 Pasadena, CA, United States Pub 78 Data Auto-Revocation List Form 990-N Determination Letters Copies of Returns</p>
<p>Prn Relief International EIN: 20-1780032 Fairfield, CT, United States Pub 78 Data Form 990-N</p>
<p>Thirst Relief International Inc. EIN: 20-3398554 -- United States Pub 78 Data Auto-Revocation List Determination Letters Copies of Returns</p>

[Home](#) > [Tax Exempt Organization Search](#) > Relief International Inc.

[Back to Search Results](#)

Relief International Inc.

EIN: 95-4300662 | --, United States

> Other Names

RELIEF INTERNATIONAL INC

Publication 78 Data ⓘ

Organizations eligible to receive tax-deductible charitable contributions. Users may rely on this list in determining deductibility of their contributions.

On Publication 78 Data List: Yes

Deductibility Code: PC

Copies of Returns (990, 990-EZ, 990-PF, 990-T) ⓘ

Electronic copies (images) of Forms 990, 990-EZ, 990-PF or 990-T returns filed with the IRS by charities and non-profits.

> Tax Year 2018 Form 990

> Tax Year 2018 Form 990T

> Tax Year 2017 Form 990

> Tax Year 2016 Form 990

*Check on Federal Tax
Exempt Status*

DUE DILIGENCE DEEP DIVE

*Examples of US &
Foreign Regulatory
Issues*

QUERY: BANKING

Why is my bank asking so many questions about my international transfers?

- To comply with KYC, the financial institution must be able to form a reasonable belief that it knows the true identity of its customer.
- Bank Examiners can fine financial institutions if there is no established program to verify the identity of account holders.
- AML laws allow for certified documents such as IRS designation letter and non-documentary means like internet searches, reference checks, and site visits.



LEGAL REQUIREMENT

Bank Customer Due Diligence

- Laws derived from The Money Laundering (AML) Control Act of 1986, The Currency and Foreign Transactions (CFT) Reporting Act of 1970 as amended by the Bank Secrecy Act, and the USA Patriot Act of 2001.
- Financial Crimes Enforcement Network (FinCEN) of the US Department of the Treasury, the Securities and Exchange Commission, and banking regulators/ examiners have issued Customer Identification Program (CIP) regulations.
- Common terms are Know Your Customer (KYC), Customer Due Diligence (CDD), Customer Identification Program (CIP)



APPLICATION OF THE LAW

Bank Customer Due Diligence

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LEGAL REQUIREMENT

Sanctions

- OFAC generally prohibits all “US persons” from engaging in transactions with persons, governments, and countries targeted by US sanctions (unless those transactions are exempt or licensed by OFAC).
- US persons are generally prohibited from facilitating actions of non-US persons that could not be directly performed by US persons due to US sanctions restrictions, although those actions may be entirely legal for a non-US person.



APPLICATION OF THE LAW

Sanctions

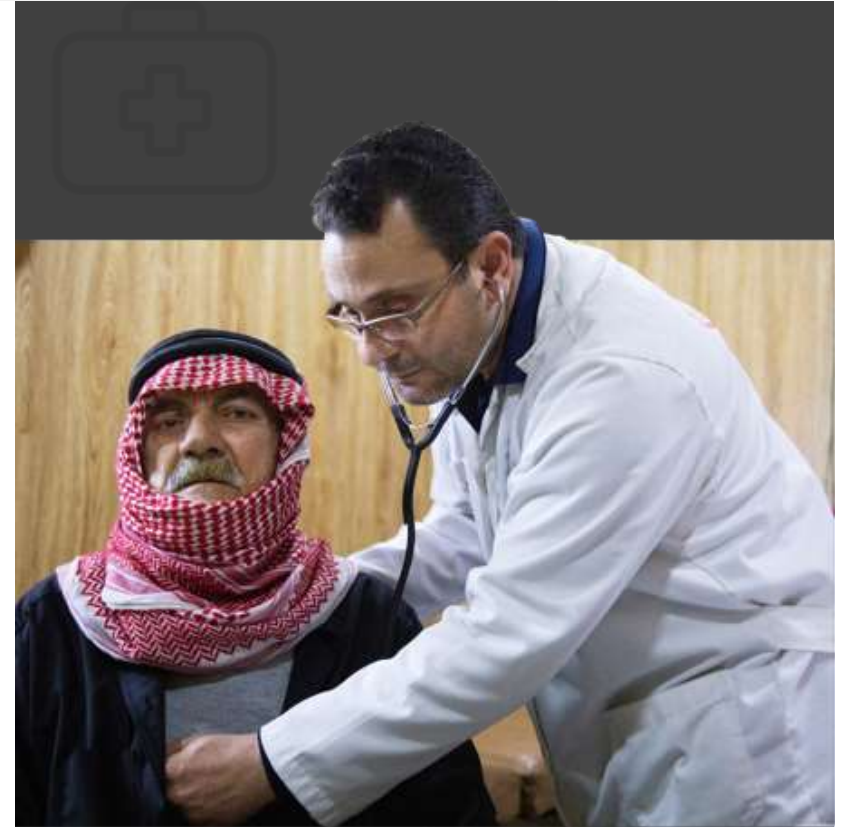
- Banks are recommended to screen a counterparty against government watchlists, including OFAC's Specially Designated Nationals and Blocked Persons list (SDN list).
- Customers may proactively build a relationship with their financial institution by providing information about where they work or who they grant to.
- Information may include internal memos explaining why activity is excluded from sanctions or copies of sanctions applications and licenses for either the customer or their counter party.



LEGAL REQUIREMENT

Foreign Corruption

- The US Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) are fighting corruption by increasing the number of investigations, settlements, and prosecutions for violations of the Foreign Corrupt Practices Act (FCPA).
- The FCPA contains both anti-bribery and accounting provisions.



LEGAL REQUIREMENT

Foreign Corruption: Anti Bribery

- The anti-bribery provisions prohibit U.S. persons and businesses, U.S. and foreign public companies listed on stock exchanges in the US or which are required to file periodic reports with the Securities and Exchange Commission (issuers), and certain foreign persons and businesses acting while in the territory of the United States (territorial jurisdiction) from making corrupt payments to foreign officials to obtain or retain business.
- US persons are generally prohibited from facilitating actions of non-US persons that could not be directly performed by US persons due to US sanctions restrictions, although those actions may be entirely legal for a non-US person.



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 - Certain foreign persons and businesses acting while in the territory of the United States (territorial jurisdiction) from making corrupt payments to foreign officials to obtain or retain business.



APPLICATION OF THE LAW

Foreign Corruption: Accounting

- The accounting provisions require issuers to make and keep accurate books and records and to devise and maintain an adequate system of internal accounting controls.
- The accounting provisions also prohibit individuals and businesses from knowingly falsifying books and records or knowingly circumventing or failing to implement a system of internal controls.



QUERY: INT'L NGO REGISTERING IN US

Can an international NGO apply for exempt status?



LEGAL REQUIREMENT

International NGO Seeking 501(c)(3)

- **State Registration:** Before foreign organizations are able to conduct activities in any particular U.S. state, they must apply for a license to conduct business in that state.
- **Federal Registration:** Like domestic NGOs, foreign organizations can apply to the Internal Revenue Service for recognition as charitable or social welfare organizations under the Internal Revenue Code.
- **No Deduction for Contributions:** Although such organizations are exempt from paying taxes on their income, contributions to foreign organizations are not tax-deductible (in the absence of a special treaty providing otherwise with the country of the NGO's origin).

Citation: Publication 526 and <https://www.state.gov/non-governmental-organizations-ngos-in-the-united-states/>



Nonprofit foreign corporations can be out of state or out of country..

The screenshot shows the Indiana Secretary of State website. The browser address bar displays in.gov/sos/business/2426.htm. The page header includes the IN.gov logo, the Secretary of State's name, and navigation links for Trademarks, Notary, and UCC. A dark blue navigation bar contains links for Online Services, I Want To, and FAQs. A left sidebar titled "Business Services Division" lists various services: SOS Divisions, INBiz - Online Services, UCC, Notary, Trademarks, Apostille/Authentication, Service of Process, Division Forms, Alerts, and Contact Us. The main content area is titled "Business Forms" and contains the following text: "Secretary of State forms are **NOT** for use by Insurance Corporations or Financial Institutions. Please contact the appropriate state agency for filing instructions." Below this, there are two bullet points: "Indiana Department of Insurance: (317)-232-5692" and "Indiana Department of Financial Institutions: (317) 232-3955". Further down, there are four bolded section headers: "For-Profit Corporations (Domestic)", "For-Profit Corporations (Foreign)", "Non-Profit Corporations (Domestic)", and "Non-Profit Corporations (Foreign)". Under the "Non-Profit Corporations (Foreign)" header, there are three bullet points, each with a link to a form and the text "FILE ONLINE": "Foreign Registration Statement 56369", "Foreign Registration Amendment 56365", and "Withdrawal of a Foreign Entity 56374".

APPLICATION OF THE LAW

Understand FARA

- The Foreign Agents Registration Act (FARA) requires registration and disclosure by those acting “for or on behalf of” foreign governments and entities.
- The very old Act is intended to create transparency on communication of foreign governments, political parties, corporations, and individuals.
- Some are concerned FARA can be politicized to target nonprofits in the US because inquiries were made related to some environmental advocacy groups recently.
- For more information visit the International Center for Not-for-Profit Law, <https://www.icnl.org/our-work/us-program/foreign-agents-registration-act>



26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part 1, §§ 170, 501, 509, 4942, 4945, 1.170A-9, 1.509(a)-3, 53.4942(a)-3, 53.4945-5, 53.4945-6)

Rev. Proc. 2017-53

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- .02 Requirements for an equivalency determination under § 53.4945-6(c)(2)
- .03 Requirements for an equivalency determination under §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5)
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 - (3) Qualifying public charity
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- .03 Section 170(b)(1)(A)(vi) or 509(a)(2) organizations within first five years
- .04 Section 170(b)(1)(A)(vi) organizations after first five years
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- .06 Support from governments
- .07 Medical research organizations
- .08 Non-functionally integrated Type III supporting organizations
- .09 Operating and exempt operating foundations

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SECTION 8. EFFECT ON OTHER DOCUMENTS

SECTION 9. EFFECTIVE DATE

SECTION 10. PAPERWORK REDUCTION ACT

DRAFTING INFORMATION

SECTION 1. PURPOSE

Private foundations may wish to treat grants to foreign grantees as qualifying distributions that satisfy the distribution requirements imposed by § 4942 of the Internal Revenue Code (Code) and not as expenditures requiring expenditure responsibility in order to not be subject to the excise tax on taxable expenditures imposed by § 4945 of the Code. If a private foundation makes a “good faith determination” that a foreign grantee qualifies as a qualifying public charity (as defined in section 3.03(3) of this revenue

procedure), the grant will generally be a qualifying distribution that does not require expenditure responsibility in order to not be a taxable expenditure.

This revenue procedure modifies and supersedes Rev. Proc. 92-94, 1992-2 C.B. 507, which provided a simplified procedure that private foundations could follow in making good faith determinations (also known as equivalency determinations).¹ This revenue procedure reflects the changes to the equivalency determination final regulations published in 2015 (TD 9740; 80 FR 57709; 2015-42 IRB 573), including the elimination of the ability of a private foundation to rely on a grantee affidavit for purposes of the special rule. This revenue procedure also reflects the changes to the public support tests for § 170(b)(1)(A)(vi) and § 509(a)(2) organizations set forth in final regulations published in 2011 (TD 9549; 76 FR 55746; 2011-46 IRB 718), and applies these changes in the context of equivalency determinations. In addition, this revenue procedure includes other updates and changes in response to comments from the public.

SECTION 2. SCOPE

This revenue procedure provides guidelines that qualified tax practitioners may use for preparing written advice on which a domestic private foundation ordinarily may rely in making an equivalency determination that the grantee of a grant made for § 170(c)(2)(B) purposes (other than a grant described in sections 507(b)(2) and 1.507-3(c)) is a qualifying public charity. Until further guidance is issued, sponsoring organizations of donor advised funds may also use the guidelines in this revenue procedure for purposes of applying the

¹ This revenue procedure uses the term “equivalency determination” unless referring to regulatory provisions that use the term “good faith determination.”

exception under § 4966(c)(2)(A) of the Code to the excise tax imposed on taxable distributions under § 4966.

SECTION 3. BACKGROUND

.01 Favorable treatment of grants with equivalency determinations.

A private foundation may make an equivalency determination to demonstrate that the following three provisions under chapter 42 of the Code and the related regulations apply and thereby potentially prevent the imposition of excise taxes:

(1) Under §§ 4945(d)(5) and 53.4945-6(c)(2), a private foundation's grant to an organization described in § 501(c)(3) ordinarily need not be maintained in a separate charitable fund;

(2) Under §§ 4942(g)(1) and 53.4942(a)-3(a), a private foundation's grant to a qualifying public charity ordinarily is a qualifying distribution that counts toward its minimum charitable distribution requirement; and

(3) Under §§ 4945(d)(4) and 53.4945-5(a), a private foundation's grant to a qualifying public charity ordinarily is not a taxable expenditure and the foundation does not need to comply with a detailed set of grant procedures known as "expenditure responsibility" to ensure that the grant is used for charitable purposes.

As explained in sections 3.02 and 3.03 of this revenue procedure, under §§ 53.4942(a)-3(a)(6), 53.4945-5(a)(5), and 53.4945-6(c)(2)(ii), a private foundation may make an equivalency determination that a foreign grantee is an organization described in § 501(c)(3) and is a qualifying public charity even though the grantee lacks a determination letter from the Internal Revenue Service (IRS) recognizing it as tax-exempt. Thus, a grant

to such an organization would not need to be maintained in a separate fund and would ordinarily be treated as a qualifying distribution and not a taxable expenditure.

More specifically, a private foundation grantor that wishes to have a grant to a foreign organization grantee that lacks an IRS determination letter treated as made to a qualifying public charity generally must complete two steps in making an equivalency determination in compliance with §§ 53.4942(a)-3(a)(6), 53.4945-5(a)(5), and 53.4945-6(c)(2)(ii). First, the grantor (through one or more foundation managers) must make a good faith determination and a reasonable judgment that the grantee is a § 501(c)(3) organization (other than by reason of § 509(a)(4)). Second, the grantor must make a good faith determination that the grantee is a qualifying public charity for purposes of §§ 4942(g) and 4945(d)(4).

.02 Regulatory requirements for an equivalency determination under § 53.4945-6(c)(2)(ii).

Section 53.4945-6(c)(2)(ii) provides that a private foundation grantor may treat a foreign grantee as an organization described in § 501(c)(3) if:

(1) In the reasonable judgment of the foundation manager (as defined in § 4946(b)), the grantee is described in § 501(c)(3) (other than an organization that tests for public safety);

(2) The grant is made for purposes described in § 170(c)(2)(B) (charitable purposes); and

(3) The grant is not a transfer of assets pursuant to a liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization of the foundation under §§ 507(b)(2) and 1.507-3(c).

