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WRITTEN BY
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Strategies for Creating and Operating 501(c)(3)s, 501(c)(4)s and Political Organizations

ABOUT THE AUTHOR

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Ms. Schadler is an author of numerous legal guides and articles for nonprofit organizations, including: *Non-Profit Organizations, Public Policy, and the Political Process: A Guide to the Internal Revenue Code and Federal Election Campaign Act; The Effect of Citizens United on Tax and Campaign Laws Governing Tax-Exempt Organizations* (coauthored with, Laurence Gold); "No Free Lunch? The House and Senate Rules for Nonprofit Organizations"; "The Courts Point the Way to Royalty Treatment for UBIT Purposes"; and "Bipartisan Campaign Reform Act of 2002: How Will It Affect Nonprofits?" In addition, Ms. Schadler assisted in the preparation of Alliance for Justice's publication *Investing in Change: A Funder's Guide to Supporting Advocacy.* Ms. Schadler has lectured at numerous seminars sponsored by nonprofit and political organizations on the laws governing lobbying, political activities, and unrelated business income tax. She has also served as an Adjunct Professor at American University, Washington College of Law.

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ALLIANCE FOR JUSTICE

Alliance for Justice is a national association of more than 150 organizations dedicated to advancing justice and democracy. We build the strength of progressive movements by training and educating nonprofit organizations on advocacy, harnessing their collective power to transform our state and federal courts.

Alliance for Justice's Bolder Advocacy program is the nation's leading resource for foundations and nonprofits who want to engage more actively and knowledgeably in the policymaking process. We build grassroots power by helping organizations move from cautious to courageous across lobbying, election-related activity, ballot measures, grantmaking, and other efforts necessary to change the world. In addition to publishing resources like this one, our Bolder Advocacy team provides nonprofits with training, technical assistance, and tools to advance their missions through advocacy. If you have questions about your nonprofit's ability to boldly speak up about the issues that matter most, we have the answers. Bolder Advocacy is your go-to source for the information you need to amplify your nonprofit's impact and pursue policy change.

Nonprofits play an essential role on the front lines of policy debates and civic engagement. They have the resources to capture the ears of public officials and advance legislative reforms. They have the community connections necessary to educate the public about the issues that directly impact their lives and get out the vote at election time. They have the fortitude to take to the courts to fight injustices and help secure justice for all.

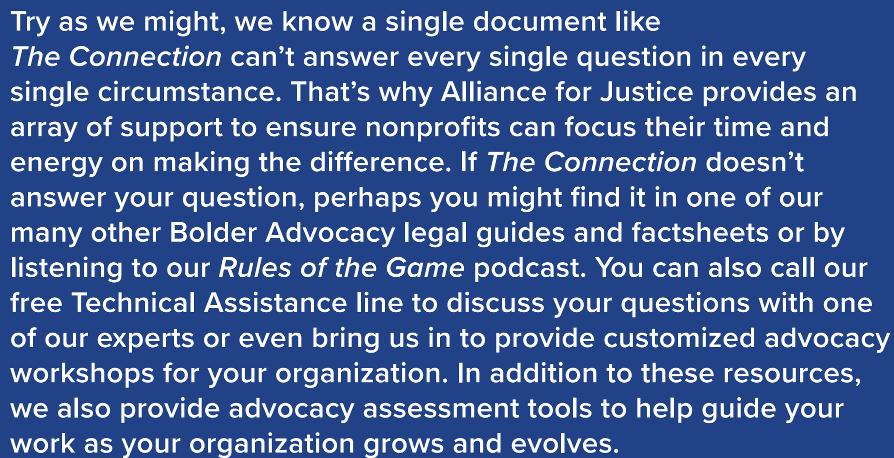
As these changemakers shape the society we want to live in, they deserve to fly with a net in the face of complicated legal hurdles. For over a quarter century, *The Connection* has been that net.

By providing a comprehensive roadmap to navigating the designations, limitations, and opportunities provided to U.S. nonprofits under federal law, *The Connection* has armed our sector for maximum impact. Because let's be honest: For most nonprofit leaders and staff, understanding the types of advocacy that 501(c)(3), 501(c)(4), and political organizations may engage in can be daunting. But all of us are required to know the limits of our legal structures and how we can form and manage affiliated organizations to maximize our impact as we pursue justice.

The Connection teaches those limits with an expanded horizon and thereby provides a roadmap for increasing impact through affiliated organizations while remaining in compliance with the law. *The Connection* has been, in many ways, the go-to legal roadmap for building, harnessing, and sustaining power as a family of affiliated nonprofit organizations.

We are therefore proud to present this updated guide. The legal framework in which nonprofits operate is constantly changing, particularly as it tries to keep up with the latest technological developments that shape what advocacy even looks like. This new edition of *The Connection* reflects this by offering additional insight into topics like:

- New FEC disclaimer requirements for "internet public communications"
- Social media for affiliated 501(c)(3) and 501(c)(4) organizations
- A recent FEC ruling impacting the use of disclaimers for text messaging
- Requirements for Super PACs and hybrid PACs (also known as Carey Committees)



Try as we might, we know a single document like *The Connection* can't answer every single question in every single circumstance. That's why Alliance for Justice provides an array of support to ensure nonprofits can focus their time and energy on making the difference. If *The Connection* doesn't answer your question, perhaps you might find it in one of our many other Bolder Advocacy legal guides and factsheets or by listening to our *Rules of the Game* podcast. You can also call our free Technical Assistance line to discuss your questions with one of our experts or even bring us in to provide customized advocacy workshops for your organization. In addition to these resources, we also provide advocacy assessment tools to help guide your work as your organization grows and evolves.

While neither *The Connection* nor our other Bolder Advocacy resources are a substitute for actual legal counsel, we nevertheless hope to offer nonprofits a vision for strategically advancing their missions and achieving their policy goals. Alliance for Justice appreciates the dedicated work of Holly Schadler, a partner in the Washington, D.C., law firm of Trister, Ross, Schadler & Gold, PLLC, as primary author of *The Connection.* We also recognize her colleagues Holly Ratliff, Allen Mattison, Jessica Robinson, and Joseph Steinberg for their invaluable review and assistance in the preparation of this guide. This guide also features the contributions of Darrin Hurwitz, who provided critical assistance to the third edition of this guide in the wake of the Supreme Court's *Citizens United* decision.

The Connection is dedicated to the memory of Michael Trister. In addition to his many contributions to this guide, he was a social justice advocate in his own right and a trusted advisor to Alliance for Justice and the nonprofit community at large for decades.

We hope this fifth edition of *The Connection* serves you and your organizations well. We look forward to championing your work and building a more just future together.

Rakim Brooks
President, Alliance for Justice

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Types Of Advocacy Organizations And What They May Do

A. The Purpose of This Guide

A 501(c)(3) public charity that organizes a 501(c)(4) social welfare organization and a 501(c)(4) that creates a political organization can greatly expand the range of permissible advocacy opportunities.[1] Similarly, a 501(c)(4) that organizes a 501(c)(3) may expand its educational and charitable activities by creating additional funding opportunities and substantive focus. This guide talks about organizing and managing these organizations, their legal relationships and the need to maintain separation between and among them.

Chapter 1:
Provides an introduction to the most significant types of tax-exempt advocacy organizations and the rules governing lobbying and political activities conducted by 501(c)(4)s.

Chapter 2:
Discusses the steps for establishing a 501(c)(4) and the specific requirements to protect and preserve the public charity status of the 501(c)(3) once a related 501(c)(4) is established. It summarizes the types of advocacy activities that each organization may conduct and discusses the practical considerations and requirements for structuring and managing the relationships among 501(c)(3)s, 501(c)(4)s, and political organizations.

Chapter 3:
Sets out the different types of political organizations and the rules governing their activities.

Chapter 4:
Discusses how to organize a separate segregated fund and the rules governing these entities.

Finally, Chapters 5 and 6:
Discuss the rules governing Independent Expenditure-Only PACs (commonly referred to as "Super PACs") and Nonconnected PACs, respectively.

Organizing and managing the activities of multiple tax-exempt organizations is not always easy and is not the best strategy for every group. The Internal Revenue Service (IRS) has provided limited guidance on setting up affiliated entities. Adding a new entity also increases costs and administrative burdens. This guide will identify and address these issues to assist in determining whether establishing multiple organizations is necessary or advantageous. The Connection, however, is no substitute for legal review of particular issues facing an organization. Therefore, it is advisable to consult a knowledgeable lawyer before proceeding.

1. Throughout this guide, references to "501(c)(3)s" are to public charities. In 1969, Congress divided 501(c)(3) organizations into two classes: "private foundations" and "public charities." Private foundations are subject to several restrictions on their advocacy activities that do not apply to public charities, and a full discussion of these rules is beyond the scope of this guide. For more information on advocacy rules and private foundations, *see Investing in Change: A Funder's Guide to Supporting Advocacy,* (Alliance for Justice) and *Philanthropy Advocacy Playbook: Leveraging Your Dollars* (Alliance for Justice 2015).

B. Different Categories of Exempt Organizations

1. Tax Exemption and Advocacy

An increasing array of laws and regulations applies to the actions of nonprofit organizations. The most important rules discussed in this guide come from federal tax and campaign finance law and from the IRS and Federal Election Commission (FEC) regulations that implement those statutes. But, there are many other laws that apply to tax-exempt organizations depending on their activities and communications including: state and local campaign finance and lobbying disclosure laws; charitable registration laws; and the Telephone Communications Protection Act as well as other laws administered by the Federal Communications Commission.

Generally, the scope of permissible political activities depends on the organization's category of tax exemption. A public charity organized under section 501(c)(3) of the Internal Revenue Code (IRC) generally pays no taxes on its income, and the contributions it receives are tax-deductible by the donor. Public charities are absolutely prohibited from supporting or opposing candidates for public office, but may conduct a limited amount of lobbying.

A 501(c)(4) social welfare organization generally pays no taxes on its operating income, but may not offer its donors a charitable tax deduction. Social welfare organizations may conduct unlimited lobbying and may engage in partisan political campaign work, but only as a secondary activity.

Finally, a 527 political organization pays no tax on its operating income, but does pay tax on its investment income.[2] Donations to political organizations are not tax-deductible. The purpose of a political organization must be to influence the selection of candidates for public office or an office in a political organization (such as a political party).[3]

2. 501(c)(3) Organizations

An organization exempt under section 501(c)(3) is required to devote its resources to educational, religious, scientific, and/or other charitable activities. Contributions to a 501(c)(3) are generally deductible from a donor's federal income tax and are not subject to federal gift tax. In addition, public charities are not generally required to disclose their donors publicly.

Public charities may engage in only a limited amount of lobbying. Lobbying by a public charity is limited to either an "insubstantial" part of its total activity or to lobbying expenditures that could be as much as approximately 20 percent of its annual budget, depending on whether the charity operates under the "Insubstantial Part Test" or elects to lobby under the "Expenditure Test." Lobbying includes activities to influence legislation at the federal, state or local level or legislation in another country, as well as to support or oppose ballot measures. A 501(c)(3) is strictly forbidden from engaging in any political activity on behalf of or in opposition to a candidate for political office.

A 501(c)(3) may, however, conduct various nonpartisan election-related activities (subject to restrictions) including:

- Engaging in ballot-measure advocacy (direct lobbying limits apply);
- Conducting public education and training sessions about participation in the political process;
- Educating candidates on public issues;
- Publishing legislative scorecards;
- Preparing candidate questionnaires;
- Canvassing the public on issues;
- Sponsoring candidate debates;
- Advocating in connection with party platform issues;
- Renting mailing lists and facilities at fair market value to other organizations, legislators, and candidates; and
- Conducting nonpartisan get-out-the-vote activities, voter registration drives, and voter education activity.

2. I.R.C. §§ 527(b), (c); Treas. Reg. §§ 1.527-3, -6. All citations to the Internal Revenue Code or the Treasury regulations refer to the most current edition as of the date of publication unless otherwise noted.
3. I.R.C. § 527(e).

The so-called "Johnson Amendment," named after Senator Lyndon Johnson, that prohibits 501(c)(3)s from supporting (or opposing) candidates for public office, has been in place since 1954. There have been and continue to be bills introduced in Congress to modify or repeal the prohibition on 501(c)(3)s engaging in political activity but to date none have passed.[4]

Alliance for Justice has published a series of nontechnical, plain-language guides describing the rules on advocacy activities for 501(c)(3)s. For an extensive review of the lobbying rules for 501(c)(3)s, see Gail M. Harmon, Jessica A. Ladd, and Eleanor A. Evans, *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities* (2011); for more information on the range of permissible voter education and election-related activities by 501(c)(3) organizations, see Laurence E. Gold and Rosemary Fei, *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations* (2010); for details on permissible ballot measure activities for 501(c)(3)s, see *Seize the Initiative* (2020); for information on foundation funding of 501(c)(3) advocacy activities, see *Philanthropy Advocacy Playbook* (2015) and *Investing in Change: A Funder's Guide to Advocacy* (2004).

3. 501(c)(4) Organizations

A 501(c)(4) is a social welfare organization that may pursue educational, lobbying and some limited political activities. No limit exists on the amount of lobbying a 501(c)(4) may conduct, including working for the passage or defeat of ballot measures. Contributions to a 501(c)(4) are not tax-deductible as charitable contributions. In addition, 501(c)(4)s are generally not required to disclose their donors publicly except under limited circumstances. Contributions to a 501(c)(4) organization are not subject to gift tax.[5]

Unlike a 501(c)(3), a 501(c)(4) may carry out some political activities without jeopardizing its tax-exempt status as long as it is engaged primarily in non-electoral activities that promote social welfare.[6] Generally, "social welfare" means promoting social improvement and civic betterment. Education and lobbying on social and economic issues qualify as social welfare activities, but participation in partisan political campaigns does not. A 501(c)(4) may, as a secondary activity, engage in partisan political activities, including independent expenditures (communications that are not coordinated with a candidate or political party and that expressly advocate the election or defeat of a candidate), without adversely affecting its tax-exempt status. **Such activities must, however, comply with federal or state campaign finance law.** In some cases, discussed in Chapter I, the 501(c)(4) must pay taxes on some or all of the funds used for political activities.[7]

A 501(c)(4) may, subject to various rules and, in some cases, restrictions:

- Engage in all of the lobbying and advocacy activities, including supporting and opposing ballot measures subject to state or local campaign finance laws, permitted for a 501(c)(3), without limit;
- Endorse candidates and publicize its endorsements;
- Publicly distribute voter guides and other communications that support or oppose candidates (with certain restrictions);
- Permit candidates to address its members (individuals who meet the definition of "member" under applicable campaign finance law);
- Rent its mailing lists and provide facilities to selected candidates at fair market value; and
- Establish and pay for the administrative and fundraising costs of a connected political organization (a separate segregated fund).

Some of these activities are subject to federal or state campaign finance and lobbying laws, as discussed in more detail elsewhere in this guide.

4. *See, e.g.,* H.R. 172, 115th Congress (2017).
5. For many years there was uncertainty regarding whether certain donations to a 501(c)(4) were subject to gift tax. While contributions to section 501(c)(3) and 527 organizations were specifically excluded from the gift tax provisions, there was no express exclusion for donations by an individual to a 501(c)(4). The Protecting Americans from Tax Hikes Act of 2015 (the PATH Act), Pub. L. No. 114-113, 129 Stat. 3040 (2015), specifically excluded gifts to 501(c)(4)s from the gift tax.
6. Rev. Rul. 81-95, 1981-1 C.B. 332.
7. I.R.C. § 527(f).

4. Political Organizations

A political organization exists primarily to influence the outcome of elections to public office. IRC section 527 addresses the tax treatment of all political organizations.

A political organization is generally exempt from taxation to the extent that it spends its funds on political activities and related expenses. Political activities include influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or an office in a political organization.[8] Political organization income is exempt from tax unless it is (1) investment income, (2) trade or business income, or (3) income that is spent or set aside to fund activities that do not qualify as political activities.[9]

Political organizations governed by IRC section 527 may be divided into three broad categories:

- Federal political committees (Federal PACs) that seek to influence the election of federal candidates and must register with and report to the FEC;
- State political committees (State PACs) that seek to influence the election of state and local candidates and must register with and report to state campaign finance agencies; and
- Other "527s," most of which must register with and report to the IRS but are not required to register with the FEC or a state agency.

One major distinction among the categories of political organizations is that Federal and State PACs may generally contribute directly to candidates and may make independent expenditures that expressly support the election or defeat of a candidate, while other 527s that are not registered with the FEC or the applicable state agency may generally not contribute to or support specific candidates. The chart that appears later in this section explains the differences in greater depth.

There is now a type of Federal PAC, commonly known as a Super PAC, that may receive unlimited contributions. Prior to the 2010 decision in *SpeechNow.org v. Federal Election Commission,*[10] all Federal PACs were limited in the size of contributions that they could receive. A Federal PAC could accept contributions of $5,000 or less per year from individuals or other Federal PACs; contributions from labor unions and corporations were prohibited. While these limits continue to apply to PACs that make contributions to federal candidates and other political committees, Federal PACs that make independent expenditures only may now accept unlimited funds from individuals and other sources.[11] And, after the 2012 court decision in *Carey v. Federal Election Commission,* federal law also recognizes PACs that have one account for independent expenditures that may accept unlimited funds and another account for making contributions to federal candidates, political parties and other political committees that may only accept contributions subject to federal limits and source restrictions.[12] Therefore, Federal PACs are now divided into three categories: "Traditional PACs," which may make contributions and independent expenditures, "Independent Expenditure-Only PACs" ("Super PACs"), which may make independent expenditures but not contributions in federal races, and *Carey* PACs (also known as "Hybrid PACs") that have one account that functions as a Traditional PAC and a separate account that functions as a Super PAC. Virtually every state law now provides for some form of Super PAC, and a handful of states recognize some form of Hybrid PAC as well.

Generally, a political organization may be organized as either:

- A separate segregated fund (SSF), which is a political organization established and administered by a corporation or union, including an incorporated 501(c)(4) organization, for the purpose of conducting political activities; or
- A nonconnected committee, which is a political organization generally established by a group of individuals independent of any sponsoring corporation or union.

8. I.R.C. § 527(e)(2).
9. Treas. Reg. § 1.527-3.
10. *SpeechNow.org v. FEC, 599 F.3d 686* (D.C. Cir. 2010).
11. Federal independent expenditure-only committees ("Super PACs") may also make contributions to state-level candidates and committees and may make independent expenditures in state elections, where permitted by and subject to applicable state law.
12. *Carey v. FEC,* 791 F. Supp. 2d 121 (D.D.C. 2011).

Note that generally the legal landscape regarding political organizations is in great flux, so it is essential to consult an attorney who specializes in campaign finance law before establishing a political organization on the federal or state level.

Alliance for Justice will post occasional updates on the Bolder Advocacy website regarding significant new developments.

Examples

The examples in this guide use fictional organizations to demonstrate how multiple entities may work together. The organizations are:

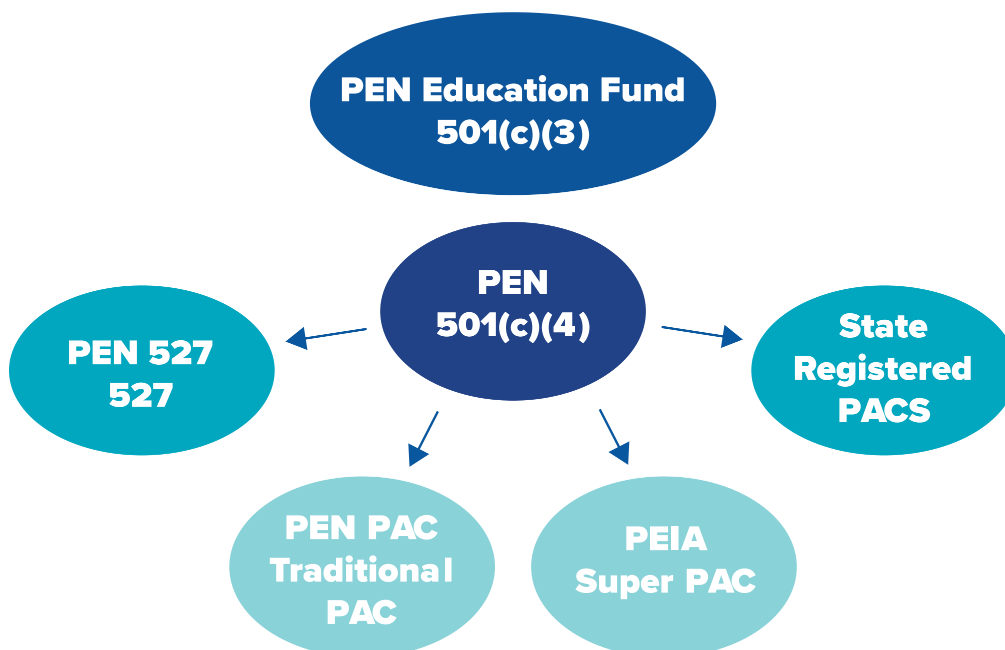
Protect the Environment Now Education Fund ("PEN Education Fund" or "Fund"), a charitable and educational organization that is tax-exempt under IRC section 501(c)(3);

Protect the Environment Now ("PEN"), an advocacy organization that is tax-exempt under IRC section 501(c)(4);

Protect the Environment Now PAC ("PEN PAC"), a separate segregated fund ("SSF") connected to PEN. PENPAC is exempt from tax under IRC section 527 and registered with the FEC to make contributions to or expenditures on behalf of federal candidates;

Protect the Environment Now 527 ("PEN 527"), an SSF connected to PEN and exempt from tax under IRC section 527. It seeks to influence elections, but it does not endorse federal candidates, contribute to federal campaigns, coordinate its activities with campaigns, or engage in express advocacy at the federal level; it is registered with the IRS but not with the FEC. It registers in state or local jurisdictions under campaign finance law as necessary; and

Protect the Environment Independent Action ("PEIA"), a nonconnected political committee exempt from tax under IRC section 527 and registered with the FEC as an Independent Expenditure-Only committee (often referred to as a "Super PAC") to conduct independent expenditures in federal races and, where permissible, engage in state-level political activity.



Comparison of 501(c)(3)s,* 501(c)(4)s, and Political (527) Organizations

	501(c)(3)s	501(c)(4)s	Political (527) Organizations
Tax Status	Tax-exempt; contributions to a 501(c)(3) are generally tax deductible; contributions are not subject to federal gift tax	Tax-exempt; contributions to a 501(c)(4) are not generally tax deductible; contributions are not subject to federal gift tax	Tax-exempt (other than on investment income); contributions to a 527 are not tax deductible; contributions are not subject to gift tax
Related Organizations	May establish a 501(c)(4)	May establish a 501(c)(3) and 527	May be established by a 501(c)(4)
Lobbying Activities	Limited lobbying expenditures, including ballot measures and certain judicial nominations	No limit on lobbying expenditures, including ballot measures and certain judicial nominations	Limited (insubstantial) lobbying expenditures permissible, but may be subject to tax if not furthering political purposes
Political Activities	• Prohibited from engaging in any partisan political activities; may conduct nonpartisan voter engagement activities • May not establish a 527 for political activities • Penalties: revocation of tax-exempt status and excise taxes on both the organization and its managers	• May carry on partisan political activities subject to federal and state campaign finance laws • Must be the "secondary," and not "primary" purpose of the organization • May establish a 527 for political activities • May be taxed on political expenditures	No limit on aggregate expenditures; subject to applicable federal and state campaign finance laws including limits on contributions
Establishing Tax-Exempt Status and Subsequent Reporting Requirements	IRS Form 1023; Report annually on IRS Form 990[13]	File IRS Form 8976 within 60 days of establishment; May "self-declare" or file IRS Form 1024-A; Report annually on IRS Form 990; Form 1120-POL for political expenditures	Depends on type of 527; see chart below
IRS Requirements for Disclosing the Non-Deductibility of Contributions on Fundraising Solicitations	Not required	• For contributions, disclosure of non-deductibility required on all solicitations by writing, television, radio, or telephone (with limited exceptions) • For business expense deductions, may be required to disclose percentage of dues used for lobbying and political activities (with limited exceptions)	Disclosure of non-deductibility required on all solicitations by writing, television, radio, or telephone; other disclosures and additional disclaimer requirements may apply under federal or state campaign laws
Public Disclosure of Contributors to IRS	Not required; disclose on IRS Form 990 but not for public inspection[14]; may be required by states for ballot measure activity or electoral activity	Not required, and donors not disclosed to public or IRS on Form 990; may be required by states for ballot measure activity or electoral activity	Yes; disclose on Form 8872 or under federal or state campaign finance laws

*These rules apply to public charities only. Private foundations are subject to more restrictive rules.

13. Depending on the amount of their gross receipts and total assets, section 501(c)(3) and 501(c)(4) organizations must file IRS Form 990, 990-EZ, or 990-N. Filing thresholds are available at https://www.irs.gov/charities-non-profits/form-990-series-which-forms-do-exempt-organizations-file-filing-phase-in. Different filing thresholds apply to Section 527 organizations; *see* I.R.C. § 6033(g). The IRS has posted these requirements at https://www.irs.gov/charities-non-profits/political-organizations/faqs-about-the-annual-form-filing-requirements-for-section-527-organizations.
14. The requirement for 501(c)(3) organizations to disclose substantial contributors to the IRS pursuant to I.R.C. § 6033(b) has been challenged and is the subject of ongoing litigation. *See Buckeye Institute v. IRS,* 2:22-cv-04297-MHW-EPD (S.D. Ohio filed Dec. 5, 2022).

Types Of Political Organizations

	Federal PACs	527s*	State PACs
Registration Requirements	File FEC Form 1 within ten days of formation; no IRS Form 8871 registration	File IRS Form 8871 if the organization anticipates having at least $25,000 in receipts or expenditures for any taxable year[15]	File IRS Form 8871 if the organization anticipates having at least $25,000 in receipts or expenditures for any taxable year
Periodic Reporting Requirements	File reports on FEC Form 3X, listing contributors and expenditures over certain thresholds	Publicly disclose contributors who donated $200 or more and all expenditures of $500 or more using IRS Form 8872, unless the organization expects to spend or receive less than $50,000 in the calendar year	Must report to state agency; generally excluded from requirement to file IRS Form 8872[16]
Annual Tax and Information Returns	File IRS Form 1120-POL only if the organization has taxable income in excess of $100 for that year; exempt from filing Form 990	File IRS Form 990 depending on the organization's gross receipts; file Form 1120-POL only if the organization has taxable income in excess of $100 for that year	File IRS Form 990 depending on the organization's gross receipts; file Form 1120-POL only if the organization has taxable income in excess of $100 for that year
Limits on Donors' Contributions, Source, and Amount	• All Federal PACs are prohibited from receiving contributions from foreign nationals, national banks or government contractors • Traditional Nonconnected PAC: $5,000 annual limit per contributor;[17] may accept contributions only from individuals and other Federal PACs; no corporate or union funds • Traditional SSF PAC: $5,000 annual limit per contributor;[18] may accept contributions only from individuals in the restricted class; no corporate or union funds • Super PAC: No limit on amount. Corporate and union contributions are permissible	• No contributions from foreign nationals, national banks, or government contractors • No limit; may accept contributions from individuals, corporations, or unions	• No contributions from foreign nationals, national banks, or government contractors • Consult state or local law on contribution limits and source restrictions

*Important exceptions to the registration and reporting requirements are set out in more detail in Chapter IV of this guide.

15. I.R.C. § 527(i)(5)(B).
16. In the event that a state does not meet the required minimal disclosure requirements, organizations in those states must report with the IRS. *See* Rev. Rul. 2003-49, 2003-1 C.B. 903; https://www.irs.gov/charities-non-profits/political-organizations/filing-requirements-1.
17. 52 U.S.C. § 30116(a)(1)(C). This contribution limit is not indexed for inflation; *see id.* § 30116(c). All citations to the United States Code refers to the most current edition as of the date of publication unless otherwise noted.
18. 52 U.S.C. § 30116(a)(1)(C). This contribution limit is not indexed for inflation; *see id.* § 30116(c).

Types Of Political Organizations

	Federal PACs	527s	State PACs
Contributions to Candidates	$5,000 limit per federal candidate if the Traditional PAC meets certain requirements;[19] Super PACs may not make contributions to federal candidates	May not contribute to federal candidates or federal political parties	May not contribute to federal candidates; subject to state and local contribution laws
Endorsing Candidates and Running Advertisements Supporting or Opposing Candidates	May endorse candidates and expressly advocate the election or defeat of a clearly identified candidate	May generally not engage in express advocacy (See Chapter 1, Section D for definition of express advocacy); state laws vary	May endorse candidates and expressly advocate the election or defeat of an identified candidate subject to state and local law
Coordinating with Campaigns or Political Parties[20]	Traditional PACs may pay for "coordinated" communications, but the cost of the expenditure is treated as an in-kind contribution;[21] Super PACS may not make "coordinated communications"	May not coordinate with campaigns	Activities are regulated by state and local campaign laws

19. A PAC that has been registered with the FEC for at least six months, has received contributions for federal elections from more than 50 people, and has contributed to at least five federal candidates qualifies as a "multicandidate committee" and may contribute up to $5,000 per election to a candidate. 52 U.S.C. § 30116(a)(2)(A); 11 C.F.R. § 100.5(e)(3). Other PACs are limited to $3,300 per election. 11 C.F.R. § 110.1(b)(1); *see also* https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/.
20. Under federal law, a communication is "coordinated" if it meets content and conduct standards provided at 11 C.F.R. § 109.21.
21. 11 C.F.R. § 109.21(b). Email and other communications disseminated over the internet, except for those placed for a fee on another person's website, digital device, application, or advertising platform are excluded from the definition of "public communications" subject to the coordination rules. See Chapter I, § E for additional information.

C. Working in Coalitions and Other Joint Activities

Advocacy organizations often choose to work in coalitions to organize conferences, lobby on legislation, or better coordinate their advocacy activities. When the organizations have the same tax-exempt status, few issues arise from this joint activity. However, when a 501(c)(3) participates in a coalition with 501(c)(4)s, labor unions, trade associations or other types of exempt organizations, it is important to structure the 501(c)(3)'s activities as part of the coalition so that they do not jeopardize the 501(c)(3)'s tax status.

Example:

The PEN Education Fund conducts voter education activities with 501(c)(4) groups. These activities are permissible so long as the activities meet the 501(c)(3) criteria and the coalition does not endorse candidates or take other partisan positions. If the Fund were asked to join together with several organizations, including 501(c)(4)s and PACs, in order to publish partisan voter guides before an election, such activity would be prohibited and would jeopardize the organization's tax-exempt status.

A 501(c)(3) may join a coalition composed of 501(c)(3)s and 501(c)(4)s for any purpose consistent with its tax-exempt status, such as conducting research or preparing and publicizing materials on a current issue. A 501(c)(3) may also join a coalition to lobby on issues. However, a 501(c)(3) may not do anything indirectly through participation in a coalition that it may not do individually. Participation in a coalition to exchange non-electoral information or sponsor educational programs on issues of interest to the groups is permissible. A 501(c)(3) may also conduct voter registration, voter education, and get-out-the-vote activities so long as these activities are nonpartisan.

1. Coalition Structures

When a coalition intends to be active on an ongoing basis, it may choose to incorporate or organize as an unincorporated association.

As a separate entity, the coalition may wish to apply for tax-exempt status under section 501(c)(3) or 501(c)(4) and obtain its own Employer Identification Number (EIN) by filing IRS Form SS-4.

Many coalitions are not established as separate legal entities, however, but operate informally under a variety of arrangements. For example, the members of a coalition may meet to share information or plan joint or common activities with each of the participants paying its own expenses. Generally, in these situations, the expenditures by the other participants do not count toward a 501(c)(3)'s own lobbying limits.

Alternatively, one of the members of the coalition could agree to act as the fiscal sponsor of the coalition. Under this structure, the members of the coalition and other funders of the effort contribute to the designated organization. All of the coalition's activities paid for by the sponsor (including lobbying activities) would be considered activities of the sponsor and would be reported on its information return (Form 990) to the IRS. For this reason, 501(c)(3) organizations may be a poor choice to sponsor coalitions that will do significant amounts of lobbying.

2. Joint Activities

Questions frequently arise in determining how or whether a 501(c)(3) may engage in joint activities and information exchanges with 501(c)(4)s, 501(c)(5)s (labor unions), and other 501(c) organizations, as well as political organizations.

Joint nonpartisan activities: A 501(c)(3) may engage in voter education and registration with a 501(c) or 527 organization (which includes "PACs") so long as the activities are conducted in a strictly nonpartisan manner. All of the group's joint written materials and oral communications must be nonpartisan. No partisan literature or communications may be distributed by any of the participating groups as part of the joint activity. In addition, the geographic areas selected for conducting the activities must be determined using nonpartisan criteria. While the other participating 501(c)s and PACs may continue to engage in their own partisan activities, these must remain completely separate from their nonpartisan activities conducted jointly with the 501(c)(3).

Influencing ballot measures: A 501(c)(3) may also work with 501(c)(4)s on ballot measure campaigns. Activities to support or oppose ballot measures and referenda are treated as direct lobbying. Therefore, the amount of expenditures that a 501(c)(3) may make is limited. (See Being a Player, Alliance for Justice, for more information about the limits on lobbying.) If organizations other than the 501(c)(3) are conducting partisan electoral work in conjunction with their ballot measure activities, a 501(c)(3) may need to avoid participation in that coalition effort because a 501(c)(3) may not engage in partisan activities.

Renting and exchanging information:
Because a 501(c)(3) organization may not make a contribution, including an in-kind contribution, to a 527, it may not give its lists (or other data such as lists of registered voters) to a 527 without charge. Allowing a 527 to use its mailing list even on a one-time basis constitutes providing something of value even if the 501(c)(3) generally makes its list available to other 501(c)(3) organizations without charge. Therefore, a 501(c)(3) must rent or sell its list to a 527 for fair market value. In addition, the IRS has indicated that, once the 501(c)(3) makes a list available to one political entity, it must offer and make the list available to any other political entities that request the list.[22] Using a list broker is the safest way to satisfy this second requirement and to establish the fair market value of the list.

A 501(c)(3) may also exchange its list for an equivalent number of new names of equal value to be provided by the 501(c)(4) or 527 within a reasonable period of time, provided that the 501(c)(4) or 527 agrees to pay the fair market value of the list if it is unable to provide the new names to the 501(c)(3) within the agreed period. In order to determine fair market value, it may be helpful to have each list valued by a list broker or other professional list manager. However, it is less advisable for a 501(c)(3) to conduct a list exchange with a 527 organization, given the potential risk in the event the exchange is not found to be even or the value the 501(c)(3) receives from the 527 is found to be less than fair market. Similar rules apply to a 501(c)(3)'s exchanges with other types of 501(c) organizations.