.03 Regulatory requirements for an equivalency determination under §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5).

In 2015, the Treasury Department and the IRS finalized the regulatory requirements for equivalency determinations under §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) (TD 9740; 80 FR 57709; 2015-42 IRB 573) for purposes of determining when a grant is a qualifying distribution and not a taxable expenditure. The regulations provide a general rule that the private foundation grantor may treat a foreign grantee as a qualifying public charity if the foundation has made a good faith determination to that effect. The regulations also include a special rule that a private foundation's determination ordinarily will be considered made in good faith if it is based on written advice that is "current" and received from a "qualified tax practitioner" concluding that the grantee is a "qualifying public charity," and if the foundation reasonably relied in good faith on the written advice in accordance with the requirements of § 1.6664-4(c)(1) in making the determination. Under this special rule, the written advice must give enough facts concerning the foreign grantee's operations and support to enable the IRS to determine that the grantee would likely qualify as a qualifying public charity as of the date of the written advice. This special rule reflects three significant changes from the equivalency determination process provided under the prior regulations: (1) a general broadening of the class of qualified tax practitioners that could prepare written advice; (2) elimination, under the special rule, of reliance by a private foundation on grantee affidavits without current written advice received from qualified tax practitioners (although such reliance is still permissible in appropriate circumstances under the general rule); and (3) the addition of a new definition of the period for reliance on written advice received from qualified tax

practitioners for purposes of the special rule.

The preamble to the final regulations stated that the Treasury Department and the IRS intended to publish an updated revenue procedure, revised to reflect the changes implemented in the 2015 final regulations as well as changes to the public support tests for § 170(b)(1)(A)(vi) and § 509(a)(2) organizations set forth in final regulations published in 2011 (TD 9549; 76 FR 55746; 2011-46 IRB 718), and to possibly provide additional guidance on foreign schools and foreign government support, with examples illustrating the application of these rules on the period of reliance on written advice.

(1) Written advice that is current. For purposes of the special rule in §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5), written advice is generally current if the relevant law on which the advice is based has not changed since the date of the written advice and the factual information on which the advice is based is from the grantee's current or prior taxable year (or the current or prior annual accounting period if the grantee does not have a taxable year for United States federal tax purposes). Thus, a grantor may rely on written advice for a period of up to two years after the advice is provided, depending on when within the grantee's taxable year (or annual accounting period) the advice was provided, and how recent the factual information is on which the advice was based. For example, written advice issued in January 2017, based on information dating from January 2017 for a grantee having a calendar taxable year, would generally remain current through December 2018. Written advice that a grantee met the public support test under § 170(b)(1)(A)(vi) or § 509(a)(2) for a test period of five years is current during the two taxable years of the grantee immediately following the end of the five-year test period.

(2) Qualified tax practitioner. A "qualified tax practitioner" is an attorney, certified

public accountant (CPA), or enrolled agent who is subject to the standards of practice before the IRS set forth in Circular 230 (31 CFR Part 10). To practice before the IRS, Circular 230 requires that an attorney or CPA be licensed in a state, territory, or possession of the United States (including the District of Columbia), and that an enrolled agent meet the eligibility requirements set forth in section 10.4 of Circular 230. A qualified tax practitioner may include an attorney, CPA, or enrolled agent serving as an employee of the grantor.

(3) Qualifying public charity. Section 501(c)(3) organizations are classified under § 509(a) as either public charities or private foundations. Public charities under § 509(a) include, but are not limited to, the following types of organizations:

(a) A church or a convention or association of churches as described in §§ 509(a)(1) and 170(b)(1)(A)(i);

(b) A school, as described in §§ 509(a)(1) and 170(b)(1)(A)(ii) and § 1.170A-9(c)(1);

(c) A hospital or medical research organization, as described in §§ 509(a)(1) and 170(b)(1)(A)(iii) and § 1.170A-9(d)(1) or (d)(2);

(d) A publicly supported organization described in §§ 509(a)(1) and 170(b)(1)(A)(vi) and § 1.170A-9(f);

(e) A publicly supported organization described in §§ 509(a)(2) and 1.509(a)-3; and

(f) A supporting organization described in §§ 509(a)(3) and 1.509(a)-4, whether Type I, Type II, functionally integrated Type III, or non-functionally integrated Type III.

For purposes of § 4945(d)(4) (which requires expenditure responsibility for grants from private foundations to organizations other than qualifying public charities), a qualifying

public charity is a public charity described in § 509(a)(1), 509(a)(2), or 509(a)(3) (other than a disqualified supporting organization, defined below in this section 3.03(3)), or an exempt operating foundation described in § 4940(d)(2).

For purposes of § 4942(g) (which treats distributions to qualifying public charities as qualifying distributions), a qualifying public charity includes a qualifying public charity under § 4945(d)(4) and also includes a disqualified supporting organization (if the grantor is an operating foundation) and a grantee that is an operating foundation under § 4942(j)(3) (whether or not it is an exempt operating foundation). See §§ 4942(g)(1) and (4).

For purposes of § 4966(c)(2)(A) (which requires expenditure responsibility for distributions from donor advised funds to organizations other than qualifying public charities), a qualifying public charity is a public charity described in § 509(a)(1), 509(a)(2), or 509(a)(3) (other than a disqualified supporting organization, defined below in this section 3.03(3)), an operating foundation under § 4942(j)(3), a private foundation described in § 170(b)(1)(F)(ii) that annually distributes all of its contributions, and a private foundation described in § 170(b)(1)(F)(iii) that maintains a common fund and annually distributes all of its income.

A disqualified supporting organization includes a non-functionally integrated Type III supporting organization under § 1.509(a)-4(i). A disqualified supporting organization also includes any other supporting organization if a disqualified person of the private foundation directly or indirectly controls the supporting organization or a supported organization (or, for grants from donor advised funds, if a donor or donor advisor (and any related parties) directly or indirectly controls a supported organization). See §§ 4942(g)(4)(A) and 4966(c)(4).

(4) Reasonable reliance in good faith under § 1.6664-4(c)(1). Under § 1.6664-4(c)(1), all pertinent facts and circumstances are taken into account in determining whether a private foundation has reasonably relied in good faith on written advice, such as the foundation managers' education, sophistication, and business experience. This standard is not met if the private foundation knows, or reasonably should know, that a qualified tax practitioner lacks knowledge of the U.S. tax law of charities. Moreover, a private foundation may not rely on written advice if it knows, or has reason to know, that relevant facts were not disclosed to the qualified tax practitioner or that the written advice is based on a representation or assumption that the foundation knows, or has reason to know, is unlikely to be true.

(5) General requirements imposed on qualified tax practitioners in preparing written advice.

(a) In general. Under 31 CFR 10.37(a)(2), in preparing written advice, a qualified tax practitioner must—

- (i) Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);
- (ii) Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know;
- (iii) Use reasonable efforts to identify and ascertain the relevant facts;
- (iv) Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable, which is the case if the practitioner knows or reasonably should know that one or more representations or assumptions on which any

representation is based are incorrect, incomplete, or inconsistent;

(v) Relate applicable law and authorities to facts; and

(vi) Not base the advice on consideration of the possibility that a return will not be audited or that a matter will not be raised by the IRS on audit.

(b) Information regarding grantee. Under 31 CFR 10.34(d), a qualified tax practitioner generally, without verification, may rely in good faith upon information furnished by the private foundation regarding the grantee, but may not ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(c) Advice of another person. Also, under 31 CFR 10.37(b), a qualified tax practitioner may rely on the advice of another person (such as foreign counsel on a question of foreign law) if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances. Reliance is not reasonable when the practitioner knows or reasonably should know that —

(i) The opinion of the other person should not be relied upon;

(ii) The other person is not competent or lacks the necessary qualifications to provide the advice; or

(iii) The other person has a conflict of interest in violation of 31 CFR Part 10.

(6) Facts required in written advice. The equivalency determination regulations require that the written advice include enough facts concerning the foreign grantee's operations and support to enable the IRS to determine that the grantee would likely qualify as a qualifying public charity as of the date of the written advice, and include a conclusion

that the grantee is a qualifying public charity for purposes of the pertinent sections of the regulations.

SECTION 4. GUIDELINES FOR WRITTEN ADVICE

.01 In general.

Written advice that meets the guidelines of sections 4, 5, and 6 of this revenue procedure (preferred written advice) ordinarily will be considered to contain sufficient facts concerning the foreign grantee's operations and support to enable the IRS to determine that the grantee would likely qualify as a qualifying public charity as of the date of the written advice. Whether written advice that does not meet one or more of the guidelines of sections 4, 5, or 6 of this revenue procedure contains enough facts concerning the foreign grantee's operations and support to enable the IRS to determine that the grantee would likely qualify as a qualifying public charity as of the date of the written advice depends on all the facts and circumstances. In all cases, the private foundation still must meet the requirement to have reasonably relied in good faith on the written advice in accordance with the requirements of § 1.6664-4(c)(1). Furthermore, in order to rely on the special rule in §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5), the private foundation must retain the original written advice (or a copy) and make it available to the IRS upon request.

.02 Attachments in English.

For purposes of section 4.01 of this revenue procedure, preferred written advice and any attachments are written in or translated into English and contain the substantive information set out in sections 5 and 6 of this revenue procedure. An English translation that meets the requirements of section 7.01(2)(c) of Rev. Proc. 2017-1, 2017-1 I.R.B. 1, 24 (or the corresponding provision of the most recent annual update of that revenue

procedure), is an acceptable translation for any documents that are not written in English, but compliance with that revenue procedure is not required.

.03 Practitioner use of affidavits, and attestation.

Preferred written advice described in section 4.01 of this revenue procedure sets forth the qualified tax practitioner's own application of the law to the facts and own conclusion that the grantee is a qualifying public charity. The written advice may reference attached affidavits from the grantee providing factual information upon which the written advice is based. Any attached grantee affidavit is attested to by an officer or trustee of the grantee with personal knowledge of the facts.

.04 Reliance on translations of foreign laws.

The grantor and qualified tax practitioner may rely on translations of and public information concerning foreign laws that meet the requirements of section 7.01(2)(b) and (c) of Rev. Proc. 2017-1 (or the corresponding provisions of the most recent annual update of that revenue procedure), but compliance with that revenue procedure is not required.

SECTION 5. SUFFICIENT FACTS IN WRITTEN ADVICE REGARDING § 501(c)(3) STATUS

.01 Effect of written advice.

See section 4.01 of this revenue procedure for the effect of preferred written advice that meets the guidelines described in this section 5.

.02 Governing instruments.

Preferred written advice includes an attachment with an English translation of the grantee's articles of organization, bylaws, or other organizing or enabling document or

documents by which the grantee is formed and governed. Preferred written advice identifies the country in which the grantee was formed if not evident from such documents.

.03 Charitable purposes.

Preferred written advice identifies the tax-exempt purpose or purposes under § 501(c)(3) for which the grantee is organized. Tax-exempt purposes include charitable, religious, educational, literary, or scientific purposes, or purposes to foster national or international amateur sports competition or to prevent cruelty to children or animals, and are referred to collectively in this revenue procedure as “charitable purposes.” Preferred written advice also confirms that the grantee is not expressly permitted to engage in activities for non-charitable purposes, other than as an insubstantial part of its activities.

.04 Charitable distribution of assets on dissolution.

Preferred written advice confirms that if the grantee terminates, liquidates, or dissolves, then under the governing instrument or applicable law, all of the grantee’s assets will be distributed to another not-for-profit charitable organization for charitable purposes or to a governmental entity for a public purpose. An English translation of applicable statutory law is attached to preferred written advice.

.05 No private shareholders.

Preferred written advice confirms that the grantee has no shareholders or members who have an ownership interest in the income or assets of the grantee. It also confirms that the grantee does not distribute any of the grantee’s income or assets to a non-charitable organization or individual, or apply any of the grantee’s income or assets for

the benefit of a non-charitable organization or individual (and that the grantee's governing instruments do not expressly permit such activities), except pursuant to the conduct of the grantee's charitable activities, or as payment of reasonable compensation for services rendered or payment of the fair market value of property that the grantee has purchased.

.06 Insubstantial lobbying and no political intervention.

Preferred written advice confirms that the grantee does not attempt to influence legislation (except as an insubstantial part of its activities) and does not directly or indirectly participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. Preferred written advice also confirms that the grantee's governing instruments do not expressly permit such activities.

.07 Affiliated organizations.

Preferred written advice discusses any organizations that control the grantee or are operated in connection with the grantee.

.08 Description of activities and analysis.

Preferred written advice or an attached affidavit describes the past, current, and anticipated (over the term of the grant) activities of the grantee, including details such as the manner of carrying out the activities, sources of receipts, and types of expenditures, sufficient to enable the IRS to determine that the grantee would likely qualify as a qualifying public charity as of the date of the written advice. Specific schedules in Forms 990 or 1023 may be used to provide relevant information for particular types of organizations. If the grantee previously provided an affidavit, the prior affidavit may be attached and supplemented with a new affidavit that describes any changes in facts or

affirms that the facts have not materially changed. Preferred written advice applies the applicable federal tax law and other relevant law to the facts in discussing whether the grantee is operated exclusively for charitable purposes. The grantee would not be considered operated exclusively for charitable purposes if, for example, it operated substantially for commercial purposes or for the benefit of private interests, or if it engaged in terrorist activities or support for terrorist organizations.

.09 Terrorist organizations and blocked persons.

An organization ineligible to apply for recognition of exemption pursuant to § 501(p) (relating to an organization designated or individually identified as a terrorist organization) cannot qualify for an equivalency determination. Preferred written advice includes verification that the grantee has not been designated or individually identified as a terrorist organization by the United States Government as described in § 501(p)(2). In addition, while not a requirement for preferred written advice, the private foundation should also confirm that the organization or its controlling officers, directors, or trustees are not foreign persons whose property and interests in property are blocked pursuant to an Executive Order or regulations administered by the Office of Foreign Assets Control.

.10 Hospitals and § 501(r).

A grantee that operates a hospital facility is not required to comply with § 501(r) with respect to the facility unless the facility is required by one of the 50 States of the United States (or the District of Columbia) to be licensed, registered, or similarly recognized as a hospital. See § 1.501(r)-1(b)(17). If the grantee operates a hospital facility in a foreign jurisdiction, the written advice does not need to address § 501(r).

.11 Schools and racial discrimination.

Private schools operating in the United States have long been required to comply with Rev. Proc. 75-50, 1975-2 C.B. 587, which sets forth guidelines and recordkeeping requirements for determining whether private schools recognized as exempt under § 501(c)(3) or applying for recognition have racially nondiscriminatory policies regarding students. The IRS published the guidelines in consequence of extensive litigation in federal courts in the 1970s arising from widespread racial discrimination in private schools in the United States.