A 501(c)(3) may accept lists from a 527 or other 501(c) organization to conduct its nonpartisan activities. There must not be, however, any requirement or understanding that the 501(c)(3) organization will use that information to further the partisan interests of the 527 or other 501(c). Moreover, the 501(c)(3) may not generally receive partisan information collected by the 527, such as candidate preference identification data. Finally, the 501(c)(3) may not use lists that target particular geographic areas or individual voters based on partisan criteria for its nonpartisan engagement activity. For example, a 501(c)(3) may not use a list to conduct nonpartisan GOTV that identifies voters who live in Democratic precincts or who have been selected based on their support for a particular candidate or issue.

Voter registration lists: A 501(c)(3) may not freely share with partisan organizations the voter registration lists or other data that it collects during voter registration or education activities. This information is the property of the 501(c)(3) and may only be rented to a 501(c)(4) or 527 at fair market value or exchanged for data of equal value under certain circumstances. (See the discussion of sharing lists above.)

Even if these guidelines are strictly followed, however, it is possible that the media or other groups may raise issues about such cooperative activities, questioning whether the partisan objectives of a 527 are attributable to a 501(c)(3). Therefore, the risk of adverse publicity for proposed efforts should be considered in any decision whether to conduct joint activities with a 527 organization.

Training and technical assistance: The issue of whether a 501(c)(3) may accept training and other technical assistance from staff and consultants of a 527 organization frequently arises. For example, a 501(c)(3) might wish to provide training to its staff and volunteers on door-to-door canvassing. In the event that staff or consultants are invited to assist with training or provide technical assistance, it is critical that the information provided and programs planned are strictly nonpartisan.

22. *See* Judith E. Kindell & John Francis Reilly, Internal Revenue Service, *2002 Exempt Organizations Continuing Professional Education Text,* "Election Year Issues" at 383-84 [hereinafter 2002 CPE Text], *available at* https://www.irs.gov/pub/irs-tege/eotopici02.pdf.

Lobbying and Political Activities by 501(c)(4)s

This chapter discusses the laws governing advocacy by 501(c)(4)s, demonstrating some of the strategic reasons for creating a 501(c)(4). Often, a 501(c)(3) will be the original or "anchor" organization with more members and greater financial resources, at least initially, than the 501(c)(4). However, a 501(c)(4) may also serve as the anchor organization with an affiliated 501(c)(3) organization that raises tax-deductible contributions for limited purposes.

A. What Is a 501(c)(4)?

A nonprofit corporation or association designed to promote social welfare may qualify for tax-exempt status under IRC section 501(c)(4). The IRS has recognized a variety of public policy issues as promoting "the general welfare of the community," such as environmental protection, firearms control, women's rights (including reproductive rights), poverty, housing, immigration and civil rights. Groups such as the League of Women Voters, People's Action, the Human Rights Campaign, the Sierra Club, and the American Civil Liberties Union are 501(c)(4)s. While 501(c)(4)s are generally exempt from paying federal income tax, contributions and membership dues to a 501(c)(4) are not tax-deductible as charitable contributions.

A 501(c)(4) may engage in an unlimited amount of lobbying (including supporting and opposing ballot measures), as long as the issues relate to the exempt purposes of the organization. In addition, a 501(c)(4) may engage in some partisan political campaign activities in accordance with federal and state campaign finance laws, provided that political activities do not become its primary activity.

Tax law requires that tax-exempt organizations, including 501(c)(4)s, benefit the general public, not a private individual or group of citizens. Applying this standard, the IRS has contested the tax-exempt status of groups that it contends are operated primarily to benefit one political party, arguing that conveying more than an insubstantial benefit to a party constitutes impermissible private benefit.[1] For example, in *American Campaign Academy v. Commissioner,*[2] the Tax Court accepted the IRS's argument that a political training academy whose trainees were placed almost exclusively in Republican campaigns did not qualify for exempt status under section 501(c)(3) because the academy provided more than an insubstantial benefit to the Republican Party. Similarly, the IRS denied tax-exempt status to several groups that had been organized to recruit and train Democratic women to run for political office. The IRS took the position that the groups were not operated primarily to promote social welfare because their activities were primarily for the benefit of one political party and a private group of individuals, rather than "the community as a whole."[3] While it is unclear at this time how the private benefit doctrine will ultimately be applied to 501(c)(4)s, this issue must be considered in organizing and operating a social welfare organization.

B. Federal Rules on Lobbying Activities by 501(c)(4)s

1. Tax Code:

A 501(c)(4) may conduct unlimited lobbying without jeopardizing its tax-exempt status as long as the legislation that the organization attempts to influence pertains to the purpose for which it was formed. Lobbying may be its sole activity. Specifically, lobbying includes:

- Drafting legislation;
- Persuading legislators to introduce legislation;
- Circulating lobbying materials to assist in the passage or defeat of a bill;
- Engaging members and the general public by letter, phone, or mass or social media to encourage their legislators to support or oppose legislation; and
- Supporting or opposing referenda, initiatives, and other public ballot measures.

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1. *See* John Francis Reilly et al., Internal Revenue Service, *2003 Exempt Organizations Continuing Professional Education Text,* "IRC 501(c)(4) Organizations" at 452, *available at* http://www.irs.gov/pub/irs-tege/eotopici03.pdf.
2. *American Campaign Academy v. Commissioner,* 92 T.C. 1053 *(1989); See also, Democratic Leadership Council v. United States,* 542 F. Supp. 2d 63 (D.D.C. 2008).
3. *See, e.g.,* IRS Priv. Ltr. Ruls. 201128032 (Apr. 4, 2011) (denying 501(c)(4) status to organizations conducting activities to benefit a political party and its candidates by providing partisan political leadership development activities); 201128034 (April 18, 2011) (same), and 201128035 (Apr. 18, 2011) (same), 201221026 (Mar. 25, 2012) (revoking 501(c)(4) status of organization conducting activities to benefit a political party and a private group of individuals by providing political leadership development activities limited to women who are members of a particular political party), and 201221025 (Mar. 25, 2012).

Before proceeding with these activities, it is important to check federal, state, or local lobbying disclosure laws and, in the case of ballot measure activity, state or local campaign finance laws which govern registration and reporting requirements, including possible disclosure of contributors and expenditures.

A 501(c)(4) must notify prospective contributors that their contributions are not deductible as charitable contributions.[4] This notice must appear in all written and oral solicitations. The IRS provides various examples of acceptable language for the notice regarding non-deductibility of contributions, including, "Contributions and gifts to [name of organization] are not tax deductible." There are penalties for each failure to include the notice.

Although some taxpayers may, in some circumstances, deduct their dues and "similar amounts" paid to a 501(c)(4) organization as an ordinary and necessary business expense, the portion of dues that funds lobbying and political expenditures is not tax-deductible.[5] A 501(c)(4) organization may be required to alert its members about what percentage of dues, if any, it has allocated to lobbying and political expenditures.[6] If the organization fails to give this notice, or if it provides a notification that underestimates the percentage of dues used for these purposes, the IRS may impose a tax on the organization based on its lobbying expenditures.[7]

A 501(c)(4) is exempt from this notice requirement if it has records to establish that:

- More than 90 percent of all dues and similar amounts is received from persons, families or entities that each paid annual dues of $140 or less;[8]
- More than 90 percent of the membership dues or similar amounts to the organization come from 501(c)(3) organizations; state or local governments; entities whose income is excluded from gross income under section 115; local associations of employees and veterans organizations described in section 501(c)(4) (but not social welfare organizations); or labor unions or labor organizations; or
- At least 90% of the annual dues paid to the organization are not deductible by its members as business expenses, whether or not the organization uses any part of the dues for lobbying and political expenditures.[9]

2. Federal and State Lobbying Disclosure

The Lobbying Disclosure Act (LDA) requires organizations that lobby the federal government to register and report their lobbying activities. Information about these registration and reporting requirements is more fully presented in Appendix A.[10] Similar disclosure laws exist on the state and local level. Summaries of many of these state laws are available on the Alliance for Justice website, **afj.org**, at: **https://afj.org/resource-library/**.

One noteworthy provision of the LDA applies exclusively to 501(c)(4)s, stating that a 501(c)(4) that engages in federal lobbying activities is not eligible to receive federal grants, loans, or awards.[11] Conversely, a 501(c)(4) that receives federal grants, loans, or awards may not lobby. Therefore, an organization should conduct a thorough review of its activities to determine if it must choose between lobbying or accepting federal money. The LDA does allow a 501(c)(4) to form a separate, affiliated 501(c)(4) organization to lobby with private funds.[12] Moreover, a 501(c)(4) that conducts lobbying may establish a separate 501(c)(3) to receive federal grants and conduct charitable activities.

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4. I.R.C. § 6113; *see* IRS Notice 88-120, 1988-2 C.B. 454.
5. I.R.C. § 162(e)(1).
6. I.R.C. § 6033(e)(1)(A)(ii).
7. I.R.C. § 6033(e)(2).
8. Rev. Proc. 98-19, 1998-1 C.B. 547, § 4.02. This amount is current through 2024. The dollar amount is indexed for inflation; **https://www.irs.gov/charities-non-profits/organizations-subject-to-proxy-tax**.
9. *Id.;* **https://www.irs.gov/pub/irs-tege/eotopicl03.pdf**.
10. *See* **http://lobbyingdisclosure.house.gov/amended_lda_guide.html**.
11. *See* 2 U.S.C. § 1611.
12. H.R. Rep. 104-339, pt. 1, at 24 (1995).

C. Rules on 501(c)(4) Political Activity Under the Federal Tax Code

The primary purpose of a 501(c)(4) must be to promote social welfare, and the IRS has ruled that participation in political campaigns does not qualify as an activity that promotes social welfare.[13] Therefore, if an organization's primary purpose or activity is partisan political activity, the organization does not qualify as a 501(c)(4).[14] Partisan political activities are those that support or oppose a political party or candidate for public office. See "What Is 'Political Activity'?" below.

In addition to this primary purpose restriction, 501(c)(4) organizations that have investment income may be subject to tax on expenditures for their political activities, unless they conduct these political activities through a "separate segregated fund" organized under IRC section 527. See Chapter IV for a discussion of establishing and operating a separate segregated fund.

1. What Is the Primary Purpose of an Organization?

No clear test exists for determining when political activity becomes an organization's primary purpose. One common approach is to analyze expenditures. If annual political expenditures are relatively small compared to the organization's overall budget, its tax-exempt status is generally safe. If political activity expenditures exceed 50 percent of total program expenditures, however, social welfare most likely cannot be deemed the primary purpose. In order to be cautious, a 501(c)(4) should generally ensure that its expenditures for political activity do not exceed 30 to 40 percent of its total budget.[15]

The IRS may also consider other factors, in addition to expenditures, to determine whether an organization is primarily engaged in promoting social welfare or political activities, including:

- The amount of staff and other resources (including buildings and equipment) devoted to conducting the organization's social welfare versus political activities;
- The manner in which the activities are conducted; and
- The amount of time spent by both volunteers and staff on political activities.[16]

In 2013, the IRS sought comments on a Notice of Proposed Rulemaking, that attempted to define political activity more specifically and the amount of such activity a 501(c)(4) may engage in.[17] Subsequently, the IRS has suspended its efforts to propose new rules on this issue.

2. What Is "Political Activity"?

Any activity is considered political if it is conducted to influence the election, selection, nomination, or appointment of any individual to a federal, state, or local public office; to an office in a political organization; or as a delegate or elector for President or Vice President.[18] Such activities include:

- Endorsements of a candidate;
- Publication or distribution of statements in favor of or in opposition to a candidate;
- Direct financial contributions or other support to a candidate, political party, or PAC (other than a ballot measure committee);
- In-kind contributions to a candidate, political party, or PAC (other than a ballot measure PAC) including, but not limited to:
    - Mailing, membership, or donor lists or other resources for fundraising;
    - Provision of facilities or office space;
    - staff time;
    - Polling results;
    - Organizing volunteers for the campaign;

13. Treas. Reg. § 1.501(c)(4)-1(a).
14. Rev. Rul. 81-95, 1981-1 C.B. 332.
15. The IRS used to offer an optional expedited process to certain organizations applying for section 501(c)(4) status. To qualify, organizations must certify that the organization (1) has spent and will continue to spend in future tax years 60% or more of both total expenditures and total time (measured by employee and volunteer hours) on activities that promote social welfare and has spent and will continue to spend 40% or less of both total expenditures and total time (measured by employee and volunteer hours) on activities that promote social welfare as defined by Section 501(c)(4);40% or less on direct or indirect participation or intervention in any political campaign in support of (or opposition to) a candidate for public office. See IRS Letter 5228 (Rev. 9-2013). Note: This expedited process no longer applies to applicants.
16. Raymond Chick and Amy Henchey, Internal Revenue Service, *1995 Exempt Organizations Continuing Professional Education Text,* "Political Organizations and IRC 501(c)(4)" *available at* **https://www.irs.gov/pub/irs-tege/eotopicm95.pdf**.
17. "Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities," 78 Fed. Reg. 71535 (Nov. 29, 2013).
18. I.R.C. § 527(e). *See also* Rev. Rul. 2004-6, 2004-1 C.B. 328 (discussing factors indicating whether an activity qualifies as a political activity).

- Opposition research if shared with the candidate;
- Comparative ratings of candidates;
- Publicizing names of political candidates who support or oppose the organization's position on public issues;
- Membership communications expressly advocating the election or defeat of a candidate; and
- Payment of the administrative and fundraising costs of a political organization.

There are election-related activities that are *not considered political activities* under the IRC. These activities may be conducted freely without affecting a 501(c)(4)'s tax-exempt status if they relate to its social welfare mission. Such activities include voter education and engagement activity, including candidate questionnaires and debates, issue education projects, get-out-the-vote programs, voter protection and voter registration, *as long as they are conducted in a non-partisan manner.*[19] The IRS has published guidance about these and other types of voter education and registration activities, including a Fact Sheet, FS 2006-17 (February 17, 2006). Revenue Rulings 2004-6 and 2007-41 provide guidance on distinguishing political and nonpartisan advocacy communications (see below). In addition to this requirement, there may be federal, state or local campaign finance rules that govern these activities.

Also permissible for 501(c)(4)s are activities such as workshops, publications, and seminars to encourage greater participation in government and politics or better campaign practices.

3. Identifying Political Communications

Distinguishing lobbying communications or other issue advocacy from political communications has become critical for many advocacy organizations, because 501(c)(4) organizations will violate their 501(c)(4) status if they primarily conduct political activities and may be taxed on any such political activities. In contrast, lobbying activities are permitted to be the primary, or even exclusive, activity of a 501(c)(4) entity, and the organization is not taxed on its nonpolitical activities.

Factors tending to indicate that an advocacy communication on a public policy issue is political activity include:[20]

- The communication identifies a candidate for public office;
- The timing of the communication coincides with an electoral campaign;
- The communication targets voters in a particular election;
- The communication identifies a candidate's position on the public policy issue that is the subject of the communication;
- The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and
- The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue. It is not clear from the regulations how many ads must be run to establish the pattern of "an ongoing series of substantially similar advocacy communications," or how a new organization could satisfy this requirement.[21]

19. For more on these rules, see *The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations* (Alliance for Justice, 2010).
20. Rev. Rul. 2004-6, 2004-1 C.B. 328. These factors are not an exhaustive list; rather, the IRS also may examine other factors based on the situation. This revenue ruling includes six sample scenarios that are likely to be encountered by 501(c) organizations. The IRS applies its analysis as to whether the activities in each scenario are likely to be characterized as political activities ("exempt functions").
21. *See* Lloyd H. Mayer, "Political Activities of Tax-Exempt Organizations – Useful Guidance in Rev. Rul. 2004-6," 100 J. Tax'n 180 (2004).

Factors tending to indicate that the advocacy communication is *not a political activity* include:

- The absence of one or more of the factors listed above indicating that the activity is political;
- The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;
- The timing of the communication coincides with a specific event outside the organization's control that the organization hopes to influence, such as a legislative vote or a committee hearing;
- The communication identifies the candidate solely as a government official in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and
- The communication identifies the candidate solely in a list of key cosponsors of the legislation that is the communication's focus.

Many of the factors are ambiguous. Moreover, most situations include a combination of these factors, with some pointing toward classifying an activity as political while others mitigate against that classification. The mere presence of a single factor is not determinative; the IRS examines the facts and circumstances of the activity as a whole. Particularly after the Citizens United decision, which permits corporations to make independent expenditures supporting or opposing candidates, there has been increasing pressure on the IRS to increase its scrutiny of 501(c)(4)s that engage in political activities.[22] For these reasons, 501(c)(4) organizations need to be cautious in how they apply the primary purpose test to these activities.

The following examples are adapted from fact patterns provided in IRS Revenue Ruling 2004-6[23] and modified to apply to PEN, the hypothetical 501(c)(4) organization featured in this guide.

Example 1:

Senators A and B represent Maine in the U.S. Senate, and Senator A (but not Senator B) is up for reelection in 2024. PEN buys full-page newspaper ads in several large Maine newspapers on a regular basis in 2024, urging more spending on the environment, which would require a legislative appropriation. One of the ads, published shortly before the election, stresses the importance of increased federal funding for environmental protection and cites statistics about Maine's environmental problems, but it does not mention Senator A's position on environmental issues. The ad ends with the statement, "Call or write Senator A and Senator B to ask them to support more federal money to protect our environment." The environment has not been raised as an issue distinguishing Senator A from any opponent. At the time when the ad is published, no legislative vote or other major legislative activity is scheduled in the U.S. Senate on changing federal funding for environmental protection.

IRS Analysis:

The circumstances indicate that the expenditure for these ads is a lobbying activity, not a political activity, for PEN. Although PEN's ad identifies Senator A shortly before an election in which that Senator is a candidate, the ad is part of an ongoing series of substantially similar advocacy communications on the same issue during the year. The advertisement identifies both Senator A and Senator B (who is not a candidate in that election), but it does not identify Senator A's position on environmental issues, and the environment has not been raised as an issue distinguishing Senator A from any opponent. Therefore, the ad does nothing to indicate that Senator A's candidacy should be supported or opposed on this issue.

22. *See, e.g.,* http://www.urban.org/urban-wire/there-are-lot-501c4-nonprofit-organizations-most-are-not-political.
23. Rev. Rul. 2004-6, 2004-1 C.B. 328; *see also* Rev. Rul. 2007-41 (providing examples of the types of activities and communications that will be treated as nonpartisan or political based on facts and circumstances for 501(c)(3) organizations; the examples are equally applicable to 501(c)(4) organizations).

Example 2:

Senator C represents Texas in the U.S. Senate and faces a challenge in his party's primary. Shortly before the primary election, PEN buys several full-page ads in Texas newspapers stating that the environment is important to Texans and that S. 24, a bill pending in the U.S. Senate, would clean up air pollution. The ad also states that Texans with asthma would benefit from cleaner air, but that Senator C has opposed similar measures to reduce air pollution in the past. The advertisement ends with the statement, "Call or write Senator C and tell him to vote for S. 24." The environment has not been raised as an issue distinguishing Senator C from any opponent. S. 24 is scheduled for a vote in the U.S. Senate before the election, soon after the date on which the advertisement is published.

IRS Analysis:

Under the facts and circumstances, PEN's advertisement is a lobbying activity. It addresses legislation that PEN is supporting and appears immediately before the U.S. Senate is scheduled to vote on that particular legislation. The candidate identified, Senator C, is a government official in a position to take action on the public policy issue in connection with a specific event (the vote), the timing of which is outside the organization's control. The IRS should consider this to be a bona fide effort to lobby Senator C to vote for the legislation, not to influence the election.

Example 3:

Senator D represents Wyoming in the U.S. Senate. PEN buys full-page newspaper ads in Wyoming that are published repeatedly, beginning shortly before an election in which Senator D is a candidate for reelection. The advertisement is not part of an ongoing series of substantially similar ads by PEN on the same issue. The ads state that a major Wyoming city needs a water treatment plant, but that it cannot be built without federal aid. The ads further state that Senator D has voted in the past year for two bills that would have provided the federal funds needed for the water treatment plant. The ads end with the statement, "Let Senator D know you agree about the need for federal funding for water treatment plants." Federal funding for water treatment has not been raised as an issue distinguishing Senator D from any opponent. At the time when the ads are published, a bill providing federal funding for water treatment has been introduced in the U.S. Senate, but no legislative vote or other major legislative action on the bill is scheduled.

IRS Analysis:

Under the facts and circumstances, the advertisements are a political activity, not a lobbying activity. PEN's ads identify Senator D, appear shortly before an election in which D is a candidate, and target voters in that election. Although federal funding for water treatment plants was not raised as an issue distinguishing Senator D from any opponent, the ads identify Senator D's position on the issue as agreeing with PEN's position, and they are not part of an ongoing series of substantially similar advocacy communications on the same issue. Additionally, the ads do not identify specific legislation and are not timed to coincide with a legislative vote or other major legislative action on the issue. The IRS would consider these ads to be an attempt to influence Senator D's reelection, not a bona fide attempt to conduct grassroots lobbying to influence Senator D's vote on the legislation.

4. Tax on Political Activities

A 501(c)(4) may be subject to a tax on expenditures made for political activities. Under IRC section 527(f), the tax is imposed at the highest corporate rate on the lesser of:

- The organization's annual net investment income (income from interest, dividends, rents, and royalties, and the net gains from sale or exchange of assets, including appreciated securities, minus investment management expenses); or
- The aggregate amount expended on political activities during that year.

A 501(c)(4) is required to report its political expenditures on the Form 990 (see below) and to file an IRS Form 1120-POL if it has $100 or more in both net investment income and political expenditures ("exempt function expenditures"). A 501(c)(4) may pay for certain expenses permitted by the Federal Election Campaign Act ("FECA") and similar state election laws, such as express advocacy communications with "members" and the costs of establishing, administering, and fundraising for a PAC, without incurring a tax.[24] These expenditures do, however, count as political activities in determining the organization's primary purpose.

A 501(c)(4) organization may minimize or avoid this tax on political campaign expenditures by forming a separate segregated fund—either a PAC or a 527 organization—to conduct political activities. It is important to be aware, however, of the consequences of conducting political activities through a political organization, as described in Chapter III.

5. Reporting Political Activities to the IRS

The IRS Form 990 requires a 501(c) organization to report certain information about its political expenditures. The core form, Part IV, line 3 asks whether the reporting organization engaged in "direct or indirect political campaign activities" on behalf of, or in opposition to, candidates for public office.

If the organization engages in independent expenditures, member communications, fundraising, or administrative activities for a separate segregated fund or other exempt function activities, it should respond "yes" to this question and complete Schedule C of the Form 990.

Part I-A, line 1 of Schedule C requests a description of the "direct and indirect political campaign activities" that the 501(c) undertook in the reporting period. The description should include a brief explanation of the political activities undertaken by the 501(c) only, not those of a separate segregated fund or other PAC. If the 501(c) pays for the administrative and/or fundraising costs of its PAC, that should be mentioned in the description. Line 2 asks for the total amount of money spent by the 501(c) for all of these activities. Line 3 requests the total number of hours that volunteers for the organization expended on political activities. Any reasonable method may be used to estimate these hours. The IRS has not provided guidance on how to track volunteer hours. Hours expended on behalf of any related PAC should not be included.

Part I-C asks a series of questions about more limited political activities—only those activities that constitute "exempt function activity" as defined by IRC section 527. The types of expenditures that would be reported on line 1 of this section are independent expenditures and any direct or in-kind contributions made by the 501(c). Expenditures for member communications (see Chapter I, § D(3)), administrative and fundraising costs for a separate segregated fund, and other indirect expenditures should not be reported on this line. Any funds transferred to a political party or political committee, including a separate segregated fund, must be reported on line 2. Finally, the reporting organization must indicate whether it filed a Form 1120-POL and list the name, address, and employer identification number of any political organization to which it made payments, including those "direct and prompt" transfers to its own separate segregated funds. See Chapter IV, § A(4).

24. Treas. Reg. §1.527-6(b)(ii)(3).

D. 501(c)(4) Participation in Federal Elections after Citizens United

FECA regulates the financing of and participation in federal elections. Therefore, any activity that involves spending in connection with a federal election must be reviewed to determine whether it is regulated under the FECA even if it is permitted under tax law. FECA has different standards from the IRC for determining what constitutes electoral activity.

In 2010, the Supreme Court struck down governmental restrictions on corporations, including nonprofits, spending general treasury funds for independent public communications that "expressly advocate" the election or defeat of clearly identified federal candidates and those that qualify as "electioneering communications."[25] (See Chapter I, § D(6) below for discussion of electioneering communications.) Prior to *Citizens United,* virtually all corporations were prohibited under federal law from engaging in express advocacy to the general public.[26] While corporations could spend funds on independent public communications with election-related messages, they could not engage in express advocacy in these communications. They could also communicate with their bona fide members on any subject including express advocacy. (See Chapter 4, § B(7).) The Citizens United decision permits 501(c)(4)s to make independent expenditures without violating FECA but did not change the limits on political activities imposed by the tax rules discussed above.

In October 2014, the FEC revised many of its regulations to reflect the decision in *Citizens United.*[27] While these changes help to clarify a number of the issues raised by Citizens United, they leave other important questions unresolved. The following sections describe activities in which corporations may engage and the associated reporting requirements.

1. Corporate Contributions to Federal Candidates Are Prohibited

Even after *Citizens United,* the FECA prohibits corporations, including nonprofit corporations,[28] from making contributions with general treasury funds[29] to support the election or defeat of a federal candidate.[30] Contributions include direct and indirect payments (including distributions, loans, advances, deposits, or gifts) of money, services, or **anything of value** that go to benefit any candidate, political committee, or party organization.[31]

25. At issue in the case was the attempt by Citizens United, a 501(c)(4) organization, to make its documentary film Hillary: The Movie, already screened in public theaters, available for home consumption through a video-on-demand provider via cable and satellite television technology. Citizens United also wanted to promote the film in television advertisements. Unlike theatrical and Internet distribution, the proposed televising of the film and the ads implicated the electioneering communications provisions of the Bipartisan Campaign Reform Act (BCRA), which prohibit corporate (and union) expenditures for certain broadcast communications that "refer" to a federal candidate and run within 30 days of a primary or 60 days of a general election. The majority found that the film was the "functional equivalent of express advocacy" because there was "no reasonable interpretation" other than that it was an appeal to vote against Hillary Clinton for the office of President. Accordingly, BCRA prohibited the televising of the film.
26. Prior to the Supreme Court's decision in Citizens United, only a "qualified nonprofit corporation" (QNC) was permitted to make independent expenditures and electioneering communications that were the "functional equivalent" of express advocacy using corporate treasury funds. Under the regulations, an incorporated 501(c)(4) that meets the following stringent criteria may be treated as a QNC: (1) it may not engage in any business activities. Business activities include income-producing activities such as the provision of goods or services, advertising, or promotional activity. They do not include fundraising activities for contributions and membership dues; (2) it may not have shareholders or other persons, other than employees or creditors, who are affiliated with the organization in a way that would allow them to make a claim on the organization's assets or earnings or offered or receive any benefit that creates a disincentive for them to disassociate themselves from the corporation; and (3) it may not be established by or accept contributions from any business corporation or labor organization. The 501(c)(4) must be able to show that it has received no direct or indirect donations from these sources as demonstrated by accounting records or, if that is not possible, a written policy against accepting these donations. This rule for independent expenditures by QNCs was an exception to the general FECA prohibition of the use of corporate funds to influence the election or defeat of a clearly identified candidate. In light of the decision in Citizens United, QNC status has little or no significance because all corporations may now conduct independent expenditures.
27. *See* 79 Fed. Reg. 62797 (Oct. 21, 2014) (FEC Explanation and Justification on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations).
28. In most cases, this guide assumes that 501(c)(4)s have chosen to incorporate rather than exist as unincorporated associations. Although it is possible to become a 501(c)(4) without incorporating, 501(c)(4)s that expect to work with 501(c)(3)s may be better off incorporating, because doing so helps to establish the legal separation between the organizations required by federal tax law. For more information about political activity by unincorporated entities, see Chapter I, § F.
29. "General treasury funds" (or simply "corporate funds") are funds that the 501(c)(4) receives from voluntary contributions by members or supporters of the corporation or from revenue-producing activities. The term does not include contributions to a 501(c)(4)'s PAC.
30. *See* 52 U.S.C. § 30118.
31. *See* 52 U.S.C. § 30101(8).

Under this general rule, a nonprofit corporation such as a 501(c)(4) may not:

- Contribute directly to a federal candidate, a Federal PAC (that is not a Super PAC), or a political party; or
- Make in-kind contributions to a federal candidate, political party, or Federal PAC (that is not a Super PAC) by providing goods or services at no charge or at less than fair market value, including, but not limited to, mailing, membership, or donor lists; paid staff; travel and living expenses; radio or television ads; or coordinated communications. (For a more detailed discussion of coordination see Chapter I, § E)

A 501(c)(4) may contribute to a Super PAC. See Chapter V.

2. Independent Expenditures Are Permitted Under *Citizens United*

After *Citizens United,* corporations, including 501(c)(4) organizations, may pay for public communications that expressly advocate the election or defeat of a clearly identified federal candidate so long as the preparation, contents and distribution of the communications are not coordinated with any candidate, candidate committee or political party. These communications include broadcast, cable or satellite communications, outdoor advertising (such as billboards), magazine and newspaper ads, mass mailings, or telephone banks, as well as other forms of general public political advertising. The term "public communications" does not include Internet communications except for those placed or promoted for a fee on another person's website, digital device, application, or advertising platform.[32] See Section E, *infra,* for additional discussion of independent expenditures and "public communications."

In determining if a communication is express advocacy, the FEC considers whether:

- A communication uses phrases to urge the election or defeat of a clearly identified candidate, such as "vote for", "defeat," or "support your Democratic nominee." Other examples of express advocacy would include such phrases as "vote Obama", "vote pro-choice" with a list of names or photographs of candidates supporting or opposing choice, or "reject the incumbent"[33]; or
- The communication as a whole, considering its proximity to an election, could only be interpreted by a reasonable person as urging the election or defeat of a candidate "because (1) the electoral portion of the communication is unmistakable, unambiguous and suggestive of only one meaning; and (2) reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates."[34]

Independent expenditures are not subject to campaign finance limits. However, to be "independent," the expenditures must be made *without any cooperation, consultation, or request* from candidates, their authorized committee, or a political party. Cooperation or "coordination" exists when the 501(c)(4) making the independent expenditure or electioneering communication has interacted with the campaign in particular ways. One common way for an expenditure to be impermissibly "coordinated" occurs when an organization airs a television or radio ad at the request or suggestion of a candidate or campaign. Cooperation will also exist if the organization has substantial discussions with the campaign about an expenditure or if the organization informs the campaign about a planned communication related to the campaign and the campaign signals its agreement with the suggestion to make that communication. (See Section E of this Chapter for a more detailed discussion of coordination.)

32. 11 C.F.R. § 100.26; *see also* Internet Communication Disclaimers and Definition of "Public Communication," 87 Fed. Reg. 77467 (Dec. 19, 2022); Technological Modernization, 89 Fed. Reg. 196 (Jan. 2, 2024).
33. 1 C.F.R. § 100.22(a).
34. 11 C.F.R. § 100.22(b). Note that the second test (so called Part b) – viewing the communication as a whole – has had a controversial history of enforcement. Decisions including *Federal Election Commission v. Wisconsin Right to Life, Inc.,* 551 U.S. 449 (2007); *The Real Truth about Abortion v FEC,* 681 F.3d 544 (4th Cir. 2012), *McConnell v. FEC,* 540 U.S. 93 (2003), *Citizens United,* and others support the position that express advocacy may be interpreted more broadly to include communications that do not contain the magic words. For a discussion of this topic *See, e.g.,* McGann Statement of Reasons, Softer Voices, FEC MUR 5831. *See also* FEC Advisory Opinion 2004-33, FEC Advisory Opinion 2012-11, and FEC Advisory Opinion 2012-27.

a. FEC reporting requirements for corporations making independent expenditures

While corporations may generally make independent expenditures without organizing and registering a PAC (so long as these activities are not the corporation's "major purpose"), they are required to report[35] aggregate independent expenditures over $250 relating to a specific race on FEC Form 5 ("Report of Independent Expenditures Made and Contributions Received"). The report, filed quarterly, must list every individual and entity that was paid more than $200 in the aggregate during a calendar year in connection with independent expenditures, the amount paid and the purpose of the disbursement. In addition, the quarterly report must disclose certain contributor information. The report must list each person (other than a political committee) who made a contribution or contributions to the reporting corporation during the reporting period whose contribution or contributions had aggregated in excess of $200 within the calendar year (since January 1), together with the date and amount of such contribution or contributions, and indicate which of these persons made a contribution in excess of $200 to the corporation for the purpose of furthering any independent expenditure.[36]

A "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. So, the organization does not have to report all of the donations it has received, but it will have to determine which receipts meet this description. Without further FEC or judicial guidance, a group should consider as to each receipt (i) the language and context of its solicitation, (ii) the donor's expressed intent, and (iii) any other factors that may bear on identifying the purposes of the donation.[37]

In addition to the periodic quarterly reports, corporations must report within 48 hours of the date of dissemination of the communication whenever total independent expenditures relating to a specific race in an election cycle reach $10,000 in the aggregate.[38] Within the final 20 days before an election, the threshold amount drops to $1,000, and the reporting period is reduced to 24 hours.[39] Contracts obligating funds, as well as actual disbursements, must be included in all reports.[40] Unlike the quarterly reports, 24- and 48-hour Form 5 independent expenditure reports do not require any identification of contributors.

If a 501(c)(4) makes a disbursement for express advocacy communications directed both to its restricted class and outside the restricted class, such costs may be allocated for reporting purposes under certain circumstances.[41] (See Chapter 2 for discussion of allocation.)

b. Special Note: Voter registration and get-out-the-vote activities directed to the general public

The FEC's regulations address various types of voter registration and get-out-the-vote (GOTV) activities directed to the general public, each of which is discussed below. (Voter registration and GOTV activities directed to a 501(c)(4)'s restricted class are discussed in Section D(3) of this Chapter.) Given the complexity of these regulations and the confusion regarding the FEC's position on certain types of voter registration and GOTV expenses, it is advisable to consult legal counsel knowledgeable in this area.

The regulations distinguish between voter registration and GOTV activities that are restricted to communications and those that include other assistance such as transportation to the polls, which the FEC refers to as "drives."