Foreign schools also have long been required to comply with Rev. Proc. 75-50 for purposes of the Code. However, foreign jurisdictions may not have the same history of racial discrimination as the United States. Furthermore, compliance with all the provisions of Rev. Proc. 75-50 is sometimes impracticable in foreign jurisdictions. Nevertheless, racial nondiscrimination remains an important principle in determining whether an organization should be recognized as described in § 501(c)(3). Therefore, for purposes of equivalency determinations regarding foreign school grantees, preferred written advice or an attached affidavit pertaining to a grantee described in § 170(b)(1)(A)(ii) as a school is considered sufficient regarding the issue of racial discrimination regarding students if: (1) the written advice or attached affidavit states that the grantee has adopted a policy in its governing instrument, or in a resolution of its governing body, that the grantee does not discriminate against applicants and students on the basis of race, color, or national or ethnic origin, as required by section 4.01 of Rev. Proc. 75-50 (or any successor revenue procedure); and (2) the written advice or attached affidavit provides evidence that the grantee actually operates in a racially

nondiscriminatory manner as to students. Evidence of racial nondiscrimination regarding students can be shown by compliance with Rev. Proc. 75-50 (or any successor revenue procedure). Compliance with that revenue procedure with respect to a foreign school grantee is not required, however, in order to provide evidence that the grantee actually operates in a racially nondiscriminatory manner as to students.

SECTION 6. SUFFICIENT FACTS IN WRITTEN ADVICE REGARDING QUALIFYING PUBLIC CHARITY STATUS

.01 Effect of written advice.

See section 4.01 of the revenue procedure for the effect of preferred written advice that meets the guidelines described in this section 6.

.02 Financial and non-financial tests

The status of some qualifying public charities does not depend on a financial test (for example, schools and hospitals). Preferred written advice on whether a grantee is such a qualifying public charity includes the application of the relevant federal tax law to the particular facts and circumstances.

The status of some qualifying public charities may depend in whole or in part on a financial test. Preferred written advice regarding a grantee whose status as a qualifying public charity depends in whole or in part on a financial test includes an attached financial schedule with enough information to demonstrate that the grantee satisfies the applicable financial test or tests, in addition to showing that the grantee meets any other requirements. Financial data from the grantee's most recently completed taxable year is used in the preferred written advice if available.

An attached schedule or list need not be filled out completely if the information provided

is sufficient to establish the grantee's tax classification. For example, a § 509(a)(2) organization need not include a list of persons providing more than one percent of income from a related activity if the organization passes the one-third support test because the organization receives sufficient donations from governments or other permitted sources regardless of whether any other income counts as public support.

.03 Section 170(b)(1)(A)(vi) or 509(a)(2) organizations within first five years.

A grantee in existence less than five years is treated as described in § 170(b)(1)(A)(vi) or 509(a)(2) if the preferred written advice includes a determination that, as of the time of the determination, the grantee can reasonably be expected to meet the applicable test for § 170(b)(1)(A)(vi) or 509(a)(2) status applied to the grantee's first five years in existence, considering the factors set forth in § 1.170A-9(f)(3) and (f)(4)(v) or § 1.509(a)-3(d).

.04 Section 170(b)(1)(A)(vi) organizations after first five years.

For a grantee described in § 170(b)(1)(A)(vi) and in existence for more than five years, preferred written advice includes as an attachment the support schedule provided on Form 990, *Return of Organization Exempt From Income Tax*, or a similar schedule of information, for the applicable period, plus, if necessary, a schedule of donations from donors providing more than two percent of total support over the applicable period. A foreign grantee's public support includes, among other things, all contributions and grants from a domestic or foreign charitable organization described in § 170(b)(1)(A)(vi).

.05 Section 509(a)(2) organizations after first five years.

For a grantee described in § 509(a)(2) and in existence for more than five years, preferred written advice includes the following attachments if necessary to establish the grantee's tax classification:

(1) The support schedule provided on Form 990, *Return of Organization Exempt From Income Tax*, for the applicable period, or a similar schedule of information;

(2) A schedule of all amounts received from disqualified persons (other than from § 509(a)(1) organizations), whose support must be excluded. Disqualified persons are substantial contributors and foundation managers and certain persons related to them as described in § 4946(a). Substantial contributors are defined in § 507(d)(2) generally as persons that have contributed the greater of \$5,000 or two percent of the total contributions the grantee has ever received;

(3) A schedule of gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in any activity that is not an unrelated business, received from persons (or bureaus or agencies of governmental units) in any taxable year if receipts from any such person exceed the greater of \$5,000 or one percent of the grantee's total support; and

(4) A schedule of all donors whose support is included as public support solely because they are § 509(a)(1) organizations (including organizations treated as § 509(a)(1) organizations for these purposes under § 53.4945-5(a)(4) or (5)).

A foreign grantee's public support includes, among other things, all contributions and grants (as described in § 1.509(a)-3(f) and (g)) from a domestic or foreign charitable organization described in § 509(a)(1).

.06 Support from governments.

For purposes of making equivalency determinations only, a foreign grantee's public support includes, among other things, all contributions and grants as described in § 1.509(a)-3(f) and (g) (and for purposes of § 170(b)(1)(A)(vi), all support described in

§ 1.170A-9(f)(8)) from a domestic governmental unit (or agency or instrumentality), from a foreign government (or agency or instrumentality), or from an international organization designated as such by Executive Order under 22 U.S.C. 288. See § 53.4945-5(a)(4).

.07 Medical research organizations.

For a grantee that is a medical research organization described in § 170(b)(1)(A)(iii) that has been in existence beyond its organizational period, preferred written advice includes as an attachment a schedule showing that the grantee devotes more than half its assets, or spends at least 3.5 percent of the fair market value of its endowment, directly in conducting medical research (or an explanation as provided in § 1.170A-9(d)(2)(A) if the organization fails both tests). Either test can be met based on a computation period consisting of the immediately preceding taxable year or the immediately preceding four taxable years. See § 1.170A-9(d)(2)(ix) for a medical research organization operating during its organizational period (in no event in excess of three years following organization).

.08 Non-functionally integrated Type III supporting organizations.

For a grantee described in § 509(a)(3) that is a non-functionally integrated Type III supporting organization and has existed for more than one year, preferred written advice includes as an attachment the financial schedules and explanations for non-functionally integrated Type III supporting organizations as provided on Form 990, *Return of Organization Exempt From Income Tax*, or a similar schedule of information, for the applicable period, showing that the grantee met its distribution requirements. Under § 1.509(a)-4(i)(5)(ii)(D), such an organization has no distributable amount for its first taxable year.

.09 Operating and exempt operating foundations.

For a grantee that is an operating foundation under § 4942(j)(3) or exempt operating foundation under § 4940(d)(2) and has existed for more than one year, preferred written advice includes as an attachment the private operating foundation schedule provided on Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*, or a similar schedule of information, for the applicable period. See § 53.4942(b)-3(b) for an operating foundation in its first taxable year.

SECTION 7. EXAMPLES OF CURRENT WRITTEN ADVICE FOR PUBLICLY SUPPORTED ORGANIZATIONS

The following examples illustrate current written advice with regard to the reliance period for public support under §§ 170(b)(1)(A)(vi) or 509(a)(2). In each example, a private foundation grantor is making a determination whether a foreign organization grantee having a calendar taxable year is a § 170(b)(1)(A)(vi) organization; the determination is based on written advice that meets the definition of preferred written advice in section 4.01 of this revenue procedure; the relevant law does not change; the grantor has no information indicating that the written advice should not be relied upon; and the grantor's reliance on the written advice is otherwise reasonable under the standards of § 1.6664-4(c)(1).

Example 1. P, a grantor, intends to make grants in 2017 and 2018 to Q, a foreign charity organized in January 2017. P obtains written advice from a qualified tax practitioner in January 2017, based on an affidavit and the collection of information from Q, that Q can reasonably be expected to qualify under § 170(b)(1)(A)(vi) during Q's first five taxable years. P may use the written advice to make good faith determinations in 2017 and in 2018 that Q is described in § 170(b)(1)(A)(vi).

Example 2. Same facts as in the prior example except that P intends to make

grants to Q in 2019 and 2020. P may no longer use the written advice from 2017 to make a good faith determination that would ordinarily be considered a good faith determination. P obtains written advice from a qualified tax practitioner in May 2019, based on an affidavit from Q that updates the prior affidavit with changes in Q's operations and support through May 2019, that Q can reasonably be expected to qualify under § 170(b)(1)(A)(vi) during its first five taxable years. P may use the written advice to make good faith determinations in 2019 and in 2020 that Q is described in § 170(b)(1)(A)(vi).

Example 3. Same facts as in the prior example except that P intends to make grants to Q in 2021 (the last year in Q's first five taxable years) and 2022. P obtains written advice from a qualified tax practitioner in June 2021, based on an affidavit from Q that updates the prior affidavit with changes in Q's operations and support through June 2021, that Q can reasonably be expected to qualify under § 170(b)(1)(A)(vi) during its first five taxable years. P may use the written advice to make good faith determinations in 2021 and in 2022 that Q is described in § 170(b)(1)(A)(vi).

Example 4. Same facts as in the prior example except that P intends to make another grant to Q in 2023. P obtains written advice from a qualified tax practitioner in April 2023, based on an affidavit from Q providing information from 2022 and prior years regarding Q's operations and support, that Q failed the support tests (both the 33 $\frac{1}{3}$ percent support test and the facts and circumstances test) for the periods 2017-2021 and 2018-2022. Under these circumstances, P may not use the written advice to make a good faith determination in 2023 that Q is described in § 170(b)(1)(A)(vi) in 2023.

Example 5. R, a grantor, intends to make a grant to S, a foreign charity, for the first time in 2017, S's 6th year of operation. R obtains written advice from a qualified tax practitioner in March 2017, based on an affidavit from S providing information from 2017 and prior years regarding S's operations and support, that S failed the support tests for the period 2012-2016. Under these circumstances, R may not use the written advice to make a good faith determination in 2017 that Q is described in § 170(b)(1)(A)(vi) in 2017.

Example 6. T, a grantor, intends to make a grant in 2017 to U, a foreign charity operating since 1990. T obtains written advice from a qualified tax practitioner in February 2017, based on an affidavit from U providing information from 2017 and prior years regarding U's operations and support, that U met a support test for the period 2011-2015 but not for 2012-2016. U's support for the period 2011-2015 establishes that U is "publicly supported" under § 170(b)(1)(A)(vi) for the year 2015, and thus is treated (for purposes of the good faith determination regulations) as publicly supported for 2016 and 2017 as well. T may use the written advice to make a good faith determination in 2017 that U is described in § 170(b)(1)(A)(vi).

SECTION 8. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 92-94.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective September 14, 2017.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information in this revenue procedure is the affidavit of factual information. This collection of information is reflected in the collection of information for Form 990–PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*, that has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under control number 1545–0052. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law.

DRAFTING INFORMATION

The principal author of this revenue procedure is Ward L. Thomas of the Office of Associate Chief Counsel (Tax-Exempt and Government Entities). For further information regarding this revenue procedure, contact Mr. Thomas at (202) 317-6173 (not a toll-free call).

Section Five

Organization and Current Developments of Benefit Corporations Under Indiana Law

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Section Five

**Organization and Current Developments
of Benefit Corporations Under**

Indiana Law..... Philip M. Purcell, CFRE, MPA/JD

PowerPoint Presentation

Organization and Current Developments of Benefit Corporations Under Indiana Law

Philip M. Purcell

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765-730-4321

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Benefit Corporations

- **A benefit corporation is a type of for-profit entity in some U.S. states that wishes to consider society in addition to profit in their decision-making process.**
- **Now in 36 states with five under consideration. See: <https://benefitcorp.net/policymakers/state-by-state-status>**
- **Differs from traditional corporations in purpose, accountability and transparency.**

- **Indiana per IC 23-1-1.3**
- **Distinguish from public benefit and mutual benefit nonprofit corporations per IC 23-17-2**
- **Not expressly stated as a Domestic Entity Type when making selection to incorporate at Indiana Secretary of State website page “Start a New Business”**
- **Select “For Profit” and identify public benefit corporation type and statute in articles of incorporation**

General Public Benefit

- **23-1.3-2-7: "General public benefit" means a material positive impact on society and the environment, taken as a whole, assessed against a third party standard, from the business and operations of a benefit corporation.**

Specific Public Benefit

23-1.3-2-10: (a) "Specific public benefit" means a benefit that serves:

(1) one (1) or more public welfare, religious, charitable, scientific, literary, or educational purposes; or

(2) other purposes or benefits beyond the strict interests of the shareholders of the benefit corporation.

(b) The term includes the following:

(1) Providing low income or underserved individuals or communities with beneficial products or services.

(2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.

(3) Protecting or restoring the environment.

(4) Improving human health.

(5) Promoting the arts, sciences, or advancement of knowledge.

(6) Increasing the flow of capital to entities with a purpose to benefit society or the environment.

(7) Conferring any other particular benefit on society or the environment.

Standard of Conduct for Directors

IC 23-1.3-5-1: The following apply to the board of directors, committees of the board of directors, and individual directors of a benefit corporation in discharging the duties of their respective positions and in considering the best interests of the benefit corporation:

(1) The board of directors, committees of the board of directors,

and individual directors shall consider the effects of any action

or inaction upon all the following:

(A) The shareholders of the benefit corporation.

(B) The employees and workforce ...

Standard of Conduct for Directors

(C) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation.

(D) Community and societal factors, including the factors of each community in which:

(i) offices or facilities;

(ii) subsidiaries; or

(iii) suppliers;

of the benefit corporation are located.

Standard of Conduct for Directors

(E) The local and global environment.

(F) The short term and long term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long term plans and the possibility that the interests may be best served by the continued independence of the benefit corporation.

(G) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

Standard of Conduct for Directors

(2) The board of directors, committees of the board of directors, and individual directors may consider other pertinent factors or the interests of any other group that the board of directors, committees of the board of directors, or individual directors consider appropriate.

Standard of Conduct for Directors

(3) The board of directors, committees of the board of directors, and individual directors are not required to give priority to a particular interest or factor listed in subdivision (1) or (2) over any other interest or factor unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests or factors related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.

Limits on Actions

IC 23-1.3-9-1 Limit on actions

Sec. 1. A person may not, except in a benefit enforcement proceeding, bring an action or assert a claim against a benefit corporation or its directors or officers with respect to either of the following:

(1) The failure to pursue or create:

(A) general public benefit; or

(B) a specific public benefit identified in the benefit corporation's articles of incorporation.

(2) A violation of an obligation, duty, or standard of conduct under this article.

IC 23-1.3-9-2 Immune from liability for failure to pursue or create general or specific public benefit

Sec. 2. A benefit corporation is not liable for monetary damages under this article for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

Benefit Enforcement Proceeding

IC 23-1.3-9-3 **Benefit enforcement proceeding. Sec. 3. A benefit enforcement proceeding may be commenced or maintained only:**

(1) directly by the benefit corporation; or

(2) derivatively in accordance with IC 23-1-32 by:

(A) a person or group of persons that owned at least two percent (2%) of the total number of shares of a class or series outstanding at the time of the act or omission complained of;

(B) a director;

(C) a person or group of persons that owned at least five percent (5%) of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or

(D) other persons as specified in the benefit corporation's articles of incorporation or bylaws.