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35. See 11 C.F.R. § 104.4(e).
36. 11 C.F.R. § 109.10(e)(1)(VI); *CREW v. FEC,* 316 F. Supp. 3d 349 (D.D.C. 2018); FEC, "FEC provides guidance following U.S. District Court decision in *CREW v. FEC,* 316 F. Supp. 3d 349 (D.D.C. 2018)," *available at* https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/.
37. *CREW v. FEC,* 316 F. Supp. 3d 349 (D.D.C. 2018); FEC, "FEC provides guidance following U.S. District Court decision in *CREW v. FEC,* 316 F. Supp. 3d 349 (D.D.C. 2018)," *available at* https://www.fec.gov/updates/fec-provides-guidance-following-us-district-court-decision-crew-v-fec-316-f-supp-3d-349-ddc-2018/.
38. 11 C.F.R. § 109.10(c); Expenditures supporting Candidate A and those made to oppose Candidate A's opponent are added together to count toward the threshold. However, expenditures to support a Senate candidate and a House candidate in the same location are not aggregated together to count toward the threshold, nor are expenditures made in a candidate's primary election aggregated with general election expenditures for the same candidate.
39. 11 C.F.R. § 109.10(d).
40. 11 C.F.R. § 104.4(f).
41. 11 C.F.R. § 114.3(b).

Voter Registration and GOTV – Communications Only

- A 501(c)(4), or other entity that is permitted to make independent expenditures, may distribute voter registration and GOTV communications that expressly advocate the election or defeat of a federal candidate, so long as the communications are not coordinated with any candidate, campaign, or political party or their agents.[42] The costs of these communications are independent expenditures and must be reported as discussed above.
- It appears to be the FEC's position that costs related to voter registration and GOTV communications to the general public that (1) do not expressly advocate the election or defeat of a clearly identified candidate or candidates of a clearly identified political party and (2) are not coordinated with any candidate or political party (or their agents) are not treated as either independent expenditures or contributions to a campaign or political party and, therefore, they are not subject to FEC reporting requirements.[43]
- Similarly, so long as there is no express advocacy or coordination, a 501(c)(4) may distribute to the general public informational materials about registration and voting that have been produced by official election administrators. These materials include, for example, official registration-by-mail forms and absentee ballots, subject to applicable state law. The related costs are not independent expenditures or contributions.[44]
- A 501(c)(4) may also donate funds to state or local government agencies that administer elections to help in offsetting the cost of printing or distributing forms or information on registration or voting. It is important to check state and local law to determine if there is a "private funding ban" that would restrict or outright prohibit these grants. At the time of publication, almost half of the states and some local jurisdictions have laws that would prohibit this funding.

The regulations do not address the treatment of other types of voter registration or GOTV communications that do not fit within these descriptions, such as communications that are coordinated with a candidate, campaign or political party, but do not contain express advocacy. Or those that are targeted to voters who have been identified based on their support for a particular candidate or political party but do not contain express advocacy. Given this lack of clarity, it is advisable to seek legal counsel with expertise in this area.

Voter Registration and GOTV "Drives"

- Voter registration or GOTV "drives" that include the provision of services to voters such as transportation to a place of registration or to the polls, in addition to distribution of express advocacy communications, raise additional issues. The FEC has historically treated voter drives that include transportation or other "noncommunicative" expenditures more restrictively than communication-only voter registration and GOTV activity. The FEC's regulations now treat voter registration and GOTV drives that include express advocacy and are not coordinated as independent expenditures that a 501(c)(4) may engage in and that must be reported on FEC Form 5.[45]
- In certain circumstances, the costs of voter registration and GOTV drives that provide transportation to individuals to a place to register or to the polls are not treated as contributions or independent expenditures so long as the drive does not include express advocacy communications. The regulations covering these activities leave a number of questions unanswered; therefore, consulting counsel familiar with these rules is important early in the planning process.

Note: An organization may not give money or any other benefit to individuals as an incentive or reward for registering to vote or for voting.[46] Most states have additional rules governing voter registration and GOTV that should be reviewed prior to conducting any such program.

42. 11 C.F.R. § 114.4(c)(1).
43. 11 C.F.R. § 114.3(c)(2).
44. 11 C.F.R. § 114.3(c)(3).
45. See 11 C.F.R. 114.4(d).
46. See 18 U.S.C. § 597.

3. Communications to Restricted Class

Under FECA, a 501(c)(4) is permitted to expressly advocate the election or defeat of clearly identified federal candidates in communications directed to its members, executive and administrative personnel, and their families ("Restricted Class").[47] Prior to Citizens United, membership communications were the only way a corporation could engage in express advocacy communications; now, corporations may engage in express advocacy with the general public so long as the communications are not coordinated and they are reported on FEC Form 5. Nevertheless, "member communications" remain an important option even after Citizens United because they may be coordinated with the candidate or political party that is the subject of the communication. In addition, the expenses associated with communications to the Restricted Class are not subject to the political expenditures tax under IRC section 527. See § D(3) of this Chapter.

Under this exception:

- Communications must be strictly limited to the Restricted Class which includes bona fide members, executive and administrative personnel, and their families. (See Chapter IV, § B(7) for a more detailed discussion of members and membership organizations.)
- Communications to the Restricted Class may be coordinated with candidates, campaign staff, and political parties.
- Member communications may include phone banks, letters, meetings, publications to members, a members-only Website, or any other correspondence that can be directed specifically to individual members. If the communication is also circulated beyond the membership, the cost of the distribution outside the membership or Restricted Class would be considered a contribution or independent expenditure, depending on whether or not the communication is coordinated with a candidate or political party.
- The communications must state the organization's view and must not simply republish a candidate's campaign materials.
- Member communications may expressly advocate the election or defeat of one or more clearly identified candidates and may encourage members of the Restricted Class to contribute or volunteer for such candidates so long as the organization does not facilitate the contribution or volunteer activity. They may also suggest registration with a particular political party.

a. Endorsements to the Restricted Class Coordinated with a Candidate

If a 501(c)(4) wishes to endorse a candidate and coordinate that announcement with the candidate's campaign, the endorsement may only be made through a membership communication. The endorsement may be announced in the organization's newsletter or other publication, as long as the distribution is restricted to the Restricted Class and a small number of nonmembers. There is no clear rule as to what constitutes a "small number" of nonmembers, but the FEC has reviewed in some specific cases the absolute number of nonmembers receiving the publication as well as the percentage of the total circulation that they represent. For example, the FEC ruled that 13.7 percent (or more) of total circulation to nonmembers is more than a small number.[48]

Note: Endorsements announced to the general public differ from endorsements to the Restricted Class because general public communications must comply with the reporting and disclaimer rules governing independent expenditures. (See Chapter III, § C(2).) Any public announcement through a press conference or any other means, however, may not be coordinated with the candidate or the campaign. Therefore, the endorsed candidate may not appear or be consulted about the event.

b. Candidate Appearances before the Restricted Class

A 501(c)(4) organization may also invite a candidate, a candidate's representatives, and political party representatives to address its membership without making an impermissible contribution.[49]

47. Under certain limited circumstances, a corporation may also solicit contributions from nonexecutive or non-administrative employees. Twice per year, a corporation or its SSF may solicit employees who do not qualify as executive and administrative personnel, such as members of labor unions represented in the corporation. *See* 11 C.F.R. § 114.6.
48. 11 C.F.R. § 114.4(c)(1).
49. 11 C.F.R. § 114.3(c)(2).

There is no requirement to invite all candidates. The organization may invite only the candidate it supports or favors or the representative of one political party while excluding all others.

The sponsoring organization may announce its support for the candidate or party at the membership event, and it may urge members to contribute, as long as the organization does not facilitate support by having an officer, director or other representative of the corporation collect the contributions for that candidate.[50] The candidate or representative may solicit and accept contributions for the campaign or political party before, during, or after the event.

Media representatives, including newspaper and broadcast reporters, may be invited to the event. Advance information regarding the appearance may be sent to the media through a press advisory. In addition, a limited number of invited or honored guests other than the organization's membership and the staff required to oversee the meeting may also attend the candidate's appearance. If more than one candidate for the same office (or their representatives) or a party representative addresses the membership, and if the media are invited to one of those individuals' appearances, the organization must allow the media equal access to cover all of the appearances.

If an organization invites its employees, other than administrative and executive personnel and their families, to attend an appearance by a candidate or political party representative, additional restrictions apply.[51] First, candidates may advocate their election, but the organization, its PAC, and its employees may not. Second, while candidates may solicit funds for their campaigns during an appearance, they may not accept contributions at the event, although they may give the audience campaign materials and preaddressed envelopes for contributions. Third, if the organization receives a request from another candidate seeking the same office, it must make equal time and a similar location available to any candidate who wishes to appear.

Finally, if a party representative is permitted to address employees, the organization must give equal opportunity to representatives of other parties. As with member-only events, the organization must allow the media to cover candidates' appearances on an equal basis.

While the organization may consult the candidate on the structure, format, and timing of the appearance, if the organization is planning to conduct independent expenditures in the future it should not request information on or discuss the candidate's campaign plans, projects, or needs beyond the scope of the appearance. The discussions that representatives of the sponsoring organization have with the campaign provide the "opportunity" for coordination and these more extensive discussions may run afoul of the coordination rules discussed in Chapter I, § E.

c. Joint Membership Events

Two or more membership organizations may conduct a joint conference call or meeting of their memberships with a federal candidate and split the costs on an actual or closely approximated pro-rata basis as long as the organizations do not advocate the candidate's election during the event. The FEC ruled that three incorporated 501(c) organizations could jointly sponsor a series of teleconferences with presidential candidates in which participation was limited to the respective members of the organizations.[52] Candidates could say anything they wished, solicit contributions, and ask participants to volunteer for their campaigns. The FEC conditioned its approval on each organization's paying a pro-rata share of the costs based on the number of its members who participated. In this way, no organization would be subsidizing the costs of candidate appearances to a Restricted Class other than its own.

d. Voter Registration and GOTV Communications and Drives Involving the Restricted Class[53]

A 501(c)(4) may send voter registration and GOTV communications that include express advocacy to its Restricted Class. The costs are reportable as membership communications on Form 7.

50. 11 C.F.R. § 114.3(c)(3).
51. 11 C.F.R. § 114.4(b).
52. FEC Advisory Opinion 2007-14.
53. 11 C.F.R. § 114.3(c)(4).

If the voter registration and GOTV activity includes provision of transportation or disbursements for "noncommunicative" expenses to assist an individual to register or vote, it is the FEC's position that the costs of such a drive must be treated differently though the regulations leave open many unanswered questions and it is advisable to consult legal counsel when planning these activities. It appears that the FEC's position is as follows:

- If the drive is "nonpartisan," it may be coordinated with a candidate, candidate's committee or political party similar to other types of membership communications. To be nonpartisan, the drive must be conducted so that information and other assistance regarding registration and voting, including any transportation, are not withheld or refused on the basis of support for or opposition to particular candidates or a political party; the costs are not contributions or expenditures for reporting purposes and may be reported as membership communications on FEC Form 7.
- If the drive is not "nonpartisan" then the activity may not be coordinated with a candidate, candidate's committee or political party, unlike other membership communications which generally may be coordinated.

e. Reporting Expenditures for Member Communications

A 501(c)(4) must report all direct expenditures made for membership communications that expressly advocate the election or defeat of a clearly identified candidate if the aggregate costs exceed $2,000 per election for all federal candidates in the election.[54] There is one exception to this rule: the costs of communications primarily devoted to subjects other than express advocacy, such as a newsletter, do not have to be reported.[55] (See Example 4 below.)

Quarterly and pre-general election reports (using FEC Form 7, "Report of Communication Costs by Corporations and Membership Organizations") are filed with the FEC covering election years. Costs are aggregated for each election for all federal candidates running in that election; there is a separate limit for all primary, general, and special elections. The report requires an organization to identify the candidate(s) that the communication benefited or opposed. If a communication identifies more than one candidate, the total costs may be allocated among the candidates based on the space or time devoted to each candidate relative to the overall communication.

Example 1:

PEN, a 501(c)(4), spends $50,000 to write, print, and distribute a mailing sent only to its members, urging them to reelect the President and touting his strong environmental record and the promises he has made to continue making progress in his second term. PEN must report the cost of the mailer on FEC Form 7, identifying the dates of the communication, the type of communication, the candidate supported, and the cost of the communication.

Example 2:

PEN spends $50,000 to write, print, and distribute a mailing sent only to its members. Half of each mail piece is dedicated to supporting the President's reelection; the other half of each mailer focuses on urging members to vote for the pro-environment candidate in their district. PEN publishes five different versions of this mailer, targeted at five congressional districts. The mailer is allocable between the President and the five congressional candidates. PEN must file FEC Form 7. In doing so PEN should report $25,000 spent to support the President and $5,000 for each of the five congressional candidates.

54. 11 C.F.R. § 104.6.
55. 11 C.F.R. § 104.6(a).

Example 3:

PEN has a newsletter that is distributed widely to members and the general public. PEN lists candidates across the country whom PEN endorses as "pro-environment." PEN has not coordinated with any candidate or candidate's committee in preparing or distributing the newsletter. PEN is permitted to send these communications, and the costs of the newsletter may be allocated between membership communications and independent expenditures.

Example 4:

PEN publishes a monthly magazine for its members on environmental issues and related topics. The October issue also carries an article about endorsements of candidates for Congress and President. The costs associated with the endorsement article do not have to be reported because the publication is primarily devoted to other topics.

Special Note on Allocating Costs for Express Advocacy Communications Disseminated to both the Restricted Class and the General Public:
A corporation may allocate the costs of express advocacy communications that are specially targeted to known recipients in the Restricted Class such as telephone, direct mail, and email communications since the recipients are generally known and can be identified either as members of the Restricted Class or as members of the general public.[56] In this case, the costs associated with the communications to the general public are reported on Form 5, discussed above, and those associated with communications to the Restricted Class are reported on Form 7. In contrast, it is the FEC's position that communications such as broadcast, newspaper, Internet, and outdoor advertising cannot be suitably targeted, since the recipients are not readily identifiable.

For such communications, the entire cost should be reported as an independent expenditure on Form 5 even if the organization is aware that members of the Restricted Class are likely to have received the communication.

4. Events with Candidates Targeted at the General Public

As a general rule, corporations may not sponsor candidate campaign appearances before the general public because these events are in-kind contributions to the candidate. This general rule does not apply, however, in the case of candidate debates or when the event is not campaign related as discussed below.

a. Candidate Debates

The FEC's regulations provide that a 501(c)(4) may conduct federal candidate debates that are open to the public, but only if the organization does not endorse, support, or oppose any candidate or political party.[57] A corporation or labor union may donate funds to support a debate conducted by the 501(c)(4) organization.

At least two candidates must be included in the scheduled debate.[58] The candidates must meet face to face; they may not be scheduled to speak at separate or sequential appearances.[59] If circumstances beyond the organization's control arise, such as bad weather preventing one candidate from showing up, the organization is not required to cancel the debate.[60]

The debate may not be designed or conducted to favor one candidate over another. The sponsoring organization must use pre-established, objective criteria for selecting candidates to participate if there are too many to accommodate at a single debate. Written criteria should be presented to the candidates. The sponsoring organization may not express support for or opposition to or solicit funds for any candidate or political party at, or in conjunction with, the debate.

56. 11 C.F.R. § 114.5(b); 79 Fed. Reg. 62797 at 62802.
57. While the regulations continue to indicate that corporations that endorse, support, or oppose candidates may not hold candidate debates, it is unclear whether this regulation is constitutional.
58. This two-candidate minimum is required by the FEC, not the IRS. See 11 C.F.R. § 110.13(b)(1).
59. *Cf.* FEC Advisory Opinion 1996-11 (allowing an organization to avoid hosting a candidate's opponent only when the candidate was invited based on his legislative role and when the organization does not engage in express advocacy for the candidate during the appearance).
60. Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 Fed. Reg. 64260, 64262 (Dec. 14, 1995).

b. Non-Electoral Appearances by Officeholders

A 501(c)(4) may also sponsor events for the general public at which one or more officeholders appear, even if those appearing are also candidates, as long as the appearance is not campaign-related.[61] The rules on candidate debates do not apply to these events. It must be clear that, although the speakers are candidates for office, they are appearing in their capacity as officeholders (or in some other non-candidate role). The 501(c)(4) should make reasonable efforts to have speakers address issues, not campaign activities or rhetoric. Neither the organization nor the candidate may advocate the election or defeat of any candidate or raise funds for a candidate or party. There is no requirement, in this case, to offer other candidates the opportunity to speak. References to the speaker's campaign or to the campaign or the qualifications of other candidates in the same race could cause the appearance to be considered campaign-related.

5. Use of 501(c)(4) Facilities, Resources, and Staff

A 501(c)(4) may allow a federal candidate, political party, or political committee to use its meeting rooms on the same terms on which they are customarily made available to clubs or to civic or community organizations.[62] In this case, however, the 501(c)(4) is required to make the room available to any other candidate on the same terms.
A 501(c)(4) may rent or sell its membership lists to a campaign or political committee at fair market value or may exchange its lists for a list of approximately the same value. The candidate or political committee must pay for the use of these resources *in advance*.

a. Volunteer Activities

Members, staff, and directors of a 501(c)(4) may volunteer to support and work for federal candidates, as long as the work is on their own time and in an individual capacity. However, they may only make "occasional, isolated, or incidental use" of the organization's facilities for these volunteer activities. "Occasional, isolated, or incidental" generally means that the individual's use during working hours does not prevent employees from completing their normal amount of work.[63] Employees may, for example, use office phones to organize members to volunteer for a campaign on an "incidental" basis. The regulations provide a "safe harbor" for activity that does not exceed one hour per week or four hours per month. Thus, individuals are permitted, during or outside working hours, to use corporate or union facilities to work on behalf of a federal candidate whom they support as long as:

- The corporation does not make the availability of the equipment conditional on its use for political activity or in support of or opposition to any particular candidate or political party; and
- The individual reimburses the corporation to the extent that the overhead or operating costs of the corporation are increased. The reimbursement is an in-kind contribution by the volunteer to the candidate who benefits from the volunteer work.[64]

b. Exemption for Use of Computer Equipment

The FEC regulations provide an additional exemption for individual volunteer activity conducted on the Internet using an employer's computer equipment. An individual's activity will be treated as "occasional, isolated, or incidental," even if it is in excess of one hour a week or four hours per month, as long as:

- The employee completes the normal amount of ordinarily expected work;
- The use does not increase the overhead or operating costs of the corporation; and
- The activity is not performed under coercion by the employer.[65]

c. Corporate-Sponsored Activities

The rules for volunteer activities do not apply to corporate-sponsored activities, such as those conducted by senior management to further the interests of their employing organization. The FEC's regulations require that this use of corporate resources must be paid for in advance by a Federal PAC, the employees (within their lawful contribution limit), or the campaign of the candidate benefiting from the activity.[66] All advance payments must be at full fair market value.

61. *See* FEC Advisory Opinions 2004-14; 1999-2; 1996-11; 1992-6.
62. 11 C.F.R. § 114.13.
63. 11 C.F.R. § 114.9(a)(1).
64. 11 C.F.R. § 114.9(a)(1).
65. 11 C.F.R. § 114.9(a)(2).
66. *See* Advisory Opinion 1998-16; 11 C.F.R. § 114.2(f)(2).

For Federal PACs that frequently use the facilities or staff of a connected corporation, it is often simpler to have the PAC advance lump sums to the corporation and draw down these funds as necessary. For example, frequently organizations want to send staff to work on specific campaigns for candidates whom they have endorsed. Providing these services is an in-kind contribution to the candidate's campaign. The Federal PAC must make a payment to the corporation that employs the staff in advance for salary, benefits, and any other associated costs. The Federal PAC may advance a lump sum to the corporation, and the corporation may draw from that payment to cover the amount of the salary and benefits that the employees earn. Similarly, if the Federal PAC wants to use a meeting room in the corporate facilities to host a fundraiser for a federal candidate, the PAC must pay fair market value in advance of the event for the use of that room.

6. Electioneering Communications

a. Basic Rules

Corporations may air certain broadcast communications known as "electioneering communications."[67] Electioneering communications are targeted[68] broadcast ads (TV, radio, cable, and satellite) aired within 30 days of a primary or 60 days of a general election that mentions the name of a federal candidate. Although the Bipartisan Campaign Reform Act of 2002 (BCRA) prohibited corporations and unions from using general treasury funds for "electioneering communications," the Supreme Court in FEC v. Wisconsin Right to Life ruled that the blackout period was unconstitutional unless an ad includes words which are the "functional equivalent" of express advocacy, meaning they are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[69] Subsequently, the Court ruled in Citizens United that a corporation may engage in electioneering communications including those that are the functional equivalent of express advocacy as long as they are not coordinated.

Therefore, independent electioneering communications are no longer restricted in any manner — corporations and unions may engage in electioneering communications — but are subject to -reporting requirements.[70]

b. Reporting Electioneering Communications

If an organization spends an aggregate of $10,000 to produce and air electioneering communications, the group must report those expenditures on FEC Form 9 ("24-Hour Notice of Disbursements/ Obligations for Electioneering Communications") within 24 hours of when the advertisement first airs.[71] Each additional time that the organization aggregates another $10,000 in electioneering communications spending during a calendar year, it must file another report within 24 hours. Unlike the 48-hour reports for independent expenditures (see above), the $10,000 threshold for electioneering communications is triggered by the aggregate of spending on all electioneering communications for all elections and candidates within a calendar year; it is not based on spending for each candidate and election separately.

The group must report the amount of each disbursement or amount obligated of more than $200 to produce or air the ad during the period covered. In addition to reporting the money that it spent on the ads, the group whose expenditures trigger 24-hour reporting for electioneering communications must disclose the names and addresses of each of its donors who contributed an aggregate of $1,000 or more to the group since January 1 of the preceding calendar year for the purpose of furthering electioneering communications.[72] However, if the organization instead sets up a separate account to make electioneering communications, it must disclose only the donors to that account who contributed more than $1,000 since January 1 of the previous year.

67. 11 C.F.R. § 100.29.
68. "Targeted" to an electorate means that the broadcast advertisement can be received by more than 50,000 people in the voting district of the candidate identified in the ad (e.g., the state for a Senate candidate, the congressional district for a House candidate, or a state with a presidential primary for a presidential candidate). See 11 C.F.R. § 100.29(b)(5)
69. *FEC v. Wisconsin Right to Life, Inc.,* 551 U.S. 449 (2007).
70. *Citizens United v. FEC,* 558 U.S. 310 (2010).
71. 11 C.F.R. §§ 104.20, 114.10(b).
72. 11 C.F.R. § 104.20(c)(8). *See also Center for Individual Freedom v. Van Hollen,* 694 F.3d 108 (D.C. Cir. 2012).

7. Disclaimers for Independent Expenditures and Electioneering Communications

All public communications paid for by 501(c)(4) organizations that expressly advocate the election or defeat of a clearly identified federal candidate, as well as all electioneering communications, must carry a disclaimer stating who paid for and authorized the communication.[73] A public communication includes any communication by means of broadcast, cable, or satellite; newspaper or magazine ad; billboard or mass mailing; phone bank to the general public; or other form of general public political advertising. General public political advertising does not include communications over the Internet other than communications placed or promoted for a fee (such as pop-up and other types of ads) on another person's website, digital device, application, or advertising platform.[74] (For disclaimer requirements for federal political committees, see Chapter III, § F.)

A "membership communication" sent by a membership organization to its Restricted Class does not require a disclaimer. In addition, there is an exception for communications placed on "[b]umper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed."[75] Nor are disclaimers required for "[s]kywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable."

The disclaimers must state the organization's full name and permanent street address, telephone number, or web address, and the fact that the communication is or is not authorized by any candidate or campaign.

Disclaimers must be "clear and conspicuous" in order to give the viewer, listener, or reader adequate notice of the entity paying for and authorizing the communication.

The disclaimer must not be difficult to read or hear, or presented in such a way that it could be easily overlooked. In a written communication, it must be contained in a box, printed with reasonable contrast, and set apart from the rest of the communication. A disclaimer in 12-point font size satisfies the requirement when used in materials (such as signs, posters, and newspapers) that are no larger than two by three feet.

Example:

"Paid for by Protect the Environment Now, www.pen.org [or street address or phone number], and not authorized by any candidate or candidate's committee."

Phone banks: Live caller phone banks to the general public — defined as more than 500 substantially similar phone calls within a 30-day period to individuals other than a group's members[76] — must include a disclaimer. The caller must identify the name of the entity paying for the call and whether or not the call is authorized by a candidate. To be clear and conspicuous, it must be delivered in a manner that is not hard to hear (either because it is not audible or because it is stated too quickly). It is not clear whether a caller needs to state the complete disclaimer at the beginning of the phone call or whether it is acceptable to provide some of the information at the end of the conversation. (See below for special rules governing robocalls, autodialed calls and robotexts).

Example:

"This call is paid for by Protect the Environment Now and is not authorized by any candidate or candidate's committee. You can learn more about PEN at our Website, www.pen.org."

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73. 11 C.F.R. § 110.11(a)(2). Note that, while a corporation must run a disclaimer only on electioneering communications and "public communications" that expressly advocate the election or defeat of a clearly identified candidate, PACs are required to provide disclaimers on public communications as well as electronic mail of more than 500 substantially similar communications and all Internet websites available to the general public.
74. 11 C.F.R. § 100.26; *see also* Internet Communication Disclaimers and Definition of "Public Communication," 87 Fed. Reg. 77467, 77470 (Dec. 19, 2022); Technological Modernization, 89 Fed. Reg. 196, 210 (Jan. 2, 2024).
75. 11 C.F.R. § 110.11(f)(1)(i) (the "small items exception"); 11 C.F.R. § 110.11(f)(1)(ii) (the "impracticable exception"). See also FEC Advisory Opinions 2002–09 (Target Wireless) and 2010-19 (Google).
76. 11 C.F.R. § 100.28.

Internet public communications: The FEC has issued regulations regarding the disclaimer requirements that apply to "internet public communications," which are public communications over the internet placed or promoted *for a fee* on another person's website, digital device, application, or advertising platform, and provided further clarification about what types of communications fall within that definition.[77]

A public communication is considered promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform. The FEC clarified that a "boosted" post, such as where an organization posts a communication that expressly advocates the election of a federal candidate for free on a social media platform and then pays the platform to boost the post's viewership, qualifies as a "public communication" and "internet public communication."[78] However, the Commission also clarified that certain types of communications where an individual is paid to create or share political content are not considered "internet public communications."[79] For example, if an organization posts a video that expressly advocates the election of a federal candidate for free on a social media platform and then pays an individual to post that video on their own social media page to share with their followers, that is not a "public communication" or "internet public communication." Similarly, if an organization pays an individual to create and post a communication online for the individual's own audience, that is also not a "public communication" or "internet public communication."

Internet public communications by a 501(c)(4) that expressly advocate the election or defeat of a federal candidate require a disclaimer. An internet public communication with text or graphic components must include the required disclaimer in a manner that is fully viewable (such that the full disclaimer can be viewed without taking any action) and clearly readable, with a reasonable degree of color contrast.

A disclaimer that appears in letters at least as large as the majority of other text in the communication satisfies the requirement to be "clearly readable." A disclaimer satisfies the requirement to have a reasonable degree of color contrast if it is displayed in black text on a white background or if the degree of color contrast is no less than the color contrast between the background and the largest text used in the communication.

If a disclaimer is displayed in a video, it must be visible for at least four seconds and appear without the viewer taking any action. An audio-only communication must include the disclaimer in the audio. (Note that video and audio internet public communications do not require the additional disclaimer required for broadcast communications described below).

In recognition of the limited size of many online advertisements, the new regulations allow for the use of an "adapted disclaimer" where the full required disclaimer cannot be provided or would occupy more than twenty-five percent of the communication due to character or space constraints intrinsic to the advertising product or medium. An adapted disclaimer is a clear statement that the communication is paid for, identifies the organization paying for the communication using either their full name or a commonly understood abbreviation or acronym by which it is known, and is accompanied by an "indicator" and a "mechanism."[80]

77. 11 C.F.R. § 110.11(c)(5), (g); *see also* Internet Communication Disclaimers and Definition of "Public Communication," 87 Fed. Reg. 77467 (Dec. 19, 2022). Technological Modernization, 89 Fed. Reg. 196 (Jan. 2, 2024).
78. Technological Modernization, 89 Fed. Reg. 196, 211 (Jan. 2, 2024).
79. *Id.*
80. An example of an "adapted disclaimer" is available on the FEC's website: **https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/coordinated-party-communication-using-adapted-disclaimer/**.

- An “indicator” is any visible or audible element presented in a clear and conspicuous manner that gives notice to a person reading, observing or listening to a communication that they may read, observe or listen to the full disclaimer through a mechanism. An indicator may take any form including but not limited to words, images, sounds, symbols and icons.
- A “mechanism” is any use of technology that enables a person reading, observing or listening to a communication to read, observe, or listen to the full disclaimer after no more than one action by the recipient. A mechanism may take any form including but not limited to hover-over text, pop-up screens, scrolling text, rotating panels, and hyperlinks to a landing page.

Broadcast communications: In addition to the general disclaimer discussed above, broadcast communications require a disclaimer stating the full name of the organization responsible for the communication.[81] If the communication is broadcast on the radio, the statement must be spoken clearly. If the communication is transmitted on television, cable, or satellite, the statement must be accompanied by a voiceover stating the information, and the disclaimer must appear in writing at the end of the communication in a clearly readable manner, with a reasonable degree of color contrast to the background; it must be shown for a period of four seconds.

Example:
“Paid for by Protect the Environment Now, www.pen.org [or street address or phone number] and not authorized by any candidate or candidate’s committee. Protect the Environment Now is responsible for the content of this advertisement.”

Text messages: In a 2002 advisory opinion, the Federal Election Commission ruled that SMS messages that were limited to 160 characters per message fell under the “small items” exception to the disclaimer requirements and did not require a disclaimer.[82] Subsequently, in 2022, the Commission ruled that short code text messages sent only to recipients who affirmatively opted-in to receive the text messages were not “public communications;” as such, they do not require disclaimers.[83] The FEC has not definitively addressed the disclaimer requirements for SMS or text messages that do not have space or character limits and are sent to those who have not opted in to receive the messages. However, to the extent that such messages are general public political advertising (and therefore “public communications”) and can include both the sender’s message and the disclaimer language, the exceptions identified in the advisory opinions above would not apply. In that case, the following disclaimer would be appropriate to include in the text or SMS message: “Paid for by Protect the Environment Now, www.pen.org. Not authorized by any candidate or candidate’s committee.”

81. 11 C.F.R. § 110.11(c)(4).
82. FEC Advisory Opinion 2002-09.
83. FEC Advisory Opinion 2002-20.

8. Special Rules for Robocalls

Although some aspects of federal law governing robocalls do not apply to political calls (e.g., limitations on permissible hours and Do Not Call list), *all* robocalls are required by federal law to include the following disclaimers: the call must (1) "at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call," and (2) "during or after the message, state clearly the telephone number or address of such business, individual, or other entity initiating the call."[84] The Federal Communications Commission's regulations implementing this statute do not require specific language to meet these requirements. However, the regulations specify that the telephone number provided for disclaimer purposes may not be that of the autodialer or prerecorded message player that placed the call.[85] Additionally, the FCC recently issued new regulations regarding robocalls.[86] While previously the regulations exempted noncommercial calls and calls from tax-exempt nonprofit organizations, allowing nonprofits to make automatic or prerecorded voice calls without prior express consent, the FCC now limits organizations operating under that exception to no more than three calls in any 30-day period using an artificial or prerecorded voice to a residential line unless the organization has obtained prior express consent from the called party. In addition, the new rules require that the nonprofit adopt additional mechanisms specified by the FCC to permit the called party to opt out of such calls in the future, and the nonprofit must adopt certain compliance policies and procedures for complying with do not call requests relating to residential phone numbers. For more information on the Federal Communications Commission rules regarding robocalls, see Alliance for Justice guide, *Robocalling Rules: Before you Pick Up that Phone, Hold that Call—What You Need to Know about Robocalls, Robotexts, and Autodialers.*

Many states also have disclaimer requirements for robocalls that go beyond those imposed by federal law. Note that in recent years some states have enacted substantive restrictions on robocalls and have even prohibited robocalls altogether. Some of these statutes have been challenged successfully; *it is important to review current federal and state rules before engaging in this activity.*

E. Coordination and Independent Activities

Expenditures made in concert or cooperation with a candidate or political party are treated as in-kind contributions subject to the prohibitions and limitations of the FECA.[87] Specifically, a 501(c)(4) corporation may not engage in "coordinated communications" with the general public. FEC regulations set out a three-part test to determine if a particular communication is "coordinated."[88] Satisfaction *of all three* of the specific elements of the test "justifies the conclusion that payments for the coordinated communication are for the purpose of influencing a Federal election." The three elements are: payment, the content standard, and the conduct standard.

84. 47 U.S.C. § 227(d)(3)(A).
85. 47 C.F.R. § 64.1200(b)(2). Note, also, that the regulations do not mention providing a caller's address. According to the regulations, only the caller's phone number is sufficient for the disclaimer, despite the clear statutory language that an address satisfies the legal requirement. *Compare* 47 U.S.C. § 227(d)(3)(A)(ii) ("during or after the message, state clearly the telephone number or address of such business") *with* 47 C.F.R. § 64.1200(b)(2) ("during or after the message state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business").
86. Limits on Exempted Calls Under the Telephone Consumer Protection Act of 1991, 88 Fed. Reg. 3668 (Jan. 20, 2023).
87. 11 C.F.R. § 109.21.
88. 11 C.F.R. § 109.21; *see also* Internet Communication Disclaimers and Definition of "Public Communication," 87 Fed. Reg. 77467 (Dec. 19, 2022).

1. Payment

The communication is paid for, in whole or in part, by someone other than a candidate, a candidate's authorized committee, or the candidate's agents, or a political party or its agents. The definition of "agent" includes any person who has actual authority, express or implied, to engage in specific activities (listed in the rules) on behalf of a principal.[89]

2. Content Standard

In order to limit the rules to communications whose subject matter is reasonably related to an election, the communication must be one of the following:

- a "public communication" that expressly advocates the election or defeat of a clearly identified candidate;
- a communication that satisfies the definition of an electioneering communication as defined by the statute;
- a "public communication" that includes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or any agent of either the candidate or the candidate's authorized committee;
- a "public communication" that is the functional equivalent of express advocacy (a communication is considered to be the functional equivalent of express advocacy if it is "susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified federal candidate." The FEC has considered the functional equivalent of express advocacy to be broader than express advocacy and looked to the Supreme Court's application of the test in decisions including *FEC v. Wisconsin Right to Life.);*
- a "public communication" that satisfies *each of the following:*
  - Refers to a political party or a clearly identified federal candidate (including a reference made to a candidate through the "popular name" of a bill or law);
  - Is publicly distributed within defined time periods: in the case of a political party or presidential candidate, 120 days before a general, special, or runoff election or a primary, convention, or caucus to nominate a candidate; in the case of a U.S. House or Senate candidate, 90 days before the same events; and
  - is directed to voters in the jurisdiction of the clearly identified candidate or to voters in a jurisdiction in which one or more candidates of the political party appears on the ballot.

For each of these types of communications under the content standard, a "public communication" is a "communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising."