B Corp Certification

- **Independent and voluntary certification process**
- **Available to corporations (subject to provisions in articles, etc.) benefit corporations and other forms of organizations such as LLCs, LPs, L3Cs, etc.**
- **See <http://www.bcorporation.net/>**

Certified



Corporation[®]

B Corp Overview

60 Million

CONSCIOUS CONSUMERS

100,000

SUSTAINABLE BUSINESSES

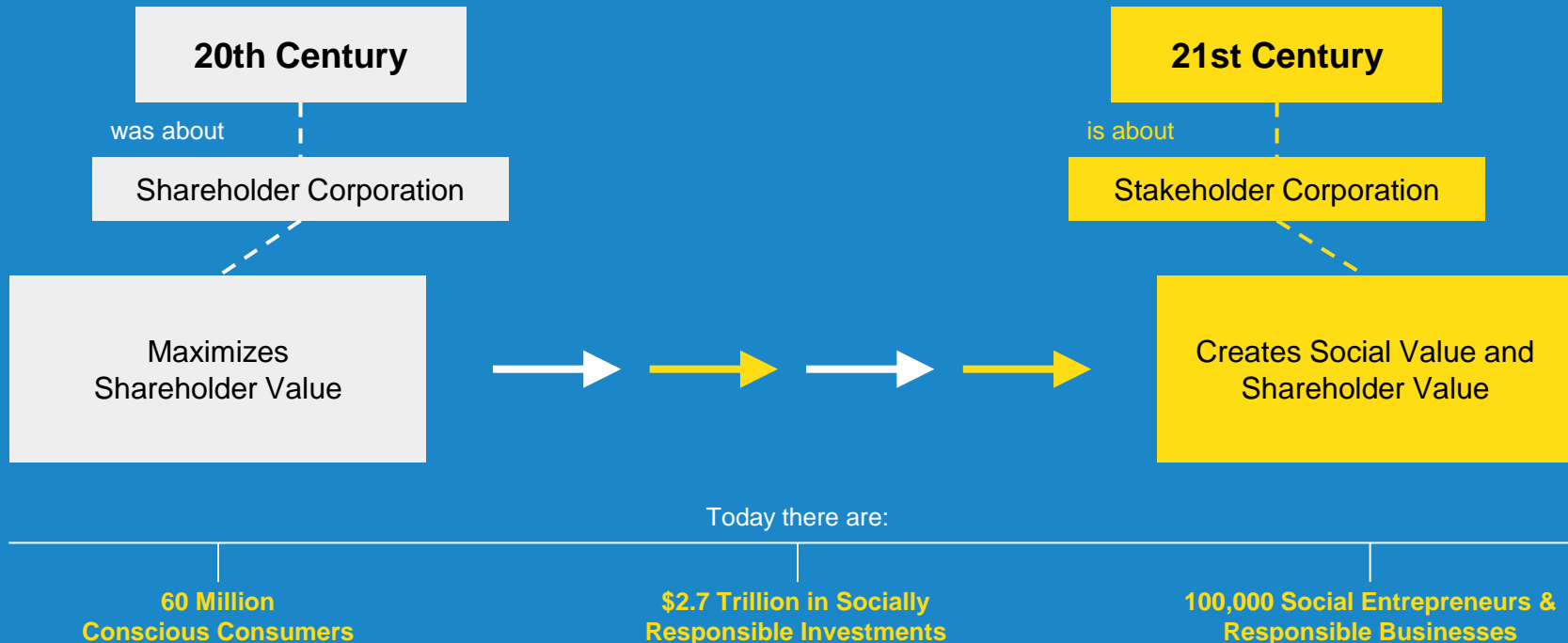
6.6 Trillion

\$ UNDER MANAGEMENT OF
RESPONSIBLE INVESTORS

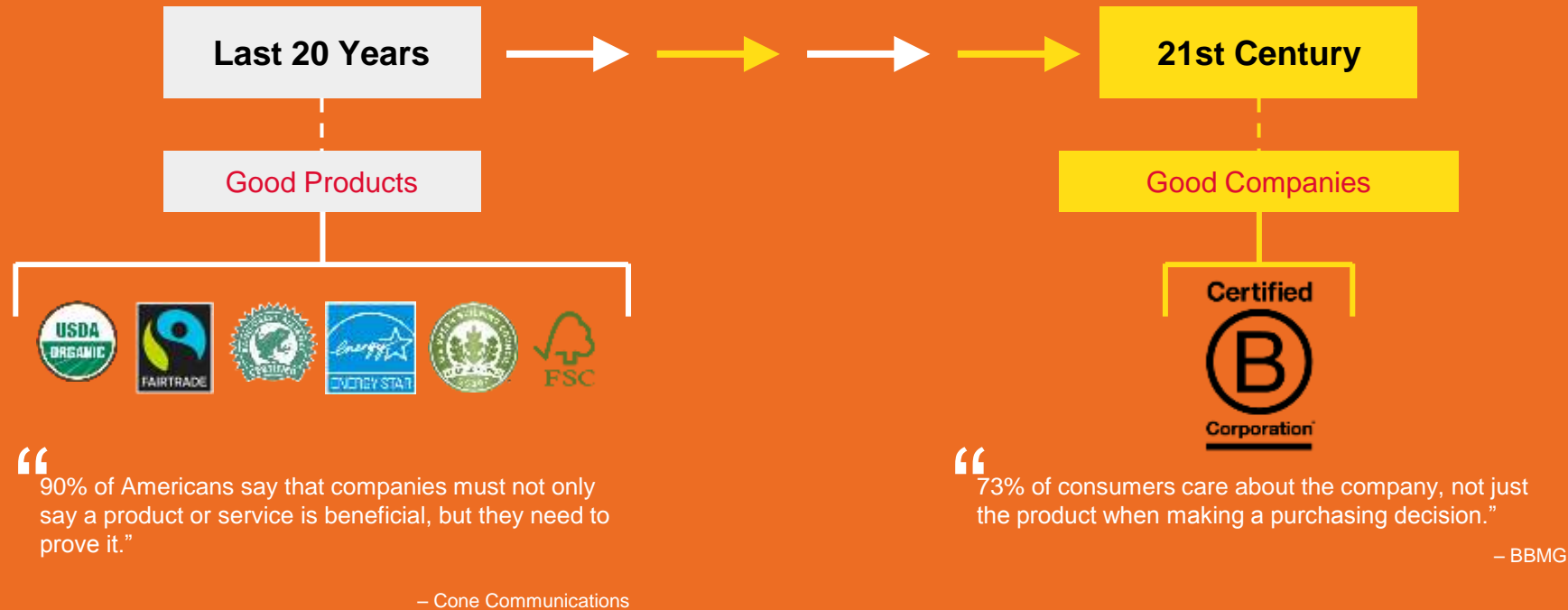
Evolution of Market

Today in the US alone, there are over 60 million conscious consumers, 100,000 sustainable businesses, and a growing class of responsible investors with \$6.6 trillion under management. However, current market infrastructure is not designed to support this culture shift.

The Evolution of Business



People are Demanding Better



Current Law Limits Purpose in For Profit Companies

Under Current Law:

- The ultimate goal of directors must be to maximize value—even in transactions governed by the business judgment rule.
- Value maximization is strictly enforced in exit transactions.
- Business strategies that require authentic commitment to stakeholders may be compromised.

Mission Enabling Concepts: Legal Tools

Benefit Corporation Status Expands:

- **Corporate Purpose**
- **Business Judgment Rule**
- **Liability Protection for Directors**
- **Flexibility in Change in Control Situations**

Understand the Legal Roadmap



- ❑ Determine path based on corporate structure and country (US or Canada) or state of incorporation:
 - Amend your governing documents OR
 - Adopt benefit corporation status

Examples:

- ❑ LLC in the United States: Amend operating agreement
- ❑ 30+ states: Adopt Benefit Corporation form within 2 years of certification



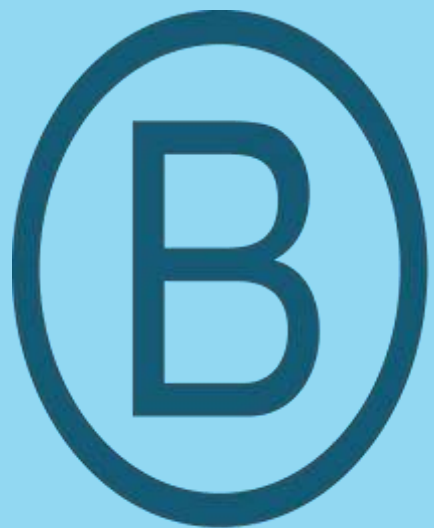
Certified B Corporation

- A certification conferred by the nonprofit B Lab
- A company that meets a high level of social and environmental performance AND makes a legal commitment to consider all stakeholders
- Any for-profit company in any country can pursue certification (LLC's included)

VS.

Benefit Corporation

- A corporate form (taxed like a C-corp or an S-corp) that has a higher level of transparency, accountability and purpose
- A legal entity that has protection and permission to consider its impact on all stakeholders, not just shareholders
- Available in 31 states in the U.S., Puerto Rico, & Italy



Lab[®]



B Lab serves a global movement of people using business as a force for good.

B Lab's vision is that one day all companies will compete to be best for the world, and as a result society will enjoy a more shared and durable prosperity.



Fetzer Vineyards 2015 B Impact Report



	Company Score	Median Score*
Overall B Score	80	55
Environment	36	7
Environmental Products & Services (e.g. Renewable energy, recycling)	5	N/A
Environmental Practices	30	6
Land, Office, Plant	6	3
Energy, Water, Materials	13	1
Emissions, Water, Waste	8	1
Suppliers & Transportation	3	N/A
Workers	18	18
Compensation, Benefits & Training	15	12










Certified B Corporations are leaders of a global movement of people using business as a force for good.

They meet **verified** higher levels of

1. Social and environmental performance
2. Transparency
3. Accountability



The B Corp community is good company to keep.

2000+
CERTIFIED B CORPS

40+
COUNTRIES

140+
INDUSTRIES

1
UNIFYING GOAL

Why Certify?

Certified



Corporation

- 1. Maintain Mission**
- 2. Differentiate from Pretenders**
- 3. Benchmark and Improve Performance**
- 4. Attract and Engage Talent**
- 5. Collaborate with Peers**
- 6. Save Money and Access Services**
- 7. Generate press**
- 8. Raise Capital**



Raise Capital



Find Companies & Funds

GIIRS rated companies and funds are highlighted in the search features of B Analytics as being best in class in terms of measurement practices.

Gain Visibility With Leading Impact Investors

Getting listed on B Analytics exposes a company to 100+ impact-focused investors who have a stated preference for GIIRS Rated Companies.

Who Can Certify?

- **For-Profit Companies of Any Size**
- **Any Industry / Geography**
- **Customized assessment based on industry, size, geography**
- **Any Legal Structure (sole proprietors, LLC's, Corporations, etc.)***
- **Companies over 1 year old – special Pending B Corp program for start-ups***

Benefit Corporations

Certified



Corporation[®]



Lab[®]

Section Six

Current Developments in Financial Accounting for Nonprofits

T. Andrew Roberts, CPA, CGMA
Estep Burkey Simmons, LLC
Muncie, Indiana

Section Six


Current Developments in Financial Accounting for Nonprofits..... T. Andrew Roberts, CPA, CGMA

PowerPoint Presentation

ASU No. 2016-14, ASU No. 2018-08, ASU No. 2014-09 (Link provided)

Current Developments in Financial Accounting for Nonprofits

Objectives

- Review recently issued accounting standards applicable to Not-for-Profit entities (NFP) and know they will impact a NFP's financial statements.
 - Covid-19 considerations for financial statements.
 - Review changes to unrelated business taxable income from the Tax Cuts and Jobs Act.
 - Review changes to form 990.
- 

Recent Accounting Pronouncements Relevant to Not-for-Profits

- FASB ASU 2016-14 – Presentation of Financial Statements of Not-for-Profit Entities
 - Effective for periods beginning after December 15, 2017.
- FASB ASU 2014-09 – Revenue from Contracts with Customers
 - Effective for nonpublic entities for reporting periods beginning after December 15, 2018.
- FASB ASU 2018-08 – Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made
 - Effective for periods beginning after December 15, 2018.

FASB ASU 2016-14– Presentation of Financial Statements of Not-for-Profit Entities

- Effective for periods beginning after December 15, 2017.
- The goal of the standard was to improve financial reporting of NFP entities by improving the clarity of the financial statement presentation and adding some disclosures. The financial statements should provide more useful information to donors, grantors, creditors, and other users of the financial statements.
- The main changes of the standard are:
 - Changed net asset classes from three to two.
 - Added liquidity information to both the Statement of Financial Position and the notes to the financial statements.
 - Requires information on expenses by both nature and function

Statement of Financial Position

- Assets and liabilities are required to be presented in the order of liquidity. This was previously a recommended order of presentation.

	<u>20XX</u>
Assets:	
Cash	\$ 4,575
Accounts and interest receivable	2,130
Inventories	610
Contributions receivable	3,025
Short-term investments	1,400
Assets restricted to investment in property	5,210
Land, buildings, and equipment	61,700
Long-term investments	<u>218,070</u>
Total assets	<u>\$ 296,720</u>
Liabilities and net assets:	
Accounts payable	\$ 2,570
Grants payable	875
Annuity trust obligations	1,685
Long-term debt	<u>5,500</u>
Total liabilities	10,630

Statement of Financial Position (cont.)

- Net assets are now presented in two classes, rather than three.
 - New standard – net assets are classified as either without donor restrictions or with donor restrictions
 - Old standard – net assets were classified as unrestricted, temporarily restricted, and permanently restricted.
 - The goal of this change was to reduce the confusion between what is temporarily restricted and what is permanently restricted.

Net assets:	
Without donor restrictions	92,677
With donor restrictions	<u>193,413</u>
Total net assets	<u>286,090</u>
Total liabilities and net assets	<u><u>\$ 296,720</u></u>

New Net Asset Classes

OLD STANDARDS

- Unrestricted – no restrictions on use, available for operating purposes
- Temporarily restricted – donor-imposed stipulations that can be fulfilled by appropriate use of funds or by the passage of time
- Permanently restricted – donor-imposed restriction that can't be fulfilled by use or the passage of time.

FASB ASU 2016-14

- Net assets without donor restrictions are defined as the part of net assets that is not subject to **donor-imposed** restrictions.
 - Includes board-designated net assets
- Net assets with donor restrictions are defined as the part of net assets that is subject to **donor-imposed** restrictions.

Endowment Fund Impact

- Endowment fund: An established fund of cash, securities, or other assets to provide income for the maintenance of a NFP. The use of the assets of the fund may be with or without donor-imposed restrictions. Endowment funds generally are established by donor restricted gifts and bequests to provide a source of income:
 - in perpetuity
 - for specified period
- Effect of the new standards on variance power and the presentation in the financial statements
 - Accounting standards have taken away variance power from determining how net assets are classified.
 - Must classify endowment net assets as with or without donor restriction
- Most will be classified as an endowment fund with donor restrictions.
- Board-designated endowment fund: An endowment fund created by a NFP's governing board by designating a portion of its net assets without donor restrictions to be invested to provide income for a long but not necessarily specified period (sometimes called funds functioning as endowment or quasi-endowment funds).


Statement of Activities

- Presentation is moving from three columns of net assets to two columns, without and with donor restrictions.
- Without donor restrictions column
 - Resources received when a product or service is sold
 - Contributions received with no stipulation on use
 - Contributions whose restrictions are met in the same reporting period
- With donor restrictions column
 - Contributions received with a donor restriction (usage or time)
 - Investment income restricted for use by a fund agreement or other type of agreement
- Investment income
 - Unrealized, realized, and interest and dividends will be combined and reported net of investment expenses. New line is named Investment return, net.
- Report releases from restriction by type of release.
- Expenses should be reported by functional category

Statement of Activities (cont.)

	<u>Without Donor Restrictions</u>	<u>With Donor Restrictions</u>	<u>Total</u>
Revenues, gains, and other support:			
Contributions	\$ 8,640	\$ 8,390	\$ 17,030
Fees	5,200	-	5,200
Investment return, net	4,678	20,272	24,950
Gain on sale of equipment	200	-	200
Other	150	-	150
Net assets released from restrictions:			
Satisfaction of program restrictions	21,990	(21,990)	-
Satisfaction of equipment acquisition restrictions	1,500	(1,500)	-
Expiration of time restrictions	1,250	(1,250)	-
Appropriation from donor endowment	7,500	(7,500)	-
Total net assets released from restrictions	<u>32,240</u>	<u>(32,240)</u>	<u>-</u>
Total revenues, gains, and other support	51,108	(3,578)	47,530
Expenses and losses			
Program A	13,296	-	13,296
Program B	8,649	-	8,649
Program C	5,837	-	5,837
Management and general	2,038	-	2,038
Fundraising	2,150	-	2,150
Total expenses	<u>31,970</u>	<u>-</u>	<u>31,970</u>
Fire loss on building	80	-	80
Actuarial loss on annuity trust obligations	-	30	30
Total expenses and losses	<u>32,050</u>	<u>30</u>	<u>32,080</u>
Change in net assets	19,058	(3,608)	15,450
Net assets at beginning of year	<u>73,619</u>	<u>197,021</u>	<u>270,640</u>
Net assets at end of year	<u>\$ 92,677</u>	<u>\$ 193,413</u>	<u>\$ 286,090</u>

Note Disclosures

- Composition of net asset with donor restrictions at the end of the period.
 - Composition of the releases from restrictions.
 - Information about the assets available to be used for operations within one year of the Statement of Financial Position Date (liquidity disclosure).
- 

Note Disclosure Examples – Net Assets With Donor Restrictions

Subject to expenditure for a specific purpose:	
Donor advised	\$ 80,000
Scholarship	<u>25,000</u>
	105,000
Pledges receivable, the proceeds from which are not restricted by donors, but which are unavailable for expenditure until due	
	15,000
Endowments:	
Subject to appropriation and expenditure when a specific event occurs:	
Restricted by donors for:	
Donor advised	1,200,000
Field of interest	<u>80,000</u>
	1,280,000
Receivables, the proceeds from which have been restricted by donors for:	
Donor advised	3,400,000
Scholarship	<u>87,000</u>
	3,487,000
Subject to Organization's spending and appropriation:	
Donor advised	4,500,000
Scholarship	1,600,000
Community grants	5,700,000
Underwater endowments	<u>(450,000)</u>
	<u>11,350,000</u>
	<u><u>\$ 16,237,000</u></u>

Note Disclosure Examples – Net Assets Released from Restrictions

Purpose restrictions accomplished:	
Donor advised	\$ 10,000
Field of interest	73,000
Scholarship	<u>22,000</u>
	105,000
Release or appropriated endowment returns without purpose restrictions	
Donor advised	1,200,000
Field of interest	800,000
Scholarship	125,000
Community grants	<u>400,000</u>
	<u>2,525,000</u>
	<u><u>2,630,000</u></u>

Note Disclosure Examples – Liquidity

As part of NFP A's liquidity management, it invests cash in excess of daily requirements in short-term investments. To help manage unanticipated liquidity needs, NFP A has committed lines of credit in the amount of \$20 million which it could draw upon. Additionally, NFP A has a quasi-endowment of \$33 million. Although NFP A does not intend to spend from its quasi-endowment other than amounts appropriated for general expenditure as part of its annual budget approval and appropriation, amounts from its quasi-endowment could be made available if necessary. However, both quasi-endowment and donor endowment contain lock-up provisions that would reduce the total investments that could be made available.

NFP A's financial assets due within one year of the balance sheet date for general expenditures are as follows:

Cash and cash equivalents	\$	4,575
Accounts and interest receivable		2,130
Contributions receivable		1,825
Short-term investments		1,400
Other investments appropriated for current use		<u>1,650</u>
	\$	<u>11,580</u>


NFP A's endowment funds consist of donor endowment and quasi-endowment. Income from donor endowment is restricted for specific purposes and, therefore, is not available for general expenditure. The quasi-endowment has a spending rate of 5 percent. \$1.65 million of appropriations from the quasi-endowment will be available within the next 12 months.

FASB ASU 2014-09 – Revenue from Contracts with Customers

Effect of FASB ASU 2014-09 on NFP

- This standard was issued to:
 1. Remove inconsistencies and weaknesses in revenue requirements.
 2. Provide a more robust framework for addressing revenue issues.
 3. Improve comparability of revenue recognition practices across entities, industries, jurisdictions, and capital markets.
 4. Provide more useful information to users of financial statements through improved disclosure requirements.
 5. Simplify the preparation of financial statements by reducing the number of requirements to which an entity must refer.
- Common types of NFP revenue affected:
 - Tuition and housing revenue
 - Government grants with deliverables
 - Sponsorships
 - Memberships and Subscriptions
 - Special events

Contract Criteria


- Revenue must be measurable
 - Revenue can't be refundable. If it is refundable, then a calculation must be made to discount the revenue based on the likelihood of a refund being issued.
 - Collection of the revenue is considered probable.
- 

New Disclosures

- Must disclose the revenue recognition policy for each type of revenue that falls under this standard.
- Must disaggregate revenue from contracts with customers by a method that makes sense to the entity. For instance, you can do it by location (country, state, county, etc.), type of contract (government contracts, public entity contracts, etc), or another method that is appropriate for your NFP.

FASB ASU 2018-08 – Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made

Summary of FASB 2018-08

- Effective for periods beginning after December 15, 2018.
 - Assists NFPs in determining whether transactions should be accounted for as contributions (nonreciprocal) or as exchange transactions (reciprocal)
 - Clarifies the accounting guidance for contributions received and made.
- 

Contribution vs Exchange Transaction

- The determining factor for whether an organization will account for a grant as a contribution or an exchange transaction is whether the grantor is receiving commensurate value in return for those assets. If commensurate value is received, it is accounted for as an exchange transaction and follows revenue recognition or other applicable standards. If commensurate value is not received by the asset provider, it is accounted for as a contribution and follows contribution standards. If some value but not commensurate value is received, then it is accounted for as both an exchange transaction and a contribution.
- Example: If the City provides a grant of \$5,000 for Entity ABC to provide meals to the homeless in that City and requires Entity ABC to provide a quarterly report of number of meals served, this would be accounted for as a contribution. The City (asset provider) has received no direct benefit or commensurate value for the grant. Note: In this standard, it is clear that benefit to the general public is not considered commensurate reciprocal value to the asset provider.

Conditional vs Unconditional

- Once the organization has reviewed the grant and determined that it is a contribution, the next step is to determine whether the contribution is conditional or unconditional. An unconditional contribution is recognized immediately whereas a conditional contribution cannot be recorded until the conditions have been met.
- To be a conditional contribution, the grant must include both of the following:
 - The grantor has the right to get their funds back or not to release future payments on promises to give if the organization does not meet the conditions.
 - One or more barriers need to be overcome before the organization is entitled to the assets transferred or promised.
- The matching portion of GIFT VII is an example of a conditional grant.

COVID-19 Audit Impacts

- Remote audits will be much more prevalent.
- Internal controls and segregation of duties may be affected by staff absences and reductions.
- Going concern issues may be present for organizations experiencing significant financial impacts.

Changes to UBTI

Effective for tax years beginning after December 31, 2017, organizations that carry on more than one unrelated trade or business will now be required to separately calculate UBTI for each “separate” trade or business, thereby prohibiting the use of losses stemming from one trade or business to offset income from another trade or business.

Changes to Form 990

- Required to file electronically for tax years beginning on or after July 2, 2019. So, calendar year-end business will have to electronically file the 2020 form 990.
- Part IV, Checklist of Required Schedules, lines 26, 27 and 28 regarding related party transactions expands the individuals included in each question to include "creator or founder" or "substantial contributor."
- Part X, Balance Sheet, line 5 regarding receivables from related parties and line 22 payables to related parties expands the question to specifically include "creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons."
- Part X, Balance Sheet has been updated to include a line for net assets without donor restrictions and a line for net assets with donor restrictions to coincide with FASB ASU 2016-14, as we previously talked about. There were three separate lines in this section - unrestricted net assets, temporarily restricted net assets and permanently restricted net assets.

990, Part IV, Checklist of Required Schedules, lines 26, 27 and 28

Part IV Checklist of Required Schedules (continued)

		Yes	No
22	Did the organization report more than \$5,000 of grants or other assistance to or for domestic individuals on Part IX, column (A), line 2? If "Yes," complete Schedule I, Parts I and III	<input type="checkbox"/>	<input type="checkbox"/>
23	Did the organization answer "Yes" to Part VII, Section A, line 3, 4, or 5 about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? If "Yes," complete Schedule J	<input type="checkbox"/>	<input type="checkbox"/>
24a	Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? If "Yes," answer lines 24b through 24d and complete Schedule K. If "No," go to line 25a	<input type="checkbox"/>	<input type="checkbox"/>
24b	Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?	<input type="checkbox"/>	<input type="checkbox"/>
24c	Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?	<input type="checkbox"/>	<input type="checkbox"/>
24d	Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year?	<input type="checkbox"/>	<input type="checkbox"/>
25a	Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. Did the organization engage in an excess benefit transaction with a disqualified person during the year? If "Yes," complete Schedule L, Part I	<input type="checkbox"/>	<input type="checkbox"/>
25b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? If "Yes," complete Schedule L, Part I	<input type="checkbox"/>	<input type="checkbox"/>
26	Did the organization report any amount on Part X, line 5 or 22, for receivables from or payables to any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons? If "Yes," complete Schedule L, Part II	<input type="checkbox"/>	<input type="checkbox"/>
27	Did the organization provide a grant or other assistance to any current or former officer, director, trustee, key employee, creator or founder, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity (including an employee thereof) or family member of any of these persons? If "Yes," complete Schedule L, Part III	<input type="checkbox"/>	<input type="checkbox"/>
28	Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions, for applicable filing thresholds, conditions, and exceptions):	<input type="checkbox"/>	<input type="checkbox"/>
28a	A current or former officer, director, trustee, key employee, creator or founder, or substantial contributor? If "Yes," complete Schedule L, Part IV	<input type="checkbox"/>	<input type="checkbox"/>
28b	A family member of any individual described in line 28a? If "Yes," complete Schedule L, Part IV	<input type="checkbox"/>	<input type="checkbox"/>
28c	A 35% controlled entity of one or more individuals and/or organizations described in lines 28a or 28b? If "Yes," complete Schedule L, Part IV	<input type="checkbox"/>	<input type="checkbox"/>
29	Did the organization receive more than \$25,000 in non-cash contributions? If "Yes," complete Schedule M	<input type="checkbox"/>	<input type="checkbox"/>
30	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? If "Yes," complete Schedule M	<input type="checkbox"/>	<input type="checkbox"/>
31	Did the organization liquidate, terminate, or dissolve and cease operations? If "Yes," complete Schedule A, Part I	<input type="checkbox"/>	<input type="checkbox"/>

990, Part X, Balance Sheet

Form 990 (2019) Page **11**

Part X Balance Sheet
Check if Schedule O contains a response or note to any line in this Part X

		(A)	(B)
		Beginning of year	End of year
Assets	1 Cash—non-interest-bearing	1	
	2 Savings and temporary cash investments	2	
	3 Pledges and grants receivable, net	3	
	4 Accounts receivable, net	4	
	5 Loans and other receivables from any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons	5	
	6 Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), and persons described in section 4958(c)(3)(B)	6	
	7 Notes and loans receivable, net	7	
	8 Inventories for sale or use	8	
	9 Prepaid expenses and deferred charges	9	
	10a Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D	10a	
	b Less: accumulated depreciation	10b	10c
	11 Investments—publicly traded securities	11	
	12 Investments—other securities. See Part IV, line 11	12	
	13 Investments—program-related. See Part IV, line 11	13	
	14 Intangible assets	14	
	15 Other assets. See Part IV, line 11	15	
16 Total assets. Add lines 1 through 15 (must equal line 33)	16		
Liabilities	17 Accounts payable and accrued expenses	17	
	18 Grants payable	18	
	19 Deferred revenue	19	
	20 Tax-exempt bond liabilities	20	
	21 Escrow or custodial account liability. Complete Part IV of Schedule D	21	
	22 Loans and other payables to any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons	22	
	23 Secured mortgages and notes payable to unrelated third parties	23	
	24 Unsecured notes and loans payable to unrelated third parties	24	
	25 Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17–24). Complete Part X of Schedule D	25	
	26 Total liabilities. Add lines 17 through 25	26	
Net Assets or Fund Balances	27 Organizations that follow FASB ASC 958, check here <input type="checkbox"/> and complete lines 27, 28, 32, and 33. Net assets without donor restrictions	27	
	28 Net assets with donor restrictions	28	
	29 Organizations that do not follow FASB ASC 958, check here <input type="checkbox"/> and complete lines 29 through 33. Capital stock or trust principal, or current funds	29	
	30 Paid-in or capital surplus, or land, building, or equipment fund	30	
	31 Retained earnings, endowment, accumulated income, or other funds	31	
	32 Total net assets or fund balances	32	
	33 Total liabilities and net assets/fund balances	33	

Form 990 (2019)

Questions?

ASU 2016-14 -

https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176168381847&acceptedDisclaimer=true

ASU 2018-08 -

https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176170810258&acceptedDisclaimer=true

ASU 2014-09 -

https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176164076069&acceptedDisclaimer=true

Section Seven

Applying for PPP Loan Forgiveness

Ted R. Batson, Jr.
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Section Seven

Applying for PPP Loan Forgiveness..... Ted R. Batson, Jr.

PowerPoint Presentation

Applying for PPP Loan Forgiveness

Ted R. Batson, Jr., Partner and Tax Counsel
9.29.2020



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A brief overview of the PPP loan program

- PPP loan program is part of the CARES Act enacted on March 27, 2020 (sec. 1102)
- A few substantive changes were made by the Paycheck Protection Program Flexibility Act enacted on June 5, 2020
- Available to employers with a headcount of not more than 500
- Permitted a loan of up to 2.5 times average monthly payroll

A brief overview of the PPP loan program (cont.)