"Public communications" *do not* include:

- The Internet and other "free" electronic communications (including email), other than ads placed or promoted for a fee on another person's Website, digital device, application, or advertising platform,[90]
- Certain door-to-door canvassing activities conducted in coordination with federal candidates and political parties,
- Private correspondence, or
- Internal communications between a corporation or labor organization and its Restricted Class.[91]

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89. 11 C.F.R. § 109.3.
90. 11 C.F.R. § 100.26. This exclusion from the definition of "public communications" of email and other communications disseminated over the Internet except for those posted for a fee on another person's website is often referred to as the "internet exception" to the coordination rules. Although the FEC did not use that particular term, it recognized the exception in Advisory Opinion 2021–04 (Pray.com). The requester, Pray.com, asked the FEC whether its plans to invite federal officeholders (whom the FEC considered in their capacity as candidates for re-election) to record videos to be posted on Pray.com's website and mobile application would result in a "coordinated communication" by Pray.com. The FEC concluded unanimously that the planned activity would not result in a coordinated communication because it was neither an electioneering communication nor a public communication, specifying that communications "made over the internet are expressly exempt from the definition of 'public communications' unless they are placed for a fee on another person's website." *Id.* at 4. Through two recent rulemakings, the Federal Election Commission has clarified that communications over the internet are not "public communications" unless they are placed or promoted for a fee on another person's website, digital device, application, or advertising platform. See Internet Communication Disclaimers and Definition of "Public Communication," 87 Fed. Reg. 77467 (Dec. 19, 2022); Technological Modernization, 89 Fed. Reg. 196 (Jan. 2, 2024).
91. In a 2024 Advisory Opinion, the FEC concluded that door-to-door canvassing is not a form of "public communication" and therefore, even if the messaging expressly advocates for the election or defeat of a federal candidate, so long as the canvass is coordinated with a supported candidate, the costs are not an in-kind contribution. *See* Advisory Opinion 2024-01 (Texas Majority PAC), available at https://www.fec.gov/files/legal/aos/2024-01/2024-01.pdf. For a detailed analysis of this opinion, see this memo from Trister, Ross, Schadler & Gold, PLLC.

3. Conduct Standard

The rules enumerate different types of conduct, any of which may satisfy this test, whether or not *there is agreement or formal collaboration*:[92]

Request or suggestion: A communication that is created, produced, or distributed at the request or suggestion of a candidate or authorized committee or political party or agent of any of these entities. This standard also covers the situation where the entity paying for the communication makes the suggestion, and the candidate, authorized committee, or political party committee assents to the suggestion.

Material involvement: A candidate, authorized committee, political party, or agent is materially involved in the decisions regarding the content, intended audience, the means and mode of the communication, specific media outlet used for, timing and frequency, or size and prominence of a printed communication or duration of a broadcast, cable, or satellite communication.

Substantial discussion: A communication is produced, created, or distributed after substantial discussion about the communication between the person paying for the communication (or their employees or agents) and the candidate identified in the communication, their authorized committee, their opponent's authorized committee, a political party, or agents of any of these individuals or entities. The discussion is "substantial" if the information conveyed to the person paying for the communication is material to the creation, production, or distribution of the communication. In addition, this rule does not apply when the "material" information was obtained from a publicly available source.

Using a common vendor: The communication is created or distributed by an organization with the assistance of a vendor who has provided certain types of services to a candidate, their authorized committee, their opponent's committee, a political party, or an agent of any of these entities within the previous 120 days. A candidate and an entity sponsoring a communication could share the same vendor, however, if the vendor does not use material information about the campaign or convey material information about the campaign to the entity. (See the discussion of safe harbors below.)

Involvement of former employees: The communication is created and distributed with the assistance of an employee or independent contractor of a candidate, authorized committee, or political party committee within the previous 120 days. The former employee or contractor must use or convey to the entity making the communication information about the identified candidate's (or opponents') plans, projects, or activities, and that information must be material to the creation, production, or distribution of the communication.

4. Safe Harbors

Policy discussions: A candidate's or political party committee's response to an inquiry about a candidate's or party's positions on legislative or policy issues that does not include a discussion of campaign plans, projects, or needs does not satisfy the conduct standards. This provision is intended to permit organizations to make inquiries about a candidate's views on policy issues or legislation in the context, for example, of preparing a voter guide or a lobbying campaign.

Firewall: The regulations expressly provide that, absent other factors, there is no coordination if the commercial vendor, former employee, or organization establishes and implements a "firewall" that prohibits candidate and political party information material to a communication from passing to individuals who are creating, producing, or distributing a communication subject to the coordination rules. The firewall must be described in a written policy that is distributed at the time of implementation to all relevant employees, consultants, and clients who are affected by the policy. If, however, there is specific information that is material to the creation, production, or distribution of the communication used by or conveyed to the person paying for the communication, the firewall will not provide a defense.

92. 11 C.F.R. § 109.21(d).

F. Rules on Political Activity by Unincorporated Associations Under FECA

Under FECA, unincorporated associations, including unincorporated 501(c)(4)s, are considered "persons" and are treated as individuals for purposes of contribution limits. If the association's major purpose is federal election activity, it must register as a federal political committee, which is subject to all the FECA registration and reporting requirements and limits on contributions and the solicitation of funds. The determination of whether an organization triggers political committee status has been the subject of litigation and considerable debate within the FEC; given this uncertainty it is advisable to seek legal counsel.[93]

G. Rules on Political Activity in State and Local Elections

A 501(c)(4) seeking to influence nonfederal elections may also be subject to regulation and reporting obligations under state and local campaign finance law. Some states permit corporations, including nonprofit corporations, to make contributions to state and local candidates and committees. Following the Supreme Court's ruling in *Citizens United,* corporations are permitted to make independent expenditures in connection with state and local elections. Most states have enacted laws governing the disclosure of independent expenditures. Before conducting any political activities, including raising or spending funds, for the purpose of influencing state or local elections in a particular state, it is advisable to seek the advice of counsel familiar with these laws. Note that the Internal Revenue Code limitations on political activity by 501(c)(4)s apply to all federal, state, and local electoral activities, as does the possibility of tax on political activities under IRC section 527.

93. 52 U.S.C. § 30101(4); 72 Fed. Reg. 5595 (Feb. 7, 2007).

Establishing and Operating Affiliated 501(c)(3) and 501(c)(4) Organizations

Given the ability of 501(c)(4)s to engage in extensive lobbying and some political activities, a 501(c)(3) active on public policy issues might consider establishing an affiliated 501(c)(4). This section will explain how to establish a 501(c)(4) and how to manage the allocation of resources between a 501(c)(3) and a 501(c)(4). The guidelines are also applicable to a 501(c)(4) that wishes to establish a 501(c)(3) in order to conduct research and other charitable activities.

A. Establishing and Operating a 501(c)(4)

In *Regan v. Taxation with Representation,*[1] the Supreme Court ruled that a 501(c)(3) organization may establish a separate 501(c)(4) to expand its capacity to lobby beyond the limited expenditures allowed for 501(c)(3)s. While it may not be worthwhile to set up a separate organization for a one-time lobbying campaign, there are clear advantages to creating a 501(c)(4) for longer-term lobbying efforts. Unlike a 501(c)(3), a 501(c)(4) may engage in unlimited lobbying on ballot measures and in legislative bodies without jeopardizing its exempt status. And, as noted above, a 501(c)(4) may conduct limited partisan election-related activities and may set up a connected political organization. Many organizations manage multiple related entities — a 501(c)(3), a 501(c)(4), and 527 organizations — successfully. The key is that the 501(c)(3) must be able to demonstrate that it is not subsidizing, directly or indirectly, the political work of its affiliated 501(c)(4) or related political organizations.[2]

This section discusses the considerations and steps that are advisable when a 501(c)(3) is establishing an affiliated 501(c)(4). The considerations vary depending on whether the 501(c)(4) only conducts lobbying or also engages in political activities.

1. Corporate Structure, Board of Directors, and Officers

The 501(c)(3) board of directors may wish to pass a resolution authorizing certain individuals to establish a 501(c)(4), or a group of individuals associated with the 501(c)(3) may proceed without a board resolution. In either case, a 501(c)(4) must be established as a legal entity separate from the 501(c)(3). This separation is generally accomplished by incorporating the 501(c)(4). Incorporation provides numerous other advantages, such as limiting directors' and officers' liability for the organization's actions. Incorporating an organization under state law is generally simple. Information, forms, and instructions are available in most states through the Secretary of State's office.[3] A listing of these offices is available from the National Association of Secretaries of State at https://www.nass.org/business-services/corporate-registration. Examples of articles of incorporation, bylaws, and the Form 1024-A (the application for tax-exempt status) are provided on Alliance for Justice's website, afj.org.

1. 461 U.S. 540 (1983)
2. IRS Exempt Organizations Continuing Professional Education Technical Instruction Program, "Election Year Issues," (2002) ("CPE Text") at 367. *See also, e.g., id.* at 473-480 (providing examples of affiliated structures including 501(c)(3), 501(c)(4) and 527 organizations); CPE Text, "Affiliations among Political, Lobbying and Educational Organizations," (2000), at 257 ("Generally, the Service will respect the separate corporate existence of corporations formed by IRC 501(c)(3) organizations. Several GCMs (most recently, G.C.M. 39776 (Aug. 25, 1988) state that an IRC 501(c)(3) organization can establish a subsidiary to conduct activities that the IRC 501(c)(3) organization could not, unless the subsidiary is a mere arm, agent, instrumentality, or integral part of the IRC 501(c)(3) parent."); IRS G.C.M. 33912 (Aug. 15, 1968) ("An attempt [to impute the political or legislative activities of a business subsidiary to a parent organization] should be made only where the evidence clearly shows that the subsidiary is merely a guise enabling the parent to carry out its legislative activities or where it can be proven that the subsidiary is an arm, agent or integral part of the parent."); Priv. Ltr. Rul. 201127013 (Apr. 15, 2011). Priv. Ltr. Rul. LR 202005020 ((Jan. 31, 2020) (In this nonprecedential ruling, that appears to be inconsistent with well-established law, including precedential authority discussed here, the IRS ruled that the public charity violated its 501(c)(3) status by serving as the sole shareholder of a for-profit subsidiary that established and operated a 527 political committee. There are some important distinctions between the quite common 501(c)(3) and 501(c)(4) affiliated structures discussed in this guide and those presented in the PLR where a 501(c)(3) wholly owned and appointed the board of a for-profit subsidiary that was also the sponsor of the PAC. It is also worth noting that many practitioners were puzzled by and disagreed with the IRS' reasoning and conclusions and, at the time of publication there are no other similar rulings or changes in the actual precedential law.
3. In most cases, an organization will incorporate in the state in which most of its activities take place. However, some organizations choose to incorporate in a different state, which may provide legal advantages related to treatment of nonprofits under state law or the certainty of an established body of state case law concerning corporations. A full discussion of these strategic issues is beyond the scope of this guide. An organization with questions in this area should consult a lawyer for more information.

Checklist for Setting up a 501(c)(4) Social Welfare Organization

(Get a knowledgeable lawyer to help with these steps.)

- ☐ Identify the intended purposes. Do they satisfy 501(c)(4) requirements? (See the Introduction to this guide for discussion of each type of tax exemption.)
- ☐ Decide whether to incorporate the organization or organize it as an unincorporated association under state law. A 501(c)(4) may be organized as an unincorporated association, or a corporation. Contact the Secretary of State for procedures on incorporation or on establishing a nonprofit association if that structure is available in your state.
- ☐ Prepare bylaws. Some states have sample bylaws on the Secretary of State's website or elsewhere. See https://afj.org/resource/sample-1024-form-501c4-bylaws/ for an example of bylaws for a 501(c)(4) that are suitable for a corporation formed under District of Columbia law. If there is an existing 501(c)(3) organization, it is worth considering using the same or similar Bylaws for the 501(c)(4) reducing the possible confusion from operating two organization under different governing procedures.
- ☐ Hold an organizational board meeting to elect officers, adopt bylaws, and authorize officers and employees to open bank accounts and sign contracts; adopt a conflict of interest policy and other policies for the organization.
- ☐ Apply for an Employer Identification Number (EIN) online at https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online.
- ☐ Establish a bank account.
- ☐ Research and follow other requirements in state law regarding corporate and tax compliance.
- ☐ Identify an accountant, counsel, or other person to maintain records and ensure corporate compliance, including filing an annual information return on IRS Form 990, "Return of Organization Exempt from Income Tax."
- ☐ All newly formed 501(c)(4) organizations must provide notice of their existence to the IRS using Form 8976 within 60 days of incorporating or organizing. This applies even if the organization has filed or will file a Form 1024-A application for a determination letter from the IRS. The Form 8976 may be found at https://www.irs.gov/charities-non-profits/electronically-submit-your-form-8976-notice-of-intent-to-operate-under-section-501c4.
- ☐ While a 501(c)(4) organization is not required to file a Form 1024-A, "Application for Recognition of Exemption Under section 501(a)," some organizations find it useful to obtain formal recognition of tax-exempt status from the IRS. The Form 1024-A may be found at https://www.irs.gov/pub/irs-pdf/i1024a.pdf. Those filing a Form 1024-A must also file a Form 8718 (with payment of the appropriate fee).
- ☐ File any required applications for tax-exempt status under state law.
- ☐ If the (c)(4) is affiliated with a (c)(3), prepare a cost-sharing or allocation agreement. See Appendix B.

Note that, effective January 1, 2024, federal law requires certain entities to report information to the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") about their "beneficial owners," the persons who ultimately own and control them.[4] However, 501(c)(4) organizations are generally exempt from the reporting requirements.

4. 31 U.S.C. § 5336; Beneficial Ownership Information Reporting Requirements, 87 FR 59498 (Sept. 30, 2022).

The 501(c)(4) must have its own board of directors separate from that of the 501(c)(3). The boards of the two organizations must operate separately, holding distinct meetings and maintaining separate minutes of their meetings. When the need arises, the members of one board may attend the meetings of the other board as guests, except when a board is meeting in executive session.

Example:

PEN holds its board meetings in the morning on the first day of every other month. Minutes are recorded for the 501(c)(4) meeting. That meeting is adjourned, and those individuals who serve as directors of the PEN Education Fund start their meeting to discuss Fund business. Minutes of the second meeting are recorded separately for the 501(c)(3).

If the 501(c)(4) conducts lobbying activities but does not engage in political activities, there is little risk in allowing the same individuals to serve on the boards of both the 501(c)(3) and the 501(c)(4). If, however, the 501(c)(4) conducts political activities, greater corporate separation is advisable between the 501(c)(3) and 501(c)(4) to reduce the chance that the political activities of the 501(c)(4) will be attributed to the 501(c)(3) or taint the nonpartisan election activities of the 501(c)(3).

Separation of the boards is one factor in demonstrating independence. Therefore, if the 501(c)(4) plans to engage in political activity, it is especially advisable to have at least some, though ideally a majority, of the members of the 501(c)(3) board be individuals who are not on the 501(c)(4) board.

The 501(c)(4) board must elect its own officers and must govern the 501(c)(4) as a separate entity in every respect. Each organization must have its own IRS Employer Identification Number, file its own separate tax returns, comply with all federal and state reporting requirements, and make its own decisions about its conduct. The 501(c)(4) must pay its own costs, and the 501(c)(4)'s board of directors, officers, and staff must make the organization's decisions.

2. Separate Finances

The two organizations must maintain separate books, records, and bank accounts, and any transfers between the organizations must be documented. (See §§ B and C of this Chapter for more information regarding grants and other transfers of funds between a 501(c)(3) and 501(c)(4).)

IRS Form 990 is the information return that most 501(c)(3) and 501(c)(4) organizations must file annually with the IRS to disclose financial and program activity.[5] Certain relationships, shared staff, and grants between the 501(c)(3) and 501(c)(4) must be disclosed on both organizations' Form 990 informational returns. No adverse consequences exist in reporting such an overlap, provided that the organizations operate independently and observe legal separation.

Specifically, IRS Form 990, Schedule R requires 501(c)(3)s to disclose direct and indirect financial transactions with other related exempt organizations, including 501(c)(4)s and, in turn, the 501(c)(4)s' connected Federal PACs. The primary purpose of this disclosure is to permit monitoring of the allocation of expenses between related organizations.

5. With some exceptions, 501(c) organizations, depending on their gross receipts, must file one of three forms: 990-N, 990-EZ, or 990. *See supra* Introduction, note 12.

"Related" is specifically defined for purposes of Form 990 in https://www.irs.gov/charities-non-profits/exempt-organizations-annual-reporting-requirements-form-990-schedule-r-meaning-of-related-organization. Read the definition carefully, because a 501(c)(3) and a 501(c)(4) are not related if they operate independently of one another and are not controlled by a third entity.

3. Naming the New Organization

Affiliated 501(c)(3)s and 501(c)(4)s often have similar names and logos. To demonstrate, the name of the hypothetical 501(c)(3) Protect the Environment Now Education Fund is quite similar to that of Protect the Environment Now, the 501(c)(4) organization. While the two organizations may have similar names, they should be distinguishable. If the organizations are commonly known by acronyms, it is best if these are not identical. Too much similarity could cause confusion about the two organizations' fundraising, lobbying, political, and other activities. Depending on which organization owns the name, it may be advisable to have a licensing agreement setting out the terms and conditions for use of the name as a way for the original organization to manage the risk that an affiliated organization's board of directors might revise that entity's programmatic focus or mission.

4. Shared Employees, Office Space, and Equipment

A 501(c)(3) and 501(c)(4) may share employees, equipment, and office space. In fact, the entire staff of the 501(c)(4) could be employees of the 501(c)(3), or vice versa. It is essential, however, that the 501(c)(4) pay at least its full share of all salary, equipment costs, and rent for running the day-to-day operations of the 501(c)(4) in order to ensure that the 501(c)(3) does not subsidize the 501(c)(4).[6] It is also important to put this cost-sharing arrangement in writing and to comply with the terms of the agreement. (See Appendix B for an example of a cost-sharing agreement.)

Shared costs should be reimbursed regularly and within a reasonable time. While there is no clear IRS guidance on what is reasonable, a 501(c)(4) should reimburse a 501(c)(3), generally within 30 to 60 days, for any advanced costs, such as salaries or rent. (To provide financial support for a longer period, a 501(c)(3) may make commercially reasonable loans to a 501(c)(4) under certain circumstances as described below in § C of this chapter.)

To protect the 501(c)(3), the 501(c)(4) should err on the side of overpaying its share of the costs when there is any question as to how an expense should be allocated. The flow of funds from a 501(c)(4) to a 501(c)(3) does not result in any significant legal risk, but a 501(c)(3) could jeopardize its tax-exempt status if it subsidizes or pays the expenses of the 501(c)(4). The exception to this rule is that the 501(c)(3) may support charitable activities of the 501(c)(4), subject to a proper grant agreement, as discussed below.

a. Shared Employees

Employees who work for both organizations should keep written records to document the time spent working for each organization so that each organization can pay its share of staff compensation. Completing time records is the best way to support the allocation of salary between the two organizations. If some staff consistently work a certain percentage of time for each organization and that percentage is documented, it may be possible to allocate salary according to that percentage on a continuing basis without continuing to maintain time records. For those staff members who work on projects that frequently change, time sheets should be used for an indefinite period to document any changes in salary allocation.

A 501(c)(3) and 501(c)(4) may generally arrange to have one organization perform the administrative functions and handle payroll so long as the other organization reimburses the associated costs in a timely manner. One of the major advantages of this arrangement is that employees do not receive multiple paychecks.

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6. *Regan v. Taxation with Representation,* 461 U.S. at 544 n.6; *Center on Corporate Responsibility, Inc. v. Schultz,* 368 F. Supp. 863, 866 n.2 (D.D.C. 1973).

Under certain circumstances, organizations that share employees may take advantage of the "common paymaster" rules.[7] A major advantage of these rules is that the FICA tax costs, particularly for highly compensated employees, will not be duplicated if the employees work directly for two or more employers. Under these rules, one entity is designated to pay certain employees even though some of their time may be spent performing services for other related organizations. The common paymaster is responsible for maintaining the payroll records for these employees and may pay individuals with one paycheck or with separate paychecks drawn on the accounts of one or more of the employing entities. A common paymaster also has responsibility for (1) payroll taxes to the government, computed as though the common paymaster were the sole employer, and (2) issuing the required forms, such as Form W-2.

The entities sharing a common paymaster must be "related." In this case the term "related" has a different definition from that used for determining relatedness for purposes of Form 990 discussed above. In the case of a tax-exempt organization, one or more of the following tests must be met: (1) at least 30 percent of the employees of one corporation are concurrently employed by the other corporation; (2) at least 50 percent of the officers of one corporation are officers of the other corporation; or (3) at least 50 percent of the board of directors of one corporation also serve on the board of the other corporation. Payments made to employees must be through a single legal entity. Finally, the organizations must designate the common paymaster in writing.[8] While the designation need not be filed with the IRS, it must be maintained with the accounting records.

A related organization may operate under these rules only if the employees are shared with the organization that is serving as the common paymaster. If the employees are working exclusively for one organization, the common paymaster rules will not apply. In that case, or if the common paymaster rules do not otherwise apply, the organization that administers payroll may act as an authorized payroll agent of the other organization, but the common paymaster rules are not applicable.

As an alternative to reimbursement, each organization may pay its share of an employee's salary and benefits separately, with each employee receiving two paychecks. This system may be more burdensome and costly because each organization must prepare separate checks or payments, and, as discussed above, it may involve higher payroll taxes.

Example:

The Education Fund and PEN are related and share employees on a regular basis. The Executive Director of the Education Fund typically spends 75 percent of her time on the Education Fund and 25 percent on PEN activities. The Field Director typically works 70 percent of his time for the Education Fund and 30 percent for PEN. These allocations are based on time reports maintained by the employees. Both employees are paid their full salary by the Education Fund. PEN reimburses or advances the funds to the Education Fund to cover the salary and benefits attributable to the time that each employee spends working for PEN. PEN and the Education Fund establish and adhere to a written agreement to document the allocation methods and payments.

Supplying program staff with a standard timesheet may help them to keep track of how they have split their time among 501(c)(3), 501(c)(4), and other activities. This step will also streamline an organization's administrative compliance efforts. The sample timesheet provided below may be adapted to match the entities affiliated with an organization and activities generally undertaken by staff.

7. *See* 26 C.F.R. § 31.3121(s)-1; Rev. Proc. 2013-39 (Dec.23, 2013). The common pay master rules are complex and may be found at IRC §§3121(s) and 3306(p).
8. Rev. Rul. 81-21, 1981-1 CB 482.

If the 501(c)(4) conducts political activities or has a PAC or 527, the need for timekeeping for shared employees is even more critical. Two principal issues are presented: (1) the organizations must maintain sufficient records to demonstrate that the 501(c)(3) is not financing prohibited political work, and (2) the 501(c)(3) may not directly or indirectly support the political work of the 501(c)(4), PAC, or 527. Sharing staff increases the burden of demonstrating to the IRS that there is no direct or indirect support.

The costs of support staff may be allocated on a "reasonable basis." While the IRS provides little specific guidance for allocation of support staff, it is clear that there must be a well-documented, specific, and reasonable allocation of expenses. The goal is to split the costs according to use by each organization. For example, the wages of a receptionist who answers phones for both organizations may be allocated based on the number of lines for professional staff or calls answered for each organization, time records maintained for a representative trial period, an allocation ratio based on overhead and administrative expenses, or some other rational measure.

Sample Timesheet for Use by Multiple Organizations

Name: ____________________ Dates: ____________________

	501 (c)(3)	501 (c)(4)	PAC	Total Hours
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Weekend				
Total Hours				

Activity Code:

01 Educational Activity
02 Direct Lobbying
03 Grassroots Lobbying
04 Voter Education
05 Membership Communications
06 Electoral – Federal
07 Electoral – State
08 Administrative
09 Fundraising
10 Special Project (describe)

**See Activity Code for assistance. Enter multiple codes (and hours) if applicable.*

b. Employee Benefits

As described above, it is frequently advantageous to have all employees working for one organization with the other entity reimbursing that organization for its prorated share of the employees' salaries and benefits. There are several issues to consider as these systems are established:

- Health insurance and other employee benefits may generally be offered by the employing organization, and these costs would be included in the payments from the other organization. In order to ensure that the employees qualify for these benefits, however, it is important to review the plan documents establishing the benefits to confirm that they cover all employees, including shared employees.
- Both 501(c)(3)s and 501(c)(4)s may establish retirement plans enabling their employees to defer income for tax purposes. While it may be possible for two organizations to share a retirement plan, again it is essential to review the proposed plan to ensure that shared employees are covered and meet the qualifications (especially minimum hour requirements) under the plan document.
- Insurance policies should be reviewed carefully to be certain they cover all organizations that are sharing employees.
- If the 501(c)(3) is the employing organization, but employees are splitting time, there may be a requirement to pay FUTA; even though 501(c)(3)s are exempt, on the portion of compensation attributable to the non-501(c)(3) organizations generally is not.
- Another factor to consider is that the **Public Service Loan Forgiveness program (PSLF)** is generally available to employees of a tax-exempt organization under 501(c)(3), not other types of tax-exempt organizations.

c. Office Space and Equipment

A 501(c)(3) and 501(c)(4) may also share office space and equipment as long as the 501(c)(4) pays its allocable share of the expenses. The 501(c)(4) may sublease office space from the 501(c)(3) or pay its share of the rent separately to the landlord. Alternatively, the 501(c)(4) may pay the rent for both organizations and allow the 501(c)(3) to occupy the space rent-free.

Each organization's share of the office and equipment must be calculated on a reasonable basis and documented. The IRS provides no specific guidance on allocating costs, but possible measures include assigning each organization a percentage of the cost equal to its share of staff time, staff payroll, or office space used. For example, if the 501(c)(3) pays 60 percent of the total salaries of the employees and the 501(c)(4) pays 40 percent, the rent and overhead might also be divided proportionately. As with the rent, the 501(c)(4) could pay for all of the costs, but the 501(c)(3) may not subsidize the costs of the 501(c)(4).

Common space may be shared, but each organization must pay for its use of the space. For example, if a conference room is used by both the 501(c)(3) and the 501(c)(4), the organizations may share the cost according to the amount of time that each one uses this space, or they can calculate the cost based on the percentage of overhead for each organization. Whatever arrangement is used, the organizations should document the basis for the allocation and revisit it periodically to ensure its accuracy.[9]

Sharing of equipment may be structured in a similar manner, with each organization paying for its own use. In the case of a copying machine, for example, each organization could have its own code to record use and pay at the end of each month at a rate that recognizes the original purchase cost and maintenance cost of the machine. Similarly, the cost of phones and phone service, computers, Internet and other costs should be paid by each organization, preferably based on actual use, but at least divided on a documented, rational basis as part of overhead.

9. *See* 2002 CPE Text, *supra* Introduction, note 21, at 367. For a more detailed explanation of the IRS position on the treatment of FUTA, **see https://www.irs.gov/government-entities/common-paymaster**.

Example:

PEN and the Education Fund share staff and a suite of offices. Each organization's share of the rent is based on the percentage of time that the staff works for each organization. While individual members of the staff work different percentages of their time for the two organizations, the blended percentage for the entire staff is 40 percent for PEN and 60 percent for the Education Fund. Therefore, PEN pays 40 percent of the rent and the Education Fund pays the remaining 60 percent.

d. Programmatic Independence

There are few clear rules describing the necessary programmatic separation between related 501(c)(3) and 501(c)(4) organizations. Instead, there is a spectrum of risk, with less separation being riskier for a 501(c)(3), depending on the type of activities conducted by the 501(c)(4). For example, conducting joint lobbying or public education activities with a 501(c)(4) poses minimal risk for the 501(c)(3) because lobbying and public education are permissible activities for the 501(c)(3) to conduct itself. The 501(c)(3) must, however, be mindful of its lobbying limits. There is considerably more risk in the case of a 501(c)(3)'s conducting nonpartisan voter education or registration activities in the same geographic areas or settings where the related 501(c)(4) is conducting partisan political work.

The 501(c)(3) may not allow a 501(c)(4) to use the 501(c)(3)'s educational materials for partisan political activities. For example, an affiliated 501(c)(4) generally may not use voting records prepared by the 501(c)(3) for its partisan activities. A 501(c)(3) must monitor and document each activity to avoid any risk of the activity's being transformed from a permissible to an impermissible activity based on subsequent related activities by an affiliated 501(c)(4).

Example:

The Education Fund conducts a nonpartisan voter registration drive. The Education Fund may not give the list of registered voters to PEN or PENPAC. Instead, if permissible under state law, the Education Fund could make its list of registered voters available for sale at a fair-market rate through some form of arm's-length transaction, typically through a broker.

Example:

The Education Fund conducts an educational program on energy independence and the importance of clean and renewable energy to the environment and job creation. It runs ads, does canvassing to educate the public, and prepares reports for the media and policy makers. The program has been a priority for the Fund for two years. Before the election, PEN issues candidate voting records that highlight, among other issues, candidates' positions on energy independence; it also endorses candidates with strong environmental records (including supportive positions on energy issues) and runs ads in support of those candidates and the positions they have taken. PEN does not use any of the same slogans as the Education Fund. The mere fact that there is some overlap in the issue focus of the two organizations should not jeopardize the Fund's exemption as long as the Fund has its own programmatic reasons and goals for working on the issue.

B. Grants Between Organizations

A 501(c)(3) may make grants to a 501(c)(4) (affiliated or unaffiliated) so long as the funds are restricted for use exclusively to engage in specific charitable, educational or other activities permissible for a 501(c)(3) and the 501(c)(3) receives reports or other documentation showing that this requirement has been honored.[10] These steps are necessary to satisfy the requirement that the 501(c)(3) exercises financial oversight to ensure that its funds are expended on permissible charitable activities. The two organizations should execute a written grant agreement outlining the purpose of the grant and requesting that the 501(c)(4) provide the 501(c)(3) with detailed periodic reports on how the funds were used. A sample agreement for this type of "controlled grant" may be found in Appendix C.

Each grant should generally be earmarked for specific charitable or educational activities that advance the 501(c)(3)'s purposes. The 501(c)(3) may not, under any circumstances, provide funds to the 501(c)(4) that might in any way be used to support the 501(c)(4)'s partisan political activities. The grant agreement should specifically prohibit the use of a grant for these purposes. In addition, the funds may not cover fundraising or general overhead expenses of the 501(c)(4).

Example:

The Education Fund makes a grant to PEN to conduct a research project on chemical releases in five major metropolitan areas and to organize a conference to discuss the report. To support this grant, the Fund prepares a letter of agreement outlining the specific purposes for which the funds may and may not be used, a budget, a schedule for completion, and requirements for reporting grant activities to the Educational Fund. This grant is proper because the activity is one that the 501(c)(3) could permissibly undertake itself.

1. "Controlled Grants"

A public charity may grant money to a 501(c)(4), without counting the expenditure against the 501(c)(3)'s lobbying limit, if the funds are given as a "controlled grant." In order to satisfy the requirements of a "controlled grant," the 501(c)(3) must limit the grant to a specific project that supports its non-lobbying program purposes and maintain records to establish that the grant was used to support those proposes.[11] The rules on "controlled grants" apply specifically to 501(c)(3)s that "elect" to lobby; but even in the case of a non-electing charity, so long as a grant agreement specifically prohibits the use of funds for lobbying activity, the grant should not count as a lobbying expenditure, but the rules are less clear.

2. Lobbying Grants

A 501(c)(3) may also make a grant to a 501(c)(4) to conduct lobbying activities. However, such a grant will count against the 501(c)(3)'s lobbying limits and, unless the 501(c)(3) (that is an electing charity) takes the necessary steps to clarify how the funds may be used, the grant may count against the 501(c)(3)'s limits on grassroots lobbying, not the more generous limit for direct lobbying.[12] The terms of such a grant should be set out in a grant agreement with the 501(c)(4) separate from any controlled grant (discussed above). A grant earmarked to support grassroots lobbying counts against the grassroots lobbying limits of the 501(c)(3).

10. Rev. Rul. 68-489, 1968-2 C.B. 210.
11. Treas. Reg. § 56.4911-4(f)(3).
12. For a discussion of 501(c)(3) limits on lobbying, including the differing definitions and limits for grassroots and direct lobbying, *see Being a Player,* Alliance for Justice.

A grant made by a 501(c)(3) to a 501(c)(4) that lobbies to support direct or a combination of direct and grassroots lobbying will count against the 501(c)(3)'s lobbying limits as follows:

- The grant is treated as a grass roots expenditure to the extent of the lesser of two amounts: the amount of the transfer or the amount of the 501(c)(4)'s grass roots expenditures.
- If the grant is greater than the 501(c)(4)'s grass roots expenditures, the excess is treated as a direct lobbying expenditure, but only to the extent of the 501(c)(4)'s direct lobbying expenditures. If, however, the grant is less than the 501(c)(4)'s grass roots expenditures, none of the transfer is a direct lobbying expenditure.
- If the grant is greater than the sum of the 501(c)(4)'s grass roots and direct lobbying expenditures, the excess of the transfer over those lobbying expenses is not a lobbying expenditure.[13]

Example:

The Education Fund makes a grant of $25,000 to PEN to support PEN's direct and grassroots lobbying on environmental issues. The grant requires that PEN spend no more than $5,000 of the grant for grassroots lobbying and that PEN provide documents to the Education Fund to show that this limit has not been exceeded. The Education Fund may treat this grant as a $5,000 grassroots lobbying expenditure and a $20,000 direct lobbying expenditure. If the grant agreement does not include these provisions, the Education Fund would be required to treat this grant as a $25,000 grassroots lobbying expenditure.

Conversely, the 501(c)(4) may give funds to the 501(c)(3) for any purpose that the 501(c)(3) may legally pursue. No restrictions exist on such transfers. Therefore, the 501(c)(4) may give unlimited funds to the 501(c)(3), directly or indirectly, without jeopardizing either organization's tax-exempt status. While records of such transfers should be maintained, no written agreement is required.

C. Loans Between Organizations

Under limited circumstances, a 501(c)(3) may lend funds to a 501(c)(4). While it may be possible for a 501(c)(4) to use a loan from a 501(c)(3) for general support or fundraising, a 501(c)(3) may not lend funds to a 501(c)(4) for the purpose of supporting the 501(c)(4)'s political activities or if other facts and circumstances would tend to show the funds would be used for impermissible political or other activity by the 501(c)(4). If a 501(c)(3) makes such a loan the 501(c)(3) entity — as well as the managers who approved the loan — may be subject to excise tax on the loan amount, and the 501(c)(3) organization may lose its exempt status.[14]

Any loan made by a 501(c)(3) to a 501(c)(4) should be an arm's-length transaction made at commercially reasonable terms. Therefore, the two organizations should sign a written agreement demonstrating that the loan is made for a definite term, at market rate interest, with adequate collateral from the 501(c)(4) (using assets such as its membership list, for example).[15] It is then essential that the organizations comply with the terms of the loan agreement, for a failure by the 501(c)(4) to repay the loan would be interpreted as evidence of an improper transfer from the 501(c)(3).

13. Treas. Reg. § 56.4911-3(c)(2).
14. *See* IRS Technical Advice Memorandum 9812001 (Aug. 21, 1996). Political campaign prohibition was violated when an organization made a loan to a related, non-exempt entity that conducted charitable and political campaign activity. The 501(c)(3) did not take any steps to ensure that the related entity did not use the funds for political purposes, so that, under I.R.C. section 527(f), the loan was a contribution to a political organization, regardless of the rate of interest charged on the loan.
15. Treas. Reg. § 1.527-6(b)(1)(ii).

A 501(c)(4) may make a loan to the 501(c)(3) without such precautions, because it is possible to have the loan treated as a contribution to the 501(c)(3) without any adverse impact on the two organizations' tax status. However, it is nonetheless advisable to have a written loan agreement setting out the terms of the loan. The agreement would document that the 501(c)(3) was obligated to repay the funds, thereby avoiding questions about why the 501(c)(3) was making the payment when it transferred money to the 501(c)(4) at some future point.

D. Fundraising

1. Initial Start-Up Funding

One of the most difficult hurdles for nonprofit groups is to raise the initial seed money to launch a 501(c)(4). Because private foundations do not generally fund 501(c)(4)s, fundraising is a much greater challenge than for tax-exempt charitable entities.[16] Nevertheless, there are many avenues of possible support.

One option is for the 501(c)(4) to approach individual donors to the 501(c)(3). A direct mailing or personal solicitation of members or supporters of the 501(c)(3) is probably the best way to begin this process, although donors will not be able to take the tax deductions that they would get by contributing to a 501(c)(3). The 501(c)(4) must rent the 501(c)(3)'s mailing list in order to send communications to prospective contributors. To maximize its success, the appeal might focus on two types of donors: those who have reached the ceiling on their charitable deductions and could no longer claim a deduction for contributing to the 501(c)(3) and those who support the mission of the 501(c)(4) and want to fund the more extensive advocacy activities that 501(c)(4)s may undertake. Note that the state charitable solicitation rules generally apply to 501(c)(4)s.

Example:

The board of directors of the Education Fund sets up PEN. PEN rents the Education Fund's mailing list and sends the Fund's members and contributors a letter stating, "We are setting up a 501(c)(4) organization that will be able to more actively protect the environment in our state. Although you will not be able to claim a tax deduction for your 501(c)(4) contribution, your money will be able to do more than if given to a 501(c)(3), including funding a significant lobbying campaign on our issues."

Other fundraising options for a new 501(c)(4) organization include:

- Approaching community foundations and other philanthropies that are not private foundations;
- Approaching corporations that may be able to write off their donations as promotional expenses rather than as charitable deductions;
- Approaching trade and professional associations, unions, and other noncharitable groups in the community; and
- Organizing community canvassing around its lobbying program or holding other events focused on particular issues.

2. Joint Fundraising with a 501(c)(3)

A 501(c)(3) and 501(c)(4) may raise funds jointly. Each organization must pay its share of the fundraising costs. Therefore, if the solicitation raises funds for both organizations with relatively equal emphasis, the costs could be split equally between the organizations. Another reasonable approach is to allocate the costs of the solicitation based on the ratio of receipts for each organization. Therefore, if the 501(c)(3) raises $60,000 and the 501(c)(4) raises $30,000, the costs of the solicitation could be divided proportionately, assigning two-thirds to the 501(c)(3) and one-third to the 501(c)(4).

16. For more information about foundation funding of 501(c)(4)s, *see Philanthropy Advocacy Playbook: Leveraging Your Dollars* (Alliance for Justice 2015) and *Investing in Change: A Funder's Guide to Advocacy* (Alliance for Justice, 2004).

Prior to undertaking joint fundraising, the two organizations should agree in writing on the terms: how costs will be allocated, including related expenses such as staff time and materials; what services the organization collecting the funds will perform; and the amount that the other organization will pay for these services.

Example:

PEN and the Education Fund send out a joint fundraising letter describing the Education Fund's research and educational activities as well as PEN's lobbying program. Contributors are invited to write separate checks to the Education Fund and PEN. Alternately, the contributor could be given the choice of dividing the contribution between PEN and the Fund by sending a single check to PEN and designating on the reply card how much of the contribution should go to each organization. PEN would deposit the funds according to the contributor's designation. Only the contribution designated for the Fund is tax-deductible. ***PEN is required to inform prospective donors on the solicitation that contributions and gifts to PEN are not deductible for federal income tax purposes; this notice must either be its own paragraph or the first sentence of a paragraph.***[17]

Joint solicitations may make reference to the 501(c)(3) as an organization "related to" or "affiliated with" the 501(c)(4), should discuss each organization's activities and, to the extent possible, should distinguish between their programs. Contributors to the 501(c)(3) should be informed that contributions will be used to support research and nonpartisan studies about current issues or some other charitable purpose. Similarly, contributors should be informed that donations to the 501(c)(4) will support lobbying or other activities.

However, a 501(c)(4) soliciting funds expressly for political activities or its PAC should not do so in a communication that also requests funds for a 501(c)(3). The IRS has said that any joint fundraising will be carefully scrutinized to determine whether the 501(c)(3) is allowing its name or goodwill to be used to further an activity that the 501(c)(3) is prohibited from conducting.[18]

Each organization is required to comply separately with the charitable solicitation registration and reporting requirements applicable under state law. Finally, the 501(c)(4)'s solicitations must have a disclaimer: "Contributions and gifts to PEN are not tax deductible."[19]

E. Managing Publications, Lists, Joint Websites, and Social Media

1. Publications

If the 501(c)(3) generally requires that an outside group pay for the use of space in its publication, the same terms should apply to the affiliated 501(c)(4). If the 501(c)(3) allows other organizations to submit occasional articles or to run announcements of activities in the publication free of charge, that same courtesy may be extended to the 501(c)(4), subject to one exception: the 501(c)(3) should not allow any organization, whether related or unrelated, to place material in the publication for free that the 501(c)(3) could not publish on its own under its tax-exempt status. In particular, a 501(c)(3) must avoid running articles about partisan political activities in its magazine or other publication for free.

Example:

PEN would like to publish several articles in PEN Education Fund's quarterly magazine. The articles discuss PEN's grassroots lobbying campaigns. The Fund may publish these articles and charge PEN the fair market value of the cost of the allocable portion of the magazine to avoid having the costs count against the Fund's limit on lobbying.

17. I.R.C. § 6113; *see also* IRS Notice 1988-120, 1988-2 C.B. 454, *available at* https://www.irs.gov/charities-non-profits/notice-88-120-1988-2-cb-454.
18. *See* 2002 CPE Text *supra* Introduction, note 21, at 369.
19. I.R.C. § 6113; *see also* IRS Notice 1988-120, 1988-2 C.B. 454, *available at* https://www.irs.gov/charities-non-profits/notice-88-120-1988-2-cb-454.

Conversely, if PEN publishes a monthly magazine, the Fund may run articles in it and pay the allocable cost of space. However, there would be a risk if, during an election year, PEN publishes editorials featuring its endorsed candidates. While there is no clear authority on whether the Fund could pay for part of the publication, there is some risk that the IRS would view the use of 501(c)(3) funds to pay for part of a magazine with political content as an impermissible political expenditure.

Example:

PEN wants to run a copy of its partisan voter guide in the Fund's magazine. The Fund should discuss with legal counsel whether to accept this guide for publication. If, however, PEN prepares and presents for publication a candidate questionnaire that meets IRS criteria for nonpartisan voter education, the Fund could run this piece.

A 501(c)(3) may, however, sell advertising in its newsletter to any entity, including a candidate. If such ads are available, the 501(c)(3) may sell them to candidates and any other entity but must do so without regard to political preferences and must charge the same fair market value. These advertisements should be identified as "paid advertisements."

If the 501(c)(4) publishes the magazine or newsletter, the same limits do not apply to the 501(c)(3)'s placing of articles or contributing to the publication. Because a 501(c)(4) may do anything that a 501(c)(3) can do without jeopardizing its tax status, the 501(c)(3) may prepare articles and submit them for placement in a 501(c)(4) magazine. The 501(c)(4) has the option of charging fair market value or running the article free of cost. Therefore, PEN's magazine may run any piece prepared by the Fund without charging the Fund for placement.

2. Sharing Lists and Databases

If the 501(c)(3) has a contact, email, donor, or membership list, it may rent the list for fair market value in an arm's-length transaction to the 501(c)(4).[20] It is advisable to have a letter of agreement to document the terms of the transaction and the assessed rental value of the list, along with documentation demonstrating how the parties calculated that value. Alternatively, the groups could exchange names if both organizations have lists, or parts of lists, of equal value. It may also be possible for each group to share the costs of developing a list. In this case, the costs must be divided evenly or in some reasonable manner to avoid having the 501(c)(3) pay any of the 501(c)(4)'s costs. Each organization would own the list and be able to use it for its programs. Whatever arrangement the organizations enter into to rent, share or exchange lists, it is important to ensure that it is consistent with applicable privacy policies and laws and with any other restrictions on the use of the names and contact information such as the limits on using cell phone numbers for robo or autodialed calls or texts. See **AFJ's Robocalling Rules Guide**.

Similar principles should be used in sharing a voter file database or modeling. Many organizations that engage in grassroots organizing and civic engagement use voter files and modeling to identify those people to whom they can most effectively direct their messages and communications. If a 501(c)(3) pays for these resources, any rental to the 501(c)(4) must be at fair market value. The 501(c)(4) may not be allowed to use the resources at no charge unless the use is limited to charitable or educational purposes in which the 501(c)(3) is permitted to engage. In addition, the 501(c)(3) must make substantial use of the database and lists derived from their use for its own programs. In other words, the 501(c)(3) may not invest funds into developing the resource, then rent to the 501(c)(4) unless the 501(c)(3) has an actual intention to use it for its own programs.

20. Courts have held that mailing list rental income is royalties, not subject to unrelated business income tax. *See, e.g., Sierra Club v. Commissioner,* 86 F.3d 1526 (9th Cir. 1996).

Particular caution should be used if the 501(c)(4) intends to use the database or modeling for partisan political purposes. Organizations should seek guidance before engaging in this type of data transfer or exchange. This type of transaction raises complex issues and there is little guidance available as to its legality.

Example:

If the Fund rents its list to third parties for $75 per thousand names, PEN may rent it at that same rate. The Fund may allow PEN to use the list free of charge if the use is consistent with the exempt purpose of the Fund, that is, its educational purpose. For example, if PEN produces an educational study that does not constitute lobbying, the Fund could contribute its list to PEN in furtherance of this educational activity. The transaction would be an in-kind contribution to PEN.

3. Applying for a Separate Nonprofit Postal Permit

An affiliated 501(c)(4) may not use the postal permit of the 501(c)(3). Each organization must apply for and use its own separate nonprofit postal permit. To apply for a postal permit to mail at the special bulk third-class rates, the organization is required to file Form 3624, "Application to Mail at Nonprofit USPS Marketing Mail Prices." The application is available at post offices, on the USPS' website at https://about.usps.com/forms/ps3624.pdf and on the Alliance of Nonprofit Mailers' website at www.nonprofitmailers.org. While the organization must pay regular USPS Marketing Mail postage rates while the application is under review, it may apply for a refund of the difference between the regular and nonprofit rates if the permit is granted.[21]

4. Joint and Linked Websites

Some affiliated organizations maintain websites that are shared between the 501(c)(3) and 501(c)(4). Most, however, choose to have separate websites that are linked in some manner. In a situation where a 501(c)(3)'s affiliated 501(c)(4) does not engage in partisan activity to support or oppose candidates or political parties, a shared website may work well. If the 501(c)(4) engages in partisan political activity, the safest strategy is to maintain separate websites with distinct URLs, one for each organization. As with other costs discussed above, in either case, each organization must pay its share of the costs of its website or its share of a joint website. It is important for the 501(c)(3) to be able to demonstrate that it is not subsidizing, directly or indirectly, the work of its affiliated 501(c)(4).

501(c)(4) Website: If only the 501(c)(4) maintains a website, it may post content on that website about the programmatic activities, communications and events of any 501(c)(3), including its affiliated 501(c)(3). In that case, the 501(c)(3) may, but is not required to, pay the (c)(4) for the cost of posting the material.

Shared Website: If a 501(c)(3) organization owns a website and allows its related 501(c)(4) to post content on the website (or if the two organizations have a joint website), and if the 501(c)(4) conducts political activity, then political material on the website may be attributed to the 501(c)(3), resulting in a violation of the 501(c)(3)'s tax status.

In 2009 the IRS found that a 501(c)(3) organization had engaged in prohibited political activity when its website housed pages for its related 501(c)(4) organization.[22] In that situation the 501(c)(3) organization maintained a website with the 501(c)(4)'s pages nested within that site. The layout and design of all pages on the site were the same. The 501(c)(3) logo appeared in the architecture of the site on every page; the 501(c)(4) pages also bore the logo of the 501(c)(4) organization.

21. For more information about nonprofit postal issues, contact the Alliance of Nonprofit Mailers online at http://www.nonprofitmailers.org.
22. IRS Technical Advice Memorandum 200908050 (Feb. 20, 2009), *available at* http://www.irs.gov/pub/irs-wd/0908050.pdf.

Endorsements of political candidates appeared only on the 501(c)(4) pages. Despite the fact that the 501(c)(4)'s name and logo was prominently displayed on its pages and the 501(c)(4) paid a proportionate share of the website costs under a cost-sharing agreement between the two organizations, the IRS determined that the 501(c)(3) had engaged in political intervention by hosting the endorsements on its website.

To avoid this pitfall, a joint website maintained by a 501(c)(3) and its affiliated 501(c)(4) must clearly distinguish between the content that belongs to the 501(c)(3) and that which belongs to the 501(c)(4). And, this separation is particularly critical if there is any partisan political content on the 501(c)(4) pages. The 501(c)(3)'s banner, logo, address, site links, disclaimer, or similar identifying information specific to the 501(c)(3) should not appear on any of the 501(c)(4) web pages. Each entity should pay for its proportional costs of the website. It may also be helpful to use a distinct layout and design for the portion of the website devoted to the 501(c)(3) so as to distinguish it clearly from the portion of the website devoted to the 501(c)(4). Even with these safeguards, however, it is unclear how the IRS would view the shared website.

Links to affiliated and unaffiliated websites: According to the IRS, not only are organizations responsible for the content on their websites, but they are also responsible for their links. A 501(c)(3) organization may not use links in a manner that supports or opposes candidates. To determine whether a 501(c)(3) is engaging in impermissible political activity by linking from its website to another website, the IRS will look at the context of the sponsoring organization's link.

Only in very narrow situations may a 501(c)(3) link to a website with political content. The facts and circumstances considered by the IRS will include the language that appears on the 501(c)(3)'s website describing the link; whether the 501(c)(3)'s link treats all candidates equally; whether the link serves a proper tax-exempt purpose (such as nonpartisan public education) or, conversely, makes it appear that the organization is supporting an electoral message; and the directness of the links between the organization's website and the web page containing material supporting or opposing a candidate. The IRS has not said what number of links constitutes sufficient separation, but "electronic proximity — including the number of 'clicks' that separate the objectionable material from the 501(c)(3)'s website — is a significant consideration."[23]

After establishing a link, an organization has an ongoing duty to monitor it. If an organization links to an external website, and if that external website later changes its content so that it becomes political in nature, the 501(c)(3) organization may be held liable for conducting political activity, even though the link was permissible at the time when it was posted.

In a memorandum regarding the 2008 elections, the IRS indicated that it would "not pursue, at this time, cases involving a link between a website of a section 501(c)(3) organization and the homepage of a website operated by a related section 501(c)(4) organization."[24] Of course, if the link from the 501(c)(3) website to its related 501(c)(4) includes explicit political language, such as, "Click here to see our endorsed candidates," the IRS might pursue a finding of political intervention by the 501(c)(3) despite the position stated in its 2008 memorandum.

For more information on this issue, see Alliance for Justice's guidance on **Influencing Public Policy in the Digital Age.**

23. Memorandum from Lois G. Lerner, Director, IRS Exempt Organizations Division, April 17, 2008, *available at* **http://www.irs.gov/pub/irs-tege/2008_paci_program_letter.pdf** at 2.
24. Memorandum from Marsha A. Ramirez, Director, IRS Exempt Organizations Examinations, July 28, 2008, *available at* **https://www.irs.gov/pub/irs-tege/internetfielddirective072808.pdf**.

5. Social Media

The IRS has provided relatively little guidance to tax-exempt organizations related to social media. In the absence of further guidance, the general principles of exempt organization law applicable to websites and other communications and activities should be considered to extend to the social media activities of 501(c)(3) and 501(c)(4) organizations.

Given the time and effort involved in building and maintaining a social media following, affiliated 501(c)(3) and 501(c)(4) organizations may wish to share a single account on a social media platform. The IRS has not provided clear guidance on such an arrangement. However, if the 501(c)(4) will never post any political content (such as candidate endorsements), it is likely the two organizations could share a social media account, maintained by the 501(c)(3), with each organization paying its allocable share of expenses under a cost-sharing agreement. If the 501(c)(4) does engage in political activity, the IRS could under various circumstances attribute the political content to the 501(c)(3) organization. Accordingly, if the affiliated organizations will not have separate social media accounts, the preferred practice is for the 501(c)(4) organization to use its own resources to maintain the social media account. This allows the 501(c)(4) organization to build and maintain a large following to which it can convey political content when it wishes, as well as make grassroots fundraising solicitations. When the 501(c)(3) organization has content to post to social media, the 501(c)(4) may help publicize the 501(c)(3)'s work by posting it to the 501(c)(4)'s social media account. If a 501(c)(3) organization with an affiliated 501(c)(4) has already amassed a large social media following and wishes to change its online structure, it should review the relevant terms of service for the social media platform and consult a lawyer knowledgeable about the relevant IRS rules.

In the same way that an organization is responsible for its own website content, an organization is generally responsible for its own social media content. Accordingly, a 501(c)(3) organization may not use its social media channels to support or oppose political candidates, and it may not post content showing bias for or against any candidate on its social media channels. The same general guidance about links discussed above with respect to websites should be considered to apply to a 501(c)(3) linking to another organization or person's website or social media account from its social media account. A 501(c)(3) organization also should not share (such as by retweeting) social media posts containing political content on its social media channels.

Paid social media posts and advertisements may be subject to additional restrictions and requirements imposed by the social media platform, or in the case of paid social media ads by a 501(c)(4) organization to advocate the election or defeat of a federal candidate, to the FEC's coordination rules, reporting requirements, and disclaimer requirements applicable to federal independent expenditures. (See Chapter I, §§ D-E.) Additionally, state laws regarding social media activities to support or oppose state-level candidates vary, and may apply to even free or "organic" social media activities in some jurisdictions.

Rules Governing Activities of Political Organizations

A. Introduction to Political Organizations

A political organization is another type of tax-exempt entity (organized under IRC section 527) and is used primarily to fund activities designed to influence the nomination or election of candidates for public office. Political organizations do not operate under the same constraints as 501(c)(3)s, which are prohibited from influencing elections, or 501(c)(4)s, which may influence elections only as a secondary activity.

There are three general categories of political organizations as listed below:

Federal PAC: A Federal PAC as discussed in this guide is any "political committee" registered with the FEC to make contributions to or expenditures on behalf of federal candidates or committees. Within this category there are a variety of different structures and types of PACs that are subject to specific rules on fundraising and spending. A Federal PAC may also participate in state and local elections where permitted by state law.

State PAC: A State PAC is any political organization registered with a state election agency to make contributions to or expenditures on behalf of state or local candidates or committees. Generally, a State PAC may not participate in federal elections.

527 Organization: A political organization may also seek to influence federal or state and local elections through activities that do not require it to register with the FEC (in the case of federal elections) or the state election agency (in the case of state elections). These political organizations, sometimes referred to as "527 organizations," operate largely outside the parameters of the FECA and state law. They are, however, required to register with and report to the IRS. See Chapter IV, § D for more details.

This guide primarily addresses the rules governing Federal PACs and 527 organizations established and maintained as separate segregated funds (SSFs) of 501(c)(4)s. This guide does not provide extensive detail on the political activities conducted by nonconnected political organizations, but it tries to note where the rules differ from those governing activities conducted by SSFs. Nor does this guide address in any detail political organizations established to support or oppose state and local candidates. Each state has its own campaign finance laws governing this type of activity. Generally, such information is available through the secretary of state or election commission.[1] In addition, Alliance for Justice's Bolder Advocacy website has a section including materials on state campaign finance laws at https://afj.org/resource-library/.

B. Overview of Federal PACs

There are various types of Federal PACs, each of which is discussed below. The distinctions among these entities depend on many factors, including the types of expenditures the PAC intends to make and the relationship, if any, to a corporation or labor union. Throughout this guide, these terms will be used to provide additional information on the rules and restrictions for each type of Federal PAC. Some Federal PACs will fall within several categories. For example, a Federal PAC may be an SSF and qualify as a multicandidate committee.

A Federal PAC is defined as "any committee, club, association or other group" (1) that makes more than $1,000 in political expenditures or receives more than $1,000 in contributions during a calendar year for the purpose of influencing federal elections and (2) whose "major purpose" is the nomination or election of federal candidates.[2]

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1. For a list of state campaign finance offices, *see* FEC, https://www.fec.gov/resources/cms-content/documents/cfsded.pdf.
2. 52 U.S.C. § 30101(4); *See Buckley v. Valeo,* 424 U.S. 1, 79 (1976); *The Real Truth about Abortion v FEC,* 681 F.3d 544 (4th Cir. 2012); 72 Fed. Reg. 5,595, 5,596-97 (Feb. 7, 2007).

1. Traditional PAC or Super PAC?

Traditional PAC: Throughout this guide, the term "Traditional PAC" is used to discuss a PAC that is registered with the FEC that is not a Super PAC. A Traditional PAC may make contributions and expenditures to influence the outcome of federal elections, as discussed in Section C of this chapter, in compliance with FECA. It is subject to contribution limits from its contributors. These limits are indexed for inflation in odd-numbered years.[3] It may also participate in state and local elections where permitted by state law. A Traditional PAC may be operated as either an SSF or a Nonconnected PAC.

Super PAC: A Super PAC is a federal political committee that may make only independent expenditures in federal races; it may *not* make any in-kind or direct contributions to federal candidates. In *SpeechNow v. FEC,* the U.S. Court of Appeals for the District of Columbia Circuit held that, if a PAC makes independent expenditures only and does not make any direct monetary or in-kind contributions to federal candidates, the PAC may accept unlimited contributions from individual donors. The Super PAC must register and file reports with the FEC like other Federal PACs. While the court did not address the ability of such a PAC to accept corporate or labor union contributions to its federal account, the FEC ruled in two subsequent advisory opinions that a Super PAC may also receive unlimited contributions from corporations and unions and presumably also from other sources that are permitted to make disbursements in connection with a federal election.[4] A Super PAC may also participate in state and local elections, and may be permitted to make contributions to state or local candidates, where permitted by state law.

Hybrid PAC: A Hybrid PAC is a type of federal political committee that maintains both a Traditional PAC account (known as a "Contribution Account") and a Super PAC account (known as a "Non-Contribution Account)."

The Contribution Account may receive contributions subject to the source and dollar limits applicable to a Traditional PAC for the purpose of making contributions to candidates, while the Non-Contribution Account may receive unlimited contributions for independent expenditures only. Each account must pay the portion of administrative expenses that represents the percentage of activity for that account, and it must comply with the applicable limits for the contributions that it receives for the purpose of making candidate contributions. (See Chapter V § B for further information.)

2. Separate Segregated Fund or Nonconnected PAC?

Separate Segregated Fund: An SSF is a political committee established under the sponsorship and continuing control of a "connected organization."[5] A Traditional PAC may be established as an SSF. At the time of publication, the issue of whether a Super PAC may be an SSF is unresolved. (See Chapter V for discussion of this issue.) The connected organization of an SSF may be any form of corporation, including an incorporated tax-exempt membership organization (other than a 501(c)(3)). While the corporation may not make contributions in federal elections, it may participate indirectly by creating an SSF that is a Federal PAC to raise voluntary contributions from eligible contributors. With few exceptions, treasury funds of an incorporated connected organization may not be transferred to the SSF, but the corporation may finance the establishment, solicitation, and administrative costs of the SSF. The corporation may solicit only its restricted class (bona fide members, executive and administrative personnel, and their families) for contributions to the SSF. Chapter IV discusses establishing and operating an SSF.

3. *See* 11 C.F.R. § 100.5(e)(3); Federal Election Commission, Contribution Limits at https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/.
4. *See SpeechNow.org v. FEC,* 599 F.3d 686 (D.C. Cir. 2010); *see also* FEC Advisory Opinions 2010-11 and 2010-09.
5. 52 U.S.C. §§ 30101(4)(B), (7).

SSF Federal PAC	Nonconnected Federal PAC
Established and maintained by a corporation or labor union	Established by a group of individuals, not a corporation or union
May solicit contributions only from a defined restricted class, including "members" and executive and administrative employees and their families	May solicit the general public for contributions
May have its administrative and fundraising costs paid by the corporation or union that controls it	Must pay all administrative and operating expenses from solicited funds in the PAC account

Nonconnected PAC: A Nonconnected PAC, as distinguished from an SSF, has no connection to a corporation or union. Again, a Traditional PAC, a Super PAC and a Hybrid PAC may each be established as a Nonconnected Federal PAC. While individuals otherwise associated with a tax-exempt organization (including a 501(c)(3) or 501(c)(4)) may form a Nonconnected PAC, it must be maintained separately from the tax-exempt organization. Any apparent direct or indirect financial support provided by the tax-exempt organization will place the Nonconnected PAC that is not a Super PAC in legal jeopardy of being considered an SSF.

A Nonconnected PAC has the advantage of being able to solicit contributions from the general public, but it must pay its own administrative and fundraising expenses directly from these contributions and not benefit in any fashion from the resources of the 501(c)(4). There are some exceptions to this rule for Super PACs, as discussed below and in Chapter V.

3. Multicandidate Committee Status (Traditional PACs Only)

Both types of Traditional PACs—Nonconnected PACs and SSFs—may qualify for multicandidate political committee status which enables the PAC to make contributions at a higher level. (This designation has no relevance to a Super PAC, however, because a Super PAC may not make contributions in federal races.)

A multicandidate committee is any committee that: (1) has been registered with the FEC for at least six months, (2) has more than 50 contributors, and (3) has made contributions to at least five candidates for federal office. Once a committee has qualified as a multicandidate committee, it must file Form 1M ("Notification of Multicandidate Status"), alerting the FEC that the committee has achieved this status. A qualified multicandidate committee may give a candidate up to $5,000 per election, whereas a PAC that does not have multicandidate status is limited to contributions of $3,300.[6] In light of the requirement to be registered for at least six months, it is important not to wait late into an election cycle to set up a Traditional PAC. When making contributions to candidates, a multicandidate committee must give to a recipient candidate or campaign committee a written notification that it has qualified as a multicandidate committee. This statement may be preprinted on the committee's checks.

6. The contribution limit for what a Traditional PAC that is not a multicandidate committee may contribute is indexed for inflation in odd-numbered years; the contribution limit for a multicandidate committee is not. 52 U.S.C. § 30116; *see also* FEC, "Contribution Limits For 2023-2024 Federal Elections," *available at* https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/.

C. Traditional PAC Participation in Federal Elections

1. Direct Support of Candidates by Traditional PACs

Traditional PACs (both SSFs and Nonconnected PACs) may make contributions to federal candidates and committees. Note that Super PACs may not make contributions to federal candidates.

a. Direct Monetary Contributions

A Traditional PAC may make direct contributions, usually a check in a lawful amount made out to a candidate's campaign and reported to the FEC by the candidate and the Traditional PAC. Contributions to federal candidates from a Traditional PAC that has qualified for multicandidate committee status are limited to $5,000 per candidate per election. The primary and general elections count as separate elections. Thus, a Traditional PAC may contribute $10,000 to a candidate in an election cycle if the candidate runs in both a primary and a general election. Prior to qualifying as a multicandidate committee, a Traditional PAC may only contribute up to $3,300 per candidate per election.

b. In-Kind Contributions

Traditional PACs may offer services or goods to candidates at no charge or at reduced cost. All such in-kind contributions count against the single-contribution limit that applies to cash contributions. Thus, if a Traditional PAC that qualifies for multi-candidate committee status conducts a phone bank coordinated with a federal candidate worth $1,000, the Traditional PAC may contribute only another $4,000 in cash toward the same election. Valuation of in-kind contributions must be at fair market value, not at actual cost to the organization.

A Traditional PAC, for example, might charge a candidate its actual costs in making available the use of office space or other facilities. If the charge is below the fair market value of what is provided, the difference between the actual charge and the fair market value represents a reportable in-kind contribution subject to the contribution limits.

c. Earmarking (Bundling) Contributions

An earmarked contribution is one directed by a contributor through an intermediary or conduit, which sends a "bundle" of contributions to the candidate for whom they are intended. Bundling enables individual contributors to make personal contributions to a candidate in such a way that the candidate recognizes that the contributor is committed to a particular public policy issue or organization. A Traditional PAC may function as a conduit for earmarked (bundled) contributions. A political organization not registered with the FEC, including a 527 organization, may not bundle contributions.[7] A 501(c)(4) is also prohibited from bundling, but its SSF Traditional PAC may do so as long as all the associated costs are paid for by the SSF.[8]

If proper procedures are followed, bundled contributions count only against the original contributor's contribution limit, not against the conduit's contribution limit. However, if the conduit exercises any "direction or control" over the choice of recipient candidate, then the earmarked contribution is considered to be a contribution by both the original contributor and the conduit.[9] The FEC has not issued clear guidance defining "direction or control." When a Traditional PAC solicitation offers prospective donors a choice of several candidates to whom the donors may contribute, "direction or control" generally has not been deemed present.

In addition, a Traditional PAC that is bundling contributions for candidates must follow specific guidelines for recordkeeping, reporting, timing, and designation of earmarked contributions.[10]

The costs associated with soliciting the contributions, forwarding the contributions to the candidate, and associated record-keeping and reporting must generally be treated as either in-kind contributions or independent expenditures to the candidate benefiting from the contributions, unless the candidate pays them.

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7. 11 C.F.R. § 110.6(b)(2)(ii).
8. 11 C.F.R. § 110.6.
9. 11 C.F.R. § 110.6(d); *See FEC vs. National Republican Senatorial Committee,* 966 F.2d 1471 (D.C. Cir. 1992) (holding that insufficient "direction or control" existed to require contributions to count against a committee that requested donations to be divided equally among four Republican candidates).
10. 11 C.F.R. §§ 110.6(c), 102.8(c), 102.9(a)(4).

FEC Form 3L: Candidate committees, political party committees, and leadership PACs that receive bundled contributions are required to file bundling disclosure reports on FEC Form 3L if they receive two or more bundled contributions that in the aggregate exceed the "reporting threshold" during the applicable reporting period. The reporting threshold for 2024 is $21,800; this amount is indexed for inflation. For purposes of the Form 3L, the term "bundled contribution" is defined broadly to include any contribution that is either (1) forwarded to a reporting committee by a Lobbying Disclosure Act lobbyist/registrant or lobbyist/registrant PAC or (2) received by the reporting committee and credited to a lobbyist/registrant or lobbyist/registrant PAC through "records, designations, or other means of recognizing that a certain amount of money has been raised."[11]

d. Polling Activity

FEC regulations set out special rules for the donation of polling data to candidates.[12] Because polling data results represent something of value, their donation to federal candidates generally constitutes an in-kind contribution and must be paid for by a Traditional PAC within its contribution limits.[13] However, the polling data is not an in-kind contribution if, before providing them to a candidate, the committee makes them public through a press release or similar means, as long as there has been no coordination or prearrangement with the candidate.

A Traditional PAC that donates polling data to several candidates may calculate the reportable in-kind contribution to each by dividing the total cost of the poll by the number of candidates who receive it. As a result, a poll that cost $5,000, provided immediately in full to each of five candidates, is only a $1,000 in-kind contribution to each.

The regulations use the concept of "aging," by which the value of a poll as an in-kind contribution declines as time passes and the data becomes stale. These values are keyed to the date on which the contribution of polling results is made to the candidate:

- Polling data provided 15 days or less from the date on which the Federal PAC receives the poll result are worth 100 percent of the calculated value.
- Polling data provided 16 to 60 days from the date on which the Federal PAC receives the poll result are worth 50 percent of the calculated value.
- Polling data provided 61 to 180 days from the date on which the Federal PAC receives the poll result are worth 5 percent of the calculated value.[14]

After 180 days, the poll no longer carries value and is not a reportable in-kind contribution if provided to the candidate.

2. Independent Expenditures — Rules and Reporting

Both Traditional PACs and Super PACs are permitted to make independent expenditures in federal races.

While 501(c)(4) organizations may also make independent expenditures, they may be subject to tax under IRC section 527(f). (See Chapter I, § C(4).) Therefore, if a 501(c)(4) has significant investment income, it may be advantageous to carry out independent expenditures through a Federal PAC.

A PAC makes an independent expenditure when it finances a public communication containing express advocacy, provided that the expenditure is not made with the cooperation or consent of, or in coordination with or at the request or suggestion of, any candidate or the agent of any candidate. (See Chapter I, § D(2) for a discussion of "express advocacy.")

11. 11 C.F.R. § 104.22(a)(6).
12. 11 C.F.R. § 106.4.
13. 11 C.F.R. § 106.4(b).
14. 11 C.F.R. § 106.4(g).

There is no limit on how much a PAC may spend on independent expenditures. If, however, it is determined that an expenditure is not independent, the expenditure is treated as an in-kind contribution and therefore subject to FECA contribution limits. For this reason, PACs that anticipate making independent expenditures must be careful to avoid coordination with a candidate, a candidate's campaign, or the appropriate political party. (See Chapter I, § E for a detailed discussion of coordination.)

With few exceptions, communications, including independent expenditures, paid for by a PAC must contain a disclaimer notice stating who financed the communication and that the communication was not authorized by any candidate.[15] See Section F of this chapter for a discussion of PAC disclaimer requirements.

Independent expenditures must be reported by a PAC and must be individually itemized on Schedule E of FEC Form 3X ("Report of Receipts and Disbursements") once the calendar year total paid to a vendor or other person exceeds $200 with respect to a particular election.[16] In addition, all independent expenditures totaling $10,000 or more relating to a specific race must be reported on Schedule E of FEC Form 3X within 48 hours of public dissemination or distribution. Each additional time that further expenditures for that election reach $10,000 up to 20 days before the election, the organization must file another report within 48 hours. Within the final 20 days before an election, the threshold amount drops to $1,000 and the reporting period shortens to 24 hours. Contracts obligating funds, as well as actual disbursements, must be included.