- Full amount of loan is forgivable if spent on qualifying expenses (payroll costs, mortgage interest, rent, utilities)
- Loan interest rate set at 1%
- Original maturity was 2 years
 - For loans issued after June 5, 2020, the minimum maturity is 5 years
- Deferral of principal and interest payments allowed
- Administered by the Small Business Administration
 - Guidance has been issued in a series of “Interim Final Rules” and [FAQs](#)

Forgiveness, in general

- Forgiveness is permitted once sufficient qualifying expenses have been accumulated
- At least 60% of the qualifying expenses submitted must be payroll costs
- We are at the front end of the forgiveness process
- The SBA has two webpages devoted to PPP loan guidance
 - [Page 1](#)
 - [Page 2](#)

The SBA PPP Loan Forgiveness Applications

- The SBA has published two different loan forgiveness applications:
 - [Form 3508EZ](#), [Instructions](#)
 - Used when certain simplifying factors are present, including the ability to take advantage of certain safe harbors
 - [Form 3508](#), [Instructions](#)
 - This is the general “long” form that covers most, if not all, scenarios
- Lenders are free to use their own form

When to use Form 3508EZ

- Form 3508EZ may be used in three circumstances
 - By a self-employed individual, independent contractor, or sole proprietor with no employees at the time of the PPP loan application and who did not include employee salaries in the computation of average monthly payroll
 - By an employer who
 - Did not reduce salary or hourly wages of any employee by more than 25 percent during the Covered Period when compared to Q1 2020
 - Did not reduce the number of employees or average paid hours between January 1, 2020 and the end of the Covered Period
 - Permitted to apply FTE reduction exceptions for this purpose⁷

When to use Form 3508EZ (continued)

- By an employer who
 - Did not reduce salary or hourly wages of any employee by more than 25 percent during the Covered Period when compared to Q1 2020
 - Was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020
 - The reduction is due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020, by HHS, the CDC, or OSHA
 - The requirements or guidance must be COVID-19-related standards for sanitation, social distancing, or any other worker or customer safety requirement

New PPP Loan Forgiveness Interim Final Rules

- The SBA has released a series of PPP loan forgiveness Interim Final Rules covering
 - Details on forgivable expenses
 - The loan forgiveness application review process
- The SBA issued [loan forgiveness-specific FAQs](#) on August 11, 2020



PPP loan forgiveness process

PPP loan forgiveness process overview

- File your application with the lender servicing your loan
 - This may be a lender other than the lender who processed your loan
- The lender will make an initial loan forgiveness determination
 - Forgiveness is based on qualifying expenses
 - The lender has 60 days to make its determination and inform the SBA
- The SBA then has 90 days to pay the lender the forgiveness amount plus accrued interest

PPP loan forgiveness process overview (cont.)

- If the lender denies forgiveness in whole or in part, the lender must provide the SBA and the borrower the reason for the denial
- In addition, the lender must provide to the SBA the borrower's:
 - PPP Loan Forgiveness Application
 - PPP Schedule A
 - PPP Borrower Demographic Information Form (if submitted)
- The borrower will have 30 days to request that the SBA review the lender's decision
 - This process is yet to be defined

PPP loan forgiveness process overview (cont.)

- The SBA retains the right to review any loan forgiveness application
- The SBA may review:
 - Eligibility for the PPP loan in the first place, including
 - Proper application of employer size standards
 - Proper application of affiliation rules
 - Certifications on the loan application
 - The calculation of the original loan amount
 - The use of the loan proceeds
 - The computation of and entitlement to the loan forgiveness amount

PPP loan forgiveness process overview (cont.)

- The SBA's review will apply guidance available at the time of the loan application
- The SBA may initiate a review at its discretion at any time for a period of up to 6 years from the date the loan is forgiven or repaid in full

PPP loan forgiveness process overview (cont.)

- The outcome of an SBA review may be appealed using a process still to be defined
- If the SBA finds the borrower was **not eligible** for a PPP loan, the borrower will be required to repay the loan
 - Apparently this repayment will be immediate
- If the SBA finds the borrower is **ineligible, in whole or in part, for loan forgiveness**, the unforgiven portion will be required to be repaid over the two-year or five-year term of the loan
 - Payments will start after the applicable loan deferral period



Covered Period

Covered Period

- The CARES Act defined an 8-week period in which qualifying expenditures are to be aggregated
 - This is called the “Covered Period”
- The Paycheck Protection Program Flexibility Act extended this to 24 weeks
 - However, for loans **disbursed** prior to June 5, 2020, the borrower can elect to use the original 8-week Covered Period
- As originally conceived, loan forgiveness would be available after the 8-week Covered Period
 - The SBA will permit loan forgiveness before the end of the new 24-week Covered Period

PPP Loan Forgiveness: Alternate Payroll Covered Period

- Both the application and an Interim Final Rule create an Alternate Payroll Covered Period
 - This alternate period may only be used by employers who utilize a **bi-weekly or more frequent** payroll period
 - It permits the employer to adjust the 8-week or 24-week period for payroll costs to start on the first day of the first payroll period after the start of the Covered Period
 - The intent appears to be to simplify the accounting for payroll costs
 - It may only be used when aggregating payroll costs



Payroll costs

Payroll Costs

- Salary, wages, commissions, and other similar compensation
 - Start with **gross pay**
 - Don't include the employer's share of FICA/Medicare or FUTA
 - But include the employee's share and income tax withheld
 - Don't include amounts in excess of an annualized \$100,000 per employee
 - This limit does not apply to health insurance, retirement benefits, and state taxes (more on these in a minute)
 - For an 8-week Covered Period this \$15,385
 - For a 24-week Covered Period this is \$46,154
 - If loan forgiveness is applied for before the end of the Covered Period, then the amount must be appropriately pro-rated

Payroll Costs (continued)

- Salary, wages, commissions, and other similar compensation (continued)
 - Don't include wages of employees whose principal place of residence is outside the U.S.
 - See [Mission Agencies and Paycheck Protection Program Loans](#) for more on this
 - Don't include wages for which you received credits under the FFCRA for paid FMLA benefits or paid sick leave benefits
 - Don't include amounts paid to independent contractors (i.e., 1099 employees)

Payroll Costs (continued)

- Salary, wages, commissions, and other similar compensation (continued)
 - **What about the minister's housing allowance?**
 - FAQ 32 states that all cash compensation is includible in payroll costs, including a "housing stipend or allowance."
 - Thus the minister's housing allowance is includible
 - Many banks did not permit the minister's housing allowance to be included when computing average monthly payroll costs because this guidance came out late
 - However, there is no published rule that the minister's housing allowance cannot be included in countable payroll costs for forgiveness

Payroll Costs (continued)

- Cash tips or their equivalent
- Payments for vacation, parental, family, medical, or sick leave
 - But not wages for which you received credits under the FFCRA for paid FMLA benefits or paid sick leave benefits
- Severance payments

Payroll Costs (continued)

- **Employer** payments for group health care benefits, including insurance premiums
 - The PPP Loan FAQs clarify that this includes dental and vision insurance
 - The instructions to Form 3508 state that this includes “employer contributions to a self-insured, employer-sponsored group health plan”
 - We don’t have guidance regarding employer contributions to:
 - A QSEHRA
 - An ICHRA
 - An EBHRA
 - HSA coupled with a HDHP

Payroll Costs (continued)

- **Employer** contributions to retirement plans
 - Seems clear that contributions to a 403(b) or 401(k) plan qualify for a defined benefit pension plan
 - Less clear about 457(b) plans, 457(f) plans, profit-sharing plans, non-qualified deferred compensation plans
- Payments of state and local taxes assessed on employee compensation
 - Probably doesn't include workers comp
 - Probably doesn't include payments to the state unemployment agency by reimbursing employers

Bonuses and Hazard Pay

- The Interim Final Rule takes a broad approach to bonuses and hazard pay
 - The interim final rule includes bonuses and hazard pay in the same category as salary and wages
 - Therefore the sum salary, wages, bonuses, and hazard pay may not exceed the annualized rate of \$100,000 per year
 - There does not appear to be a limit on the reasons for which a bonus or hazard pay may be paid

Payments to Furloughed or Laid-off Employees

- The Interim Final Rule makes it clear that payments to furloughed or laid-off employees during the Covered Period are forgivable
 - This applies even though the employee is unable to perform his or her day-to-day duties



Non-payroll costs

Non-payroll costs: Mortgage Interest

- Mortgage interest is included
 - Mortgage must have been in place on February 15, 2020
 - Refinanced mortgages are included
 - Do not include mortgage principal, including pre-payment of principal or pre-payment of interest
 - Construction loan interest should qualify if the loan is secured by the property and construction in progress
 - Interest on loans secured by equipment and other types of tangible personal property is included
 - Company car

Non-payroll costs: Rent

- Rent is included
 - Lease agreement must have been in place on February 15, 2020
 - A renewed lease is included
 - A change in location is not covered in the guidance
 - Lease payment on both real property (i.e., your building) and equipment and other types of tangible personal property is included
 - Company car
 - Copier lease

Non-payroll costs: Utilities

- Utilities include payments for:
 - Electricity
 - Gas
 - Water
 - Transportation utility fees assessed by state and local governments
 - Telephone
 - We don't know if this includes allowances for BYOD
 - Internet access
 - We don't know if this includes allowances for an employee's home Internet service



Incurred or Paid

Payroll costs: Incurred or Paid

- “Payroll costs paid **or** incurred during the eight consecutive week (56 days) [(and now 168 day)] covered period are eligible for forgiveness.”
- In addition, payroll costs **incurred** during the Covered Period, but **paid** on or before the next regular pay date after the conclusion of the Covered Period (or the Alternative Payroll Covered Period, if elected) are eligible for forgiveness
- This also means that it is possible for more than 56 days or 168 days of payroll to be forgiven
 - But the extra days must be incurred before the Covered Period and paid during the Covered Period

Payroll costs: Incurred or Paid (cont.)

- **Example**

- Trinity Church uses a bi-weekly payroll schedule
- Trinity's Covered Period begins on Monday, June 1, 2020 and ends on Sunday, July 26, 2020
- The last day of Trinity's payroll period that includes June 1 is Saturday, June 6, 2020
- Salaried employees are paid through the payroll date
- The cutoff for hourly employees is three business days prior to the payroll date
- The full amount of the June 6 payroll is forgivable because it was **paid** during the Covered Period

Payroll costs: Incurred or Paid (cont.)

- **Example 2**

- Trinity's July 19 – August 1 payroll period is made up of payroll costs **incurred** during the Covered Period **and** payroll costs **incurred** after the Covered Period
- Payroll costs between July 19 and July 26 are forgivable
 - Payroll costs after July 27 through August 1 are not forgivable

Non-Payroll costs: Incurred or Paid

- Non-payroll costs are eligible for forgiveness if:
 - They are **paid** during the Covered Period
 - They are **incurred** within the Covered Period and paid on or before the next regular billing date
 - Even if the billing date is after the Covered Period

PPP Loan Forgiveness: Non-Payroll Costs (cont.)

- **Example**

- The Covered Period for Joyful Heart Ministries is June 1, 2020 through July 26, 2020
- Joyful Heart receives its May electricity bill in June and pays it in June
 - This payment is eligible for forgiveness because it is made during the Covered Period
- Joyful Heart receives its June electricity bill in July and pays it in July before July 26
 - This payment is eligible for forgiveness because it is made during the Covered Period

PPP Loan Forgiveness: Non-Payroll Costs (cont.)

- **Example (continued)**

- Joyful Heart receives its July electricity bill in August and pays it in August
 - The portion of this payment that relates to the period July 1 – July 26 is eligible for forgiveness because it is made on the first regularly scheduled billing date after the close of the billing period



Adjustments to the loan forgiveness amount

Salary and Wage Reduction Amount

- The calculation looks at whether there has been a greater than 25% change in an employee's weekly salary or hourly wage during the Covered Period when compared to Q1 2020
- Employees who received salary or wages in excess of \$100,000 on an annualized basis *during any pay period in 2019 are excluded*

Salary and Wage Reduction Amount (continued)

Example

Employee	Method of Pay	Average Rate of Pay		
		Covered Period	Prior Calendar Qtr	Change in Rate of Pay
John	Salary	\$1,058/week	\$1,481/week	(28.57%)
Sue	Salary	\$1,635/week	\$1,731/week	(5.56%)
Ellen	Salary	\$1,250/week	\$1,250/week	0.00%
Mary	Hourly	\$17.50/hour	\$27.50/hour	(36.36%)
Bill	Hourly	\$22.00/hour	\$25.00/hour	(12.00%)
Steve	Hourly	\$23.00/hour	\$23.00/hour	0.00%

Salary and Wage Reduction Amount (continued)

Example

	John	Mary
(a) Average rate of pay for prior quarter	\$1,481/week	\$27.50/hour
(b) 75% of Prior Calendar Qtr Rate of Pay	\$1,111/week	\$20.63/hour
(c) Average rate of pay for the Covered Period	\$1,058/week	\$17.50/ hour
(d) Row (b) less row (c)	\$53	\$3.13/hour
(e) For salaried workers, multiply the result in row (d) by 8 (or 24 if using the 24-week Covered Period)	$\$53 \times 8 = \424	
(f) Average hours worked per week in the Prior Calendar Quarter		40
(g) Multiply the amount on row (f) by the amount on row (d)		\$125
(h) multiply the amount on row (g) by 8 (or 24 if using the 24-week Covered Period)		\$1,000

FTE Reduction Quotient: Computing Full-Time Equivalent Employees (FTEs)

- The forgiveness application instructions describe a process for computing FTEs
 1. For each employee, determine the number of hours paid each week during the period
 2. For each employee, compute the average number of hours paid per week
 3. For each employee, divide the amount from Step 2 by 40, rounding the result to the nearest tenth
 - The result cannot be greater than 1
 4. Sum the amounts computed in Step 3

FTE Reduction Quotient: Computing Full-Time Equivalent Employees (FTEs) (continued)

- The instructions provide for a simplified method
 - Employees who work 40 or more hours per week count as 1
 - Employees who work fewer than 40 hours per week count as 0.5
 - This approach will only produce a satisfactory answer if the number of employees in total and the number of hours worked by all employees are stable across all time periods referenced

FTE Reduction Quotient: Computing Full-Time Equivalent Employees (FTEs) (continued)

Example

Employee Name	Hours Worked Per Week								Avg. Hours Worked Per Week	Avg. FTEs over Covered Period
	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8		
John	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	1.0
Sue	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	1.0
Ellen	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	1.0
Mary	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	1.0
Bill	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	0.6
Steve	12.00	15.00	10.00	14.00	17.00	20.00	12.00	15.00	14.38	0.4
Sally	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	1.0
Totals:	237.00	240.00	235.00	239.00	242.00	245.00	237.00	240.00	239.38	6.0

FTE Reduction Quotient: Computing Full-Time Equivalent Employees (FTEs) (continued)

- FTE computations are required for:
 - The Covered Period or, if elected, the Alternative Payroll Covered Period
 - The reference period you select (see below)
 - The payroll period that includes February 15, 2020
 - The period February 15, 2020 through April 26, 2020
 - December 31, 2020

FTE Reduction Quotient: FTE Exceptions

- The PPP Flexibility Act codified one FTE exception
- An employee is not excluded from the FTE count if the borrower can, in good faith, document
 - An inability to rehire individuals who were employees of the borrower on February 15, 2020; and
 - An inability to hire similarly qualified individuals for unfilled positions on or before December 31
- Documentation:
 - The written offer to rehire an individual;
 - A written record of the offer's rejection; and
 - A written record of efforts to hire a similarly qualified individual

FTE Reduction Quotient: FTE Exceptions (cont.)