D. 527 Organizations

Entities referred to in this guide and in common political parlance as "527s" are political organizations that seek to influence elections but conduct activities that are not subject to the rules and requirements applicable to Federal PACs and State PACs. While the term "527" is generally used to describe this type of group, it is important to remember that *all* political organizations, including Federal PACs and State PACs, are exempt from tax under section 527. Particularly with the emergence of Super PACs, this type of 527 organization is considerably less likely to be useful. The major advantage of the Super PAC, when compared to a "527 organization," is that it may conduct all the same activities and carry out unlimited independent expenditures. The most obvious advantage of a 527 that is not a Super PAC is that the 527 is not required to register with the FEC or similar state agency because it does not qualify as a PAC or political committee for the purposes of federal or state law. It is required, however, to register and report with the IRS. (See Chapter IV, § D.)

1. Tax Rules

A 527 organization may be established as an SSF of a 501(c)(4) organization (or any 501(c) organization except a 501(c)(3)), or it may be a non-connected entity. Unlike a 501(c)(4), which must limit its political activities to ensure that they do not compromise its primary purpose, a 527 *must* expend its funds exclusively to influence elections.

A 527 organization may conduct voter education and registration activities that are timed to coincide with an election and targeted at geographic areas where elections are occurring. The fact that these activities are conducted to influence the public's judgments about the positions of particular candidates and officeholders distinguishes them from similar activities that may be conducted solely for lobbying or educational purposes by 501(c)(3)s and 501(c)(4)s. In addition, because of the election-related content, targeting, and timing, a 501(c)(3) would not be permitted to distribute similar voter guides or records or conduct partisan voter registration.

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15. 11 C.F.R. § 110.11(a)(1).
16. *See* 11 C.F.R. § 104.4(b)(2) for reporting requirements related to independent expenditures. Expenditures supporting candidate A and those made to oppose candidate A's opponent are added together to count toward the threshold. However, expenditures to support a Senate candidate and a House candidate in the same location are not aggregated together to count toward the threshold, nor are expenditures made in a candidate's primary election aggregated with general election expenditures for the same candidate.

The types of voter education communications that are treated as exempt function expenditures and, thus, may be developed and paid for by a 527 organization include:[17]

- Voter guides on issues that identify where particular candidates stand on those issues;
- Voting records that show the positions of incumbent officeholders and compare challengers' views on the same issues;
- Some types of grassroots lobbying communications and issue advocacy, as well as door-to-door canvassing and other events timed and targeted to influence an election; and
- Voter registration and voter turnout activities targeted to areas where the issues are thought to be important to voters' choices.

These activities are likely to be subject to federal or state campaign finance laws, particularly if they include express advocacy or the functional equivalent of express advocacy, that must be reviewed prior to engagement.

2. Campaign Finance Rules

While a 527 organization must have a political objective for its activities, if *it conducts express advocacy on the federal level, it must not have influencing federal elections as its major purpose, or else it will be required to register and report as a Federal PAC.* "Major purpose" is not well-defined, and there is currently considerable disagreement among the FEC's Commissioners and pending litigation about how to determine major purpose,[18] but at a minimum the term certainly means that if at least a majority of an organization's spending is express advocacy pertaining to federal elections, it is required to register as a Federal PAC. In some cases the FEC has evaluated an organization's governing documents, solicitations, and communications, in addition to its expenditures, to determine its "major purpose."[19] In other cases, the FEC has disagreed on what expenditures should be taken into account, with some Commissioners taking the position that only federal independent expenditures should be used to calculate major purpose and other Commissioners advocating a broader review of an organization's activities.

If a PAC does cross the $1,000 express-advocacy barrier, but influencing federal elections is not its major purpose, then it needs to register only with the IRS and not with the FEC, although it will have to comply with the FEC's special reporting and message disclaimer requirements for its independent expenditures and electioneering communications.

A 527 organization must also avoid any coordination or cooperation with a candidate, the candidate's campaign, or a political party in conducting its activities, largely because it cannot make direct or indirect contributions. If the activities are conducted in coordination or in cooperation with a candidate or a candidate's campaign, the entire expenditure will be considered an in-kind contribution for the purpose of federal election law. (See Chapter I, § E for a discussion of coordination.)

Example:

The PEN board votes to create a voter education 527, "PEN 527," a distinct fund from PEN or PENPAC. PEN 527 decides to pay for the research, development, and distribution of a voter guide that informs the voters about the candidates in a particular race. The guide lists the candidates and their positions on two issues central to the campaign and the organization's agenda. It will be sent out two weeks before the election in an area where PEN 527 has determined, through research, that potential voters are most concerned about these issues. This activity is timed and targeted to have an election-related impact and would therefore qualify as an appropriate activity for PEN 527.

17. *See, e.g.,* IRS Priv. Ltr. Ruls. 199925051, 9652026, 9808037, and 9725036.
18. *See CREW v. FEC,* 299 F.Supp.3d 83 (2018); CREW v. FEC, 209 F.Supp.3d 77 (2016); Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioner Lee E. Goodman, MUR 6872 (New Models). *See also* MUR 7904 (Hansjörg Wyss, et al.), MUR 7674 (Iowa Values), MUR 7465 (Freedom Vote, Inc.), MUR 7181 Independent Women's Voice), MUR 6538R (Americans for Job Security, et al.), and MUR 6396 (Crossroads Grassroots Political Strategies).
19. *Buckley,* 424 U.S. at 79; FEC, Final Rule, "Political Committee Status," 72 Fed. Reg. 5,595, 5,596-97 (Feb. 7, 2007).

E. Support of State or Local Candidates

Some states permit 501(c)(4)s and other corporations to make contributions directly to state and local candidates with or without specific limits and reporting requirements. States that do not permit direct contributions to candidates may permit corporations, including 501(c)(4)s, to establish and maintain State PACs. States vary as to whether a corporation may be permitted to pay the fundraising and administrative costs of a State PAC. In many states a group may make contributions to state or local candidates from its Federal PAC. These must then be reported to the FEC on the PAC's federal report, and the state may also require a separate state report. Because every state law is different and many states require the formation and legal registration of a State PAC, it is essential to consult state law and advisable to consult counsel regarding these requirements.[20]

F. Disclaimers for Public Communications

All "public communications" by a Traditional PAC or Super PAC must carry a disclaimer, regardless of whether the communication expressly advocates the election or defeat of a candidate.[21] A public communication includes any broadcast, newspaper or magazine ad, billboard or mass mailing, telephone bank to the general public, or other form of general public political advertising, as well as communications over the internet that are placed or promoted for a fee on another person's website, digital device, application, or advertising platform.[22] In addition, email of more than 500 substantially similar communications, and all websites and internet applications of a Traditional PAC or Super PAC must also have a disclaimer.[23]

1. Format

Disclaimers must be "clear and conspicuous," so as to give the viewer, listener, or reader adequate notice of the entity paying for and authorizing the communication.[24] The disclaimer must not be difficult to read or hear, and it may not be easily overlooked. A disclaimer on printed material must be contained in a printed box, printed with reasonable contrast, and set apart from the rest of the communication. A disclaimer in a 12-point font size satisfies the requirement when used in materials no larger than two by three feet.

2. Content — General Rule

If the communication is authorized by a candidate (or the candidate's campaign committee or an agent of either) but paid for by a Traditional PAC, the disclaimer must clearly state who paid for the communication and that it is authorized by the candidate, committee, or agent. If the communication is paid for by a Traditional PAC or Super PAC but is not authorized by the candidate, committee, or agent, then the disclaimer must state the PAC's full name and either its permanent street address, its telephone number or Web address, and the fact that the communication is not authorized by any candidate or campaign.

Example:

PENPAC pays for an advertisement authorized by Smith for Congress. The advertisement will be treated as an in-kind contribution subject to the applicable contribution limits. The disclaimer could read: "Paid for by Protect the Environment Now PAC and authorized by Smith for Congress."

20. For a listing of state offices that will have important information on each state's laws, *see* FEC, https://www.fec.gov/resources/cms-content/documents/cfsded.pdf.
21. 11 C.F.R. § 110.11(a)(1).
22. 11 C.F.R. § 110.11(a) (referring to § 100.26). *See also* 11 C.F.R. § 110.11(c)(5) (defining "internet public communication"); Internet Communication Disclaimers and Definition of "Public Communication," 87 Fed. Reg. 77467 (Dec. 19, 2022); Technological Modernization, 89 Fed. Reg. 196, 211 (Jan. 2, 2024). Skywriting, stickers, pens, water towers, and other media where a disclaimer is impractical are not required to carry a disclaimer; *id.* § 110.11(f)(1).
23. 11 C.F.R. §110.11(a); *see also* Technological Modernization, 89 Fed. Reg. 196, 211 (Jan. 2, 2024).
24. *See* 11 C.F.R. § 110.11(c) for specific requirements and exceptions.

Example:

PENPAC pays for an independent expenditure in support of Smith for Congress. The disclaimer could read: "Paid for by Protect the Environment Now PAC, www.penpac.org [or phone number or street address], and not authorized by any candidate or candidate's committee."

3. Special Rules for Different Types of Communications

a. Broadcast Communications

Communications transmitted through radio, television, or through any broadcast, cable or satellite transmission must include both the basic disclaimer described in § F(2) above, as well as an additional disclaimer statement known as the "stand by your ad" statement.

Communications authorized by a candidate:
For radio and television communications authorized by a candidate (or the candidate's campaign or agent), candidates must verbally identify themselves and state that they have approved the communication. For television communications, the statement must be either conveyed by a full-screen view of the candidate making the statement or accompanied by a clearly identifiable photograph of the candidate that appears during the voiceover and covers at least 80 percent of the vertical screen height. Additionally, television ads must include an on-screen statement that appears at the end of the advertisement, stating content similar to the audio statement, that (1) appears for at least four seconds, (2) has a reasonable degree of color contrast between the disclaimer and the background image, and (3) appears in letters equal or greater than four percent of the vertical picture height.

Communications not authorized by a candidate:
Communications paid for by a political committee or other entity and not authorized by a candidate, such as independent expenditures, require a disclaimer stating the name of the political committee responsible for the communication and, if applicable, the name of the sponsoring committee's connected organization. The name of the connected organization is not required if its name is already provided in the original statement. For example, because the name of the connected organization must be restated in the name of its SSF, stating the name of the SSF only would be sufficient.

If the communication is broadcast on the radio, the statement must be spoken clearly. If the communication is transmitted on television, cable, or satellite, the statement must be accompanied by a voiceover stating the information, and the disclaimer must appear in writing at the end of the communication that (1) appears for at least four seconds, (2) has a reasonable degree of color contrast between the disclaimer and the background image, and (3) appears in letters equal or greater than four percent of the vertical picture height.

Example:

The following statement satisfies the disclaimer requirements for broadcast communications not authorized by a candidate:

"Paid for by Protect the Environment Now PAC, www.penpac.org [or street address or phone number], and not authorized by any candidate or candidate's committee. Protect the Environment Now PAC is responsible for the content of this advertisement."

b. Phone Banks

Live caller phone banks to the general public, defined as more than 500 substantially similar phone calls within a 30-day period to individuals other than a group's members, must carry a disclaimer.[25] The caller must identify the name of the entity paying for the call and, if applicable, the name of the sponsoring Federal PAC's connected organization, as well as whether the call is authorized by a candidate or candidate's committee.

25. 11 C.F.R. § 110.11(a).

To be clear and conspicuous, it must be delivered in a manner that is not hard to hear (either because it is not audible or because it is stated too quickly). It is not clear whether a caller must state the complete disclaimer at the beginning of the phone call, or whether it is acceptable to provide some of the information at the end of the conversation. (See also Chapter I, § D(8) regarding additional rules applicable to robocalls.)

Example:

PENPAC pays for a phone bank to the general public, and no candidate or campaign authorizes the communication. The following disclaimer could be used:

"This call is paid for by Protect the Environment Now PAC and is not authorized by any candidate or candidate's committee. You can learn more about PENPAC at our Website, www.penpac.org."

c. Text Messages

In a 2002 advisory opinion, the Federal Election Commission ruled that SMS messages that were limited to 160 characters per message fell under the "small items" exception to the disclaimer requirements and did not require a disclaimer.[26] Subsequently, in 2022, the Commission ruled that short code text messages sent only to recipients who affirmatively opted-in to receive the text messages were not "public communications;" as such, they do not require disclaimers.[27] The FEC has not definitively addressed the disclaimer requirements for SMS or text messages that do not have space or character limits and are sent to those who have not opted in to receive the messages. However, to the extent that such messages are general public political advertising (and therefore "public communications") and can include both the sender's message and the disclaimer language, the exceptions identified in the advisory opinions above would not apply.

In that case, the following disclaimer would be appropriate to include in the text or SMS message: "Paid for by Protect the Environment Now PAC, www.penpac.org. Not authorized by any candidate or candidate's committee."

d. Websites

The website or internet application of a Traditional PAC or Super PAC must state the name of the PAC paying for it and whether it is authorized by a candidate or committee.[28] Password-protected websites available only to an organization's members are not required to have a disclaimer. Where required, the disclaimer must be "clear and conspicuous." Although the current regulations are silent about specific requirements for website disclaimers for a PAC's own website, the FEC previously approved a Traditional PAC's website containing a disclaimer that (1) appeared on the homepage and immediately following a request for contributor information and (2) was printed in the same type size as much of the text in the body of the website. If a 501(c)(4) has pages on its website that are paid for by its Traditional PAC or Super PAC, those PAC pages should have a disclaimer that states that the PAC has paid for the content.

Example:

If PENPAC's website is available to the general public and is not authorized by any candidate or campaign, the following disclaimer could be used:

"Paid for by Protect the Environment Now PAC, www.penpac.org, and not authorized by any candidate or candidate's committee."

26. FEC Advisory Opinion 2002-09.
27. FEC Advisory Opinion 2022-20; *see also* Interpretive Statement of Chairman Allen J. Dickerson and Commissioner James E. "Trey" Trainor, III Regarding Reg 2011-02 (Internet Communication Disclaimers and Definition of Public Communication), at 5.
28. 11 C.F.R. § 110.11(a)(1); *see also* Technological Modernization, 89 Fed. Reg. 196, 211 (Jan. 2, 2024).

e. Internet Public Communications

The FEC has issued regulations regarding the disclaimer requirements applicable to “internet public communications,” which are public communications over the internet placed or promoted for a fee on another person’s website, digital device, application, or advertising platform.[29] The Commission also provided further clarification about what types of communications fall within that definition.

A public communication is considered promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform. The FEC clarified that a “boosted” post, such as where a political committee posts a communication that expressly advocates the election of a federal candidate for free on a social media platform and then pays the platform to boost the post’s viewership, qualifies as an “internet public communication.”[30] However, the Commission also clarified that certain types of communications where an individual is paid to create or share political content are not considered “internet public communications.”[31] For example, if a PAC posts a video that expressly advocates the election of a federal candidate for free on a social media platform and then pays an individual to post that video on their own social media page to share with their followers, that is not an “internet public communication.” Similarly, if a PAC pays an individual to create and post a communication online for the individual’s own audience, that is also not an “internet public communication.”

An internet public communication by a political committee requires a disclaimer containing the content described in § F(2) above and that is presented in a clear and conspicuous manner. If an internet public communication has text or graphic components, it must include the required disclaimer in a manner that is fully viewable (such that the full disclaimer can be viewed without taking any action) and clearly readable, with a reasonable degree of color contrast. A disclaimer that appears in letters at least as large as the majority of other text in the communication satisfies the requirement to be “clearly readable.” A disclaimer satisfies the requirement to have a reasonable degree of color contrast if it is displayed in black text on a white background or if the degree of color contrast is no less than the color contrast between the background and the largest text used in the communication.

If a disclaimer is displayed in a video, it must be visible for at least four seconds and appear without the viewer taking any action. An audio-only communication must include the disclaimer in the audio. (Note that video and audio internet public communications do not require the additional disclaimer required for broadcast communications described in § F(3)(a), above).

In recognition of the limited size of many online advertisements, the new regulations allow for the use of an “adapted disclaimer” where the full required disclaimer cannot be provided or would occupy more than twenty-five percent of the communication due to character or space constraints intrinsic to the advertising product or medium. An adapted disclaimer is a clear statement that the communication is paid for, identifies the political committee paying for the communication using either their full name or a commonly understood abbreviation or acronym by which it is known, and is accompanied by an “indicator” and a “mechanism.”[32]

- An “indicator” is any visible or audible element presented in a clear and conspicuous manner that gives notice to a person reading, observing or listening to a communication that they may read, observe or listen to the full disclaimer through a mechanism. An indicator may take any form including but not limited to words, images, sounds, symbols and icons.
- A “mechanism” is any use of technology that enables a person reading, observing or listening to a communication to read, observe, or listen to the full disclaimer after no more than one action by the recipient. A mechanism may take any form including but not limited to hover-over text, pop-up screens, scrolling text, rotating panels, and hyperlinks to a landing page.

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29. Internet Communication Disclaimers and Definition of “Public Communication,” 87 Fed. Reg. 77467 (Dec. 19, 2022); Technological Modernization, 89 Fed. Reg. 196 (Jan. 2, 2024).”
30. Technological Modernization, 89 Fed. Reg. 196, 211 (Jan. 2, 2024).
31. *Id.*
32. An example of an “adapted disclaimer” is available on the FEC’s website at https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/coordinated-party-communication-using-adapted-disclaimer/.

Establishing and Operating a Separate Segregated Fund

A separate segregated fund (SSF) is a political organization that is tax-exempt under Internal Revenue Code section 527. It may be a Traditional Federal PAC, State PAC, or a 527 organization that does not report to the Federal Election Commission or any state election agency. An SSF may be established and maintained by a 501(c) organization, including a 501(c)(4), but not a 501(c)(3).[1] Generally, an SSF's purpose is to conduct political activities in which the 501(c)(4) is not permitted to engage or that may subject the 501(c)(4) to tax if they are carried out directly. The SSF account must be strictly segregated from the other accounts of the 501(c).

This chapter describes the basic rules for (1) establishing an SSF, (2) starting an SSF that is a Federal PAC registered with the FEC, (3) accounting and reporting responsibilities for all Federal PACs, and (4) registering with the IRS as an SSF that intends to conduct activities to influence elections without triggering registration and reporting requirements under federal or state campaign finance law (a "527"). You will need to consult state law to determine the rules for establishing an SSF that operates as a state-level political committee.

A. Rules Applicable to Establishing All SSFs

1. How to Organize the Committee

There are some rules that apply to all SSFs whether they are registered with the FEC, a state agency, or the IRS. There are others that apply only to certain SSFs, and those distinctions are noted.

In order for an SSF to qualify and maintain eligibility for tax exemption under IRC section 527, it must be organized and operated for the purpose of accepting contributions and/or making expenditures for an exempt function.

An "exempt function" means influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office. An SSF is not required to apply to the IRS for recognition of its exemption from federal tax.

Federal law does not require any specific form of organization for an SSF, and it does not require that an SSF manage its affairs by the terms of bylaws or other formal organizing documents. In this sense, SSFs have a wide range of organizational options available to them. Some SSFs authorize the treasurer to make virtually all major decisions. Other SSFs operate under more complicated arrangements for making these decisions, such as the use of an executive committee that draws on the participation of leaders in the connected 501(c)(4) organization to make contribution and other operating decisions.

2. Employer Identification Number

The SSF must apply for an employer identification number (EIN) by filing a Form SS-4 with the IRS. The SSF may not use the EIN of its connected 501(c)(4) if it wishes to have a separate legal identity from the 501(c)(4). Generally, a bank will not open an account until the SSF has obtained an EIN. This step must be taken even if the SSF will not have any employees of its own. The IRS online Form SS-4 (Application for EIN) can be found at https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online.

3. Depository

The SSF must open a bank account(s) into which all funds must be deposited and from which all expenditures must be made. It is generally impermissible for any SSF to receive and spend funds without first depositing them in the depository account.

1. A 501(c)(3) may establish a separate 501(c)(4) entity, and that 501(c)(4) entity may subsequently establish an SSF for conducting political activities, but the 501(c)(3) may not be involved in supporting the political activities conducted by the 501(c)(4) or the SSF. *See Branch Ministries v. Rossotti,* 211 F.3d 137 (D.C. Cir. 2000); *see also* 2002 CPE Text, *supra* Introduction, note 21, at 368. A 501(c)(3) may not do indirectly through a 501(c)(4) or SSF any activities that the 501(c)(3) is prohibited from engaging in directly.

4. Fundraising

All fundraising solicitations for SSFs must remind potential donors that contributions to these organizations are not tax-deductible.

It may be possible for a 501(c)(4) organization to transfer funds to an SSF that is not a Federal PAC, as long as the transfers are made "promptly and directly."[2] If the transfer is not made "promptly and directly," the amounts transferred will be considered exempt function expenditures (expenditures for political activity) subject to tax under IRC section 527. The rules governing these transfers, summarized briefly below, are very complex and require careful attention.

- The transfer procedures must be made in accordance with applicable state and federal law.
- The 501(c) organization must maintain adequate records to demonstrate that the transfer was made up of dues or political contributions, not investment income.
- The dues or contributions may not be used to generate investment income for the 501(c) organization. This requirement prevents the organization from holding funds for a significant period of time in an interest-bearing account and transferring them to the SSF. For this reason, many organizations choose to use non-interest-bearing accounts to collect dues and contributions. If an interest-bearing account is used, the transfers must be made "promptly." The IRS ruled informally that funds were transferred "promptly" when the transfers were made once or twice a month.[3]

The FECA, applicable to all Traditional PACs and Super PACs, has many additional rules and requirements for fundraising discussed in Section B of this Chapter. State law varies and must be consulted to determine if a 501(c)(4) may transfer funds and, if so, the applicable rules.

5. Tax Returns

Certain SSFs must file Form 990 or Form 990-EZ, depending on their registration and revenue. All Federal PACs are exempt from these filings. For SSFs that are not registered with the FEC, the filing requirements depend on whether or not the committee is a qualified state or local political organization ("QSLPO"), meaning that its political activities relate solely to state and local office and it is registered and reports in states whose law requires disclosure of contributions and expenditures similar to the IRS requirements. QSLPOs must file Form 990 or Form 990-EZ only if the committee has gross receipts of $100,000 or more. Non-QSLPO committees must file Form 990 or Form 990-EZ if their gross receipts are $25,000 or more. No section 527 political organizations (including both QSLPOs and non-QSLPOs) are required to file a Form 990-N. Additional information on Form 990 filing requirements may be found at **https://www.irs.gov/charities-non-profits/exempt-organization-annual-filing-requirements-overview.**

Forms 990 and 990-EZ are due on the fifteenth day of the fifth month after the close of an organization's tax year. An organization may obtain an automatic six-month extension on its Form 990 or 990-EZ by filing Form 8868 prior to the date on which its Form 990 or 990-EZ is due. Form 8868 is available online at: **https://www.irs.gov/pub/irs-pdf/f8868.pdf**.

The SSF must also file a tax return (Form 1120-POL, "Income Tax Return for Certain Political Organizations") on the fifteenth day of the fourth month after the end of the tax year if it has investment income (including interest or dividends) or nonexempt function expenditures in excess of $100 during the tax year. The due date for an SSF with a tax year ending December 31 is April 15. There may be similar state filing requirements.

2. Treas. Reg. § 1.527-6(e); IRS Technical Advice Memorandum 9622002 (Dec. 13, 1995); IRS Priv. Ltr. Rul. 8852037 (Oct. 4, 1988).
3. IRS General Counsel Memorandum 39837 (May 22, 1990); 2002 CPE Text, *supra* Introduction, note 21, at 440.

B. Establishing an SSF that is a Federal PAC

Throughout this section, the term "SSF Federal PAC" is used to discuss Traditional PACs. If a Super PAC is formed as an SSF, many of the rules will be the same, but note that it is unclear at the time of publication if Super PACs may be set up as SSFs. In cases where there are different rules, those differences are noted.

1. Registering With the Federal Election Commission

An SSF Federal PAC must register with the FEC by filing a Statement of Organization (FEC Form 1) within 10 days of any action by the connected organization toward establishing it, including passage of a resolution by the board of directors of a 501(c)(4) authorizing the establishment of an SSF. This form requires certain basic information, including the formal name of the committee, the name and location of its bank, the name of its treasurer, and the custodian of its records. It does not matter whether the new SSF has raised any money. *As long as the connected organization has authorized raising money, the SSF must register.*

Although the same form is used to register either an SSF Federal PAC or a Nonconnected Federal PAC, there are differences in how the form should be completed for each type of entity. These differences are highlighted below and in Chapter V.

2. Name of the Committee

The official name of the SSF Federal PAC must include the full name of its connected organization. A shortened form of the official name may be used on letterhead or checks, provided that the short name includes a clearly recognizable abbreviated form or acronym.[4]

Example:

If the PEN Board decides to set up a Federal PAC, the name of the new organization cannot simply be "Political Action Committee" or "Good Government Fund." The official name must be "Protect the Environment Now Political Action Committee." The PAC may indicate on its Statement of Organization that it will use PENPAC as a well-known abbreviation, but that cannot be the official name.

4. 52 U.S.C. § 30102(e)(5).

Filling Out the FEC Statement of Organization
(See Chapter V for special rules for Super PACs.)

	SSF Federal PAC	Nonconnected Federal PAC
1. Full name and address of Federal PAC	Must include the full name of the sponsoring corporation; address may be a post office box.	No federal rule on naming a nonconnected committee, except an unauthorized committee may not include the name of a candidate in its name.
2. Date	The date on which the Statement of Organization is submitted to the FEC.	
3. FEC Identification Number	Because this is the initial filing, leave this blank.	
4. Amendment	Because this is an initial filing and not an amendment to a previous filing, check "New."	
5. Type of Committee	Check box (e) ("This committee is a separate segregated fund"); the committee must indicate if it is a lobbyist/registrant PAC.	Check box (f) if the committee plans to support or oppose more than one federal candidate; the committee must indicate if it is a lobbyist/registrant PAC.
6. Connected Organization/Affiliated Committees	The connected organization is the corporation setting up the SSF; affiliated committees are any Federal PACs established by the parent or subsidiaries of the parent. The box for "connected organization" should be checked under "relationship".	Generally no, unless the committee is affiliated with another registered political action committee; generally, committees are affiliated when they are established, financed, maintained, and controlled by the same person or organization.
7. Custodian of Records	Usually the PAC treasurer, although some organizations use an outside accountant for this purpose.	
8. Treasurer	Anyone, including an employee or an officer of the connected organization; the appointment of an assistant treasurer is advisable in order to sign checks in the event that the treasurer is not available. (See section C(4) of this chapter for discussion of the treasurer's legal liability.)	
9. Depository	The bank or other financial institution in which the PAC deposits its funds; it is not necessary to list multiple accounts in the same bank.	

3. Affiliation of SSF Federal PACs

All SSF Federal PACs established, financed, maintained, or controlled by different parts of the same organization are considered to be affiliated. Thus, SSF Federal PACs established by regional or state groups or chapters of the same 501(c)(4) organization are affiliated with the parent's Federal PAC. However, some local organizations are only loosely associated with a national organization, and therefore their SSF Federal PACs may not be considered affiliated. To determine whether your organization is affiliated with another organization, it is wise to consult an attorney.

Under certain circumstances, Federal PACs not established by the same parent may be considered affiliated. The FEC looks at the following factors, among others, to determine affiliation: similar patterns of contributions; large transfers of money from one organization to another; and "common control," such as control by one Federal PAC or its connected 501(c)(4) over another PAC's decision-making authority.[5]

The consequences of affiliation are important. Affiliated committees share a single limitation on contributions to federal candidates. Thus, if a multicandidate parent SSF Federal PAC contributes $4,500 to a particular federal candidate for an election, any affiliated Federal PACs would be collectively limited to contributing only an additional $500 to the same candidate for the same election. Affiliated committees also share common limits on the contributions that they may accept from the same donor. (See Chapter V regarding affiliation rules and Super PACs.)

4. Committee Officers

Federal law requires an SSF Federal PAC to name only one officer, a treasurer. The treasurer is responsible for processing all PAC receipts, authorizing contributions and expenditures by the PAC, maintaining PAC books and records, and seeing to the preparation and timely filing of accurate financial disclosure reports with the FEC. A custodian of records must also be designated. This role may be filled by the treasurer or another person responsible for day-to-day recordkeeping.

The treasurer may delegate day-to-day accounting and reporting responsibilities to another person. However, the treasurer remains the responsible party for purposes of federal law. Without a treasurer, an SSF Federal PAC may not accept contributions or make expenditures. These PACs are advised to avoid the occurrence of any such vacancy by providing for one or more assistant treasurers who can automatically assume the position of treasurer if the treasurer is unavailable for some reason.

The decision to name any other officers such as a chairman or executive officer, is completely within the discretion of the connected organization or the SSF Federal PAC itself. Appointment of other officers does not relieve the treasurer of any responsibility.

5. Depository

The bank account for an SSF Federal PAC may be in any national or state bank or federally insured credit union or savings and loan. The PAC may have as many depositories, and as many accounts in each depository, as needed. Accounts in the same bank do not need to be listed separately on the Statement of Organization.

Example:

PENPAC was established to conduct express advocacy activities in federal elections. The PEN board met and passed a resolution to organize PENPAC. A bank account was opened for the PAC. No corporate money (i.e., PEN funds) may be deposited in the account. Contributions must be raised from PEN's restricted class for the specific purpose of supporting the PAC and deposited in the PAC account. PEN decides to appoint four volunteers, including one of the PEN board members, to direct the PAC's activities.

5. 11 C.F.R. § 100.5(g)(4).

6. 501(c)(4) Support for an SSF Federal PAC

It is important to note that the rules on corporate support for a Super PAC, discussed in Chapter V, differ from those discussed below.

A 501(c)(4) may pay the administrative and fundraising costs of its SSF Federal PAC, or the SSF may pay some or all of these costs directly.[6] The 501(c)(4) may, for example, pay all the costs for office space, staff, telephones, office supplies, and legal and accounting services. Staff of the 501(c)(4) may work on administrative activities of the SSF Federal PAC. Similarly, the 501(c)(4) may absorb all other costs of the SSF's administration. These costs may be considered exempt function expenses and therefore count against the primary purpose of the connected 501(c)(4). In addition, the costs must be reported on the Form 990 of the connected 501(c)(4). (See Chapter I, § C(5).) They are not, however, subject to section 527(f) tax because they are covered under the reserved section of the IRS regulations.[7]

In the event that the SSF Federal PAC pays any administrative cost that is payable by the 501(c)(4), it may seek reimbursement from the 501(c)(4), provided that the reimbursement is made within 30 days of the original payment by the SSF.[8] Apart from such reimbursements, the 501(c)(4) may not give money to the SSF Federal PAC for administrative or any other purposes. All payments for the benefit of the SSF must be made directly by the 501(c)(4) to the vendors or suppliers of services, provided "in-kind" by the 501(c)(4) itself or made as reimbursements to the SSF within 30 days.

Example:

PENPAC pays its share of the monthly rent and the costs of a PAC meeting to decide on endorsements and next year's agenda. PENPAC may seek reimbursement from PEN and deposit the reimbursement in the PENPAC account within 30 days. A deposit of PEN funds into the PENPAC account under any other circumstances would violate the FECA.

The 501(c)(4) may not lend funds to the SSF Federal PAC. Federal law expressly prohibits such loans.[9]

The SSF Federal PAC may pay for 501(c)(4) activities, but this must be done carefully. If the expenditure is not clearly for the purpose of influencing an election, it may be taxable under the IRC. For example, if the SSF Federal PAC pays for a lobbying workshop that is not election related, it may be subject to tax on that expenditure.

If the SSF Federal PAC wants to use resources of the 501(c)(4) organization to make an in-kind contribution to a federal candidate, Federal PAC, or political party, the fair market value of the resources must be paid in advance by the SSF Federal PAC to the 501(c)(4).[10] Otherwise the 501(c)(4) will be considered to have made a prohibited corporate contribution. The SSF Federal PAC may advance a specific amount to cover a particular use of corporate resources, or it may advance a lump sum to cover multiple uses that it anticipates in the future. The funds that are advanced by the PAC to the 501(c)(4) may not be returned to the PAC.

6. 11 C.F.R. § 114.1(a)(2)(iii).
7. Treas. Reg. §§ 1.527-6(b)(2), (3).
8. 11 C.F.R. § 114.5(b)(3) (2012); *see also* FEC Advisory Opinion 1983-22 (Northwest Central Pipeline Corporation PAC).
9. *See* 52 U.S.C. § 30101(8); (defining any "loan" to be a contribution).
10. *See* 11 C.F.R. § 114.2(f)(2)(i)(B).

Example:

PENPAC decides to contribute the services of a PEN employee to Smith for Congress; PENPAC must pay in advance the estimated cost of the employee's salary and benefits to PEN. Alternatively, if PENPAC anticipates that it will be making additional in-kind contributions of staff services worth approximately $5,000 to Smith and other candidates, PENPAC may advance $5,000 to PEN and draw down on that advance as the funds are expended. If an advance payment is not made, but instead PEN is reimbursed after the expenditure, PEN has made a prohibited corporate contribution.

7. Fundraising Rules for an SSF Federal PAC

A 501(c)(4) corporation establishing an SSF Federal PAC may solicit contributions to the SSF only from its executive and administrative personnel and their families.[11] In addition, if the 501(c)(4) has "members," contributions may be solicited from these members and their families. (See below for a discussion of the meaning of "member" in this context.) Individuals must be members prior to the SSF's solicitation. If the connected 501(c)(4) has an affiliated 501(c)(3) membership organization, it may be possible for the SSF to solicit the members of the 501(c)(3) for contributions to the SSF.[12] The 501(c)(3) may not pay any of the costs of the solicitation and must take steps to ensure that it does not jeopardize its charitable status.

An SSF may not solicit or receive contributions from foreign nationals. A foreign national is a person who is not a U.S. citizen and does not have a "green card" to work in the United States.[13]

Under certain limited circumstances, a 501(c)(4) may also solicit contributions from nonexecutive or non-administrative employees. All other potentially interested donors, such as members of the general public, may not be approached for contributions. Any solicitation outside of this permissible class violates federal law.

All fundraising solicitations for the SSF Federal PAC must include language informing the prospective contributor of the political purposes of the SSF, that all contributions are voluntary and the contributor has the right to refuse to contribute without reprisal, and that any suggested amounts listed on the solicitation are merely suggestions and more or less that the suggested amounts may be given.[14] A PAC solicitation does not require a disclaimer. It must, however, include a notice that contributions are not tax deductible.

An individual may contribute up to $5,000 per calendar year to an SSF Federal PAC.

a. Who Is a Member?

A member, under the FECA, is an individual who has an enduring financial or organizational connection to the 501(c)(4) organization.[15] Individuals who have only a casual or honorific connection to the organization, and occasional donors, are not members. Generally, the FEC has interpreted the term "member" to apply to any person who either pays membership dues on at least an annual basis or has a significant organizational attachment.[16] Individuals must affirmatively accept membership by some action, such as checking a box stating their intention to be members. The affirmation could be satisfied, for example, if the member returns a mailed questionnaire or attends an organizational meeting.[17]

11. "Executive or administrative personnel" are defined as employees who are paid on a salary basis, rather than an hourly one, and who have policymaking or supervisory responsibilities. Executives, lawyers, and engineers would be included; professionals represented by a labor union are not included. 11 C.F.R. § 114.1(c).
12. *See* FEC Advisory Opinion 2005-3 (ACOG).
13. 52 U.S.C. § 30121(a).
14. 11 C.F.R. § 114.5(a).
15. *FEC v. National Right to Work Committee,* 459 U.S. 197, 204 (1982).
16. *See* 11 C.F.R. § 100.134(f).
17. 64 Fed. Reg. 41266 at 41270.

Annual Dues: Individuals who pay dues of more than a nominal amount at least annually meet the definition of a member.[18] The FEC has not set any minimum amount for dues, allowing organizations to establish their own dues. Because some individuals fail to renew their dues exactly 12 months after the date of their last payment, the FEC offers organizations flexibility in satisfying this provision, as long as members renew their dues within "a reasonable grace period."[19]

Organizational Attachment: Individuals may also be considered members if they have the right to participate directly in organizational governance.[20] This right involves the ability to vote, directly or indirectly, in the election of at least one of the members for the organization's highest governing board or on policy questions that are binding on that board.

Example:

A member of PEN must pay dues of at least $15 per year. An individual paying these dues qualifies as a member under the FECA and may be solicited by the PAC. PEN also maintains an extensive list of names of people who have written to the organization for information or have had some similar type of contact. These individuals are not PEN members and may not be solicited by the PAC for contributions.

Membership organizations must also satisfy certain requirements:

- Some or all of the members must have the power to operate the organization, pursuant to its bylaws or other formal organizational documents;
- Membership requirements must be expressly stated in bylaws or other formal organizational documents;
- Bylaws or other formal organizational documents must be made available to members;
- The organization must expressly solicit people to become members;
- The organization must expressly acknowledge membership acceptance, such as by sending a membership card or newsletter to the member; and
- The organization may not be organized primarily for the purpose of influencing elections.[21]

b. What Is a Solicitation?

The FEC has broadly defined the term "solicitation" to encompass almost any oral or written presentation that encourages giving. Solicitation is not just an outright request for funds. The FEC has held, for example, that a newsletter circulated by a connected organization includes a solicitation if it publishes an article about its PAC that promotes the importance of giving and clearly states how people wishing to contribute can do so.[22] The sale of items, such as T-shirts or posters, by a Federal PAC is also considered a solicitation.

While an SSF Federal PAC may lawfully accept unsolicited contributions from those outside its solicitable class, publicizing the PAC's right to accept these contributions is itself a solicitation. It is extremely important, therefore, for the connected organization to evaluate carefully any discussion of its SSF in communications directed beyond its membership or executive and administrative personnel and their families to the public at large. These communications could be deemed impermissible solicitations.

18. 11 C.F.R. § 100.134(f)(2).
19. Definition of "Member" of a Membership Organization, 64 Fed. Reg. 41,266, 41,270, (July 30, 1999). Although the FEC has not defined the bounds of the grace period, organizations are more likely to satisfy the regulations by making their best efforts to renew members within the 12-month period.
20. 11 C.F.R. § 100.134(f)(3).
21. 11 C.F.R. § 100.134(e).
22. *See* FEC Advisory Opinion 2003-14; 1979-15 1979-66;1980-65;1981-41; 1982-65; 1991-03; 1992-09;1995-14; 2000-07; 1979-13.

All contributions to a Federal PAC must be voluntary. An organization may not, therefore, automatically assess members a political contribution as part of their regular payment of dues or allocate a portion of dues as a contribution to the PAC. Federal PAC contributions may not be required as a condition of membership. Any contribution guidelines must be simply suggestions, and potential contributors must be informed of their right to refuse to contribute without negative consequences and of their right to contribute more or less than any suggested amount.

8. Accounting and Reporting Responsibilities for Federal PACs

All Federal PACs are required to keep records of their financial affairs and to make substantial disclosure of those affairs on a periodic basis to the FEC.[23] Political committees must file reports on FEC Form 3X, showing all receipts and disbursements and all outstanding debts and obligations. Receipts include contributions from individuals or other political committees, proceeds of loans received, rebates, and refunds. Disbursements include operating expenditures (if not paid by the connected organization), contributions to federal candidates, and loan repayments. In addition to summary information, the report requires detailed itemization of certain information, such as contributions from individuals and payments to a single vendor that, in the aggregate, exceed $200. For all contributions of more than $50 to the Federal PAC, the committee must maintain a record of the contribution received. Records of a contribution by check must contain an image of the check.[24] No cash contributions in excess of $100 may be accepted. The treasurer must preserve all records and accounts required under the regulations for three years after the report to which the records relate is filed.[25]

a. Filing Deadlines for FEC Reports

A Federal PAC may choose to report on either a quarterly or monthly basis.

Quarterly reporting: If the Federal PAC chooses to file quarterly, reports during a federal election year must be filed by April 15, July 15, and October 15, with the fourth quarterly or "year-end" report due on January 31 of the following year. In addition, the PAC must file a pre-election report 12 days before any election in which the Federal PAC has made contributions or expenditures not previously reported. Finally, the Federal PAC must file a post-general election report 30 days after the general election. There is no requirement for any post-primary election report.

During a nonelection year, a Federal PAC on a quarterly schedule must file only two semiannual reports covering January through June (to be filed by July 31) and covering July through December (to be filed by January 31 of the following year). In addition to these regularly scheduled reports, a PAC may also be required to file reports in connection with special and primary elections.

Monthly reporting: Monthly filing requires filing of a report on the 20th day after the last day of each month during the period from January through September. For the last three months of an election year, in place of the monthly report, the Federal PAC must file the pre- and post-general election reports and year-end reports as described above under quarterly filings. Monthly filing is advantageous if the Federal PAC is planning to support candidates in numerous primary elections or in any special election around the country because monthly filing obviates the need to track the coverage dates and deadlines for pre-primary election reports.

In a nonelection year, a Federal PAC filing monthly files a report by the 20th day after the last day of each month, except for the year-end report covering the month of December, which is due on January 31 of the next year.

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23. *See* 11 C.F.R. §§ 102.9, 104.14.
24. 11 C.F.R. § 102.9(a)(4); *see also* 11 C.F.R. § 100.34 (defining "record").
25. 11 C.F.R. § 102.9(c).

In the case of a Federal PAC that has receipts or expenditures (or anticipates having receipts or expenditures) in a calendar year in excess of $50,000, FEC reports must be filed electronically on or before the date when they are due. All other filers may file reports on or postmarked by the date on which they are due. If mailed, the reports should be sent by certified or registered mail, express mail, or overnight delivery service with a delivery confirmation so as to have proof of filing.[26] Pre-election reports must be filed on the due date or postmarked on an earlier date specified by the FEC. The FEC takes the position that it cannot waive or extend reporting deadlines, and it strictly monitors filing dates. A late filer may be subject to a civil penalty.

b. Expenditures Must Be Documented

All Federal PACs must keep detailed documentation of all expenditures, including the name and address of the recipient of each disbursement; its date, amount and purpose; and (if the disbursement is made for a candidate) the candidate's name and office sought.[27] For all expenditures over $200, it must save a copy of the canceled check, invoice, receipt, or record of electronic transfer; for credit card transactions, the PAC must keep the canceled check or record of electronic transfer used to pay the credit card bill, plus either the monthly billing statement or the customer receipt for each transaction. These records must be maintained for three years from the date of the report of the underlying contribution and expenditure.

c. Obtaining Contributor Information

The treasurer of a Federal PAC must exercise "best efforts" in compiling the information necessary to itemize individual contributions aggregated in excess of $200 per calendar year. This information should be obtained even if the donor has not yet reached the $200 threshold. All written solicitations must include a "clear request" for contributor information. The request must be easy to read and clearly visible, and it must include a statement that federal law requires the PAC to use its best efforts to collect and report the name, address, occupation, and employer of all individuals whose contributions exceed $200 per year.

The FEC suggests two statements that meet this requirement, but similar language is acceptable:

- "Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation, and name of employer of individuals whose contributions exceed $200 in a calendar year"; or
- "To comply with federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation, and name of employer of individuals whose contributions exceed $200 per calendar year."[28]

Where a contributor fails to provide this information, the treasurer must make at least one written or oral request for this information within 30 days of receipt of the contribution. The additional request may not include any other subject or solicitation and must include a preaddressed return postcard or envelope. The information acquired must be reported in the same election cycle, either on the next FEC report or through amending the report on which the contribution was originally reported. Repeated failure to obtain this information from contributors can result in liability for reporting violations and a civil penalty. *Federal PACs should keep records of their requests for this information.*

An SSF Federal PAC must report any contributor information that is available in the records of its connected organization. Therefore, if the 501(c)(4) has the address, occupation, or employer information in its records, independent of the SSF solicitation, that information must be used in the FEC report.

Note that there is a difference between the recordkeeping and reporting requirements of the FECA. For example, individual contributors are disclosed by name and with accompanying details on FEC reports only if their aggregate contributions exceed $200 in any year, but the Federal PAC must maintain complete records of the names and addresses of each contributor who has donated in excess of $50.[29]

26. *See* 11 C.F.R. § 100.19(b); *see also* https://www.fec.gov/help-candidates-and-committees/filing-reports/paper-filing/.
27. 11 C.F.R. § 102.9(b)(1).
28. 11 C.F.R. § 104.7(b)(1)(i).
29. Compare 11 C.F.R. § 104.8(a) (requiring disclosure of each contributor of $200 or more) with 11 C.F.R. § 102.9(a)(1) (requiring that an account be kept of the name and address of each contributor of $50 or more).

d. Reporting "In-Kind" Contributions (Traditional PACs Only)

The fair market value of all in-kind contributions (donations of goods or services in lieu of cash) made by the SSF Federal PAC must be disclosed. Therefore, if the committee contributes its mailing list to a candidate, the fair market value of the list must be disclosed and counts against the contribution limit to that candidate. Similarly, if the PAC coordinates with a candidate on the production and broadcast of a radio ad advocating the election of that candidate, all the costs of the ad are considered in-kind contributions and must be disclosed.

These costs count against the SSF Federal PAC's contribution limit to that candidate. The SSF Federal PAC must also notify the candidate benefiting from the in-kind contribution of the nature, amount, and date of the contribution.

In-kind contributions *received by* a Federal PAC are disclosed both as a receipt and as an expenditure on the FEC report so that the value of the in-kind contribution does not affect the cash balance of the PAC.

Super PACs are not permitted to make contributions in federal races, so the rules on in-kind contributions to candidates do not apply.

e. Contribution Limits from PACs to Candidates (Traditional PACs Only)

SSF Federal PACs are limited in the value of money or in-kind contributions that they may make to candidates. Super PACs may *not make contributions to candidates, so the guidance in this section applies only to Traditional PACs*.

A Federal PAC that has been registered with the FEC for at least six months, has received contributions for federal elections from more than 50 people, and has contributed to at least five candidates qualifies for multicandidate committee status and may contribute up to $5,000 to each candidate per election (i.e., $5,000 for the primary election plus $5,000 for the general election). These limits are not indexed currently to inflation.[30]

Traditional Federal PACs that are not multicandidate committees are limited to $3,300 per candidate per election.[31] Certain limits, including the $3,300 limit above, are indexed for inflation in odd-numbered years.

Within 10 days of qualifying as a multi-candidate committee, a Traditional PAC must also notify the FEC by filing a Form 1M, "Notification of Multicandidate Status."[32] It must also notify each recipient of a contribution of its status.[33] Most committees comply with this requirement by printing the words, "XYZ PAC has qualified as a multicandidate committee," on the PAC's checks. For this reason, you may wish to order only a limited number of preprinted checks during the first six months of the PAC's existence. The information may also be stated in a cover letter that accompanies any contribution.

Since federal contribution limits are calculated on a per-election basis, the specific election for which a contribution is made should be clearly indicated on the face of the check or in an accompanying letter. It also is essential to indicate accurately on the report whether the contribution is for the primary or the general election. Errors in this area could create the appearance that contribution limitations for a particular election have been violated when, in fact, they have not.

C. State or Local Activity by Federal PACs

If a Federal PAC intends to conduct state or local political activity from the same account as its federal activity, it must disclose these expenditures on its reports to the FEC. It will also be required to comply with state and local registration and reporting requirements. Some states permit a Federal PAC to make contributions to state and local candidates with minimal, or no, reporting requirements, while others require the formation of a separate State PAC. Because state laws vary widely, it is advisable to consult with counsel prior to using a Federal PAC for state or local activity. Generally the Secretary of State oversees the regulation of these activities, and forms are available from that office.

30. 52 U.S.C. § 30116(a)(4).
31. *See* 11 C.F.R. § 100.5(e)(3); *see also* FEC, "Contribution Limits For 2023-2024 Federal Elections," *available at* https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/.
32. 11 C.F.R. § 102.2(a)(3).
33. 11 C.F.R. § 110.2(a)(2).

For information on state campaign finance laws, see https://afj.org/resource-library/ and the websites of the Secretary of State or other campaign finance board.

D. Establishing an SSF That Is Not Registered with the FEC

The following information applies only to SSFs that are *not registered with the FEC.*

1. Registration with the Internal Revenue Service

An SSF that is not a Federal PAC and that reasonably anticipates raising or spending $25,000 or more in a calendar year must register with the IRS within 24 hours after the date on which the organization is established. The 24-hour period is triggered by any one of the following events: obtaining an employer identification number (EIN), incorporation of the SSF under state law, approval of articles of association by the board of directors, or the opening of a bank account. The SSF must file Form 8871 ("Notice of SSF Status") electronically with the IRS. (The link to Form 8871, instructions and electronic filing access is at https://www.irs.gov/charities-non-profits/political-organizations/initial-notice-form-8871). This form requires certain basic information, including the name and address of the SSF, date of its establishment, custodian of records, exempt purpose, related entities (which would include the name of the connected organization), and a list of all directors, officers, and highly compensated employees.

The IRS will send to the SSF a user name and password. This will be necessary for electronically amending the Form 8871 or filing periodic reports. (See "Reporting Requirements" below.) An SSF must electronically file notice (an amended Form 8871) of any "material change" to the information on its Form 8871 within 30 days of the material change. A change of address, directors, or bank account would constitute a material change.

2. Reporting Requirements

Periodic reporting to the IRS is required for political organizations that do not report contributions and expenditures to the FEC. If, however, the SSF intends to register with a state campaign finance agency, it should indicate on the Form 8871 that it is a qualified state or local political organization ("QSLPO"), which will avoid its having to file periodic reports with the IRS on Form 8872. An SSF that is required to register with the IRS and does *not meet the requirements of a* QSLPO must file periodic reports with the IRS using Form 8872 ("Political Organization Report of Contributions and Expenditures, available at http://www.irs.gov/pub/irs-pdf/f8872.pdf. Instructions are available at http://www.irs.gov/pub/irs-pdf/i8872.pdf).

In order to be a QSLPO, a group must meet the following criteria:[34]

- All of the political organization's exempt function activities are solely for the purposes of influencing state or local elections;
- The political organization is required, under state law, to submit to the appropriate state agency the same information regarding its contributions and expenditures that the political organization would be required to report to the IRS on Form 8872;
- The state agency to which the political organization reports makes the information available to the public, and the organization itself makes the reports publicly available upon request; and
- No federal candidate or federal officeholder is involved in the direction or fundraising efforts of the political organization.

For an SSF that is not a QSLPO, Form 8872 requires disclosure of aggregate contributions received and disbursements paid, and detailed information is required for contributions and expenditures.[35] Once the Form 8871 has been filed, the Form 8872 must be filed even if there is no activity. An organization must file Form 8872 electronically if it has, or expects to have, contributions or expenditures exceeding $50,000 for the calendar year. No extensions may be granted for filing these reports.

34. I.R.C. § 527(e)(5). Even if state law does not require the reporting of the identical information required on IRS Form 8872, an organization may still be deemed a "Qualified State or Local Political Organization" as long as contributions of $500 or more and expenditures of $800 or more are required to be reported. Rev. Rul. 2003-49, 2003-1 C.B. 903.
35. *See* I.R.C. § 527(j)(3) for the contents of reports required by the IRS.

Quarterly reports: If the SSF chooses to file quarterly, reports during an election year (i.e., an even-numbered year) must be filed by April 15, July 15, and October 15, with the fourth quarterly or "year-end" report due on January 31 of the following year. In addition to these reports, the SSF must file a pre-election report 12 days before an election (primary or general) for which it has made contributions or expenditures not previously reported in connection with that particular election. Finally, the SSF must file a post-general election report 30 days after the general election. (There is no requirement for any post-primary election report.)

During a nonelection year (i.e., an odd-numbered year), an SSF on a quarterly schedule must file only two semiannual reports covering January through June (to be filed by July 31) and covering July through December (to be filed by January 31 of the following year).

Monthly reports: Monthly filing requires the filing of a report on the 20th day after the last day of each month during the period from January through September. For the last three months of an election year, in place of the monthly report, the SSF must file the pre- and post-general election reports and year-end reports as described above under "Quarterly reports." Monthly filing is advantageous if the SSF plans to be active in numerous primary elections around the country, because monthly filing avoids the need to track the coverage dates and deadlines for pre-primary election reports.

In a nonelection year, an SSF filing monthly files a report by the 20th day after the last day of each month, except for the year-end report covering the month of December, which is due on January 31 of the next year.

3. Obtaining Contributor Information

An SSF must itemize on Form 8872 contributions of $200 or more in the aggregate from any one contributor and aggregate expenditures of $500 or more. Therefore, it is advisable that an SSF request the name, address, and (if the contributor is an individual) occupation and employer of a contributor in all its solicitations. Similarly, this information must be requested of any entity or individual to whom the organization makes aggregate payments of $500 or more in a calendar year. Forms 8871 and 8872 are publicly available, including contributor information, through the IRS' website.

4. Fundraising Activities

An SSF that is not registered with the FEC or equivalent state agency is relatively unrestricted with regard to the source and amount of contributions that it may solicit and receive. While an unregistered SSF is generally permitted to accept unlimited contributions from individuals (although not from foreign nationals), corporations, or labor unions, there may be special circumstances that restrict the receipt of certain contributions.

Individuals who make contributions to any political organization exempt under IRC section 527, such as an SSF, should be aware that:

- They may not deduct these amounts as charitable contributions for federal or state income tax purposes;[36]
- Such contributions are not subject to the federal gift tax;[37] and
- Contributors of stock and other appreciated property must pay income tax on any unrealized gains that they have at the time of the gift.[38]

36. I.R.C. § 170(c)(2)(D).
37. I.R.C. § 2501(a)(4).
38. I.R.C. § 84(a).

Special Rules For Establishing and Operating a Super PAC That Is a Nonconnected Committee

A. Background on Super PACs

The decision in *SpeechNow.org v. FEC* held that the First Amendment precludes governmental limits on contributions by individuals to political organizations that exclusively undertake "independent expenditures." Until *SpeechNow.org,* an individual could contribute only $5,000 per year to a Federal PAC regardless of the kinds of political activities in which the PAC engaged; and, individuals were limited to contributing $117,000[1] overall to all Federal PACs, candidates, and political parties during a two-year election cycle. Now no limits apply to contributions to Federal PACs that do not make contributions to federal candidates and engage **only** in independent expenditures and other public communications. A Super PAC may receive corporate and labor union contributions but is apparently subject to the prohibitions on contributions from foreign nationals, national banks, and federal contractors.[2]

As discussed in previous chapters, Super PACs are required to comply with many of the same rules applicable to all Federal PACs, including registration (see Chapter IV, § B(1) and below), recordkeeping and reporting (see Chapter IV, § B(8)), disclaimers (see Chapter I, § D(7)) and coordination (see Chapter I, § E). There remain, however, many unanswered questions about the organization and operation of Super PACs.

B. Super PAC Structure

A Super PAC may be formed as a Nonconnected Federal PAC; it is less clear whether a Super PAC may be formed as an SSF, particularly if it intends to solicit contributions from beyond the restricted class of a connected organization.[3] Given the uncertainty surrounding this issue, it is advisable to consult legal counsel who is knowledgeable about federal campaign finance issues when establishing a Super PAC.

In the case of a Super PAC that is organized by a 501(c)(4) and shares officers, office space and staff, there is an approach to forming a Super PAC that has received FEC approval. The FEC advised the Club for Growth ("CFG"), a 501(c)(4), that, as it proposed, it could establish and administer a Nonconnected Super PAC with the same treasurer (who also was the CFG's president) as its traditional PAC.[4] Under this opinion, CFG was permitted to solicit any individual to contribute to the Super PAC regardless of whether the person was a member of CFG's Restricted Class. The FEC advised CFG that it could solicit beyond CFG's Restricted Class and did not treat the Super PAC as an SSF. Accordingly, CFG was advised that it could solicit contributions from the general public, as well as corporations, labor unions, and other federally-permissible sources. And, CFG could pay the PAC's administrative and fundraising costs with those costs treated as lawful (and unlimited) in-kind contributions by CFG to the Super PAC and reported as such.

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1. In 2014, the Supreme Court in *McCutcheon v. FEC,* 134 S. Ct. 1434 (2014), struck down the aggregate limits on the amount an individual may contribute during a two-year period to all federal candidates, parties and political action committees combined. As a consequence, while the contribution limits to federal candidates, PACs and party committees remain, there is no limit on the aggregate contributions that an individual may give to these entities.
2. *See* FEC Advisory Opinion 2010-11 (Commonsense Ten) and 2010-09 (Club for Growth), which addressed super PACs that stated their intent not to accept such contributions. The constitutionality of prohibiting these sources from contributing to super PACs has not been directly addressed since *SpeechNow v. FEC.*
3. The FEC was asked by Stop This Insanity, a section 501(c)(4) organization, whether it could open a separate account of its SSF, Stop the Insanity, Inc. Employee Leadership Fund ("Fund") to solicit the general public for contributions to be used solely to make independent expenditures, while not disclosing its payments for the administrative and solicitation costs of the Fund. The Commission was unable to obtain the necessary four affirmative votes as to whether the Non-Contribution Account of the Fund could solicit contributions from persons outside of Stop This Insanity's solicitable class and how to treat Stop This Insanity's payment of that account's administrative and fundraising costs. Stop This Insanity sued the FEC, and the U.S. Court of Appeals for the D.C. Circuit affirmed the district court's decision that the PAC could not be established as an SSF because it sought to solicit contributions beyond its connected corporate sponsor's restricted class without disclosing the corporation's costs of that fundraising or administrative expenses as contributions to the Non-Contribution Account. *Stop This Insanity Inc. Emp. Leadership Fund v. FEC,* 761 F. 3d 10 (D.C. Cir. 2014). The court did not address the situation where a Super PAC or Non-Contribution Account asserts SSF status and relies solely upon its sponsor's restricted class, whether in the form of dues to the sponsor that are then transferred or direct contributions to the Super PAC or Non-Contribution Account, as the source of its funds. **https://www.fec.gov/legal-resources/court-cases/stop-this-insanity-inc-employee-leadership-fund-et-al-v-fec/**.
4. FEC Advisory Opinions 2012-18 (NRLC), 2012-03 (ActRight), 2011-24 (StandLouder.com), 2011-11 (Stephen Colbert), 2010-11 (Commonsense Ten), and 2010-9 (Club for Growth).

In contrast, the administrative and fundraising costs of a Federal PAC that is an SSF may be paid by its connected organization, and those payments are not "contributions" under FECA. The payment of those costs by a corporation for a *Nonconnected* Super PAC raises an unresolved question regarding the tax treatment of these expenditures under IRC section 527(f). There is currently no tax liability if a section 501(c) organization pays for certain expenses explicitly permitted by FECA, such as partisan engagement with the group's own members and establishing, administering and fundraising for an SSF. The regulations provide that these are expenditures for an exempt function only to the extent provided in the regulations.[5] The specific regulation covering these expenses, however, is "reserved" and no final decision has ever been made on their treatment. Therefore, while the 501(c) connected organization must treat those amounts as not furthering its primary purpose under the IRC, they are not subject to tax if paid for its SSF. If the Super PAC is established as a Nonconnected PAC, however, it is not clear whether the amounts expended by the 501(c)(4) organization in support of the PAC, which are treated as "contributions" to the PAC, would be covered by the reserved section of the regulations or treated as taxable under IRC section 527(f).

Pursuant to a Stipulated Order between National Defense PAC and the FEC, a Nonconnected Federal PAC may maintain two separate bank accounts: one to receive unlimited contributions for independent expenditures only (a "Non-Contribution Account"), and another to receive contributions subject to the source and dollar limits applicable to a Traditional Federal PAC for the purpose of making candidate contributions (a "Contribution Account").[6] Each account must pay the portion of administrative expenses that represents the percentage of activity for that account, and it must comply with the applicable limits for the contributions that it receives for the purpose of making candidate contributions. Therefore, it is no longer necessary to have two separate PACs, one Traditional PAC and the other a Super PAC, as one Nonconnected Federal PAC registered with the FEC may have two accounts established for these separate activities. Such PACs may be referred to as "Carey PACs" or "Hybrid PACs." This order does not apply to SSFs. (See discussion in footnote 3 regarding *Stop This Insanity*.)

C. Establishing and Registering a Super PAC

1. FEC Registration

A Super PAC is required to file Form 1 with the FEC within 10 days of raising or spending in excess of $1,000 with respect to federal elections. A Super PAC that is established as a Nonconnected PAC should not identify a "connected" organization on Line 6 of the Form 1, and the PAC should not be identified as a separate segregated fund (Line 5(e)). The Super PAC may, however, include in its name the name of any particular organization that was involved in starting or maintaining it.

In the case of a Nonconnected PAC already registered as a Traditional PAC with the FEC that wishes to set up a Non-Contribution Account and operate as a Hybrid PAC, the PAC should file an amended Form 1 identifying itself as a Hybrid PAC. The Hybrid PAC should use the same EIN and FEC Reporting Number for both its accounts.

2. Employer Identification Number

The Super PAC, unless it is merely an account of an existing PAC, as discussed above, must apply for an employer identification number (EIN) by filing a Form SS-4 with the IRS. The Super PAC may not use the EIN of a connected 501(c)(4), if any, if it wishes to have a separate legal identity from the 501(c)(4). Generally, a bank will not open an account until the entity has obtained an EIN. This step must be taken even if the Super PAC will not have any employees of its own. The link to the IRS online Form SS-4 (Application for EIN) is **https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online**.

5. Treas. Reg. § 1.527-6(b)(3).
6. Stipulated Order and Consent Judgment, *Carey v. FEC,* No. 11-259-RMC (D.D.C. Aug. 19, 2011).

3. Depository

The Super PAC must open a bank account(s) into which all funds must be deposited and from which all expenditures must be made. It is impermissible for a Super PAC to receive and spend funds without first depositing them in the depository account.

D. Special Accounting and Reporting Responsibilities

The Super PAC must report all of its receipts and disbursements pursuant to the Act and regulations in the same manner as any other federal political committee. (See Chapter IV, § B(8).)

There are special rules for a Federal PAC that is a Hybrid PAC that maintains both a Contribution Account and a Non-Contribution Account.[7] In this case, reporting is somewhat more complicated, particularly because contributions received into the Non-Contribution Account must be reported separately from contributions received into the Contribution Account. The FEC has instructed that contributions to the Non-Contribution Account should be reported on Line 17 of Form 3X as "Other Federal Receipts," rather than on Line 11(a), which continues to be used to report voluntary contributions to the Contribution Account. Contributions that must be itemized should be described on Schedule A in the memo entry as part of the "Non-Contribution Account." Independent expenditures made from Non-Contribution Account should be reported on Line 24 of Form 3X and identified separately on Schedule E by entering "Non-Contribution Account" in the memo text. To the extent that the Federal PAC pays its own administrative or operating expenses, these disbursements should be allocated between the Non-Contribution Account and the Contribution Account in a manner that corresponds to the percentage of activity from each account. The disbursements should be reported on Schedule B, Line 29 as "Other Disbursements" and identified in the memo text as for the "Non-Contribution Account."

E. State Activity

A Super PAC may also make contributions to state and local candidates and undertake public communications about state and local elections insofar as state law permits. In this respect, a Super PAC can function at the state and local level like a Traditional Federal PAC. (For that reason, the commonly applied "Independent Expenditure-Only PAC" label is somewhat misleading; it would be more accurately termed a "no-federal-contributions PAC.") Given varying state laws, however, it is essential to consult the law of the relevant state prior to using a Super PAC for state or local election activity.

Because the rules governing Super PACs continue to evolve, it is important to consult counsel or knowledgeable sources regarding new rulings or guidance regarding establishing and operating Super PACs.

7. *See* FEC Statement on *Carey v. FEC:* Reporting Guidance for Political Committees that Maintain a Non-contribution Account (October 5, 2011) https://www.fec.gov/updates/fec-statement-on-carey-fec/.

Operating a Nonconnected Federal PAC that is Not a Super PAC

Individuals associated with a 501(c)(3) or 501(c)(4), on their personal time and without any use of organizational resources, may establish a Traditional Nonconnected Federal PAC,[1] which is a PAC established by an independent group of individuals, not by a corporation. The major benefit of a Nonconnected Federal PAC is that, unlike an SSF, it may solicit the general public for contributions. A Nonconnected Federal PAC may not be affiliated with another nonprofit corporation, such as a 501(c)(4), or any other corporate entity.[2] Staff, directors, or members of a 501(c)(3) or 501(c)(4), as individuals, not as agents or members of the 501(c)(3) or 501(c)(4), may form or serve on the board of a Nonconnected Federal PAC to support federal candidates.

A Nonconnected Federal PAC must file its Statement of Organization with the FEC within 10 days of raising or spending $1,000.[3] The process for creating a Nonconnected Federal PAC is similar in most respects to that for starting an SSF, with a few minor differences. (See Chapter IV.) The PAC organizers may choose to incorporate under state law for liability purposes or some states provide similar protections against liability for unincorporated nonprofit associations.

A 501(c)(3) or 501(c)(4) with which the individuals are associated may not provide any financial support, directly or indirectly, to the Nonconnected Federal PAC. Rather, all costs of organizing and operating the PAC must be paid from voluntary individual contributions to the PAC. This separation is particularly important in the case of a 501(c)(3) because a 501(c)(3) is strictly prohibited under tax law from having an affiliated political organization that supports or opposes candidates.

There is little clear guidance on the degree of separation required between a corporation and a Nonconnected Federal PAC (that is not a Super PAC) to ensure that the PAC is treated as a Nonconnected PAC. Numerous advisory opinions have considered the factors required to maintain separation between a corporation and a Nonconnected Federal PAC and have set out reasonably strict requirements for separation of governance, financial management, and activities. The recent opinions discussed in the previous chapter on Super PACs raise the question of whether the FEC's position has evolved in this respect. In two opinions issued to Nonconnected Super PACs, the only material difference between an SSF and a Nonconnected PAC is that in the case of the SSF the connected organization may pay, and not report to the FEC, the administrative and fundraising costs of the SSF. In contrast, the FEC's earlier opinions suggest that a greater degree of separation may be required for Nonconnected PACs that are not Super PACs, including diversified management and board members.

It is absolutely clear, however, that a corporation may not pay for any of the fundraising, administrative, or other overhead costs of a Traditional Nonconnected Federal PAC. Financial transactions between an exempt organization or any other corporation and a Nonconnected Federal PAC should be kept to a minimum and must always be at arm's length.

In order to demonstrate separation, previous FEC advisory opinions suggest avoiding having the same persons managing both the Nonconnected Federal PAC and any nonprofit corporation, or even to have a majority of overlapping directors. Individual board members or staff on their own time may serve on the board or as officers, but independence from the 501(c)(3) and 501(c)(4) is essential.

1. *See* FEC Advisory Ops. 2000-20 (Committee for Quality Cancer Care), 1997-26 (AMSA), 1997-15 Kenneth Nickalo), 1995-38 (Washington Policy Associates), 1991-37 (Democratic Election Reporting Education Fund), and 1984-12 (American College of Allergists).
2. FEC, Campaign Guide for Nonconnected Committees *available at* **https://www.fec.gov/resources/cms-content/documents/policy-guidance/nongui.pdf**; *see also* FEC Advisory Opinion 1984-12 (American College of Allergists).
3. 52 U.S.C. § 30103.

The FEC has taken the position in one advisory opinion that the PAC should have a "diversified leadership" to avoid the situation in which individuals affiliated with a particular corporation form the majority of the PAC board.

A 501(c)(3) that has no affiliated 501(c)(4) should, in most cases, avoid sharing space, equipment, or staff with a Traditional Nonconnected Federal PAC. Any sharing of resources could invite IRS scrutiny into whether the 501(c)(3) is indirectly or directly supporting the PAC. If a 501(c) organization and Nonconnected Federal PAC share any staff, equipment, or office space, the PAC must pay fair market value for all of these resources in advance (for use of staff) or within a commercially reasonable time. The cost of any use of the corporation's lists by the PAC must be paid in advance.

Failing to maintain separation between a Traditional Nonconnected Federal PAC and a nonprofit corporation could convert the PAC into an SSF. If such an affiliation occurs, the Nonconnected Federal PAC would be limited to fundraising from the Restricted Class and other restrictions of an SSF under the FECA.

This guide does not attempt to cover the full range of rules applicable to Nonconnected Federal PACs, because it focuses primarily on the complex structures of affiliated organizations. For more information, consult a legal advisor or the *FEC Campaign Guide for Nonconnected Committees,* available at https://www.fec.gov/resources/cms-content/documents/policy-guidance/nongui.pdf.

Conclusion

Putting Knowledge Into Practice

While the details of the laws discussed in this guide can be quite complex, the essential idea is simple: nonprofit organizations may become involved in the policy process at every stage, and different organizational structures are available that enable nonprofit organizations to pursue almost any strategy for policy and political change. It is possible to ally with different types of nonprofit organizations to create effective coalitions for any type of social change. We hope that this guide has given you the information you need to bring your unique knowledge, vision, and commitment to the policy and political process and to succeed.

Lobbying Disclosure Act

The Lobbying Disclosure Act of 1995 (LDA), as amended, requires registration and reporting by organizations employing lobbyists or by outside lobbyists who accept compensation for conducting lobbying activities on behalf of clients. The LDA applies to the lobbying of both the executive and legislative branches of the federal government. Grassroots lobbying efforts to encourage the public to contact executive and legislative branch officials and staff are generally not regulated or reportable under the LDA. The Act also imposes significant civil and criminal penalties on lobbyists and lobbying organizations for violations of the disclosure requirements or of the congressional gift and travel rules. For more information, visit the websites of the U.S. Senate at https://www.senate.gov/legislative/lobbyingdisc.htm and of the U.S. House at https://lobbyingdisclosure.house.gov/.