- Borrowers are required to inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection of the offer.

FTE Reduction Quotient: FTE Exceptions (cont.)

- In addition, an employee's reduced hours are includible in the FTE computation where
 - The borrower made a good faith, written offer to restore the reduced hours
 - The offer was for the same salary or wages and same number of hours as earned in the last pay period prior to the reduction in hours;
 - The offer was rejected; and
 - The borrower has maintained records documenting the offer and its rejection

PPP Loan Forgiveness: FTE Exceptions (cont.)

- Finally, an employee may continue to be included in the FTE headcount if no longer employed due to:
 - Termination of an employee for cause;
 - The voluntary resignation of an employee; or
 - An employee's voluntary request for a reduction in hours

FTE Reduction Quotient (Headcount Reduction Factor)

- This is a fraction computed using the following formula:

$$\text{FTE Reduction Quotient} = \frac{\text{FTE during Covered Period}}{\text{FTE during reference period}}$$

- This fraction is multiplied times the **total forgivable costs** to arrive at the loan forgiveness amount
- The permissible reference periods are:
 - February 15, 2019 to June 30, 2019
 - January 1, 2020 to February 29, 2020
 - (For seasonal employers only) any twelve-week consecutive period between 05/01/2019 and 09/15/19, but must align with the period used to determine average monthly payroll costs
- Use the reference period that gives you the best result

FTE Reduction Quotient (Headcount Reduction Factor) (continued)

- Example

- Assume the following FTE headcounts:

- Covered Period 30.2
- February 15, 2019 to June 30, 2019 29.3
- January 1, 2020 to February 29, 2020 31.5

- February 15, 2019 to June 30, 2019 FTERQ

- $30.2 \div 29.3 = 1.03$, which by rule converts to 1.0.

- January 1, 2020 to February 29, 2020 FTERQ

- $30.2 \div 31.5 = 0.9587$



FTE Reduction Quotient safe harbors

FTE Reduction Quotient safe harbors

- There are two FTE Reduction Quotient safe harbors
 - The business activity safe harbor
 - The FTE restoration safe harbor

The business activity safe harbor

- This safe harbor trumps any FTE reduction
- The factors for eligibility include
 - A documented, good faith determination, that the borrower was unable to operate between February 15, 2020, and the end of the Covered Period at the same level of business activity as before February 15, 2020
 - The “same level of business activity” is yet to be defined
 - The reduction is due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020, by HHS, the CDC, or OSHA
 - The requirements or guidance must be COVID-19-related standards for sanitation, social distancing, or any other worker or customer safety requirement

FTE restoration safe harbor

- This is an exception to the application of the FTE Reduction Quotient
 1. Compute your FTE headcount for the payroll period that includes February 15, 2020
 2. Compute your FTE headcount for the period February 15, 2020 and April 26, 2020
 3. If the FTE headcount in Step 2 is less than the FTE headcount in Step 1, you had a decrease in headcount and must proceed to Step 4
 4. Compute your FTE headcount at December 31, 2020
 - The instructions omit a reference to “the payroll period that includes December 31, 2020”

FTE restoration safe harbor (continued)

5. If the FTE headcount in Step 4 is greater than or equal to the FTE headcount in Step 1, you are eligible for the safe harbor



PPP loan forgiveness application documentation

Loan forgiveness application documentation

- **Payroll documentation** to submit with your application
 - Bank statements and/or payroll registers from your payroll service showing cash compensation paid
 - Form 941
 - Income, payroll, and unemployment tax filings with state authorities
 - Payment receipts, canceled checks, or account statements along with invoices supporting:
 - Health insurance premiums paid
 - Retirement plan contributions

Loan forgiveness application documentation (cont.)

- **FTE reduction documentation** to submit with your application
 - Average hours worked for each employee for the Covered Period
 - Average hours worked for each employee for the selected headcount reduction reference period
- **Salary and wage reduction documentation** to retain but not submit
 - Rates of pay during Q1 2020
 - Rates of pay during the Covered Period

Loan forgiveness application documentation (cont.)

- **Business activity reduction safe harbor documentation**
 - Copies of the applicable agency imposed requirements or guidance for each borrower location
 - Relevant borrower financial records.
- **FTE restoration safe harbor documentation to retain but not submit**
 - Average hours worked for each employee for the pay period including 2/15/2020
 - Average hours worked for each employee for the period 2/15/2020 through 4/26/2020
 - Average hours worked for each employee at 12/31/2020

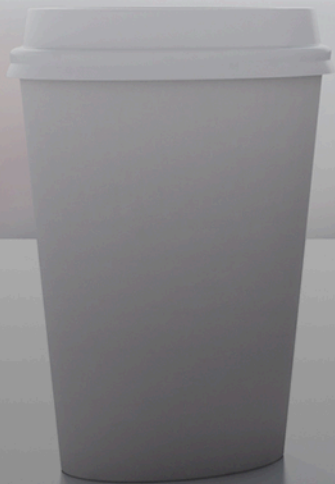
Loan forgiveness application documentation (cont.)

- **Mortgage interest documentation** to submit with your application
 - Canceled checks or payment receipts
 - Lender amortization schedule
 - Mortgage statements from February 2020 through the month after the end of the Covered Period
- **Rent documentation** to submit with your application
 - Current lease agreement
 - Receipts, canceled checks or electronic payment confirmations
 - Lessor account statements from February 2020 through the month after the end of the Covered Period

Loan forgiveness application documentation (cont.)

- **Utility documentation** to submit with your application
 - Invoices from February 2020 through the month after the end of the Covered Period
 - Receipts, canceled checks or electronic payment confirmations, or account statements
- These documentation requirements are mandatory

Questions?



Thank you!

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Section Eight

Nonprofit Political Activity & Lobbying

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Washington, DC

Section Eight

Nonprofit Political Activity & Lobbying..... Katherine T. LaBeau

PowerPoint Presentation

PERKINS coie



Political Law Group

September 29, 2020

Nonprofit Political Activity & Lobbying

*Good Governance of Nonprofit Organizations During
the COVID Crises and Beyond*

Katherine LaBeau, Perkins Coie LLP

PERKINS coie

Political Law Group

Overview: Political Activity & Lobbying

Good Governance Connection

Independent Sector, *The Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations*

- **Good Governance Principle 1: Laws & Regulations**
 - Nonprofit Boards of Directors have a responsibility to be familiar with the laws and the legal framework within which the organization functions.
 - Here, we are focusing on Internal Revenue Code and Treasury Regulation rules on lobbying and political activity.

Basic Rules

- Lobbying versus political activity:
 - Lobbying seeks to influence lawmakers in their official capacity; political activity seeks to influence their re-election.
- 501(c)(3)s
 - No political activity.
 - Public charities – “insubstantial” lobbying.
 - Private foundations – no lobbying.
- 501(c)(4)s
 - Some political activity (<49%).
 - Unlimited lobbying.

Reporting Lobbying & Political Activity: Form 990 Schedule C

SCHEDULE C
(Form 990 or 990-EZ)

Political Campaign and Lobbying Activities

OMB No. 1545-0047

2019

**Open to Public
Inspection**

Department of the Treasury
Internal Revenue Service

For Organizations Exempt From Income Tax Under section 501(c) and section 527

- ▶ **Complete if the organization is described below.** ▶ **Attach to Form 990 or Form 990-EZ.**
▶ **Go to www.irs.gov/Form990 for instructions and the latest information.**

If the organization answered "Yes," on Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46 (Political Campaign Activities), then

- Section 501(c)(3) organizations: Complete Parts I-A and B. Do not complete Part I-C.
- Section 501(c) (other than section 501(c)(3)) organizations: Complete Parts I-A and C below. Do not complete Part I-B.
- Section 527 organizations: Complete Part I-A only.

If the organization answered "Yes," on Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47 (Lobbying Activities), then

- Section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)): Complete Part II-A. Do not complete Part II-B.
- Section 501(c)(3) organizations that have NOT filed Form 5768 (election under section 501(h)): Complete Part II-B. Do not complete Part II-A.

If the organization answered "Yes," on Form 990, Part IV, line 5 (Proxy Tax) (see separate instructions) or Form 990-EZ, Part V, line 35c (Proxy Tax) (see separate instructions), then

- Section 501(c)(4), (5), or (6) organizations: Complete Part III.

Name of organization

Employer identification number

Part I-A Complete if the organization is exempt under section 501(c) or is a section 527 organization.

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV. (see instructions for definition of "political campaign activities")
- 2 Political campaign activity expenditures (see instructions) ▶ \$ _____
- 3 Volunteer hours for political campaign activities (see instructions)

Part I-B Complete if the organization is exempt under section 501(c)(3).

- 1 Enter the amount of any excise tax incurred by the organization under section 4955 ▶ \$ _____
- 2 Enter the amount of any excise tax incurred by organization managers under section 4955 ▶ \$ _____
- 3 If the organization incurred a section 4955 tax, did it file Form 4720 for this year? Yes No
- 4a Was a correction made? Yes No

Why Talk About This Now?

Presidential election year – increased IRS and public scrutiny on nonprofit activities.

Exclusive: Tucker Carlson-founded Daily Caller violated tax law, IRS complaint alleges

Watchdog asks IRS to probe right-wing outlet's financial and political relationships with its own nonprofit arm



ROGER SOLLENBERGER

JUNE 17, 2020 6:47PM (UTC)

The Daily Caller, a conservative news outlet co-founded by Tucker Carlson, and its related nonprofit, the Daily Caller News Foundation (DCNF), appear to have operated in violation of tax law, according to a complaint filed Tuesday with the IRS by a public transparency watchdog

BLM Co-Founder Appears To Violate IRS Laws On CNN

JUNE 26, 2020 By Elle Reynolds

A co-founder of the Black Lives Matter Global Network weighed in on the 2020 election. In an apparent violation of Internal Revenue Service laws prohibiting 501(c)(3) organizations from engaging in campaign activity,

Patrisse Cullors, in her official capacity as a co-founder of the BLM Global 'etwork, told CNN on June 19 that "our goal is to get Trump out."

With Trump flag and pro-GOP messages, Taneytown church at intersection of politics and religion

By JANEY HARRIS, CARROLL COUNTY TIMES | AUG 20, 2020 AT 4:30 AM



LATEST CARROLL COUNTY NEWS

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Political Law Group

Political Activity

Political Activity

- 501(c)(3)s – *no* political activity at all.
 - There is no *de minimis* exception.
 - The IRS also cares both about the expenditures and *resources* of a 501(c)(3), *and* the use of its name and branding, in connection with political activity.
 - Consequence is a tax penalty or revocation of 501(c)(3) tax status.
- 501(c)(4)s – political activity cannot be *primary* activity (<49%).

Political Activity

- “Directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.”
- Local, state, federal candidates.
- Includes opposing/supporting political parties.

Issue Advocacy Communications

The more factors present, the more likely that a communication is political activity:

- Reference to officeholder who is also a candidate.
- Expression of approval or disapproval for that officeholder's positions and/or actions.
- Proximity to the election.
- Reference to voting or the election.
- Issue has been raised by candidates in the election.
- Communication is *not* part of an ongoing series on the same issue.
- Timing *not* related to a non-electoral event (e.g., pending bill).

Political Activity Includes

- Permitting the use of organization resources, including an e-mail address or staff time, to support a candidate or party.
- Comparing candidates' policy positions.
- Asking candidates to sign a policy pledge.
- Inviting a candidate to speak at an event in their capacity as a candidate, without providing equal opportunities to opponents.
- Partisan GOTV/voter registration.

Political Activity Does Not Include

- Issue advocacy mentioning sitting officeholders who are also candidates.
 - Depending upon timing & pattern.
- Educating *all* candidates on issues and topics, for the organization's benefit.
- Nonpartisan GOTV activity and civic engagement messaging.
- Pushing for the inclusion of topics or issues in *all* candidate/party platforms.

Nonpartisan Voter Reg/GOTV

- Content must be nonpartisan
 - No advocacy for/against candidates.
 - No use of issues to push votes or turnout for/against candidates (e.g. “Vote Pro-Choice”).
 - Ok to underscore that electeds legislate on important policy issues (e.g. “Vote to make sure your voice is heard on key issues”).
- Targeting of audience must also be nonpartisan.
- Must assist anyone who asks.

501(c)(3) Partnerships with Other Nonprofits

- 501(c)(3)s *may* partner with other organizations that do political activity, such as 501(c)(4)s.
 - Partnership must be limited to 501(c)(3)-permissible activity.
- May not work with 527 political organizations, period.
- Cannot link to other websites with political content.

Personal Activity

- Employees, vendors, officers, and Board members may not engage in political activity while “on the clock” for a 501(c)(3) or using 501(c)(3) resources.
- They *may* volunteer with campaigns in their personal time, using personal resources.
 - No use of 501(c)(3) resources for personal campaign activity (computer, e-mail address, etc.).
 - Social media disclaimer: “Views are my own.”

Influencing Legislation

501(c)(3) Lobbying

- Public charities:
 - “Influencing legislation” (lobbying) must be an “insubstantial” part of overall activities in each fiscal year.
- Private foundations:
 - No lobbying (results in a taxable expenditure).
- Two alternate tests to measure lobbying:
 - 1) Insubstantial part test (default).
 - 2) 501(h) election.

Direct Lobbying

- Direct lobbying occurs when:
 - Communicating with;
 - Members of a legislative body or their staff, other government officials who have a role in legislation, or the general public (if the “legislation” is a public referendum); *and*
 - Expressing a view on specific legislation (or a public referendum).

Grassroots Lobbying

- Grassroots lobbying generally occurs when:
 - Making a communication;
 - To the general public;
 - That refers to and expresses a view on specific legislation; and
 - Includes a “call to action.”

**Only 501(h) electing organizations can rely on these grassroots lobbying definitions.*

Common Lobbying Exceptions

- Issue advocacy.
- Self-defense communications.
- Nonpartisan research or analysis.
- Providing technical advice at the invitation of a Congressional committee.
- Examinations and discussions of broad social, economic, and similar issues.
- Communications with Executive Branch officials at any level on executive actions (e.g., regulations or executive orders).

Questions?

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Section Nine

Ethical Best Practices for Nonprofits

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Section Nine

Ethical Best Practices for Nonprofits..... Tamara L. Weaver

PowerPoint Presentation

Ethics Policy Template

IRS Sample Conflict of Interest Policy



Ethical Best Practices for Nonprofits

Tamara Weaver

Deputy Attorney General

Consumer Protection Division



Overview

- Role and Authority of the Attorney General
- Officer and Director Duties
- Code of Ethics
- Conflicts of Interest
- Fundraising
- Practicalities; Attorney General Involvement
- Lawyer Board Members



OAG and the Consumer Protection Division

1. Consumer Mediation
 2. Licensing
 3. Consumer Litigation
 4. Homeowner Protection
 5. Data Privacy
-
1. Deceptive, Abusive, Unfair
 2. Home Improvement Fraud
 3. Senior Consumer Protection
 4. Auto Dealers
 5. Anti-trust
 6. Nonprofits
 7. Charitable Trusts
 8. Institutional Funds



Statutes and Caselaw

- Indiana Nonprofit Corporations Act
 - IC 23-17-24-1 (judicial dissolution)
 - IC 23-17-24-1.5 (other remedies)
 - IC 23-17-13 and -14 (Director and Officer duties)
- Indiana Uniform Prudent Management of Institutional Funds Act (UPMIFA)
 - IC 30-2-12-13
- Indiana Deceptive Consumer Sales Act
 - IC 24-5-0.5
- Indiana Trust Code
 - IC 30-4-5.5



Statutes and Caselaw

Zoeller v. East Chicago Second Century, Inc. 904 N.E.2d 213
(Ind. 2009)

*The people's interest in the rectitude of entities created in the name of public good, such as charities, **has long led to regarding the Attorney General as an officer with authority to enforce those interests.***

*"...broad common law and statutory authority conferred upon the **Attorney General to protect the public interest in charitable and benevolent instrumentalities.**"*



Statutes and Caselaw

- The Attorney General is the entity charged with protecting the public interest represented by nonprofits
- The Attorney General has broad, significant statutory authority
- The Attorney General may have worked through your particular situation, or one similar to it, before



Indiana Nonprofit Corporations Act

An Indiana court may dissolve a nonprofit corporation in a proceeding brought by the AG if one of the following is established:

Obtained the corporation's articles of incorporation by fraud

Exceed or abuse authority conferred upon the corporation by law

Corporate assets are being misapplied or wasted

No longer able to carry out the corporation's purpose



Apply to Public Benefit Corporations only



Indiana Nonprofit Corporations Act

A few alternatives to dissolution:

Before dissolving a nonprofit corporation, a court must consider:

- Reasonable alternative to dissolution
- Whether dissolution is in the public interest

Receiver

Wind up or liquidate corporation

Powers: dispose of any corporate assets; sue and defend

Custodian

Manage affairs of corporation

Power: all the powers of the corporation, through or in place of board of directors/officers

Actions done in the best interests of the corporation's members and creditors or to carry out the corporation's lawful purposes



Indiana Nonprofit Corporations Act

Additional remedies for Attorney General:

Injunction

IC 23-17-24-1.5(b)(1)

Extremely general

Appointment of temporary or permanent receivers

IC 23-17-24-1.5(b)(2)

Permanent removal

IC 23-17-24-1.5(b)(3)

Trustees, corporate officers, or directors...

...who have breached fiduciary duty

Appointment of permanent court approved replacements

IC 23-17-24-1.5(b)(4)

Trustees, corporate officers or directors, and members



Officer and Director Duties

In Good Faith

With the care an ordinarily prudent person in a like position would exercise under similar circumstances

Director must discharge duties:

In a manner the director reasonably believes to be in the best interests of the corporation

Analyzed for violations under IC 23-17-13



Officer and Director Duties

...In a resolution of the board of directors

...By direction of an officer authorized by the board of directors to do so

To the extent consistent with bylaws, perform duties prescribed...

And perform the duties set forth in bylaws

Officer
must

*Analyzed under
IC 23-17-14-2*



Officer and Director Duties

Duty of Care

- Oversee affairs
- Business decisions
- Wasting assets

Duty of Loyalty

- Avoid Self-Dealing
- Conflicts of Interest



Code of Ethics

A charitable organization should have a formally adopted, written code of ethics with which all of its directors or trustees, staff, and volunteers are familiar and to which they adhere.

<https://independentsector.org/resource/checklist-code-ethics/>

(Sample included in materials as well)

<https://independentsector.org/resource/principles/>



Code of Ethics

Law is just
the
minimum

Doing
the right
thing

Articulating
and
agreeing

Reflected
in policies
and
procedures



Conflicts of Interest

A charitable organization should adopt and implement policies and procedures to ensure that all conflicts of interest, or the appearance thereof, within the organization and the board are appropriately managed through disclosure, recusal, or other means.



Conflicts of Interest

Potential,
Perceived,
or
Material

Independent
board
members

Proactive
or Reactive

Regular
Disclosures



Fundraising

Fundraisers

- Materials
- Oversight
- Compensation

Donors

- Intent
- Privacy



Fundraising

Fundraisers

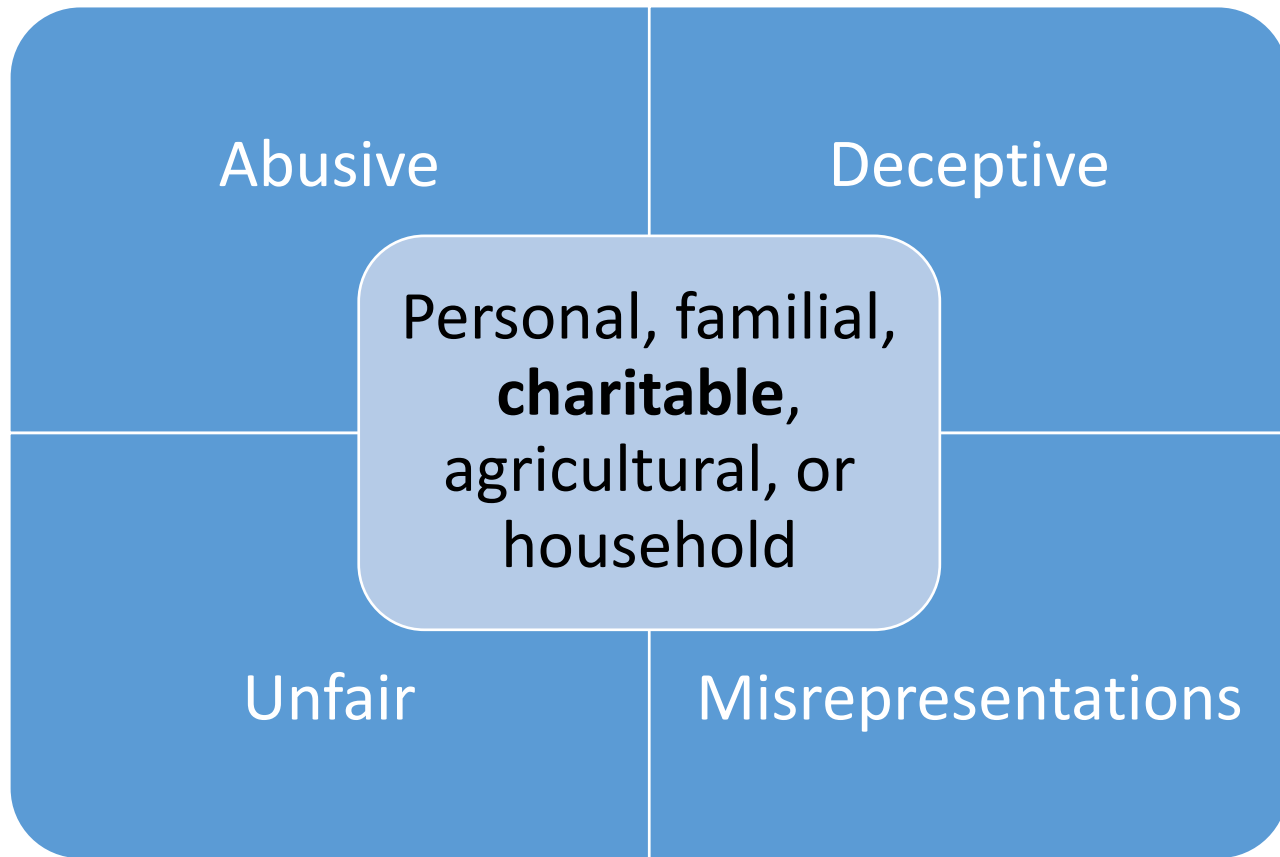
- Materials
- Oversight
- Compensation

Accuracy and Truthfulness of Fundraising Materials

- Guidelines for all fundraising materials
- Subject to review process
- Represent organization truthfully
- State laws regarding solicitations



Deceptive Consumer Sales Act





Fundraising

Fundraisers

- Materials
- Oversight
- Compensation

Oversight of Fundraisers

- Fundraisers and Telemarketers represent the organization
- Defining responsibilities
- Registration with OAG



Fundraising

Fundraisers

- Materials
- Oversight
- Compensation

Fundraiser Compensation

- Policies for internal and external fundraisers
- Compensation based on performance, time/effort
- Upholding the organization's value and reputation



Fundraising

Donors

- Intent
- Privacy

Contributions must be used for the purposes consistent with the donor's intent

- Present and future use
- Agree with conditions or reject
- Document, document, document!



Fundraising

Donors

- Intent
- Privacy

Charities should respect donor privacy

- Options to opt-out
- Maintaining donor lists
- Public charity vs. private foundation



Practicalities of Attorney General Involvement

Triggering
activities

Process



Practicalities - Triggers

Investigative Triggers

News Report

Complaints

Self-Reporting

Triggering Activities

\$\$ problems

Internal Strife

Malfeasance



Practicalities - Triggers

Triggering Activities

\$\$ problems

Internal Strife

Malfeasance

- May indicate nonprofit/directors are wasting or misapplying assets
- May indicate nonprofit is failing in its mission
- May indicate a conflict of interest



Practicalities - Triggers

Triggering Activities

\$\$ problems

Internal Strife

Malfeasance

- Could indicate a failure to comply with Articles or Bylaws
- Problem remains unresolved by insiders or affiliates
- Indicates significant threat to nonprofit's continued functioning or mission/failing purpose



Practicalities - Triggers

Triggering Activities

\$\$ problems

Internal Strife

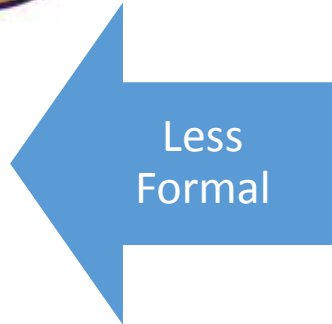
Malfeasance

- Indicates nonprofit may be exceeding or abusing its authority
- Indicates nonprofit may be failing its purposes
- Director duties at issue – duty of care, duty of loyalty
- Officers, staff, volunteers



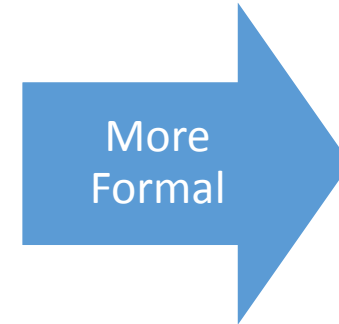
Practicalities - Process

No Guarantees!



- Correspondence
- Interviews
- IRS information return research (990s)

- Self-reporting
- Demonstrates candor, cooperation, accountability, responsibility
- Can increase likelihood of optimum beneficial resolution



- Civil Investigative Demands
 - Written responses
 - Documents
 - Interviews
 - (all under oath)

- News Stories
- Indicates problem is going unchecked, media pressure and public scrutiny
- Can increase difficulty in managing problems



Lawyer Board Members

Lawyer board member must utilize legal skills in exercising her own judgment.

- Background, qualifications, experience

Lawyer board member must utilize legal skills in dealing with other board members.

- Reliance on legal counsel



Lawyer Board Members

Indiana's Rule of Professional Conduct 6.1 prompts lawyers to provide public interest legal services

A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to . . . public service or charitable groups or organizations.”

A lawyer who chooses to fulfill her ethical obligations by serving on a charitable organization's board of directors cannot check her legal skills at the door.



Lawyer Board Members

Defining Representation

“The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer’s services are made available to the client.” (RPC 1.2)

“In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.” (RPC 1.13)

Contact Info:



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317-234-7122

[name of organization]

ETHICS POLICY

It is the policy of [name of organization] that its employees and board members uphold the highest standards of ethical, professional behavior. To that end, these employees and board members shall dedicate themselves to carrying out the mission of this organization and shall:

- 1) Hold paramount the safety, health and welfare of the public in the performance of professional duties.
- 2) Act in such a manner as to uphold and enhance personal and professional honor, integrity and the dignity of the profession.
- 3) Treat with respect and consideration all persons, regardless of race, religion, gender, sexual orientation, maternity, marital or family status, disability, age or national origin.
- 4) Engage in carrying out [name of organization]'s mission in a professional manner.
- 5) Collaborate with and support other professionals in carrying out [name of organization]'s mission.
- 6) Build professional reputations on the merit of services and refrain from competing unfairly with others.
- 7) Recognize that the chief function of [name of organization] at all times is to serve the best interests of its constituency.
- 8) Accept as a personal duty the responsibility to keep up to date on emerging issues and to conduct themselves with professional competence, fairness, impartiality, efficiency, and effectiveness.
- 9) Respect the structure and responsibilities of the board of directors, provide them with facts and advice as a basis for their making policy decisions, and uphold and implement policies adopted by the board of directors.
- 10) Keep the community informed about issues affecting it.
- 11) Conduct organizational and operational duties with positive leadership exemplified by open communication, creativity, dedication, and compassion.
- 12) Exercise whatever discretionary authority they have under the law to carry out the mission of the organization.
- 13) Serve with respect, concern, courtesy, and responsiveness in carrying out the organization's mission.

- 14) Demonstrate the highest standards of personal integrity, truthfulness, honesty, and fortitude in all activities in order to inspire confidence and trust in such activities.
- 15) Avoid any interest or activity that is in conflict with the conduct of their official duties.
- 16) Respect and protect privileged information to which they have access in the course of their official duties.
- 17) Strive for personal and professional excellence and encourage the professional developments of others.

Appendix A: Sample Conflict of Interest Policy

Note: Items marked *Hospital insert – for hospitals that complete Schedule C* are intended to be adopted by hospitals.

Article I Purpose

The purpose of the conflict of interest policy is to protect this tax-exempt organization's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Article II Definitions

1. Interested Person

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

[Hospital Insert – for hospitals that complete Schedule C

If a person is an interested person with respect to any entity in the health care system of which the organization is a part, he or she is an interested person with respect to all entities in the health care system.]

2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

Article III Procedures

1. Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

- a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

- a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Article IV **Records of Proceedings**

The minutes of the governing board and all committees with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Article V **Compensation**

- a. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

[Hospital Insert – for hospitals that complete Schedule C

- d. Physicians who receive compensation from the Organization, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.]

Article VI **Annual Statements**

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Article VII **Periodic Reviews**

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

Article VIII **Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.