Basic Requirements

An organization is required to register and report under the LDA if:

- It employs one or more "lobbyists," and
- Its total expenses for "lobbying activities" exceed or are expected to exceed $14,000 during a calendar quarter; this threshold is indexed to inflation and adjusted every four years, with the next adjustment occurring January 1, 2025.

A lobbyist is defined as an individual who is employed or retained by the organization for financial or other compensation, makes at least two "lobbying contacts," and spends at least 20 percent of their time for the organization in a quarterly reporting period on "lobbying activities." Thus, an individual who is employed primarily to conduct research, and who occasionally accompanies the organization's lobbyist to explain technical matters would probably not qualify as a lobbyist because they would generally not be spending 20 percent or more of their work time on lobbying activities.

Lobbying Contacts Versus Lobbying Activities

A lobbying contact consists of:

- An oral or written communication (including an electronic communication);
- To an executive or legislative branch official;
- On behalf of a client (in the case of an organization that employs lobbyists, the organization is the client); regarding:
  - The formulation, modification, or adoption of federal legislation, federal rules, regulations, executive orders, and other government programs;
  - The administration of federal programs (including the negotiation or award of contracts, grants, or licenses); or
  - The nomination or confirmation of a person subject to confirmation by the Senate.

Lobbying activities include both lobbying contacts and all efforts in support of such contacts, including:

- Preparation and planning activities;
- Research and other background work intended for use in lobbying contacts; and
- Coordination with the lobbying activities of other groups. (See special rules on coalitions below.)

Exempt contacts: Certain communications will not count as lobbying contacts for the purpose of determining who is a lobbyist. These include:

- Requests for appointments, status requests, or similar administrative communications made without the intent to influence a covered official;
- Communications made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act;
- Testimony given before a committee, subcommittee, or task force of Congress, or submitted for inclusion in the public record of a congressional hearing;
- Communications required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of Congress or a federal agency, including communications compelled by a federal contract, grant, loan, permit, or license;

- Communications in response to a notice in the Federal Register, Commerce Business Daily, or other similar publication soliciting public comment;
- Communications made to agency officials with regard to judicial proceedings, criminal or civil law enforcement inquiries, investigations or proceedings, or filings required by statute or regulation;
- Written comments filed in a public docket and other communications made on the record in a public proceeding; and
- Formal petitions for agency action, made in writing pursuant to established agency procedures.

The full list can be found in Section 3(8)(B) of the LDA, available at https://lobbyingdisclosure.house.gov/lda.html. While the activities listed above will not trigger registration requirements for any employee, if these activities are pursued in support of the organization's other lobbying activities the expenses associated with these contacts must still be disclosed as lobbying activities.

Registration and Reporting

An organization that employs at least one individual who meets the definition of a lobbyist must register with the Secretary of the Senate and the Clerk of the House. (Identical forms must be filed in both locations.) The organization is the registrant, and its in-house lobbyists are to be named on the registration form.

Registration is required within 45 days of the date of employment of the lobbyist or by the date of the second lobbying contact, whichever is earlier. Following registration, the organization is required to file quarterly reports with the Secretary and the Clerk. Outside lobbyists or lobbying firms file their own registrations, in which they name their clients. Thus, a lobbying organization would not name its contract lobbyists on the organization's registration, but it would include the cost of hiring those lobbyists in its estimate of lobbying expenses on its quarterly reports.

Registration Form LD-1: A lobbying registration, filed electronically on Form LD-1, must identify:

- The name of the registrant;
- The registrant's client (in the case of an organization lobbying on its own behalf, the client is the organization itself);
- The effective date of registration;
- Contact information for the registrant;
- Any "affiliated organization" (i.e., any organization other than the client that contributes more than $5,000 in a calendar quarter for lobbying activities and actively participates in the planning, supervision, or control of such lobbying activities);
- Any foreign entity that: (1) holds at least 20 percent equitable interest in the registrant or its client or any affiliated organization; (2) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes activities of the registrant or its client or any affiliated organization; or (3) is an affiliate of the registrant or its client or any affiliated organization and has a direct interest in the outcome of the lobbying activity. (It is worth noting that given the Justice Department's increased focus on enforcement of the Foreign Agents Registration Act, if an organization has foreign donors they should review the issue with legal counsel);
- The general issues expected to be lobbied and, to the extent practicable, specific issues already addressed or likely to be addressed;
- Each employee who has acted or is expected to act as a lobbyist on behalf of the client; and
- For any employee listed as a lobbyist who served as a covered executive or legislative branch official within 20 years of acting as a lobbyist for the client, the position in which they served.

Quarterly reports Form LD-2: Quarterly reports must be filed with the Secretary of the Senate and the Clerk of the House by January 20, April 20, July 20, and October 20 of each year. Note that reports must be filed even for periods in which a registrant had no lobbying activity. For such periods, the registrant simply marks a box indicating that the organization had no such activity in the reporting period.

Reports of lobbying activity, filed electronically on Form LD-2, must identify:

- The general lobbying issue areas and the specific issues lobbied (including bill numbers and references to specific executive branch actions);
- The names of employees who acted as lobbyists (if an individual has newly met the definition of lobbyist since the organization filed its Form LD-1, they should be listed on the organization's next Form LD-2; if an individual no longer qualifies as a lobbyist for the filer it is important to terminate that person's registration. Line 23 of the LD-2 is used to delete names of employees who are no longer expected to act as lobbyists, due to a change in job duties, assignments, or employment status.);
- A good-faith estimate of lobbying expenses, including payments to third parties (Estimates of amounts in excess of $5,000 may be rounded to the nearest $10,000. Where neither income nor expenses exceed $5,000, the form includes a box that must be checked so indicating);
- The chamber(s) of Congress and federal agencies contacted;
- Updated information on any "affiliated organization" (see above); and
- Updated information on any foreign entity (see above).

In addition, Congress recently enacted a requirement that organizations must disclose certain information about prior criminal convictions of their lobbyists, including Federal or State Court convictions on an offense involving bribery, extortion, embezzlement, illegal kickback, tax evasion, fraud, conflict of interest, making a false statement, perjury, or money laundering.

Alternate Reporting Methods

Reporting Coalitions and Affiliated Organizations

A coalition that employs or retains lobbyists on behalf of the coalition may be the registrant under the LDA even if the coalition is not a legal entity or has no formal name. If the coalition employs lobbyists, the registrant is the coalition not the individual members, though the individual members may have their own reporting obligations. If the coalition retains a lobbying firm, the firm's registration must list the name of the coalition and identify the names of the affiliated organizations. If the coalition does not have a name, it must adopt an identifier and indicate on the LD-1 that it is an "informal coalition." If the coalition does not have a name, it must adopt an identifier and indicate on the LD-1 that it is an "informal coalition." A registrant is also required to report any "affiliated organization" which is defined as an entity, other than the registrant, that contributes more than $5,000 to the lobbying activities of the registrant during a quarterly reporting period and "actively participates in the planning, supervision, or control of such lobbying activities." The LDA Guidance available at https://lobbyingdisclosure.house.gov/amended_lda_guide.html provides various examples to illustrate when an entity is considered to be "actively participating" in lobbying activities of the registrant:

> An organization "actively participates" in the planning, supervision, or control of lobbying activities of a client or registrant when that organization (or an employee of the organization in his or her capacity as an employee) engages directly in planning, supervising, or controlling at least some of the lobbying activities of the client or registrant.

In contrast, the Guidance states that having "only a passive role in the lobbying activities" of a registrant is not considered active participation. Passive activities include "merely donating or paying dues to the client or registrant, receiving information or reports on legislative matters, occasionally responding to requests for technical expertise or other information in support of the lobbying activities, attending a general meeting of the association or coalition client, or expressing a position with regard to legislative goals in a manner open to, and on a par with, that of all members of a coalition or association — such as through an annual meeting, a questionnaire, or similar vehicle."

Tracking and Recordkeeping

In an effort to avoid duplication in recordkeeping, the LDA permits public charities that have "elected" to lobby pursuant to Code section 501(h) to report under the LDA using the Code's definitions for purposes of compliance with LDA sections 2 U.S.C. § 1603(a)(3) and 2 U.S.C. § 1604(b)(4).

The LDA also permits electing registrants to disclose the amount that is ultimately reportable to the IRS for LDA quarterly activity reports (LD-2). The rules in this regard are complex and should be reviewed in greater detail prior to registration.

An organization is required to institute a reasonable system for compiling the information necessary to complete the quarterly reports including tracking expenses related to lobbying activities and make a good faith effort to comply with that system. Further, the LDA Guidance recommends maintaining records for all filings and the records supporting those filings for a period of at least six years after the date a report is filed.

Semiannual Reporting of Certain Contributions

Lobbyists and their employers must file semiannual reports disclosing certain contributions to federal candidates, political parties, and leadership PACs, as well as a broad range of payments to honor or recognize legislative and executive branch officials and donations to presidential libraries and inaugural committees. In addition, each filer must certify that they have read and understand the gift and travel provisions of the House and Senate rules and that they have not knowingly violated those rules. The LD-203 reports are due by July 30 and January 30 of each year, covering the periods of January 1 to June 30 and July 1 to December 31, respectively.

All individuals who are registered as lobbyists and their employing organizations or lobbying firms are subject to the reporting requirement. Each registered lobbyist *and* their employer must file the LD-203, even if there were no reportable payments and the organization did not establish or control a PAC, since, in addition to those disclosure obligations, filers must certify that they understand and have complied with the Congressional gift and travel rules. A registered lobbyist whose registration was active *during any part of a reporting period* is subject to the reporting requirement regardless of whether or not the individual lobbyist engaged in any lobbying activity or terminated his or her registration during the reporting period.

It is important to timely terminate the registration of an individual who longer qualifies as a lobbyist for an organization on Line 23 of the organization's LD-2, as described above, otherwise the individual will continue to be obligated to file the LD-203.

Registered lobbyists and their employers must disclose to the Secretary of the Senate and Clerk of the House semiannually the following types of activities, whether conducted by the organizations or individuals themselves or by a Federal PAC that they establish or control:

- Contributions of at least $200 to federal candidates, political parties, or leadership PACs (defined as any Federal PAC that a federal officeholder or candidate has established, financed, maintained, or controlled, except for his or her official campaign committee and any political party committee);
- Payments for an event to honor or recognize a legislative or executive branch official;
- Payments to an entity that is named for a legislative branch official;
- Payments to a person or entity in recognition of a legislative branch official;
- Payments to an entity that is established, maintained, financed, or controlled by a legislative or executive branch official;
- Payments to an entity that is designated by a legislative or executive branch official;
- Payments for a meeting, retreat, conference, or similar event that is held by or in the name of a legislative or executive branch official; and
- Donations of at least $200 to a presidential library foundation or presidential inaugural committee.

Other Required Disclosures

Upon request of the official at the time of the contact, a person making an oral lobbying contact must disclose whether the lobbyist is registered, the name of the client represented, and whether the client is a foreign entity. A person making a written lobbying contact must disclose any foreign entity on whose behalf the contact has been made.

APPENDIX B

Example Cost-Sharing Agreement For A 501(c)(3) Employer Sharing Services with a 501(c)(4)

Note: This sample cost-sharing agreement is intended to provide a useful starting point and helpful example. Each organization must review it closely and revise it as needed based on its particular procedures. In particular, Sections I and II of the agreement must reflect how the organization's staff time and expenses are actually allocated. The allocation method must be reasonable and organizations may take various approaches, but the agreement must reflect an organization's actual procedures and, equally important, the organizations must comply with the terms of the agreement. We recommend consulting with experienced legal counsel for further guidance.

This COST-SHARING AND LICENSING AGREEMENT ("Agreement") is made and entered into as of _______________ ____, 202_ (the "Effective Date"), by and between [NAME OF 501(c)(3)] ("XXX"), a [NAME OF STATE IN WHICH IT'S INCORPORATED] nonprofit corporation organized and operated for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code (the "Code") and [NAME OF 501(c)(4)] ("YYY"), a [NAME OF STATE IN WHICH IT'S INCORPORATED] nonprofit corporation organized and operated for social welfare purposes within the meaning of Section 501(c)(4) of the Code.

RECITALS

WHEREAS, XXX has employees, facilities and office resources that YYY wishes to use to engage in its programs and activities;

WHEREAS, recognizing the similarities in their missions to [brief statement of missions], XXX and YYY have determined that it is to their mutual benefit for the two organizations to share employees, facilities, and office resources, and for YYY to reimburse XXX for its allocable share of the costs of these resources;

WHEREAS, the parties agree to make every effort to safeguard XXX's tax status under Section 501(c)(3) of the Code and that XXX's employees, facilities and resources shall not be used to engage in YYY's programs and activities without adequate compensation from YYY;

> These clauses should be added only if the (c)(3) is licensing the name and marks to the (c)(4).
>
> WHEREAS, XXX owns all right, title and interest in and to the XXX marks, including the goodwill associated therein (the "XXX Marks");
>
> WHEREAS, YYY wishes to use the XXX Marks to identify itself as "___________" and XXX wishes to grant YYY a license to use the XXX Marks for that purpose, all in accordance with the terms and conditions set forth in Schedule C of this Agreement; and

WHEREAS, the procedures provided in this Agreement are intended to ensure that (1) XXX has absolute discretion and control over the disposition of its resources and assets for its own activities and (2) YYY's activities and programs are attributable only to YYY, not to XXX.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained in this Agreement and for good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, the parties agree as follows:

I. Sharing and Calculating Costs of Employees, Facilities and Other Office Resources

A. Employees:

XXX shall make available to YYY the services of its employees, to the extent they are not otherwise occupied in providing services for XXX, to perform a variety of program, administrative, accounting, fundraising, and other similar functions for YYY on an as-needed basis.

B. Calculation of Payment for Salaries and Fringe Benefits:

YYY's payment for services of XXX's employees shall be based on the proportion of the salaries and fringe benefits of XXX's personnel that is expended on behalf of YYY, as determined in accordance with time-sheets or other reasonable contemporaneous documentation prepared by XXX's employees.

C. Facilities, Equipment and Supplies:

Employees of XXX made available to YYY may use office space, office supplies, office equipment and furniture, and similar items of XXX described in Schedule A ("Overhead"). YYY shall pay XXX its share of expenses related to Overhead ("Overhead Costs"), which shall be calculated by multiplying XXX's total Overhead Costs by the percentage obtained by dividing the total program staff hours charged to YYY's activities by the total number of hours worked by XXX's program staff. The parties shall update Schedule A whenever circumstances merit.

D. Direct Costs of Use of Certain Office Resources:

Direct costs shall be allocated based on the percentage of use by each party. "Direct Costs" shall include the expenses listed on Schedule B to this Agreement, as from time to time updated by the parties.

E. Use of Vendors:

To the extent that YYY retains third-party vendors to perform services, YYY will contract directly with these vendors for the provision of goods and services whenever possible. If this approach is impossible or impracticable in a particular instance, YYY will pay XXX the direct costs of the goods and services provided to YYY as specified in Schedule B. In each instance, the parties shall confirm in writing in advance of using the vendor's services, (1) that the proposed use by the non-contracting party is permissible under the vendor agreement and (2) the parties' agreement on the method of allocating the costs of such use and of billing the other party for the associated costs.

This provision should be used if the (c)(3) intends to allow the (c)(4) to rent a list or the organizations intend to exchange lists.

F. List Rentals and Exchanges:

To the extent YYY wishes to use a XXX email or other list: (1) YYY must rent such list from XXX for a fee equal to the fair market value of the use of the list for this purpose or (2) subject to agreement by both parties, YYY and XXX may exchange lists of similar value so long as each party has an intended current or future use for the list it receives.

G. Activities Consistent with XXX's Tax-Exempt Status:

YYY shall not use any resources in a manner that, in XXX's sole discretion, is inconsistent with or could jeopardize XXX's exempt status under Section 501(c)(3) of the Code.

II. Billing and Payment for Shared Employees and Costs

A. Invoices:

XXX shall prepare and deliver a detailed invoice to YYY that states: (1) in the case of services, the staff that performed the services, the total time expended or method of allocation, and the total reimbursable cost for such services, and (2) in the case of other costs, including overhead and direct costs, a description of the cost, the amount or extent of the use, and the total reimbursable cost.

B. Payment:

YYY shall reimburse XXX within thirty (30) days after receiving an invoice. If YYY has questions about an invoice or believes that an invoice is not accurate or complete, YYY shall pay all amounts that are not in dispute and pay all remaining amounts within (10) days of resolving any questions or dispute if the initial 30-day period has elapsed or by the end of the initial 30-day period, whichever is later. If YYY fails to reimburse XXX within sixty (60) days of the date of initial receipt of an invoice, XXX shall have the right to impose interest in the amount of the federal funds rate plus a 1.5% finance charge per month on the balance.

III. Review of Agreement and Allocation Method

A. Annual Review:

Within ninety (90) days of the end of each fiscal year, the parties shall conduct a review of this Agreement and the current cost allocation for services and costs for the prior fiscal year to determine if any modifications are necessary.

B. Disputes over Cost Allocation:

If at any time XXX concludes that the allocation of costs under this Agreement is inconsistent with or could jeopardize its tax-exempt status, it may choose, in its sole discretion, to take steps to address the circumstances. Any dispute over the allocation of costs shall be resolved through good-faith negotiations as agreed to by the parties. In the event that the Internal Revenue Service ("IRS") determines that XXX did not receive adequate reimbursement under this Agreement, YYY shall pay XXX the difference between the amounts paid and the amount identified by the IRS, and any associated penalties and interest.

IV. Record-Keeping

Each party shall keep records related to the obligations required under this Agreement for a minimum of seven (7) years or such other period agreed to by the parties. Each party shall make all books, ledgers, accounts, files, computer records and personnel records involved in performing activities under this Agreement available at reasonable times and upon advance notice to the other party, its auditors, or legal counsel to determine compliance with this Agreement.

V. Responsibility for Employee Compensation

A. Sole Responsibility for Employees:

XXX shall bear sole responsibility for (1) compensating its employees in accordance with its wage and benefit plans and all applicable labor laws, and (2) payment of all applicable taxes, payroll deductions and other similar items, including but not limited to federal and state withholding taxes, workers' compensation and unemployment insurance. XXX and YYY shall work together to ensure that any and all federal, state and local taxes are paid.

B. Overtime:

XXX shall be responsible for aggregating the total hours worked during each period for all of its employees, regardless of whether all or a portion of the pay period is spent working on behalf of YYY, and shall be responsible for meeting any overtime obligations under applicable law; provided however that YYY shall reimburse XXX for its applicable share of such costs in accordance with this Agreement.

VI. Term and Termination

A. Term:

This Agreement shall be effective as of the Effective Date and shall continue indefinitely, or until earlier superseded by a subsequent agreement or until one of the parties terminates the Agreement as provided under Section VI.B.

B. Termination:

Either party may terminate this Agreement at any time, and for any reason, or no reason, by giving the other party written notice at least thirty (30) days prior to the effective date of termination. Within thirty (30) days after the effective date of termination, XXX shall present an invoice to YYY for all costs incurred by YYY prior to termination that require reimbursement.

VII. Miscellaneous

A. Notices:

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be considered given and delivered when personally delivered, or when delivered by United States mail or when sent by e-mail with a copy sent via United States mail, properly addressed to the other party at the address set forth below, or at such other address as the party shall specify by notice given in accordance with this Section:

If to XXX:

If to YYY:

B. Governing Law:

This Agreement shall be interpreted and construed in accordance with the laws of the State of ____________ without reference to principles of conflict of laws.

C. Entire Agreement:

This Agreement, including all Schedules, constitutes the entire agreement of the parties with respect to the subject matter of this Agreement and shall supersede and render null and void all prior and contemporaneous agreements between the parties with respect to such subject matter.

D. Amendments and Assignment:

Except as otherwise provided, this Agreement may be amended in writing by mutual agreement of the parties. This Agreement may not be assigned by either party.

E. Severability:

If any term of provision of this Agreement is rendered invalid or unenforceable by any valid law or by any duly promulgated regulation, or declared null and void by any court of competent jurisdiction, such term or provision shall be restated in accordance with applicable law to best reflect to the intentions of the parties, and the remaining provisions of this Agreement shall remain in full force and effect.

F. Waiver:
No failure by a party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, agreement, term or condition unless in writing and signed by the party granting the waiver. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect.

G. Survival of Certain Provisions:
All rights to payment, causes of action, confidentiality and any provisions that by their terms are intended to survive termination shall survive the termination of this Agreement.

H. Counterparts:
This Agreement may be signed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

In Witness Whereof,
the parties have duly executed this Agreement effective as of the date specified herein.

By: ______________________________
Name: ______________________________
Title: ______________________________

By: ______________________________
Name: ______________________________
Title: ______________________________

Schedule A:
Overhead Costs

(Must be reviewed and revised as necessary)

- Website maintenance
- Payroll services
- Legal, accounting and auditing services
- IT services
- Membership dues
- Postage & shipping
- Supplies
- Equipment rental & maintenance
- Bank & finance fees
- Office space rent
- Real estate taxes
- Storage
- Cleaning
- Insurance
- Utilities
- Internet
- Telephone
- Depreciation

Schedule B:
Direct Costs

(Must be reviewed and revised as necessary)

- Subscriptions
- Data access use
- Independent contractors
- Travel of employees and contractors
- Printing

Optional Schedule For Sharing Name And Marks:

Schedule C:

License To Use Name

1. Grant of License:

XXX grants to YYY a non-exclusive license (“License”) to use the XXX Marks in accordance with the terms set forth below.

1.01 Scope of License:

YYY may use the XXX Marks only in connection with its tax-exempt activities.

1.02 No Sublicensing:

YYY may not sublicense the XXX Marks in any form without XXX’s prior written approval, which it shall grant or withhold in its sole discretion.

1.03 Use in Accordance with Law:

YYY will use the XXX Marks in a professional manner in accordance with all applicable laws, rules and regulations. YYY will not engage in any deceptive, misleading or illegal or unethical practices that are or might be detrimental to XXX or to the XXX Marks.

2. Ownership of the Marks:

2.01 Ownership:

YYY acknowledges that: (b) XXX retains sole and exclusive ownership of all right, title and interest in and to the XXX Marks, and all applications or registrations resulting from such ownership; (b) its right to use the XXX Marks is only by virtue of this License and that YYY acquires no rights in or to the XXX Marks or any variation on the XXX Marks through YYY’s use; and (c) all goodwill arising from YYY’s use of the XXX Marks shall inure to the benefit of XXX.

2.02 No Contest:

YYY agrees that it will not contest, oppose, or challenge XXX’s exclusive ownership of the XXX Marks, or do anything to impair XXX’s ownership or rights in the XXX Marks. YYY further agrees that it will not seek registration of any mark constituting or otherwise including the term [insert], or any similar term, without written permission from XXX.

2.03 Adverse Use:

To the extent it is or becomes aware of such, YYY shall notify XXX of any adverse use by a third party of any of the XXX Marks or of a mark or name confusingly similar to any of the XXX Marks and agrees to take no action with respect thereto except with XXX’s prior written authorization. XXX may thereupon take such action as in its sole discretion it deems advisable for the protection of its rights in and to the XXX Marks. YYY further agrees to provide full cooperation with any action by XXX to protect XXX’s right, title, and interest in the XXX Marks.

3. Quality Control and Use of Marks:

3.01 Quality Control:

YYY agrees not to modify or alter the XXX Marks in any manner whatsoever, without the prior express written permission of XXX. YYY agrees to provide to XXX on its request samples of use of the XXX Marks, and information about the charitable and social welfare activities carried out by YYY, so that XXX can ensure that the XXX Marks are being used at the level and quality acceptable to XXX. If XXX has any concerns about how YYY is using the XXX Marks, the parties shall work together in good faith to resolve the concerns.

3.02 Confusingly Similar and/or Combination Marks:
YYY agrees not to adopt or use any other trademark, words, symbols, letters, designs or marks that would be confusingly similar to the XXX Marks.

4. Term and Termination:

4.01 Term:
This License shall remain in effect until terminated pursuant to the terms herein.

4.02 Termination by Notice:
XXX may terminate this License for any reason or no reason upon providing not less than 30 days prior written notice to YYY.

4.03 Termination by Default:
Notwithstanding Section 4.02, XXX may terminate this License effective immediately by written notice to YYY upon the occurrence of one or more of the following events (each a “Default”):

(a) Any failure by YYY to observe or to perform any covenants or agreements, which failure shall in XXX’s sole discretion adversely affect XXX’s corporate or tax-exempt status, its reputation or the value of the XXX Marks;

(b) Any gross misconduct by YYY’s officers, directors, agents or employees, which misconduct, in XXX’s sole discretion, may adversely affect XXX’s corporate or tax-exempt status, its reputation or the value of the XXX Marks;

(c) YYY ceases to exist, becomes insolvent or the subject of bankruptcy, insolvency or liquidation proceedings, or makes an assignment for the benefit of creditors;

(d) YYY fails to conform the nature and quality of its use to the standards of XXX as set forth in Section 3.01 above; or

e) The Internal Revenue Service determines that YYY’s activities fail to meet the requirements of Code Section 501(c)(4).

4.04 Consequences of Termination:
In the event of any termination of this License Agreement, YYY agrees to immediately discontinue all use of the Marks.

4.05 Effect on License Agreement:
Termination of the License does not automatically terminate the provisions related to cost-sharing and reimbursement.

5. Indemnification:
To the maximum extent permitted by law, YYY will indemnify, defend, and hold XXX, its officers, directors, employees and agents, harmless from any claim, demand, cause of action, liability, loss, damage, cost, or expense that arises from or is associated with (i) YYY’s breach of this License or (ii) YYY’s actions or omissions in connection with its activities using the XXX Marks.

Sample Grant Agreement For a “Controlled Grant” from 501(c)(3) to 501(c)(4)

Note: This sample agreement is intended to provide a useful starting point and helpful example, but an organization must review it closely and revise or modify it as needed based on the particular facts.

The grant to [name of 501(c)(4) (“Grantee”)] from [name of 501(c)(3)] (“Grantor”) is for the explicit purposes described in Grantee’s proposal and subject to Grantee’s acceptance of the terms of this Agreement.

WHEREAS, Grantor is a nonprofit corporation organized and operated for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code (“Code”) and desires to provide a grant to Grantee to conduct charitable and educational activities;

WHEREAS, Grantee is a nonprofit corporation organized and operated for social welfare purposes within the meaning of Section 501(c)(4) of the Code; and

WHEREAS, the parties hereto agree that every effort shall be made to safeguard the integrity of Grantor’s tax-exempt status;

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the parties agree as follows:

Grantor has approved a grant in the amount of $__________ to Grantee in support of its work to support the project as described in the proposal attached to this Agreement (“Project”). The grant will be made after Grantor receives the executed copy of this Agreement. Grantee has reviewed the Agreement and accepts the grant terms and conditions outlined below.

Tax-Status:
It is understood that your organization is exempt from tax under Section 501(c)(4) of the Code. This status has been confirmed by filing copies of any and all IRS rulings with the Grantor. Grantee is required to notify Grantor immediately of any changes in Grantee’s tax status, including changes proposed by the IRS and an actual revocation, whether or not appealed.

Controlled Grant:
This grant constitutes a “controlled grant” as that term is defined pursuant to Treasury Regulation § 56.4911-4(f)(3). As such, the grant funds may be used for the Project and exclusively for charitable and educational activities consistent with Grantor’s tax-exempt status as a public charity. It is understood that your organization will not use these funds to intervene in any election or support or oppose any political party or candidate for public office, or engage in any lobbying as that term is defined under IRC Sections 501(h) and 4911.

This grant is not earmarked for transmittal to any other entity or person, whether or not mentioned in any proposal or other correspondence. Grantee accepts full control of the grant and its disposition and responsibility for complying with this Agreement’s terms and conditions.

Reversion of Grant Funds:
Any funds not expended or committed for the Project, or within the period stated, must be returned to the Grantor. Grantor will notify Grantee if it determines in its sole discretion, after careful consideration of available information, that the grant was not used for the purposes specified or was not reasonably in the interest of the general public. In addition, Grantee will return any unexpended funds if Grantee loses its exemption under IRC section 501(c)(4).

Reports to Grantor:

Grantee will furnish Grantor with quarterly written reports addressing the following points. These reports will supply sufficient information for Grantor to determine that the grant is being used for the purposes intended and for Grantor to fulfill its own public reporting responsibilities.

- A summary of receipts and expenditures. Each report shall provide an itemized statement of costs incurred by Grantee in performance of this Agreement.
- A description of work conducted by Grantee during the period in furtherance of the Project.
- An evaluation of the impact and results of work undertaken and an assessment of progress that has been made in meeting stated goals. Grantee is encouraged to report not only the positive results of its activities, but also any problems that have arisen along with a description of measures that have or will be put into practice to resolve them.
- A description and explanation of any changes in the nature, methodology, and/or objectives of the Project as presented in the initial funding proposal.

Grantee shall provide Grantor with a final report on the Project within sixty (60) days of the end of the grant period. The reports shall include: (1) a detailed description of what was accomplished through the expenditure of grant funds, including a discussion of the progress made toward achieving the goals of the grant and (2) a financial accounting of how the funds were spent which has been certified by the responsible financial officer of the organization.

Each report must be signed by an officer and include the following certification inside the report or in an attached letter:

"This organization warrants that it is in full compliance with its Grant Agreement with the Grantor and that all restrictions, including those prohibiting the use of the grant funds for lobbying and political activities, set forth in that Agreement have been observed."

Grantee Records:

Grantee shall maintain records satisfactory to Grantor related to the performance of this Agreement. If requested, Grantee shall make all books, ledgers, accounts, files and computer records and personnel involved in performing functions under the Agreement available to the Grantor or its designated representatives, auditors or legal counsel to confirm compliance with the terms of the Agreement and applicable law. Grantee agrees to retain records in accordance with its document retention policy but in no case less than six (6) years after the conclusion of the grant period.

Please sign and return the original of this Agreement acknowledging that Grantee accepts the terms and conditions of this Agreement.

For Grantee:	For Grantor:
______________________________	______________________________
(Signature of Authorized Representative)	(Signature of Authorized Representative)
______________________________	______________________________
(Name and Title)	(Name and Title)
______________________________	______________________________
(Date)	(Date)

Sample Grant Agreement For a Grant that Includes Support for Lobbying from 501(c)(3) to 501(c)(4)

Note: This sample agreement is intended to provide a useful starting point and helpful example, but an organization must review it closely and revise or modify it as needed based on the particular facts.

This grant to [name of 501(c)(4) ("Grantee")] from [name of 501(c)(3)] ("Grantor") is for the explicit purposes described in Grantee's proposal and subject to Grantee's acceptance of the terms of this Agreement.

WHEREAS, Grantor is a nonprofit corporation organized and operated for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code ("Code") and desires to provide a grant to Grantee to conduct activities that are consistent with Grantor's exempt purposes;

WHEREAS, Grantee is a nonprofit corporation organized and operated for social welfare purposes within the meaning of section 501(c)(4) of the Code and desires to conduct activities that include influencing legislation as described in the proposal submitted to Grantor;

WHEREAS, the parties hereto agree that every effort shall be made to safeguard the integrity of Grantor's tax-exempt status;

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the parties agree as follows:

Grantor has approved a grant in the amount of $_________ to Grantee in support of its work as described in the proposal attached to this Agreement ("Project"). The grant will be made after Grantor receives the executed copy of this Agreement. Grantee has reviewed the Agreement and accepts the grant terms and conditions outlined below.

Tax-Status:

It is understood that your organization is exempt from tax under Section 501(c)(4) of the Code. This status has been confirmed by filing copies of any and all IRS filings requested by the Grantor. Grantee is required to notify Grantor immediately of any changes in Grantee's tax status, including changes proposed by the IRS and an actual revocation, whether or not appealed.

Purpose of Grant:

Grantee may use the grant funds to support direct lobbying up to a limit of $_________, grassroots lobbying up to a limit of $_________, within the meaning of 26 U.S.C. 4911, and other charitable and educational activities in support of the Project that are consistent with Grantor's tax-exempt status. It is understood that your organization will not use these funds to intervene in any election in support of or opposition to any political party or candidate for public office.

This grant is not earmarked for transmittal to any other entity or person, whether or not mentioned in any proposal or other correspondence. Grantee accepts full control of the grant and its disposition and responsibility for complying with this Agreement's terms and conditions.

Reversion of Grant Funds:

Any funds not expended or committed for the Project, or within the period stated, must be returned to the Grantor. Grantor will notify Grantee if it determines in its sole discretion, after careful consideration of available information, that the grant was not used for the purposes specified or was not reasonably in the interest of the general public. In addition, Grantee will return any unexpended funds if Grantee loses its exemption under IRC section 501(c)(4).

Reports to Grantor:

Grantee will furnish Grantor with written reports addressing the following points. These reports will supply sufficient information for Grantor to determine that the grant is being used for the purposes intended and for Grantor to fulfill its own public reporting responsibilities.

- A summary of receipts and expenditures. Each report shall provide an itemized statement of costs incurred by Grantee in performance of this Agreement.
- A description of work conducted by Grantee during the period in furtherance of the Project.
- An evaluation of the impact and results of work undertaken and an assessment of progress that has been made in meeting stated goals. Grantee is encouraged to report not only the positive results of its activities, but also any problems that have arisen along with a description of measures that have or will be put into practice to resolve them.
- A description and explanation of any changes in the nature, methodology, and/or objectives of the Project as presented in the initial funding proposal.

Grantee shall provide Grantor with a final report on the Project within sixty (60) days of the end of the grant period. The reports shall include: (1) a detailed description of what was accomplished through the expenditure of grant funds, including a discussion of the progress made toward achieving the goals of the grant and (2) a financial accounting of how the funds were spent which has been certified by the responsible financial officer of Grantee.

Each report must be signed by an officer and include the following certification inside the report or in an attached letter:

"This organization warrants that it is in full compliance with its Grant Agreement with the Grantor and that all restrictions, including those prohibiting the use of the grant funds for political activities, set forth in that Agreement have been observed."

Grantee Records:

Grantee shall maintain records satisfactory to Grantor related to the performance of this Agreement. If requested, Grantee shall make all books, ledgers, accounts, files and computer records and personnel involved in performing functions under the Agreement available to the Grantor or its designated representatives, auditors or legal counsel to confirm compliance with the terms of the Agreement and applicable law. Grantee agrees to retain records in accordance with its document retention policy but in no case less than six (6) years after the conclusion of the grant period.

Please sign and return the original of this Agreement acknowledging that Grantee accepts the terms and conditions of this Agreement.

For Grantee:	For Grantor:
______________________________	______________________________
(Signature of Authorized Representative)	(Signature of Authorized Representative)
______________________________	______________________________
(Name and Title)	(Name and Title)
______________________________	______________________________
(Date)	(Date)

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